Before the Supreme Court of Pakistan, Islamabad

Dr. Amjad H. Bokhari vs. Federation of Pakistan

(Constitutional Petition 45/2003)

Written Submissions by Dr. Parvez Hassan,
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(Prepared for submission on
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A. Karachi Oil Spill: The Magnitude of the Disaster

1. grounding and structural collapse of the MV Tasman Spirit in Karachi port on 13 August 2003 resulted in the greatest marine environmental disaster in the history of Pakistan

2. out of a total cargo of 67,535 tons, about 26,000 tonnes of light crude oil flooded the coastline

3. the immediate "environmental bill" of the catastrophe includes:

(1) widespread marine pollution resulting in the destruction of phytoplankton-the so called "grass of the sea"- which is responsible for one third of the world's oxygen

(2) air pollution leading to respiratory problems for people exposed to petroleum carbon exposure

(3) whole-scale destruction of fish threatening the country's fisheries industry which exports Rs. 8 billion seafood, has an annual catch of 650,000 tonnes of fish and involves the livelihood of about 300,000 people

(4) extensive damage to the rich mangrove ecosystem including destruction of millions of mangrove seedlings

(5) soiling of Clifton beach, the main recreational site for millions of city dwellers, from all social strata of society, with further threat to area of port Qasim and the forty (40) kilometer Karachi coast line

4. Long-term environmental damage to all of the above unknown but oil toxicity is known to have the following detrimental effects:

(1) carcinogenic processes in sea animals and reproductive and genetic damage

(2) damage to the respiratory organs and clogging of the filtering mechanism of fish,

(3) imbalance in the cycles of plant life-even when fish are not killed, the degradation process consumes large quantities of dissolved oxygen, which is vital to life at sea

B. Inadequacy of National Response

1. state of preparedness and response of national authorities fundamentally and fatally inadequate

2. operationally, no national contingency plan, lack of adequate stockpiles of anti-pollution agents and absence of inter-agency co-ordination, all compounded by a failure to implement the 1990 International Convention on Oil Pollution Preparedness, Response and Co-operation to which Pakistan is a party

3. weak domestic legal framework on marine pollution marked by extremely low penalties, fragmentation of laws and responsibility of state organs and inadequate coverage of accidental and catastrophic spills (see Section G on Nationals Laws, Institutions, and Policies)

4. systemic legal vulnerability for the recovery of compensation due to failure to ratify key international conventions on civil liability (see section H below on the International Regime and Framework) that generally operate under a principle of strict liability on the shipowner

C. Scope of Public Interest Litigation (The Indian Experience)

(1) violation of fundamental or other legal rights

(2) of a class of persons who by reason of poverty/disability/socially/economically disadvantaged position – voiceless, marginalized, vulnerable sections of the community

(3) by any public spirited individual or action group

(4) not only by filing a regular writ but also by writing a letter to Court; epistolary jurisdiction

(5) Court to look at substance and not form

Reliance:

(1) M.C. Mehta vs. Union of India, AIR 1987 SC 1086

(2) Bandua Mukti Morcha vs. Union of India, AIR 1984 SC 802

(3) S.P. Gupta vs. Union of India, AIR 1982 SC 149

(4) Peoples Union for Democratic Rights vs. Union of India, AIR 1982 SC 1473

D. The Genesis of Public Interest Litigation in Pakistan: Toward Shehla Zia

1. recognized early by the Supreme Court of Pakistan that procedure is the instrument and not the end of justice:

> [t]he proper place for procedure in any system of the administration of justice is to help and not thwart the grant to the people of their rights. All technicalities have to be avoided unless it is essential to comply with on grounds of public policy. Any system which by giving effect to the form and not to the substance defeats substantive rights [and] is defective to that extent…. **Imtiaz Ahmad v. Ghulam Ali**, **PLD 1963 SC 382.**

2. rules of locus standi can be dispensed with in case of violation of fundamental rights of a class of persons who are unable to seek redress through the traditional means (**Benazir Bhutto v Federation of Pakistan, PLD 1988 SC 416**)

