Charan Lal Sahu

Vs

Union of India

And

Rakesh Shrouti

Vs

Union of India and Others

And

Rajkumar Keswani

Vs

Union of India and Others

And

Nasrin Bi and Others

Vs

Union of India and Others

Writ Petition Nos. 268 of 1989

(CJI Sabyasachi Mukharji, K. N. Singh, K. N. Saikia, S. Ranganathan, a. M. Ahmadi JJ)

22.12.1989

JUDGMENT

SABYASACHI MUKHARJI, C.J. -

1. Is the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 (hereinafter referred to as 'the Act') constitutionally valid ? That is the question.

2. The Act was passed as a sequel to a grim tragedy. On the night of December 2, 1984 occurred the most tragic industrial disaster in recorded human history in the city of Bhopal in the State of Madhya Pradesh in India. On that night there was massive escape of lethal gas from the MIC storage tank at Bhopal Plant of the Union Carbide (I) Ltd. (hereinafter referred to as 'UCIL') resulting in large scale death and untold disaster. A chemical plant owned and operated by UCIL was situated in the northern sector of the city of Bhopal. There were numerous hutments adjacent to it on its southern side, which were occupied by impoverished squatters. UCIL manufactured the

pesticides, Seven and Temik, at the Bhopal plant, at the request of, it is stated by Judge John F. Keenan of the United States District Court in his judgment, and indubitably with the approval of, the Government of India. UCIL was incorporated in 1984 under the appropriate Indian law. 50.99 per cent of its shareholdings were owned by the Union Carbide Corporation (UCC), a New York Corporation. LIC and the Unit Trust of India own 22 per cent of the shares of UCIL, a subsidiary of UCC.

3. Methyl Isocyanate (MIC), a highly toxic gas, is an ingredient in the production of both Seven and Temik. On the night of the tragedy MIC leaked from the plant in substantial quantities. The exact reasons for the circumstances of such leakage have not yet been ascertained or clearly established. The results of the disaster were horrendous. Though no one is yet certain as to how many actually died as the immediate and direct result of the leakage, estimates attribute it to about 3000. Some suffered injuries the effects of which are described as carcinogenic and ontogenic by Ms. Indira Jaising, learned counsel; some suffered injuries serious and permanent and some mild and temporary. Livestock was killed, damaged and infected. Businesses were interrupted. Environment was polluted and the ecology affected, flora and fauna disturbed.

4. On December 7, 1984, Chairman of UCC Mr. Warren Anderson came to Bhopal and was arrested. He was later released on bail. Between December 1984 and January 1985 suits were filed by several American lawyers in the courts in America on behalf of several victims. It has been stated that within a week after the disaster, many American lawyers, described by some as 'ambulance chasers', whose fees were stated to be based on a percentage of the contingency of obtaining damages or not, flew over to Bhopal and obtained powers of attorney to bring actions against UCC and UCIL. Some suits were also filed before the District Court of Bhopal by individual claimants against UCC (the American Company) and the UCIL.

5. On or about February 6, 1985, all the suits in various U.S. District Courts were consolidated by the Judicial Panel on Multi-District Litigation and assigned to U.S. District Court, Southern District Litigation and assigned to U.S. District Court, Southern District of New York. Judge Keenan was at all material times the presiding judge there.

6. On March 29, 1985, the Act in question was passed. The Act was passed to secure that the claims arising out of or connected with the Bhopal gas leak disaster were dealt with speedily, effectively and equitably. On April 8, 1985 by virtue of the Act the Union of India filed a complaint before the U.S. District Court, Southern District of New York. On April 16, 1985 at the first pre-trial conference in the consolidated action transferred and assigned to the U.S. District Court, Southern District, New York, Judge Keenan gave the following directions :

> (i) that a three member Executive Committee be formed to frame and develop issues in the case and prepare expeditiously for trial or settlement negotiations. The Committee was to comprise of one lawyer selected by the firm retained by the Union of India and two other lawyers chosen by lawyers retained by the individual plaintiffs;
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> (ii) that as a matter of fundamental human decency, temporary relief was necessary for the victims and should be furnished in a systematic and coordinated fashion without unnecessary delay regardless of the posture of the litigation then pending.

7. On September 24, 1985 in exercise of powers conferred by Section 9 of the Act, the Government

of India framed the Bhopal Gas Leak Disaster (Registration and Processing of Claims) Scheme, 1985 (hereinafter called 'the Scheme').

8. On May 12, 1986 an order was passed by Judge Keenan allowing the application of UCC on forum non convenience as indicated hereinafter. On May 21, 1986 there was a motion for fairness hearing on behalf of the private plaintiffs. On June 26, 1986 individual plaintiffs filed appeal before the U.S. Court of Appeal for the Second Circuit challenging the order of Judge Keenan. By an order dated May 28, 1986 Judge Keenan declined the motion for a fairness hearing. The request for fairness hearing was rejected at the instance of Union of the India in view of the meagreness of the amount of proposed settlement. On July 10, 1986 UCC filed an appeal before the U.S. Court of Appeal for the Second Circuit. It challenged Union of Indian being entitled to American mode of discovery, but did not challenge the other two conditions imposed by Judge Keenan, it is stated. On July 28, 1986 the Union of India filed cross-appeal before the U.S. Court of Appeal praying that none of the conditions imposed by Judge Keenan should be disturbed. In this connection it would be pertinent to set out the conditions incorporated in the order of judge keenan, dated May 12, 1986 whereby he had dismissed the case before him on the ground of forum non convenience, as mentioned before. The conditions were the following :

> (1) That UCC shall consent to the jurisdiction of the courts of India and shall continue to waive defenses based on the statute of limitation;
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> (2) That UCC shall agree to satisfy any judgment rendered by an Indian court against it and if applicable, upheld on appeal, provided the judgment and affirmance "comport with minimal requirements of due process"; and
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> (3) That UCC shall be subject to discovery under the Federal Rules of Civil Procedure of the U.S. after appropriate demand by the plaintiffs.

9. On September 5, 1986 the Union of India filed a suit for damages in the District Court of Bhopal, being Regular Suit No. 1113 of 1986. It is this suit, inter alia, and the orders passed therein which were settled by the orders of this Court dated February 14 and 15, 1989 (Union Carbide Corporation v. Union of India, (1989) 1 SCC 674 : 1989 SCC (Cri) 243), which will be referred to later. On November 17, 1986 upon the application of the Union of India, the District Court Bhopal, granted a temporary injunction restraining the UCC from selling assets, paying dividends or buying back debts. On November 27, 1986 the UCC gave an undertaking to preserve and maintain unencumbered assets to the extent of 3 billion U.S. dollars.

10. On November 30, 1986 the District Court Bhopal lifted the injunction against the Carbide selling assets on the strength of the writ ten undertaking by UCC to maintain unencumbered assets of 3 billion U.S. dollars. On December 16, 1986 UCC filed a written statement contending that they were not liable on the ground that they had nothing to do with the Indian Company; and that they were a different legal entity; and that they never exercised any control and that they were not liable in the suit. Thereafter, on January 14, 1987 the Court of Appeal for the Section Circuit affirmed the decision of Judge Keenan but deleted the condition regarding the discovery under the American procedure granted in favour of the Union of India. It also suo motu set aside the condition that on the judgment of the Indian court complying with due process the decree issued should be satisfied by UCC. It ruled that such a condition cannot be imposed as the situation was covered by the provisions of the Recognition of Foreign Country Money Judgments Act.

11. On April 2, 1987, the court made a written proposal to all parties for considering reconciliatory interim relief to the gas victims. It September 1987, UCC and the Government of India Sought time from the Court of District Judge, Bhopal, to explore avenues for settlement. It has been asserted by the learned Attorney General that the possibility of settlement was there long before the full and final settlement was effected. He sought to draw our attention to the assertion that the persons concerned were aware that efforts were being made from time to time for settlement. However, in November 1987 both the Indian Government and the Union Carbide announced that settlement talks had failed and Judge Deo extended the time.

12. The District Judge of Bhopal on December 17, 1987 ordered interim relief amounting to Rs. 350 crores. Being aggrieved thereby the UCC filed a civil revision which was registered as Civil Revision Petition No. 26 of 1988 and the same was heard. On or about February 4, 1988, the Chief Judicial Magistrate of Bhopal ordered notice for warrant on Union Carbide, Hong Kong for the criminal case filed by CBI against Union Carbide. The charge-sheet there was under Sections 304, 324, 326, 429 of the Indian Penal Code read with Section 35 IPC and the charge was against M/s. Warren Anderson, Keshub Mahindra, Vijay Gokhale, J. Mukund, Dr. R. B. Roy Chowdhary, S. P. Chowdhary, K. V. Shetty, S. I. Qureshi and Union Carbide of USA, Union Carbide of Hong Kong and Union Carbide having Calcutta address. It charged the Union Carbide by saying that MIC gas was stored and it was further stated that MIC had to be stored and handled in stainless steel which was not done. The charge-sheet, inter alia, stated that a Scientific Team headed by Dr. Varadarajan had concluded that the factors which had led to the toxic gas leakage causing its heavy toll existed in the unique properties of very high reactivity, volatility and inhalation toxicity of MIC. It was further stated in the charge-sheet that the needles storage of large quantities of the material in very large size containers for inordinately long periods as well as insufficient caution in design, in choice of materials of construction and in provision of measuring and alarm instruments, together with the inadequate controls on systems of storage and on quality of stored materials as well as lack of necessary facilities for quick effective disposal of material exhibiting instability, led to the accident. It also charged that MIC was stored in negligent manner and the local administration was not informed, inter alia, of the dangerous effect of the exposure of MIC or the gases produced by its reaction and the medical steps to be taken immediately. It was further stated that apart from the design defects the UCC did not take any adequate remedial action to prevent back flow of solution from VGS into RVVH and PVH lines. There were various other acts of criminal negligence alleged. The High Court passed an order staying the operation of the order dated December 17, 1987 directing the defendant-applicant to deposit Rs. 350 crores within two months from the date of the said order. On April 4, 1988 the judgment and order were passed by the High Court modifying the order of the District Judge, and were passed by the High Court modifying the order of the District Judge, and granting interim relief of Rs 250 crores. The High Court held that under the substantive law of torts, the court has jurisdiction to grant interim relief under Section 9 of the CPC. On June 30, 1988 Judge Deo passed an order restraining the Union Carbide from settling with any individual gas leak plaintiffs. On September 6, 1988 special leave was granted by this Court in the petition filed by UCC against the grant of interim relief and Union of India was also granted special leave in the petition challenging the reduction of quantum of compensation from Rs. 350 crores to Rs. 250 crores. Thereafter, these matters were heard in November - December 1988 by the bench presided over by the then learned Chief Justice of India (Pathak, C.J.) and hearing continued also in January - February 1989 and ultimately on February 14-15, 1989 the order culminating in the settlement was passed ((1989 1 SCC 674).

13. In judging the constitutional validity of the Act, the subsequent events, namely, how the Act has worked itself out, have to be looked into. It is, therefore, necessary to refer to the two orders of this

Court. The proof of the cake is in its eating, it is said, and it is perhaps not possible to ignore the terms of the settlement reached on February 14 and 15, 1989 in considering the effect of the language used in the Act. Is that valid or proper - or has the Act been worked in any improper way ? These questions do arise.

14. On February 14, 1989 an order was passed in C.A. Nos. 3187-88 of 1988 with SLP (C) No. 13080 of 1988. ((1989) 1 SCC 674) The parties thereto were UCC and the Union of India as well as Jana Swasthya Kendra, Bhopal, Zehreeli Gas Kand Sangharsh Morcha, Bhopal, Madhya Pradesh. That order recited that having considered all the facts and the circumstances of the case placed before the court, the material relating to the proceedings in the courts in the United States of America, the offers and counter-offers made between the parties at different stages during the various proceedings, as well as the complex issues of law and fact raised and the submissions made thereon, and in particular the enormity of human suffering occasioned by the Bhopal gas disaster and the pressing urgency to provide immediate and substantial relief to victims of the disaster, the court found that the case was pre-eminently fit for an overall settlement between the parties covering all litigations, claims, rights and liabilities relating to and arising out of the disaster and it was found just, equitable and reasonable to pass, inter alia, the following orders : (SCC p. 675, para 1)

> "(1) The Union Carbide Corporation shall pay a sum of U.S. Dollars 470 million (Four hundred and seventy millions) to the Union of India in full settlement of all claims, rights and liabilities related to and arising out of Bhopal gas disaster.
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> (2) The aforesaid sum shall be paid by the Union Carbide Corporation to the Union of India on or before March 31, 1989.
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> (3) To enable the effectuation of the settlement all civil proceedings related to and arising out of the Bhopal gas disaster shall hereby stand transferred to this Court and shall stand concluded in terms of the settlement, and all criminal proceedings related to an arising out of the disaster shall stand quashed wherever these may be pending."

15. A written memorandum was filed thereafter and the court on February 15, 1989 passed an order after giving due consideration thereto. The terms of settlement were as follows : (SCC p. 677)

> "1. The parties acknowledge that the order dated February 14, 1989 disposes of in its entirety all proceedings in Suit No. 1113 of 1986. This settlement shall finally dispose of all past, present and future claims, causes of action and civil and criminal proceedings (of any nature whatsoever wherever pending) by all Indian citizens and all public and private entities with respect to all past, present and future deaths, personal injuries, health effects, compensation, losses, damages and civil and criminal complaints of any nature whatsoever against UCC, Union Carbide India Limited, Union carbide Eastern, and all of their subsidiaries and affiliates as well as each of their present and former directors, officers, employees, agents, representatives, attorneys, advocates and solicitors arising out of, relating to or connected with the Bhopal gas leak disaster, including past, present and future claims, causes of action and proceedings against each other. All such claims and causes of action whether within or outside India of Indian citizens, public or private entitles are hereby extinguished, including without limitation each of the claims filed or to be filed under the Bhopal Gas leak Disaster (Registration and Processing of

> Claims) Scheme, 1985, and all such civil proceedings in India are hereby transferred to this Court and are dismissed with prejudice, and all such criminal proceedings including contempt proceedings stand quashed and accused deemed to be acquitted.
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> 2. Upon full payment in accordance with the court's directions the undertaking given by UCC pursuant to the order dated November 30, 1986 in the District Court, Bhopal stands discharged, and all orders passed in Suit No. 1113 of 1986 and/or in any revision there from, also stand discharged."

16. It appears from the statement of objects and reasons of the Act that Parliament recognized that the gas leak disaster involving the release, on December 2 and 3, 1984 of highly noxious and abnormally dangerous gas from a plant of UCIL, a subsidiary of UCC, was of an unprecedented nature, which resulted in loss of life and damage to property on an extensive scale, as mentioned before. It was stated that the victims who had managed to survive were still suffering from the adverse effects and the further complications which might arise in their cases, of course, could not be fully visualized. It was asserted by Ms. Indira Jaising that in case of some of the victims the injuries were carcinogenic and ontogenic and these might lead to further genetic complications and damages. The Central Government and the Government of Madhya Pradesh and various agencies had to incur expenditure on a large scale for containing the disaster and mitigating or otherwise coping with the effects thereto. Accordingly, the Bhopal Gas Leak Disaster (Processing of Claims) Ordinance, 1985 was promulgated, which provided for the appointment of a Commissioner for the welfare of the victims of the disaster and for the formulation of the Scheme to provide for various matters necessary for processing of the claims and for the utilisation by way of disbursal or otherwise of amounts received in satisfaction of the claims.

17. Thereafter, the Act was passed which received the assent of the President on March 29, 1985. Section 2(b) of the Act defines 'claim'. It says that "claim" means - (i) a claim, arising out of, or connected with, the disaster, for compensation or damages for any loss of life or personal injury which has been, or is likely to be, suffered; (ii) a claim, arising out of, or connected with, the disaster, for any damage to property which has been, or is likely to be, sustained; (iii) a claim for expenses incurred or required to be incurred for containing the disaster or mitigating or otherwise coping with the effects of the disaster; (iv) any other claim (including any claim by way of loss of business of employment) arising out of, or connected with, the disaster. A "claimant" is defined as a person entitled to make a claim. It has been provided in the Explanation to Section 2 that for the purpose of clauses (b) and (c), where the death of a person has taken place as a result of the disaster, the claim for compensation or damages for the death of such person shall be for the benefit of the spouse, children (including a child in the womb) and other heirs of the deceased and they shall be deemed to be the claimants in respect there of.

18. Section 3 is headed "Power of Central Government to represent claimants". It provides as follows :

> "3. (1) Subject to the other provisions of this Act, the Central Government shall, and shall have the exclusive right to, represent, and act in place of (whether within or outside India) every person who has made, or is entitled to make, a claim for all purposes connected with such claim in the same manner and to the same effect as such persons.
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> (2) In particular and without prejudice to the generality of the provisions of sub-

> section (1), the purposes referred to therein include -
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> (a) institution of any suit or other proceeding in or before any court or other authority (whether within or outside India) or withdrawal of any such suit or other proceedings, and
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> (b) entering into a compromise.
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> (3) The provisions of sub-section (1) shall apply also in relation to claims in respect of which suits or other proceedings have been instituted in or before any court or other authority (whether within or outside India) before the commencement of this Act :
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> Provided that in the case of any such suit or other proceeding with respect to any claim pending immediately before the commencement of this Act in or before any court or other authority outside India, the Central Government shall represent, and act in place of, or along with, such claimant, if such court or other authority so permits."

19. Section 4 of the Act is headed as "Claimant's right to be represented by a legal practitioner". It provides as follows :

> "Notwithstanding anything contained in Section 3, in representing, and acting in place of, any person in relation to any claim, the Central Government shall have due regard to any matters which such person may required to be urged with respect to his claim and shall, if such person so desires, permit at the expense of such person, a legal practitioner of his choice to be associated in the conduct of any suit or other proceeding relating to his claim."

20. Section 5 deals with the powers of the Central Government and enjoins that for the purpose of discharging its functions under this Act, the Central Government shall have the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908. Section 6 provides for the appointment of a Commissioner and other officers and employees. Section 7 deals with powers to delegate. Section 8 deals with limitation, while Section 9 deals with the power to frame a Scheme. The Central Government was enjoined to frame a scheme which was to take into account, inter alia, the processing of the claims for securing the enforcement, creation of a fund for meeting expenses in connection with the administration of the scheme and of the provisions of this Act and the amounts which the Central Government might, after due appropriation made by Parliament by law in that behalf, credit to the fund referred to in clauses above and any other amounts which might be credited to such fund. Such scheme was enjoined, as soon as may be after it had been framed, to be laid before each House of Parliament. Section 10 deals with removal of doubts. Section 11 deals with the overriding effect and provides that the provisions of the Act and of any scheme framed there under shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the Act of any instrument having effect by virtue of any enactment other than the Act.

21. A scheme has been framed and was published on September 24, 1985. Clause 3 of the said scheme provides that the Deputy Commissioners appointed under Section 6 of the Act shall be the authorities for registration of claims (including the receipt, scrutiny and proper categorization of

such claims under paragraph 5 of the Scheme) arising within the areas of their respective jurisdiction and they shall be assisted by such other officers as may be appointed by the Central Government under Section 6 of the Act for scrutiny and verification of the claims and other related matters. The Scheme also provides for the manner of filing claims. It enjoins that the Deputy Commissioner, shall provide the required forms for filing the applications. It also provides for categorization and registration of claims. Sub-clause (2) of clause 5 enjoins that the claims received for registration shall be placed under different heads.

22. Sub-clause (3) of clause 5 enjoins that on the consideration of claims made under paragraph 4 of the Scheme, if the Deputy Commissioner is of the opinion that the claims fall in any category different from the category mentioned by the claimant, he may decide the appropriate category after giving an opportunity to the claimant to be heard and also after taking into consideration any facts made available to him in this behalf. Sub-clause (5) of clause 5 enjoins that if the claimant is not satisfied with the order of the Deputy Commissioner, he may prefer an appeal against such order to the Commissioner, who shall decide the same.

23. Clause 9 of the Scheme provides for processing of Claims Account Fund, which the Central Government may, after due appropriation made by Parliament, credit to the said Fund. It provides that there shall also be a Claims and Relief Fund, which will include the amounts received in satisfaction of the claims and any other amounts made available to the Commissioner as donation or for relief purposes. Sub-clause (3) of clause 10 provides that the amount in the said Fund shall be applied by the Commissioner for, disbursal of amounts in settlement of claims, or as relief, or apportionment of part of the Fund for disbursal of amounts in settlement of claims arising in future or for disbursal of amounts to the Government of Madhya Pradesh for the social and economic rehabilitation of the persons affected by the Bhopal gas leak disaster.

24. Clause 11 of the Scheme deals with the disbursal, apportionment of certain amounts, and sub-clause (2) thereof enjoins that the Central Government may determine the total amount of compensation to be apportioned for each category of claims and the quantum of compensation payable, in general, in relation to each type of injury or loss. Sub-clause (5) thereto provides that in case of a dispute as to disbursal of the amounts received in satisfaction of claims, an appeal shall lie against the order of the Deputy Commission to the Additional Commissioner, who may decide the matter and make such disbursal as he may, for reasons to be recorded in writing, think fit. The other clauses are not relevant for our present purposes.

25. Counsel for different parties in all these matters have canvassed their submissions before us for the gas victims. Mr. R. K. Garg, Ms. Indira Jaising and Mr. Kailash Vasudev have made various submissions challenging the validity of the Act on various grounds. They all have submitted that the Act should be read in the way they suggested and as a whole. Mr. Shanti Bhushan, appearing for interveners on behalf of Bhopal Gas Peedit Mahila Udyog Sangathan and following him Mr. Prashant Bhushan have urged that the Act should be read in the manner canvassed by them and if the same is not so read then the same would be violative of the fundamental rights of the victims, and as such unconstitutional. The learned Attorney General assisted by Mr. Gopal Subramanium has on the other hand urged that the Act is valid and constitutional and that the settlement arrived at on February 14-15 is proper and valid.

26. In order to appreciate the background Ms. Indira Jaising placed before us the proceedings of the Lok Sabha wherein Mr. Virendra Patil, the Hon'ble Minister, stated on March 27, 1985 that the tragedy that had occurred in Bhopal on December 2 and 3, 1984 was unique and unprecedented in

character and magnitude not only for our country but for the entire world. It was stated that one of the options available was to settled the case in Indian courts. The second one was to file the cases in American courts. Mr. Patil reiterated that the Government wanted to proceed against the parent company and also to appoint a Commission of Inquiry.

27. Mr. Garg in support of the proposition that the Act was unconstitutional, submitted that the Act must be examined on the touchstone of the fundamental rights on the basis of the test laid down by this Court in State of Madras v. V. G. Row (1952 SCR 597 : AIR 1952 SC 196). There at page 607 of the report this Court has reiterated that in considering the reasonableness of the law imposing restrictions on the fundamental rights, both the substantive and the procedural aspects of he impugned restrictive law should be examined from the point of view of reasonableness. And the test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard or general pattern of reasonableness can be laid down as applicable to all cases. The nature of the right alleged to have been infringed, the underlying purpose of the restrictions imposed, the extent and urgency of the evil sought to be remedied thereby, the disproportion of the imposition, the prevailing conditions at the time, should all enter into the judicial verdict. Chief Justice Patanjali Sastri reiterated that in evaluating such elusive factors and forming their own conception of what is reasonable, in the circumstances of a given case, it is inevitable that the social philosophy and the scale of values of the judges participating in the decision would play an important role.

28. Hence, whether by Section 3, 4 and 11 the rights of the victims and the citizens to fight for their own causes and to assert their own grievances have been taken away validly and properly, must be judged in the light of the prevailing conditions at the time, the nature of the right of the citizen, the purpose of the restrictions on their rights to sue for enforcement in the courts of law or for punishment for offences against his person or property, the urgency and extent of the evils sought to be remedied by the Act, and the proportion of the impairment of the rights of the citizen with reference to the intended remedy prescribed. According to Mr. Garg, the present position calls for a comprehensive appreciation of the national and international background in which precious rights to life and liberty were enshrined as fundamental rights and remedy for them was also guaranteed under Article 32 of the Constitution. He sought to urge that multinational corporations have assumed powers or potencies to override the political and economic independence of the sovereign nations which have been used to take away in the last four decades, much wealth out of the Third World. Now these are plundered much more than what was done to the erstwhile colonies by imperialist nations in the last three centuries of foreign rule. The role of courts in cases of conflict between rights of citizens and the vast economic powers claimed by multinational corporations to deny moral and legal liabilities for their corporate criminal activities should not be lost sight of. He, in this background, urged that these considerations assume immense importance to shape human rights jurisprudence under the Constitution, and for the Third World to regulate and control the power and economic interests of multinational corporations and the power of exploitation and domination by developed nations without submitting to due observance of the laws of the developing countries. It therefore appears that the production of, or carrying on trade in dangerous chemicals by mutinational industries on the soil of Third World countries calls for strictest enforcement of constitutional guarantees for enjoying human rights in free India, urged Mr. Garg. In this connection, our attention was drawn to the Charter of Universal Declaration of Human Rights. Article 1 of the Universal Declaration of Human Rights, 1984 reiterates that all human beings are born free and equal in dignity and rights. Article 3 states that everyone has right to life, liberty and security of person. Article 6 of the Declaration states that everyone has the right to recognition everywhere as a person before the law. Article 7 states that all are equal before the law and are

entitled without any discrimination to equal protection of the law. All are entitled to equal protection against any discrimination in violation of the Declaration of Human Right and against any incitement to such discrimination. Article 8 states that everyone has the right to an effective remedy by competent national Tribunal for acts violating fundamental rights guaranteed to him by the Constitution or by the law. It is, therefore, necessary to bear in mind that Indian citizens have a right to live which cannot be taken away by the Union of India or the Government of a State, except by a procedure which is just, fair and reasonable. The right to life includes the right to protection of limb against mutilation and physical injuries, and dos not mean merely the right to breathe but also includes the right to livelihood. It was urged that this right is available in all its dimensions till the last breath against all injuries to head, heart and mind or the lungs affecting the citizen or his next generation or of genetic disorders. The enforcement of the right to life or limb calls for adequate and appropriate reliefs enforceable in courts of law and of equity with sufficient power to offer adequate deterrence in all case's of corporate criminal liability under strict liability, absolute liability, punitive liability and criminal prosecution and punishment to the delinquents. The damages awarded in civil jurisdiction must be commensurate to meet well defined demands of evolved human rights jurisprudence in modern world. It was, therefore, submitted that punishment in criminal jurisdiction for serious offences is independent of the claims enforced in civil jurisdiction and no immunity against it can be granted as part of settlement in any civil suit. If any Act authorises or permits doing of the same, the same will be unwarranted by law and as such bad. The Constitution of India does not permit the same.

29. Our attention was drawn to Article 21 of the Constitution and the principles of international law. Right to equality is guaranteed to every person under Article 14 in all matters like the laws of procedure for enforcement of any legal or constitutional right in every jurisdiction, substantive law defining the rights expressly or by necessary implication, denial of any of these rights to any class of citizen in either field must have nexus with constitutionally permissible object and can never be arbitrary. Arbitrariness is, therefore, antithetical to the right of equality. In this connection, reliance was placed on the observations of this Court in E. P. Royappa v. State of Tamil Nadu ((1974) 4 SCC 3 : 1974 SCC (L&S) 165 : (1974) 2 SCR 348), Maneka Gandhi v. Union of India ((1978) 1 SCC 248 : (1978) 2 SCR 621) where it was held that the view that Articles 19 and 21 constitute watertight compartments has been rightly overruled. Articles dealing with different fundamental rights contained in Part III of the Constitution do not represent entirely separate streams of rights which do not mingle at any point of time. They are all parts of an integrated scheme in the Constitution and must be preserved and cannot be destroyed arbitrarily. Reliance was placed on the observations in R. D. Shetty v. International Airport Authority of India ((1979) 3 SCC 489 : (1979) 3 SCR 1014). Hence, the rights of the citizens to fight for remedies and enforce their rights flowing the breach of obligation in respect of crime cannot be obliterated. The Act and Sections 3, 4 and 11 of the Act insofar as these purport to do so and have so operated, are violative of Articles 14, 19(1)(g) and 21 of the Constitution. The procedure envisaged by the said sections deprives the just and legitimate rights of the victims to assert and obtain their just dues. The rights cannot be so destroyed. It was contended that under the law the victims had right to ventilate their rights.

30. It was further contended that Union of India was a joint tort-feasor along with UCC and UCIL. It had negligently permitted the establishment of such a factory without proper safeguards exposing the victims and citizens to great danger. Such a person or authority cannot be entrusted to represent the victims by denying the victims their rights to plead their own cases. It was submitted that the object of the Act was to fully protect people against the disaster of highly obnoxious gas and disaster of unprecedented nature. Such an object cannot be achieved without enforcement of the criminal liability by criminal prosecution. Entering into settlement without reference to the victims

was, therefore, bad and unconstitutional, it was urged. If an Act, it was submitted, permits such a settlement or deprivation of the rights of the victims, then the same is bad.

