

## **Opinion of the Attorney General of India: Extradition of Mr. Warren Anderson**

**Aug. 6, 2001**

*The following is the text of the communication to the Government of India from Attorney-General of India Soli Sorabjee, which contains his opinion on the question whether extradition proceedings against Warren Anderson, Chairman of Union Carbide Corporation at the time of the gas tragedy, are legally sustainable:*

### **Whether extradition proceedings against Mr. Warren Anderson are legally sustainable under Indo-American Extradition Treaty.**

The present opinion is regarding whether extradition proceedings against Mr. Warren Anderson are legally sustainable under Indo-American Extradition Treaty.

In my earlier opinion dated 31.7.1998 on the same subject, I had taken the view that the offence of causing death by rash or negligent act (Section 304-A of the Indian Penal Code) would be comparable to the offence of manslaughter under the law of the United States and would prima facie be covered under Article 3 of the Extradition Treaty between India and the United States (the "Extradition Treaty").

As regards the other question whether the available evidence against Mr. Warren Anderson would meet the evidentiary standard of "probable cause" required under U.S. law, I had suggested that as the issue involved was of U.S. law, legal advice on this aspect should be obtained from competent U.S. Attorneys.

A legal opinion has now been obtained through the Embassy of India from M/s Verner, Lipfert, Bernhard, McPherson and Hand, Chartered. I have perused the opinion.

According to the said opinion, manslaughter and "causing death by negligence" would be found comparable by a U.S. court.

Thereafter, the said opinion addresses the question whether, on the available evidence, the Indian government can satisfy the probable cause requirements necessary for the magistrate to issue a certificate of extraditability. After a detailed analysis of the evidence and case law, the conclusion reached is as follows:

There are missing evidentiary links that need to be supplemented, such as 1. The actual cause of the gas leak; 2. Mr. Anderson's knowledge of the cause of the gas leak prior to its occurrence; 3. The extent to which Mr. Anderson had decision-making control over UCIL's safety and design issues, and 4. Whether Mr. Anderson refused to correct the hazard.

Although the Indian government does not have to show that Mr. Anderson will be convicted of criminal negligence, U.S. law requires evidence linking him directly to the cause of the gas leak. Without this type of evidence, it is our opinion, a U.S. court will not find probable cause on the charge of "causing death by negligence" or its equivalent, manslaughter.

In my opinion, although it is not impossible to furnish the "missing evidentiary links", the time and effort would be considerable and I am not sanguine that at the end of the day the requisite evidentiary material would be forthcoming.

However, I will proceed on the assumption that it will be possible to supply the evidence which is lacking at present to sustain the finding of "probable cause" by the U.S. court. Ultimately, the crucial question is whether the U.S. Secretary of State, who has the discretion to refuse extradition on diplomatic or humanitarian concerns, will accede to the extradition request.

According to the opinion of the U.S. Attorneys, the State Department would likely find policy reasons not to surrender Mr. Anderson to the Indian government. The reasons are humanitarian concerns, such as Mr. Anderson's age, said to be 81 years old, and health, and length of time that has elapsed, almost 17 years, between the event and the Indian government's decision to make a formal request for his extradition. These are weighty and relevant considerations for the State Department for refusing our request for extradition. I am inclined to agree with the opinion of the U.S. Attorneys on this aspect. All things considered, in my opinion, proceedings in the USA for extradition of Mr. Warren Anderson are not likely to succeed and, therefore, the same may not be pursued.