# case analysis of Charan Lal Sahu Vs. Union of India & Ors

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**26th APRIL 2020**

# Charan Lal Sahu Vs. Union of India & Ors [[1]](#footnote-1)

#  case and its Implications

**BACKGROUND OF THE CASE**

In 1954, UCIL was incorporated in India. Union Carbide (India) Limited popularly known as UCIL, was a subsidiary of UCC (Union Carbide Corporation),a New York Corporation. The share holding of UCIL was divided as 50.99% held by UCC, whereas 22% was held by Unit Trust of India and Life Insurance Corporation of India. Methyl Isocyanide (MIC) a highly toxic gas, was manufactured in a chemical plant in Bhopal for pesticides which was owned by UCIL. About 3000 people died, when the MIC storage tank at the Bhopal plant leaked, and the lethal gas escaped, on the night between 2nd and 3rd December, 1984. Approximately thousands of people suffered injuries. The flora and fauna was highly affected, and the environment was polluted badly. In various district courts of the United States of America, many suits were filed on behalf of the victims. The judicial panel on Multi - district litigation finally decided that all the suits should be consolidated and it was assigned to the US district Court, Southern district of New York and Judge Keenan was declared as the presiding judge throughout the whole case. Finally, on the ground of forum non conveniens the legal battle was shifted to the Indian courts and it was decided that it should not proceed in the US courts. While this was happening the Government of India passed The Bhopal gas leak disaster (Processing of claims) Act, 1985 for speedy, effective and equitable settlement of the claims which was to arise out of the Bhopal gas leak disaster. On 5th September, 1986 the Union of India filed a suit for damages in the District court of Bhopal. Even though there were lots of negotiations for a settlement, ultimately the settlement could not be concluded and the talks failed. Finally the district judge ordered an interim relief of ₹ 350 crores to the victims in an order dated 17th December, 1987. An appeal was filed in the High Court and on 4th April, 1988 the order of the District Court was modified and the instrument relief was reduced to ₹ 250 crores. Both parties were dissatisfied with the judgement passed, thus both UCC as well as the Union of India filed a petition for special leave before the High Court. Finally the special leave petition was granted. Orders dated 14th February, 1989 and 15th February, 1989 the court decided, and a settlement was decided between the parties and UCC was directed to pay an amount of 470 million US dollars to the Union of India for the full settlement of the claims and also for the liabilities and rights which arose out of the Bhopal gas disaster. The following orders were passed by keeping in view The Bhopal gas disaster (processing of claims) Act 1985. The present writ petition challenges the constitutional validity of the Act saying that the Act is violative of the principles of Natural Justice, and it is also violative of the fundamental rights which are guaranteed under article 14, 19 and 21 of the Constitution of India. The petitioner claims that the Union of India is a joint tort-feasor and since the Central government owns 22% share in UCIL thus the central government is being a judge in its own case. Moreover, the Government only permitted the establishment of the factories without any necessary safeguards, thus it has no locus standi to compromise on behalf of the victims. It is also claimed that the victims and the legal heirs were not consulted before the Act was passed, thus the State is in disguise of giving aid destroying the rights that are inherent to the citizens and is demanding the citizens to surrender their rights to the state. Thus, it is concluded by the petitioner that the vesting of the rights in the Central Government is a bad and unreasonable strategy, and there is a conflict of interest between the Central government and the victims.

**FACTS IN ISSUE**

In this case there were three major issues which are in question.

First issue deals with the question whether or not the act which are concerned with is in accordance with the fundamental rights which are enshrined under the Article 14, 19 and 21 of the Indian Constitution.

The second issue has three major parts and it deals with the question whether the act which we are talking about is in accordance with the principles of Natural Justice or not. The three parts in the second issue are as following -

1. As the Union of India is a joint tort-feasor (As it has a share of 22%) does it have any locus standi to compromise on behalf of the victims as it itself permitted the establishment of the factories and had not checked the safety measures taken.
2. It also deals with the question of giving opportunity of representation to the victims and their legal heirs, in the Act mentioned.
3. Moreover it is pointed out that the central government has a conflict of interest and it seems like it is judging its own cause, which is contradictory to the rules of natural justice.

