The International Medical Commission on Bhopal: Rewriting the Experience of Bhopal Victims into the Professional Literature

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This paper considers some of the trajectories by which the experience of the victims[1] of the Bhopal Gas Tragedy has found its way into the medical literature. Focusing on one specific scientific intervention, I try to follow the theoretical implications of Veena Das's[2] formulation regarding the professional transformation of suffering (1995: 144). In *Critical Events*, she argues movingly that the discourse of the professional, even as it speaks on behalf of the victim, does not seem to have the conceptual structures by which voice can be given to them (175).

To begin with a chronology of the events: the gases that leaked from the Union Carbide pesticide plant in Bhopal in the dark early hours of December 3rd 1984 killed several thousand people and injured an estimated 200,000 to 300,000. This accident – the world's worst industrial disaster – was caused by a runaway reaction in a gigantic storage tank in which 42 tons of methyl isocyanate (MIC) were stored. The concrete storage tank burst open and a huge poison cloud of MIC and other breakdown products drifted across the city of Bhopal, destroying every form of life it encountered. Less than forty-eight hours later, two thousand people had been killed. There was a good deal of evidence to show that the Union Carbide Corporation had been negligent in the design, maintenance and operation of the plant; and, since that time, the corporation's bid to escape legal liability has made for a sickeningly long-drawn-out second tragedy for the people of Bhopal.

As news of the disaster reached other parts of the world, droves of American claims lawyers descended on the city, promising victims untold riches from injury lawsuits against Union Carbide. In order to protect the victims from unscrupulous lawyers, the Government of India passed the Bhopal Gas Leak Disaster (Processing of Claims) Act in March 1985, which stipulated that the government would, in its *parens patriae* role, pursue justice for and provide assistance to the victims of the disaster. The reasoning behind this was that the government was in a better position than the impoverished and illiterate typical victim to arrange for adequate legal representation and to pursue a powerful multinational corporation through the byways of justice. The pursuit was vigorous in the beginning: in a New York District Court in 1985, the Indian government successfully countered Carbide's efforts to shift the blame entirely on to Union Carbide India Limited (UCIL), its Indian subsidiary, which, with its far lower assets, could not have been expected to pay any substantial amount of compensation to the victims. The Indian government was interested in engaging in a struggle for compensation with the Union Carbide Corporation, not its much smaller subsidiary, and would have also preferred to pursue the case in a U.S. court, where the laws and standards of compensation for toxic exposure cases were more thorough-going than they were in India. So the New York District Court was treated to the piquant spectacle of the Indian government arguing in an American court that the Indian legal system was shoddy and inadequate, against Carbide's lawyers who expressed their highest admiration for the standards of law and justice in India. Judge Keenan ruled that the issue concerned Union Carbide Corporation, not UCIL, and that it could be decided in the Indian courts.

The process began in the District Court of Bhopal in 1986, and the first issue taken up by victims' organizations was the provision of interim relief to the devastated victims of the disaster by Union Carbide. The corporation appealed the court's ruling that it should pay an interim amount of Rs 350 crores (to be adjusted against the final settlement), and took the matter to the Madhya Pradesh High Court. The High Court reduced the amount of interim payment to Rs 250 crores, and in keeping with its stalling tactics, Carbide once again appealed the ruling.[3] The matter of interim relief was then taken to the Supreme Court, which suddenly and surprisingly ruled in February 1988 that the Indian government and Union Carbide should agree to a settlement which required the corporation to pay a mere $470 million in total damages, and which would free the corporation from all future liability arising from the Bhopal case. It was widely believed that this final settlement was the outcome of pressures placed on the Court by the Congress government of the time, which may have conducted some kind of private deal with Union Carbide. This amount was insufficient even to pay for the basic medical treatment that Bhopal victims required on account of gas exposure, and is pitifully small compared to the damages paid to the victims of other major industrial disasters. The comparison with Exxon is particularly stark: for the Valdez spill, where no human lives were lost, Exxon paid $5 billion in damages, while the over 600,000 claimants in the Bhopal case were being asked to share in the sum of $470 million. It was

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immediately understood that the Union Carbide Corporation had got off very lightly for the death and devastation it caused in Bhopal: Carbide's stock price rose by $2 a share in the New York Stock Exchange on the day that the settlement was announced.[4]

