REIMAGINING VICTIMHOOD UNDER INTERNATIONAL LAW – FROM MARGINS TO MANDATE: TRANSITIONAL JUSTICE, LEGAL PERSONALITY AND LESSONS FROM THE BHOPAL GAS DISASTER

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This paper reconceptualises victimhood in international law by grounding it in domestic legal experience and analysing it through Wesley Hohfeld's theory of jural correlatives. It argues that current frameworks in international human rights law, international criminal law, and transitional justice offer fragmented and often static conceptions of the victim. These frameworks fail to capture the complex, mediated relationship between individuals and the state in the aftermath of conflict or mass atrocity. Using the Bhopal gas tragedy as a case study, the paper shows that domestic contexts, especially in mass tort cases, are where the contours of victimhood are most sharply contested and where the asymmetry between individuals and the state becomes most visible. From this dynamic, a more relational and nuanced understanding of victimhood emerges, that can inform and reshape international legal norms. The Bhopal case, marked by catastrophic industrial harm, the involvement of a transnational corporate actor, and a state that acted both as a regulator and legal representative of victims, illustrates the limitations of current legal categories for addressing complex, large-scale harm. The Indian government's assumption of exclusive standing in foreign litigation and its control over of compensation processes raise fundamental concerns about agency, participation, and voice. These concerns intersect with evolving theories of state responsibility and international legal personhood. Hohfeld's framework enables a

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detailed analysis of the shifting legal relations among victims, the state, and corporate actors. It disaggregates the rights, duties, powers, and privileges involved, revealing how the state exercised the authority to act for victims while simultaneously denying them legal standing to assert their own claims. The paper contends that Bhopal provides a critical template for interrogating the limits of victimhood in international law and for proposing a redefinition that places the individual–state relationship at the centre. While rooted in domestic jurisprudence, this redefinition aligns with broader trends in international law that seek to enhance individual agency and visibility as rights-holders. It also imposes positive obligations on states not only to remedy violations but to build legal systems that empower victims to assert their rights in autonomous and meaningful ways. In this view, victimhood is not merely a response to individual harm but a juridical status shaped through institutional structures and political choices. Contributing to the growing discourse on the relational turn in international law, this paper highlights the interaction between national legal orders and international legal obligations. It locates itself within critical traditions of international legal scholarship and recognises that its insights are drawn from jurisprudence originating in the Global South, particularly Indian legal experience. The paper calls for a shift in the understanding of victimhood that acknowledges structural injustice, moves beyond procedural recognition alone, and supports a more inclusive and contextually grounded approach to legal redress. In doing so, it seeks to reposition victimhood as central to both the legitimacy and the effectiveness of international legal regimes.

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I. INTRODUCTION

Victimhood in international law remains a concept marked by fragmentation and under-theorisation. While international criminal law, international human rights law, and transitional justice each articulate frameworks for recognising victims, these are often partial, reactive, and shaped by rigid legal categories that obscure the lived complexity of harm. Predominantly situated within post-conflict or atrocity contexts, prevailing definitions of the victim tend to abstract the individual from their legal and institutional surroundings, treating victimhood as a status conferred rather than a relation produced. This paper argues that to fully grasp the normative and legal implications of victimhood, we must turn to domestic legal contexts, particularly those involving mass atrocities or post conflict assessment, where the relationship between the individual and the state is both contested and visible in practical terms.

It is here that the asymmetries of legal agency, representational authority, and access to justice are most starkly realised, and where the state's dual role as both guarantor and violator of rights becomes most apparent. An overwhelming number of international human rights norms are addressed to the States and not individuals or groups of persons.[1] The language in these human rights covenants and documents refers to 'state parties' to respect and promote certain rights instead of individuals.[2]

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[1] See generally Jost Delbruck, 'International Protection of Human Rights and State Sovereignty' (1982) 57(4) Indiana Law Journal 567. But see Article 5 of International Convention on the Elimination of all Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 (ICERD) where there is a provision for an individual's possession of a specific right. See generally International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR); GAOR 'Resolutions and Decisions adopted by the General Assembly during its 18th Session, Supplement No. 15' (17 September-17 December 1963) UN Doc A/5515.

[2] See International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR); GAOR 'Resolutions and Decisions adopted

Recent developments across various international legal regimes underscore the growing recognition of victims not merely as passive recipients of justice but as active agents whose perspectives are central to legal and institutional processes. In *The Prosecutor v Dominic Ongwen* before the International Criminal Court ('ICC'), the Chamber explicitly recognised the importance of victims' lived experiences, allowing over 4,000 victims to participate, thereby shaping both the proceedings and the reparations phase.[3] Similarly, in the Trust Fund for Victims proceedings following the ICC's *Lubanga* and *Katanga* cases, victims' voices were integrated into the design and implementation of reparative measures, reflecting a move toward participatory justice models.[4]

At the regional level, the Inter-American Court of Human Rights has continued to prioritise victim-centred jurisprudence. In *Guzmán Albarracín v Ecuador (2020)*, the Court recognised the role of the victim's family in demanding accountability and emphasised the structural context of gender-based violence in its reasoning, grounding its judgment in the dignity and agency of the victim.[5] Meanwhile, the European Court of Human Rights ('ECtHR') has also broadened standing and participatory rights in cases such as *Kurt v Austria (2021)*, where it acknowledged the state's failure to prevent domestic violence from the perspective of the victim's autonomy and rights.[6]

Beyond courts, the UN Human Rights Committee and the Convention on the Elimination of All forms of Discrimination Against Women ('CEDAW') Committee have increasingly issued views that stress state obligations to ensure victim participation and to remedy structural barriers to justice, as seen in *Angela González Carreño v Spain (CEDAW, 2014)*,[7] where the Committee focused on the denial of victim agency in domestic violence contexts. Collectively, these cases and institutional practices signal a doctrinal and

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by the General Assembly during its 21st Session, Supplement No. 16' (20 September-20 December 1966) UN Doc A/6316; International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195 (ICERD); GAOR 'Resolutions and Decisions adopted by the General Assembly during its 18th Session, Supplement No. 15' (17 September-17 December 1963) UN Doc A/5515.

[3] *The Prosecutor v Dominic Ongwen* (Judgment) ICC-02/04-01/15 (4 February 2021).

[4] *The Prosecutor v Thomas Lubanga Dyilo* (Judgment) ICC-01/04-01/06 (14 March 2012); *The Prosecutor v Germain Katanga* (Judgment) ICC-01/04-01/07 (7 March 2014).

[5] *Guzmán Albarracín et al v Ecuador* Series C No 405 (IACtHR, 24 June 2020).

[6] *Kurt v Austria* App no 62903/15 (ECtHR, 15 June 2021).

[7] *Angela González Carreño v Spain* CEDAW/C/58/D/47/2012 (UNHRC, 16 July 2014).

normative shift: victims are no longer ancillary to international adjudication but are emerging as central figures, whose narratives, interests, and agency increasingly shape the substance and direction of international law.

While the role of the State as a key law enforcement agent under international law remains important, the simultaneous recognition and promotion of *individual* human rights also remains the States' obligation.[8] This notion has been recognised under the Universal Declaration of Human Rights under Articles 1 and 2.[9] As Simon Chesterman rightly pointed out, 'if the individual is absent, the human rights discourse neither exists nor has meaning.'[10] The individual is the vessel of human rights, and the protection from any violence, guaranteeing their freedom and dignity, has become an essential concern of the international community. As noted by Quincy Wright,[11] 'the rights of States must be considered relative to the rights of individuals. Both the State and the individual must be considered as subjects of world law and the sovereignty of the State must be regarded not as absolute but as a competence defined by that law.'[12] An individual's rights exist outside the jurisdiction of States and are concerns of the international community.[13] The individual, and more specifically, a victim of a human rights violation, has emerged as a key actor in the international system.[14] An individual's evolution is apparent when one compares the recent treatment of individual rights under present international law with the old 'classical' international law, which only recognised States and

[8] See UNGA Res 41/128 (4 December 1986). Declaration on the Right to Development, which stated 'the human person is the central subject of development and should be the active participant and beneficiary of the right to development.'

[9] UNGA Res 217(10 December 1948). Article 1 of the Universal Declaration of Human Rights, states that 'all human beings are born free and equal in dignity and rights.' Article 2 of the Universal Declaration of Human Rights, states that 'everyone is entitled to all rights and freedoms without any discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.'

[10] Simon Chesterman, 'Human Rights as Subjectivity: The Age of Rights and the Politics of Culture' (1998) 27(1) Millennium: Journal of International Studies 97.

[11] Quincy Wright, 'Relationship Between Different Categories of Human Rights' in UNESCO staff (ed), *Human Rights: Comments and Interpretations* (1949).

[12] ibid 149.

[13] Barcelona Traction, Light and Power Co, Ltd (*Belgium v Spain*) [1970] ICJ Rep 3.