In the third issue, the central government is asked to prove its legislative competence to destroy or demand the citizens to surrender their rights in disguise of giving aid to the citizens.

Section 3,4 and 11 of the Bhopal Act1985 has been put forward as unconstitutional and are also in question in this case.

**PETITIONER'S ARGUMENT**

1. The Section 3, 4 and 11 in the mentioned Act is in infringement of Article 14, 19(1)(g) and 21 of the Constitution of India. The sections mentioned deprive the legitimate and just rights of the victims. In the argument the universal declaration of human rights was also mentioned to support the argument.
2. The principles of Natural Justice are violated as the Union government is a joint tort-feasor in this case and should not be allowed to hear its own case.
3. The petitioners pleaded that they did not get any right to represent their case and neither did the government take care of informing the date of proceedings via any media medium.
4. Since the government owns 22% of the shares of UCIL thus it was argued that it has a conflict of interest and should not be allowed to represent.
5. It is not permissible for the government to encroach the rights of the citizen in the name of providing legal aid.

**RESPONDENT'S ARGUMENTS**

* 1. The government argued that it is authority because of “Parens Patriae”. Moreover, when the  Articles 38, 39 and 39A (Directive Principles of State Policy) when clubbed with the Preamble of India, gives the government authority.
	2. The government argued that it is acting on behalf of the victims only and not as a judge of the case thus it is not violative of the principles of Natural Justice. Moreover, the Doctrine of necessity was also stated.
	3. The Doctrine of necessity is more important than the principle of Natural Justice.
	4. In Article 39A of the Constitution of India, the state is supposed to take decisions for the welfare of the public in general.

**LEGAL ASPECTS TO BE DEALT IN THIS CASE**

1. **Parens patriae -**

The Section 3(1) of the Bhopal Act states that “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 person.”

In this case, the government declares itself as *parens patriae* and declares that it is liable to represent the people outside as well as inside the country.

Parens patriae, as we know means “father of the country” and it empowers the legislature to act in accordance for the welfare of persons non suijuris, such as insane, minor or incompetent persons.

1. **Forum Non Conveniens -**

This literally translates to “forum not agreeing”. This happens when the forum disagrees to take the case because of lack of jurisdiction, and believes that there is a better forum for the given case. Forum non conveniens applies between courts in different jurisdictions in the same country and between courts in different countries as mentioned in doctrine of the conflict of laws.

In this particular case, the District court of New York said that, ““The courts of India appear to be well up to the task of handling this case. Any unfavorable change in law for plaintiffs which might be suffered upon transfer to the Indian courts, will, by the rule of Piper, not be given substantial weight. Differences between the two legal systems, even if they are injurious to the plaintiff, do not suggest that India is not an adequate alternative forum.”

Thus, the case was transferred to the District Court of Bhopal, on two conditions -

1. The UCC is bound to agree and satisfy the judgement of the Indian tribunal
2. It should submit to discovery on the American model.
3. **The principle of natural justice -**

The two important principles of natural justice are “nemo iudex in causa sua” and “audi alteram partem”

In “nemo iudex in causa sua” refers to the right of every individual to have a fair hearing without any bias. In this case, the petitioners claim that this right is being infringed because the Union of India has a 22% share in UCC and thus is a tort-feasor. Thus, it is not in accordance with the principle of natural justice that the Union of India represents the victims.

Moreover, the maxim “audi alteram partem” refers to the principle that no party should be left unheard. In this case, the petitioners argue that the government encroaches their right and does not let them file their individual suits.

1. **Section 3 of The Bhopal Gas Leak Disaster (Processing of Claim) Act, 1985**-

Section 3 states that - “(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 person.

(2) In particular and without prejudice to the generality of the provisions of sub-section (1), the purposes referred to therein include--

(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 proceeding, and

(b) entering into a compromise.

(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:

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.”[[2]](#footnote-2)

Thus, it gives power to the government to represent and act in accordance to its understanding.