One of the legal challenges to the settlement took the form of a challenge to the Bhopal Act, since this had taken away from the victims their right to be heard. The Supreme Court upheld the constitutional validity of the Act in December 1989, using the occasion to gratuitously launch into a strong defence of the settlement. Again, victims' groups filed review petitions in response, which received the support of the new Janata Dal government which came into power in January 1990. In a judgement delivered in October 1991, the Supreme Court upheld the settlement as before, but (mostly in the light of medical evidence) tried to mitigate it somewhat. The most significant changes were that Carbide no longer had immunity from criminal charges in the Bhopal case, the right of unborn children to reopen litigation was restored, and the government was asked to provide insurance cover to the victims. Since that time, the Union Carbide Corporation has been absconding from the criminal charges of culpable homicide and grievous harm pending against it in the Magistrate's Court in Bhopal. Das bases her analysis in *Critical Events* on the debates and judgements arising from these two hearings.

To briefly revisit her argument, Das begins with the premise that the problem of theodicy is not confined to the domain of religion alone; it extends also into such domains as bureaucracy, law and medicine. The experience of suffering places a burden on the meaningfulness of religion for the individual: as Weber first noted, religious cosmologies are then confronted with having to assert their legitimacy in the face of the question: 'Given x, can there really be a God?' Das contends that faith in the social order is just as profoundly shaken by the experience of massive suffering; and that institutions must (and do) swiftly respond to articulations of doubt such as: 'Given x, can we really continue to think we live in a just society?', or '...can we really continue to place our trust in modern medical knowledge?', and so on. She discerns two kinds of orientation, the internal and external, that propel the effort to invest the experience of suffering with meaning. What she terms the *internal* orientation:

> creates an elaborate discourse on the meaning of suffering, essentially to legitimize the producer of the discourse rather than the victim. I shall call the second an *external* orientation. This holds suffering to be accidental. It acknowledges frankly the inability of any theodicy to adequately explain why people suffer and, paradoxically, allows the emergence of novelty and the creation of a healing discourse. In the case of the Bhopal disaster we shall see how the first orientation was embodied in the judicial and medical discourse, thereby providing legitimacy to the producers of the discourse (the scientific profession, the law court), while the second orientation was subtly repressed...Cosmologies of the powerless hold the capriciousness of gods and the sheer contingency of events responsible for the disorder of their lives; this, at the very least has the potential of freeing those who suffer from having to take the personal responsibility for their fate, even as it masks the real sources of their oppression from them. But in the cosmologies of the powerful, conversely, there is no place for chaos. For, if the contingent and chaotic nature of the world were acknowledged in these, it would have the potential to dismantle the structures of legitimacy through which suffering is imposed upon the powerless (139).

Das attempts to demonstrate the process by which the domains of law and medicine reiterated their legitimacy by looking at two courtroom texts, the Supreme Court judgement of December 1989, which upheld the constitutional validity of the Bhopal Act and provided a defence of the settlement, and the more favourable October 1991 judgement on the review petitions filed by Bhopal victim organizations against the settlement. Particularly in her lengthy analysis of the December 1989 judgement, she brilliantly exposes the manoeuvre by which the law of the land is able to establish its legitimacy, by invoking and, at the same time, overruling the suffering of the people of Bhopal. The two-part movement that she considers characteristic of an internal orientation is plainly to be found in this case: the prolonged suffering of the people is alluded to, and then it is used as the pretext for justifying the Indian government's decision to reach an unfavourable settlement with Union Carbide. Thus, the people, by virtue of their long and miserable wait for justice, have 'won' the right to a grossly inadequate settlement without being consulted, while the legal system manages to project itself as both compassionate (in its recognition of suffering) and fair.

When it comes to discussing the manner in which the medical profession legitimises itself after the disaster, however, Das restricts her analysis to the profession's assertion of legitimacy solely as expressed in legal outcomes because the only 'text' she examines is the medical evidence presented before the Supreme Court. Thus, the question of the legitimacy of the medical profession in the eyes of the victims in other relevant contexts, e.g. in the therapeutic setting of the hospital ward, remains unaddressed. Even as a courtroom figure, the medical establishment does not come across as a monolithic, well-ordered entity anxious to impose its understanding of the events on everyone. Although she focuses on the medical version of the facts which made the settlement possible, Das's own account conveys the fierceness of the contest between varying medical understandings of the experience of victimhood. She begins by pointing out that there were three distinct sources of medical knowledge about the effects of the Carbide gases on the human organism: the scientists in the employ of Union Carbide, the researchers working with the Indian Council of Medical Research (ICMR), and independent physicians whose work among Bhopal victims or in their own laboratories was driven by humanitarian concern for the victims. As can be imagined, the scientific knowledge deriving from these sources was far from uniform.