[14] See Alexander Orakhelashvili, 'The Position of the Individual in International Law' (2001) 31(2) California Western International Law Journal 241 <https://scholarlycommons.law.cwsl.edu/cwilj/vol31/iss2/10> accessed 3 March 2025.

their corresponding rights and duties.[15] This evolution is portrayed in a statement drafted by the Committee of Experts at UNESCO.[16] The Committee of Experts stated:

> These rights must no longer be confined to a few. They are claims which all men and women may legitimately make, in their search, not only to fulfil themselves at their best, but to be so placed in life that they are capable, at their best, of becoming in the highest sense citizens of the various communities to which they belong and of the world community, and in those communities of seeking to respect the rights of others, just as they are resolute to protect their own.[17]

With this in mind, an important issue begins to arise: what is the relationship between an individual and a State in the recognition and protection of fundamental human rights? Hohfeld's schema of jural correlatives—rights/duties, privileges/no-rights, powers/liabilities, and immunities/disabilities, offers a compelling analytical framework for rethinking the individual's position in international law, traditionally circumscribed by the sovereignty-centric paradigm.

The increasing juridification of individual rights through human rights treaties, international criminal law, and environmental obligations suggests a reconfiguration of international legal subjectivity. Within the Hohfeldian lens, an individual emerges not merely as a passive beneficiary of state action but as a holder of rights that impose corresponding duties on states. For example, where international law prohibits torture, the individual holds a claim-right, and the state a correlative duty, thus disaggregating sovereignty into distinct normative obligations.

This analytic shift unsettles the conventional fiction of state exclusivity in international law and foregrounds the dyadic legal relationships that now exist between individuals and sovereigns across multiple legal regimes. Yet this apparent empowerment of the individual belies the structural asymmetries that persist within the international legal order. Hohfeld's correlatives presuppose

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[15] For an understanding of the classical theory where states were the only and sole subject of international law, and where there was no relation between the law and the individuals, See Carl Aage Nørgaard, *The Position of the Individual in International Law* (11th edn, 1962)

[16] A memorandum and questionnaire was circulated by UNESCO on the theoretical bases of the rights of man. See Edward Hallett Carr and Jacques Maritain, *Human Rights: Comments and Interpretations; A Symposium Edited by UNESCO* (Allan Wingate 1949).

[17] ibid 260.

institutional mechanisms capable of enforcing the obligations they map, a presumption that remains tenuous in a system defined by decentralised authority and voluntarism. While international adjudicatory bodies have incrementally acknowledged individual standing and responsibility, the enforceability remains inconsistent and is often subject to state discretion or non-compliance. Thus, the individual's rights, though formally articulated, often lack the material efficacy that Hohfeld's framework assumes. This tension, between normative recognition and practical enforcement, reveals the incomplete transformation of international law from an inter-sovereign to a truly cosmopolitan order. Hohfeld's insights thereby serve both as a diagnostic tool and a critical mirror, exposing the aspirational yet ambivalent legal status of the individual in a system still deeply structured by sovereignty.

This Article examines the evolving legal status of the individual in international law, with particular attention to the figure of the 'victim' of human rights violations. It seeks to interrogate the shifting normative boundaries between the individual, the State, and other international legal actors, clarifying the current juridical configuration of their interrelations. Central to this inquiry is an application of Wesley Hohfeld's theory of Jural Relations to the dialectic between sovereignty and individual rights, illuminating how legal entitlements and correlative obligations are structured and contested in contemporary international law. Victims have long been marginalised in international law, often regarded as passive recipients of protection rather than as active legal subjects with enforceable rights. Even within human rights frameworks, mechanisms for redress have largely operated through state channels, offering victims limited opportunity to directly participate in legal processes or shape outcomes that affect them. However, this outlook began to change since the discourse of transitional justice has arisen as a response to the challenges faced by a society emerging from conflict. In the next section, we will examine the changing role of a victim and transitional justice as a victim-centered discipline.[18] Transitional justice challenges the traditional, state-centric understanding of the victim in international law by repositioning victims as central agents in processes of accountability, truth-seeking, and reparations. Unlike classical international legal frameworks, which often treat individuals as

[18] For an introduction and historical evolution of transitional justice, See Marie Soueid and Ann Marie Willhoite and Annie E Sovcik, 'The Survivor Centered Approach to Transitional Justice: Why a trauma informed handling of witness testimony is a necessary component' (2017) 50(1) George Washington International Law Review 125.

peripheral to inter-state obligations, transitional justice mechanisms, such as truth commissions, reparations programs, and victim participation in hybrid or international courts, affirm the victim's role not merely as a subject of harm but as a key stakeholder in the reconstruction of legal and political order. This shift reframes the victim from a passive object of state benevolence to an active participant whose dignity, agency, and narratives are integral to the legitimacy and effectiveness of post-conflict justice.

To ground this theoretical framework, the Article undertakes a case study of the Bhopal gas disaster an emblematic instance of mass harm and state-mediated relief within Indian jurisprudence.[19] The Bhopal case encapsulates broader tensions between state sovereignty, corporate impunity, and victim redress, serving as a poignant lens through which to explore the normative architecture of post-disaster justice.[20] By mapping the relational legal positions that emerged in its aftermath, between the State, victims, and transnational corporate actors, through a Hohfeldian schema, the analysis aims to contribute to a deeper understanding of how victimhood is constructed, recognised, and operationalised under international law in the context of mass harm and transitional justice.[21]

II. DEFINING THE VICTIM IN INTERNATIONAL LAW

The development of the term 'victim' in international law finds its origin post-World War II, as the drastic situation demanded measures to strengthen a victim's intervention within criminal proceedings.[22] Under the United Nations ('UN') framework, the General Assembly adopted Resolution 40/34, on the 29th

[19] On 3rd December, 1984, in a city named Bhopal in Madhya Pradesh, India, tonnes of chemical methyl isocyanate split out from Union Carbide India Ltd.'s pesticide factor. This remains attributable to some of the key operational decisions of Union Carbide Corporation which controlled its Indian subsidiary, Union Carbide India Limited. See Ingrid Eckerman, 'The Bhopal Gas Leak: Analyses of Causes and Consequences by Three Different Models' (2005) 18(4-6) Journal of Loss Prevention 213; Ingrid Eckerman, *The Bhopal Saga Causes and Consequences of the World's Largest Industrial Disaster* (University Press India Private Ltd 2005); Upendra Baxi and Amita Dhanda, *Valiant Victims and Lethal Litigation: The Bhopal Case* (NM Tripathi, 1990).

[20] For a reading about the aftermath of the Bhopal disaster, See Kim Fortun, *Advocacy After Bhopal* (University of Chicago Press 2001); Paul Shrivastava, 'Preventing Industrial Crises: The Challenges of Bhopal' (1987) 5(3) International Journal of Mass Emergencies & Disasters 199.

[21] For a reading on the international law aspects to the Bhopal disaster, See YK Tyagi and Armin Rosencranz, 'Some International Law Aspects of the Bhopal Disaster' (1988) 27(10) Social Science and Medicine 1105.

[22] See Alon Confino and Robert G Moeller, 'Remembering the Second World War, 1945-1965: Narratives of Victimhood and Genocide' (2005) 4 Cultural Analysis, University of California 46.

of November in 1985, titled the *Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power*.[23] Under this resolution, 'victims of crime' included three categories of persons. The first category included the person who has individually or collectively suffered harm. The second category included the immediate family or the dependents of the direct victim. The last category included persons who have suffered harm in intervening to assist the victims in distress or prevent victimisation. According to the Declaration:

> "Victims" means persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment or their fundamental rights, through acts or omissions that are in violation of criminal laws operative within Member States, including those laws proscribing criminal abuse of power.
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> A person may be considered a victim, under this Declaration, regardless of whether the perpetrator is identified, apprehended, prosecuted or convicted and regardless of the familial relationship between the perpetrator and the victim.
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> The term "victim" also includes, where appropriate, the immediate family or dependents of the direct victim and persons who have suffered harm in intervening to assist victims in distress or to prevent victimization.[24]
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> Under the same resolution, 'victims of abuse of power' were described as:
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> Persons who, individually or collectively, have suffered harm, including physical or mental injury, emotional suffering, economic loss or substantial impairment of their fundamental rights, through acts or omissions that do not yet constitute violations of national criminal laws but of internationally recognized norms relating to human rights.[25]

The United Nations Commission on Human Rights, in its Resolution 2005/35, formally recognised and codified a bifurcated approach to victimhood in international law, distinguishing between *victims of gross violations of international human rights law* and *victims of serious violations of international humanitarian law*.[26] This differentiation reflects the dual normative regimes

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[23] This was adopted by UNGA Res 40/34 (29 November 1985). It is based on UNGA Res 217(10 December 1948).

[24] The last paragraph of this definition adds: The provisions contained herein shall be applicable to all, without distinction of any kind, such as race, colour, sex, age, language, religion, nationality, political or other opinion, cultural beliefs or practices, property, birth or family status, ethnic or social origin, and disability.

[25] UNGA Res 40/43 (29 November 1985).

