

BHOPAL GAS PEEDITH SANGHARSH SAHAYOG SAMITI (BGPSSS)

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STATEMENT ON THE 35th ANNIVERSARY
OF THE BHOPAL GAS LEAK DISASTER
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BGPSSS expresses its profound grief at the sudden demise of 62-year old Abdul Jabbar, Convener, Bhopal Gas Peedith Mahila Udyog Sanghathan (BGPMUS) on 14 Nov, 2019 under tragic circumstances. BGPSSS also expresses its solidarity with BGPMUS and reiterates its commitment to carry forward the struggle for justice for the gas-victims, which BGPMUS under the leadership of Jabbar, had been waging for the last 33 years.

The escape of about 40 tonnes of methyl isocyanate (MIC) – a highly toxic chemical – from a storage tank on the premises of the pesticide plant of Union Carbide India Limited (UCIL) in Bhopal – the capital of the State of Madhya Pradesh – on the night of 02/03 Dec, 1984 resulted in a horrendous disaster in the city, which was then inhabited by about 900,000 persons. Due to criminal negligence and utter callousness on the part of the plant management in taking adequate safety precautions, water and other impurities – that cause MIC to react violently – entered one of the MIC storage tanks resulting in exothermic reactions and forcing MIC and its reaction products to escape in the form of froth and lethal gases. The escaping poisonous gases, which were heavier than air, spread across 40 sq. kms of area of Bhopal, covering about 36 of the 56 municipal wards, leaving in its wake more than 20,000 dead (over several years) and inflicting injuries in varying degree on over 550,000 others. The pernicious impact on flora and fauna in the affected area was equally grave. UCIL was then under the control of Union Carbide Corporation (UCC) – a U.S. multinational company, which currently is owned the Dow Chemical Company (“Dow”), a subsidiary of Dow Inc.

Unfortunately, even three and half decades after the disaster, neither the State nor the Central Government has attempted either to undertake a comprehensive assessment of the ramifications of the disaster or to take necessary remedial measures. The unjust Settlement of 14/15 Feb, 1989 was a complete sham since it was based on the assumption that the total number of gas-affected were merely 105,000, including 3000 dead. However, by 2004, after adjudication of over 1,000,000 claims, the union of India was forced admit that the total number of gas-victims were 573,588. Thus, the compensation that was received for 105,000 victims was actually disbursed among 573,588 gas-victims, which in effect meant that each gas-victim was finally awarded less than one-fifth of the sum allotted even as per the terms of the unjust settlement. As a result, the gas-victims have had to wage concerted struggles not only for adequate compensation but also for proper medical relief & rehabilitation, environmental remediation and justice. There was little progress during 2019 on the most pressing issues

concerning the gas-victims, which is a matter of serious concern. The current status of these issues may be briefly recounted as follows:

1. HEALTH: The gross indifference on the part of the State and Central Governments to the health needs of the gas-victims continues to be as grim as ever. Apart from the fact that a fairly large health-infrastructure has been built in terms of buildings and number of hospital beds (about 1000 beds exclusively for gas-victims) because of pressure exerted over the years by organizations supporting the cause of the Bhopal gas victims, the quality of health care in terms of investigation, diagnosis, treatment, research and record-keeping continue to be abysmal as ever. The persistent apathy of the Indian Council of Medical Research (ICMR) and the Government of Madhya Pradesh in monitoring the health status of the Bhopal gas victims is shocking to say the least. They have failed to maintain proper medical records of hospitals and clinics through computerization and networking and have failed to supply health-booklet to each gas-victim with his/her complete medical record. That proper protocol for treatment of most gas-related ailments has not been evolved even 35 years after the disaster speaks volumes about the apathetic attitude of the concerned authorities in this regard. Mere symptomatic treatment, over-medication due to lack of proper monitoring, and dispensing of sub-standard and spurious drugs has resulted in increasing number of renal failures among gas-victims. Bhopal-disaster-related medical research, which the ICMR had thoughtlessly discontinued in 1994 and which the ICMR was compelled to revive in 2010, is yet to be pursued with necessary vigour. The fact is that neither the ICMR nor the State Government has any idea of the number of gas-victims suffering under each category of disease arising from respiratory, ophthalmic, gastro-intestinal, neurological, psychiatric, and other problems. What is equally shocking is that even 35 years after the disaster, most of the gas-victims seeking treatment continue to be classed as suffering from temporary injury in order to deny them compensation for permanent injury. Increasing cases of cancer and genetic disorders are matters of grave concern.