Union Carbide's immediate response was to withhold important information about the harmful effects of MIC, the main chemical in the poison cloud: from statements made by plant officials at the time of the leak that MIC is

no worse than a 'potent tear gas'; to their doctors' denial of the possibility of cyanide poisoning (which caused many deaths that might have been averted if sodium thiosulphate – a cyanide antidote – had been administered); to later statements by their American medical experts, Drs Peter Halberg and Hans Weill, that MIC has no long-term medical effects. Union Carbide was quick to shift the blame to those it killed and maimed in the desperately poor communities near the Bhopal plant; their very poverty and helplessness were turned into accusations against them. Bud Holman, attorney for Union Carbide, described the Bhopal victims in these terms: 'Some have tuberculosis, which is endemic in that area, some have emphysema, which is endemic in that area, some have malnutrition, which is a troublesome thing in that area. Each individual history has to be examined in order to determine what damage he has, or whether he has a claim or not. The claims include a considerable number of fraudulent claims, we expect.'[5] Again, Carbide's medical expert, Dr Peter Halberg, told a reporter: 'The MIC produced a heavy cloud which settled very close to the earth, killing children because of their immature lungs, the elderly because of their diminished lung capacity, those who ran because their lungs expanded too quickly, and small animals. The survivors included those people who stood still and covered their faces with handkerchiefs…'[6] In other words, it was their own fault for being too young, or too old, or too stupid to know that the best thing to do was to stand still as the deadly cloud engulfed their city. It has been pointed out that the corporation was well aware of the dangerous nature of MIC; to cite only one example, the results of Carbide-sponsored research undertaken at the Mellon Institute in 1963 (one of the many studies commissioned by the corporation over the years) included the statement that 'methyl isocyanate appears to be the most toxic member of the isocyanate family... [It] is highly toxic by both the peroral and skin penetration routes and presents a definite hazard to life by inhalation.'[7] By contrast, the findings announced by Carbide scientists in the years after the disaster tended to minimize the degree of long-term damage perpetrated by the Carbide gases. These are the kinds of statements of attitude and orientations of research that Das brings in to make her case about the 'professional transformation of suffering'.

Most of the ICMR's research findings have not been publicly available almost from the very beginning, because of the government's insistence on treating them as 'confidential' both during and after the long process of litigation. From Das's descriptions of the role they played in the court debates (she points out that Carbide's lawyers used ICMR data to allege malingering on the part of the Bhopal victims) it would appear that they might have endorsed the same kinds of conclusions about chemical exposure that the Carbide scientists had drawn. So far, it remains possible to argue that the m˜edical establishment was indeed composed of a single great edifice, secure in its expertise and eager to pin the final responsibility for their ailments on the people of Bhopal. However, this does not take into account the many medical professionals who came into the city to offer their services, collect crucially important survey information, begin monitoring the health status of the gas-affected victims, write critical affidavits for the case against Carbide; and once their activities in Bhopal were brought to a halt by the government, continued laboratory research and the publication of findings that countered the false sense of security being fostered by Carbide researchers. Das names many of these scientists in her book, for example, Drs Anderson, Mackenzie, and Verma, and credits their research with having made a crucial difference in the 1991 judgement. However, she does not appear to have included them as part of the medical profession when she generalizes about the 'professional transformation of suffering'.

In the 'Epilogue' to *Critical Events*, Das has warned that 'careful readers may find in this book inconsistencies, contradictions and the inability to live within my conceptual means' (209). To announce that one has unearthed an inconsistency in the work of such a careful scholar may be a rather grand claim; my intention here is only to apply her technique of close textual reading to a more clearly medical, rather than medico-litigational, document. In particular, I am interested in the medical viewpoint that lost out in court in 1988, against the combined legal onslaught of Union Carbide and the Indian government. Physician activism has been, after all, an important feature of the Bhopal landscape since the gas leak; and I will examine here only one such text, the final report of the International Medical Commission on Bhopal.

