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Session V: Torts Liability of Corporation - The Aftermath of Bhopal

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the government of India were to give certain stability to foreign investment. He was of the view that foreign investors were apprehensive about the uncertainty of the taxation and the fear of retrospective taxation and they were also apprehensive about the Intellectual Property. He further said that the Chambers of Commerce have now recommended to the Government that it would be in the interests of the national policy if the government were to sign the Paris Convention with certain safeguards. He was of the view that to encourage foreign investment upto 51% there should be no fetters attached to it. Besides the formula of Reserve Bank of India relating to disinvestment was also very artificial and so the foreign investor had to suffer.

The next speaker was Mr. Dara P. Mehta, a practising Solicitor in Bombay. He concentrated on three issues. The first issue was relating to the threshold of 40% which he said was never statutorily recognised by the Foreign Exchange Regulation Act. He was of the view that this 40% ceiling was brought in by administrative policy which was introduced as early as in 1950 when Jawaharlal Nehru made a statement to the effect in the Parliament. Secondly, he felt that the present policy of according approval for foreign investment is coupled with very strict conditions and these conditions that are attached to the policy render the approvals less automatic route with such conditions, because few investors prefer the automatic route with such conditions.

He was of the view that the new Policy should have said that investments will be considered on their Merits without the requirement of a transfer of foreign technology. Speaking about litigation in India, he felt that lawyers perhaps were responsible for the delays which occur in the courts, and that the Government was the biggest litigator in India. He urged the legal profession and also the Government and its agencies who seek to defer legitimate obligations by having to resort to long and protracted litigation to fully co-operate with each other in trying to reduce the delays of litigation.

Session V

**TORTS LIABILITY OF CORPORATIONS
THE AFTERMATH OF BHOPAL**

Ms. Jayanthi Natarajan, Member of Parliament (Rajya Sabha) chaired the session. The discussion was initiated by Mr. F. C. Nariman, Senior Advocate, Supreme Court of India and Vice Chairman of the International Court of Arbitration. He pointed out that the tort system of law in India is still being governed by the Common Law System and there is no express statutory provision except "The Public Liability Act" which was passed just a few months ago and which provides for a compulsory insurance of industries or industrial

concerns dealing with hazardous chemicals. He expressed the view that litigation was perhaps the last solution and not the first in almost every mass tort disaster. He further pointed out that the system was just not geared up to cope with so many hundreds or thousands of victims even though the right of action was vested statutorily in one body. He also mentioned that the judicial suggestion of a National Disaster Fund is not yet created. He cited an incident about how the judge who just tried the Bhopal case happened to be a compensation claimant which became known only some months later. He was later disqualified from trying the case but not until he had passed a massive injunction order against the Union Carbide Corporation.

Dr. N. R. Madhava Menon, Director of the National Law School of India University, Bangalore submitted that it was not the Bhopal Gas Leak Case that created the panic amongst foreign companies and foreign industrialists, but the panic was created by the extent of human suffering and injury that a man made disaster could cause in our modern technological age. He mentioned that when you analyse tortious liability of corporations in India today, it was necessary to make a distinction between tortious liability in ordinary torts and liability in toxic industrial torts of the type that we have in the Bhopal case. He pointed out that in the ordinary cases, the Indian law follows almost 100 per cent the English Law, the Anglo-American law based on fault or negligence or in some extreme cases on the strict liability principle.

Dr. Menon observed that the one significant development which was of relevance to the foreign observer of the Indian legal scene was the difference that tort jurisprudence had imbibed as a result of the impact of the Indian constitution which had sanctified the life and property of every citizen including foreigners and had given a higher weightage particularly in the judicial process in an adjudication. He was of the view that human rights standards have brought in higher standards of liability and of compensation in tort litigation and that the dimension of human suffering should not be forgotten when a matter is litigated particularly for compensation purposes. He contended that this has been reflected in the various judgments of the Bhopal gas leak litigation. He stated that in Indian law the due process of law is a guarantee available to citizens, foreigners, natural persons as well as corporations. He also proposed that the concept of "public spirited citizens" is another principle of processual nature which needs to be recognised in the Indian judicial system as the expansion of 'locus standi' which allows public spirited citizen to come forward and litigate in such mass disaster industrial accidents. He further argued that under the inherent powers of the court as well as on the principles evolved from constitutional jurisprudence, the power to order interim compensation irrespective of the relative liability of the corporation, the wrong-doer, the tort-feasor, is a very justifiable proposition which is a part of Indian Law. He remarked that "fairness learning" has become a part of Indian jurisprudence.

The next panelist was Prof. Upendra Baxi, Vice Chancellor of the University of Delhi. He pointed out the following distinctive issues raised by the Bhopal Gas Leak Disaster.

- The issue of how any legal system particularly third world legal system can establish jurisdiction over a foreign corporation.
- The complexity and delay of legal process which was used by the Government of India to establish convenient forum before Judge Keenan.
- The sheer arrogance of judicial power.

He described the 1989 settlement as 'Second Bhopal Catastrophe' and he felt that this settlement could unfortunately give a lot of peace of mind to foreign investors in India. He pointed out that the Bhopal case brought out the problems of enforcement of money judgements in 'first world'. It also brought out the medico-legal aspects of mass disasters. He stressed the need to understand the difference between 'victim' and 'victimage' in order to do justice to tort or any other litigation.

He concluded by mentioning about what he called the 'genetic Bhopals' which were in making in India. He remarked that only investment is entitled to progress which is an investment in human future and human solidarity.

The floor was than thrown open for discussions and a lively discussion followed.

VALEDICTORY SESSION

The Valedictory session was declared open by Mr. Ashok Desai, Senior Advocate, Supreme Court of India. This was followed by the summing up of the contributions by Mr. Abhishek Singhvi, Advocate, Supreme Court of India.

After the Report Mr. Leonard de Hass, the 'President-elect of UIA spoke about the UIA. He said that the UIA was an organisation founded in 1927 in Belgium. It catered to different kinds of members like bar associations or similar kind of associations of lawyers, solicitors and barristers. He pointed out that the only requirement was that the lawyers must exercise his profession freely and the organisation to which he belonged must be a free organisation which implied that there should be no state interference. He also spoke that the objectives of the UIA which related to the human rights of the lawyers: and to scientific legal matters.

Next speaker was Mr. Ian Hunter, Commercial Queen's Counsel in England. He said that India is important because of its size, because it is a democratic