[26] UNCHR Res 35 (19 April 2005).

governing the protection of individuals—human rights law applying in peacetime and conflict alike, and humanitarian law operating specifically within armed conflict contexts. Resolution 2005/35 endorsed the Basic Principles and Guidelines on the Right to a Remedy and Reparation,[27] adopted by the General Assembly in A/RES/60/147,[28] which elaborates the procedural and substantive rights of victims to access justice, obtain reparations, and benefit from guarantees of non-repetition. Gross violations of human rights, such as torture, enforced disappearance, and extrajudicial killings, are recognised as entailing non-derogable obligations and often trigger obligations *erga omnes*, while serious breaches of international humanitarian law, including war crimes and grave breaches of the Geneva Conventions, engage complementary responsibilities under international criminal law and the law of armed conflict. The articulation of these two victim categories underscores the growing juridical recognition of the individual as a subject of international law, while also revealing the normative complexity and fragmentation that characterise the evolving landscape of victim rights.

In international criminal law, under the statute of the ICC, the scope of victims is wider than that under the Criminal Tribunals of the former Yugoslavia and Rwanda. The rights of victims are recognised more actively by the ICC, whereas the former Yugoslavia and Rwanda acknowledged the role of victims as mere witnesses.[29] Under the criminal tribunals of Yugoslavia ('ICTY') and Rwanda ('ICTR'), there was no provision for protecting victims' rights outside the scope of the protection offered for being a witness. There was no scope for victims to participate in the court procedure either.

ICTY and ICTR adopted a definition of a victim that excluded the victim's family. A victim under Yugoslavia Rules was defined as 'a person against whom a crime over which the Tribunal has jurisdiction has allegedly been committed.'[30] A victim's role under ICTY and ICTR Rules is that of a mere witness, which reduces the victims to objects rather than subjects capable of presenting their

[27] ibid.

[28] UNGA Res 60/147 (16 December 2005).

[29] The relevant provisions are Article 19(1), 21 in the Statute of the International Criminal Tribunal for Rwanda and Article 20(1), 22 in the Statute of the International Criminal Tribunal for Yugoslavia.

[30] Rules of Procedure and Evidence of the International Criminal Tribunal for the former Yugoslavia (adopted 11 February 1994, entered into force 14 March 1994) IT/32/Rev.50, rule 2(A).

own issues and fighting for their own interests in a criminal proceeding.[31] The relationship between the victim and the tribunal is one of power and liability. The victims are liable to the tribunal to represent them as they do not have the power to participate in the criminal proceedings.

The victim's position as a mere object in criminal proceedings was made better when the ICC was established.[32] In 1998, when the Rome Statute of the ICC was adopted,[33] it was the first time that the rights of victims in international criminal proceedings were materialised.[34] The definition adopted in the Rome Statute was similar to the one established in the UN Declaration of Basic Principles of Justice for Victims of Crime and Abuse of Power (Discussed above as UN General Assembly resolution 40/34. 1985). The Rome Statute defines victims as:

a. 'Victims' means natural persons who have suffered harm as a result of the commission of any crime within the jurisdiction of the Court;
b. Victims may include organisations or institutions that have sustained direct harm to any of their property which is dedicated to religion, education, art, or science or charitable purposes, and to their historic monuments, hospitals and other places and objects for humanitarian purposes.[35]

An innovative aspect of the Rome Statute of the ICC is its emphasis on the victim's active participation in criminal proceedings.[36] The Rome Statute states that:

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[31] For a detailed analysis of the study of the Rome Statute of the International Criminal Court, See Claude Jorda and Jérôme Hemptinne, 'The Status and Role of the Victim' in Antonio Cassese, Paola Gaeta and John R.W.D Jones (eds), *The Rome Statute of the International Criminal Court: A Commentary* (Oxford University Press 2002).

[32] Compare the Statutes of the former ICTY and ICTR with the Rome Statute. See Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) 2187 UNTS 3, art 68 that discusses the Protection of the victims and witnesses and their participation in proceedings.

[33] UNGA, 'Rome Statute of the International Criminal Court' (15 June-17 July 1998) UN Doc A/CONF. 183/9; Rome Statute of the International Criminal Court (adopted 17 July 1998, entered into force 1 July 2002) UN Doc A/CONF. 183/9.

[34] See Gabrielė Chlevickaitė, Barbora Holá and Catrien Bijleveld, 'Judicial Witness Assessments at the ICTY, ICTR and ICC: Is There "Standard Practice" in International Criminal Justice' (2020) 18(1) Journal of International Criminal Justice 185.

[35] Rules of Procedure and Evidence of the International Criminal Court (adopted 9 September 2002) ICC-ASP/1/3, rule 85.

[36] Rome Statute (n 33) 127.

> Where the personal interests of the victims are affected, the Court shall permit their views and concerns to be presented considered at stages of the proceedings deemed to be appropriate by the Court and in a manner which is not prejudicial to or inconsistent with the rights of the accused and a fair and impartial trial.[37]

From the above observations, we can notice a pattern in international criminal law where the victim is recognised as an actor in the criminal proceedings. The ICC is described as a victim-friendly and a victim-centered Court in comparison to the ICTY and ICTR.[38] The victim is a subject of the criminal proceedings under international criminal law. They have a right to present their own interests, views, and concerns directly to the ICC judges.[39]

Victimhood under international human rights law is defined not merely by the occurrence of harm but by the infringement of rights enshrined in binding international instruments such as the *International Covenant on Civil and Political Rights* ('ICCPR') and regional conventions like the *European Convention on Human Rights* ('ECHR'). The Human Rights Committee, in cases such as *Toonen v Australia* (CCPR/C/50/D/488/1992),[40] has affirmed that individuals may be considered 'victims' where they are personally and directly affected by a violation, even in the absence of physical harm, thereby expanding the scope of legal victimhood. Similarly, the ECtHR has elaborated a nuanced jurisprudence on victim status, holding in *Klass and Others v Germany* (1978) that individuals may qualify as victims where they are potentially subject to surveillance laws, thereby acknowledging the preventive dimension of human rights protection.[41] Victimhood in this context carries with it procedural entitlements—such as standing before quasi-judicial bodies and access to reparations—as articulated in *Velásquez Rodríguez v Honduras* (IACtHR, 1988),[42] where the Inter-American Court held that the state's failure to

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[37] ibid.

[38] ICC'S official website has declared that victim participation and reparations represent a 'balance between retributive and restorative justice.' International Criminal Court, 'Victims Before the ICC' *ICC Newsletter* (October 2024) <https://www.icc-cpi.int/NR/rdonlyres/4E898258-B75B-4757-9AFD47A3674ADBA5/278481/ICCNL2200410_En.pdf> accessed 10 February 2020. See Claire Garbett, 'The International Criminal Court and Restorative Justice: Victims, Participation and the processes of Justice' (2017) 5(2) Restorative Justice 198.

[39] Rome Statute, art 68(3).

[40] *Toonen v Australia* CCPR/C/50/D/488/1992 (UNHRC, 31 March 1994).

[41] *Klass and Others v Germany* App no 5029/71 (ECtHR, 6 September 1978).

[42] *Velásquez Rodríguez v Honduras* Series C No 4 (IACtHR, 26 July 1988).

investigate and remedy violations itself constituted a breach of the victim's rights. These developments underscore a shift from a reactive to a proactive model of legal subjectivity, in which individuals are empowered to claim redress directly under international law, reinforcing the erosion of state-centric exclusivity in the human rights domain. Under international human rights law, the victim is acknowledged only when the state is the author of an international obligation breach.[43] Meaning that, in human rights law, when there is a breach of international obligations by a non-state actor, the affected party would not be considered a victim. In contrast, under international criminal law and international humanitarian law, individuals would be victims because of acts committed by other individuals (who may be individuals performing public actions) or even non-state actors.[44]

III. TRANSITIONAL JUSTICE AND THE EVOLUTION OF VICTIMHOOD

Transitional justice is a hybrid discipline that draws upon, yet ultimately transcends, the doctrinal boundaries of international criminal law, international human rights law, and international humanitarian law. While it replicates key normative commitments, such as accountability, truth, reparation, and non-repetition, from these fields, it departs from them in both its methodological flexibility and its contextual orientation. Unlike international criminal law, which centres on individual liability and retributive justice, transitional justice often embraces non-punitive mechanisms such as truth commissions and amnesties to accommodate fragile political transitions. Similarly, while it inherits the rights-based logic of international human rights law and the protection imperatives of humanitarian law, transitional justice frequently operates in legal grey zones where formal rule-of-law frameworks have broken down or are in flux. It is thus a discipline defined by its pragmatism and political contingency, privileging processes that restore civic trust, institutional legitimacy, and collective memory, rather than rigid adherence to pre-existing legal paradigms. In doing so, it both mirrors and unsettles the foundational assumptions of the legal traditions from which it emerged. Transitional justice is an approach to moving a society from a phase of chaos to that of peace and is

[43] Example, terrorists. Carlos Fernández de Casadevante Romani, *International Law of Victims* (Springer 2012).