3. development of epistolary jurisdiction of court on behalf of destitute bonded labourers, **Darshin Masih v the State, PLD 1990 Supreme Court 513**

4. original jurisdiction in public interest litigation cases rooted in three sources: letters written to the Chief Justices of the superior courts of Pakistan, newspaper reports (which become the basis of suo motu actions by the courts), and cases filed by petitioners that raised questions of human rights

5. as noted by Dr. Nasim Hassan Shah, the superior courts of Pakistan have fashioned public interest litigation remedies in a broad sweep of cases:

> (1) to correct malpractices in our educational system; (2) to afford protection to women of any origin (Pakistan or Foreign) subjected to any sex related offences and to stop the menace of obnoxious calls to them; (3) to protect the property rights of female heirs/owners by issuance of directions to the Attorney-General to take steps to amend the relevant existing law or to cause fresh legislation to be initiated for securing their rights; (4) to prevent exploitation of the children by restraining the authorities from taking them to public places for reception of dignitaries. It has also ruled that children shall not be forced to undertake any such work which under the law has only to be done by the labour force; (5) to suspend all restrictions imposed against Nurses working in Military Hospitals and Air Hostesses of Pakistan International Airlines to getting married while in service; (5) to stay public hangings as being contrary to the Constitutional provisions guaranteeing dignity of man; (6) to issue guidelines for controlling the traffic muddle in Karachi; (6) to check the practice of extortion of money by Railway staff from the passengers traveling in the Samjhota Express (train running between Pakistan and India) with a Commission of Advocates and Human Rights activists appointed to monitor the situation; (7) to direct the Federal and Provincial Governments to stop making appointment against the retirement rules, a practice which was violative of fundamental right of equal opportunity for all citizens to enter upon a profession; and (8) to issue guideline to be observed by the authorities to check environmental pollution caused by fumes of motor vehicles, deforestation, open sewerages, dumping of nuclear waste etc.
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> (See Dr. Nasim Hassan Shah "Public Interest Litigation as a Means of Social Justice", PLD 1993 Journal Section 31)

6. growth of public interest litigation leads to development of novel techniques of procedure, including appointment of expert commissions, for handling technically complex matters with extensive policy ramifications; in the words of Dr. Faquir Hussain of the Law Commission of Pakistan:

> [i]n such like cases the judiciary, in the interest of justice, deviated from its set course of procedure and invented new and creative methods of finding facts and discovering the truth. The Courts did so by launching an investigation into the matter. A variety of techniques, ranging from calling of official record to deputing experts to probe and constituting socio-legal Commissions to investigate the matter were employed. The court then examined the reports submitted by the experts and Commissions and decided the case accordingly. In such cases the Court follows a certain pattern. It regards the report as prima facie evidence and supplies its copies to the parties for rebuttal on affidavit. The court then considers the report together with affidavit, if any, and proceeds to adjudicate the issues involved in the case. As is clear this procedure is new and imaginative and is altogether different from the traditional rules of procedure under the adversarial system of adjudication.
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> (Dr. Faqir Hussain, "Public Interest Litigation in Pakistan", PLD 1993 Journal Section 72)

7. widespread poverty, illiteracy and institutional fragility make public interest litigation a necessity in this region; as noted by the High Court of Lahore in State v M.D. WASA 2000 CLC 471:

> The rationale behind public interest litigation in developing countries like Pakistan and India is the social and educational backwardness of its people, the dwarfed development of law of tort, lack of developed institutions to attend to the matters of public concern, the general inefficiency and corruption at various levels. In such a socio-economic and political milieu, the non-intervention by Courts in complaints of matters of public concern will amount to abdication of judicial authority.