31. Before we deal with the various other contentions raised in this case, it is necessary to deal with the application for intervention and submission made on behalf of the Coal Indian in Writ Petition No. 268 of 1989 wherein Mr. L. N. Sinha in his written submission had urged for the intervened that Article 21 of the Constitution neither confers nor creates nor determines the dimensions nor the permissible limits of restrictions which appropriate legislation might impose on the right to life or liberty. He submitted that provisions for procedure are relevant in judicial or quasi-judicial proceedings for enforcement of rights or obligations. With regard to alterations of rights, procedure is governed by the Constitution directly. He sought to intervene on behalf of Coal India and wanted these submissions to be taken into consideration. However, when this contention was sought to be urged before this Court on April 25, 1989, after hearing all the parties, it appeared that there was no dispute between the parties in the instant writ petitions between the victims and the Government of India that the rights claimed in these cases are referable to Article 21 of the Constitution. Therefore, no dispute really arises the submissions urged by Mr. Sinha on behalf of the intervened in this case. It has been so recorded.

32. By the order dated March 3, 1989, Writ Petitions Nos. 268 of 1989 and 164 of 1986 have been directed to be disposed of by this bench. We have heard these two writ petitions along with the other writ petitions and other matters as indicated hereinbefore. The contentions are common. These writ petitions question the validity of the Act and the settlement entered into pursuant to the Act. Writ Petition No. 164 of 1986 is by one Shri Rakesh Shrouti who is an Indian citizen and claims to be a practising advocate having his residence at Bhopal. He says that he and his family members were at Bhopal on December 2/3, 1984 and suffered immensely as a result of the gas leak. He challenges the validity of not have the exclusive right to represent the victims in suits against the Union Carbide and thereby deprive the victims of their right to sue and deny access to justice. He further challenges the right of the Union of India to represent the victims against Union Carbide because of conflict of interests. The conduct of the Union of India was also deprecated and it was further stated that such conduct did not inspire confidence. In the premises, the said petitioner sought a declaration under Article 32 of the Constitution that the Act is void, inoperative and unenforceable as violative of Articles 14, 19 and 21 of the Constitution. Similarly, the second writ petition, namely, Writ Petition No. 268 of 1989 which is filed by Mr. Charan Lal Sahu, who is also a practising advocate on behalf of the victims and claims to have suffered damages as a result of the gas leak, challenges the Act. He further challenges the settlement entered into under the Act. He says that the said settlement was violative of principles of natural justice and the fundamental right of the said petitioner and other victims. It is his case that insofar as the Act permits such a course to be adopted, such a course was not permissible under the Constitution. He further asserts that the Union of India was negligent and a joint tortfeasor. In the premises, according to him, the Act is bad, the settlement is bad and these should be set aside.

33. In order to determine the question whether the Act in question is constitutionally valid or not in the light of Articles 14, 19(1)(g) and 21 of the Constitution, it is necessary to find out what does the Act actually mean and provide for. The Act in question, as the Preamble to the Act states, was passed in order to confer powers on the Central Government to secure that the claims arising out of, or connected with, the Bhopal gas leak disaster are dealt with speedily, effectively, equitably and to the best advantage of the claimants and for matters incidental thereto. Therefore, securing the claims arising out of or connected with the Bhopal gas leak disaster is the object and purpose of the Act. We have noticed the proceedings of the Lok Sabha in connection with the enactment of the Act. Our

attention was also drawn by the learned Attorney General to the proceedings of the Rajya Sabha wherein the Hon'ble Minister, Shri Virendra Patil explained that the Bill enabled the government to assume exclusive right to represent and act, whether within or outside India in place of every person who had made or was entitled to make claim in relation to the disaster and to institute any suit or other proceedings or enter into any compromise as mentioned in the Act. The whole object of the Bill was to make procedural changes to the existing Indian law which would enable the Central Government to take up the responsibility of fighting litigation on behalf of these victims. The first point was that it sought to create a locus standi in the Central Government to file suits on behalf of the victims. The object of the statute, it was highlighted, was that because of the dissemination of the tragedy covering thousands of people, large number of whom being poor, would not be able to go to the courts, it was necessary to create the locus standi in the Central Government to start the litigation of payment of compensation in the court on their behalf. The second aspect of the Bill was that by creating this locus standi in the Central Government, the Central Government became competent to institute judicial proceedings for payment of compensation on behalf of the victims. The next aspect of the Bill was to make a distinction between those on whose behalf suits had already been filed and those on whose behalf proceedings had not yet then been instituted. One of the Members emphasised that under Article 21 of the Constitution, the personal liberty of every citizen was guaranteed and it has been widely interpreted as to what was the meaning of the expression 'personal liberty'. It was emphasised that one could not take away the right of a person, the liberty of a person, to institute proceedings for his own benefit and for his protection. It is from this point of view that it was necessary, the member debated, to preserve the right of a claimant to have his own lawyers to represent him along with the Central Government in the proceedings under Section 4 of the Act, this made the Bill constitutionally valid.

34. Before we deal with the question of constitutionality, it has to be emphasised that the Act in question deals with the Bhopal gas leak disaster and it deals with the claims meaning thereby claims arising out of or connected with the disaster for compensation of damages for loss of life or any personal injury which had been or is likely to be caused and also claims arising out of or connected with the disaster for any damages to property or claims for expenses incurred or required to be incurred for containing the disaster or making or otherwise coping with the impact of the disaster and other incidental claims. The Act in question does not purport to deal with the criminal liability, if any, of the parties or persons concerned nor it deals with any of the consequences flowing from those. This position is clear from the provisions and the Preamble to the Act. Learned Attorney General also says that the Act does not cover criminal liability. The power that has been given to the Central Government is to represent the 'claims', meaning thereby the monetary claims. The monetary claims, as was argued on behalf of the victims, are damages flowing from the gas disaster. Such damages, Mr. Garg and Ms. Jaising submitted, are based on strict liability, absolute liability and punitive liability. The Act does not, either expressly or impliedly, deal with the extent of the damages or liability. Neither Section 3 not any other section deals with any consequences of criminal liability. The expression "the Central Government shall, and shall have the exclusive right to, represent, and act in place of (whether within or outside India) every person who has made, or is entitled to make, a claim for all purposes connected with such claim in the same manner and to the same effect as such person", read as it is, means that Central Government is substituted and vested with the exclusive right to act in place of the victims, i.e., eliminating the victims, their heirs and their legal representatives, in respect of all such claims arising out of or connected with the Bhopal gas leak disaster. The right, therefore, embraces right to institute proceedings within or outside India along with right to institute any suit or other proceedings or to enter into compromise. Sub-section (1) of Section 3 of the Act, therefore, substitutes the Central Government in place of the victims.

The victims, or their heirs and legal representatives, get their rights substituted in the Central Government along with the concomitant right to institute such proceedings, withdraw such proceedings or suit and also to enter into compromise. The victims or the heirs or the legal representatives of the victims, are substituted and their rights are vested in the Central Government. This happens by operation of Section 3 which is the legislation in question. Sub-section (3) of Section 3 makes it clear that the provisions of sub-section (1) of Section 3 shall also apply in relation to claims in respect of which suits or other proceedings have been instituted in or before any court or other authority (when within or outside India) before the commencement of this Act but makes a distination in the case of any such suit or other proceedings with respect to any claim pending immediately before the commencement of this Act in or before any or other authority outside India, and provides that Central Government shall represent, and act in place of, or along with, such claimant, if such court or other authority so permits. Therefore, in cases where such suits or proceedings have been instituted before the commencement of the Act in any court or before any authority outside India, the section by its own force will not come into force in substituting the Central Government in place of the victims or the heirs or their legal representatives, but the Central Government has been given the right to act in place of, or along with, such claimant, provided such court or other authority so permits. It is to have adherence and conformity with the procedure of the countries or places outside India, where suits or proceedings are to be instituted or have been instituted. Therefore, the Central Government is authorised to act along with the claimants in respect of proceedings instituted outside India subject to the orders of such courts or the authorities. Is such a right valid and proper ?

35. There is the concept known both in this country and abroad, called parens patriae. Dr. B. K. Mukherjea in his "Hindu Law of Religious and Charitable Trust", Tagore Law Lectures, Fifth Edition, at page 404, referring to the concept of parens patriae, has noted that in English law, the Crown as parens patriae is the constitutional protector of all property subject to charitable trusts, such trusts being essentially matters of public concern. Thus the position is that according to Indian concept parens patriae doctrine recognized King as the protector of all citizens and as parent. In Budhkaran Chaukhani v. Thakur Prosad Shah (AIR 1942 Cal 331 : 46 CWN 425)the position was explained by the Calcutta High Court at page 318 of the report. The same position was reiterated by the said High Court in Banku Behary Mondal v. Banku Behary Hazra (AIR 1943 Cal 203 : 47 CWN 89) at page 205 of the report. The position was further elaborated and explained by the Madras High Court in Medai Dalavoi T. Kumaraswami v. Medai Dalavoi Rajammal (AIR 1957 Mad 563 : (1957) 2 MLJ 211) at page 567 of the report. This Court also recognized the concept of parens patriae relying on the observations of Dr. Mukherjea aforesaid in Ram Saroop v. S. P. Sahi (1959 Supp 2 SCR 583 : AIR 1959 SC 951) at pages 598 and 599. In the "Words and Phrases" Permanent Edition, Vol. 33 at page 99, it is stated that parens patriae is the inherent power and authority of a legislature to provide protection to the person and property of persons non sui juris, such as minor, insane, and incompetent persons, but the words parens patriae meaning thereby the father of the country, were applied originally to the King and are used to designate the State referring to its sovereign power of guardianship over persons under disability. Parens patriae jurisdiction, it has been explained, is the right of the sovereign and imposes a duty on sovereign, in public interest, to protect persons under disability who have no rightful protector. The connotation of the term parens patriae differs from country to country, for instance, in England it is the King, in America it is the people, etc. The Government is within its duty to protect and to control persons under disability. Conceptually, the parens patriae theory is the obligation of the State to protect and takes into custody the rights and the privileges of its citizens for dischargings its obligations. Our Constitution makes it imperative for the State to secure to all its citizens the rights guaranteed by the Constitution and where the

citizens are not in a position to assert and secure their rights, the State must come into picture and protect and fight for the rights of the citizens. The Preamble to the Constitution, read with the Directive Principles, Articles 38, 39 and 39-A enjoin the State to take up these responsibilities. It is the protective measure to which the social welfare state is committed. It is necessary for the State to ensure the fundamental rights in conjunction with the Directive Principles of State Policy to effectively discharge its obligation and for this purpose, if necessary, to deprive some rights and privileges of the individual victims or their heirs to protect their rights better and secure these further. Reference may be made to Alfred L. snapp and Son, Inc. v. Puerto Rico (73 L Ed 2d 995 : 458 US 592 : 102 SCR 3260) in this connection. There is was held by the Supreme Court of the United States of America that Commonwealth of Puerto Rico have standing to sue as parens patriae to enjoin apple growers' discrimination against Puerto Rico migrant farm workers. This case illustrates in some aspect the scope of parens patriae. The Commonwealth of Puerto Rico sued in the United States District Court for the Western District of Virginia, as parens patriae for Puerto Rican migrant farmworkers, and against Virginia apple growers, to enjoin discrimination against Puerto Ricans in favour of jamaican workers in violation of the Wagner-Peyser Act, and the Immigration and Nationality Act. The District Court dismissed the action on the ground that the Commonwealth lacked standing to sue, but the Court of Appeal for the Fourth Circuit reversed it. On certiorari, the United States Supreme Court affirmed. In the opinion by White, J., jointed by Burger, C.J. and Brennan, Marshall, Blackmun, Rehnquist, Stevens, and O'Connor, JJ., it was held that Puerto Rico had a claim to represent its quasi-sovereign interests in federal court at least which was as strong as that of any State, and that it had parens patriae standing to sue to secure its residents from the harmful effects of discrimination and to obtain full and equal participation in the federal employment service scheme established pursuant to the Wagner-Peyser Act and the Immigration and Nationality Act of 1952. Justice White referred to the meaning of the expression parens patriae. According to Black's Law Dictionary, 5th edn. 1979, page 10003, it means literally 'parent of the country' and refers traditionally to the role of the State as a sovereign and guarding of persons under legal disability. Justice White at page 1003 of the report emphasised that the parens patriae action had its roots in the common law concept of the royal prerogative". The royal prerogative included the right or responsibility to take care of persons who were legally unable, on account of mental incapacity, whether it proceeds from non-age, idiocy or lunacy to take proper care of themselves and their property. This prerogative of parens patriae is inherent in the supreme power of every state, whether that power is lodged in a royal person or in the legislature and is a most beneficent function. After discussing several cases Justice White observed at page 1007 of the report that in order of maintain an action, in parens patriae, the State must articulate an interest apart from the interests of particular parties, i.e. the State must be more than a nominal party. The State must express a quasi-sovereign interest. Again an instructive insight can be obtained from the observations of Justice Holmes of the American Supreme Court in the case of State of Georgia v. Tennessee Copper Co. (51 L Ed 1038 : 206 US 230 (1906) : 27 SCR 618), which was a case involving air pollution in Georgia caused by the discharge of noxious gases from the defendant's plant in Tennesee. Justice Holmes at page 1044 of the report described the State's interest as follows :

> "This is a suit by a State for an injury to it in its capacity of quasi-sovereign. In that capacity the State has an interest independent of and behind the titles of its citizens, in all the earth and air within its domain. It has the last word as to whether its mountains shall be stripped of their forests and its inhabitants shall breathe pure air. It might have to pay individuals before it could utter that word, but with it remains the final power ...

> ... When the States by their union made the forcible abatement of outside nuisances impossible to each, they did not thereby agree to submit to whatever might be done. They did not renounce the possibility of making reasonable demands on the ground of their still remaining quasi-sovereign interests ......"

36. Therefore, conceptually and from the jurisprudential point of view, especially in the background of the Preamble to the Constitution of India and the mandate of the Directive Principles, it was possible to authorise the Central Government to take over the claims of the victims to fight against the multinational corporation in respect of the claims. Because of the situation the victims were under disability in pursuing their claims in the circumstances of the situation fully and properly. On its plain terms the State has taken over the exclusive right to represent and act in place of every person who has made or is entitled to make a claim for all purposes connected with such claim in the same manner and to the same effect as such person. Whether such provision is valid or not in the background of the requirement of the Constitution and the Code of Civil Procedure, is another debate. But there is no prohibition or inhibition, in our opinion, conceptually or jurisprudentially for the Indian State taking over the claims of the victims or for the State acting for the victims as the Act has sought to provide. The actual meaning of what the Act has provided and the validity thereof, however, will have to be examined in the light of the specific submissions advanced in this case.

37. Ms. Indira Jaising as mentioned hereinbefore on behalf of some other victims drew our attention to the background of the passing of the Act in question. She drew our attention to the fact that the Act was to meet a specific situation that had arisen after the tragic disaster and the advent of American lawyers seeking to represent the victims in American courts. The government's view, according to her, as was manifest from the Statement of Objects and Reasons, debates of the Parliament, etc. was that the interests of the victims would be best served if the Central Government was given the right to represent the victims in the courts of United States as they would otherwise be exploited by 'ambulance chasers' working on contingency fees. The government also proceeded initially on the hypothesis that U.S. was the most convenient forum in which to sue UCC. The government however feared that it might not have locus standi to represent the victims in the courts of the United States of America unless a law was passed to enable it to sue on behalf of the victims. The dominant object of the Act, therefore, according to her, was to given to the Government of India locus standi to sue on behalf of the victims in foreign jurisdiction, a standing which it otherwise would not have had. According to her, the Act was never intended to give exclusive rights to the Central Government to sue on behalf of the victims in India or abroad. She drew our attention to the Parliamentary debates as mentioned hereinbefore. She drew our attention to the expression parens patriae as appearing in the Words and Phrases, Volume 31 page 99. She contended that the Act was passed to provide locus standi only to present in America. She drew our attention to the American Constitutional Law by Laurence H. Tribe, 1978 edn, at paragraph 3.24, where it was stated that in its capacity as proprietor, a State may satisfy the requirement of injury to its own interests by an assertion of harm to the State as such. It was further stated by the learned author there that the State may sue under the federal anti-trust laws to redress wrongs suffered by it as the owner of a railroad and as the owner and operator of various public institutions. It was emphasised that in its quasi-sovereign capacity, the State has an interest, independent of and behind the titles of its citizens, in all the earth and air within its domain. It was sought to be suggested that in the instant Act no such right was either asserted or mentioned. The State also in its quasi-sovereign capacity is entitled to bring suit against a private individual to enjoin a corporation not to discharge noxious gases from its out of State plant into the suing State's territory. Finally, it was emphasised that as parens patriae on behalf of the citizens, where a State's capacity as parens patriae is not negated by

the federal structure, the protection of the general health, comfort, and welfare of the State's inhabitants has been held to give the State itself a sufficient interest. Ms. Jaising sought to contend that to the extent that the Act was not confined to empowering the government to sue on behalf of those who were not sui generis but extended also to representing those who are, this exercise of the power cannot be referable to the doctrine of parens patriae. To the extent, it is not confined in enabling the government to represent its citizens in foreign jurisdiction but empowered it to sue in local courts of the exclusion of the victims it cannot be said to be in exercise of doctrine of parens patriae, according to her. We are unable to agree. As we have indicated before conceptually and jurisprudentially there is no warrant in the background of the present Act, in the light of circumstances of the Act in question to confine the concept into such narrow field. The concept can be varied to enable the government to represent the victims effectively in domestic forum if the situation so warrants. We also do not find any reason to confine the parens patriae doctrine to only quasi-sovereign right of the State independent of and behind the title of the citizen, as we shall indicate later.

38. It was further contended that deprivation of the rights of the victims and denial of the rights of the victims or the rights of the heirs of the victims to access to justice was unwarranted and unconstitutional. She submitted that it has been asserted by the government that the Act was passed pursuant to Entry 13 of List I of the seventh Schedule to the Constitution. It was therefore submitted that to the extent it was a law relating to civil procedure, it sets up a different procedure for the Bhopal gas victims and denies to them equality before law, violating Article 14 of the Constitution. Even assuming that due to the magnitude of the disaster, the number of claimants and their disability, they constituted a separate class and that it was permissible to enact a special legislation setting up a special procedure for them, the reasonableness of the procedure has still to be tested. Its reasonableness, according to her, will have to be judged on the touchstone of the existing Civil Procedure Code of 1908 and when so tested, it is found wanting in several respects. It was also contended by the government that it was a legislation relating to "actionable wrongs" under Entry 8 of the Concurrent List of the Seventh Schedule. But so read, she said, it could only deal with the procedural aspects and not the substantive aspect of "actionable wrongs". If it does, then the reasonableness of a law must be judged with reference to the existing substantive law of actionable wrongs and so judged it is in violation of many constitutional rights as it takes away from the victims the right to sue for actionable wrongs, according to counsel for the victims. According to her, it fails to take into account the law of strict liability for ultra hazardous activity as clarified by this Court in M. C. Mehta case (M. C. Mehta v. Union of India, (1987) 1 SCC 395 : 1987 SCC (L&S) 37 : (1987) 1 SCR 819). She further submitted that it is a bad Act as it fails to provide for the right to punitive damages and destruction of environment.

39. It was contended on behalf of the Central Government that the Act was passed to give effect to the Directive Principles as enshrined under Article 39-A of the Constitution of India. It was, on the other side, submitted that it is not permissible for the State to grant legal aid on pain of destroying rights that inhere in citizens or on pain of demanding that the citizens surrender their rights to the State. The Act in fact demands a surrender of rights of the citizens to the State. On the interpretation of the Act. Ms. Indira Jaising submitted that Section 3 and 4 as noted above, give exclusive power to the government to represent the victims and there is deprivation of the victims' right to sue for the wrongs done to them which is uncanalised and unguided and the expression "due regard" in Section 4 of the Act does not imply consent and as such is violative of the rights of the victims. The right to be associated with the conduct of the suit is hedged in with so many conditions that it is illusory. According to her, a combined reading of Section 3 and 4 of the Act lead to the conclusion that the victims are displaced by the Central Government which has constituted itself as the "surrogate" of

the claimants, that they have no control over the proceedings, that they have no right to decided whether or not to compromise and if so on what terms and they have no right to be heard by the court before any such compromise is effected. Therefore, Section 3 read with Section 4, according to her, hands over to the government all effective rights of the victims to sue and is a naked usurpation of power. It was submitted that in any event on a plain reading of the Act, Section 3 read with Section 4 did not grant the government immunity from being sued as a joint tort-feasor.

40. It was further urged that Section 9 makes the government the total arbiter in the matter of registration, processing and recording of claims. Reference was made to Section 9(2) (a), (b) and (c) and disbursal of claims under Sections 9(2) (f) and 10. It was urged that the Deputy Commissioner and Commissioner appointed under the Act and the Scheme are subordinates and agents of the Central Government. They replace impartial and independent civil court by officers and sub-ordinates of the Central Government. Clause 11 of the Scheme makes the Central Government, according to counsel, judge in its own cause inasmuch as the Central Government could be and was in fact a joint tort-feasor. It was submitted that Sections 5 to 9 of the Act read with the Scheme do not set up a machinery which is constitutionally valid. The Act, it was urged, deprives the victims of their rights out of all proportion to the object sought to be achieved, namely, to sue in foreign jurisdiction or to represent those incapable of representing themselves. The said object could be achieved, according to counsel, by limiting the right to sue in foreign jurisdiction alone and in any event representing only those victims incapable of representing themselves. The victims who wish to sue for and no their own behalf must have power to sue, all proper and necessary parties including Government of India, Government of Madhya Pradesh, UCIL and Shri Arjun Singh to vindicate their right to life and liberty and their rights cannot and should not be curtailed, it was submitted. Hence, the Act goes well beyond its objects and imposes excessive restriction amounting to destruction of the rights of the victims, according to counsel. In deciding whether any rights are affected, it is not the object of the Act that is relevant but its direct and inevitable effect on the rights of the victims that is material. Hence no matter how laudable the object of the Act is alleged to be by the Government of India, namely, that it is an Act to give effect to Directive Principles enshrined in Article 39-A of the Constitution, the direct and inevitable effect of Section 3 according to counsel for the victims is to deprive the victims of the right to sue for and on their own behalf through counsel of their choice and instead empower the Central Government to sue for them.

41. The Act is, it was contended, unconstitutional because it deprives the victims of their right to life and personal liberty guaranteed by Article 21. The right to life and liberty includes the right to sue for violations of the right, it was urged. The right to life guaranteed by Article 21 must be interpreted to mean all that makes life livable, life in all its fullness. According to counsel, it includes the right to livelihood. Reference was made to the decision of Olga Tellis v. Bombay Municipal Corpn. ((1985) 3 SCC 545 : 1985 Supp 2 SCR 51, 78-83) This right, it was contended, is inseparable from the remedy. It was urged that personal liberty includes a wide range of freedoms to decide how to order one's affairs. Reference was made to Maneka Gandhi v. Union of India ((1978) 1 SCC 248 : (1978) 2 SCR 621). The right to life and life and liberty also includes the right to healthy environment free from hazardous pollutants. The right to life and liberty, it was submitted, is inseparable from the remedy to judicial vindication of the violation of that right - the right of access to justice must be deemed to be part of that right. Therefore, the importance is given to the right to file a suit for an actionable wrong. See Ganga Bai v. Vijay Kumar ((1974) 2 SCC 393, 397 : (1974) 3 SCR 882, 886). According to counsel appearing for the victims, the Act read strictly infringes the right to life and personal liberty because the right to sue by the affected person for damages flowing from infringement of their rights is taken away. Thus, it was submitted that not just some incidents of the right to life, but the right itself in all its fullness is taken away. Such

deprivation, according to counsel, of the right, i.e., impugned Act is neither substantively nor procedurally just, fair or reasonable. A law which divests the victims of the right to sue to vindicate for life and personal liberty and vests the said right in the Central Government is not just, fair or reasonable. The victims are sui generis and able to decide for themselves how to vindicate their claims in accordance with law. There is, therefore, no reasons shown to exist for divesting them of that right and vesting that in the Central Government.

42. All the counsel for the victims have emphasised that vesting of the right in the Central Government is bad and unreasonable because there is conflict of interests between the Central Government and the victims. It was emphasised that the conflict of interest as already prejudiced the victims in the conduct of the case inasmuch as a compromise unacceptable to the victims has been entered into in accordance with the order of this Court of February 14/15, 1989 (Union Carbide Corporation v. Union of India, (1989) 1 SCC 674 : 1989 SCC (Cri) 243), without hearing the victims. This conflict of interest will continue, it was emphasised, to adversely affect the victims inasmuch as Section 9 of the Act read with clauses 5, 10 and 11 of the Scheme empower the Central Government to process claims, determine the category into which these fall, determine the basis on which damages will be payable to each category and determine the amount of compensation payable to each claimant. Learned counsel urged that the right to a just, fair and reasonable procedure was itself a guaranteed fundamental right under Article 14 of the Constitution. This included right to natural justice. Reference was made to Olga Tellis case ((1985) 3 SCC 545 : 1985 Supp 2 SCR 51, 78-83) and S. L. Kapoor v. Jagmohan ((1980) 4 SCC 379, 385, 395 : (1981) 1 SCR 746, 753, 766). The right to natural justice is included in Article 14. (Union of India v. Tulsiram Patel, (1985) 3 SCC 398 : 1985 SCC (L&S) 672 : 1985 Supp 2 SCR 131) Reference was also made to Maneka Gandhi case ((1978) 1 SCC 248 : (1978) 2 SCR 621). It was contended by counsel that the right to natural justice is the right to be heard by court at the pre-decisional stage, i.e., before any compromise is effected and accepted. Reference was made to the decision of this Court in Swadeshi Cotton Mills v. Union of India. ((1981) 1 SCC 664 : (1981) 2 SCR 533 : (1991) 51 Com Cas 210) It was submitted that natural justice is a highly effective tool devised by the courts to ensure that a statutory authority arrives at a just decision. It is calculated to act as a healthy check on the abuse of power. Natural justice is not dispensable nor is it an empty formality. Denial of that right can and has led to the miscarriage of justice in this case. According to counsel, if the victims had been given an opportunity to be heard, they would, inter alia, have pointed out that the amount agreed to be paid by UCC was hopelessly inadequate and that UCC, its officer and agents ought not to be absolved of criminal liability, that the Central Government itself was liable to have been sued as a joint tort-feasor and, according to counsel, had agreed to submit to a decree if fund liable under the order dated December 31, 1985, that suits had been filed against the State of Madhya Pradesh, Shri Arjun Singh and UCIL which said suits cannot be deemed to have been settled by the compromise/order of February 14/15, 1989. It was also pointed out that Union of India was under a duty to sue UCIL, which it had failed and neglected to do. It was submitted that to the extent that the statute does not provide for a pre-decisional hearing on the fairness of the proposed settlement or compromise by court, it is void as offending natural justice hence Articles 14 and 21 of the Constitution. Alternatively, it was contended by the counsel that since the statute neither expressly nor by necessary implication bars the right to be heard by court before any compromise is effected such a right to a pre-decisional hearing by court must be read into Section 3(2)(b) of the Act. Admittedly, it does not expressly exclude the right to a hearing by court prior to any settlement being entered into. Far from excluding such a right by necessary implication, having regard to the nature of the rights affected, i.e., the right to life and personal liberty, such a right to hearing must be read into the Act in order to ensure that justice is done to the victims, according to all the

counsel. The Act sets up a procedure different from the ordinary procedure established by law, namely, Civil Procedure Code. But it was submitted that the Act should be harmoniously read with the provisions of Civil Procedure Code and if it is not so read, then the Act in question would be unreasonable and unfair. In this connection, reliance was placed on the provisions of Order I Rule 4, Order XXIII Rule I proviso, Order XXIII Rule 3-B and Order XXXII Rule 7 of CPC and it was submitted that these are not inconsistent with the Act. On the contrary these are necessary and complementary, intended to ensure that there is no miscarriage of justice. Hence these must be held to apply to the facts and circumstances of the case and the impugned Act must be read along with these provisions. Assuming that the said provisions must be read with Section 3(2)(b) to make the Act reasonable, it was submitted. It was urged that if these are not so read then the absence of such provisions would vest arbitrary and unguided powers in the Central Government making Section 3(2)(b) unconstitutional. The said provisions are intended to ensure the machinery of accountability to the victims and to provide to them, an opportunity to be heard by court before any compromise is arrived at. In this connection, reference was made to Rule 23(3) of the Federal Rules of Civil Procedure in America which provides for a hearing to the victims before a compromise is effected. The victims as plaintiffs in an Indian court cannot be subjected to a procedure which is less fair than that provided by a U.S. forum initially chosen by the Government of India, it was urged.