1.1 It was because of this utter insensitivity on the part of the Union of India and the State of Madhya Pradesh that the Bhopal Gas Peedith Mahila Udyog Sanghathan (BGPMUS), the Bhopal Group for Information & Action (BGIA) and the Bhopal Gas Peedith Sangharsh Sahayog Samiti (BGPSSS) had filed a Writ Petition (No.50 of 1998) – as Petitioners Nos.1, 2 and 3 – before the Supreme Court on 14.01.1998. The Petitioners pleaded for restarting of disaster-related medical research, monitoring & recording the health status of each gas-victim, improvement in health care facilities, appropriate protocol for treatment of each disaster-related ailment, etc. After 14 years of litigation, and after several interim directions, the Supreme Court finally issued a comprehensive Order on 09 Aug, 2012 acceding to the above prayers of the Petitioners and issued necessary directions to the Union of India, the State of MP and to concerned institutions in this regard. The Petitioners were further directed to pursue the matter before the High Court of Madhya Pradesh (as Writ Petition No.15658 of 2012), a task that BGPMUS & BGPSSS are actively engaged in at present. However, the fact remains that even 85 months after the Supreme Court had passed the said

Order dated 09 Aug, 2012, neither the UOI nor the State Government has taken the necessary steps to fully comply with all the directions of the Court. What is most appalling and disheartening is that even 35 years after the disaster, proper health records of the gas-victims are not being maintained and, although claims are being made to the contrary, the fact is that most of the gas-victims do not have a hard copy of his/her complete medical record in his/her possession to date. The ICMR (through the Advisory Committee) has also disclosed that over 170,000 gas-victims were regularly seeking treatment at the Bhopal Memorial Hospital & Research Centre (BMHRC) since it was founded in the year 2000.

1.2 Due to the failure of the Respondents to comply with the said Order of the Supreme Court dated 09 Aug, 2012, BGP MUS & BGPSSS were compelled to file a Contempt Petition (No.832 of 2015) on 15 May, 2015 against the concerned officials of UOI, State of MP and allied institutions such as ICMR, National Institute for Research in Environmental Health (NIREH) and Bhopal Memorial Hospital & Research Centre (BMHRC). After the Government of India took control of the Bhopal Memorial Hospital Trust (BMHT) in 2010, BMHRC was initially placed under the administrative control of the Department of Atomic Energy & Department of Bio-Technology. Thereafter the management of the hospital was handed over to ICMR in 2012 and then to the Department of Health Research (DHR), which is under the Ministry of Health & Family Welfare, in 2015. However, certain vested interests were determined to thwart the adoption of Central Health Service (CHS) Recruitment Rules (RR) by BMHRC for recruiting doctors and other auxiliary staff. Therefore, BGP MUS & BGPSSS brought the matter to the attention of the MP High Court at Jabalpur. Concurrently, the Monitoring Committee headed by Justice V.K Agarwal (Retd.) also brought to the attention of the High Court the undue delay on the part of concerned agencies in implementation of the Monitoring Committee's recommendations regarding RR and other related matters. As a result, the High Court issued an Order dated 15 Feb, 2017 directing DHR to implement the recommendations of the Monitoring Committee within three months. Due to the failure of DHR to comply with the directions of the High Court dated 15. Feb, 2017 within the stipulated time, BGP MUS & BGPSSS were again forced to seek further directions from the High Court, including a plea to make BMHRC an integral part of All India Institute of Medical Sciences (AIIMS), Bhopal, which is one of the elite medical institutions in the country, so that the gas-victims are assured the best medical care. Subsequently, in an affidavit filed before the High Court on 18 Nov, 2019, DHR has informed the Court that a formal decision has been taken by the Ministry of Health & Family Welfare, Government of India, to affiliate BMHRC with Sree Chitra Tirunal Institute for Medical Sciences and Technology, Trivandrum, and that the decision was awaiting sanction from the Union Cabinet. So far, the Government of India has had no qualms in flouting the Court's orders with impunity. The crucial issue is to convert BMHRC into a teaching hospital in order to attract the requisite super-specialists to treat the gas-victims. More than seven years have passed and the Central Government has not yet complied with the Supreme Court Order dated 09 Aug, 2012.

1.3 A shocking and disgraceful act that came to light in 2008 was the illegal manner in which secret drug trials were conducted on gas-victims at BMHRC during 2004-2008. After the matter became public, the authorities at BMHRC made every effort to shield the culprits. BGPMUS & BGPSSS have sought detailed inquiry into this unsavory incident of using gas-victims as guinea pigs and have demanded stringent action against the guilty. For pursuing the matter, BGPMUS & BGPSSS have become interveners in Writ Petition (C) No.33 of 2012, which was filed by Swasthya Adhikar Manch, Indore, to oppose unregulated drug trials in the country, especially by multinational drug companies, and the matter is currently pending before the Supreme Court.