8. a deep link exists between public interest litigation and environmental rights in South Asia-environmental movement in the west rooted in recreation and aesthetics whereas in this part of the world it is linked with basic rights of health, sanitation and livelihood-these ground realities boldly recognized by the Supreme Court in **Shehla Zia**

9. On the development of public interest litigation in Pakistan, see generally (a) Dr. Parvez Hassan, "Environmental Rights as part of Fundamental Human Rights: The Leadership of the Judiciary in Pakistan", PLJ 2003 Magazine 209, (b) Parvez Hassan and Azim Azfar "Securing Environmental Rights through Public Interest Litigation in South Asia", under publication in the Virginia Environmental Law Journal (2004) and (c) Werner Menski, Ahmad Rafay Alam and Mehreen Raza Kasuri, Public Interest Litigation in Pakistan (2000) Pakistan Law House, Karachi.

E. Shehla Zia case [PLD 1994 SC 693]

1. right to a clean environment included in the right to life guaranteed in Article 9 and right to dignity guaranteed in Article 14

2. Court took notice of international trends and practices to formulate national obligations

3. Rio Declaration on Environment and Development and its precautionary principle applied

4. Its glow:

(1) has been followed and has unleashed a new paradigm in Public Interest Litigation on environmental issues in Pakistan; corpus of our jurisprudence already points to the superior courts appointing Commissions to progress environmental rights

(a) The Supreme Court appointed a Commission to visit the site and recommend remedial measures in West Pakistan Salt Mines Labour Union vs. Director of Industries, PLD 1994 SCMR 2061.

(b) The Lahore High Court has appointed Commissions:

- Solid Waste Management Commission, in City District Government vs. Muhammad Yousaf (2003)

- Lahore Clean Air Commission, in Syed Mansoor Ali Shah vs. Government of Punjab and others (2003)

F. Powers of Court in Public Interest Litigation

1. constitutional obligation to protect rights

2. all incidental/ancillary powers including to forge new remedies and fashion new strategies

3. innovative approaches in the past

4. can determine and award compensation; in M.C. Mehta, supra, the Supreme Court of India held:

> 7. We are also of the view that this Court under Article 32(1) is free to devise any procedure appropriate for the particular purpose of the proceeding, namely, enforcement of a fundamental right and under Article 32(1) the Court has the implicit power to issue whatever direction, order or writ is necessary in a given case, including all incidental or ancillary power necessary to secure enforcement of the fundamental right. The power of the Court is not only injunctive in ambit, that is, preventing the infringement of a fundamental right, but it is also remedial in scope and provides relief against a breach of the fundamental right already committed vide Bandhura Mukti Morcha's case, (AIR 1984 SC 802) (supra). If the Court were powerless to issue any direction, order or writ in cases where a fundamental right has already been violated, Article 32 would be robbed of all its efficacy, because then the situation would be that if a fundamental right is threatened to be violated, the Court can injunct such violation but if the violator is quick enough to take

> action infringing the fundamental right, he would escape from the net of Article 32. That would, to a large extent, emasculate the fundamental right guaranteed under Article 32 and render it impotent and futile. We must therefore, hold that Article 32 is not powerless to assist a person when he finds that his fundamental right has been violated. He can in that event seek remedial assistance under Article 32. The power of the court to grant such remedial relief may include the power to award compensation in appropriate cases. We are deliberately using the words "in appropriate cases" because we must make it clear that it is not in every case where there is a breach of a fundamental right committed by the violator that compensation would be awarded by the Court in a petition under Article 32. The infringement of the fundamental right must be gross and patent, that is, incontrovertible and ex facie glaring and either such infringement should be on a large scale affecting the fundamental rights of a large number of persons or it should appear unjust or unduly harsh or oppressive on account of their poverty or disability or socially or economically disadvantaged position to require the persons or persons affected by such infringement to initiate and pursue action in the civil Courts. Ordinarily, of course, a petition under Article 32 should not be used as a substitute for enforcement of the right to claim compensation for infringement of a fundamental right through the ordinary process of civil Court. It is only in exceptional cases of the nature indicated by us above, that compensation may be awarded in a petition under Article 32. This is the principle on which this Court awarded compensation in Rudul Shah v. State of Bihar, AIR 1983 SC 1086. So also, this Court awarded compensation to Bhim Singh, whose fundamental right to personal liberty was grossly violated by the State of Jammu and Kashmir. If we make a fact analysis of the cases where compensation has been awarded by this Court, we will find that in all the cases, the fact of infringement was patent and incontrovertible, the violation was gross and its magnitude was such and it would have been gravely unjust to the person whose fundamental right was violated, to require him to go to the civil Court for claiming compensation (at p. 1091, emphasis added).