43. Counsel submitted that Section 6 of the Act is unreasonable because it replaces an independent and impartial civil court of competent jurisdiction by an officer known as the Commissioner to be appointed by the Central Government. No qualification, according to counsel, had been prescribed for the appointment of a Commissioner and clause 5 of the Scheme framed under the Act vests in the Commissioner the judicial function of deciding appeals against the order of the Deputy Commissioner registering or refusing to register a claim. It was further submitted that clause 11(2) of the Scheme is unreasonable because it replaces an independent and impartial civil court of competent jurisdiction with the Central Government, which is a joint tort-feasor for the purpose of determining the total amount of compensation to be apportioned for each category of claims and the quantum of compensation payable for each type of injury or loss. It was submitted that the said function is a judicial function and if there is any conflict of interest between the victims and the Central Government, vesting such a power in the Central Government amounts to making it a judge in its own cause. It was urged that having regard to the fact that amount received in satisfaction of the claims is ostensibly pre-determined, namely, 470 million dollars unless the order of February 14/15 is set aside which ought to be done, according to counsel, the Central Government would have a vested interest in ensuring that the amount of damages to be disbursed does not exceed the said amount. Even otherwise, according to counsel the Government of India has been used as a joint tort-feasor, and as such they would have a vested interest in depressing the quantum of damages, payable to the victims. This would, according to counsel, result in a deliberate underestimation of the extent of injuries and compensation payable.

44. Clause 11(4) of the Scheme, according to counsel, is unreasonable inasmuch as it does not take into account the claims of the victims to punitive and exemplary damages and damages for loss and destruction of environment. Counsel submitted that in any event the expression "claims" in Section 2(b) cannot be interpreted to mean claims against the Central Government, the State of Madhya Pradesh, UCIL, which was not sued in Suit No. 1113 of 1986 and Shri Arjun Singh, all of whom have been sued as joint tort-feasors in relation to the liability arising out of the disaster. Counsel submitted that if Section 3 is to be held to be intra vires, the word "exclusive" should be severed from Section 3 and on the other hand, it Section 3 is held ultra vires, then victims who have already filed suits or those who had lodged claims should be entitled to continue their own suits as well as Suit No. 1113 of 1986 as plaintiffs with leave under Order I Rule 8. Counsel submitted that interim

relief as decided by this Court can be paid to the victims even otherwise also, according to counsel, under clause 10(2) (b) of the Scheme.

45. Counsel submitted that the balance of 470 million dollars after deducting interim relief as determined by this Court should be attached. In any event, it was submitted that, it be declared that the word "claim" in Section 2 does not include claims against Central Government or State of Madhya Pradesh or UCIL. Hence, it was urged that the rights of the victims to sue the Government of India, the State of Madhya Pradesh or UCIL would remain unaffected by the Act or by the compromise effected under the Act. Machinery to decide suit expeditiously has to be devised, it was submitted. Other suits filed against UCC, UCIL. State of Madhya Pradesh and Arjun Singh should be transferred to the Supreme Court for trial and disposal, according to counsel. It was submitted that the court should fix the basis of damages payable to different categories, namely, death and disablement mentioned under clause 5(2) of the Scheme. Counsel submitted that this Court should set up a procedure which would ensure that an impartial judge assisted by medical experts and assessors would adjudicate the basis on which an individual claimant would fall into a particular category. It was also urged that this Court should quantify the amount of compensation payable to each category of claimant in clause 5(2) of the Scheme. This decision cannot, it was submitted, be left to the Central Government as is purported to be done by clause 11(2) of the Scheme.

46. This Court must set up, it was urged, a trust with independent trustees to administer the trust and trustees to be accountable to this Court. An independent census should be carried out of number of claimants, nature and extent of injury caused to them, the category into which they fall. Apportionment of amounts should be set aside or invested for future claimants, that is the category in clause 5(2)(a) of the Scheme, which is, according to counsel, of utmost importance since the injuries are said to be carcinogenic and ontogenic and wide affecting persons yet unborn.

47. Shri Garg, further and on behalf of some of the victims counsel, urged before us that deprivation of the rights of the victims and vesting of those rights in the State in violative of the rights of the victims and cannot be justified or warranted by the Constitution. Neither Section 3 nor Section 4 of the Act gives any right to the victims; and the other hand, it is a complete denial of access to justice for the victims, according to him. This, according to counsel, is arbitrary. He also submitted that Section 4 of the Act, as it stands, gives no right to the victims and as such even assuming that in order to fight for the rights of the victims, it was necessary to substitute the victims even then insofar as the victims have been denied the right of say, in the conduct of the proceedings, this is disproportionate to the benefit conferred upon the victims. Denial of rights to the victims is so great and deprivation of the right to natural justice and access to justice is so tremendous that judged by the well settled principles by which yardsticks provisions like these should be judged in the constitutional framework of this country, the Act is violative of the fundamental rights of the victims. It was further submitted by him that all the rights of the victims by the process of this Act, the right of the victims to enforce full liability against the multinationals as well as against the Indian companies, absolute liability and criminal liability have all been curtailed.

48. All the counsel submitted that in any event, the criminal liability cannot be the subject matter of this Act. Therefore, the government was not entitled to agree to any settlement on the ground that criminal prosecution would be withdrawn and this being a part of the consideration or inducement for settling the civil liability, he submitted that the settlement arrived at on February 14/15, 1989 as recorded in the order of this Court (Union Carbide Corporation v. Union of India, (1989) 1 SCC 674 : 1989 SCC (Cri) 243) is wholly unwarranted, constitutional and illegal.

49. Mr. Garg additionally further urged that by the procedure of the Act, each individual claim had to be first determined and the government could only take over the aggregate of all individual claims and that could only be done by aggregating the individual claims of the victims. That was not done, according to him. Read in that fashion, according to Shri Garg, the conduct of the government in implementing the Act is wholly improper and unwarranted. It was submitted by him that the enforcement of the right of the victims without a just, fair and reasonable procedure which is vitally necessary for representing the citizens or victims was bad. It was further urged by him that the Bhopal gas victims have been singled out for hostile discrimination resulting in total denial of all procedures of approach to competent to represent the victims in the litigations or for enforcement of the claims. It was then submitted by him that the claims of the victims must be enforced fully against the Union Carbide Corporation carrying on commercial activities for profit resulting in unprecedented gas leak disaster responsible for a large number of deaths and severe injuries to others. It was submitted that the liability of each party responsible, including the Government of India, which is a joint trot-feasor along with the Union Carbide, has to be ascertained in appropriate proceedings. It was submitted on behalf of the victims that Union of India owned 22 per cent of the shares in Union Carbide and therefore, it was incompetent to represent the victims. There was conflict of interest between the Union of India and the Union Carbide and so the Central Government was incompetent. It is submitted that pecuniary interest however small disqualifies a person to be a judge in his own cause. The settlement accepted by the Union of India, according to various counsel is vitiated by the pecuniary bias as holders of its shares to the extent of 22 per cent.

50. It was submitted that the pleadings in the court of the United States and in the Bhopal Court considered in the context of the settlement order of this Court accepted by the Union of India establish that the victims' individuality were sacrificed wantonly and callously and therefore, there was violation, according to some of the victims, both in the Act, and in its implementation of Articles 14, 19(1)(g) and 21 of the Constitution.

51. The principles of the decision of this Court in M. C. Mehta v. Union of India (M. C. Mehta v. Union of India, (1987) 1 SCC 395 : 1987 SCC (L&S) 37 : (1987) 1 SCR 819) must be so interpreted that complete justice is done and it in no way excludes the grant of punitive damages for wrongs justifying deterrents to ensure the safety of citizens in free India. No multinational corporation, according to Shri Garg, can claim the privilege of the protection of Indian law to earn profits without meeting fully the demands of civil and criminal justice administered in India with this Court functioning as the custodian. Shri Garg urged that the liability for damages, in India and the Third World countries, of the multinational companies cannot be less but must be more because the persons affected are often without remedy for reasons of inadequate facilities for protection of health or property. Therefore, the damages sustainable by Indian victims against the multinationals dealing with dangerous gases without proper security and other measures are far greater than damages suffered by the citizens of other advanced and developed countries. It is, therefore, necessary to ensure by damages and deterrent remedies that these multinationals are not tempted to shift dangerous manufacturing operations intended to advance their strategic objectives of profit and war to the Third World countries with little respect for the right to life and dignity of the people of sovereign Third World countries. The strictest enforcement of punitive liability also serves the interest of the American people. The Act, therefore, according to Shri Garg, is clearly unconstitutional and therefore, void.

52. It was urged that the settlement is without jurisdiction. This Court was incompetent to grant immunity against criminal liabilities in the manner it has purported to do by its order dated February 14/15, 1989, it was strenuously suggested by counsel. It was further submitted that to hold the Act

to be valid, the victims must be heard before the settlement and the Act can only be valid if it is so interpreted. This is necessary further, according to Shri Garg, to lay down the scope of hearing. Shri Garg also dew our attention to the Scheme of disbursement of relief to the victims. He submitted that the Scheme of disbursement is unreasonable and discriminatory because there is no procedure in it which is just, fair and reasonable in accordance with the provisions of Civil Procedure Code. He further submitted that the Act does not lay down any guidelines for the conduct of the Union of India in advancing the claims of the victims. There were no essential legislative guidelines for determining the rights of the victims, the conduct of the proceedings on behalf of the victims and for the relief claimed. Denial of access to justice to the victims through-an impartial judiciary is so great a denial that it can only be consistent with the situation which calls for such a drastic provision. The present circumstances were not such. He drew our attention to the decision of this Court in Basheshar Nath v. CIT (AIR 1959 SC 149 : (1959) 35 ITR 190 : 1959 Supp 1 SCR 528), Re Special Courts Bill, 1978 ((1979) 1 SCC 380 : (1979) 35 ITR 190 : 2 SCR 476), A. R. Antulay v. R. S. Nayak ((1988) 2 SCC 602 : 1988 SCC (Cri) 372), Ram Krishna Dalmia v. S. R. Tendulkar (1959 SCR 279 : AIR 1958 SC 538 : 61 Bom LR 192), Ambika Prasad Mishra v. State of U. P. ((1980) 3 SCC 719 : (1980) 3 SCR 1159) and Budhan Choudhary v. State of Bihar ((1955) 1 SCR 1045 : AIR 1955 SC 191 : 1955 Cri LJ 374). Shri Garg further submitted that Article 21 must be read with Article 51 of the Constitution and other Directive Principles. He drew our attention to Lakshmi Kant Pandey v. Union of India ((1984) 2 SCC 244 : (1984) 2 SCR 795), Mackinnon Mackenzie & Co. Ltd. v. Audrey D'Costa ((1987) 2 SCC (L&S) 100) and Sheela Barse C. Secretary, Children Aid Society ((1987) 3 SCC 50 : 1987 SCC (Cri) 458 : (1987) 1 SCR 870). Shri Garg submitted that in India, the national dimensions of human rights and the international dimensions are both congruent and their enforcement is guaranteed under Articles 32 and 226 to the extent these are enforceable against the State, these are also enforceable against transnational corporations inducted by the State on condition of due observance of the Constitution and all laws of the land. Shri Garg submitted that in the background of an unprecedented disaster resulting in extensive damage to life and property and the destruction of the environment affecting large number of people and for the full protection of the interests of the victims and for complete satisfaction of all claims for compensation, the Act was passed empowering the Government of India to take necessary steps for processing of the claims and for utilisation of disbursal of the amount received in satisfaction of the claims. The Central Government was given the exclusive right to represent the victims and to act in place of, in United States or in India, every citizen entitled to make a claim. Shri Garg urged that on a proper reading of Section 3(1) of the Act read with Section 4, exclusion of all victims for all purpose is incomplete and must ascertain the magnitude of the damages and should be able to grant reliefs required by law under heads of strict liability, absolute liability and punitive liability.

53. Shri Garg submitted that it is necessary to consider that the Union of India is liable for the torts. In several decisions to which Shri Garg drew our attention, it has been clarified that government is not liable only if the tortious act complained has been committed by its servants in exercise of its sovereign powers by which it is meant powers that can be lawfully exercised under sovereign rights only vide Nandram Heeralal v. Union of India (AIR 1978 MP 209, 212 : 1978 ACJ 215). There is a real and marked distinction between the sovereign functions of the government and those which are non-sovereign functions that fall in the latter category are those connected with trade, commerce, business and industrial undertakings. Sovereign functions are such acts which are or such a nature as cannot be performed by a private individual or association unless powers are delegated by sovereign authority of State.

54. According to Shri Garg, the Union and the State Governments under the Constitution and as per laws of the Factories, Environment Control, etc., are bound to exercise control on the factories in

public interest and public purpose. These functions are no sovereign functions, according to Shri Garg, and the government in this case was guilty of negligence. In support of this, Shri Garg submitted that the offence of negligence on the part of the government would be evident from the fact that -

> (a) the government allowed the Union Carbide factory to be installed in the heart of the city.
>
> (b) the government allowed habitation in the front of the factory knowing that the most dangerous and lethal gases were being used in the manufacturing processes;
>
> (c) the gas leakage from this factory was a common affair and it was agitated in the Vidhan Sabha right from 1980 to 1984. These features firmly proved, according to Shri Garg, the grossest negligence of the governments. Shri Garg submitted that the gas victims had legal and moral right to sue the governments and so it had full right to implead all the necessary and proper parties like Union Carbide, UCIL, and also the then Chief Minister Shri Arjun Singh of the State. He drew our attention to Order II Rule 3 of the Civil Procedure Code. In suits on joint tort-feasors is responsible for the injury sustained for the common acts and they can all be sued together. Shri Garg's main criticism has been that the most crucial question of corporate responsibility of the peoples right to life and their right to guard it as enshrined in Article 21 of the Constitution were sought to be gagged by the Act. Shri Garg tried to submit that this was an enabling Act only but not an Act which deprived the victims of their right to sue. He submitted that in this Act, there is denial of natural justice both in the institution under Section 3 and in the conduct of the suit under Section 4. It must be seen that justice is done to all (R. Viswanathan v. Rukn-ul-Mulk Syed Abdul Wajid ((1963) 3 SCR 22 : AIR 1963 SC 1). It was urged that it was necessary to give a reasonable notice to the parties. He referred to M. Narayanan Nambiar v. State of Kerala (1963 Supp 2 SCR 724 : AIR 1963 SC 1116 : (1963) 2 Cri LJ 186 : (1963) 2 LLJ 660).

55. Shri Shanti Bhushan appearing for Bhopal Gas Peedit Mahila Udyog Sangathan submitted that if the Act is to be upheld, it has to be that when the Bhopal gas disaster took place, which was the worst industrial disaster in the world which resulted in the deaths of several thousands of people and caused serious injuries to lakhs of others, there arose a right to the victum to get not merely damages under the of the torts but also arose clearly, by virtue of right to life guaranteed as fundamental right by Article 21 of the Constitution a right to get full protection of life and limb. This fundamental right also, according to Shri Shanti Bhushan, embodied within itself a right to have the claim adjudicated by the established courts of law. It is well settled that right itself is a fundamental right which cannot be denied to the people. Shri Shanti Bhushan submitted that there may be some justification for the Act being passed. He said that the claims against the Union Carbide are covered by the Act. The claims of the victims against the Central Government or any other party who is also liable in tort to the victims is not covered by the Act. The second point that Shri Shanti Bhushan made was that the Act so far as it empowered the Central Government to represent and act in place of the victims is in respect of the civil liability arising out of disaster and not in disaster and not in respect of any right in respect of criminal liability. The Central Government, according to Shri Shanti Bhushan, cannot have any right or authority in relation to any offences which arose out of the disaster and which resulted in criminal liability. It was submitted that there cannot be any settlement or compromise in relation to non-compoundable criminal cases and in respect of compoundable

criminal cases the legal right to compound these could only be possessed by the victims alone and the Central Government could only be possessed by the victims alone and the Central Government could not compound those offences on their behalf. It was submitted by Shri Shanti Bhushan that even this Court has no jurisdiction whatsoever to transfer any criminal proceedings to itself either under any provision of the Constitution or under any provision of the Criminal Procedure Code or under any other provision of law and, therefore, if the settlement in question was to be treated not as a compromise but as an order of the court, it would be without jurisdiction and liable to be declared so on the principles laid down, according to Shri Bhushan, by this Court in Antulay case ((1988) 2 SCC 602 : 1988 SCC (Cri) 372). Shri Shanti Bhushan submitted that even if under the Act, the Central Government is considered to be able to represent the victims and to pursue the litigation on their behalf and even to enter into compromise on their behalf, if would be a gross violation of the constitutional rights of the victims to enter into a settlement with the Union Carbide without given the victims opportunities to express their views about the fairness or adequacy of the settlement before any court could permit such a settlement to be made.

56. Shri Shanti Bhushan submitted that the suit which may be brought by the Central Government against Union Carbide under Section 3 of the Act would be a suit of the kind contemplated by the Explanation to Order XXIII Rule 3 of the Code of Civil Procedure since the victims are not parties and yet the decree obtained in the suit would bind them. It was, therefore, urged by Shri Shanti Bhushan that the provisions of Section 3(1) of the Act merely empowers the Central Government to enter into a compromise but did not lay down the procedure which was to be followed for entering into any compromise. Therefore, there is nothing which is inconsistent with the provisions of Order XXIII Rule 3-B of the CPC to which the provisions of Section 11 of the Act be applied. If, however, by any stretch of argument the provisions of the Act could be construed so as to override the provisions of Order XXIII Rule 3-B CPC, it was urged, the same would render the provisions of the Act violative of the victims' fundamental rights and the actions would be rendered unconstitutional. If it empowered the Central Government to compromise the victims' rights, without even having to apply the principles of natural justice, then it would be unconstitutional and as such bad. Shri Shanti Bhushan, Ms. Jaising and Shri Garg submitted that these procedures must be construed in accordance with the provisions contained in Order XXIII Rule 3-B CPC and an opportunity must be given to those whose claims are being compromised to show to the Court that the compromise is not fair and should not accordingly be permitted by the court. Such a hearing in terms, according to counsel, of Order XXIII Rule 3-B CPC has to be before the compromise is entered into. It was then submitted that Section 3 of the Act only empowers the Central Government to represent and act in place of the victims and to institute suits on behalf of the victims or even to enter into compromise on behalf of the victims.

57. The Act does not create new causes of action or create special courts. The jurisdiction of the civil court to entertain suit would still arise out of Section 9 of the CPC and the substantive cause of action and the nature of the reliefs available would also continue to remain unchanged. The only difference produced by the provisions of the Act would be that instead of the suit being filed by the victims themselves the suit would be filed by the Central Government on their behalf.

58. Shri Shanti Bhushan then argued that the case of action of each victim is separate and entitled him to bring a suit for separate amount according to the damages suffered by him. He submitted that even where the Central Government was empowered to file suits on behalf of all the victims it could only ask for a decree of the same kind as could have been asked for by the victims themselves, namely, a decree awarding various specified amounts to different victims whose names had to be disclosed. According to Shri Shanti Bhushan, even if all the details were not available at the time

when the suit was filed, the details of the victims damages had to be procured and specified in the plaint before a proper decree could be passed in the suit. Even if the subject matter of the suit had to be compromised between the Central Government and the Union Carbide the compromise had to indicate as to what amount would be payable to each victim, in addition to the total amount which was payable by Union Carbide, submitted Shri Shanti Bhushan. It was submitted that there was nothing in the Act which permitted the Central Government to enter into any general compromise with Union Carbide proving for the lump sum amount without disclosure as to how much amount is payable to each victim.

59. If the Act in question had not been enacted, the victims would have been entitled to not only sue Union Carbide themselves but also the enter into any compromise of settlement of their claims with the Union Carbide immediately. The provisions of the Act, according to Shri Shanti Bhushan, deprive the victims of their legal right and such deprivation of their rights and creation of a correspond right in the Central Government can be treated as reasonable only if the deprivation of their rights imposed a corresponding liability on the Central Government to continue to pay such interim relief to the victims as they might be entitled to till the time that the Central Government is able to obtain the whole amount of compensation from the Union Carbide. He submitted that the deprivation of the right of the victims to sue for their claims and denial of access to justice and to assert their claims and the substitution of the Central Government to carry on the litigation for or on their behalf can only be justified, if and only if the Central Government is enjoined to provide for such interim relief or continue to provide in the words of Judge Keenan, as a matter of fundamental human decency, such interim relief, necessary to enable the victims to fight the battle. Counsel submitted that the Act must be so read. Shri Shanti Bhutan urged that if the Act is construed in such a manner that it did not create such an obligation on the Central Government, the Act cannot be upheld as a reasonable provision when it deprived the victims of their normal legal rights of immediately obtaining compensation from Union Carbide. He referred to Section 10 (b) of the Act and clauses 10 and 11(1) of the Scheme to show that the legislative policy underlying the Bhopal Act clearly contemplated payment of interim relief to the victims from time to time till such time as the Central Government was able to recover from Union Carbide full amount of compensation from which the interim reliefs paid by the Central Government were to be deducted from the amount payable to them by way of final disbursal of the amounts recovered.

60. The settlement is bad, according to Shri Shanti Bhushan if part of the bargain was given up of the criminal liability against UCIL and UCC. Shri Shanti Bhushan submitted that this Court should not hesitate to declare that the settlement is bad because the fight will go on and the victims should be provided reliefs and interim compensation by the Central Government to be reimbursed ultimately from the amount to be realised by the Central Government. This obligation was over and above the liability of the Central Government as a joint tort-feasor, according to Shri Shanti Bhushan.

61. Shri Kailash Vasdev, appearing for the petitioners in Writ Petition No. 1551 of 1986 submitted that the Act displaced the claimants in the matter of their right to seek redressal and remedies of the actual injury and harm caused individually to the claimants. The Act in question by replacing the Central Government in place of the victims, by conferment of exclusive right to sue in place of victims, according to him, contravened the procedure established by law. The right to sue for the wrong done to an individual was exclusive to the individual. It was submitted that under the civil law of the country, individuals have rights to enforce their claims and any deprivation would place them into a different category from the other litigants. The right, to enter into a different category from the other litigants. The right to enter into compromise, it was further submitted, without

consultation of the victims, if that is that construction of Section 3 read with Section 4 of the Act, then it is violative of procedure established by law. The procedure substituted, if that be the construction of the Act, would be in violation of the principles of natural justice and as such bad. It was submitted that the concept of parens patriae would not be applicable in these case. It was submitted that traditionally, sovereigns can sue under the doctrine of parens patriae only for violations of their" quasi-sovereign" interests. Such interests do not include the claims of individual citizens. It was submitted that the Act in question is different from the concepts of parens patriae because there was no special need to be satisfied and a class action, according to Shri Vasdev, would have served the same purpose as a suit brought under the statute and ought to have been preferred because it safeguarded claimants' right to procedural due process. In addition, a suit brought under the statute would threaten the victims' substantive due process rights. It was further submitted that in order to sustain an action, it was necessary for the Government of India to have standing.

62. Counsel submitted that doctrine of parens patriae has received no judicial recognition in this country as a basis for recovery of money damages for injuries suffered by individuals. He may be right to that extent but the doctrine of parens patriae has been used in India in varying contexts and contingencies.

63. We are of the opinion that the Act in question was passed in recognition of the right of the sovereign to act as parens patriae as contended by the learned Attorney General. The Government of India in order to effectively safeguard the rights of the victims in the matter of the conduct of the case was entitled to act as parens patriae, which position was reinforced by the statutory provisions, namely, the Act. We have noted the several decisions referred to hereinbefore, namely, Budhkaran Chaukhani v. Thakur Prosad Shah (AIR 1942 Cal 331 : 46 CWN 425), Banku Behary Mondal v. Bankur Behari Mazra (AIR 1943 Cal 203 : 47 CWN 89), Medai Dalavoi T. Kumaraswami Mudaliar v. Medai Dalavoi Rajammal (AIR 1957 Mad 563 : (1957) 2 MLJ 211) and to the decision of this Court in Mahant Ram Saroop Dasji v. S. P. Sahi (1959 Supp 2 SCR 583 : AIR 1959 SC 951) and the decision of the American Supreme Court in Alfred Schnapp v. Puerto Rico (73 L Ed 2d 995 : 458 US 592 : 102 SCR 3260). It has to be borne in mind that conceptually and jurisprudentially, the doctrine of parens patriae is not limited to representation of some of the victims outside the territories of the country. It is true that the doctrine has been so utilised in America so far. In our opinion, learned Attorney General was right in contending that where citizens of a country are victims of a tragedy because of the negligence of any multinational, a peculiar situation arises which calls for suitable effective machinery to articulate and effectuate the grievances and demands of the victims, for which the conventional adversary system would be totally inadequate. The State in discharge of its sovereign obligation must come forward. The Indian State because of its constitutional commitment is obliged to take upon itself the claims of the victims and to protect them in their hour of need. Learned Attorney General was also right in submitting that the decisions of the Calcutta and Madras High Courts and U.S. Supreme Court clearly indicate that parens patriae doctrine can be invoked by sovereign State within India, even if it be contended that it has not so far been invoked inside India in respect of claims for damages of victims suffered at the hands of the multinational. In our opinion, conceptually and jurisprudentially, there is no bar on the State to assume responsibilities analogous to parens patriae to discharge the State's obligations under the Constitution. What the Central government has done in the instant case seems to us to be an expression of its sovereign power. This power is plenary and inherent in every sovereign State to do all things which promote the health, peace, morals, education and good order of the people and tend to increase for the wealth and prosperity of the State. Sovereignty is difficult to define. (See in this connection, Weaver on Constitutional Law, p, 490). By the nature of things, the State sovereignty in these matters cannot be limited. It has to be adjusted to the conditions touching the common welfare

when covered by legislative enactments. This power is to the public what the law of necessity is to the individual. It is comprehended in the maxim salus populi suprema lex - regard for public welfare is the highest law. It is not a rule, it is an evolution. This power has always been as broad as public welfare and as strong as the arm of the State, this can only be measured by the legislative will of the people, subject to the fundamental rights and constitutional limitations. This is an emanation of sovereignty subject to as aforesaid. Indeed, it is the obligation of the State to assume such responsibility and protect its citizens. It has to be borne in mind, as was stressed by the learned Attorney General, that conferment of power and the manner of its exercise are two different matters. It was submitted that the power to conduct the suit and to compromise, if necessary, was vested in the Central Government for the purpose of the Act. The power to compromise and to conduct the proceedings are not uncanalised or arbitrary. These were clearly exercisable only in the ultimate interests of the victims. The possibility of abuse of a statute does not impart to it any element of invalidity. In this connection, the observations of Viscount Simonds in Belfast Corporation v. O. D. Cars Ltd. (1990 AC 490, 520-21 : (1990) 2 WLR 148 : (1960) 1 All ER (HL)) are relevant where it was emphasised that validity of a measure is not to be determined by its application to particular cases. This Court in Collector of Customs, Madras v. Nathella Sampathu Chetty ((1962) 3 SCR 786, 825 : AIR 1962 SC 316) emphasised that the constitutional validity of the statute would have to be determined on the basis of its provisions and on the ambit of its operation as reasonably construed. It has to be bone in mind that if upon being so judged it passes the test of reasonableness, then the possibility of the powers conferred being improperly used is no ground for pronouncing the law itself invalid. See in this connection also the observations in P. J. Irani v. State of Madras ((1962) 2 SCR 169, 178-81 : AIR 1961 SC 1731) and D. K. Trivedi v. State of Gujarat (1986 Supp SCC 20, 60-61 : (1986) 1 SCR 479).

64. Sections 3 and 4 of the Act should be read together as contended by the learned Attorney General, along with other provisions of the Act and in particular Sections 9 and 11 of the Act. These should be appreciated in the context of the object sought to be achieved by the Act as indicated in the Statement of Objects and Reasons and the Preamble to the Act. The Act was so designed that the victims of the disaster are fully protected and the claims of compensation of damages or loss of life or personal injuries or in respect of other matters arising out of or connected with the disaster are processed speedily, effectively, equitably and to the best advantage of the claimants. Section 3 of the Act is subject to other provisions of the Act which includes Sections 4 and 11. Section 4 of the Act opens with non-obstinate clause, vis-a-vis, Section 3 and therefore, overrides Section 3. Learned Attorney General submitted that the right of the Central Government under Section 3 of the Act was to represent the victims exclusively and act in the place of the victims. The Central Government, it was urged in other words, is substituted in the place of the victims and is the dominus litis. Learned Attorney General submitted that the dominus litis carries with it the right to conduct the suit in the best manner as it deems fit, including, the right to withdraw and right to enter into compromise. The right to withdraw and the right to compromise conferred by Section 3(2) of the Act cannot be exercised to defeat the rights of the victims. As to how the rights should be exercised is guided by the objects and reasons contained in the Preamble, namely, to speedily and effectively process the claims of the victims and to protect their claims. The Act was passed replacing the Ordinance at a time when many private plaintiffs had instituted complaints/suits in the American courts. In such a situation, the Government of India acting in place of the victims necessarily should have right under the statute to act in all situations including the position of withdrawing the suit or to enter into compromise. Learned Attorney General submitted that if the UCC were to agree to pay a lump sum amount which would be just, fair and equitable, but insists on a condition that the proceedings should be completely withdrawn, then necessarily there should be power under the Act to so

withdraw. According to him, therefore, the Act engrafted a provision empowering the government to compromise. The provisions under Section 3(2)(b) of the Act to enter into compromise was consistent with the powers of dominus litis. In this connection our attention was drawn to the definition of 'Dominus Litis' in Black's Law Dictionary, Fifth Edition, p. 43, which states as follows :

> "'Dominus litis'. The master of the suit, i.e. the person who was really and directly interested in the suit as a party, as distinguished from his attorney or advocate. But the term is also applied to one who, though not originally a party, has made himself such, by intervention or otherwise, and has assumed entire control and responsibility for one side and is treated by the court as liable for costs. Virginia Electric and Power Co. v. Bowers (181 Va 542 : 25 SE 2d 361, 363)."