[44] See The Statutes of the ICC and of the former ICTY and ICTR.

closely linked to nation-building.[45] To define it more simply, it is the 'conception of justice associated with periods of political change'[46] It has been described by the International Centre for Transitional Justice as:

> Transitional justice is a response to systematic or widespread violations of human rights. It seeks recognition and democracy. Transitional justice is not a special form of justice, but justice adapted to societies transforming themselves after a period of pervasive human rights abuse.[47]

Across the spectrum of transitional justice, mechanisms like truth recovery, memorialisation, and reparations all point to victims' needs and their protection.

The UN has recognised that transitional justice is not a static moment but is dynamic and ongoing. Ruti Teitel has described the orientation of transitional justice as 'caught between the past and future, between backward-looking and forward-looking, between retrospective and prospective.'[48] She explains the peculiar nature of transitional justice as one that is related to its temporal reach and one that spans between the past regime and the desired (liberal) shift.[49] One cannot properly grasp the contours of transitional justice because it operates in the normative and institutional interstices between international human rights law and international criminal law, yet does not fully align with either. Unlike human rights law, which emphasises ongoing state obligations to protect and fulfil individual rights, transitional justice often deals with exceptional periods of rupture—times of transition where these obligations have been systematically violated and where legal continuity is itself in question.

At the same time, while international criminal law focuses on individual criminal accountability for the most serious violations, transitional justice recognises that justice in such contexts may require a broader set of tools—truth commissions, reparations, institutional reform—that go beyond punitive measures. The result is a hybrid framework that prioritises moral legitimacy, social repair, and political transformation over strict legalism, making

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[45] Kieran McEvoy and Kirsten McConnachie, 'Victimology in Transitional Justice: Victimhood, Innocence and Hierarchy' (2012) 9(5) European Journal of Criminology 527.

[46] Ruti G Teitel, 'Transitional Justice in a New Era' (2002) 26 Fordham International Law Journal 893.

[47] International Centre for Transitional Justice, 'What is Transitional Justice' (ICTJ) <https://www.ictj.org/what-transitional-justice> accessed on 5 January 2020.

[48] Ruti (n 46).

[49] ibid.

transitional justice both conceptually fluid and politically contingent. Its aims are thus not reducible to either the protection of rights or the prosecution of crimes, but involve negotiating tensions between truth and justice, peace and accountability, memory and reconciliation—tensions that resist resolution within the boundaries of traditional legal regimes. An attempt will be made to test this hypothesis that transitional justice falls between the two disciplines and fills in the gap.

A. International Criminal Law and Transitional Justice

The Nuremberg Trials[50] post the Second World War led to the 'first phase of transitional justice,'[51] as described by Teitel. During this phase, there was 'a striking innovation to turn to international criminal law and the extension of its applicability beyond the state to the individual.'[52] Professor Naomi Roht-Arriaza's approach to understanding the relationship between transitional justice and international criminal law is a good starting point. In the first approach, the relationship between the two disciplines is interrelated,[53] in the sense that it is based on certain broad conceptions of transitional justice and international criminal law; transitional justice could be a precursor to international criminal law and can act as a catalyst to fill in any gaps in international criminal law.[54] In the second approach, the disciplines are placed parallel, meaning that the two are unrelated and irrelevant to each other, as international criminal law aims to enforce the law regardless of the circumstances.[55] Nevertheless, central to both disciplines is the role of victims.[56]

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[50] For a general overview on the Military Tribunal at Nuremberg, See Eugene Davidson, *The Trials of the Germans: An Account of the Twenty-two Defendants Before the International Military Tribunal at Nuremberg* (University of Missouri Press, 1972); George A Finch, 'The Nuremberg Trial and International Law' (1947) 41(1) The American Journal of International Law 20; Quincy Wright, 'The Law of the Nuremberg Trial' (1947) 41(1) The American Journal of International Law 38. See for a counterpoint on the historicity of international criminal law and its institutions, Rashmi Raman and Rohini Sen, 'Retelling Radha Binod Pal: The Outsider and The Native' in Frédéric Mégret and Immi Tallgren (eds), *The Dawn of a Discipline International Criminal Justice and Its Early Exponents* (Cambridge University Press 2020).

[51] Ruti G Teitel, 'Transitional Justice Genealogy' (2003) 16 Harvard Human Rights Journal 69.

[52] ibid 73.

[53] Naomi Roht-Arriaza, 'Editorial Note' (2013) 7(3) International Journal of Transitional Justice 383.

[54] ibid 389.

[55] ibid.

[56] For the increasing role of victims in international criminal law, See Mina Rauschenbach and Damien Scalia, 'Victims and International Criminal Justice: A Vexed Question?' (2008) 90(870) International Review of the Red Cross 441.

Under the framework of international criminal law, victims are granted the right to participation, but when they are not participating as witnesses, they are granted participatory rights when their personal interests are likely to get affected. Under the Rome Statute, there is a provision for victims to participate when their personal interests are affected in a proceeding.[57] However, this participation will be determined by the Court. In transitional justice, victims play a significant role and are the backbone of the criminal process; without their participation, it is almost impossible for a criminal trial to proceed. The culpability and criminal liability of the accused depend on the evidence gathered from the victim's testimony. Thus, they can participate from time to time in the different phases of the proceedings which include investigation, pre-trial, and appellate stages.[58]

The links between international transitional justice and international human rights law are significant. The Human Rights Council has requested the Office of the High Commissioner for Human Rights ('OHCHR')[59] 'to continue to enhance its leading role, including with regard to conceptual and analytical work regarding transitional justice, and to assist States to design, establish and analytical work regarding transitional justice, and to assist States to design, establish and implement transitional justice mechanisms from a human rights perspective.'[60] International human rights law assists in responding to past abuses and building a better society, which is the central objective of transitional justice.[61] The way victims are defined under international human rights (as defined in the previous section) depicts that the interpretation of the term victim and the rights associated with a victim are wider than its equivalent in international criminal law. The way international human rights and transitional justice are connected is that violations in human rights can trigger transitional justice responses that aim to rebuild a disintegrated society.[62] Human rights law provides for a framework for non-discrimination and inclusivity, and human

[57] See Decision on Victim's Participation in Proceedings Related to the Situation in Uganda (*Pre-Trial Chamber II*) ICC-02/04 (9 March 2012).
[58] ibid.
[59] See UNGA, 'Report of the Secretary General' (14 December 2006) UN Doc A/61/636-S/2006/980; UNHRC Res 9/10 (15 September 2008), UNHRC, 'Annual Report of the United Nations High Commissioner for Human Rights and Reports of the Office of the High Commissioner and the Secretary-General' (6 August 2009) UN Doc (A/HRC/12/18).
[60] UNHRC Res 9/10 (18 September 2008).
[61] For the convergence of different branches of international law, See Christine Evans, *The Right to Reparation in International Law for Victims of Armed Conflict* (CUP 2012).
[62] Naomi (n 53).

rights approaches are best suited to accommodate complementary visions of justice that fit into domestic law and customary norms.[63] By adapting some transitional justice measures, there is an improvement in human rights and democratisation of society.[64]

B. Third World Approaches to International Law and Victimhood

From a critical perspective, the Bhopal gas tragedy, which will be explored in a subsequent section of this paper, exposes the limitations of existing transitional justice mechanisms, which remain largely tethered to post-conflict or post-authoritarian paradigms and are insufficiently responsive to structural and peacetime harms. Traditional transitional justice ('TJ') frameworks often rely on a dichotomy between victims and perpetrators, rooted in contexts of political violence, failing to account for complex entanglements such as corporate-state collusion, regulatory failure, and systemic neglect that defined Bhopal. The Indian state's self-appointment as the sole legal representative of victims, while simultaneously being implicated in the lax oversight that enabled the disaster, highlights a deeper institutional contradiction that existing TJ models are ill-equipped to address. Moreover, the absence of meaningful victim participation and the lack of sustained reparative or truth-seeking processes reveal the inadequacy of mechanisms that prioritise legal closure over transformative justice. Bhopal challenges the assumption that harm must be politically motivated or conflict-driven to warrant a TJ response, and it calls into question the moral economy of victimhood that underpins conventional TJ frameworks. By foregrounding state complicity, structural violence, and the erasure of victim agency in a non-war setting, the Bhopal case demands a radical reimagining of transitional justice—one that expands its conceptual and normative boundaries to address the enduring injustices of global capitalism, environmental degradation, and regulatory indifference.

Third World Approaches to International Law ('TWAIL') critically interrogate the concept of the 'victim' in international law by exposing how this legal category often reflects colonial and neo-colonial power structures.[65]

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[63] Ruti (n 46).

[64] Tricia D Olsen, Leigh A. Payne and Andrew G. Reiter, 'The Justice Balance: When Transitional Justice Improves Human Rights and Democracy' (2010) 32(4) Human Rights Quaterly 980.