5. The Supreme Court of India, over the years, has followed M.C. Mehta, supra, to award compensation under its original jurisdiction by applying the "Polluter Pays Principle" against the offender, (1) to reverse the environmental damage and (2) to compensate the victims of the disaster in the following environmental pollution cases:

(a) Indian Council for Enviro-Legal Action and others v. Union of India and others, AIR 1996 S.C. 1446

(b) Vellore Citizens Welfare Forum v. Union of India and others, AIR 1996 S.C. 2715

(c) M.C. Mehta v. Kamal Nath and others, AIR 2000 S.C. 1997

6. The Supreme Court of India in M.C. Mehta v. Kamal Nath, supra, further held that "pollution is a civil wrong" and "a tort committed against the community as a whole" and the person guilty of causing pollution can be held liable to pay exemplary damages so that it may act as a deterrent for others.

7. The Courts have used Commissions to facilitate their work and directions:.

8. The Commissions appointed by the Courts are given certain powers; in West Pakistan Salt Mines Labour Union vs. Director of Industries, PLD 1994 SCMR 2061, the Supreme Court constituted a Commission with the power of inspection, recording evidence, examining witnesses including the powers as provided by Order XXVI of the Civil Procedure Code (id. at 2073).

G. National Laws, Institutions and Policies

1. Pakistan Environmental Protection Act, 1997

- Pakistan Environmental Protection Council, section 3
- Pakistan Environmental Protection Agency (Federal), section 5
- Provincial Environmental Protection Agencies, section 8
- the Act provides against all activities causing an adverse effect on the environment, section 16
- violators are required to pay the fine upto rupees one million, section 17(1) and are required to pay the cost of restoration, section 17(5)(e)

2. Pakistan Merchant Shipping Ordinance, 2001

- establishes the Mercantile Marine Department, section 3
- prohibition against oil pollution from ships, section 555(1)
- prohibition against pollution due to discharge of noxious liquid substances from ships, section 556(1)
- competence of Federal Government to direct master/owner of slip to avoid/reduce pollution on shipping casualties, section 566(1)
- violators to face imprisonment of not less than two years, and may be fined between $US 50,000 to US$ 1 million, section 555(3), section 556(2), and section 566(2)
- place of trial, Federal Government may direct, section 578
- power to detain ship that has caused damages, section 586

3. Karachi Port Trust (Amendment) Ordinance, 1994 [Karachi Port Trust Act, 1886]

- responsibility of the Karachi Port Trust Board for maintaining the marine environment of the Port's limit free from pollution of the sea, section 90 (1)
- no discharge of waste, oily noxious substances, section 90(2)
- violators are required to pay a penalty not exceeding Rupees 10 million, section 90(3) and are required to pay the charges for cleaning of the port and removal of pollution therefrom, section 90(3)

4. The Ports Act, 1908

- prohibits the discharge of ballast or rubbish into a port to ensure safe shipping, section 21

5. Pakistan Territorial Waters and Maritime Zones Act, 1976

Section 14 gives the power to the Federal Government to make Rules on:

- Preservation and protection of marine environment and prevention and control of marine pollution; section 14(2)(e)
- Regulation of the exploration, development, exploitation conservation and management of the resources in Pakistan's Exclusive Economic Zone and Continental Shelf, sections 14(2)(b) and 14(2)(c)

6. Pakistan Coastal Zone Management Plan

H. International Regime and Framework

Background:

Prior to World War II, the prevailing norm of customary international law governing the oceans was "freedom of use", with oceans regarded as an inexhaustible reservoir of resources and ideal dumping grounds for wastes. After 1945, the increase in international trade and shipping and growing size of oil tankers, alerted international community to the need to regulate pollution of the marine environment

The International Maritime Organization (IMO) was set up in 1958 under the aegis of the United Nations to develop and monitor the highest technical standards for international shipping and to facilitate the adoption of the most practicable measures to counter marine pollution. IMO Conventions fall into three (3) major categories: maritime safety, prevention of marine pollution, and liability and compensation especially in relation to damage caused by pollution. The IMO has no powers to enforce conventions and where an offence occurs within the jurisdiction of a certain state it has the option to either cause proceedings to be taken in accordance with its own law or to give details of the offence to the flag state to take appropriate action

1. The 1954 International Convention on the Prevention of Pollution of the Sea by Oil, 1954

- first international convention to prevent pollution of the sea by oil from tankers by setting limits on the scale and location of operational discharges

2. The International Convention on Civil Liability for Oil Pollution Damage, 1969 (the "1969 Civil Liability Convention")

- the shipowner is strictly liable for oil pollution damage without need to prove negligence or fault, except in certain circumstances, notably war and insurrection
- persons who suffer damage from oil pollution have recourse directly against the owner of the vessel without involving states
- the owner's liability is limited according to a formula related to the tonnage of the ship unless the incident arose out of his own fault
- the maximum liability is for ships over 140,000 gross tonnage for whom liability is limited to United States Dollars one hundred and fifteen million (US$ 115,000,000)
- this Convention has not been ratified by Pakistan

3. The Convention on the Establishment of an International Fund for Compensation for Oil Pollution Damage, 1971 (the "1971 Fund Convention")

- establishes a fund to provide additional compensation to that available under the 1969 Civil Liability Convention and to provide compensation where no liability arises under the latter or the shipowners are unable to pay any compensation

- the fund is established from a levy on oil importers, mainly oil companies whose cargoes the vessels are likely to be carrying

- the shipowners bear the full cost up to their total liability under the 1969 Civil Liability Convention beyond which the resources of the Fund are available

- the total amount of compensation payable by the Fund under the 1992 Protocol (as amended in 2000) is ordinarily United States Dollars two hundred and sixty million (US$ 260,000,000)

- this Convention has not been ratified by Pakistan

4. The Convention for the Prevention of Pollution from Ships, 1973, which was amended by a Protocol in 1978 (the "1973/78 MARPOL Convention")

- state parties are obliged to apply the provisions of the Convention to ships flying their flag and to ships within their jurisdiction

- a major thrust of this Convention is towards the technical requirements of tanker safety: all tankers built after 1975 have been built to meet MARPOL requirements; all new tankers ordered after July 1993 must be fitted with double bottoms and double hulls and tankers which were built before 1970 also require the fitting of double hulls or equivalent design

- implementation of the Convention involves the right of inspection by port states and state parties are obliged to co-operate with each other in the detection of violations and the enforcement of the Convention

- ships in the port or offshore terminals of acceding parties are required to hold certificates pursuant to the Convention whereas states party to the Convention are required to provide oil reception facilities

- the Convention is not confined to oil pollution but also regulates other forms of pollution by ships including noxious liquids, sewage and garbage

- under Article 17 of the Convention, states are obliged to provide, in collaboration with IMO and UNEP, support to other parties who are in need of and request technical and scientific assistance and supply of equipment and facilities for reception and monitoring

5. The Convention on Oil Pollution Preparedness, Response and Cooperation, 1990 (the "1990 Oil Pollution Preparedness Convention")

- encourages the establishment of oil pollution emergency plans on ships, offshore installations, ports and oil handling facilities

- encourages the establishment of national and regional contingency plans

- requires oil tankers of 150 gross tons and above to a carry a shipboard oil pollution emergency plan

6. Others

- United Nations Convention on the Law of the Sea, 1982 (UNCLOS)
- International Regulations for Preventing Collisions at Sea, 1972 (COLREGS)
- Convention on Safety of Life at Sea, 1974 (SOLAS)
- [IMO] Standards of Training, Certification, and Watchkeeping, 1978

7. Enforcement Main Challenge

Although the international community has reacted to problems as they arise (Torrey Canyon, for example, catalysed national and international responses), commentators are agreed that enforcement of the Conventions remains a major problem.