65. Learned Attorney General sought to contend that the victims had not been excluded entirely either in the conduct of proceedings or in entering into compromise, and he referred to the proceedings in detail emphasising the participation of some of the victims at some stage. He drew our attention to the fact that the victims had filed separate consolidated complaints in addition to the complaint filed by the Government of India. Judge Keenan of the District Court of New York had passed orders permitting the victims to be represented only by the private attorneys but also by the Government of India. Hence, it was submitted that it could not be contended that the victims had been excluded. Learned Attorney General further contended that pursuant to the orders passed by Judge Keenan imposing certain conditions against the Union Carbide and allowing the motion for forum non convenience of the UCC that the suit came back to India and was instituted before the District Court of Bhopal. In those circumstances, it was urged by the learned Attorney General that the private plaintiffs who went to America and who were represented by the contingency lawyers full knew that they could also have joined in the said suit as they were before the American court along with the Government of India. It was contended that in the proceedings at any point of time or stage including when the compromise was entered into, these private plaintiffs could have participated in the court proceedings and could have made their representation, if they so desired. Even in the Indian suits, these private parties have been permitted to continue as parties represented by separate counsel even though the Act empowers the Union to be the sole plaintiff. Learned Attorney General submitted that Section 4 of the Act clearly enabled the victims to exercise their right of participation in the proceedings. The Central Government was enjoined to have due regard to any matter which such person might require to be urged, Indeed, the learned Attorney General urged very strenuously that in the instant case, Zehreeli Gas Kand Sangharsh Morcha and Jana Swasthya Kendra (Bhopal) had filed before the District Judge, Bhopal, an application under Order I Rule 8 read with Order I Rule 10 and Section 151 of the CPC for their intervention on behalf of the victims. They had participated in the hearing before the learned District Judge, who referred to their intervention in the order. It was further emphasised that when the UCC went up in revision to the High Court of Madhya Pradesh at Jabalpur against the interim compensation ordered to be paid by the District Court, the intervener through its advocate, Shri Vibhuti Jha had participated in the proceedings. The aforesaid association had also intervened in the civil appeals preferred pursuant to the special leave granted by this Court to the Union of India and Union Carbide against the judgment of the High Court for interim compensation. In those circumstances, it was submitted that there did not exist any other gas victim intervening in the proceedings, claiming participation under Section 4. Hence, the right to compromise provided for by the Act, could not be held to be violative of the principles of natural justice. According to the learned Attorney General, this Court first proposed the order to counsel in court and after they agreed thereto, dictated the order on February 14, 1989. On February 15, 1989 after the Memorandum of Settlement was filed pursuant to the

orders of the court, further orders were passed. The said association, namely, Zehreeli Gas Kand Sangharsh Morcha was present, according to the records in the court on both the dates and did not apparently object to the compromise. Shri Charan Lal Sahu, one of the petitioners in the writ petition, had watched the proceedings and after the court had passed the order on February 15, 1989 mentioned that he had filed a suit for Rs 100 crores. Learned Attorney General submitted that Shri Sahu neither protested against the settlement nor did he make any prayer to be heard. Shri Charan Lal Sahu, in the petition of opposition in one of these matters has prayed that a sum of Rs. 100 million (sic) should be paid over to him for himself as well as on behalf of those victims whom he claimed to represent. In the aforesaid background on the construction of the section, it was urged by the learned Attorney General that Section 3 of the Act cannot be held to be unconstitutional. The same provided a just, fair and reasonable procedure and enabled the victims to participate in the proceedings at all stages - those who were capable and willing to do so. Our attention was drawn to the fact that Section 11 of the Act provides that the provisions of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other enactment other than the Act. It was, therefore, urged that the provisions of the Civil Procedure Code stood overridden in respect of the areas covered by the Act, namely, (a) representation; (b) powers of representation; and (c) compromise.

66. According to the learned Attorney General, the Act did not violate the principles of natural justice. The provisions of the CPC could not be read into the Act for Section 11 of the Act provides that the application of the provision of the Civil Procedure Code insofar as those were inconsistent with the Act should be construed as overridden in respect of areas covered by it. Furthermore, inasmuch as Section 4 had given a qualified right of participation to the victims, there cannot be any question of violation of the principles of natural justice. The scope of the application of the principles of natural justice cannot be judged by any strait-jacket formula. According to him, the extension of the principles of natural justice beyond what is provided by the Act in Sections 3 and 4, was unwarranted and would deprive the provisions of the statue of their efficacy in relation to the achieved. He emphasised that the process of notice, consultation and exchange of information, informed decision making process, the mobilities of assessing a consensus of opinion would involve such time that the government would be totally unable to act in the matter efficiently, effectively and purposefully on behalf of the victims for realisation of the just dues of the victims. He further urged that the Civil Procedure Code before its amendment in 1976 did not have the provisions of Order I Rules 8(4), (5) and (6) and Explanations etc. nor Order XXIII Rules 3-A and 3-B. Before the amendment the High Court had taken a view against the requirement of hearing the parties represented in the suit under Order I Rule 8 before it before settling or disposing of the suit. Our attention was drawn to the decision of the Calcutta High Court in Chintaharan Ghose v. Gujaraddi Sheik (AIR 1951 Cal 456, 457-59), wherein it was held by the learned Single Judge that the plaintiff in a representative suit had right to compromise subject to the conditions that the suit was properly filed in terms of the provisions of that Rule and the settlement was agreed bona fide. Learned Attorney General in that context contended that when the suit was validly instituted, the plaintiff had a right to compromise the suit and there need not be any provision for notice to the parties represented before entering into any compromise. Reliance was placed on the decision of the Allahabad High Court in Ram Sarup v. Nanak Ram (AIR 1952 All 275 : 1951 AWR 155) where it was held that a compromise entered into in a suit filed under order I Rule 8 of the CPC was binding on all persons as the plaintiffs who had instituted the suit in representative capacity had the authority to compromise. He further submitted that most, if not all, of the victims had given their power of attorney which were duly filed in favour of the Union of India. These powers of attorney have neither been impeached nor revoked or withdrawn. By virtue of the powers of attorney the Union of

India, it was stated, had the authority to file the suits and to compromise the interests of the victims if so required. The Act in question itself contemplates settlement as we have noted, and a settlement would need a common spokesman.

67. It was submitted that the Government of India as the statutory representative discharged its duty and its in a centralised position of assessing the merits and demerits of any proposed course of action. So far as the act of compromise, abridging or curtailing the ambit of the right of the victims, it was submitted that in respect of liability of UCC and UCIL, be it corporate, criminal or tortious, it was open to an individual to take a decision of enforcing the liability to its logical extent or stopping short of it and acceding to a compromise. Just as an individual can make an election in the matter of adjudication of liability so can a statutory representative make an election. Therefore, it is wholly wrong to contend, it was urged, that Section 3 (ii)(b) is inconsistent with individual's right of election and at the same time it provides the centralised decision-making processes to effectively adjudge and secure the common good. It was only a central agency like the Government of India, who could have a perspective of the totality of the claims and a vision of the problems of individual plaintiffs in enforcing these, it was urged. It was emphasised that it has to be borne in mind that a compromise is a legal act. In the percent case, it is a part of the conduct of the suit. It is, therefore, imperative that the choice of compromise is made carefully, cautiously and with a measure of discretion, it was submitted. But if any claimant wished to be associated with the conduct of the suit, he would necessarily have been afforded an opportunity for that purpose, according to the learned Attorney General. In this connection, reference was made to Section 4 of the Act. On the other hand, an individual who did not participate in the conduct of the suit and who is unaware of the various intricacies of the case, could hardly be expected to meaningfully partake in the legal act of settlement either in conducting the proceedings or entering into compromise, it was urged. In those circumstances, the learned Attorney General submitted that the orders of February 14/15, 1989 and the Memorandum of Settlement were justified both under the Act and the Constitution. According to him, the terms of settlement might be envisaged as pursuant to Section 3(ii)(b) of the Act, which was filed according to him pursuant to judicial direction. He sought, more than once to emphasise, that the order was passed by the highest court of the land in exercise of extraordinary jurisdiction vested in it under the Constitution.

68. Our attention was drawn to several decisions for the power of this Court under Articles 136 and 142 of the Constitution. Looked at closely the provisions of the Act, it was contended that taking into consideration all the factors, namely, possibilities of champerty, exploitation, unconscionable agreements and the need to represent the dead and the disabled, the course of events would reveal a methodical and systematic protection and vindication of rights to the largest possible extent. It was observed that the rights are indispensably valuable possessions, but the right is something which a man can stand on, something which must be demanded or insisted upon without embarrassment or shame. When rights are curtailed, permissibility of such a measure can be examined only upon the strength, urgency and the pre-eminence of rights and the largest good of the largest number sought to be served by curtailment. Under the circumstances which were faced by the victims of Bhopal gas tragedy, the justifying basis, according to the learned Attorney General, or ground of human rights is that every person morally ought to have something to which he or she is entitled. It was emphasised that the statute aimed at it. The Act provides for assumption of rights to sue with the aim of securing speedy, effective and equitable results to the best advantage of the claimants. The Act and the Scheme, according to the learned Attorney General, sought to translate that profession into a system of faith and possible association when in doubt. Unless such a profession is shown to be unconscionable under the circumstances or strikes judicial conscience as a subversion of the objects of the Act, a declared fair, just and equitable exercise of a valid power would not be open to

challenge. He disputed the submissio__n that the right to represent victims postulated as contended mainly by the counsel on behalf of the petitioner a pre-determination of each individual claim as a sine qua non for proceedings with the action. Such a construction would deplete the case of its vigour, urgency and sense of purpose, he urged. In this case, with the first of the cases having been filed in U.S. Federal Court on December 7, 1984 a Settlement would have been reached for a much smaller sum to the detriment of the victims. Learned Attorney General emphasised that this background has to be kept in mind while adjudging the validity of the Act and the appropriateness of the conduct of the suit in the settlement entered into.

69. He submitted that it has to be borne in mind that if the contentions of the petitioners are entertained, the rights theoretically might be upheld but the ends of justice would stand sacrificed. It is in those circumstances that it was emphasised that the claimant is an individual and is the best person to speak about his injury. The knowledge in relation to his injury is relevant for the purpose of compensation, whose distribution and disbursement is the secondary stage. It is fallacious to suggest that the plaint was not based upon necessary data. He insisted that the figures mentioned in the plaint although tentative were not mentioned without examination or analysis.

70. It was further submitted by the learned Attorney General that while the Government of India had proceeded against the UCC, it had to represent the victims as a class and it was not possible to define each individual's right after careful scrutiny, nor was a substitute for adjudication since it involved a process of reparation and relief. The relief and reparation cannot be said to be irrelevant for the purpose of the Act. It was stated that the alleged liability of the Government of India or any claim asserted against the alleged joint tort-feasor should not be allowed to be a constraint on the Government of India to protect the interests of its own citizens. Any counter-claim by UCC or any claim by a citizen against the government cannot vitiate the action of the State in the collective interest of the victims, who are the citizens. Learned Attorney General submitted that any industrial activity, normally, has to be licensed. The mere regulation of any activity does not carry with it legally a presumption of liability for injury caused by the activity in the event of a mishap occurring in the course of such an activity. In any event, the learned Attorney General submitted the Government of India enjoys sovereign immunity in accordance with settled law. If this were not the case, the sovereign will have to abandon all regulatory functions including the licensing of drivers of automobiles. Hence, we have to examine the question whether even on the assumption that there was negligence on the part of the Government of India in permitting licensing of the industry set up by the Union Carbide in Bhopal or permitting the factory to grow up, such permission or conduct of the Union of India was responsible for the damage which had been suffered as a result of Bhopal gas leakage. It is further to be examined whether such conduct was in discharge of the sovereign functions of the Government, and as such damages, if any, resulting therefrom are liable to be proceeded against the government as a joint tort-feasor or not. In those circumstances, it was further asserted on behalf of the Union of India that though calculation of damages in a precise manner is a logical consequence of a suit in progress is cannot be said to be condition precedent for the purpose of settling the matter. Learned Attorney General urged that the accountability to the victims should be through the court. He urged that the allegation that a large number of victims did not give consent to the settlement entered into, is really of no relevance in the matter of a compromise in a mass tort action. It was highlighted that it is possible that those who do not need urgent relief or are uninformed of the issues in the case, may choose to deny consent and may place the flow of relief in jeopardy. Thus, consent based on individual subjective opinion can never be correlated to the proposal of an overall settlement in an urgent matter. Learned Attorney General urged further that if indeed consent were to be insisted upon as a mandatory requirement of a statute, it would not necessarily lead to an accurate reflection of the victims, opinion as opinions may be diverse. No

individual would be in a position to relate himself to a lump sum figure and would not be able to define his expectations on a global criteria. In such circumstances the value of consent is very much diminished. It was urged that if at all consent was to be insisted it should not be an expression of the mind without supporting information and response. To make consent meaningful it is necessary that it must be assertion of a right to be exercised in a meaningful manner based on information and comprehension of collective welfare and individual good. In a matter of such dimensions the insistence upon consent will lead to a process of enquiry which might make effective consideration of any proposal impossible. For the purpose of affording consent, it would also be necessary that each individual not only assesses the damages to himself objectively and places his opinion in the realm of fair expectation, but would also have to do so in respect of others. The learned Attorney General advanced various reasons why it is difficult now or impossible to have the concurrence of all.

71. In answer to the criticism by the petitioners, it was explained on behalf of the Union of India that UCIL was not impleaded as a party in the suit because it would have militated against the pleas of multinational enterprise liability and the entire theory of the case in the plaint. It was highlighted that the power to represent under the Act was exclusive, the power to compromise for the Government of India is without reference to the victims, yet it is a power guided by the sole object of the welfare of the victims. The presence and ultimately the careful imprimatur of the judicial process is the best safeguard to the victims. Learned Attorney General insisted that hearing the parties after the settlement would also not serve any purpose. He urged that it can never be ascertained with certainty whether the victims or groups have authorised what was being allegedly spoken on their behalf; and that the victims would be unable to judge a proposal of this nature. A method of consensus need not be evolved like in America were every settlement made by contingency fee lawyers who are anxious to obtain their share automatically become adversaries of the victims and the court should therefore be satisfied. Here the court arrived at the figure and directed the parties to file a settlement on the basis of its order of February 14, 1989 and the interveners were heard, it was urged. It was also urged that notice to the victims individually would have been a difficult exercise and analysis of their response time-consuming.

72. The learned Attorney General urged that neither the Central Government nor the State Government of Madhya Pradesh is liable for the claim of the victims. He asserted that, on the facts of the present case, there is and can be no liability on their part as joint tort-feasors. For the welfare of the community several socio-economic activities will have to be permitted by the government. Many of these activities may have to be regulated by licensing provisions contained in statutes may have to be regulated by licensing provisions contained in statutes made either by Parliament or by State legislatures. Any injury caused to a person, to his life or liberty in the conduct of a licensed authority so as to make the said licensing authority or the government liable to damages would not be in conformity with jurisprudential principle. If in such circumstances, it was urged on behalf of the government, the public exchequer is made liable, it will cause great public injury and may result in drainage of the treasury. It would terrorise the welfare State from acting for development of the people, and will affect the sovereign governmental activities which are beneficial to the community not being adequately licensed and would thereby lead to public injury. In any event, it was urged on behalf of the government, that such licensing authorities even assuming without admitting could be held to be liable as joint tort-feasors, it could be so held only on adequate allegations of negligence with full particulars and details of the alleged act or omission of the licensing authority alleged and its direct nexus to the injury caused to the victims. It had to be proved by cogent and adequate evidence. On some conjecture or surmise without any foundation on facts, government's right to represent the times cannot be challenged. It was asserted that even if the government is considered

to be liable as a joint tort-feasor, it will be entitled to claim sovereign immunity on the law as it now stands.

73. Reference was made to the decision of this Court in Kasturilal Ralia Ram Jain v. State of U. P. ((1965) 1 SCR 375 : AIR 1965 SC 1039 : (1965) 2 LLJ 583) where the conduct of some police officer in seizing gold in exercise of their statutory powers was held to be in discharge of the sovereign functions of the State and such activities enjoyed sovereign immunities. The liability of the Government of India under the Constitution has to be referred to Article 300, which takes us to Sections 15 and 18 of the Indian Independence Act, 1947 and Section 176(1) of the Government of India Act, 1935. Reference was also made to the observations of this Court in State of Rajasthan v. Mst. Vidhyawati (1962 Supp 2 SCR 989 : AIR 1962 SC 933).

74. We have noted the shareholdings of UCC. The circumstances that financial institutions held shares in the UCIL would not disqualify the Government of India from acting as parens patriae and in discharging of its statutory duties under the Act. The suit was filed only against the UCC and not against UCIL. On the basis of the claim made by the Government of India, UCIL was not necessary party. It was suing only the multinational based on several legal grounds of liability of the UCC, inter alia, on the basis of enterprise liability. If the Government of India had instituted a suit against UCIL to a certain extent it would have weakened its case against UCC in view of the judgment of this Court in M. C. Mehta case (M. C. Mehta v. Union of India, (1987) 1 SCC 395 : 1987 SCC (L&S) 37 : (1987) 1 SCR 819). According to learned Attorney General, the Union of India in present case was not proceedings on the basis of lesser liability of UCC predicated in Mehta case (M. C. Mehta v. Union of India, (1987) 1 SCC 395 : 1987 SCC (L&S) 37 : (1987) 1 SCR 819) but on a different jurisprudential principle to make UCC strictly and absolutely liable of the entire damages.

75. The learned Attorney General submitted that even assuming for the purpose of argument without conceding that any objection can be raised for the Government of India representing the victims, to the present situation the doctrine of necessity applied. The UCC had to be sued before the American courts. The tragedy was treated as a national calamity, and the Government of India had the right, and indeed the duty, to take care of its citizens, in the exercise of its parens patriae jurisdiction or on principle analogous thereto. After having statutorily armed itself in recognition of such parens patriae right or on principles analogous thereto, it went to the American courts. No other person was properly designed for representing the victims as a foreign court had to recognise a right of representation. The Government of India was permitted to represented by their attorneys. A committee of three attorneys was formed before the case proceeded before Judge Keenan. It was highlighted that the order of Judge Keenan permitted the Government of India to represent the victims. If there was any remote conflict of interest between the Union of India and the victims from the theoretical point of view the doctrine of necessity would override the possible violation of the principles of natural justice - that no man should be a judge in his own cause. Reference may be made to Halsbury's Laws of England, Vol. 1, 4th edn., page 89, para 73, where it was pointed out that if all the members of the only tribunal competent to determine a matter are subject to disqualification, they may be authorised to determine a matter are subject to disqualification, they may be authorised and obliged to hear that matter by virtue of the operation of the common law doctrine of necessity. Reference was laos made to de Smith's Judicial Review of Administrative Action, 4th edn. pages 276-77. See also G. A. Flick, Natural Justice, 1979, pages 138-41. Reference was also made to the observations of this Court in J. Mohapatra and Co. v. State of Orissa ((1984) 4 SCC 103) where at page 112 of the report, the court recognised the principle of doctrine of necessity a person interested was held not disqualified to adjudicate on his rights. The present is a case where

the Government of India only represented the victims as party and did not adjudicate between the victims and the UCC. It is the court which would adjudicate the rights of the victims. The representation of the victims by the Government of Indian cannot be held to be bad, and there is and there was no scope of violations of any principle of natural justice. We are of the opinion in the facts and the circumstances of the case that this contention urged by Union of India is right. There was no scope of violation of the principle of natural justice on this score.

76. It was also urged that the doctrine of de facto representation will also apply to the facts and the circumstances of the present case. Reliance was placed on the decision of this Court in Gokaraju Rangaraju v. State of A. P. ((1981) 3 SCC 132 : 1981 SCC (Cri) 652 : (1981) 3 SCR 474) Where it was held that the doctrine of de facto representation envisages what acts performed within the scope of assumed official authority in the interest of public or third persons and not for one's own benefit, are generally to be treated as binding as if they were the acts of officers de jure. This doctrine is founded on good sense, sound policy and practical expediency. It is aimed at the prevention of public and private mischief and protection of public and private interest. It avoids endless confusion and needless chaos. Reference was made to the observations of this Court in Pushpadevi M. Jatia v. M. L. Wadhawan ((1987) 3 SCC 367, 389-90 : 1987 SCC (Cri) 526) and Beopar Sahayak (P) Ltd. v. Vishwa Nath ((1987) 3 SCC 693, 702-03 : 1987 SCC (Cri) 641). Apart from he aforesaid doctrine, doctrine of bona fide representation was sought to be resorted to in the circumstances. In this connection, reference was made to Dharampal Singh v. Director of Small Industries Services (1980 Suppp SCC 505 : AIR 1980 SC 1888), N. K. Mohammad Sulaiman v. N. C. Mohammad Ismail ((1966) 1 SCR 937 : AIR 1966 SC 792) and Malkarjun Bin Shidramappa Pasare v. Narhari Bin Shivappa (27 IA 216 : ILR 25 Bom 337 : 2 Bom LR 927).

77. It was further submitted that the initiation of criminal proceedings and then quashing thereof, would not make the Act ultra vires so far as is concerned. Learned Attorney General submitted that the Act only authorised the Government of India to represent the victims to enforce their claims of damages under the Act. The government as such had nothing to do with the quashing of the criminal proceedings and it was not representing the victims in respect of the criminal liability of the UCC or UCIL to the victims. He further a submitted that quashing of criminal proceedings was done by the court in exercise of plenary powers under Articles 136 and 142 of the Constitution. In this connection, reference was made to State of U. P. v. Poosu ((1976) 3 SCC 1 : 1976 SCC (Cri) 368 : (1976) 3 SCR 1005) and K. M. Nanavati v. State of Bombay ((1961) 1 SCR 497 : AIR 1961 SC 112 : (1961) 1 Cri LJ 173). According to the learned Attorney General, there is also power in the Supreme Court to suggest a settlement and given relief as in Ram Gopal v. Smt. Sarubai ((1981) 4 SCC 505) and India Mica and Micanite Industries Ltd. v. State of Bihar. ((1982) 3 SCC 182)

78. Learned Attorney General urged that the Supreme Court is empowered to act even outside a statute and give relief in addition to what is contemplated by the latter in exercise of its plenary power. This Court acts not only as a court of appeal but is also a court of equity. See Roshanlal Kuthiala v. R. B. Mohan Singh Oberoi ((1974) 4 SCC 628 : (1975) 2 SCR 491). During the course of hearing of the petitions, he informed this Court that the Government of India and the State Government of Madhya Pradesh refuted and denied any liability, partial or total, of any sort in the Bhopal gas leak disaster, and this position is supported by the present state of law. It was, however, submitted that any claim against the Government of India for its alleged tortious liability was outside the purview of the Act and such claims, if any, are not extinguished by reason of the orders dated February 14/15., 1989 of this Court.

79. Learned Attorney General further stated that the amount of 470 million U.S. dollars which was

secured as a result of the memorandum of settlement and the said orders of this Court would be meant exclusively for the benefit of the victims who have suffered on account of the Bhopal gas leak disaster. The Government of India would not seek any reimbursement on account of the expenditure incurred suo motu for relief and rehabilitation of the Bhopal gas victims nor will the government or its instrumentality make any claim on its own arising from this disaster. He further assured this Court that in the event of disbursement of compensation being initiated either under the Act of under the orders of this Court, a notification would be instantaneously issued under Section 6(3) of the Act authorising the Commissioner or any other officers to discharge functions and exercise all or any powers which the Central Government may exercise under Section 5 of enable the victims to place before the Commissioner or the Deputy Commissioner any additional evidence that they would like to be considered.

80. The Constitution Bench of this Court presided over by the learned Chief Justice R. S. Pathak has pronounced an order on May 4, 1989 (Union Carbide Corpn. v. Union of India, (1989) 3 SCC 38) given reasons for the orders passed on February 14/15, 1989. Inasmuch as good deal of criticism was advanced before this Court during the hearing of the arguments on behalf of the petitioners about the propriety and validity of the settlement dated February 14/15, 1989 even though the same was not directly in issue before us, it is necessary to refer briefly to what the Constitution Bench has stated in the said order dated May 4, 1989. After referring to the facts leading to the settlement, the court has set out the brief reasons on the following points :

> (a) How did not court arrive at the sum of 470 million U. S. dollars for an overall settlement ?, (b) Why did the court consider the sum of 470 million U.S. dollars as 'just, equitable and reasonable' ?, (c) Why did the court not pronounce on certain important legal questions of far-reaching importance, said to arise in the appeals as to the principles of liability of monolithic, economically entrenched multinational companies operating with inherently dangerous technologies in the developing countries of the Third World ? These questions were said to be of great contemporary relevance to the democracies of the Third World. This Court recognised that there was another aspect of the review pertaining to the part of the settlement which terminated the criminal proceedings. The questions raised on the point in the review petitions, the court was of the view, prima facie merit consideration and therefore, abstained form saying anything which might tend to prejudge this one way or the other.

81. The basic consideration, as this court recorded, motivating the conclusion of the settlement was the compelling need for urgent relief, and the court set out the law's delays duly considering that there was a compelling duty both judicial and humane, to secure immediate relief to the victims. In doing so, the court did not enter upon any forbidden ground, the court stated. The court noted that indeed efforts had already been made in this direction by Judge Keenan and the learned District Judge of Bhopal. Even at the opening of the arguments in the appeals, the court had suggested to learned counsel to reach a just and fair settlement. And when counsel met for rescheduling of the hearings the suggestion was reiterated. The court recorded that the response of learned counsel was positive in attempting a settlement but they expressed a certain degree of uneasiness and scepticism at the prospects of success in view of their past experience of such negotiations when, as they stated, there has been uninformed and even irresponsible criticism of the attempts at settlement.

82. Learned Attorney General had made available to the court the particulars of offers and counter-offers made on previous occasions and the history of settlement. In those circumstances, the court

examined the prima facie material as the basis of qualification of a sum which, having regard to all the circumstance including the prospect of delays inherent in the judicial process in India and thereafter in the matter of domestication of the decree in the US for the purpose of execution and directed that 470 million U.S. dollars, which upon immediate payment with interest over a reasonable period, pending actual distribution amongst the claimants, would aggregated to nearly 500 million U.S. dollars or its rupee equivalent of approximately Rs. 750 crores which the learned Attorney General had suggested, be made the basis of settlement, and both the parties accepted this direction.

83. The court reiterated that the settlement proposals were considered not he premised that the government had the exclusive statutory authority to represent and act on behalf of the victims and neither counsel had any reservation on this. The order was also made on the premise that the Act was a valid law. The court declared that in the event the Act is declared void in the pending proceedings challenging its validity, the order dated February 14, 1989 would required to be examined in the light of that decision. The court also reiterated that if any material was placed before it from which a reasonable inference was possible that the UCC had, at any time earlier, offered to pay any sum higher than an outright down payment of 470 million U.S. dollars, this Court would straightway initiate suo motu action requiring the concerned parties to show cause why the order dated February 14, 1989 should not be set aside and the parties relegated to their original positions. The court reiterated that the reasonableness of the sum was based not only on independent quantification but the idea of reasonableness for the present purpose was necessarily a broad and general estimate in the context of a settlement of the dispute and not on the basis of an accurate assessment by adjudication. The court stated that the question was, how good or reasonable it was as a settlement, which would avoid delay, uncertainties and assure immediate payment. An estimate in the very nature of things, would not have the accuracy of an adjudication. The court recorded the offers, counter offers, reasons and the numbers of the persons treated and the claims already made. The court found that from the order of the High Court and the admitted position the plaintiff's side, a resonable prime facie estimate of the number of fatal cases and serious personal injury cases, was possible to be made. The court referred to the High Court's assessment and procedure to examine the task of assessing the quantum of interim compensation. The Court referred to M. C. Mehta case (M. C. Mehta v. Union of India, (1987) 1 SCC 395 : 1987 SCC (L&S) 37 : (1987) 1 SCR 819) reiterated by the High Court, bearing in mind the factors that if the suit proceeded to trail the plaintiff-Union of India would obtain judgment in respect of the claims relating to deaths and personal injuries in the following manner : (a) Rs. 2 lakhs in each case of death; (b) Rs. 2 Lakhs in each case of total permanent disability; (c) Rs. 1 lakh in each case of permanent partial disablement; and (d) Rs. 50,000 in each case of temporary partial disablement.