1. **Section 4 of The Bhopal Gas Leak Disaster (Processing of Claim) Act, 1985 -**

Section 4 states that “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 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 proceeding relating to his claim.”[[3]](#footnote-3)

Thus, it claims that if a person wants to claim anything extra than what the government is claiming then s/he is supposed to hire individual legal practitioner at his/her own expense. This section was interpreted as a withdrawal of legal aid from anyone who wanted to claim anything different from the Government of India.

1. **Section 11 of The Bhopal Gas Leak Disaster (Processing of Claim) Act, 1985**

 Section 11 states that “The provisions of this Act and of any Scheme framed thereunder shall have effect notwithstanding anything inconsistent therewith contained in any enactment other than this Act or any instrument having effect by virtue of any enactment other than this Act.”[[4]](#footnote-4)

The overriding power of the Government was criticised by the petitioners.

1. **Article 14 of the Constitution of India -**

Article 14 states that “The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”[[5]](#footnote-5)

In this case, the petitioners argue that since they are allowed to represent their own case thus they are not treated equally.

1. **Article 19(1)(g) of the Constitution of India -**

Article 19(1)(g) states that “Right to practice any profession or to carry on any occupation, trade or business to all citizens subject to Art. 19 (6) which enumerates the nature of restriction that can be imposed by the state upon the above right of the citizens.”[[6]](#footnote-6)

Thus the right of the legal practitioners to represent the individual cases of the victims was encroached by the government, as proposed by the petitioners.

1. **Article 21 of the Constitution of India -**

Article 21 states that “No person shall be deprived of his life or personal liberty except according to procedure established by law.”[[7]](#footnote-7)

In this case, the petitioners said that the personal liberty to file a case against UCC was encroached by the government.

1. **Article 39 of the Constitution of India -**

Article 39 states that “(a) The first part gives adequate livelihood to every citizen, including all men and women, and these rights are equal. (b) Secondly, resource distribution of community (including ownership and control) for the common good as for the welfare of the society.”[[8]](#footnote-8)

Thus, it provides for legal aid to the citizens who are not capable of hiring a legal practitioner. The government argues that when this article is clubbed with the preamble of the Constitution of India then it becomes the responsibility of the government to represent all the parties of the Bhopal Gas Tragedy victims.

**COMPARISON OF LAW OF INDIAN WITH DIFFERENT NATIONS (THE GULF OF MEXICO OIL DISASTER)**

On April 20, 2010, a tragic disaster hit the Gulf Coast. British Petroleum’s (BP) Deepwater Horizon rig exploded spewing crude oil into the ocean from the three major cracks in the rig. It rivaled the 1989 Exxon Valdez spill within days of exploding (Gerstein, 2010). A few years earlier, BP was fined $20 million for neglecting to prevent leaks in a pipeline in Alaska’s Pruhoe Bay. From June 5, 2010, to June 14, 2010, BP had collected 127,000 barrels of oil in their containment cap alone; while it is believed that a total 60,000 barrels of oil a day are gushing into the Gulf.

The oil slick can be seen from space and covers an area of 130 miles by 70 miles even though BP has dumped 50,000 barrels of heavy mud on the leaks to help stop the flow of oil (2010). After the insistence from government officials, BP began drilling a relief well that will intersect with the original well and will pull up oil so that BP can dump more mud and concrete into the old well and retire it for good. BP is attempting to help the states affected by the oil spill. Mississippi, Alabama, and Louisiana received $15 million each from BP, while Florida received $25 million (New Orleans is asking that BP shell out another $75 million to them alone to help maintain their image); all the states plan on using the majority of the money to fund advertising campaigns to draw in tourists.

BP has also set aside $20 billion for “tourism and leisure businesses” who file  compensation claims.[[9]](#footnote-9)

**PRECEDENTS OF HIGH COURT AND SUPREME COURT USED IN THE CASE**

The case refers to several cases to conclude and arrive at the judgement. Cases such as **Madras v. Nathella Sampathu Chetty[[10]](#footnote-10), P.J. Irani v. State of Madras[[11]](#footnote-11), D.K. Trivedi v. State of Gujarat[[12]](#footnote-12)** and **Ballast Corporation v. O.D. Commission[[13]](#footnote-13)** were cited to proof that Article 14 of the Constitution of India is not violated.

