



DowDuPont: Justice out of sight, the Bhopal tragedy 1984-2017

Decades after the Bhopal disaster which killed 20,000, impacted half a million and contaminated the local water supply, victims have been unable to secure adequate justice or remedies from chemical giant DowDuPont; a challenge made greater by a series of purchases and mergers.

Problem Analysis

The Bhopal gas disaster was one of the biggest industrial accidents in history, a tragedy resulting from corporate gross negligence and insufficient security measures.¹ Thousands died and many others are still affected by pollution from heavy metals in and around the company sites and the groundwater.^{2,3,4,5} Bhopal has since become an example of how mergers and acquisitions create corporate impunity by making it more difficult to prosecute the companies and individuals who bear responsibility.

There is no regulatory framework in place that can prevent and provide redress for human rights abuses such as this one. In February 2015, the UN's special rapporteur on hazardous substances and wastes, Mr. Tuncak, said that he is "deeply concerned" that the current merger between Dow Chemical and DuPont may erase the possibility of justice: "The victims have faced insurmountable obstacles in getting past the corporate veil of Dow and UCC to find accountability and justice. [...] "This merger creates yet another layer of legal hurdles for victims to arrive at any semblance of an effective remedy and accountability for a preventable disaster now more than 30 years old."⁶ Bhopal also illustrates that companies can deny, and continue to deny for decades, any responsibility for human rights abuses – unless they are subjected to significant pressure.⁷

This case illustrates many of the substantive, procedural, conceptual, and practical obstacle that arise in dealing with human rights violations by TNCs.⁸ The obstacles include, amongst others, a lack of home state responsibility, difficulty piercing the corporate veil, misuse of *forum non conveniens*, a lack of resources, and access to courts.

Company

Company: DowDuPont

Union Carbide was founded in 1917 in Texas, USA and became a subsidiary of Dow Chemical in 2001 (17 years after the disaster in Bhopal). The Dow Chemical Company merged with DuPont on August 31, 2017.⁹

Head office: DowDuPont is dually headquartered in a) Midland, Michigan and b) Wilmington, Delaware, United States.¹⁰

Subsidiary: The Bhopal plant directly was owned and operated by Union Carbide India Limited (UCIL),¹¹ subsidiary of the Union Carbide Corporation (UCC).¹²

Company background

Publicly traded company

Shareholders: Vanguard Group Inc (7.17%), Capital Research and Management Company (6.40%), Fidelity Management & Research Company (2.28%), BlackRock Fund Advisors (1.59%), and State Street Global Advisors (Aus) Ltd (1.44%).¹³

CEO: Andrew N. Liveris,^{14,15} \$23 million income (2016).¹⁶

Executive Chairman until 2014: Union Carbide Corporation chairman Warren Anderson, who was charged for culpable homicide in India but remained outside Indian jurisdiction in the US until his death in 2014.

Estimated profit and turnover: Dow and DuPont combine for nearly \$73 billion in annual sales. On the basis of recent stock prices, DowDuPont has a market capitalization approaching \$150 billion.¹⁷

- Dow Chemicals: Profit: US\$ 2.5 billion & turnover US\$ 12 billion¹⁸
- Du Pont: US\$ 24.5 million net sales¹⁹

Presence:

- Dow Chemicals: Africa (8), Asia (15), Europe (24), Latin America (7), Middle East (5), and North America (2)

- DuPont: Africa (12), Asia and the Pacific (16), Europe and the Middle East (34), North America (3), South America (6)

Number of employees: > 100,000 (Dow Chemicals +/- 56,000 + DuPont +/- 52,000)

Company activity

DowDuPont, one of the largest global chemical companies, currently pursues a separation into three independent, publicly traded companies: an agriculture, a materials science, and a specialty products company.²⁰

Country and location in which the violation occurred

Bhopal, India

Summary of the case

Union Carbide India Limited (UCIL) pesticide plant a massive leak of toxic methyl isocyanate (MIC), caused more than 20,000 casualties.²¹ Most victims died from suffocation. Approximately 560,000 of the 895,000 inhabitants of Bhopal were affected in some way.^{22,23} They suffer from acute breathlessness, brain damage, menstrual irregularities, loss of immunity, cancer and tuberculosis.²⁴ An investigation by *The New York Times* produced evidence of at least ten violations of standard procedures by both the parent corporation Union Carbide Company (UCC) and its Indian-run subsidiary Union Carbide India Limited (UCIL) that led to the disaster.²⁵