[65] For TWAIL accounts that challenge the mainstream, See JT Gathii, 'International law and Eurocentricity' (1998) 9 European Journal of International Law 184; Karin Mickelson, 'Rhetoric and Rage: Third World Voices in International Legal Discourse' (1998) 16 Wisconsin International Law Journal 353; Makau W Mutua, 'What is TWAIL?' (2000) 94 Proceedings of

TWAIL scholars argue that the mainstream legal discourse tends to construct victims in ways that depoliticise and individualise suffering, obscuring the historical and structural causes rooted in imperialism, global capitalism, and racial hierarchies. For example, in the context of international humanitarian and criminal law, victims are typically portrayed as passive recipients of harm who await justice from institutions that may themselves be complicit in global inequities. This narrow framing, TWAIL argues, marginalises collective experiences of oppression and erases the political agency of communities in the Global South. As Makau Mutua contends, international human rights discourse often casts the Third World subject as a 'savage-victim-saviour' trope, reinforcing a paternalistic dynamic in which Western actors are seen as rescuers of passive, voiceless victims.[66]

TWAIL perspectives also emphasise the need to redefine victimhood in ways that acknowledge historical injustice, colonial violence, and socio-

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the ASIL Annual Meeting 31; Balakrishnan Rajagopal, 'Locating the Third World in Cultural Geography' (1999) 15(2) Third World Legal Studies 1; David Kennedy, 'My talk at the ASIL: What is New Thinking in International Law?' (2000) 94 American Society of International Law 104; David W. Kennedy, 'When Renewal Repeats: Thinking Against the Box' (2000) 32 New York Journal of International Law and Politics 335; Duncan Kennedy 'Two Globalizations of Law & Legal Thought: 1850-1968' (2003) 36 Suffolk University Law Review 631; Antony Anghie and B.S. Chimni 'Third World Approaches to International Law and Individual Responsibility in Internal Conflicts' (2003) 2(1) Chinese Journal of International Law 77; Antony Anghie, Bhupinder Chimni, Karin Mickelson and Obiora Chinedu Okafor, *The Third World and International Order: Law, Politics, and Globalization* (Martinus Nijhoff 2003); Martti Koskenniemi, *From Apology to Utopia: The Structure of International Legal Argument* (Cambridge University Press 2005); Martti Koskenniemi, 'On the Idea and Practice for Universal History with a Cosmopolitan Purpose' (2006) 984 Shiso 4; B.S. Chimni, 'Third World Approaches to International Law: A Manifesto' (2006) 8 International Community Law Review 3; Bindu Puri and Heiko Sievers, *Terror, Peace and Universalism: Essays on the Philosophy of Immanuel Kant* (OUP 2007); A Imseis (ed), Third World Approaches to International Law and the persistence of the question of Palestine' (2008) 15 *Palestine Yearbook of International Law https://brill.com/edcollbook/title/18612;* Karin Mickelson, 'Situating Third World Approaches to International law (TWAIL): Inspirations, Challenges and Possibilities' (2008) 10(4) International Community Law Review 351; Karin Mickelson, 'Taking Stock of TWAIL Histories' (2008) 10 International Community Law Review 355; Obiora Chinedu Okafor, 'Critical Third World Approaches to International Law (TWAIL): Theory, Methodology, or Both?' (2008) 10 International Community Law Review 371; Richard Falk, Balakrishnan Rajagopal and Jacqueline Stevens, *International Law and the Third World: Reshaping Justice* (1st edn, Routledge 2008); Anne Orford, *International Law and its Others* (CUP 2009); B.S. Chimni, 'The World of TWAIL: Introduction to the Special Issue' (2011) 3(1) Trade, Law, and Development; Luis Eslava and Sundhya Pahuja, 'Between Resistance and Reform: TWAIL and the Universality of International Law' (2011) 3(1) Trade, Law and Development 103.

[66] See Makau wa Mutua, 'Savages, Victims, and Saviors: The Metaphor of Human Rights' (2001) 42 Harvard International Law Journal 201.

economic exploitation. Scholars such as Vasuki Nesiah and Balakrishnan Rajagopal highlight that legal mechanisms such as transitional justice, while purporting to serve victims, often rely on liberal legalism that is disconnected from the lived realities of postcolonial societies. Instead, they argue for a conception of victimhood that recognises the collective, systemic, and enduring nature of harm, particularly as experienced by marginalised communities. This reconceptualisation shifts focus from mere compensation or retributive justice to structural transformation and historical redress. In this light, victims are not simply individuals who suffer violations but also communities who resist and challenge the legal and political systems that sustain their marginalisation. This approach aligns with TWAIL's broader goal of decolonising international law and recovering the voices and agency of the oppressed.[67]

IV. INTERSECTIONALITY AND THE POLITICS OF VICTIMHOOD

International criminal law and international human rights law fall under the framework of reference for transitional justice. In its human rights dimension, transitional justice seeks to respond systematically to widespread violations of human rights. In its international criminal law dimension, it coexists with the discipline and ties the two fields together, filling in the gaps and expanding the purview of international criminal law.[68]

Across the spectrum of transitional justice, mechanisms like truth recovery, memorialisation, and reparations all point to victims' needs and their protection. Despite the definition of a victim and the role of a victim under different disciplines of international law as discussed in Sections II & III, there is a lack of a comprehensive, globally accepted definition for the term 'victim.' In the aftermath of a mass violence, it could be complex to place the identities of 'victim' and 'perpetrator' on an individual when in some situations, individuals can be both victimised and victimiser over a period of time.[69] As a result, the intersection between innocence and blame presents a difficulty in awarding

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[67] See Balakrishnan Rajagopal, *International Law from Below: Development, Social Movements and Third World Resistance* (CUP 2003); Vasuki Nesiah 'The Ground Beneath Her Feet: "Third World" Feminisms' (2003) 4(3) Journal of International Women's Studies 30.

[68] Naomi Roht-Arriaza, 'Transitional Justice and International Criminal Justice: A Fraught Relationship?' (*OUPblog* 25 November 2013) <https://blog.oup.com/2013/11/transitional-justice-international-criminal-justice-relationship-pil/> accessed 5 January 2025.

[69] Mike Morrissey and Marie Smyth, *Northern Ireland After the Good Friday Agreement: Victims, Grievance and Blame* (Pluto Press 2002).

victim-status to an individual under transitional justice, as victims may also have committed human rights abuses.

This section proposes a unique interpretation of the term victimhood. Victimhood is that incident that allows an individual to exercise their personhood before a Court or Tribunal.[70] Victimhood is the central aspect of an individual's personality, and this legal personality of the individual empowers them and serves as grounds for granting personal and social power instead of representing weakness. Using the insights of Martha Minow in her article on *Surviving Victim Talk*,[71] when individuals are suffering from exclusions and degradations based on certain characteristics like race, gender, disability, or sexual orientation, they can claim protection by asserting that they are victims of this unacceptable bias. This shows that victimhood is the central aspect of a person that can be utilised to reinforce in the courts that the individual has been subject to bias. She asserts this by providing the example of an individual who may want to establish their innocence by sharing their stories of immigration and hardship to show their innocence and indicate how they have never participated in exploitation or discrimination.[72] Victimhood is therefore that part of an individual's 'identity' that can be reinforced by a person to obtain legal recognition and claim legal protection.

Victimhood can be conceptualised as an axis of identity.[73] The 'identity characteristic' in victimhood can be comprehensively understood through the concept of intersectionality developed by Kimberle Crenshaw.[74] Intersectionality refers to society's characterisation that stems due to the presence of several identity axes.[75] Identity axes refer to an imaginary line where everyone present

[70] This is the author's own interpretation of victimhood and has been proposed to fill the gaps in the definitions under international law. See in this context, Rashmi Raman, 'Changing of the Guard: A Geopolitical Shift in the Grammar of International Law' in Frans Viljeon, Humphrey Sipalla and Foluso Adegalu (eds), *Exploring African Approaches to International Law: Essays in Honour of Kéba Mbaye* (University of Pretoria 2022).

[71] Martha Minow, 'Surviving Victim Talk' (1993) 40(6) UCLA Law Review 1411.

[72] ibid 1418.

[73] See Hadar Dancig-Rosenberg, 'Crime Victimhood and Intersectionality' (2019) 47(1) Fordham Urban Law Journal 85.

[74] Kimberle Crenshaw, 'Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory and Antiracist Politics' (1989) 1989(1) University of Chicago Legal Forum 139 [hereinafter Crenshaw, Demarginalizing the Intersection of Race and Sex] (creating the concept of intersectionality).

