



---

## Multinational corporations and the politics of reparations: Comparative study of Hinkley groundwater contamination and Bhopal gas tragedy

Ankita Ojha

PhD Scholar, Centre For Political Studies (CPS), Jawahar Lal Nehru University, New Delhi, India

---

### Abstract

There is rising level of 'risk' posed by Environmental-Disasters in the globalised world. Though the disasters do not differentiate, however, their effect varies. The following study is an attempt to understand two Environmental Disasters-Hinkeley Ground-Water Contamination (USA) and Bhopal Gas Tragedy (India) caused by two well-known MNCs. We intend to understand the entry of these disasters in Judicial Corridors and their effect on the populace of both states. We argue that just conduct requires well-informed negotiations and the ability of the state to make MNCs responsible

**Keywords:** Justice, multinational corporations, India, USA, justice, negotiations, environmental disaster

---

### Introduction

The impact of Multinational Corporations (MNCs) in shaping the global economy is well known. The first few commonly known MNCs are the East India Company and the Dutch East India Company, established by the end of the 16th century to carry out transnational trade. They later became colonialism's precursors, resulting in an enormous drain of wealth<sup>[1]</sup>. Because of their economic and financial clout, they gained the ability to influence the fiscal and social policies of the state. We have moved from a colonial to a post-colonial era where the values of democracy and Justice hold in high regard. Despite that, MNCs still hold a monopoly and bypass democratic values. Most MNCs today have come under the scrutiny of environmentalists and human rights activists for not paying attention to the Human and environmental costs of development. Adam Smith<sup>[2]</sup> places corporations in opposition to economic liberty. But the time has changed along with economic domains; today's MNCs have gained the enormous capacity to tarnish the quality of life.

This essay explores two multinational corporations named *Union Carbide Ltd's (UCIL)* pesticide factory and *Pacific Gas and Electric Corporation (PG&E)*. Both companies were brought to court for negligence that resulted in a chemical disaster causing massive human suffering. In the former case, a compensation of \$470 million was granted to 1.5 lakh people (listed in government record), whereas the actual sufferers are many times more reported by Business Standard<sup>[3]</sup>. In a later case, \$333 million compensation was awarded to 650 plaintiffs. Though both the arbitrations took place in a different context with different variables at play in nearly the same timeframe of the late 1980s and 1990s, a massive difference in the compensation granted to the victims of Justice was served. However, there remain questions about how large corporations: hide the facts, set aside blame, and sweep their issues under the rug.

In this paper, along with the help of two case studies, I would like to focus on the 'accountability' aspect of modern corporations that have gained the enormous capacity to impact the "right to life" of individuals and how negotiations through a proper mechanism of Class-negotiations against Multinational Corporations could have potential to deliver more inclusive Justice.

### Case studies

#### Union Carbide Ltd's (UCIL) pesticide factory Gas Leakage aka Bhopal Gas Tragedy

On the night of December 2-3, 1984, there was a leak of the MIC gas, which is considered to be the most toxic chemical in industrial use. The moment the Bhopal gas disaster took place, the Union Carbide Company adopted a policy of *Suppression vary, and suggestio falsi*<sup>[4]</sup>, i.e. concerted efforts were made to spread the message of disinformation. Therefore no cognisance was taken about the high reactivity of the chemical binding as required. Due to a lack of information about the disaster's intensity and available treatment resources, suffering multiplied and resulted in massive loss of life. The stillbirth and neonatal mortality rates increased by up to 300% and 200%, respectively. In the early 21st century, more than 400 tons of industrial waste were still on the site. Despite continued protests and attempts at litigation, neither the Dow Chemical Company, which bought out the Union Carbide Corporation in 2001, nor the Indian government had adequately cleaned the site.

Investigations later established that the understaffed plant's substandard operating and safety procedures had led to the catastrophe. At the same time, the same company doesn't compromise on these grounds in North Virginia despite running at a loss. It also raises questions about how MNCs practise double standards taking advantage of loopholes in state laws. Carbide got out of the pesticide business, but in February 2001, it merged with the Dow Chemical Company, which does make pesticides. Dow's president and chief executive stated that the merger

should save at least US\$500 million annually, though regrettably, 2,000 jobs would be lost as well. None of the men at fault for Bhopal has ever been brought to Justice, nor will they be in their lifetime <sup>[5]</sup>.