Cases such as **Royappa v. State of Tamil Nadu[[14]](#footnote-14), Menaka Gandhi v. Union of India[[15]](#footnote-15), R.D. Shetty v. International Airport Authority of India[[16]](#footnote-16), Ram Saroop v. S.P. Sahi[[17]](#footnote-17)** and several other cases have been mentioned to point out that the state has the right of “parens patriae” and the usage of that in this case is not arbitrary.

Cases such as **Basheshar v. Income Tax Commissioner[[18]](#footnote-18), A.R. Antulay v. R.S. Nayak & Anr.[[19]](#footnote-19), Ram Krishna Dalmia v. Tendulkar[[20]](#footnote-20)** and many more cases were cited to pass the judgement that the doctrine of 'Bona fide Representation' as also 'defacto validity' are not applicable to the present case. The government is allowed only to represent the victims not to adjudicate the case.

1. **Viswanathan v. Rukn-ul-Mulk Syed Abdul Wajid[[21]](#footnote-21), M. Narayanan Nambiar v. State of Kerala[[22]](#footnote-22), Chintaharan Ghose & Ors. v. Gujaraddi Sheik & Ors.[[23]](#footnote-23)** and **Ram 'Sarup v. Nanak Ram[[24]](#footnote-24)** were referred to, to come to the conclusion that Section 4 of the mentioned Act is not arbitrary.

**Menaka Gandhi v. Union of India[[25]](#footnote-25), Olga Tellis v. Bombay Municipal Corporation[[26]](#footnote-26), Union of India v. Tulsi Ram Patel[[27]](#footnote-27)** and **Swadeshi Cotton Mills v. Union of India[[28]](#footnote-28)** was relied on to declare that in this case no infringement of any principle of natural justice is done.

To prove that there has been no infringement of any rights of the citizen cases such as **Roshanlal Kuthiala & Ors. v. R.B. Mohan Singh, Oberoi[[29]](#footnote-29)** and **Nandram Heeralal v. Union of India & Anr.[[30]](#footnote-30)** were cited.

**J.Mohapatra vs. State of Orrisa[[31]](#footnote-31)** is one of the cases which was cited by the court. In this case it was held that “An adjudicator, who is subject to disqualification on the ground of bias or interest in the matter which he has to decide, may be required to adjudicate if there is no other person who is competent or authorized to adjudicate or if a quorum cannot be formed without him or if no other competent tribunal can be constituted. In such cases, the principal of natural justice would have to give way to necessity for otherwise there would be no means of deciding the matter and the machinery of justice or administration would break down.”

It formed the basis for deciding whether the government has a locus standi or not.

From the **Menaka Gandhi v. Union of India[[32]](#footnote-32)**, the legal question that “ can a post decisional hearing mitigate the injustice caused by the lack of pre decisional hearing. All the Judges agreed that it was a clear violation of the Doctrine of audi alteram partem and hence the Court decided to give a post decisional hearing to her.” was solved for this case.

**JUDGMENT IN A GLANCE**

1. It was upheld that the Act was constitutional and the rights of the people was not infringed under Article 14, 19 and 21 of the Constitution of India.
2. Section 3, 4 and 11 of the Act was held constitutional.
3. The Central Government was held legislatively competent in enacting such provisions taking DPSP under Article 39 as a feasible defense for such competency.

**OVERVIEW OF THE JUDGEMENT**

The judges concluded that the “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 and in such a situation of predicament, the victims could be legitimately be considered to be disabled” and therefore the power was vested in the Central Government. Thus the Act mentioned comes under the purview of parens patriae. The judges stated that “it is necessary for the State to ensure the Fundamental Rights in conjunction with the Directive Principles of State Policy to effectively discharge its obligations 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.”

Moreover, it was mentioned that in this case hearing of the huge number of individual petitions is not possible, thus this is in the best interest of the public.

In this judgement, the doctrine of necessity is considered of utmost importance.

And to quote the court itself, “To do a great right after all, it is permissible sometimes to do a little wrong”

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