84. Half of these amounts were awarded as interim compensation by the High Court.

85. The figures adopted by the High Court in regard to the number of fatal cases and cases of serious personal injuries did not appear to have been disputed by anybody before the High Court, this Court observed. From those figures, it came to the conclusion that the total number of fatal cases was about 3000 and of grievous and serious personal injuries, as verifiable from the records was 30,000. This Court also took into consideration that about 8 months after the occurrence a survey had been conducted from the purpose of identification of cases. These figures indicated less than 10,000. In those circumstances, as a rough and ready estimate, this Court took into consideration the prima facie findings of the High Court and estimated the number of fatal cases at 3000 where compensation could range from Rs. 1 lakh to Rs. 3 lakhs. This would account for Rs. 70 crores, nearly 3 times higher than what would have otherwise been awarded in comparable cases in

motor vehicles accident claims.

86. The court recognised the effect of death and reiterated that loss of precious human lives is irreparable. The law can only hope to compensate the estate of a person whose life was lost by the wrongful act of another only in the way the law was equipped to compensate i.e. by monetary compensation calculated on certain well recognised principles. "Loss to the estate" which is the entitlement of the estate and the "loss of dependency" estimated on the basis of capitalised present value awardable to the heirs and dependents, this Court considered, were the main components in the computation of compensation in fatal accident, actions, but the High Court adopted a higher basis. The court also took into account the personal injury cases, and stated that these apportionments were merely broad considerations generally guiding the idea of reasonableness of the overall basis of settlement, and reiterated that this exercise was not a predetermination of the quantum of compensation amongst the claimants either individually or categorywise; and that the determination of the actual quantum of compensation payable to the claimants has to be done by the authorities under the Act. These were the broad assessments and on that basis the court made the assessment. The court believed that this was a just a reasonable assessment based on the materials available at that time. So far as the other question, namely, the vital juristic principles of great contemporary relevance to the Third World generally, and to India in particular, touching problems emerging from the pursuit of such dangerous technologies for economic gains by multinationals in this case, the court recognised that these were great problems and reiterated that there was need to evolve a national policy to protect national interest from such ultra-hazardous pursuits of economic gain; and that jurists, technologists and other experts in economics, environmentology, futurology, sociology and public health should identify the area of common concern and help in evolving proper criteria which might receive judicial recognition and legal sanction. The Court reiterated that some of these problems were referred to in M. C. Mehta case (M. C. Mehta v. Union of India, (1987) 1 SCC 395 : 1987 SCC (L&S) 37 : (1987) 1 SCR 819). But in the present case, the compulsions of the need for immediate relief to tens of thousands of suffering victims could not wait till these questions vital though these be, were resolved in due course of judicial proceedings; and the tremendous suffering of thousands of persons compelled this Court to move into the direction of immediate relief which, this Court thought, should not be subordinated to the uncertain promises of the law, and when the assessment of fairness of the amount was based on certain factors and assumptions not disputed even by the plaintiffs.

87. Before considering the question of constitutional validity of the Act, in the light of the background of the facts and circumstances of this case and submissions made, it is necessary to refer to the order dated March 3, 1989 passed by the Constitution Bench in respect of Writ Petition Nos. 164 of 1986 and 268 of 1989, consisting of five learned judges presided over by the Hon'ble Chief Justice of India. The order stated that these matters would be listed on March 8, 1989 before a Constitution Bench for decisions" on the sole question whether the Bhopal Gas leak Disaster (Processing of Claims) Act, 1985 is ultra vires". This is a judicial order passed by the said Constitution Bench. This is not an administrative order. Thus, these matters are before this Court. The questions, therefore, arises : what are these matters ? The aforesaid order specifically states that these matters were places before this bench on the "sole question" whether the Act is ultra vires. Hence, these matters are not before this Bench for disposal of these writ petitions. If as a result of the determination, one way or the other, it is held, good and bad, and that some relief becomes necessary, the same cannot be given or an order cannot be passed in respect thereof, except declaring the Act or any portion of the Act, valid or invalid constitutionally as the decision might be.

88. In Writ Petition No. 268 of 1989 there is consequential prayer to set aside the order dated February 14/15, 1989. But since the order dated March 3, 1989 above only suggests that these matters have been placed before this bench' on the sole question' whether the Bhopal Act is ultra vires or not, it is not possible by virtue of that order to go into the question whether the settlement is valid or liable to be set aside as prayed for in the prayers in these applications.

89. The provisions of the Act have been noted and the rival intentions of the parties have been set out before. It is, however, necessary to reiterate that the Act does not in any way circumscribe the liability of the UCC, UCIL or even the Government of India or Government of Madhya Pradesh if they were jointly or severally liable. This follows from the construction of the Act, from the language that is apparent. The context and background do not indicate the contrary. Counsel for the victims plead that this is so. The learned Attorney General accepts that position. The liability of the government is, however, disputed. This Act also does not deal with any question of criminal liability of any of the parties concerned. On an appropriate reading of the relevant provisions of the Act, it is apparent that the criminal liability arising out of Bhopal gas leak disasters is not the subject matter of this Act and cannot be said to have been in any way affected, abridged or modified by virtue of this Act. This was the contention of the learned counsel on behalf of the victims. It is also the contention of the learned Attorney General. In our opinion, it is the correct analysis and consequence of the relevant provisions of the Act. Hence, the submissions made on behalf of some of the victims that the Act was bad as it abridged or took away the victims' right to proceed criminally against the delinquent, be it UCC or UCIL or jointly or severally the Government of India, Government of Madhya Pradesh or Shri Arjun Singh, the erstwhile Chief Minister of Madhya Pradesh, is on a wrong basis. There is no curtailment of any right with respect to any criminal liability. Criminal liability is not he subject matter of the Act. By the terms of the Act and also on the concessions made by the learned Attorney General, if that be so, then can non-prosecution in criminal liability be a consideration or valid consideration for settlement of claims under the Act ? This is a question which has been suggested and articulated by learned counsel appearing for the victims. On the other hand, it has been asserted by the learned Attorney General that the part of the order dated February 14/15, 1989 dealing with criminal prosecution or the order of this Court was by virtue of the inherent power of this Court under Articles 136 and 142 of the Constitution. These, the learned Attorney General said, were in the exercise of plenary powers of this Court. These are not considerations which induced the parties to enter into settlement. For the purpose of determination of constitutional validity of the Act, it is however necessary to say that criminal liability of any of the delinquents or of the parties is not the subject matter of this Act and the Act does not deal with either claims or rights arising out of such criminal liability. This aspect is necessary to be reiterated on the question of validity of the Act.

90. We have set out the language and the purpose of the Act, and also noted the meaning of the expression 'claim' and find that the Act was to secure the claims connected with or arising out of the disaster so that these claims might be dealt with speedily, effectively, equitable and to the best advantage of the claimants. In our opinion, clause (b) of Section 2 includes all claims of the victims arising out of and connected with the disaster for compensation and damages or loss of life or personal injury or loss to the business and flora and fauna. What, however, is the extent of liability, is another question. This Act does not purport to or even to deal with the extent of liability arising out of the said gas leak disaster. Hence, it would be improper or incorrect to contend as did Ms. Jaising, Shri Garg and other learned counsel appearing for the victims, that the Act circumscribed the liability - criminal, punitive or absolute of the parties in respect of the leakage. The Act provides for a method of procedure for the establishment and enforcement of that liability. Good deal of argument was advanced before this Court on the question that the settlement has abridged the

liability and this Court has lost the chance of laying down the extent of liability arising out of disaster like the Bhopal gas leak disaster. Submissions were made that we should lay down clearly the extent of liability arising out of disasters and we should further hold that the Act abridged such liability and as such curtailed the rights of the victims and was bad on that score. As mentioned hereinbefore, this is an argument under a misconception. The Act does not in any way except to the extent indicated in the relevant provision of the Act circumscribe or abridge the extent of the rights of the victims so far as the liability of the delinquents are concerned. Whatever are the rights of the victims and whatever claims arise out of the gas leak disaster for compensation, personal injury, loss of life and property, suffered or likely to be sustained or expenses to be incurred or any other loss are covered by the Act and the Central Government by operation of Section 3 of the Act has been given the exclusive right to represent the victims in their place and stead. By the Act, the extent of liability is not in any way abridged and, therefore, if in case of any industrial disaster like the Bhopal gas leak disaster, there is right in victims to recover damages of compensation on the basis of absolute liability, then the same is not in any manner abridged or curtailed.

91. Over 120 years ago Rylands v. Fletcher ((1868) 3 LR 3 HL 330 : 19 LT 220 : 33 JP 70) was decided in England. There A; was the lessee of certain mines. B, was the owner of a mill standing on land adjoining that under which the mines worked. B, desired to construct a reservoir, and employed competent persons, such as engineers and a contractor, to construct it. A, had worked his mines up to a spot where there were certain old passages of disused mines; these passages were connected with vertical shafts which communicated with the land above, and which had also been out of use for years, and were apparently filled with marl and the earth of the surrounding land. No care had been taken by the engineer or the contractor to block up these shafts, and shortly after water had been introduced into the reservoir it broke through some of the shafts, flowed through the old passage and flooded A's mine. It was held by the House of Lords in England that where the owner of land, without willfulness or negligence, uses his land in the ordinary manner of its use, though mischief should thereby be occasioned to his neighbor, he will not be liable in damages. But if he brings upon his land any thing which would not naturally come upon it, and which is in itself dangerous, and may become mischievous if not kept under proper control, though in so doing he may act without personal willfulness or negligence, he will be liable in damages for any mischief thereby occasioned. In the background of the facts it was held that A was entitled to recover damages from B, in respect of the injury. The question of liability was highlighted by this Court in M. C. Mehta case (M. C. Mehta v. Union of India, (1987) 1 SCC 395 : 1987 SCC (L&S) 37 : (1987) 1 SCR where a Constitution of Bench of this Court had to deal with the rule of strict liability. This Court held that the rule in Rylands v. Fletcher ((1868) 3 LR 3 HL 330 : 19 LT 220 : 33 JP 70) laid down a principle that if a person who brings on his land and collects and keeps there anything likely to do harm and such thing escapes and does damage to another, he is liable to compensate for the damage caused. This rule applies only to non-natural user of the land and does not apply to things naturally on the land or where the escape is due to an act of God and an act of a stranger or the default of the person injured or where the things which escape are present by the consent of the person injured or in certain cases where there is a statutory authority. There, this Court observed that the rule in Rylands v. Fletcher ((1868) 3 LR 3 HL 330 : 19 LT 220 : 33 JP 70) evolved in the 19th Century at a time when all the developments of science and technology had not taken place, and the same cannot afford any guidance in evolving any standard of liability consistent with the constitutional norms and the needs of the present day economy and social structure. In modern industrial society with highly developed scientific knowledge and technology where hazardous or inherently dangerous industries are necessary to be carried on as part of the developmental process, courts should not feel inhibited by this rule merely because the new law does not recognise the rule

of strict and absolute liability in case of an enterprise engaged in hazardous and dangerous activity. This Court noted that law has to grow in order to satisfy the needs of the fast-changing society and keep abreast with the economic developments taking place in the country. Law cannot afford to remain static. This Court reiterated there that if it is found necessary to construct a new principle of liability to deal with an unusual situation which has arisen and which is likely to arise in future on account of hazardous or inherently dangerous industries which are concomitant to an industrial economy; the court should not hesitate to evolve such principle of liability merely because it has not been so done in England. According to this Court, an enterprise which is engaged in a hazardous or inherently dangerous industry which poses potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standard of safety and if any harm results to anyone on account of an accident in the operation of such activity resulting, for instance, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who were affected by the accident as part of the social cost for carrying on such activity, regardless of whether it is carried on carefully or not. Such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the Rule in Rylands v. Fletcher ((1868) 3 LR 3 HL 330 : 19 LT 220 : 33 JP 70). If the enterprise is permitted to carry on a hazardous or dangerous activity for its profit, the law must presume that such permission is conditionals on the enterprise absorbing the cost of any accident arising on account of such activity as an appropriate item of its overheads. The enterprise along has the resources to discover and guard against hazards or dangers and to provide warning against potential hazards. This Court reiterated that the measure of compensation in these kinds of cases must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in carrying on of the hazardous or inherently dangerous activity by the enterprise. The determination of actual damages payable would depend upon various facts and circumstances of the particular case.

92. It was urged before us that there was an absolute and strict liability for an enterprise which was carrying on dangerous operations with gases in this country. It was further submitted that there was evidence on record that sufficient care and attention had not been given to safeguard against the dangers of leakage and protection in case of leakage. Indeed, the criminal prosecution that was launched against the Chairman of Union Carbide Mr. Warren Anderson and others, as indicated before, charged them along with the defendants in the suit with delinquency in these matters and criminal negligence in conducting the toxic gas operations in Bhopal. As in the instant adjudication, this Court is not concerned with the determination of the actual extent of liability, we will proceed on the basis that the law enunciated by this Court in M. C. Mehta case (M. C. Mehta v. Union of India, (1987) 1 SCC 395 : 1987 SCC (L&S) 37 : (1987) 1 SCR 819) is the decision upon the basis of which damages will be payable to the victims in this case. But then the practical question arises : what is the extant of actual damages payable, and how would the quantum of damages be computed ? Indeed, in this connection, it may be appropriate to refer to the order passed by this Court on May 4, 1989 (Union Carbide Corpn. v. Union of India, (1989) 3 SCC 38) giving reasons why the settlement was arrived at the figure indicated. This court had reiterated that it had proceeded on certain prima facie undisputed figures of death and substantially compensating personal injury. This court has referred to the fact that the High Court had proceeded on the broader principle in M. C. Mehta case (M. C. Mehta v. Union of India, (1987) 1 SCC 395 : 1987 SCC (L&S) 37 : (1987) 1

SCR 819) and on the basis of the capacity of the enterprise because the compensation must have deterrent effect. On that basis the High Court had proceeded to estimate the damages on the basis of Rs. 2 Lakhs for each case of death and of total permanent disability, Rs. 1 Lakh for each case of partial permanent disability and Rs. 50,000 for each case of temporary partial disability. In this connection, the controversy as to what would have the damages been if the act__ion had proceeded, is another matter. Normally, in measuring civil liability, the law has attached more importance to the principle of compensation than that of punishment. Penal redress, however, involves both compensation to the person injured and punishment as deterrence. These problems were highlighted by the House of Lor in England in Rookes v. Barnard (1964 AC 1129 : (1964) 1 All ER 367), which indicate the difference between aggravated and exemplary damages. Salmond on the Law of Torts, 15th edn, at page 30 emphasises that the function of damages is compensation rather than punishment, but punishment cannot always be ignored. There are views which are against exemplary damages on the ground that these infringe in principle the object of law of torts, namely, compensation and not punishment and these tend to impose something equivalent to fine in criminal law without the safeguards provided by the criminal law. In Rooks v. Barnard (1964 AC 1129 : (1964) 1 All ER 367), the House of Lords in England recognised three classes of cases in which the award of exemplary damages was considered but also deter the wrongdoers and others from similar conduct in future. The question of awarding exemplary or deterrent damages is said to have often confused civil and criminal functions of law. Though it is considered by many that it is a legitimate encroachment of punishment in the realm of civil liability, as it operates a restraint on the transgression of law which is for the ultimate benefit of the society. Perhaps, in this case, had the action proceeded, one would have realised that the fall out of this gas disaster might have been the formulation of a concept of damages, blending both civil and criminal liabilities. There are, however, serious difficulties in evolving such an actual concept of punitive damages in respect of a civil action which can be integrated and enforced by the judicial process. It would have raised serious problems of pleading, proof and discovery, and interesting and challenging as the task might have been, it is still very uncertain how far decision based on such a concept would have been a decision according to 'due process' of law acceptable by international standards. There were difficulties in that attempt. But as the provisions stand these considerations do not make the Act constitutionally invalid. These are matters on the validity of settlement. The Act, as such does not abridge or curtail damage or liability whatever that might be. So the challenge to the Act on the ground that there has been curtailment or deprivation of the rights of the victims which is unreasonable in the situation is unwarranted and cannot be sustained.

93. Shri Garg tried to canvass before us the expanding of horizons of human rights. He contended that the conduct of the multinational corporations dealing with dangerous gases for the purpose of development specially in the conditions prevailing in the Third World countries requires closer scrutiny and vigilance on the part of emerging nations. He submitted that unless courts are alert and active in preserving the rights of the individuals and in enforcing criminal and strict liability and in setting up norms compelling the government to be more vigilant and enforcing the sovereign will of the people of India to oversee that such criminal activities which endanger even for the sake of developmental work, economy and progress of the country, the health and happiness of the people and damage the future prospects of health, growth and affect and pollute the environment, should be curbed and, according to him, these could only be curbed by insisting through the legal adjudication, these could only be curbed by insisting through the legal adjudication, punitive and deterrent punishment in the from of damages. He also pleaded that norms should be set up indicating how these kinds of dangerous operations are to be permitted under conditions of vigilance and surveillance. While we appreciate the force of these arguments, and endorse his plea that norms

and deterrence should be aspired for, it is difficult to correlate that aspect with the present problem in this decision.

94. We do reiterate, as mentioned in the Universal Declaration of Human Rights that people are born free and the dignity of the persons must be recognised and an effective remedy by competent tribunal is one of the surest methods of effective remedy. If, therefore, as a result of this tragedy new consciousness and awareness on the part of the people of this country to be more vigilant about measures and the necessity of this country to be more vigilant about measures and the necessity of ensuring more strict vigilance for permitting the operations of such dangerous and poisonous gases dawn, then perhaps the tragic experience of Bhopal would not go in vain.

95. The main question, however, canvassed by all learned counsel for the victims was that so far as the Act takes away the right of the victims to fight or establish their own rights, it is denial of access to justice, and it was contended that such denial is so great a deprivation of both human dignity and right to equality that it cannot be justified because it would be affecting right to life, which again cannot be deprived without a procedure established by law which is just, fair and reasonable.

96. On this aspect, Shri Shanti Bhushan tried to urge before us that Section 3 and 4 of the Act, insofar as these enjoin and empower the Central Government to institute or prosecute proceedings was only an enabling provision for the Central Government and not depriving or disabling provisions for the victims. Ms. Jaising sought to urge in addition, that in order to make the provisions constitutionally valid, we should eliminate the concept of exclusiveness to the Central Government and give the victims right to sue along with the Central Government. We are unable to accept these submissions.

97. In our opinion, Section 3 and 4 are categorical and clear. When the expression is explicit, the expression is conclusive, alike in what it says and in what it does not say. These give to the Central Government an exclusive right to act in place of persons who are entitled to make claim or have already made claim. The expression 'exclusive' is explicit and significant. The exclusively cannot be whittled down or watered down as suggested by counsel. The said expression must be given its full meaning and extent. This corroborated by the use of the expression 'claim' for all purposes. If such duality of rights are given to the Central Government along with the victims in instituting or proceeding for the realisation or the enforcement of the claims arising out of Bhopal gas leak disaster, then that would be so cumbersome that it would not be speedy, effective or equitable and would not be best or more advantageous procedure for securing the claims arising out of the leakage. In that view of the matter and in view of the language used and the purpose intended to be achieved, we are unable to accept this aspect of the arguments advances on behalf of the victims. It was then contended that by the procedure envisaged by the Act, the victims have been deprived and denied their rights and property to fight for compensation. The victims, it has been asserted, have been denied access to justice. It is a great deprivation, it was argued. It was contended that the procedure evolved under the Act for the victims. Such special disadvantageous procedure and treatment is unequal treatment, it was suggested. It was, therefore, violative of Article 14 of the Constitution, that is the argument advanced.

98. The Act does provide a special procedure in respect of the rights of the victims and to that extent the Central Government takes upon itself the rights of the victims. It is a special Act providing a special procedure for a kind of special class victims. In view of the enormity of the disaster the victims of the Bhopal gas leak disaster, as they were placed against the multinational and a big Indian corporation and in view of the presence of foreign contingency lawyers to whom the victims

were exposed, the claimants and victims can legitimately be described as a class by themselves different and distinct, sufficiently separate and identifiable to be entitled to special treatment for effective, speedy, equitable and best advantageous settlement of their claims. There indubitably is differentiation. But this differentiation is based on a principle which has rational nexus with the aim intended to be achieved by this differentiation. The disaster being unique in its character and in the recorded history of industrial disasters situated as the victims were against a mighty multinational with the presence of the foreign contingency lawyers looming on the scene, in our opinion, there were sufficient grounds for such differentiation and different treatment. In treating the victims of the gas leak disaster differently and providing them a procedure, which was just, fair, reasonable and which was not unwarranted or unauthorised by the Constitution, Article 14 is not breached. We are, therefore, unable to accept this criticism of the Act.

99. The second aspect canvassed on behalf of the victims is that the procedure envisaged is unreasonable and as such not warranted by the situation and cannot be treated as a procedure which is just, fair and reasonable. The argument has to be judged by the yardstick, as mentioned hereinbefore, enunciated by this Court in State of Madras v. V. G. Rao (192 SCR 597 : AIR 1952 SC 196). Hence, both the restrictions or limitations on the substantive and procedural rights in the impugned legislation will have to be judged from the point of view of the particular statute in question. No abstract rule or standard of reasonableness can be applied. That question has to be judged having regard to the nature of the rights alleged to have been infringed in this case, the extent and urgency of the evil sought to be reminded, disproportionate imposition, prevailing conditions at the time, all these facts will have to be taken into consideration. Having considered the background, the plight of the impoverished, the urgency of the victims' need, the presence of the foreign contingency lawyers, the procedure of settlement in USA in mass action, the strength for the foreign multinationals, the nature of injuries and damages, and the limited but significant right of participation of the victims as contemplated by Section 4 of the Act, the Act cannot be condemned as unreasonable.

100. In this connection, the concept of parens patriae in jurisprudence may be examined. It was contended by the learned Attorney General that the State had taken upon itself this onus to effectively come in as parens patriae. We have noted the long line of Indian decisions where, thought in different context, the concept of State as the parent of people are not quite able to or competent to fight for their rights or assert their rights, have been utilised. It was contended that the doctrine of parens patriae cannot be applicable to the victims. How the concept has been understood in this country as well as in America has been noted. Legal dictionaries have been referred to as noted before. It was asserted on behalf of the victims by learned counsel that the concept of parens patriae can never be invoked for the purpose of suits in domestic jurisdiction of any country. This can only be applied in respect of the claims out of the country in foreign jurisdiction. It was further contended that this concept of parens patriae can only be applied in case of persons who are under disability and would not be applicable in respect of those who are able to assert their own rights. It is true that victims or their representatives are sui generis and cannot as due age, mental capacity or other reason not legally incapable for suing or pursuing the remedies for the rights yet they are at a tremendous disadvantage in the broader and comprehensive sense of the term. These victims cannot be considered to be any match to the multinational companies or the government with whom in the conditions that the victims or their representatives were after the disaster physically, mentally, financially, economically and also because of the position of litigation would have to contend. In such a situation of predicament the victims can legitimately be considered to be disabled. They were in no position by themselves to look after their own interests effectively or purposefully. In that background, they are the people who needed the State, sovereignty to assert, establish and maintain

their right against the wrongdoers in this mass disaster. In that perspective, it is jurisprudentially possible to apply the principle of parens patriae doctrine to the victims. But quite apart from that, it has to be born in mind that in this case the State is acting on the basis of the statute itself. For the authority of the Central Government to sue for and on behalf of or instead in place of the victims, no other theory, concept or any jurisprudential principle is required that the Act itself. The Act empowers and substitutes the Central Government. It displaces the victims by operation of Section 3 of the Act and substitutes the Central Government in its place. The victims have been divested of their right to sue and such claims and such right have been vested in the Central Government. The victims have been divested because the victims were disabled. The disablement of the victims vis-a-vis their adversaries in this matter is a self-evident factor. If that is the position then, in our opinion, even if the strict application of the parens patriae doctrine is not in order, as a concept it is a guide. The jurisdiction of the State's power cannot be circumscribed by the limitations of the traditional concept of parens patriae. Jurisprudentially, it could be utilised to suit or alter or adept itself in the changed circumstances. In the situation in which the victims were, the State had to assume the role of a parent protecting the right of the victims who must come within the protective umbrella of the State and the common sovereignty of the Indian people. As we have noted the Act is an exercise of the sovereign power of the State. It is an appropriate evolution of the expression of sovereignty in the situation that had arisen. We must recognize and accept it as such.

101. But this right and obligation of the State has another aspect Shri Shanti Bhushan has argued and this argument has also been adopted by other learned counsel appearing for the victims that with the assumption by the State of the jurisdiction and power as a parent to fight for the victim is in the situation there is an incumbent obligation on the State, in the words of Judge Keenan, 'as a matter of fundamental human decency' to maintain the victims until the claims are established and realised from the foreign multinationals. The major inarticulate premise apparent from the Act and the Scheme and the spirit of the Act is that so long as the rights of the victims are prosecuted the State must protect and preserve the victims. Otherwise the object of the Act would be defeated, its purpose frustrated. Therefore, continuance of the payments of the interim maintenance for the continued sustenance of the victims is an obligation arising out of State's assumption of the power and temporary deprivation of the right of the victims and divestiture of the rights of the victims to fight for their own rights. This is the only reasonable interpretation which is just, fair and proper. Indeed, in the language of the Act there is support for this interpretation. Section 9 of the Act gives power to the Central Government to frame by notification, a scheme for carrying into effect the purposes of the Act. Sub-section (2) of Section 9 provides for the matter for which the Scheme may provide. Amongst other, clause (d) of Section 9(2) provides for creation of a fun for meeting expenses in connection with the administration of the Scheme and of the provisions of the Act; and clause (e) of Section 9(2) covers the amounts which the Central Government "may after due appropriation made by Parliament by law in that behalf, credit to the fund referred to in clause (d) and any other amounts which may be credited to such fund" Clause (f) of Section 9(2) speaks of the utilisation, by way of disbursal (including apportionment) or otherwise, of any amounts received in satisfaction of the claims. These provisions are suggestive but not explicit. Clause (b) of Section 10 which provides that in disbursing under the Scheme the amount received by way of compensation or damages in satisfaction of a claim as a result of the adjudication or settlement of the claim by a court or other authority, deduction shall be made from such amount of the sums, if any, paid to the claimant by the government before the disbursal of such amount. The Scheme framed is also significant. Clause 10 of the Scheme provides for the claims and relief funds and includes disbursal of amount as relief including interim relief to person affected by the Bhopal gas leak disaster and clause 11(1) stipulates that disbursal of any amounts under the Scheme shall be made by the Deputy

Commissioner to each claimant through credit in a bank or postal saving account, stressing that the legislative policy underlying the Bhopal Act contemplated payment of interim relief till such time as the central Government was able to recover from the Union Carbide full amount of compensation from which the interim reliefs already paid were to be deducted from the amount payable to them for the final disbursal. The Act should be construed as creating an obligation on the Central Government to pay interim relief as the Act deprives the victims of normal and immediate right of obtaining compensation from the Union Carbide. Had the Act not been enacted, the victims could have and perhaps would have been entitled not only to sue the Union Carbide themselves, but also to enter into settlement or compromise of some sort with them. The provisions of the Act deprived the victims of the legal right and opportunity, and that deprivation is substantial deprivation because upon immediate relief depends often the survival of these victims. In that background, it is just and proper that this deprivation is only to be justified if the Act is read with the obligation of granting in interim relief or maintenance by the Central Government until the full amount of the dues of the victims is realised from the Union Carbide after adjudication or settlement and then deducting therefrom the interim relief paid to the victims. As submitted by learned Attorney General, it is true that there is no actual expression used in the Act itself which expressly postulates or indicates such a duty or obligation under the Act. Such an obligation is, however, inherent and must be the basis of properly construing the spirit of the Act. In our opinion, this is the true basis and will be in consonance with the spirit of the Act. It must be, to use the well known phrase 'the major inarticulate premise' upon which thought not expressly stated, the Act proceeds. It is on this promise or premise that the State would be justified in taking upon itself the right and obligation to proceeds and prosecute the claim and deny access to the courts of law to the victims on their own. If it is only so read, it can be held to be constitutionally valid. It has to be borne in mind that the language of the Act does not militate against this construction but on the contrary, Sections 9, 10 and the Scheme of the Act suggest that the Act contains such an obligation. If it is so read, then only meat can be put into the skeleton of the Act making it meaningful and purposeful. The Act must, therefore, be so read. This approach to the interpretation of the Act can legitimately be called the 'constructive intuition' which, in our opinion, is a permissible mode of viewing the Act of Parliament. The freedom to search for 'the spirit of the Act' or the quantity of the mischief at which it is aimed (both synonymous for the intention of the Parliament) opens up the possibility of liberal interpretation "that delicate and important branch of judicial power, the concession of which is dangerous, the denial ruinous". Given this freedom it is a rare opportunity though never to be misused and challenge for the judges to adopt and give meaning the Act, articulate and inarticulate, and thus translate the intention of the Parliament and fulfill the object of the Act. After all, the Act was passed to give relief to the victims who, it was thought, were unable to establish their own rights and fight for themselves. It is common knowledge that the victims were poor and impoverished. How could they survive the long ordeal of litigation and ultimate execution of the decree or the orders unless provisions be made for their sustenance and maintenance, especially when they have been deprived of the right to fight for these claims themselves ? We, therefore, read the Act accordingly.