2. COMPENSATION: Twenty-one years after the unjust Bhopal Settlement of 14/15 Feb, 1989, the Union of India had decided to file a curative petition [Curative Petition (Civil) Nos.345-347 of 2010] before the Supreme Court on 03 Dec, 2010 against the terms of the Settlement on the plea that the Settlement was based on underestimated figures of the dead and injured. The UOI has sought enhancement of compensation by an additional Rs.7728 crores (over \$5 billion) while the total compensation amount under the 1989 Settlement was merely about Rs.705 crores (then \$470 million). The petition has been admitted but has not yet been taken up for hearing. BGPMUS and BGPSSS do support the UOI's Curative Petition in principle regarding the total casualty figure (i.e., 5,73,588 victims, including dead and injured) and regarding the modalities for enhancing compensation (i.e., that it should be based on the Dollar-Rupee exchange rate that prevailed at the time of the Settlement). However, BGPMUS and BGPSSS have serious differences with the UOI's stand regarding the number of dead (just 5295 according to the Curative Petition) and the seriously injured (just 4944 according to the Curative Petition) and regarding the UOI's paltry claims for relief & rehabilitation and for environmental remediation. The stand of BGPMUS & BGPSSS regarding the number of dead (20,000+) and seriously injured (170,000+) has already been explained in the Special Leave Petition (SLP) that is currently pending before the Supreme Court as SLP (C) No.12893 of 2010, which will be heard only after the disposal of UOI's Curative Petition. On 24 Oct, 2013, BGPMUS & BGPSSS filed an Interlocutory Application in UOI's Curative Petition (C) Nos.345-347 of 2010 & through an Additional Affidavit dated 07 Sep, 2015 to point out the inadequacies in the UOI's petition and praying for granting appropriate relief. It is astonishing that the Union of India had made no attempt to place the relevant ICMR reports before the Claim Courts to enable the Claim Courts to assess fairly the types and gravity of injuries suffered by the Bhopal gas victims. In the absence of proper health booklets, which the ICMR and the State Government had failed to provide to each gas-victim, circumstantial evidence would have been very valuable in determining the likely degree of injury suffered by a gas-victim. BGPMUS & BGPSSS hope that the said Curative Petition, which has been pending before the Supreme

Court for the last nine years, would be disposed of without further delay but after health booklet with his/ her complete medical record is issued to each gas-victim. Compensation is supposed to be awarded in terms of the category and degree of injury but as of now gas-victims are left without the means to prove the same. Computerization of health records and networking of the records of the various hospitals and clinics treating gas-victims as well as providing each gas-victim with his/her complete medical records is a prime necessity in this regard.

3. CRIMINAL CASE: The criminal cases against the accused are supposedly proceeding at two levels: one against the three absconding accused and the other against the nine accused who appeared before the Chief Judicial Magistrate (CJM), Bhopal, to face trial. Through Judgment and Order dated 07 Jun, 2010, the CJM had prosecuted eight accused (one of the accused is dead) under Section 304-A, 336, 337 and 338 of IPC. The CBI, the State of MP and BGP MUS & BGPSSS had filed Criminal Revision Petitions against the said Judgment before the Sessions Court, Bhopal. The CBI had sought enhancement of charges against Keshub Mahindra and 7 other accused from Section 304-A to Section 304 Part-II of IPC based on evidence already before the CJM. BGP MUS & BGPSSS have expressed their utmost displeasure at the extremely slow pace at which the criminal case has been proceeding and their demand for setting up a **special court** to speed up the proceedings has not yet been acceded to by the State Government. Currently, the Appeals filed by the eight Accused against the sentencing is being heard by the Sessions Court, Bhopal. In a last ditch attempt, the accused persons racked up the "sabotage" theory as the cause of the Bhopal disaster to absolve them of their responsibility in causing the same. However, their antics have not provided them any succor so far.

3.1 Ten to fourteen days imprisonment at the time of arrest in 1984 is the only privation that seven of the accused (Nos.2 to 9) have suffered so far (accused No.4 has not faced even that inconvenience to date)! Under the circumstances, the culprits are least perturbed about the likelihood of being imprisoned any further in their lifetime and the next of kin of the dead and the surviving victims are left with not even the faintest hope that justice would be rendered to them in their lifetime for the loss & suffering they have had to endure during the last 35 years. This apathy speaks volumes about the pathetic state of the criminal justice system in the country that renders justice only on selective basis. When the governments at the Centre and the States are not serious in pursuing a criminal case, they can scuttle the due process with impunity and, thereby, make a complete mockery of the criminal justice system.