The final report, which was released in New York in December 1996, was made up of two sets of articles in two medical journals. Formed by two eminent epidemiologists at the invitation of victim groups, the International Medical Commission on Bhopal (IMCB) was an independent inquiry commission consisting of fifteen medical professionals from twelve countries who went to Bhopal in 1994 to chronicle the long-term health consequences of the gas leak. An activist-researcher herself, Das was associated with the IMCB in an advisory capacity, and she can safely be assumed to have had a certain degree of familiarity with the Commission's work. In their article describing the work of the IMCB, the two co-chairpersons of the Commission, Drs Rosalie Bertell and G. Tognoni[8] express their commitment to the idea of 'community epidemiology' (88): where the community is not merely the object of research, but actively involved in all the various stages of the process. They note that 'the strength of the IMCB is therefore principally based on the solidarity among peoples, as well as in the independence and scientific reliability of the procedures and in the transparency of the communication of the results' (89). The designers of the epidemiological study[9] had carefully factored in 'the probability of confounding by socio-economic determinants of ill-health, and the poorly understood distribution of gas exposure across the city' (5).

Briefly, the results of the study showed that as many as 50,000 survivors may have been permanently disabled, either partially or totally. While reaffirming the previously-known facts about the severe damage caused by the Union Carbide gases to the lungs and eyes of the victims, the Commission also reported widespread

neurotoxicological damage. Noting the extent of the incidence of post-traumatic stress syndrome, the Commissioners urged the government to recognize it as a compensatable effect of the disaster. One major concern for the Commissioners was the health status of children: since nobody under the age of eighteen had been registered as a gas victim, there has been no official recognition of their illnesses and of course, no compensation. The Commission strongly recommended the registration, compensation and ongoing monitoring of those survivors who were in utero or under age eighteen at the time of the disaster, and of the children of survivors.

They reported that medical care and treatment of chronically ill Bhopal survivors current at the time typically lacked continuity; their medical conditions were seldom treated as gas-related. The Commission suggested the establishment of a thorough-going system of care at the community and primary levels with well-developed treatment protocols and health monitoring of disabled survivors.[10] It is interesting to note in this regard that the Union Carbide Corporation had at the time been involved in the setting up of a much-publicized hospital for the treatment of the Bhopal victims. Dr Bertell provides some background information about this initiative.[11]

> Union Carbide has recently sold the Indian subsidiary in Bhopal, without assuring the people that it had cleaned up the toxic materials which were buried there over the years of operation of this failed plant. Money from this sale was confiscated by the Supreme Court of India in October 1991 after the Court declared Union Carbide to be an absconder from Justice. The corporation had failed to respond to repeated court summons to appear in the Magistrate Court of Bhopal to answer to criminal charges of culpable homicide for its role in the Bhopal disaster.
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> Some of the Union Carbide confiscated money has been channelled into a trust fund under the guidance of Sir Ian Percival, a Union Carbide lawyer, for a hospital in Bhopal. According to the unanimous opinion of the IMCB, further hospital beds are not needed in Bhopal, but rather a system of primary and community health centres capable of assisting those survivors suffering from chronic disability. The new hospital will focus on cardio-pulmonary diseases and, while pulmonary disease is the most frequent after-effect of the disaster, cardiac problems were not noted (3).

In its terms of discourse, the IMCB was planned very much as a 'scientific' intervention, and issues its challenge in the very spaces where the battle for justice in Bhopal has been lost. At the same time, it does not appear to be smuggling in an internal orientation to suffering; the Commission works with a much expanded notion of the therapeutic in relation to the Bhopal survivors. Consider, for example, the following passage:

> In this study, the role of drug usage clearly confirms the relationship between medicine and its social context. As it is 'represented' by drugs, the daily experience of the people of Bhopal is one of confusion, lack of information and neglect of real problems... drug utilisation studies can be seen from outside as a purely descriptive, academic exercise of observation primarily oriented at producing data for publication. Depending on the methodology selected, however, and on the context of their implementation, they appear more appropriately as an effective tool for interacting with the individuals and the communities. Drug utilisation studies in this context become the occasion for reversing the marginalizing attitude of prescribers...(21-22)

Bhatia and Tognoni appear to be opening up new potentialities for healing within the medical discourse; here they are actually putting forward the possibility of medical research as itself a form of healing.