- to implement a Convention, a country must possess minimum technical and manpower requirements, or in other words a basic marine administration, which is no small task for a developing country; to cite one successful example, Singapore, which is strategically located at the crossroads of major shipping routes, studied the 1973/78 MARPOL Convention for several years before ratification; this effort included extensive consultations with all the stakeholders including shipping and oil companies, and the provision of adequate reception facilities for oil waste and chemicals
- technology and techniques in shipping industry change very rapidly, so there is a critical need to update laws and keep operational preparedness at par with the best international practices and standards
- all of the above points to a need to invest in capital and human infrastructure ("capacity building") and to forge regional and international collaboration

I. International Precedents

1. Torrey Canyon (English Channel)

18 March 1967	120,000 tonnes were spilled from Torrey Canyon entering the English Channel – biggest oil pollution incident ever recorded. Investigators found Captain solely responsible for the accident because he had kept the ship on automatic steering and steaming at its top speed of nearly sixteen knots.
24 March 1967	In an effort to break up the slicks, Royal Navy ships sprayed a dispersal agent on the oil, and then sprayed the beaches when the oil began going ashore in Cornwall.
28-30 March 1967	Royal Navy planes hit the ship repeatedly with 1,000-pound bombs and dumped aviation fuel, kerosene, and napalm on the wreck in an effort to start fires that would consume the remaining oil before it could spread.

4 May 1967	Writ against the owner was filed in Singapore where the a sister/ship was berthed
5 July 1967	sister ship was arrested on behalf of British Government
19 July 1967	sister ship was released against a bond of 3 million pounds as security for damages
April 1968	French Government seized the other sister ship in Rotterdam and directed the security of 3.2 million pounds
11 November 1969	after negotiations the owner settled the total compensation of 3 million pounds to be divided equally between the U.K. and France

2. Exxon Valdez Disaster (Alaska, U.S.)

24 March 1989	38,000 tonnes of oil spilled near Prince William Sound on the Alaska Coast. Congress enacted legislation requiring that all tankers in Prince William Sound be double-hulled by the year 2015.
20 September1991	Agreement and Consent Decree were executed
9 October 1991	The settlement among the State of Alaska, the United States Government and Exxon was approved by the U.S. District Court. It resolved various criminal charges against Exxon as well as civil claims brought by the federal and state governments for recovery of natural resource damages resulting from the oil spill. The settlement had three distinct parts: (1) Criminal Plea Agreement: Exxon was fined $150 million, the largest fine ever imposed for an environmental crime. The court forgave $125 million of that fine in recognition of Exxon's cooperation in cleaning up the spill and paying certain private claims. Of the remaining $25 million, $12 million went to the North American Wetlands Conservation Fund and $13 million went to the national Victims of Crime Fund. (2) Criminal Restitution: As restitution for the injuries caused to the fish, wildlife, and lands of the spill region, Exxon agreed to pay $100 million. This money was divided evenly between the federal and state governments. (3) Civil Settlement: Exxon agreed to pay $900 million with annual payments stretched over a 10-year period. The final payment was received in September 2001. The settlement contains a "reopener window" between September 1, 2002 and September 1, 2006, during which the governments may make a claim for up to an additional $100 million. The funds must be used to restore resources that suffered a substantial loss or decline as a result of the oil spill, the injuries to which could not have been known or anticipated by the six trustees from any information in their possession or reasonably available to any of them at the time of the settlement.