[75] Kimberle Crenshaw, 'Mapping the Margins: Intersectionality, Identity Politics, and Violence against Women of Color' (1991) 43(6) Stanford Law Review 1241. [hereinafter Crenshaw, Mapping the Margins] Crenshaw discusses the way both racism and sexism affect women of

on the line shares a common characteristic. The theory suggests that some identity axes are axes of oppression, whereas others are seen as axes of denomination. The ones positioned on dominant axes have certain social privileges, and the ones on the oppression axes face discrimination.[76] Crenshaw maps certain similarity and variation that create hierarchy, subordination, and exclusion amongst different groups. The identity characteristics generally revolve around sex, sexual orientation, race, and other social forces. Crenshaw explains the identity axes by using the example of black women who are at the intersection of two axes of oppression. These axes are sexist oppression (stemming from the fact that the person is biologically a woman) and racist oppression (stemming from their racial affiliation, which is an African American). This situation of a black woman differs from that of a white woman and a black man and thereby results in discrimination, preventing the recognition and uniqueness of a black-woman's needs.[77] Crenshaw's theory exposes the theory of intersectionality and how power can dictate a social structure. The ones located at the intersections of oppression are discriminated against, and the ones located at the intersections of domination enjoy various social privileges.[78]

In conformity with the intersectionality theory, victimhood is where an individual is effectively demonstrating an identity that they associate with. This identity is one where the individual is exposed to unacceptable bias. Due to this unacceptable bias, the individual is falling on the identity axes of oppression. Upon being able to successfully demonstrate this personality, the individual can obtain powers and obtain legal recognition, and claim legal protection. Intersectionality in international human rights law remains underdeveloped, often subsumed within a formal equality framework that inadequately accounts

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color. As she states: [W]hen one discourse fails to acknowledge the significance of the other, the power relations that each attempt to challenge are strengthened. For example, when feminists fail to acknowledge the role that race played in the public response to the rape of the Central Park jogger, feminism contributes to the forces that produce disproportionate punishment for Black men who rape white women, and when antiracists represent the case solely in terms of racial domination, they belittle the fact that women particularly, and all people generally, should be outraged by the gender violence the case represented.

[76] ibid.

[77] Crenshaw (n 75).

[78] See Kathy Davis, 'Intersectionality as Buzzword: A Sociology of Science Perspective on What Makes a Feminist Theory Successful' (2008) 9(1) Feminist Theory 67, where intersectionality has been defined as 'the interaction between gender, race, and other categories of difference in individual lives, social practices, institutional arrangements, and cultural ideologies and the outcomes of these interactions in terms of power.'

for the layered, compounding experiences of discrimination and harm. While international human rights law nominally recognises the universality of rights, its doctrinal and institutional architecture tends to isolate rights violations along singular axes, such as gender, race, or disability, thereby obscuring how intersecting identities intensify vulnerability and shape access to justice. This reductive treatment of identity translates into a flattened conception of victimhood in international law, where victims are too often categorised through generic legal templates that fail to reflect the structural and systemic dimensions of their marginalisation. The result is a form of legal recognition that is simultaneously visible and insufficient; individuals are acknowledged as victims of violations, but the socio-political conditions that render them disproportionately vulnerable remain unaddressed. A critical analysis thus reveals that intersectionality is not merely a descriptive tool but a normative imperative, demanding a reconfiguration of victimhood that centres complexity, structural inequality, and historically embedded forms of exclusion within the adjudicatory and reparative practices of international law.

V. HOHFELD'S JURAL RELATIONS AND THE STATE-INDIVIDUAL DYNAMIC

The state is a key law enforcement agent under international law, and the simultaneous recognition and promotion of human rights principles is the member states' obligation.[79] An overwhelming number of international human rights norms are addressed to the states and not individuals or groups of persons.[80] The individual too holds a place of importance in international law, 'if the individual is absent, the human rights discourse neither exists nor has

[79] See UNGA Res 41/128 (4 December 1986). Declaration on the Right to Development stated, 'the human person is the central subject of development and should be the active participant and beneficiary of the right to development.'

[80] See Jost Delbruck, 'International Protection of Human Rights and State Sovereignty' (1982) 57(4), Indiana Law Journal 567; International Convention on the Elimination of All Forms of Racial Discrimination (adopted 21 December 1965, entered into force 4 January 1969) 660 UNTS 195, art 5 (ICERD) where there is a provision for an individual's possession of a specific right; International Covenant on Civil and Political Rights (adopted 16 December 1966, entered into force 23 March 1976) 999 UNTS 171 (ICCPR); GAOR 'Resolutions and Decisions adopted by the General Assembly during its 21st Session, Supplement No. 16' (20 September-20 December 1966) UN Doc A/6316; GAOR 'Resolutions and Decisions adopted by the General Assembly during its 18th Session, Supplement No. 15' (17 September-17 December 1963) UN Doc A/5515.

meaning.'[81] With this in mind, an important issue begins to arise: what is the relationship between an individual and a State in the recognition and protection of fundamental human rights? Wesley N.= Hohfeld's[82] theory of jural relations can aid in answering this question.

In two celebrated essays published in the Yale Law Journal,[83] Hohfeld[84] sought to eliminate any obscurity and vagueness surrounding the terms 'rights' and 'duties.'[85] Hohfeld proposed a semiotic analysis with eight different forms of legal relations.[86] He claimed that these were the fundamental legal concepts and titled them the 'lowest generic conceptions' that all legal issues could be reduced down to.[87] He did not offer a substantive theory, but rather an analytical method of deconstructing legal relations into their smallest atoms.[88] He arranged these eight legal concepts in a logical system by linking the legal concept with its respective opposite or correlative.[89] This arrangement provides a distinction

[81] Simon Chesterman, 'Human Rights as Subjectivity: The Age of Rights and the Politics of Culture' (1998) 27(1) Millennium: Journal of International Studies 97.

[82] For a biography on Wesley Hohfeld, See Carl Wellman, *An Approach to Rights: Studies in the Philosophy of Law and Morals* (Springer 1997).

[83] See Wesley Newcomb Hohfeld, 'Some Fundamental Legal Conceptions as Applied in Judicial Reasoning' (1913) 23(1) Yale Law Journal 16. The sequel is Wesley Newcomb Hohfeld, 'Fundamental Legal Conceptions as Applied in Judicial Reasoning' (1917) 26(8) Yale Law Journal 710 [hereinafter Hohfeld 1917]. This article later appeared at Wesley Newcomb Hohfeld, *Fundamental Legal Concepts as Applied in Judicial Reasoning: And Other Legal Essays* (Walter Wheeler Cook, YUP 1946).

[84] Carl Wellman (n 82).

[85] See Hohfeld (n 83); A year after Hohfeld's death, the Yale University Press printed Hohfeld's two articles in a small volume. See Walter Wheeler Cook (n 83).

[86] See Hohfeld (n 83); Arthur L Corbin, 'Legal Analysis and Terminology' (1919) 29 Yale Law Journal 163. Though Hohfeld's endeavour was to provide an analytical scheme, his theory was criticised for not providing an argument for the logical relationship between the propositions and for being deceptive as it disguises the fact that the basic relationships could be complex. See Peter Westen, 'Poor Wesley Hohfeld' (2018) 55(2) San Diego Law Review 449; Chhatrapati Singh, 'The Inadequacy of Hohfeld's Scheme: Towards a More Fundamental Analysis of Jural Relations' (1985) 27(1) Journal of the Indian Law Institute 117.

[87] Christopher Berry Gray, *The Philosophy of Law An Encyclopedia* (1st edn, Routledge 1999); Hohfeld (n 83). This method of reducing complex legal notions in terms of duties and rights has been criticised for yielding a more complex network that what one starts out with. See Chhatrapati (n 86).

[88] Henry Smith calls it a 'theoretical construct' that can be used to analyze legal relations. See Henry E Smith, 'Property as the Law of Things' (2012) 125(7) Harvard Law Review 1691. Hohfeld's theory of jural relations was framed in a purely analytical manner. This was critiqued for not containing any direct and explicit implication and arose controversy. See Gregory S Alexander, *Commodity And Property: Competing Visions Of Property In American Legal Thought* 1776-1970 (University Of Chicago Press 1997).

[89] Hohfeld (n 83). See Alan D Cullison, 'A Review of Hohfeld's Fundamental Legal Concepts' (1967) 16(3) Cleveland State Law Review 559; Corbin (n 86). An alternative to this arrangement

between four sets of different juridical relationships[90] and advocated for a two-party legal relationship. A person's right, privilege, power, or immunity is linked to its correlative, i.e., a duty, no-right, liability, or disability respectively.[91] Hohfeld's theory's application can yield beneficial insights and provide practical usefulness and map out the relationship between two parties.[92] As Hohfeld's conceptions gain meaning only upon specifying its relation with the others, his theory can be applied by choosing one of the eight fundamental conceptions and applying it to specify the relation between two parties.[93]

In that context, Hohfeld's theory of jural relations can help define the legal relationship between State and an individual, and between sovereignty and human rights. Sovereignty is a recognised, fundamental principle of the UN Charter.[94] Simultaneously, it is a relative concept that is subject to limitations that the international system may necessitate.[95] The Charter obligates the member

was proposed, wherein a square of oppositions containing 'duty' and 'right' were proposed to separate the semantic problems of meaning from questions of logical relationships. See Chhatrapati (n 86).

[90] Hohfeld exhibited the various relations by using a scheme of opposites and correlatives. See Hohfeld (n 83). This is shown as:

Jural Opposites	rights	privilege	power	immunity
	no-rights	duty	disability	liability
Jural Correlatives	right	privilege	power	immunity
	duty	no-right	liability	disability

[91] Corbin (n 86). The analytical power of two-party relations was demonstrated by Hohfeld in his analysis of *in rem* concepts. Hohfeld (n 83) 1917. See Wesley Newcomb Hohfeld, 'The Nature of Stockholders' Individual Liability for Corporation Debts' (1909) 9(4) Columbia Law Review 285; Wesley Newcomb Hohfeld, 'The Individual Liability of Stockholders and the Conflict of Laws' (1909) 9(4) Columbia Law Review 492.