102. It was, then, contended that the Central Government was not competent to represent the victims. This argument has been canvassed on various grounds. It has been urged that the Central Government owns 22 per cent share in UCIL and as such there is a conflict of interest between the Central Government and the victims, and on that ground the former is disentitled to rpresent the latter in their battle against UCC and UCIL. A large number of authorities on this aspect were cited. However, it is not necessary in the view we have taken to deal with these because factually the Central Government does not own any share in UCIL. These are the statutory independent

organisations, namely, Unit Trust of India and Life Insurance Corporation, who own 20 to 22 percent shares in UCIL. The Government has certain amount of say and control in LIC and UTI. Hence, it cannot be said, in our opinion, that there is any conflict of interest in the real sense of matter in respect of the claims of Bhopal gas leak disaster between the Central Government and the victims. Secondly, in a situation of this nature, the Central Government is the only authority which can pursue and effectively represent the victims. There is no other organisation or unit which can effectively represent the victims. Perhaps, theoretically, it might have been possible to constitute another independent statutory body by the government under its control and supervision in whom the claim of the victims might have been vested and substituted and the body could have been entrusted with the task of agitating or establishing the same claims in the same manner as the central government has done under the Act. But the fact that has not been done, in our opinion, does not in any way affect the position. Apart from that, lastly, in our opinion, this concept that where there is a conflict of interest, the person having the conflict should not be entrusted with the task of this nature, does not apply in the instant situation. In the instant case, no question of violation of the principle that of natural justice arises, and there is no scope for the application of the principle that no man should be a judge in his own cause. The Central Government was not judging any claim, but was fighting and advancing claims of the victims. In those circumstances, it cannot be said that there was any violation of the principles of natural justice and such entrustment to the Central Government of the right to ventilate for the victims was improper or bad. The adjudication would be done by the courts, and therefore there is no scope of the violation of any principle of natural justice.

103. Along with this submission, the argument was that the power and the right given to the Central Government to fight for the claims of the victims, is unguided and uncanalised. This submission cannot be accepted. Learned Attorney General is right the power conferred on the Central Government is not uncanalised. The power is circumscribed by the purpose of the Act. If there is any improper exercise or transgression of the power then the exercise of that power can be called in question and set aside, but the Act cannot be said to be violative of the rights of the victims on that score. We have noted the relevant authorities on the question that how power should be exercised is different and separate from the question whether the power is valid or not. The next argument on behalf of the victims was that there was conflict of interest between the victims and the government viewed from another aspect of the matter. It has been urged that the Central Government as well as the Government of Madhya Pradesh Shri Arjun Singh were guilty of negligence, malfeasance and non-feasance, and as such were liable for damages along with Union Carbide and UCIL. In other words, it has been said that the Government of India and the Government of Madhya Pradesh along with Shri Arjun Singh are joint tort-feasors and joint wrongdoers. Therefore, it was urged that there is conflict of interest in respect of the claims arising out of the gas leak disaster between the Government of India and the victims. the victims and in such a conflict, it is improper, rather illegal and unjust to vest in the Government of India the right and claims of the victims. As noted before, the Act was passed in a particular background and, in our opinion, if read in that background it only covers claims against Union Carbide or UCIL. "Bhopal gas leak disaster" or "disaster" has been defined in clause (a) of Section (2) as the occurrence on the 2nd and 3rd days of December, 1984 which involved the release of highly noxious and abnormally dangerous gas from a plant in Bhopal (being a plant of the UCIL, a subsidiary of the UCC of USA) and which resulted in loss of life and damage to property on an extensive scale.

104. In this context, the Act has to be understood that it is in respect of the person responsible, being the person in charge of the UCIL and the parent company UCC. This interpretation of the Act is further strengthened by the fact that a"claimant" has been defined in clause (c) of Section 2 as a

person who is entitled to make a claim and the expression "person" in Section 2(e) includes the government. Therefore, the Act proceeded on the assumption that the government could be a claimant being a person as such. Furthermore, this construction and the perspective of the Act is strengthened if a reference is made to the debate both in the Lok Sabha and Rajya Sabha to which references have been made.

105. The question whether there is scope for the Union of India being responsible or liable as a joint tort-feasor is a difficult and different question. But even assuming that it was possible that the Central Government might be liable in a case of this nature, the learned Attorney General was right in contending that it was only proper that the Central Government should be able and authorised to represent the victims. In such a situation, there will be no scope of the violation of the principles of natural justice. The doctrine has been elaborated, in Halsbury's Laws of England, 4th edn., page 89, paragraph 73, where it was reiterated that even if all the embers of the Tribunal competent to determine a matter were subject to disqualification, they might be authorised and obliged to hear that matter by virtue of the operation of the common law doctrine of necessity. An adjudicator who is subject to disqualification on the ground of bias or interest in the matter which he has to decide may in certain circumstances be required to adjudicate if there is no other person who is competent or authorised to be adjudicator or if a quorum cannot be formed without him or if no other competent tribunal can be constituted. In the circumstances of the case, as mentioned hereinbefore, the Government of India is only capable to represent the victims as a party. The adjudication, however, of the claims would be done by the court. In those circumstances, we are unable to accept the challenge on the ground of the violation of principles of natural justice on this score. The learned Attorney General, however, sought to advance, as we have indicated before, his contention on the ground of de facto validity. He referred to certain decision. We are of the opinion that this principle will not be applicable. We are also not impressed by the plea of the doctrine of bona fide representation of the interest of victims in all these proceeding. We are of the opinion that the doctrine of bona fide representation would not be quite relevant and as such the decisions cited by the learned Attorney General need not be considered.

106. There is, however, one other aspect of the matter which requires consideration. The victims can be divested of their rights i.e. these can be taken away from them provided those rights of the victims are ensured to be established and agitated by the Central Government following the procedure which would be just, fair and reasonable. Civil procedure Code is the guide which guides civil proceedings in this country and in other countries procedure akin to Civil Procedure Code. Hence, these have been recognised and accepted as being in consonance with the fairness of the proceedings and in conformity with the principles of natural justice. Therefore, procedure envisaged under the Act has to be judged whether it is so consistent. The Act, as indicated before, has provided the procedure under Sections 3 and 4. Section 11 provides that the provisions of the Act and of any Scheme framed thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than the Act or any instrument having effect by virtue of any enactment other than the Act. Hence, if anything is inconsistent with the Act for the time being, it will not have force and the Act will override those provision to the extent it does. The Act has not specifically contemplated any procedure to be followed in the action to be taken pursuant to the powers conferred under Section 3 except to the extent indicated in Section 4 of the Act. Section 5, however, authorises the Central Government to have the powers of a civil court for the purpose of discharging the functions pursuant to the authority vested under Section 3 and 4 of the Act. There is no question of Central Government acting as a court in respect of the claims which it should enforce for or on behalf or instead of the victims of the Bhopal gas leak disaster. In this connection, it is necessary to note that it was submitted that the Act, so far as it deals with the claims of the victims,

should be read in conformity with the Civil Procedure Code and/or with the principles of natural justice; and unless the provisions of the Act are spread it would be violative of Articles 14 and 21 of the Constitution in the sense that there will be deprivation of rights to life and liberty without following a procedure which is just, fair and reasonable. That is the main submission and contention of the different counsel for the victims who have appeared. The different viewpoints from which this contention has been canvassed have been noted before. On the other hand, on behalf of the government, the learned Attorney General has canvassed before us that there were sufficient safeguards consistent with the principles of natural justice within this Act and beyond what has been provided for in a situation for which the Act was enacted, nothing more could be provided and further reading down the provision of the Act in the manner suggested would defeat the purpose of the Act. The aforesaid Section 3 right to represent and act in place of (whether within or outside India) every person who has made, or is entitled to make, a claim in respect of the disaster. The State has taken over the rights and claims of the victims in the exercise of sovereignty in order to discharge the constitutional obligations as the parent and guardian of the victims who in the situation as placed needed the umbrella of protection. Thus, the State has the power and jurisdiction and for this purpose unless the Act is otherwise unreasonable or violate of the constitutional provisions, no question of giving a hearing to the parties for taking over these rights by the State arises. For legislation by the Parliament, no principle of natural justice is attracted provided such legislation is within the competence of the legislature, which indeed the present Act is within the competence of the Parliament. We are in agreement with the submission of the learned Attorney General that Section 3 makes the Central Government the dominus litis and it has the carriage (sic) of the proceedings, but that does not solve the problem of by what procedure the proceedings should be carried.

107. The next aspect is that Section 4 of the Act, which, according to the learned Attorney General give limited rights to the victims in the sense that it obliges the Central Government to "have due regard to any matters which such person may require to be urged with respect to his claim and shall, if such person so desires, permit at the expense of such person, a legal practitioner of his choice to be associated in the conduct of any suit or other proceedings relating to his claim". Therefore, it obliges the Central Government to have 'due regard' to any matters, and it was urged on behalf of the victims that this should be read in order to make the provisions constitutionally valid as providing that the victims will have a say in the conduct of the proceedings and as such must have an opportunity of knowing what is happening either by instructing or giving opinions to the Central Government and/or providing for such directions as to settlement and other matters. In other words, it was contended on behalf of the victims that the victims should be given notice of the proceedings and thereby an opportunity, if they so wanted, to advance their view; and that to make the provisions of Section 4 meaningful and effective unless notice was given no victim, disabled as he is, the assumption upon which the Act has been enacted, could not (sic) come and make suggestion in the proceedings. If the victims are not informed and given no opportunity, the purpose of Section 4 cannot be attained.

108. On the other hand, the learned Attorney General suggested that Section 4 has been complied with, and contended that the victims had notice of the proceedings. They had knowledge of the suit in America, and of the order passed by Judge Keenan. The private plaintiffs who had gone to America were represented by foreign contingency lawyers who knew fully well what they were doing and they had also joined the said suit along with the Government of India. Learned Attorney General submitted that Section 4 of the Act clearly enabled the victims to exercise their rights of participation in the proceedings. According to him, there was exclusion of victims from the process of adjudication but a limited participation and beyond and beyond that participation no further

participation was warranted and no further notice was justified either by the provisions of the Act as read with the constitutional requirements or under the general principles of natural justice. He submitted that the principles of natural justice cannot be put into straitjacket and their application would depend upon the particular facts and the circumstances of a situation. According to the learned Attorney General, in the instant case, the legislature had formulated the area where natural justice could be applied, and up to what area or stage there would be association of the victims with the suit, beyond that no further application of any principle of natural justice was contemplated.

109. The fact that the provisions of the principles of natural justice have to be compiled with, is undisputed. This is well settled by the various decisions of the court. The Indian Constitution mandates that clearly, otherwise the Act and the actions would be violative of Article 14 of the Constitution and would also be destructive of Article 19(1)(g) and negate Article 21 of the Constitution by denying a procedure which is just, fair and reasonable. See in this connection, the observations of this Court in Maneka Gandhi case ((1978) 1 SCC 248 : (1978) 2 SCR 621) and Olga Tellis case ((1985) 3 SCC 545 : 1985 Supp 2 SCR 51, 78-83). Some of these aspects were noticed in the decision of this Court in Swadeshi Cotton Mills v. Union of India ((1981) 1 SCC 664 : (1981) 2 SCR 533 : (1981) 51 Com Cas 210). That was a decision which dealt with the question of taking over of the industries under the Industries (Development and Regulation) Act, 1951. The question that arose was whether it was necessary to observe the rules of natural justice before issuing a notification under Section 18-A(1) of the Act. It was held by the majority of judges that in the facts of that case there had been non-compliance with the implied requirement of the audi alteram partem rule of natural justice at the pre-decision stage. The order in that case could be struck down as invalid on that score but the court found that in view of the concession that a hearing would be afforded to the company, the case was remitted to the Central Government to give a full, fair and effective hearing. It was held that a phrase 'natural justice' is not capable of static and precise definition. It could not be imprisoned in the straitjacket of a cast-iron formula. Rules of natural justice are not embodied rules. Hence, it was not possible to make an exhaustive catalogue of such rules. This Court reiterated that audi alteram partem is highly effective rule devised by the courts to ensure that a statutory authority arrives at a just decision and it is calculated to act as a healthy check on the abuse or misuse of power. The rules of natural justice can operate only in areas not covered by any law validly made. The general principle as distinguished from an absolute rule of uniform rule of uniform application seems to be that where a statute does not in terms exclude this rule of prior hearing by contemplates a post-decisional hearing amounting to a full review of the original order on merits then such a statute would be construed as excluding the audi alteram partem rule at the pre-decisional stage. If the statute conferring the power is silent with regard to the giving of a per-decisional hearing to the person affected the administrative decision after post-decisional hearing was good.

110. The principles of natural justice have been examined by this Court in Union of India v. Tulsiram Patel (Union of India v. Tulsiram Patel, (1985) 3 SCC 398 : 1985 SCC (L&S) 672 : 1985 Supp 2 SCR 131). It was reiterated, that the principles of natural justice are not the creation of Article 14 of the Constitution. Article 14 is not the begetter of the principles of natural justice but their constitutional guardian. The principles of natural justice consist, inter alia, of the requirement that no man should be condemned offered. If, however, a legislation or a statute expressly or by necessary implication excludes the application of any particular principle of natural justice then it requires close scrutiny by the court.

111. It has been canvassed on behalf of the victims that the Code of Civil Procedure is an instant example of what is a just, fair and reasonable procedure, at least the principles embodied therein,

and the Act would be unreasonable if there is exclusion of the victims to vindicate properly their views and rights. The exclusion may amount to denial of justice. In any case, it has been suggested and in our opinion there is good deal of force in this contention, that if a part of the claim, for good reasons or bad, is sought to be compromised or adjusted without at least considering the views of the victims that would be unreasonable deprivation of the rights of the victims. After all, it has to be borne in mind that injustice consists in the sense in the minds of the people affected by any act or inaction a feeling that their grievances, views or claims has gone unheeded or not considered. Such a feeling is in itself an injustice or a wrong. The law must be so construed and implemented that such a feeling does not generate among the people for whose benefit the law is made. Right to a hearing or representation before entering into a compromise seems to be embodied in the due process of law understood in the sense the term has been used in the constitutional jargon of this country though perhaps not originally intended. In this connection, reference may be made to the decision of this Court in Sangram Singh v. Election Tribunal, Kotah ((1955) 2 SCR 1 : AIR 1955 SC 425 : 10 ELR 293). The Representation of the Peoples Act, 1951 contains Section 90 and the procedure Election Tribunals under the Act was governed by the said provision. Sub-section (2) of Section 90 provided that "Subject to the provisions of this Act and of any rules made thereunder, every election petition shall be tried by the Tribunal, as nearly as may be, in accordance with the procedure applicable under the Code of Civil Procedure, 1908 to the trial of suits". Justice Bose speaking for the court said that it is procedure, something designed to facilitate justice and further its ends, and cannot be considered as a penal enactment for punishment or penalties; not a thing designed to trip people up rather than help them. It was reiterated that our laws of procedure are grounded on the principle of natural justice which requires that me should not be condemned unheard, that decisions should not be reached behind their backs, that proceedings that affect their lives and property should not continue in their absence and that they should not be precluded from participating in them. Of course, there may be exceptions and where they are clearly defined these must be given effect to. But taken by and large, and subject to that proviso, our laws of procedure should be constructed, wherever that is reasonably possible, in the light of that principle. At page 9 of the report, Justice Bose observed as under :

> "But that a law of natural justice exists in the sense that a party must be heard in a court of law, or at any rate be afforded an opportunity to appear and defend himself, unless there is express provision to the contrary, is, we think, beyond dispute. See the observations of the Privy Council in T. A. Balakrishna Udayar v. Vasudeva Ayyar (ILR 40 Mad 793, 800 : AIR 1917 PC 71) and especially in T. B. Barret v. African Products Ltd. (AIR 1928 PC 261 : 29 MLW 72) where Lord Buckmaster__ said "no forms or procedure should ever be permitted to exclude the presentation of litigant's defence" Also Hari Vishnu case (Hari Vishnu Kamath v. Ahmed Seyd Ishaque, AIR 1955 SC 233) which we have just quoted. In our opinion, Wallace J. was in Venkatasubbiah v. D. Lakshminarasimham (AIR 1925 Mad 1274 : 49 MLJ 273) in holding that "One cardinal principle to be observed in trials by a court obviously is that a party has a right to appear and plead his cause on all occasions when that cause comes on for hearing", and that "It follows that a party should not be deprived of the right and in fact the court has no option to refuse that right, unless the Code of Civil Procedure deprives him of it". 112. All civilised countries accept the right to be heard as part of the due process of law whe questions affecting their rights, privileges or claims are considered or adjudicated.

113. In S. L. Kapoor v. Jagmohan ((1980) 4 SCC 379, 385, 395, : (1981) 1 SCR 746, 753, 766) (at SCC pp. 349-95), Chinnappa Reddy, J. speaking for this Court observed that the concept that justice

must not only be done but must manifestly be seen to be done, is basic to our system. It has been reiterated that the principles of natural justice know of no exclusionary rule dependent on whether it would have made any difference if natural justice had been observed. The non-observance of natural justice is itself prejudice to any man and proof of prejudice independently of proof of denial of natural justice is unnecessary and it has been said that it ill comes from a person who has denied justice that the person who has been denied justice, is not prejudiced. Principles of natural justice must, therefore, be followed. That is the normal requirement.

114. In view of the principles settled by this Court and accepted all over the world, we are of the opinion that in case of this magnitude and nature, when the victims have been given some say by Section 4 of the Act, in order to make that opportunity contemplated by Section 4 of the Act, meaningful and effective, it should be so read that the victims have to be given an opportunity of making their representation before the court comes to any conclusion in respect of any settlement. How that opportunity should be given, would depend upon the particular situation. Fair procedure should be followed in representative mass tort action. There are instances and some of these were also placed before us during the hearing of these matters indicating how the courts regulate giving of the notice in respect of a mass action where large number of people's views have to be ascertained. Such procedure should be evolved by the courts when faced with such a situation.

115. The Act does not expressly include the application of the Code of Civil Procedure. Section 11 of the Act provides the overriding effect indicating that anything inconsistent with the provisions of the Act in other law including the Civil Procedure Code should be ignored and the Act should prevail. Our attention was drawn to the provisions of Order I Rule 8(4) of the Code. Strictly speaking, Order I Rule 8 will not apply to a suit or a proceeding under the Act. It is not a case of one having common interest with others. Here the plaintiff, the Central Government has replaced and divested the victims.

116. Learned Attorney General submitted that as the provisions of the Code stood before 1976 Amendment, the High Court had taken view that hearing of the parties represented in the suit, was not necessary, before compromise. Further reference was made to proviso to Order XXIII Rule 1. As in this case there is no question, in our opinion, of abandonment as such of the suit or part of the suit, the provisions of this rule would also not strictly apply. However, Order XXIII Rule 3-B of the Code is an important and significant pointer and the principles behind the said provision would apply to this case. The said Rule 3-B provides that no agreement or compromise in a representative suit shall be entered into without the leave of the court expressly recorded in the proceedings; and sun-rule (2) of Rule 3-B enjoins that before granting such leave be the court shall given notice in such manner as it may think fit in a representative action. Representative suit, again, has been defined under Explanation to the said rule vide clause (d) as any other suit in which the decree passed may, be virtue of the provisions of this Code or of any other law for any other law for the time being in force, bind any person who is not named as party suit. In this case, indubitably the victims would be bound by the settlement though not named in the suit. This is a position conceded by all. If that is so, it would be a representative suit in terms of and for the purpose of Rule 3-B of Order XXIII of the Code. If the principles of this rule are the principles of natural justice then we are of the opinion that the principles behind it would be applicable; and also that Section 4 should be so construed in spite of the difficulties of the process of notice and other difficulties of making "informed decision making process cumbersome", as canvassed by the learned Attorney General.

117. In our opinion, the constitutional requirements, the language of the section, the purpose of the Act and the principles of natural justice lead us to this interpretation of Section 4 of the Act that in

case of a proposed or contemplated settlement, notice should be given to the victims who are affected or whose rights are to be affected to ascertain their views. Section 4 is significant. It enjoins the Central Government only to have "due regard to any matters which such person may require to be urged". So, the obligation is on the Central Government is the situation contemplated by Section 4 to have due regard to the views of the victims and that obligation cannot be discharged by the Central Government unless the victims are told that a settlement is proposed, intended or contemplated. It is not necessary that such views would require consent of all the victims. The Central Government as the representative of the victims must have the view of the victims and place such view before the court in such manner it considers necessary before a settlement is entered into. If the victims want to advert to certain aspect of the matter during the proceedings under the Act and settlement indeed is an important stage in the proceedings, opportunities must be given to the victims. Individual notices may not be necessary. The court can, and in our opinion, should in such situation formulate modalities of giving notice and public notice can also be given inviting views of the victims by the help of mass media.

118. Our attention was drawn to similar situations in other lands where in mass disaster action of the present type or mass calamity actions affecting large number of people, notices have been given in difference forms and it may be possible to invite the views of the victims by announcement in the media, press, radio, and TV etc. intimating the victims that a certain settlement is proposed or contemplated and inviting views of the victims within a stipulated period. And having regard to the views, the Central Government may proceed with the settlement of the action. Consent of all; is not a precondition as we read the Act under Section 4. Hence, the difficulties suggested by the learned Attorney General in having the consent of all and unanimity, do not really arise and should not deter us from construing the section as we have.

119. The next aspect of the matter is, whether in the aforesaid light Section 4 has been complied with. The fact that there was no specific notice given to the victims as such in this case, is undisputed. Learned Attorney General, however, sought to canvass the view that the victims had notice and some of them had participated in the proceedings. We are, however, unable to accept the position that the victims had notice of the nature contemplated under the Act upon the underlying principle of the Order XXIII Rule 3-B of the Code. It is not enough to say that the victims must keep vigil and watch the proceeding. One assumption under which the Act is justified is that the victims were disabled to defend themselves in an action of this type. If that is so, then the court cannot presume that the victims were a lot, capable and informed to be able to have comprehended or contemplated the settlement. In the aforesaid view of the matter, in our opinion, notice was necessary. The victims at large did not have the notice.

120. The question, however, is that the settlement had been arrived at after great deal of efforts to give immediate relief to the victims. We have noticed the order dated May 4, 1989 passed by this Court (Union Carbide Corpn. v. Union of India, (1989) 3 SCC 38) indicating the reasons which impelled the court to pass the orders on February 14/15, 1989 in terms and manner as it did. It has been urged before us on behalf of some of the victims that justice has not been done to their views and claims in respect of the damages suffered by them. It appears to us by reading the reasons given by this Court on May 4, 1989 that justice perhaps has been done but the question is, has justice appeared to have been done and more precisely, the question before this Court is : does the Act envisage a procedure or contemplate a procedure which ensures not only that justice is done but justice appears to have been done. If the procedure does not ensure that justice appears to have been done, is it valid ? Therefore, in our opinion, in the background of this question must hold that Section 4 means and entails that before entering into any settlement affecting the rights and claims

of the victims some kind of notice or information should be given to the victims; we need not now spell out the actual notice and the manner of its giving to be consistent with the mandate and purpose of Section 4 of the Act.

121. This Court in its order dated May 4, 1989 has stated that in passing orders in February 14/15 1989, this Court was impelled by the necessity of urgent relief to the victims rather than to depend upon the uncertain promise of law. The Act, as we have construed, requires notice to be given in what manner, it need not be spelled out, before entering into any settlement of the type with which we are concerned. It further appears that that type of notice which is required to be given had not been given. The question, therefore, is what is to be done and what is the consequence ? The Act would be bad if it is not construed in the light that notice before any settlement under Section 4 of the Act was required to be given. Then arises the question of consequences of not giving the notice. In this adjudication, we are not strictly concerned with the validity or otherwise of the settlement, as we have indicted hereinbefore. But constitutional adjudication cannot be divorced from the reality of a situation, or the impact of an adjudication. Constitutional deductions are never made in the vacuum. These deal with life's problems in the reality of a given situation. And no constitutional adjudication is also possible unless one is award of the consequences of such such an adjudication. One hesitates in matters of this type where large consequences follow one way or the other to pull asunder what others have put together. It is well to remember, as did Justice Holmes, that times has upset many fighting faiths and one must always wager one's salvation upon some prophecy based upon imperfect knowledge. Our knowledge changes; our perception of truth also changes. It is true that notice was required to be given and notice has not been given. The notice which we have contemplated is a notice before the settlement or what is known in legal terminology as 'pre-decisional notice'. But having regard to the urgency of the situation and having regarded to the need for the victims for relief and help and having regard to the fact that so much effort has gone in finding a basis for the settlement, we, at one point of time, thought that a post-decisional hearing in the facts and circumstances of this case might be considered to be sufficient compliance with the requirements of principles of natural justice as embodied under Section 4 of the Act. The reasons that impelled this Court to pass the orders of February 14/15, 1989 and significant compelling. If notice was given, then what would have happened ? It has been suggested on behalf of the victims by counsel that if the victims had been given an opportunity to be heard, then they would have perhaps pointed out, inter alia, that the amount agreed to be paid through the settlement was hopelessly inadequate. We have noted the evidence available to this Court has recorded in its order dated May 4, 1989 to be the basis for the figure at which the settlement was arrived at. It is further suggested that if an opportunity had been given before the settlement, then the victims would have perhaps again pointed out that criminal liability could not be absolved in the manner in which this Court has done on February 14/15, 1989. It was then contended that the Central Government was itself sued as a joint tort-feasor. The Central Government would still be liable to be proceeded in respect of any liability to the victims if such a liability is established; that liability is in no way abridged or effected by the Act or the settlement entered into. It was submitted on behalf of the victims that if an opportunity had been given, they would have perhaps pointed out that the suit against the Central Government, Government of Madhya Pradesh and UCIL could not have been settled by the compromise. It is further suggested that if given an opportunity, it would have been pointed out that the UCIL should have also been sued. One of the important requirements of justice is that people affected by an action or inaction should have opportunity to have their say. That opportunity the victims have got when these applications were heard and they were heard after utmost publicity and they would have further opportunity when review application against the settlement would be heard.

122. On behalf of the victims, it was suggested that the basis of damages in view of the observations made by this Court in M. C. Mehta case (M. C. Mehta v. Union of India, (1987) 1 SCC 395 : 1987 SCC (L&S) 37 : (1987) 1 SCR 819) against the victims of UCC or UCIL would be much more than normal damages suffered in similar case against any other company or party which is financially not so solvent or capable. It was urged that it is time in order to make damages deterrent the damages must be computed on the basis of the capacity of delinquent made liable to pay such damages and on the monetary capacity of the delinquent the quantum of the damages awarded would vary and not on the basis of actual consequences suffered by the victims. This is an uncertain promise of law. On the basis of evidence available and on the basis of the principles so far established, it is difficult to foresee any reasonable possibility of acceptance of this yardstick. And even if it is accepted, there are numerous difficulties of getting that view accepted internationally as a just basis in accordance with law. These, however, are within the realm of possibility.

123. It was contended further by Shri Garg, Shri Shanti Bhushan and Ms. Jaising that all the further particulars upon which the settlement had been entered into should have been given in the notice which was required to be given before a settlement was sanctified or accepted. We are unable to accept this position. It is not necessary that all other particulars for the basis of the proposed settlement should be disclosed in a suit of this nature before the final decision. Whatever data was already there have been disclosed, that, in our opinion, would have been sufficient for the victims to be able to give their views, if they want to. Disclosure of further particulars are not warranted by the requirements of principles of natural justice. Indeed, such disclosure in this case before finality might jeopardise further action, if any, necessary so consistent with justice of the case.