3. Song San Case (Singapore)

August 1996	Pollution incident at Singapore's harbour and a beach resort
	Authorities conducted clean up operation and investigation of the sources of pollution
	After several weeks, the Authorities were certain that suspected vessel was the source of oil
	Criminal charges were brought in the Singapore Court against the owner, the master and the chief officer for violation the laws and the MARPOL Convention for not maintaining the oil record book (comparable to Section 560 of Pakistan's Merchant Shipping Ordinance, 2001)
	The offenders pleaded guilty before the Magistrate Court. The owners were fined S$400,000 for discharging oil into the sea plus S$50,000 on the failure to maintain oil record books. Judge imposed the heaviest sentence in Singapore's maritime history

4. Prestige (Spain)

13 November 2002	20,000 tonnes of oil leaked from the Prestige which sank off the coast of northwest Spain
15 November 2002	Prestige's captain, a Greek national, was detained on suspicion of an environmental crime and also on suspicion of disobeying Spanish authorities.
7 February 2003	Greek captain was released from jail on $3 million bail with orders to report to the court regularly.
18 February 2003	A Spanish judge has placed three senior government officials under official investigation for their roles in the oil spill from a sunken tanker. Investigating magistrate ordered the three senior officials to appear in court to respond to questions about why officials ordered the ship out to open sea after it cracked its hull on November 13 near the coast, starting the oil spill.

5. The Bhopal Disaster

2 December 1984	MIC toxic gas leaked from the plant in Bhopal of the Union Carbide India Limited (UCIL) a subsidiary of Union Carbide Corporation (UCC) of the U.S.A. which killed 4,000 persons.
7 December 1984	law suits were filed in the U.S. – these numbered as many as 144 suits – these were later consolidated
29 March 1985	Government of India ("GOI") enacted legislation, the Bhopal Gas Disaster (Processing of Claims) Act, 1985 (the "Act") which enabled the GOI to have exclusive rights to represent Indian plaintiffs in India and elsewhere in connection with the tragedy

[8 April 1985 – May 1987 – the U.S. suits and appeals]	GOI sued UCC in the US District Court, New York (USDC)
	USDC dismissed the consolidated cases on the ground of *forum non conveniens*
	145 plaintiffs filed an appeal in the US Court of Appeal -the UCC also filed cross appeal - the appeals were dismissed; in May 1987, GOI filed writ of certiorari in the US Supreme Court which refused relief
5 September 1986	Union of India filed the damages suit No. 1113/86 in the Court of District Judge, Bhopal for US$ 3.3 billion against UCC
17 November 1986	on the stay application of the Union of India, the District Judge granted a temporary injunction restraining UCC from selling its assets and paying dividends.
2 April 1987	District Judge, Bhopal, made written proposals to all parties for considering reconciliatory interim relief to gas victims
17 September 1987	Union of India and UCC sought time to explore the settlement
November 1987	settlement failed
17 December 1987	District Judge, Bhopal, directed UCC to deposit within two months US$ 270 million as interim payment to be discharged to the victims (Union of India vs. UCC)
18 January 1988	UCC filed revision before the Madhya Pradesh High Court
4 April 1988	MP High Court reduced the interim damages to US$ 192 million **(UCC vs. Union of India, AIR 1988 NOC 50 (MP))**
8 September 1988	UCC filed PLA in the Supreme Court of India
8 September 1988	Union of India filed PLA in the Supreme Court of India
14 February 1989	SC came out with an overall settlement of the claims and awarded US$ 470 million to the GOI on behalf of the victims as full and final settlement. The SC also stayed all the civil and criminal proceedings pending in the Indian Courts against the corporate official of UCC and UCIL **(UCC vs. Union of India, AIR 1990 SC 273)**
15 February 1989	victims opposed the settlement in a Review Petition filed in the SC
December 1989	SC upheld the constitutional validity of the Act.
14 April 1990	SC ordered interim relief of Rs. 200 per month to the victims' families
3 October 1991	SC upheld the US$ 470 million dollars settlement recorded and set aside its earlier order quashing the criminal proceedings against the corporate officials **(UCC vs. Union of India, AIR 1992 SC 248)**

J. Need for consolidation of all cases before Supreme Court

1. The Supreme Court should consider directing the transfer of the Karachi High Court case to itself (Al-Jehad Trust vs. Federation of Pakistan and others, PLD 1996 S.C. 324 (at page 370)). This will, among others, avoid multiplicity of litigation/possible different results as the subject-matter in both the matters is more or less the same.