3.2 The criminal case against the three absconding accused, namely accused Nos.1, 10 and 11, which has been pending before the Court of the CJM, Bhopal, as Miscellaneous Judicial Case (MJC) No.91 of 1992 has also been proceeding at an equally tardy pace. After acceding to the plea of BGPSSS, BGIA and BGP MUS dated 07 Sep, 2001 the CJM had issued notice to the Dow Chemical Company (Dow), USA, on 06 Jan, 2005 to appear in the criminal case on behalf of the absconding accused No.10,

Union Carbide Corporation (UCC), USA, which had become a wholly owned subsidiary of Dow in 2001. However, on 17 Mar, 2005 the MP High Court at Jabalpur stayed the said order of the CJM at the urging of a purportedly non-party in the matter without issuing notice to the petitioners. The stay was vacated only 7 years later on 19 Oct, 2012, when the High Court finally upheld the validity of the CJM's Order dated 06 Jan, 2005. After BGPSSS & BGPMUS brought the ruling of the High Court to the attention of the CJM, Bhopal, through an Application dated 30 Nov, 2012 in MJC No.91/1992, the CJM re-issued notice to Dow on 24 Jul, 2013; 01 Mar, 2014; 12 Nov, 2014 and on 22 Jan, 2016. On 11 Jul, 2016, the CBI informed the concerned Judicial Magistrate, Bhopal that the Ministry of Home Affairs (MHA) had forwarded the notice to the U.S. Department of Justice on 01 Feb, 2016 and a reminder was further sent by the MHA on 15 Jun, 2016. However, Dow has repeatedly failed to respond to the notice. The concerned magistrate has issued notice to the Union of India for the seventh time on 13 Nov, 2019 to produce accused No.10 by 20 Jan, 2020. Meanwhile, the proceedings against accused no.1, Warren Anderson, have become infructuous after his demise on 29 Sep, 2014. Union Carbide Eastern (Hong Kong), accused No.11, was apparently wound up several years ago.

3.3 On 19 Nov, 2016, BGPSSS & BGPMUS had filed an application urging the CJM, Bhopal to proceed ex parte for consideration of Application dated 07 Sep, 2001 in terms of the orders of the CJM dated 15 Jun, 2004 and 06 Jan, 2005 against the Dow Chemical Company for willful violation of summons of the CJM and to record evidence against the accused. The lackadaisical manner in which the trial against the accused in the criminal case has proceeded for the last thirty-five years makes a mockery of the criminal justice system in the country. Neither the Central Government nor the State Government appear to be serious in pursuing the criminal cases against the accused, including the new entity Dow Inc., which is indicative of their total lack of commitment to the cause of the gas-victims.

3.4 Interestingly, in response to an application filed by Abdul Jabbar Khan and Shanawaz Khan on 15 Jun, 2010, the CJM Bhopal on 19 Nov, 2016 ordered a case to be registered against Moti Singh, a retired IAS officer and against Swaraj Puri, a retired IPS officer, under Sections 212, 217 and 221 of IPC for sheltering Accused No.1, Warren Anderson, and allowing him to escape from Bhopal on 07 Dec, 1984. Although summonses were issued to Mr.Singh and Mr.Puri to appear before the Court on 08 Dec, 2016, they filed an appeal for stay before the Bhopal Sessions Court, which dismissed the plea. Thereafter, Moti Singh and Swaraj Puri filed a petition MCRC no. 15788/2017 under Section 482 of CRPC before the MP High Court, which upheld their plea vide judgment dated 01 Aug, 2018. Jabbar and Shanawaz filed an appeal against the High Court ruling before the Supreme Court, which summarily dismissed the case in 2019.