While the UCC initially offered India a \$5 million relief fund, the government turned down the offer and demanded \$3.3 billion. Eventually, an out-of-court settlement was reached in February 1989; Union Carbide agreed to pay \$470 million for damages caused <sup>[6]</sup>. The amount was distributed disproportionately, leaving many bereft of any compensation. However, unsettled questions remain in the Bhopal Gas Tragedy, which include: why was Union Carbide so willing to settle out of court?; how was Union Carbide able to avoid the multiple attempts at Negotiation? Should large corporations be getting away with this today?

Let us now look at the case of Hinckley, which answers certain aspects of well-thought-out class-action litigation that can provide Justice to litigants while making MNCs answerable on High-Value grounds. Though Hinckley can't be treated as an ideal case, much more is required to be done in order to substantiate what it means to be Justice and how it can be achieved in a world dominated by Powerful MNCs.

### **Pacific Gas and Electric Corporation's (PG&Es) Hinkley Groundwater Contamination**

In the famous Hinkley Groundwater Contamination case ("Hinkley"), Pacific Gas & Electric ("PG&E") had released hexavalent-chromium, a cancer-causing substance, into the water supply, ultimately affecting the local groundwater of nearly 650 Hinkley residents. PG&Es didn't notify the locals of the toxins they had dumped into the environment, causing a disturbing array of health problems: liver, heart, respiratory, and reproductive failure, cancer of the brain, kidney, breast, and gastrointestinal system; frequent miscarriages and more <sup>[7]</sup>.

In 1997, 77 Hinkley plaintiffs filed a lawsuit against PG&E. The suit was a direct result of a massive communications effort mounted by Erin Brockovich, an employee in the local Law Firm. She had uncovered the utility's environmental misconduct and launched a personal investigation that ended in the largest settlement of (\$333 million for 648 plaintiffs) on record for a civil class-action lawsuit.

Hinkley depicts a story of change that has changed the scope of class-action disputes and has provided more insight into how negotiators can overcome power disparities that arise between community members and large corporations. Bridging the gap between large corporations and communities requires fewer trials and more solutions created at the negotiating table <sup>[8]</sup>.

### **Politics of class-negotiations**

A class action, also known as a class-action lawsuit, class suit, or representative action, is a type of lawsuit where one of the parties is a group of people who are represented collectively by a member or members of that group <sup>[9]</sup>. In the Hinkley lawsuit, class-action negotiations played a vital role in delivering Justice to 650 plaintiffs of Hinkley and creating a separate reparation amount for cleaning the groundwater contamination and taking care of prospective hazards from environmental damages.

The story of most of the Chemical disasters caused by MNCs has certain similarities. They have a particular way of shedding blame by using their powerful position to make other parties vulnerable. When the harm to a local community is unmistakably clear, there is often little recourse when large corporations "argue the science (junk science), since there is a chance they could get out on that using paid research facilities to produce otherwise results". This might help them to stall the process. Stalling helps them make the other parties lose patience with the loss of personal assets and ultimately withdraw or settle for much less. MNCs are well aware of the presence of multiple stakeholders and individuals' unwillingness to pay for the courts. Hence fabrication of facts, Bribes, and extra-legal means became tools to get away with the courts. Sometimes 'states Law' also gives them enough leverage and scope to shed any financial, ethical or moral responsibility. Therefore the Hinkley negotiations Became a powerful example of providing greater meaning to Class negotiations than mere court settlement.

In Hinkley, along with \$333 million to affected residences, PG&E is asked to clean up the pollution they had done, which eventually might cost them \$1 Billion. Whereas in the case of Bhopal, Union Carbide paid a minuscule amount ordered by the court without proper thought-out negotiations, and the responsibility of cleaning the environment was later dumped on the head of the state <sup>[10]</sup> government. Therefore, Negotiation on behalf of the class brings challenges to reaching a more complex, vis-a-vis more fair solution. The solution needs to serve each individual's needs beyond monetary factors adequately.