[92] Pierra Schlag, 'How to Do Things With Hohfeld' (2015) 78 Law and Contemporary Problems 185. See Jeremy Waldron, *Liberal Rights: Collected Papers 1981-1991* (CUP 1993). Jeremy Waldron comments on the two-party conception of Hohfeld as it only applies to legal relations and not to moral relationships.

[93] See Mark Andrews, 'Hohfeld's Cube' (1983) 16(3) Arkon Law Review 471; J.M. Balkin, 'The Hohfeldian Approach to Law and Semiotics' (1990) 44(5) University of Miami Law Review 1119. Critics of Holfeld have stated that his theory only addresses the legal relations between two parties and not the moral ones. For a commentary on Hohfeld not being adapted to moral relationships, See Philip Montague, 'War and Self-Defence: A Critique and a Proposal' (2010) 23 Diametros 69. See Judith Jarvis Thomson, *The Realm of Rights* (HUP 1990).

[94] Charter of the United Nations (adopted 26 June 1945, entered into force 24 October 1945) 1 UNTS XVI art 2(1).

[95] The relative character of sovereignty has been emphasised in James Wilford Garner, *Recent Developments in International Law* (University of Calcutta 1925); Robert Lansing, 'Notes on World Sovereignty' (1921) 15(1) American Journal of International Law 13; James W Garner, 'Limitations on National Soverignty in International Relations' (1925) 19(1) American Political

states to promote and respect human rights without discriminating based on race, sex, and nationality.[96] In that context, the international community's principle of non-intervention does not apply to questions of human rights violations.[97]

VI. THE BHOPAL GAS TRAGEDY AS A CASE STUDY FOR VICTIMHOOD

The Bhopal gas tragedy serves as a compelling and strategic case study to foreground the discussion on victimhood in international law and Hohfeld's theory of jural relations as it encapsulates the complex interplay between state power, corporate impunity, and the legal marginalisation of victims, within both domestic and international frameworks. Unlike conventional cases of human rights violations or armed conflict, Bhopal occurred in a peacetime regulatory context. Nonetheless, the scale of harm, the systemic denial of justice, and the state's monopolisation of victim representation expose profound deficiencies in how international law conceptualises and operationalises victimhood. Hohfeld's analytic framework provides a critical tool to deconstruct the relational legal positions at play, revealing how the Indian state assumed not only duties but also strategic liberties, effectively displacing victims' claims and insulating transnational corporate actors from accountability. By situating Bhopal within this analytical matrix, the case illuminates the inadequacies of prevailing legal doctrines and challenges the narrow, actor-specific definitions of victimhood, offering instead a model that foregrounds structural harm, mediated agency, and the evolving subjectivity of victims in international law. Hohfeld's theory of jural relations will be applied to the relationship shared between the State and an individual and between sovereignty and human rights. To begin this analysis, we are applying Hohfeld's theory to an illustration of the Bhopal gas leak.[98] The

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Science Review 1; James L. Briely, *The Law of Nations: An Introduction to the International Law of Peace* (2nd, OUP 1936); Clyde Eagleton, 'Organization of the Community of Nations' (1942) 36(2) American Journal of International Law 229.

[96] ibid art 1(3); art 13(1); art 55(1).

[97] The United Nations Assembly in 1947 to address the issue of human rights violations in Bulgaria, Hungary and Rumania is an example of the international response. For the United Nations response to human rights, see Repertory of United Nations Practice, vol 1, supplement 2, 121-123 (1955–1959).

[98] On 3rd December, 1984, in a city named Bhopal in Madhya Pradesh, India, tonnes of chemical methyl isocyanate split out from Union Carbide India Ltd's pesticide factor. This remains attributable to some of the key operational decisions of Union Carbide Corporation which controlled its Indian subsidiary, Union Carbide India Limited. See Ingrid Eckerman, 'The Bhopal Gas Leak: Analyses of Causes and Consequences by Three Different Models' (2005) 18(4-6)

Bhopal gas leak carries a larger narrative message of the State's response towards addressing suffering and providing relief to the victims of the disaster.[99] Applying Hohfeld's theory to the relationships that originated in the aftermath of the Bhopal gas leak can pave the way to the evolution of victim rights and the State's treatment of a mass disaster under international law.[100]

The facility at Bhopal, operated by Union Carbide of India Ltd ('UCIL') was a plant manufacturing the chemical methyl-isocyanate,[101] which is known to be extremely dangerous, volatile, and toxic.[102] On the night of 2nd December 1984, a chemical reaction ruptured the MIC tank, causing a leak and spewing over forty-five tons of toxic gas, causing a catastrophe affecting many lives.[103] The quantum of damage was so huge that the Indian government decided to represent all the victims of the disaster and sue on their behalf by using *parens patriae*.[104] *Parens patriae* is a common law doctrine adapted by English Courts [105] and in India, the turning point in the jurisprudence of the doctrine was post

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Journal of Loss Prevention 213; Ingrid Eckerman, *The Bhopal Saga Causes and Consequences of the World's Largest Industrial Disaster* (University Press India Private Ltd 2005); Upendra Baxi and Amita Dhanda, *Valiant Victims and Lethal Litigation: The Bhopal Case* (NM Tripathi, 1990).

[99] For a reading about the aftermath of the Bhopal disaster, See Kim Fortun, *Advocacy After Bhopal* (University of Chicago Press 2001); Paul Shrivastava, 'Preventing Industrial Crises: The Challenges of Bhopal' (1987) 5(3) International Journal of Mass Emergencies & Disasters 199.

[100] For a reading on the international law aspects to the Bhopal disaster, See YK Tyagi and Armin Rosencranz, 'Some International Law Aspects of the Bhopal Disaster' (1988) 27(10) Social Science and Medicine 1105.

[101] For a summary of the accident, See Tze Lin Kok, Yeuan Jer Choong, Chee Kean Looi and Jing Han Siow, 'Bhopal Gas Tragedy- The Scar of Process Safety' (2019) 269 Loss Prevention Bulletin 11; 'Articles and Case Studies from Around the World' (2014) 240 Loss Prevention Bulletin 1.

[102] For a reading on the long-term effects of methyl isocyanate, See Bhupesh Mangla, 'Long-Term Effects of Methyl Isocyanate' (1989) 334(8654) LANCET Journals 103; Neil Anderson, 'Long-Term Effects of Methyl Isocyanate' (1989) 333(8649) LANCET Journals 1259.

[103] Upendra Baxi terms the Bhopal disaster as the 'Bhopal catastrophe' and presents it as a series of interlinked catastrophes which include the levels of human, social and environmental suffering, the failures of the Union Carbide Corporation and the failure of the State to deliver retributive justice for the Bhopal-violated. See Upendra Baxi, 'Writing About Impunity and Environment: The "Silver Jubliee" of the Bhopal Catastrophe' (2010) 1(1) Journal of Human Rights and the Environment 23.

[104] The term *parens patriae* was first mentioned in *Charan Lal Sahu v Union of India* 1989 1 SCC 674. The term was used to justify the passing of the Bhopal Gas Leak Disaster (Processing of Claims) Act.

[105] *Parens patriae* translates to 'parent of the country.' Its evolution dates back to the common law concept of the royal prerogative developed in England. The royal prerogative includes the rights and capacities that the King exclusively enjoys and has over all other persons. Henry Campbell Blacl, *Black's Law Dictionary* (Bryan A Garner ed, 5th edn, The Publisher's Editorial Staff 1979). See *Pfizer Inc v Lord* 522 F.2d 612, 616 (8th Cir. 1975); *Fakland v Bertie* [1696] 2 Vern 333; *Eyre v Countess of Shaftsbury* [1722] 2 P Wms 103; *Beverley's Case* [1603] 76 Eng Rep 1118; *Wellesley v*

the Bhopal Gas Leak Disaster.[106] By invoking *parens patriae*, the Indian government asserted its right to sue Union Carbide on behalf of the individual plaintiffs.[107] This *parens patriae* control came from the Bhopal Processing of Claims Act ('the Act'),[108] as the Act preserved the victims' right to retain counsel and allowed the government to make claims on behalf of the victims.[109] It was a way to dictate strategy and to scurry ongoing settlement negotiations.[110] The objective of this was to ensure that the victims 'are fully protected, and that compensation claims were pursued speedily, effectively, equitably, and to the best advantage of the claimants.'[111]

Both the Indian government and the Union Carbide Corporate ('UCC') assumed defensive positions and tried to control the damage. They sought to shift responsibility and public attention away and shift the locus and blame on

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Duke of Beaufort [1827] 2 Russ 1, 38 Eng Rep 236; *Smith v Smith* [1746] 26 ER 977; *Skinner v Warner* [1792] 21 Eng Rep 473; *De Manneville v De Manneville* [1804] 32 Eng Rep 762; *Re M & N* (Minors) [1990] 1 All ER 205.