124. So on the materials available, the victims would have had to express their view. The victims have have not been able to show at all any other point or material which would go to impeach the validity of the settlement. Therefore, in our opinion, though settlement without notice is not quire proper, on the materials so far available, we are of the opinion that justice has been done to the victims but justice has not appeared to have been done. In view of the magnitude of the misery involved and the problems in this case, we are also of the opinion that the setting aside of the settlement on this ground in view of the facts and the circumstances of this case keeping the settlement in abeyance and giving notice to the victims for a post-decisional hearing would not be in the ultimate interest of justice. It is true that not giving notice, was not proper because principles of natural justice are fundamental in the constitutional set up of this country. No man or no man's right should be affected without an opportunity to ventilate his views. We are also conscious that justice is psychological yearning, in which men seek acceptance of their viewpoint by having an opportunity of vindication of their viewpoint before the forum or the authority enjoined or obliged to take a decision affecting their right. Yet, in the particular situations, one has to bear in mind how an infraction of that should be sought to be removed in accordance with justice. In the facts and the circumstances of this case where sufficient opportunity is available when review application is heard on notice, as directed by court, no further opportunity is necessary and it cannot be said that injustice has been done. "To do a great right" after all, it is permissible sometimes "to do a little wrong". In the facts and circumstances of the case, this is one of those rare occasions. Though entering into a settlement without the required notice is wrong. In the facts and the circumstances of this case, therefore, we are of the opinion, to direct that notice should be given now, would not result in doing justice in the situation. In the premises, no further consequential order is necessary by this Court. Had it been necessary for his Bench to have passed such a consequential order, we would not have passed any such consequential order in respect of the same.

125. The sections and the Scheme dealing with the determination of damages and distribution of the

amount have also been assailed as indicated before. Our attention was drawn to the provisions of the Act dealing with the payment of compensation and the scheme framed therefore. It was submitted that Section 6 of the Act enjoins appointment by the Central Government of an officer know as the Commissioner for the welfare of the victims. It was submitted that this does not give sufficient judicial authority to the officer and would be really leaving the adjudication under the Scheme by an officer of the executive nature. Learned Attorney General has, however, submitted that for disbursement of the compensation contemplated under the Act or under the orders of this Court, a notification would be issued under Section 6 (3) of the Act authorising the Commissioner or other officers to exercise all or any of the powers which the Central Government may exercise under Section 5 to enable the victims to place before the Commissioner or Deputy Commissioner any additional evidence that they would like to adduce. We direct so, and such appropriate notification be issued. We further direct that in the Scheme categorisation to be done by the Deputy Commissioner should be appealable to an appropriate judicial authority and the Scheme should be modified at accordingly. We reiterate that the basis of categorisation and the actual categorisation should be justiciable and judicially reviewable - the provisions in the Act and the Scheme should be so read. There were large number of submissions made on behalf of the victims about amending the Scheme. Apart from and to the extent indicated above, in our opinion, it would be unsafe to tinker with the Scheme piecemeal. The Scheme is an integrated whole and it would not be proper to amend it piecemeal. We, however, make it clear that in respect of categorisation and claim, the authorities must act on principles of natural justice and act quasi-judicially.

126. As mentioned hereinbefore, good deal of arguments were advanced before us as to whether the clause in the settlement that criminal proceedings would not be proceeded with and the same will remain quashed is valid or invalid. We have held these are not part of the proceedings under the Act. So the orders on this aspect in the order of February 14/15, 1989 (Union Carbide Corporation v. Union of India, (1989) 1 SCC 674 : 1989 SCC (Cri) 243) are not orders under the Act. Therefore, on the question of the validity of the Act, this aspect does not arise. Whether the settlement of criminal proceedings or quashing the criminal proceedings could be a valid consideration for settlement or whether if it was such a consideration or not is a matter which the court reviewing the settlement has to decide.

127. In the premise, we hold that the Act is constitutionally valid in the manner we read it. It proceeds on the hypothesis that until the claims of the victims are realised or obtained from the delinquents, namely, UCC and UCIL by settlement or by adjudication and until the proceedings in respect thereof continue the Central Government must pay interim compensation or maintenance for the victims. In entering upon the settlement in view of Section 4 of the Act, regard must be had to the views of the victims and for the purpose of giving regard to these, appropriate notices before arriving at any settlement, was necessary. In some cases, however, post-decisional notice might be sufficient but in the facts and the circumstances of this case, no useful purpose would be served by giving a post-decisional hearing having regard to the circumstances mentioned in the order of this Court dated May 4, 1989 ((1979) 3 SCC 489 : (1979) 3 SCR 1014) and having regard to the fact that there are no further additional data and facts available with the victims which an be profitably and meaningfully presented to controvert the basis of the settlement and further having regard to the fact that the victims had their say or on their behalf their views had been agitated in these proceedings and will have further opportunity in the pending review proceedings. No further order on this aspect is necessary. The sections dealing with the payment of compensation and categorisation should be implemented in the manner indicated before.

128. The Act was conceived on the noble promise of giving relief and succour to the dumb, pale,

meek and impoverished victims of a tragic industrial gas leak disaster, a concomitant evil in this industrial age of technological advancement and development. The Act had kindled high hopes in the hearts of the weak and worn, wary and forlorn. The Act generated hope of humanity. The implementation of the Act must be with justice. Justice perhaps has been done to the victims situated as they were, but it is also true that justice has not appeared to have been done. That is a great infirmity. That is due partly to the fact that procedure was not strictly followed as we have understood it and also partly because of the atmosphere that was created in the country, attempts were made to slake the confidence of the people in the judicial process and also to undermine the credibility of this Court. This was unfortunate. This was perhaps due to misinformed public opinion and also due to the fact that victims were not initially taken into confidence in reaching the settlement. This is a factor which emphasises the need for adherence to the principles of natural justice. The credibility of judiciary is an important as the alleviation of the suffering of the victims, great as these were. We hope these adjudications will restore that credibility. Principles of natural justice are integral embedded in our constitutional framework and their pristine glory and primacy cannot and should not be allowed to be submerged by the exigencies of particular situations or cases. This Court must always assert primacy of adherence to the principles of natural justice in all adjudications. But at the same time, these must be applied in a particular manner in particular cases having regard to the particular circumstances. It is, therefore, necessary to reiterate that the promises made to the victims and hopes raised in their hearts and minds can only be redeemed in some measure if attempts are made vigorously to distribute the amount realised to the victims in accordance with the Scheme as indicated above. That would be redemption to a certain extent. It will also be necessary to reiterate that attempts should be made to formulate the principles of law guiding the government and the authorities to permit carrying on of trade dealing with materials and things which have dangerous consequences within sufficient specific safeguards especially in case of multinational corporations trading in India. An awareness on these lines has dawned. Let action follow that awareness. It is also necessary to reiterate that the law relating to damages and payment of interim damages or compensation to the victims of this nature should be seriously and scientifically examined by the appropriate agencies.

129. The Bhopal gas leak disaster and its aftermath emphasis the need for laying down certain norms and standards for the government to follow before granting permissions of licences for the running of industries dealing with materials which are of dangerous potentialities. The government should, therefore, examine or have the problem examined by an expert committee as to what should be the conditions on which future licences and/or permission for running industries on Indian soil would be granted and for ensuring enforcement of those conditions, sufficient safety measures should be formulated and scheme of enforcement indicated. The government should insist as a condition precedent to the grant of such licences permissions, creation of a fund in anticipation by the industries to be available for payment of damages out of the said fund in case of leakages or damages in case of accident or disaster flowing from negligent working of such industrial operations or failure to ensure measures preventing such occurrence. The government should also ensure that the parties must agree to abide to pay such damages out of the said damages by procedure separately evolved for computation and payment of damages without exposing the victims or sufferers of the negligent act to the long and delayed procedure. Special procedure must be provided for and the industries must agree as a condition for the grant of licence to abide by such procedure or to abide by statutory arbitration. The basis for damages in case of leakages and accident should also be statutorily fixed taking into consideration the nature of damages inflicted, the consequences thereof and the ability and capacity of the parties to pay. Such should also provide for deterrent or punitive damages, the basis for which should be formulated by a proper expert committee or by the

government. For this purpose, the government should have the matter examined by such body as it considers necessary and proper like the Law Commission or other competent bodies. This is vital for the future.

130. This case has taken some time. It was argued extensively. We are grateful to counsel who have assisted in all these matters. We have reflected. We have taken some time in pronouncing our decision. We wanted time to lapse so that the heat of the moment may calm down and proper atmosphere restored. Justice, it has been said, is the constant and perpetual disposition to render every man his due. But what is a man's due in a particular situation and in a particular circumstance is a matter for appraisement and adjustment. It has been said that justice is balancing. The balances have always been the symbol of even-handed justice. But as said Lord Denning in Jones v. National Coal Board ((1957) 2 QB 55, 64 : (1957) 2 All ER 155 : (1957) 2 WLR 760 (CA)) let the advocates one after the other put the weights into the scales - the 'nicely calculated less or more' - but the judge at the end decides which way the balance tilts, be it ever so slightly. This is so in every case and every situation.

131. The applications are disposed of in the manner and with the direction, we have indicated above.

<u>SINGH, J. �</u>

I have gone through the proposed judgment of my learned brother, Sabyasachi Mukharji, C.J. I agree with the same but I consider it necessary to express any opinion on certain aspects.

133. Five years ago between the night of December 2-3, 1984 one of the most tragic industrial disasters in the recorded history of mankind occurred in the city of Bhopal in the State of Madhya Pradesh, as a result of which several persons died and thousands were disabled and physically incapacitated for life. The ecology in and around Bhopal was adversely affected and air, water and the atmosphere was polluted, its full extent has yet to be determined. Union Carbide India Limited (UCIL) a subsidiary of Union Carbide Corporation (a Transnational Corporation of United States) has been manufacturing pesticides at its plant located in the city of Bhopal. In the process of manufacture of pesticide the a UNCIL had stored stock of Methyl Isocyanate commonly known as MIC a highly toxic gas. On the night of the tragedy, the MIC leaked from the plant in substantial quantity causing death and misery to the people working in the plant and those residing around it. The unprecedented catastrophe demonstrated the dangers inherent in the production of hazardous chemicals even though for the purpose of industrial development. A number of civil suits for damages against the UCC were filed in the United States of America and also in this country. The cases filled in USA were referred back to the Indian courts by Judge Keenan details of which are contained in the judgment of my learned brother Mukharji, C.J. Since those who suffered in the catastrophe, were mostly poor, ignorant, illiterate and ill-equipped to pursue their claims for damages either before the courts in USA or in Indian courts, Parliament enacted the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 (hereinafter referred to as 'the Act') conferring power on the Union of India to take over the conduct of litigation in this regard in place of the individual claimants. The facts and circumstances which led to the settlement of the claims before this Court have already been stated in detail in the judgment of Mukharji, C.J., and therefore, I need not refer to those facts and circumstances. The constitutional validity of the Act has been assailed before us in the present petitions. If the Act is declared unconstitutional, the settlement which was recorded in this Court, under which the UCC has already deposited a sum of Rs 750 crores for meeting the claims of Bhopal gas victims, would fall and the amount of money which is already in

deposit with the Registry of this Court would not be available for relief to the victims. Long and detailed arguments were advanced before us for a number of days and on an anxious consideration and having regard to the legal and constitutional aspects and especially the need for immediate help and relief to the victims of the gas disaster, which is already delayed, we have upheld the constitutional validity of the Act. Mukharji, C.J. has rendered a detailed and elaborate judgment with which I respectfully agree. However, I consider it necessary to say few words with regard to the steps which should be taken by the executive and the legislature to prevent such tragedy in future, and to avoid the prolonged misery of victims of an industrial disaster.

134. We are a developing country, our national resources are to be developed in the field of science, technology, industry and agriculture. The need for industrial development has led to the establishment of a number of plants and factories by the domestic companies and undertakings as well as by Transnational Corporations. May of these industries are engaged in hazardous or inherently dangerous activities which pose potential threat to life, health and safety of persons working in the factory, or residing in the surrounding areas. Though working of such factories and plants is regulated by a number of laws of our country, i.e. the Factories Act, Industries (Development and Regulation) Act and Workmen's Compensation Act etc. there is no special legislation providing for compensation and damages to outsiders who may suffer on account of any industrial accident. As the law stands today, affected persons have to approach civil courts for obtaining compensation and damages. In civil courts, the determination of amount of compensation or damages as well the liability of the enterprise has been bound by the shackles of conservative principles laid down by the House of Lords in Rylands v. Fletcher ((1868) 3 LR 3 HL 330 : 19 LT 220 : 33 JP 70). The principles laid therein made it difficult to obtain adequate damages from the enterprise and that too only after the negligence of the enterprise was proved. This continued to be the position of law, till a Constitution Bench of this Court in M. C. Mehta v. Union of India (M. C. Mehta v. Union of India, ((1987) 1 SCC 395 : 1987 SCC (L&S) 37 : (1987) 1 SCR 819) commonly known as Sri Ram Oleum Gas leak case evolved principles and laid down new norms to deal adequately with the new problems arising in a highly industrialised economy. This Court made judicial innovation in laying down principles with regard to liability of enterprises carrying hazardous or inherently dangerous activities departing from the rule laid down in Rylands v. Fletcher ((1868) 3 LR 3 HL 330 : 19 LT 220 : 33 JP 70). The Court held as under. (SCC p. 420, para 31)

"We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged must be conducted with the highest standards of safety and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without any negligence on its part. Since the persons harmed on account of the hazardous or inherently dangerous activity carried on by the enterprise would not be in a position to isolate the process if operation from the hazardous preparation of substance or any others related element that caused the harm the enterprise must be held strictly liable for causing such harm as a part of the social cost of carrying on the hazardous or inherently dangerous activity. If the enterprise is permitted to carry on an hazardous or inherently dangerous activity for its profit, the law must presume that such permission is conditional on the enterprise absorbing the cost of any accident arising on account of such hazardous or inherently

dangerous activity as an appropriate item of its overheads. Such hazardous or inherently dangerous activity for private profit can be tolerated only on condition that the enterprise engaged in such hazardous or inherently dangerous activity indemnifies all those who suffer on account of the carrying on of such hazardous or inherently dangerous activity regardless of whether it is carried on carefully or not. This principle is also sustainable on the ground that the enterprise alone has the resource to discover and guard against hazards or dangers and to provide warning against potential hazards. We would therefore hold that where an enterprise is engaged in a hazardous or inherently dangerous activity and harm results to anyone on account of an accident in the operation of such hazardous or inherently dangerous activity resulting, for example, in escape of toxic gas the enterprise is strictly and absolutely liable to compensate all those who are affected by the accident and such liability is not subject to any of the exceptions which operate vis-a-vis the tortious principle of strict liability under the rule in Rylands v. Fletcher ((1868) 3 LR 3 HL 330 : 19 LT 220 : 33 JP 70).

The law so laid down made a landmark departure from the conservative principles with regard to the liability of an enterprise carrying on hazardous or inherently dangerous activities.

135. In the instant cases there is no dispute that UCIL a subsidiary of UCC was carrying on activity of manufacturing pesticide and in that process it had stored MIC a highly toxic and dangerous gas which leaked causing vast damage not only to human life but also to the flora and fauna and ecology in and around Bhopal. In view of this Court's decision in M. C. Mehta case (M. C. Mehta v. Union of India, (1987) 1 SCC 395 : 1987 SCC (L&S) 37 : (1987) 1 SCR 819) there is no scope for any doubt regarding the liability of the UCC for the damage caused to the human beings and nature in and around Bhopal. While entering into the settlement the UCC has accepted its liability and for that reason it has deposited a sum of Rs. 750 crores in this Court. The inadequacy of the amount of compensation under the settlement was assailed by the counsel for the petitioners but it is not necessary for us to express any opinion on that question as review petitions are pending before another Constitution Bench and more so, as in the present cases were are concerned only with the constitutional validity of the Act.

136. The Bhopal gas tragedy has raised several important questions regarding the functioning of multinationals in Third World countries. After the Second World War colonial rule came to end in several parts of the globe, as a number of nations secured independence from foreign rule. The political domination was over but the newly born nations were beset with various problems on account of lack of finances and development. A number of multinationals and transnational corporations offered their services to the underdeveloped and developing countries to provide finances and technical know-how by setting up their own industries in those countries on their own terms that brought problems with regard to the control over the functioning of the transnational corporations. Multinational companies in many cases exploited the underdeveloped nations and in some cases they influenced political and economic policies of host countries which subverted the sovereignty of those countries. There have been complaints against the multinationals for adopting unfair and corrupt means to advance their interests in the host countries. Since this was a worldwide phenomena the United Nations took up the matter for consideration. The Economic and Social Council of the United Nations established a Commission on Transnational Corporations to conduct research on various political, economic and social aspects relating to transnational corporations. On a careful and detailed study the Commission submitted its report in 1985 for evolving a Code of Conduct for Transnational Corporations. The Code was adopted in 1986 to which large number of countries of the world are signatories. Although it has not been fully finalised as yet, the Code presents a comprehensive instrument formulating the principles of Code of Conduct for

transnational corporations carrying on their enterprises in underdeveloped and developing countries. The Code contains provisions regarding ownership and control designed to strike balance between the competing interest of the Transnational Corporations and the host countries. It extensively deals with the political, economic, financial, social and legal questions. The Code provides for disclosure of information to the host countries and it also provides guidelines for rationalisation and compensation, obligations to international law and jurisdiction of courts. The Code lays down provisions for settlement of disputes between the host States and an affiliate of a Transnational Corporation. It suggests that such disputes should be submitted to the national courts or authorities of host countries unless amicably settled between the parties. It provides for the choice of law and means for dispute settlement arising out of contracts. The Code has also laid down guidelines for the determination of settlement of disputes arising out of accident and disaster and also for liability of Transnational Corporations and the jurisdiction of the courts. The Code is binding on the countries which formally accept it. It was stated before us that India has accepted the Code. If that be so, it is necessary that the government should take effective measures to translate the provisions of the Code into specific actions and policies backed by appropriate legislation and enforcing machinery to prevent any accident or disaster and to secure the welfare of the victims of any industrial disaster.

137. In the context of out national dimensions of human rights, right to life, liberty, pollution free air and water is guaranteed by the Constitution under Articles 21, 48-A and 51(g), it is the duty of the State to take effective steps to protect the guaranteed constitutional rights. These rights must be integrated and illumined by the evolving international dimensions and standards, having regard to our sovereignty, as highlighted by clauses 9 and 13 of UN Code of Conduct on Transnational Corporations. The evolving standards of international obligations need to be respected, maintaining dignity and sovereignty of our people, the State must take effective steps to safeguard the constitutional rights of citizens by enacting laws. The laws so made may provide for conditions for granting licence to Transnational Corporations, prescribing norms and standards for running industries on Indian soil ensuring the constitutional rights of our people relating to life, liberty, as well as safety to environment and ecology to enable the people to lead a healthy and clean life. A Transnational Corporation should be made liable and sub-servient to laws of our country and the liability should not be restricted to affiliate company only but the parent corporation should also be made liable for any damage caused to the human beings or ecology. The law must require transnational corporations to agree to pay such damages as may be determined by the statutory agencies and forums constituted under it without exposing the victims to long-drawn litigation. Under the existing civil law, damages are determined by the civil courts, after a long-drawn litigation, which destroys the very purpose of awarding damages. In order to meet the situation, to avoid delay and to ensure immediate relief to the victims we would suggest that the law made by Parliament should provide for constitution tribunals regulated by special procedure for determining compensation to victims of industrial disaster or accident, appeal against which may lie to this Court on limited ground of questions of law only after depositing the amount determined by the tribunal. The law should also provide for interim relief to victims during the pendency of proceedings. These steps would minimise the misery and agony of victims of hazardous enterprise.

138. There is yet another aspect which needs consideration by the government and the Parliament. Industrial development in our country and the hazards involved therein, pose a mandatory need to constitute a statutory "Industrial Disaster Fund", contributions to which may be made by, the government, the industries whether they are transnational corporations or domestic undertaking, public or private. The extent of contribution may be worked out having regard to the extent of hazardous nature of the enterprise and other allied matters. The Fund should be permanent in nature, so that money is readily available for providing immediate effective relief to the victims. This may

avoid delay, as has happened in the instant case in providing effective relief to the victims. The government and the Parliament should therefore take immediate steps for enacting law, having regard to these suggestions, consistent with the international norms and guidelines as contained in the United Nations Code of Conduct on Transnational Corporations.

139. With these observations, I agree with the order proposed by my learned brother, Sabyasachi Mukharji, C.J.

RANGANATHAN, J. (for Ahmadi, J. and himself) (partly dissenting) �

Five years ago, this country was shaken to its core by a national catastrophe, second in magnitude and disastrous effect only to the havoc wrought by the atomic explosions in Hiroshima and Nagasaki. Multitudes of illiterate and poverty-stricken people in and around Bhopal suffered damage to life and limb due to the escape of poisonous Methyl Isocyanate (MIC) gas from one of the storage tanks at the factory of the Union Carbide (India) Limited (UCIL) in Bhopal, a wholly owned subsidiary of the multinational giant, the Union Carbide Corporation (UCC). A number of civil suits claiming damages from the UCC were filed in the United States of America and similar litigation also followed in Indian courts. Fearing the possibilities of the exploitation of the situation by vested interests, the Government of India enacted the Bhopal Gas Leak Disaster (Processing of Claims) Act, 1985 ("the Act') to regulate the course of such litigation. Briefly speaking, it empowered the Union of India to take over the conduct of all litigation in this regard and conduct it in place of, or in association with, the individual claimants. It also enabled the Union to enter into a compromise with the UCC and UCIL and arrive at a settlement. The writ petitions before us have been filed challenging the constitutional validity of this statute on the ground that the divestiture of the claimants' individual rights to legal remedy against the multinational for the consequences of carrying on dangerous and hazardous activities on our soil violates the fundamental rights guaranteed under Articles 14, 19 and 21 of the Constitution.

141. In consequence of certain proceedings before Judge Keenan of the US District Courts, the venue of the litigation shifted to India. In the principal suit filed in India by the Union (Civil Suit No. 1113 of 1986) orders were passed by the trial court in Bhopal directing the UCC to deposit Rs. 370 crores (reduced to Rs. 250 crores by the Madhya Pradesh High Court) as interim payment to the gas victims pending the disposal of the suit. There were appeals to this Court in which the UCC contested the court's jurisdiction to pass an order for an interim payment in a suit for money, while the Union pleaded that a much higher interim payment should have been granted. When the matter was being argued in this Court, a settlement was arrived at between the Union and the UCC under which a sum of Rs. 750 crores has been received by the Union in full settlement of all the claims of all victims of the gas leak against the UCC. The Union also agreed to withdraw certain prosecutions that had been initiated against the officials of the UCC and UCIL in this connection. This settlement received the imprimatur of this court in its orders dated February 14/15, 1989 (Union Carbide Corporation v. Union of India, (1989) 1 SCC 674 : 1989 SCC (Cri) 243).

142. It is unfortunate that, though the writ petitions before us were pending in this Court at that time, neither their contents nor the need for considering, first the issue of the validity of the Act before thinking of a settlement in pursuance of its provisions seem to have been effectively brought to the notice of the bench which put an end to all the litigation on this topic in terms of the settlement. The settlement thus stood approved while the issue of validity of the Act under which it was effected stood undecided. When this was brought to the notice of the above bench, it directed these writ petitions to be listed before a different bench to avoid any possible feeling that the same

bench may be coloured in this views on the issue by reason of the approval it had given to the fait accompli viz. the settlement. That is how these matters come before us.

143. The petitioners, claiming to represent a section of the victims are, firstly, against any settlement at all being arrived at with the UCC. According to them, it is more important to ensure by penal action that multinational corporations do not play with the lives of people in developing and underdeveloped countries than to be satisfied with mere compensation for injury and that the criminal prosecutions initiated in this case should have been pursued. Secondly, they are of the view that the amount for which the claims have been settled is a pittance, far below the amount of damages they would have been entitled to, on the principles of strict, absolute and punitive liability enunciated by this court in Mehta case (M. C. Mehta v. Union of India, (1987) 1 SCC 395 : 1987 SCC (L&S) 37 : (1987) 1 SCR 819). Thirdly, their grievance is that no publicity at all was given, before this Court passed its order, to enable individual claimants or groups of them to put forward their suggestions or objections to the settlement proposed. Their interests were sealed, they say, without complying with elementary principles of natural justice. They contend that the provisions of an Act which has made such a settlement possible cannot be constitutionally valid.

144. The arguments before us ranged over a very wide ground, covered several issues and extended to several days. This bench has been placed in somewhat of a predicament as it has to pronounce on the validity of the provisions of the Act in the context of an implementation of its provisions in a particular manner and, though we cannot (and do not) express any views regarding the merits of the settlement, we are asked to consider whether such settlement can be consistent with a correct and proper interpretation of the Act tested on the touchstone of the fundamental right guaranteed under the Constitution. Mukharji, C.J., has outlined the issues, dealt elaborately with the contentions urged, and given expression to his conclusions in a learned, elaborate and detailed judgment which we have had the advantage of perusing in draft. Our learned brother K. N. Singh, J., has also highlighted certain aspects in his separate judgment. We are, in large measure, in agreement with them, but should like to say a few words on some of the issues in this case, particularly those in regard to which our approach has been somewhat different :

> (1) 145. The issue regarding the validity of the Act turns principally on the construction of Sections 3 and 4 of the Act. We are inclined to hold that the fact that a settlement has been effected, or the circumstances in which or the amount for which the claims of the victims have been settled, do not have a bearing on this question of interpretation and have to be left out of account altogether except as providing a contextual background in which the question arises. Turning therefore to the statute and its implications, the position is this. Even person who suffered as a consequence of the gas leak had a right to claim compensation from the persons who, according to him, were liable in law for the injury caused to him and also a right to institute a suit or proceeding before any court or authority with a view to enforce his right to claim damages. In the normal course of events, such a claimant who instituted a suit or proceeding would have been at complete liberty to withdraw the said suit or proceeding or enter into any compromise he may choose in that regard. Section 3 undoubtedly takes away this right of the claimant altogether : (a) except to the limited extent specified in the proviso to Section 3(3) and (b) subject to the provisions of Section 4, for this section clearly states that it is the Central Government and the Central Government alone which has the right to represent and act in place of the claimants, whether within or outside India, for all purposes in connection with the enforcement of his claims. We may first consider how far the

main provision in Section 3 (leaving out of account the proviso as well as Section 4) is compatible with the constitution.

146. The first question that arises is whether the legislature is justified in depriving the claimants of the right and privilege of enforcing their claims and prosecuting them in such manner as they deem fit and in compulsorily interposing or substituting the government in their place. We think that, to this question, there can be only one answer. As pointed out by our learned brother, the situation was such that the victims of the tragedy needed to be protected against themselves as their adversary was a mighty multinational corporation and proceedings to a considerable extent had been initiated in a foreign country, where the conduct of the cases was entrusted to foreign lawyers under a system of litigation which is unfamiliar to us here. In the stark reality of the situation, it cannot even be plausibly contended that the large number of victims of the gas leak disaster should have been left to fend for itself and merely provided with some legal aid of one type or another. It is necessary to remember that, having regard to the identity of the principal ground of claim of all the victims, even if a single victim was not diligent in conducting his suit or entered into a compromise or submitted to a decree judging the issues purely form his individual point of view, such a decision or decree could adversely affect the interests of the innumerable other victims as well. In fact, it appears that a settlement between one set of claimants and the adversary corporation was almost imminent and would perhaps have been through but for the timely intervention of the Government of India. The battle for the enforcement of one's rights was bound to be not only prolonged but also very arduous and expensive and the decision of the legislature that the fight against the adversary should be consolidated and its conduct handed over to the Government of India - it may perhaps have been better if it had been handed over to an autonomous body independent of the government but, as pointed out by our learned brother, the course adopted was also not objectionable - was perhaps the only decision that could have been taken in the circumstances. This is indeed a unique situation in which the victims, in order to realise to the best advantage their right again UCC, had to be helped out by transposing that right to be enforced by the government.