When approaching a negotiation, whether "on one's own behalf or that of others, a site of negotiation is created, a table" <sup>[11]</sup>. While the benefits of Negotiation far outweigh litigation in terms of costs, time, and future relationships, the negotiating table still seems to be "disappearing." We need to recognise the need to create solutions that offer 'mutual gain' and long-term retrospective and prospective solutions. Unlike Bhopal Gas Tragedy, where the company' despite getting warnings, keep on operating within hazardous conditions with less manpower, if one should have been honest retrospectively with the happening, might have stopped both tragedies. Though in Hinckley, the negotiations lead the company to pay for the retrospective damages and prospective environmental hazards. In contrast, the Bhopal class action lawsuit failed to do so. As a result, the company got away without paying materially on the one hand and without even bothering about ethical compliance. Hence, enlarging the negotiation space, such as bargaining techniques, perceptions, and pay-offs, can broaden the scope of Justice.

### **Negotiations and just conduct: Making mncs answerable**

Approaching a situation as solution-driven, rather than assigning blame, requires an understanding of the components of a negotiation, which include the following factors: 1) emotional and psychological, 2) extrinsic and social, and 3) economic and legal <sup>[6]</sup>. Both companies didn't take full responsibility for the catastrophe and started the politics of the Blame Game. They were making the sufferer more vulnerable and exhausted. PG&E's successful evasion of Negotiation made it harder for them to face the truth, that is, to see the harm they had done to Hinkley residents. MNCs today generally follow the same footnotes and lack an ethical framework. They sidelined the social domain and focused on Hinckley's legal and economic battle; this resulted in ethical poverty. In Bhopal, the MNC disappeared, leaving people speechless about the security of life.

When parties sit down to negotiate, fairness guides the proceedings and determines whether or not there is an "even playing field" and whether a viable solution will be met. Fairness "refers to something being 'balanced, in equilibrium, or equal.' The multifaceted challenge of representing requires constant communication between negotiators and the community.

While direct communication is not commonly available during class negotiations, the negotiator must understand the nature of the Negotiation and speak for the community in a way that reflects the extrinsic values of the community. However, focusing on this objective, the negotiator must also understand that everything they think or do is geared towards the interests of the class. This involves the ability to facilitate a settlement using emotional intelligence, a payment based on the interests and needs of the public, and one that will be upheld in the future. The inability to create a negotiation table in the Bhopal tragedy left people as Orphans in the corporate world. Yet, in Hinkley, a proper negotiation channel lead people to live a new life and responsibility on the shoulders of MNCs PG&E to clean the place for the future. Hence Hinley groundwater contamination case opens up avenues to understand negotiations in broader terms by making MNCs ethically, morally, economically and socially responsible.

### **References**

1. Dutt RC. The economic history of India. A.M. Kelley, 1969.
2. Smith A. The Wealth of Nations. Oxford, England: Bibliomania.com Ltd. [Web.], 2002.
3. Sriramachari S. The Bhopal gas tragedy: An Environmental disaster. *Current Science*,2004;86(7):905-920. <http://www.jstore.org/stable/24109273>
4. Sathe SP. Crisis of Indian Legal System [Review of Alternatives in Development: Law: The Crisis of the Indian Legal System, by U. Baxi]. *Economic and Political Weekly*,1983;18(32):1388–1393. <http://www.jstor.org/stable/4372382>
5. Kovel J. The enemy of nature: the end of capitalism or the end of the world? 2nd ed. updated and expanded ed. London; New York: Halifax: New York, NY, Zed Books, 2007.
6. Phyllis B. Negotiating at an Uneven Table: A Practical Approach to Working with Difference and Diversity. San Francisco, 1994.
7. Dutt RC. The economic history of India. A.M. Kelley, 1969.
8. Smith A. The Wealth of Nations. Oxford, England: Bibliomania.com Ltd. [Web.], 2002.
9. Sriramachari S. The Bhopal gas tragedy: An Environmental disaster. *Current Science*,2004;86(7):905-920. <http://www.jstore.org/stable/24109273>
10. Sathe SP. Crisis of Indian Legal System [Review of Alternatives in Development: Law: The Crisis of the Indian Legal System, by U. Baxi]. *Economic and Political Weekly*,1983;18(32):1388–1393. <http://www.jstor.org/stable/4372382>
11. Kovel J. The enemy of nature: the end of capitalism or the end of the world? 2nd ed. updated and expanded ed. London; New York: Halifax: New York, NY, Zed Books, 2007.
12. Phyllis B. Negotiating at an Uneven Table: A Practical Approach to Working with Difference and Diversity. San Francisco, 1994.