

## From New Delhi by Susan Maitra

### Setting the value of human life

*Is the new government's move on the 1984 Bhopal gas disaster more than populist posturing?*

**A**t a Jan. 12 press conference here, Union Law Minister Dinesh Goswami announced that the National Front government has decided to support the review petitions filed by volunteer organizations and others against the settlement reached by the Indian government and Union Carbide over the 1984 Bhopal gas disaster. "Human life in India is not so cheap that the worst industrial disaster of the world . . . could be compensated by an amount of \$470 million," Goswami stated.

Under the terms of the Bhopal Act of 1985, the government became the sole legal representative of the victims, and negotiated a \$470 million settlement with Union Carbide, owners of the chemical plant where methyl isocyanide (MIC) fumes escaped to blanket large areas of Bhopal city on a foggy winter night in 1984, killing thousands instantly and maiming countless more.

The compensation agreement, which also extinguished any further rights to the victims as far as civil or criminal claims on Union Carbide are concerned, and which explicitly avoided fixing liability, was reached in February 1989, and was subsequently converted into an order by the Supreme Court of India.

It is the finality of this settlement which has been thrown into question by the new government's move. But the actual impact remains to be seen. In December a five-judge panel of the Supreme Court had upheld the constitutional validity of the Bhopal Gas Act, albeit with an important proviso—namely, that the victims would

be given a fair hearing on the settlement. The December judgment's further opinion that the settlement itself seemed fair and that a hearing of the review petitions is unnecessary, is binding on no one.

Unlike the constitutional challenge, the review petitions challenge the settlement itself. According to Prof. Upendra Baxi, a law professor at Delhi University and a leading human rights protagonist, the government's decision to support the review petitions has several important components.

First, it reaffirms that the victims have certain "inalienable rights" to remedies, and that the government, in adopting a parental role, can only act on behalf of and at the behest of the victims. Second, the announcement explicitly recognizes the right to interim relief, and specifies that the amount of the one-time interim payment will be established in consultation with the victims.

Third, the minimum number of people exposed to the deadly MIC is taken to be non-negotiable. At an average of four members per family, the minimum number of people affected exceeds 400,000, and actual personal injury claims already exceed 600,000. Some investigators insist the death toll was as high as 10,000. By contrast, the February settlement is based on the assumption of 3,000 dead and 40,000 seriously injured, and at one point the Madhya Pradesh state government argued in court that the number of seriously injured was only 23!

Fourth, the government has stated

its belief, echoed in the review petitions, that the immunity from criminal liability given to Union Carbide is not sustainable in principle—a view also stated in the Supreme Court's December decision. Incredibly, the government-Union Carbide memorandum of understanding states not only that all civil and criminal claims stand extinguished, and that India shall defend all Union Carbide companies in such proceedings globally, but also that if anybody has been convicted, he shall now be deemed acquitted!

In Washington, Union Carbide spokesman Bob Berzok questioned the new government's decision; and indeed, it remains to be seen just what the move implies. As a critic here has already observed, the government did not itself file a petition seeking to set aside the settlement and the court order for its implementation, but has only voiced its "support" for the review petitions already filed. In so doing, it may only prolong the litigation and delay actual compensation payments to the victims.

It is this consideration which had brought near unanimous support for the February 1989 settlement, even from the local "human rights" watchdogs. This concern could be offset if the government's convictions about the interim relief are carried through efficiently, but that would seem to be a tall order under the circumstances.

That the Rajiv Gandhi government acted swiftly to try to get relief funds from Union Carbide is clear from the record. But the price of compensation from Union Carbide seems to have been to close the book on the actual plant. Jailing the Union Carbide India Ltd. officials and a few of the relevant state regulatory authorities would do much more than a populist campaign against the multinational bogeymen to raise the value of a human life in India.