147. We did not indeed understand any learned counsel before us to say that the legislature erred in entrusting the Government of India with the responsibility of fighting for the victims. The only grievance is that in the process their right to take legal proceedings should not have been completely taken away and that they should also have had the liberty of participating in the proceedings right through. In fact, though the Act contemplates the Central Government to completely act in place of the victims, the Government of India has not in fact displaced them altogether. In all the proceedings pending in this country, as well as those before Judge Keenan, the Government of India has conducted the proceedings but the other victims or such of them as chose to associate themselves in these proceedings by becoming parties were not shut out from taking part in the proceedings. In fact, as the learned Attorney General pointed out, one of the groups of litigants did give great assistance to the trail judge at Bhopal. But even if the provisions of Section 3 had been scrupulously observed and the names of all parties, other than the Central Government, had been got deleted from the array of parties in the suits and proceedings pending in this country, we do not think that the result would have been fatal to the interests of the litigants. On the contrary, it enabled the litigants to obtain the benefit of all legal expertise at the command of the Government of India in exercising their rights against the Union Carbide Corporation. Such representation can well be justified by resort to a principle analogous to, if not precisely the same as that of "parens patriae". A victim of the tragedy is compelled to part with a valuable right of his in order that it might be more efficiently and satisfactorily exploited for his benefit than he himself is capable of. It is of course possible that there may be an affluent claimant or lawyer engaged by him, who may be capable of fighting the litigation better. It is possible that the Government of India as a litigant may or may not

be able to pursue the litigation with as much determination or capability as such a litigant. But in a case of the present type one should not be confounded by such a possibility. There are more indigent litigants than affluent one. There are more illiterates than enlightened ones. There are very few of the claimants, capable of finding the financial wherewithal required for fighting the litigation. Very few of them are capable of prosecuting such a litigation in this country not to speak of the necessity to run to a foreign country. The financial position of UCIL was negligible compared to the magnitude of the claim that could arise and, though eventually the battle had to be pitched on our own soil, an initial as well as final recourse to legal proceedings in the United States was very much on the cards, indeed inevitable. In this situation, the legislature was perfectly justified in coming to the aid of the victims with this piece of legislation and in asking the Central Government to shoulder the responsibility by substituting itself in place of the victims for all purposes connected with the claims. Even if the Act had provided for a total substitution of the Government of India in place of the victims and had completely precluded them from exercising their rights in any manner, it could perhaps have still been contended that such deprivation was necessary in larger public interest.

148. But the Act is not so draconian in its content. Actually, as we have said a little earlier, the grievance of the petitioners is not so much that the government was entrusted with the functions of a dominus litis in this litigation. Their contention is that the whole object and purpose of the litigation is to promote the interests of the claimants, to enable them to fight the UCC with greater strengthened determination, to help them overcome limitations of time, money and legal assistance and to realise the best compensation possible consistent not only with the damage suffered by them but also consistent with national honour and prestige. It is suggested that the power conferred on the government should be construed as one hedged in by this dominant object. A divestiture of the claimant's right in this situation would be reasonable, it is said, only if the claimants' right are supplemented by the government and not supplanted by it.

149. Assuming the correctness of the argument, the provisions of the proviso to Section 3(3) and of Section 4 furnish an answer to this contention. While the provision contained in the main part of Section 3 may be sufficient to enable the Government of India to claim to represent the claimants and initiate and conduct suits or proceeding on their behalf, the locus standi of the Government of India in suits filed by other claimants before the commencement of the Act outside India would naturally depends upon the discretion of the court enquiring into the matter. That is why the proviso to section 3 makes the right of the Government of India to represent and act in place of the victims in such proceedings subject to the permission of the court or authority where the proceedings are pending. It is of course open to such court to permit the Central Government even to displace the claimants if it is satisfied that the authority of the Act is sufficient to enable it to do so. In the present case it is common ground that the proceedings before Judge Keenan were being prosecuted by the Central Government along with various individual claimants. Not only did judge Keenan permit the association of the Government of India in these proceedings but the Government of India did have a substantial voice in the course of those proceedings as well.

150. Again Section 4 mandates that, notwithstanding anything contained in Section 3, the Central Government, in representing and acting in place of any person in relation to any claim, shall have due regard to any matters which such person may require to be urged with respect to his claim. It also stipulates that if such persons so desire, the Central Government shall permit, at the expense of such person, a legal practitioner of his choice to be associated in the conduct of any suit or other proceeding relating to his claim. In other words, though, perhaps, strictly speaking, under section 3 the Central Government can totally exclude the victim himself or his legal practitioners from taking part in the proceedings (except in pending suits outside India) section 4 keeps the substance of the

rights of the victims intact. It enables, and indeed obliges, the government to receive assistance from individual claimants to the extent they are able to offer the same. If any of the victims or their legal advisers have any specific aspect which they would like to urge, the Central Government shall take it into account. Again if any individual claimant at his own expense retains a legal practitioner of his own choice, such legal practitioner will have to be associated with the government in the conduct of any suit or proceeding relating to his claim, Section 3 and 4 thus combine together the interests of the weak, illiterate, helpless and poor victims as well as the interests of those who could have managed for themselves, even without the help of this enactment. The combination thus envisaged enables the government to fight the battle with the foreign adversary with the full aid and assistance of such the victims or their legal advisers as are in a position to offer any such assistance. Though section 3 denies the claimants the benefit of being eo nomine parties in such suits or proceedings, Section 4 preserves to them substantially all that they can achieve by proceeding on their own. In other words, while seeming to deprive the claimants of their right to take legal action on their own, it has preserved those right, to be exercised indirectly. A conjoint reading of Section 3 and 4 would, in our opinion, therefore, show that there has been normal total deprivation of the right of the claimants to enforce their claim for damages in appropriate proceedings before any appropriate forum. There is only a restriction of this right which, in the circumstances, is totally reasonable and justified. The validity of the Act is, therefore, not liable to be challenged on this ground.

151. The next angle from which the validity of the provision is attacked is that the provision enabling the government to enter into a compromise is bad. The argument runs thus : The object of the legislation can be furthered only if it permits the government to prosecute the litigation more effectively and not if it enables the government to withdraw it or enter into a compromise. According to them, the Act fails the impecunious victims in this vital aspect. The authority conferred by the Act on the government to enter into a settlement or compromise, it is said, amounts to an absolute negation of the right of the claimants to compensation and is capable of being so exercised to render such right totally valueless, as in fact, it is said, has happened.

152. It appears to us that this contention proceeds on a misapprehension. It is common knowledge that any authority given to conduct a litigation cannot be effective unless it is accompanied by an authority to withdraw or settle the same if the circumstances call for it. The vagaries of a litigation of this magnitude and intricacy could not be fully anticipated. There were possibilities that the litigation may have to be fought out to the bitter finish. There were possibilities that the UCC might be willing to adequately compensate the victims either on their own or at the instance of the government concerned. There was also the possibility, which had already been in evidence before Judge Keenan, that the proceedings might ultimately have to end in a negotiated settlement. One notices that in most of the mass disaster cases reported, proceedings finally end in a compromise if only to avoid an indefinite prolongation of the agonies caused by such litigation, The legislation, therefore, cannot be considered to be unreasonable merely because in addition to the right to institute a suit or other proceedings it also empowers the government to withdraw the proceedings or enter into a compromise.

153. Some misgiving were expressed, in the course of the hearing, of the legislative wisdom (and, hence the validity) of entrusting the carriage of these proceedings and, in particular, the power of settling it out of court, to the Union of India. It was contended that the union is itself a joint tort-feasor (sued as such by some of the victims) with an interest (adverse to the victims) in keeping down the amount of compensation payable to the minimum so as to reduce its own liability as a joint tort-feasor. It seems to us that this contention is misconceived. As pointed out by Mukharji, C.J., the Union of India itself is one of the entities affected by the gas leak and has a claim for

compensation from the UCC quite independent of the other victim. From this point of view, it is in the same position as the other victims and, in the litigation with the UCC, it has every interest in securing the maximum amount of composition possible for itself and the other victims. It is, therefore, the best agency in the circumstances that could be looked up to for fighting the UCC on this own as well as on behalf of the victims. The suggestion that the union is a joint tort-feasor has been stoutly resisted by the learned Attorney General. But, even assuming that the Union has some liability in the matter, we fail to see how it can derive any benefit or advantage by entering into a low settlement with the UCC. As is pointed out later in this judgment and by Mukharji, C.J., the Act and scheme thereunder have provided for an objective and quasi-judicial determination of the amount of damages payable to the victims of the tragedy. There is no basis for the fear expressed during the hearing that the officers of the government may not be objective and may try to out down the amounts of compensation, so as not to exceed the amount received from the UCC. It is common ground and, indeed, the learned Attorney General fairly conceded, that the settlement with the UCC only puts an end to the claims against the UCC and UCIL and does not in any way affect the victims' right, if any, to proceed against the Union, the state of Madhya Pradesh or the ministers and officers thereof, if so advised. If the Union and these officers are joint tort-feasor, as alleged, the Union will not stand to gain by allowing the claims against the UCC to be settled for a low figure. On the contrary it will be interested in settling the claims against the UCC at as high a figure as possible so that its own liability as a joint tort-feasor (if made out) can be correspondingly reduced. We are, therefore, unable to see any vitiating element in the legislation insofar as it has entrusted the responsibility not only of carrying on but also of entering into a settlement, if though fit.

154. Nor is there basis for the contention that the Act enables a settlement to be arrived at without a proper opportunity to the claimants to express their views on any purposeless for settlement that my be mooted. The right of the claimant under Section 4 to put forward his suggestions or to be represented by a legal practitioner to put forth his own views in the conduct of the suit or other proceeding certainly extends to everything connected with the suit or other proceeding. If, in the course of the proceedings there should arise any question of compromise or settlement, it is open to the claimants to oppose the same and to urge the Central Government to have regard to specific aspects in arriving at a settlement. Equally it is open to any claimant to employ legal practitioner to ventilate his opinions in regard to such proposals for settlement. The provisions of the Act, read by themselves, therefore, guarantee a complete and full protection to the rights of the claimants in every respect. Save only that they cannot file a suit themselves, their right to acquire redress has not really been abridged by the provisions of the Act. Section 3 and 4 of the Act properly read, in our opinion, completely vindicate the objects and reasons which compelled parliament to enact this piece of legislation. Far form abridging the right of the claimants in any manner, these provisions are so worded as to enable the government to prosecute the litigation with the maximum amount of resources, efficiency and competence at it command as well as with all the assistance and help that can be extended to it by such of those litigants and claimants as are capable of playing more than a mere passive role in the litigation.

155. But then, it is contended, the victims have had no opportunity of considering the settlement proposals mooted in this case before they were approved by the court. This aspect is dealt with later.

(2). 156 One of the contentions before us was that the UCC and UCIL are accountable to the public for the damages caused by their industrial activities not only on a basis of strict liability but also on the basis that the damages to be awarded against them should include an element of punitive liability and that this has been lost sight of while approving of the proposed settlement. Reference was made in this context to M. C. Mehta case (M. C. Mehta v. Union of India, (1987) 1 SCC 395 :

1987 SCC (L&S) 37 : (1987) 1 SCR.

Whether the settlement should have taken into account this factor is, in the first place, a moot question. Mukharji, C.J. has pointed out - and we are inclined to agree - that this is an "uncertain province of the law" and it is premature to say whether this yardstick has been, or will be, accepted in this country, not to speak of its international acceptance which may be necessary should occasion arise for executing a decree based on such a yardstick in another country. Secondly, whether the settlement took this into account and, if not, whether it is bad for not having kept this basis in view are question that touch the merits of the settlement with which we are not concerned. So we feel we should express no opinion here on this issue. It is too far-fetched, it seems to us, to contend that the provision of the Act permitting the Union of India to enter into a compromise should be struck down as unconstitutional because they have been construed by the Union of India as enabling it to arrive at such settlement.

157. The argument is that the Act confers a discretionary and enabling power in the Union to arrive at a settlement but lays down no guidelines or indications as to the stage at which, or circumstances in which, a settlement can be reached or the type of settlement that can be arrived at; the power conferred should, therefore, be struck down as unguided, arbitrary and uncanalised. It is difficult to accept this contention. The power to conduct a litigation, particularly in a case of this type, must, to be effective necessarily carry with it a power to settle it at any stage. It is impossible to provide statutorily any detailed catalogue of the situations that would justify a settlement or the basis or terms on which a settlement can be arrived at. The Act moreover, cannot be said to have conferred any unguided or arbitrary discretion to the Union in conducting proceedings under the Act. Sufficient guidelines emerge from the Statement of Objects and Reasons of the Act which make it clear that the aim and purpose of the Act is to secure speedy and effective redress to the victims of the gas leak and that all steps taken in pursuance of the Act should be for the implementation of the object. Whether this object has been achieved by a particular settlement will be a different question but it is altogether impossible to say that the Act itself is bad for the reason alleged. We, therefore, think it necessary to clarify, for our part, that we are not called upon to express any view on the observations in Mehta case (M. C. Mehta v. Union of India, (1987) 1 SCC 395 : 1987 SCC (L&S) 37 : (1987) 1 SCR 819) and should not be understood as having done so.

(3). 158. Shri Shanti Bhushan, who supported the Union's stand as to the validity of the Act, however, made his support conditional on reading into its provisions an obligations on the part of the Union to make interim payments towards their maintenance and other needs consequent on the tragedy, until the suits filed on their behalf ultimately yield tangible results. That a modern welfare State is under an obligation to give succour and all kinds of assistance to people in distress cannot at all be gainsaid. In point of fact also, as pointed out by the learned Chief Justice, the provisions of the Act and scheme there under envisage interim payments to the victims; so there is nothing objectionable in this Act on this aspect. However, our learned brother has accepted the argument addressed by Shri Bhushan which goes one step further viz. that the Act would be unconstitutional unless this is read as "a major inarticulate premise" underlying the Act. We doubt whether this extension would be justified for the hypothesis underlying the argument is, in the words of Shri Bhushan, that had victims been left to fend for themselves, they would have had an "immediate and normal right of obtaining compensation from the Union Carbide" and, as the legislation has vested their rights in this regard in the Union, the Act should be construed as creating and obligation on the Central Government to provide

interim relief. Though we would emphatically reiterate that grant of interim relief to ameliorate the plight of its subjects in such a situation is a matter of imperative obligation on the part of the State and not merely 'a matter of fundamental human decency' as Judge Keenan put it, we think that such obligation flows from its character as a welfare State and would exist irrespective of what the statute may or may not provide. In our view the validity of the Act does not depend upon its explicit or implicitly providing for interim payments. We say this for two reasons. In the first place, it was and perhaps still is, a moot question whether a plaintiff suing for damages in tort would be entitled to advance or interim payments in anticipation of a decree. That was, indeed, the main point on which the interim orders in this case were challenged before this Court and, in the context of the events that took place, remains undecided. It may be mentioned here that no decided case was brought to our notice in which interim payment was ordered pending disposal of an action in tort in this country. May be there is a strong case for ordering interim payments in such a case but, in the absence of full and detailed consideration, it cannot be assumed that, left to themselves, the victims would have been entitled to a "normal and immediate" right to such payment. Secondly, even assuming such right exists, all that can be said is that the State, which put itself in the place of the victims, should have raised in the suit a demand for such interim compensation - which it did - and that it should distribute among the victims such interim compensation as it may receive from the defendants. To say that the Act would be bad if it does not provide for payment of such compensation by the government irrespective of what may happen in the suit is to impose on the State an obligation higher than what flows from its being subrogated to the right of the victims. As we agree that the Act and the Scheme thereunder envisage interim relief to the victims, the point is perhaps only academic. But we felt that we should mention this as we are not in full agreement with Mukharji, C.J., on this aspect of the case.

(4) 159. The next important aspect on which much debate took place before us was regarding the validity of the Act qua the procedure envisaged by it for a compromise or settlement. It was argued that if the suit is considered as a representative suit no compromise or settlement would be possible without notice in some appropriate manner to all the victims of the proposed settlement and an opportunity to them to ventilate their views thereon (vide Order XXIII Rule 3-B CPC). The argument runs thus : Section 4 of the Act either incorporates the safeguards of these provisions in which event any settlement effected without compliance with the spirit, if not the letter, of these provisions would be ultra vires the Act. Or it does not, in which event, the provisions of Section 4 would be bad as making possible an arbitrary deprivation of the victims' rights being inconstant with, and derogatory of, the basic rule established by the ordinary law of the land viz. the Code of Civil Procedure, We are inclined to take the view that it is not possible to bring the suits brought under the Act within the categories of representative action envisaged in the Code of Civil Procedure. The Act deals with a class of action which is sui generis and for which a special formula has been found and encapsulated in Section 4. The Act divests the individual claimants of their right to sue and vests it in the Union. In relation to suits in India, the Union is the sole plaintiff, none of the others are envisaged as plaintiffs or respondents. The victims of the tragedy were so numerous that they were never defined at the stage of filing the plaint nor do they need to be defined at the stage of a

> settlement. The litigation is carried on by the State in its capacity, not exactly the same as but somewhat analogous to that of a parens patriae. In the case of a litigation by a karta of a Hindu undivided family or by a guardian on behalf of a ward, who is non-sui juris, for example, the junior members of the family or the wards, are not to be consulted before entering into a settlement. In such cases, the court acts as guardian of such persons to scrutinise the settlement and satisfy itself that it is in the best interest of all concerned. If it is later discovered that there has been any fraud or collusion, it may be open to the junior member of the family or the wards to call the karta or guardian to account but, barring such a contingency, the settlement would be effective and binding. In the same way, the Union as parens patriae would have been at liberty to enter into such settlement as it considered best on its own and seek the court's approval therefor.

160. However, realizing that the litigation is truly fought on behalf and for the benefit of innumerable, though not fully identified, victims the Act has considered it necessary to assign a definite role to the individual claimants and this is spelt out in Section 4. This section directs -

> (i) that the Union shall have due regard to any matters which such persons may require to be urged with respect to his claim : and
>
> (ii) that the Union shall, if such person so desires, permit at the expense of such person, a legal practitioner of his choice to be associated in the conduct of any suit or other proceeding relating to his claim.

This provision adequately safeguards the interests of individual victims. It enables each one of them to bring to the notice of the Union any special features or circumstances which he would like to urge in respect of any matter and if any such features are brought to its notice the Union is obliged to take it into account. Again, the individual claimants are also at liberty to engage their own counsel to associate with the State counsel in conducting the proceedings. If the suits in this case had proceeded, in the normal course, either to the stage of a decree or even to one of settlement the claimants could have kept themselves abreast of the development and the statutory provision would have been more than adequate to ensure that the points of view of all the victims are presented to the court. Even a settlement or compromise could have been arrived at without the court being apprised of the views of any of them who chose to do so. Advisedly, the statute has provided that though the Union of India will be the dominus litis in the suit, the interests of all the victims and their claims should be safeguarded by giving theme a voice in the proceedings to the extent indicated above. This provision of the statute is an adaptation of the principle of Order I Rule 8 and of Order XXIII Rule 3-B of the Code of Civil Procedure in is application to the suits governed by in and, though the extent of participation allowed to the victims is somewhat differently enunciated in the legislation, substantially speaking, it does incorporate the principles of natural justice to the extent possible in the circumstances. The statute cannot, therefore, be faulted, as has been pointed out earlier also, on the ground that it denies the victims an opportunity to present their views or place them at any disadvantage the matter of having an effective voice in the matter of settling the suit by way of compromise.

161. The difficulty in this case has arisen, as we see it, because of a fortuitous circumstance viz. that the talks of compromise were mooted and approved in the course of the hearing of an appeal from an order for interim payment. Though compromise talks had been in the air right from the beginning of this episode, it is said that there was an element of surprise when they were put

forward in court in February 1989. This is not quite correct. It has been pointed out that even when the issue regarding the interim relief was debated in the courts below, attempts were made to settle the whole litigation. The claimants were aware of this and they could - perhaps should - have anticipated that similar attempts would be made in this Court also. Though certain parties had been associated with the conduct of the proceedings in the trial court and the trial judge did handsomely acknowledge their contribution to the proceedings - they were apparently not alert enough to keep a watching brief in the Supreme Court, may be under the impression that the appeal here was concerned only with the quantum of interim relief. One set of parties was present in the court but, apart from praying that he should be forthwith paid a share in the amount that would be deposited in court by the UCC in pursuance of the settlement, no attempt appears to have been made to put forward a contention that the amount of settlement was inadequate or had not taken into account certain relevant Consideration. The Union also appears to have been acting on the view that it could proceed ahead on its own both in its capacity as "parens patriae" as well as in view of the powers of attorney held by it from a very large number of the victims though the genuineness of this claim is now contested before us. There was a day, interval between the enunciation of the terms of the settlement and their approval by the court. Perhaps the court could have given some more publicity to the proposed settlement in the newspapers, radio and television and also permitted some time to laps before approving it, if only to see whether there were any other points of view likely to emerge. Basically speaking, however, the Act has provided an adequate opportunity to the victims to speak out and if they or the counsel engaged__ by some of them in the trial court had kept in touch with the proceedings in this Court, they could have most certainly made themselves heard. If a feeling has gained ground that their voice has not been fully heard, the fault was not with the statue but was rather due to t developments leading to the finalisation of the settlement when the appeal against the interim order was being heard in this Court.

162. One of the points of view on which considerable emphasis was laid in the course of the arguments was that in a case of this type the offending parties should be dealt with strictly under the criminal law of the land and that the inclusion, as part of the settlement, of a term requiring the withdrawal of the criminal prosecutions launched was totally unwarranted and vitiates the settlement. It has been pointed out by Mukharji, C.J., - and we agree - that the Act talks only of the civil liability of, and the proceedings against, the UCC or UCIL or others for damages caused by the gas leak. It has nothing to say about the criminal liability of any of the parties involved. Clearly, therefore, this part of the settlement comprises a term which is outside the purview of the Act. The validity of the Act cannot, therefore, be impugned on the ground that it permits - and should not have permitted - the withdrawal of criminal proceedings against the delinquents. Whether in arriving at the settlement, this aspect could also have been taken into account and this term included in it, is a question concerning the validity of the settlement. This is a question outside the terms of reference to us and we, there fore, express no opinion in regard thereto.

> (5) 163. A question was mooted before us as to whether the actual settlement - if not the statutory provision - is liable to be set aside on the grounds that the principles of natural justice have been flagrantly violated. The merits of the settlement as such are not in issue before and nothing we say can or should fetter the hands of the bench hearing a review petition which has already been filled, from passing such orders there on as it considers appropriate.

164. Our learned brother, however, has, while observing that the question referred to us is limited to the validity of the Act alone and not the settlement, incidentally discussed this aspect of the case too. He has pointed out that justice has in fact been done and that all facts and aspects relevant for a

settlement have been considered. He has pointed out that the grievance of the petitioners that the order of this Court did not give any basis for the settlement has since been sought to met by the order passed on May 4, 1989 (Union Carbide Corpn. v. Union of India, (1989) 3 SCC 38) giving detailed reasons. This shows that the court had applied its mind fully to the terms of the settlement in the light of the data a well as all the circumstances placed before it and had been satisfied that the settlement proposed was a fair and reasonable one that could be approved. In actions of this type, the court, approval is the true safety valve to prevent unfair settlements and the fact is that the highest court of the land has given thought to the matter and seen it fit to place its seal of approval to the settlement. He has also pointed out that the post-decisional hearing in a matter like this will not be of much avail. He has further pointed out that a review petition has already been filed in the case and is listed for hearing. The court has already given an assurance in its order of May 4, 1989 (Union Carbide Corpn. v. Union of India, (1989) 3 SCC 38), that it will only be too glad to consider any aspects that may have been overlooked in considering the terms of the settlement. Can it be said, in the circumstances, that there has been failure of justice which compels us to set aside the settlement as totally violative of fundamental rights ? Mukharji, C.J., has pointed out that the answer to this question should be in the negative. It was urged that there is a feeling that the maxim : "Justice must not only be done but must also appear to be done" has not been fully complied with and that perhaps, if greater publicity had attended the hearing, many other fact and aspects could have been highlighted resulting in a higher settlement or no settlement at all. That feeling can be fully ventilated and that deficiency can be adequately repaired, it has been pointed out by Mukharji, C.J., in the hearing on the review petition pending before this Court. Though we are prima facie inclined to agree with him that there are good reasons why the settlement should not be set aside on the ground that the principles of natural justice have been violated, quite apart from the practical complications that may arise as the result of such an order, we would not express any final opinion on the validity of the settlement but would leave it open to be agitated, to the extent permissible in law, in the review petition pending before this Court.

165. There is one more aspect which we may perhaps usefully refer to in this context. The scheme of the Act is that on the one hand the Union of India pursues the litigation against the UCC and the UCIL; on the other all the victims of the tragedy are expected to file their claims before the prescribed authority and have their claims before the prescribed authority and have their claims for compensation determined by such authority. Certain infirmities were pointed out on behalf of the petitioners in the statutory provisions enacted in this regard. Our learned brother has dealt with these aspects and given appropriate directions to ensure that the claims will be gone into by a quasi-judicial authority (unfettered by executive prescriptions of the amounts of compensation by categorising the nature of injuries) with an appeal to an officer who has judicial qualifications. In this manner the Scheme under the Act provides for a proper determination of the compensation payable to the various claimants. Claims have already been filed and these are being scrutinised and processed. A correct picture as to whether the amount of compensation for which the claims have been settled is meagre, adequate or excessive will emerge only at that stage when all the claims have been processed and their aggregate is determined. In these circumstances, we feel that no useful purpose will be served by a post-decisional hearing on the quantum of compensation to be considered adequate for settlement.

166. For these reasons, it would seem more correct and proper not to disturb the orders of February 14/15, 1989 (Union Carbide Corporation v. Union of India, (1989) 1 SCC 674 : 1989 SCC (Cri) 243) on the ground that the rules of natural justice have not been complied with, particularly in view of the pendency of the review petition.

(6). 167. Before we conclude, we would like to add a few words on that state of the law of torts in this country. Before we gained independence, on account of our close association with Great Britain, we were governed by the common law principles. In the filed of torts, under the common law of England, no action could be laid by the dependents or heirs of a person whose death was brought above by the tortious act of another on the maxim actio personalis moritur cum persona, although a person injured by a similar act could claim damages for the wrong done to him. In England this situation was remedied by the passing of the Fatal Accidents Act, 1846 popularly known as Lord Campbell's Act. Soon thereafter the Indian legislature enacted the Fatal Accidents Act, 1855. This Act is fashioned on the lines of the English Act has undergone a substantial change, our law has remained static and seems a trifle archaic. The magnitude of the gas leak disaster in which hundreds lost their lives and thousands were maimed, not to speak of the damage to livestock, flora and fauna, business and property, is an eye-opener. The nation must learn a lesson from this traumatic experience and evolve safeguards at least for the future. We are of the view that the time is ripe to take a fresh look at the outdated century old legislation which is out of tune with modern concepts.

168. While it may be a matter for scientists and technicians to find solutions to avoid such large scale disaster, the law must provide an effective and speedy remedy to the victims of such torts. The Fatal Accidents Act, on account of its limited and restrictive application, is hardly sutied to meet such a challenge. We are, therefore, of the opinion that the old antiquated Act should be drastically amended or fresh legislation should be enacted which should, inter alia, contain appropriate provisions in regard to the following matters :

> (i) The payment of a fixed minimum compensation on a "no-fault liability" basis (as under the Motor Vehicles Act) pending final adjudication of the claims by a prescribed forum :
>
> (ii) The creation of a special forum with specific power to grant interim relief in appropriate cases :
>
> (iii) The evolution of a persuader to be followed by such forum which will be conducive to the expeditious determination of claims and avoid the high degree of formalism that attached to proceedings in regular courts; and
>
> (iv) A provision requiring industries and concerns engaged in hazardous activities to take out compulsory insurance against third party risks.

169. In addition to what we have said above, we should like to say that the suggestion made by our learned brother, K. N. Singh, J. for the creation of an Industrial Disaster Fund (by whatever name called) deserves serious consideration. We would also endorse his suggestion that the Central Government will be well advised if, in further, it insists on certain safeguards before permitting a transnational company to do business in this country. The necessity of such safeguards, at least in the following two direction, is highlighted in the present case :

> (a) Shri Garg has alleged that the processes in the Bhopal Gas Plant were so much shrouded in secrecy that neither the composition of the deadly gas that escaped nor the proper antidote therefore were known to anyone in this country with the result that the steps taken to combat its affects were not only delay but also totally inadequate and ineffective. It is necessary that this type of situation should be

avoided. The government should therefore insist, when granting license to a transnational company to establish its industry here, on a right to be informed of the nature of the processes involved so as to be able to take prompt action in the event of an accident.

(b) We have seen how the victims in this case have been considerably handicapped on account of the fact that the immediate tort-feasor was the subsidiary of a multinational with its Indian assets totally inadequate to satisfy the claims arising out of the disaster. It is, therefore, necessary to evolve, either by international consensus or by unilateral legislation, steps to overcome these handicaps and to ensure -

(i) that foreign corporation seeking to establish an industry here, agree to submit to the jurisdiction of the courts in India in respect of actions for tortious act in this country;

(ii) that the liability of such a corporation is not limited to such of its assets (or the assets of its affiliates) as may be found in this country, but that the victims are able to reach out to the assets of such concerns anywhere in the world;

(iii) that any decree obtained in Indian courts in compliance with due process of law is capable of being executed against the foreign corporation, its affiliated and their assets without further procedural hurdles, in those other countries.

170. Our brother, K. N. Singh, J., has in this context dealt at some length with the United Nations Code of Conduct for Multinational Corporations which awaits approval of various countries. We hope that calamities like the one which this country has suffered will serve as catalysts to expenditure the acceptance of an international code on such matters in the near future.

171. With these observations, we agree with the order proposed by the learned Chief Justice.

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