The Commissioners appear to be cognizant of the limitations of medical discourse; and within their scientifically informed endeavour, there are constant efforts to stretch those limits. Bhatia and Tognoni make a case for health education in the same article; and one of the benefits they cite is that 'helping the victims understand the nature of their permanent injuries may also help them begin the process of coping and healing...'(21). Once again, medical knowledge is being offered as an act of consolation. Also, in articulating the magnitude and finality of the undeserved injury that has befallen them, a sense of the senselessness of their suffering is being proffered afresh to the victims. It seems reasonable to infer, then, that the boundaries of this discursive terrain may be more generous than Das has tended to assume.

To conclude, it seems to me that an internal orientation to suffering is not a necessary concomitant of the discourse of the professional. The IMCB shows that the legitimacy enjoyed by medical discourse can be placed at the service of the powerless almost as readily as it can be made to serve the interests of the powerful. In the case of Bhopal, a variety of factors may be seen to have played a role in establishing an internal orientation: professional discourse, as represented by the medical and legal opinion purchased by a wealthy multinational corporation, was indeed among the foremost. There is also the specific historical context of an Indian state which had just then begun to abandon its established economic policy of import substitution for a new regime of liberalization which was contingent on the country's ability to attract foreign capital. There is the added factor that the joint-stock company has evolved today into a near-mystical entity which can shift shapes smoothly to place itself outside the reach of the moral and legal consequences of its policies. Since February 2001, the Union Carbide Corporation has merged with Dow Chemical to form the largest chemical company in the world, with disheartening consequences for the possibilities for any further legal action.[13] To understand the production of mass suffering, and the subsequent belittling of that experience for the powerless who suffer, it is world historical and political economic processes that must to be interrogated.

Notes

[1] The term 'victim' is used throughout, since the reference is not only to the survivors of the Bhopal gas tragedy, but also to the thousands of people who were killed.

[2] Veena Das, 1995, *Critical Events: An Anthropological Perspective on Contemporary India.* New Delhi: Oxford University Press. A shorter version of this line of reasoning can be found in Veena Das, 1994, 'Moral orientations to Suffering: Legitimation, Power, and Healing', in Lincoln Chen, Arthur Kleinman and Norma Ware (eds.) *Health and Social Change in International Perspective.* Boston: Harvard University Press.

[3] Rs 350 crores amounts to about $76 million, by today's reckoning; Rs 250 crores woud be about $54 million.

[4] Cited in David Dembo, Ward Morehouse and Lucinda Wykle, 1990, *Abuse of Power. Social Performance of Multinational Corporations: the Case of Union Carbide.* New York: New Horizons Press, p. 98.

[5] Cited in Dembo, Morehouse and Wykle, p. 95.

[6] Ibid.

[7] Ibid., p. 94.

[8] R. Bertell and G. Tognoni, 1996, 'International Medical Commission, Bhopal: a model for the future', *The National Medical Journal of India*, 9: 86-91.

[9] P. Cullinan, S.D. Acquilla and V.R. Dhara, 1996, 'Long term morbidity in the survivors of the 1984 Bhopal gas leak', *The National Medical Journal of India*, 9: 5-10.

[10] Following this recommendation, a group of Bhopal activists has established the Sambhavna clinic in one of the worst affected areas of the city. See www.bhopal.org for details.

[11] Rosalie Bertell, 1996 'Twelve years after Bhopal: an editorial reflection' *International Perspectives on Public Health*, 11 & 12: 2-4.

[12] Rajiv Bhatia and Gianni Tognoni, 1996, 'Pharmaceutical use in the victims of gas exposure', *International Perspectives in Public Health*, 11 & 12: 14-22.

[13] For recent legal developments and medical findings, see especially Ingrid Eckerman, 2005. *The Bhopal Saga: Causes and Consequences of the World's Largest Industrial Disaster.* Hyderabad: Universities Press; Bridget Hanna, Ward Morehouse and Satinath Sarangi, 2006. *The Bhopal Reader: Remembering Twenty Years of the World's Worst Industrial Disaster.* New York: Apex Press; Roli Varma and Daya R. Varma, 2005 'The Bhopal Disaster of 1984', *Bulletin of Science, Technology and Society*, 25(1), 37-45.