4. ENVIRONMENTAL REMEDIATION: Toxic waste that was generated during UCIL's operation from 1969 to 1984 was dumped in and around the plant leading to severe soil and water contamination. A comprehensive study to estimate the extent and gravity of the damage has not been carried

out by the Centre or the State Government to date. Instead, the magnitude of the problem has been grossly underestimated by making it appear that the total toxic waste that needs to be safely disposed of is only about 345 tonnes that is stored at the plant site. The matter is pending before the Supreme Court as a part of the Curative Petition (Civil) No.345-347 of 2010. The current proposal to incinerate/bury the toxic waste near Indore is wholly misconceived and it would only result in shifting the problem from Bhopal to Indore. On the contrary, in a preliminary study titled "*Assessment and Remediation of Hazardous Waste Contaminated Areas in and around M/s Union Carbide India Ltd., Bhopal*" that was jointly carried out by the National Environmental Engineering Research Institute (NEERI), Nagpur, and the National Geophysical Research Institute (NGRI), Hyderabad, during 2009-2010, it was estimated that "*the total quantum of contaminated soil requiring remediation amounts to 11,00,000 MT [metric tonnes]*"(p.68). Since the Government of India has submitted that the private incinerator at Pitampur (Indore) has been suitably upgraded to prevent any toxic emission, the Supreme Court had permitted test-incineration of toxic waste currently stored at the Bhopal plant. The matter has not proceeded any further since then.

4.1 Based on the "Polluter Pays Principle", it is the duty and responsibility of the Dow Inc., USA, which currently owns UCC, to meet the cost of remediating comprehensively the affected environment in and around the UCIL plant with the latest available remediation technology. Similarly, the cost of providing safe-drinking water to the affected population residing in and around the former UCIL plant too has to be borne by Dow Inc. However, the responsibility for providing safe drinking water to the affected population is entirely that of the State Government, which has not fulfilled this responsibility till now. While ground water in several localities of Bhopal is highly polluted, neither the State Government nor the Bhopal Municipal Corporation has undertaken any scientific study to monitor the situation and take remedial action. Moreover, local residents who fall sick because of consumption of polluted water are not even provided free medical treatment.

4.2 Remediation of the estimated 1,100,000 MT of contaminated soil is a far more difficult task. At the initiative of the Centre for Science and Environment (CSE), Delhi, a preliminary attempt was made in April 2013 to bring together on a common platform the various stakeholders (including BGMUS & BGPSSS) and experts to prepare an Action Plan to remediate the degraded environment. While a draft Action Plan has been worked out, it requires further refinement as well as inputs from other experts and stakeholders, including the Government of Madhya Pradesh, which refused to attend the workshop organized by CEC. The stoic indifference of the State Government to this daunting task is alarming. In situ decontamination of the toxic waste (including the contaminated soil & groundwater) using closed-loop remediation technologies is a possibility. With inputs and technical help from the UN Environment Programme (UNEP), onsite cleaning up of the contaminated site in Bhopal is quite feasible. However, the Government of India has to take the initiative in inviting the UNEP to undertake this task. It goes without saying that the entire costs for the

cleanup of the contaminated site has to be ultimately borne by the Dow Inc., the present owners of accused No.10, UCC.

5. RELIEF & REHABILITATION: Over the last 35 years, the State Government has failed to address adequately and with sensitivity a host of socio-economic problems that confronts the chronically sick, the elderly, the differently-abled, the widowed, and other vulnerable sections among the gas-victims. Out of the 150-odd work-sheds that were constructed to run training and employment programmes, only 4-5 are functional now, all the others have been shut down. Economic assistance received for the purpose from central government has not been properly utilized till now. Some of the work-sheds that are functional are being run by local organizations. Special industrial area set up in the Govindpura industrial area that has 152 work-sheds has been handed over to Madhya Pradesh industry department. However, the condition that employment in the industries that are set up will only be given to gas affected victims and their dependents has been removed.

5.1 The pittance, which was disbursed as compensation in most instances to these sections was never enough to take care of their daily needs. Finding gainful employment in accordance with the reduced capacity to work and to lead a dignified life has been a serious challenge. Similarly, only partial steps have been taken by the state and central government about providing life support pension to gas-widows and persons disabled because of the gas disaster. The State Government has to give far more attention and provide far larger support to the most vulnerable sections of gas-victims than in the past.

We Demand:

1. Speedy implementation of the Supreme Court Order dated 09 Aug, 2012 in Writ Petition (Civil) No.50 of 1998, which had directed the Union of India to provide the best medical care to the gas-victims;
2. Speedy Disposal of Curative Petition (Civil) Nos.345-347 of 2010, which is currently pending before the Supreme Court of India, for enhancement of compensation and for remediation of the contaminated site in and around the UCIL plant at Bhopal;
3. Setting up of a Special Court for speedy trial and prosecution of all the accused, who are responsible for causing the Bhopal disaster.
4. Proper rehabilitation of all needy gas-victims; and
5. Provision of safe drinking water, free medical care and compensation to all victims of contaminated water and toxic waste.

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