2. The relief sought before Karachi High Court can be granted by the Supreme Court in Public Interest Litigation.

K. Lessons from the Tasman Spirit Disaster and the Way Forward: Turning a Tragedy into an Opportunity

1. A prudent and wise nation will not wilt after a tragedy but will use the feedback to strengthen itself in all affected areas

2. The following goals challenge the country and this Court:

(1) immediate short-term response:

(a) to mitigate and reverse the ecological damage

(b) to provide financial compensation to the worst victims

(2) a broader long-term response:

(a) to prepare a national contingency plan to effectively deal with oil pollution through inter-agency co-ordination

(b) to integrate domestic marine environmental law with global instruments and ensure that the domestic laws are kept updated

(c) to seek international collaboration for adequate marine administration consisting of trained manpower competent to fulfill international conventions and domestic laws

3. Vessel oil pollution only approximately ten percent of marine pollution world-wide- this Court is presented with a historic opportunity to bring about a whole-scale structural and systematic improvement to Pakistan's marine law and administration.

L. Recommendations/Interim Measures (immediate, short-term and long-term)

1. Immediate health relief – directions to Health Ministry/Health Department to prepare action plan for affected areas in 2/4 weeks

2. Directions to Fisheries/Wildlife/Ministry of Agriculture to establish site offices for relief

3. Directions to Forestry Department for reafforestation particularly in the mangrove affected areas

4. Directions to Government of Pakistan (under the lead of the Federal Ministry of Communications) to prepare an action plan with time lines in response to the Assessment Report dated 9 September 2003 prepared by IUCN, UNEP, UNDP and Sindh EPA on the directions of the Government of Pakistan.

5. Directions to Government of Pakistan to review its existing laws, policies and institutions and to amend the same to better prevent/meet similar accidents in the future; the emphasis should also be on capacity building and developing a cadre of trained professionals that can help avoid similar accidents (Singapore experience)

6. Directions to Government of Pakistan to review the international treaty framework and assess its suitability for future needs in the light of the experience of the present oil spill

7. Government to immediately establish a national "Oil Spill Relief Fund" with its own donation and seek public and corporate donations – particularly from the shipping sector.

8. Government of Pakistan should consider event-specific legislation to facilitate claims against owners and insurance companies.

9. To set up a high-powered Commission headed by a former Chief Justice of Pakistan who resides in Karachi:

(1) with membership to include the Director General of the Pakistan Environmental Protection Agency and technical experts, doctors, civic leaders, NGOs, academics (from Universities and National Institute of Oceanography) and civil society representatives such as Nazim, MNA/MPA from affected areas

(2) to be serviced by Sindh Environmental Protection Agency/IUCN for secretariat purposes

(3) to over-see 1. to 8. with periodic (monthly) reports to Supreme Court

10. This case and the related cases should be heard by the Supreme Court in Karachi; the venue of and the damage from the oil spill is in Karachi; the institutional, technical and professional support needed by the Supreme Court will be more readily available in Karachi.

[Note: The Submissions have not addressed the issue of liability of the ship-owner/insurance company/others as these parties are not included in the Petition before the Supreme Court. Ordinarily, claims and damages are left to be determined in civil suits. But M.C. Mehta vs. Union of India, AIR 1987 SC 1086, points to the exceptional circumstances in which the Supreme Court can award compensation:

> If we make a fact analysis of the cases where compensation has been awarded by this Court, we will find that in all the cases, the fact of infringement was patent and incontrovertible, the violation was gross and its magnitude was such and it would have been gravely unjust to the person whose fundamental right was violated, to require him to go to the civil Court for claiming compensation (at p. 1091).

We believe that the present case meets the tests specified in the M.C. Mehta case.]