The disaster also had an enormous environmental impact. The gas was absorbed by nearby rivers, contaminating water and soil in the area, harming health and access to clean drinking water.²⁶ The site was never fully restored by Union Carbide or the Indian government²⁷ and the contamination has remained untreated for decades. Researchers estimate that more than 400 tons of poisonous chemicals are still buried there, leaking into groundwater and soils.^{28,29,30,31,32}

Little attention has been paid to the state of the UCIL site and its immediate surroundings with respect to other contaminants that may have been present for reasons not connected to the accident.³³ As such, the impact of the plant on human rights is not confined to the gas leak. Since the opening of the plant in 1970, it had been a source of environmental pollution.³⁴ UCC's engineering department warned in 1973 that the design of the Bhopal plant, which used solar evaporation ponds for waste effluent, posed a "danger of polluting sub-surface water supplies in the Bhopal area".³⁵

The cause of the disaster remains under debate. The Indian government and local activists argue that slack management and deferred maintenance created a situation where routine pipe maintenance caused a backflow of water into an MIC tank, triggering the disaster. Union Carbide Corporation (UCC) contends water entered the tank through an act of sabotage.³⁶

Since the disaster many local and international human rights and environmental groups, including the Pesticide Action Network, International Campaign for Justice for Bhopal, Greenpeace and Amnesty International have been involved in the search for remedies.

Bhopal led to complex litigation in both India and the United States seeking to impose criminal and civil liabilities on UCIL and UCC.^{37,38} As the US-based Union Carbide company controlled its Indian subsidiary UCIL it made sense to sue in US courts, however, for victims this proved very difficult. A law was passed giving the Indian government the exclusive right to represent all victims, inside and outside India. In 1986, claims in the US were dismissed on grounds of forum *non conveniens*. Proceedings in India began. The Indian case ended in 1989 with a US\$ 470 million settlement, far below most estimates of the damage at the time. An intervention filed on behalf of the victims before India's Supreme Court in 1988 had claimed that INR10 billion (around US\$ 628 million) was needed as interim relief alone.³⁹ The settlement was also criticised for being negotiated without the participation of the victims.⁴⁰ Survivors, civil society groups and others overwhelmingly rejected this settlement as utterly inadequate.⁴¹

The Supreme Court in India later reinstated criminal charges against UCC/UCIL. No conviction was forthcoming until June 2010, when a local court found UCIL and seven of its executives guilty of criminal negligence, sentenced them to two years imprisonment and a fine of about US\$ 2,000 each, the maximum punishment allowed by Indian law.⁴² The search for justice continues to this day.⁴³

On 3 December 1984, one of the world's worst industrial disasters took place in Bhopal. In a Following the 2015 announcement of a planned merger of Dow Chemical and DuPont, Baskut Tuncak, the UN's special rapporteur on hazardous substances and wastes, said that he was "deeply concerned" and that the merger may erase any remaining possibility of the victims of the Bhopal disaster seeing an "effective remedy".⁴⁴ The Bhopal Medical Appeal launched a campaign targeting the Dow-DuPont merger urging: "Don't bury Bhopal." The merger took effect in 2017.

After the disaster UCC began attempts to dissociate itself from responsibility for the gas leak and to shift the responsibility to UCIL.⁴⁵ UCC stated that the plant was wholly built and operated by the Indian subsidiary. This argument is still being used today: "The 1984 gas release from the plant in Bhopal, India was a terrible tragedy," a statement from DowDuPont reads. "It is important to note that Dow never owned or operated the plant, which today is under the control of the Madhya Pradesh state government."⁴⁶ However, there is overwhelming evidence to suggest that UCC management was aware of safety problems at the Bhopal plant for at least several years before December 1984.⁴⁷

The Indian government also failed to provide safety in this case. The government had a 22% stake in UCIL.⁴⁸ The specific site within the city was zoned for light industrial and commercial use, not for hazardous industry. UCIL built the plant in Bhopal because of its central location and access to transport infrastructure.

The local government was also aware of safety problems but was reluctant to place heavy industrial safety and pollution control burdens on the struggling industry because it feared the economic effects of the loss of such a large employer. Human rights scholar Surya Deva has commented: "Based on the government's previous failure to discharge its duty to respect, protect and fulfill human rights in relation to Bhopal, the future prospects of tough state actions in cleaning the site or providing continuous medical help to the affected victims do not appear very promising".⁴⁹

Endnotes

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