[106] The first instances of the application of *parens patriae* in India were seen while deciding the matters of custody and guardianship of infants and minors, See Banku *Behary Mondal v Banku Behary Hazra and Anr* 1943 AIR Cal 203; *Medai Dalavoi T Kumaraswami v Medai Dalavoi Rajammal* 1957 2 MLJ 211; *Marilynn Anita Dhilon v Margaret Nijar and Ors* 1984 ILR 1Punjab and Haryana; *Manuel Theodore D'Souza*, 2000 2 Bom CR 244; *Rosy Jacob v A Chakramakkal*, 1973 1 SCC 840; *Anuj Garg and Ors v Hotel Association of India* 2008 AIR 2009 SC 557; *Gaurav Nagpal v Sumeda Nagpal* AIR 2009 SC 557*; Ashish Ranjan v Anupma Tandon and Anr.* 2010 14 SCC 274; *Sheoli Hati v Somnath Das* AIR 2019 SC 3254. For the applicability of *parens patriae* in cases of disability (physical, mental, economical or legal), See *Aruna Ramchandra Shanbaug v Union of India & Ors* 2011 4 SCC 454. See *Shankar Kinsanroa Khade v State of Maharashtra* 2013 4 ABR 567; *Perry Kansagra v Smriti Mada Kansagra* 2019 3 CTCT 827. The doctrine of *parens patriae* has also been applied by Indian Courts to declare rivers, tributaries and streams as juristic and legal persons. See *Mohd Salim v State of Uttarakhand and Ors* 2017 2 RCR (Civil) 636; *Court on its Own Motion and Ors v Chandigarh Administration and Ors* 2020 4 RCR (Civil) 1.

[107] The Government of India to protect and safeguard the rights of the victims was entitled to act as *parens patriae* and this position was reinforced by the Bhopal Gas Leak Disaster (Processing of Claims) Act. See Charan Lal Sahu (n 104).

[108] The Union of India enacted an ordinance in 1985, that granted it 'an exclusive right to represent and act on behalf of the victims of the disaster' and make a claim against the Union Carbide Corporation for the Bhopal disaster. See 'The Bhopal Tragedy: Social and Legal Issues' (1985) 20(2) Texas International Law Journal 267, (summarises the provisions of the Bhopal Ordinance). Post this, the Bhopal Gas Leak Disaster (Processing of Claims) Act 1985 was enacted.

[109] ibid s 4.

[110] For an in-depth analysis of *parens patriae* in the Bhopal disaster, See LF Butler, 'Parens Patriae Representation in Transnational Crises: The Bhopal Tragedy' (1987) 17(1) California Western International Law Journal 175.

[111] *Union Carbide Corporation v Union of India* 1990 AIR 273 (India).

other parties and delete any factual knowledge and evidence of culpability.[112] By exercising *parens patriae*, the Indian government became a negotiator between the UCC and the victims of the disaster.[113] This shifting position of the Indian government will be examined in the next section of this Article. The analysis of the relationships shared between the Indian government and the victim, the Indian government and the UCC, and the UCC and the victims will help determine a State's response in a mass disaster and the evolving role of a victim of a human rights violation.

A. The Relationship between the Government of India and the Victims of the Disaster

In 1985, the Government of India ('GOI') passed the Processing of Claims Act, which authorised it to act as *parens patriae* to represent the victims of the disaster exclusively.[114] The rationale for this move was to ensure that the victims 'are fully protected, and that compensation claims were pursued speedily, effectively, equitably, and to the best advantage of the claimants.'[115] This relationship of the GOI and the victims is a classic example of the jural correlative of power and liability proposed by Hohfeld.[116] Hohfeld decoded the notion of power by stating that legal relations could be changed due to external influences in nature and which are beyond the control of human volition or within the control of human volition. The one who has a volitional control to effect a change in another's legal relations is known to have legal power. [117]

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[112] Jamie Cassels, 'The Uncertain Promise of Law: Lessons from Bhopal' (1991) 29(1) Osgode Hall Law Journal 1, 11. See also Marc Galanter, 'When Legal Worlds Collide: Reflections on Bhopal, the Good Lawyer and the American Law School' (1986) 36(3) Journal of Legal Education 292, 307.

[113] By invoking *parens patriae* that was granted legitimisation through the Bhopal Gas Leak Disaster (Processing of Claims Act), the government of India became a mediator as it was suing and settling claims on behalf of the victims. For a full analysis of the power of the Government of India, see Bhopal Gas Leak Disaster Act (n 104).

[114] For a reading of the provisions, see Bhopal Gas Leak Disaster (n 104).

[115] Union Carbide Corporation case (n 111).

[116] See Peter Jaffey, 'Hohfeld's Power-Liability/Right-Duty Distinction in the Law of Restitution' (2004) 17(02) Canadian Journal of Law and Jurisprudence 295.

[117] Hohfeld gives the example of an offeror and offeree where the offeree has a power to bind the offeror in a contract and the offeror is under a liability as there is a possibility that the offeree will oblige the offeror by accepting the offer. Hohfeld (n 83) 44. But see Roy L Stone, 'An Analysis of Hohfeld' (1963) 48(313) Minnesota Law Review 313, 325, where Hohfeld's arrangement of correlatives and opposites and power and liability is said to be inconsistent. Hohfeld's definition of the jural conceptions is described as ambiguous and lacking a logical sense.

When Hohfeld was talking about power, he was declaring that when 'Y' has power, 'Y' can change the external relations of 'X' and therefore, 'X' is under a liability with relation to 'Y'.[118] Power denotes the ability to alter existing legal conditions for better or for worse. [119]

The GOI had the power to alter the legal relationships of the victims with the Corporation, as it was representing and settling claims with the UCC on behalf of the victims. This indicates the victims' liability in relation to the GOI, which could alter and impact the victims' legal relations. This power placed the victims in a position of helplessness and liability towards the GOI. This power of the GOI corresponds to liability in the victims, and this liability, among other things (right, privilege), could also carry the possibility of a duty being created.[120]

B. Power, Liability, and the State-Victim Relationship – Applying Hohfeld To Bhopal

Hohfeld's terms were not necessarily pigeonholed in nature. Instead, the fundamental basic conceptions can coexist and interconnect amongst each other. The GOI's power to represent the victims and settle their claims under its *parens patriae* jurisdiction makes it duty-bound to represent them effectively and settle claims adequately.

The GOI, by invoking the doctrine of *parens patriae*, had the power to represent victims and a duty to represent them with this power, ensuring that the compensation was 'just, reasonable and adequate.' After a couple of months of preparation and argument, the GOI agreed to cap off the settlement to 470 million dollars and shut down any further claims arising out of or connected to the gas leak.[121] Chief Justice R.S. Pathak responded by stating, 'in light of the enormity of the human suffering caused by the Bhopal gas disaster and the pressing urgency to provide immediate and substantial relief to victims of the

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[118] Hohfeld spoke about power by using illustrations: 'Many examples of legal powers may readily be given. Thus, X, the owner of ordinary personal property "in a tangible object" has the power to extinguish his own legal interest (rights, powers, immunities, etc.) through that totality of operative facts known as abandonment; and- simultaneously and correlatively-to create in other persons privileges and powers relating to the abandoned object- e.g., the power to acquire title to the latter by appropriating it.' See Hohfeld (n 83) 45.

[119] Peter (n 86).

[120] See Hohfeld (n 83) 54; Liability could also create a privilege and a power. *Dougherly v Creary 30* Cal. 290, 298 (1866). But see *Booth v Commonwealth* 16 Grat. (1861).

[121] Union Carbide (n 111); S Hazarika, 'Bhopal Payments by Union Carbide Set at $470 Million' *The New York Times* (New York, 15 February 1989) A1 and D3.

disaster the case was pre-eminently fit for an overall settlement.'[122] Further, the estimates of the number of deaths and injuries can only be guessed. But worst of all, the GOI did not account for the consequences of the disaster that unfolded in the years that followed.

VII. HOHFELDIAN PERSPECTIVES ON THE STATE - INDIVIDUAL DYNAMICS

The GOI represented the victims to decide the quantum of compensation; in exchange, it also sought immunity from any liability. While power is the ability to affect someone's legal relations, disability is the opposite of power, meaning it is the absence of the ability to affect legal relations.[123] The correlative of disability is immunity, which refers to the protection of one's legal relations from being affected by another's power. Hohfeld pointed out:

> As already brought out, immunity is the correlative of disability ("no-power") and the opposite, or negation, of liability. Perhaps it-will also be plain, from the preliminary outline and from the discussion down to this point, that a power bears the same general contrast to an immunity that a right does to a privilege. A right is one's affirmative claim against another, and a privilege is one's freedom from the right or claim of another. Similarly, a power is one's affirmative "control" over a given legal relation as against another; whereas an immunity is one's freedom from the legal power or "control" of another as regards some legal relation. [124]

In the Bhopal disaster, the GOI, by invoking the *parens patriae* doctrine (through the Processing of Claims Act), diverted its position from liability to immunity and disabled or took away the courts' power to affect or alter its legal relations. This move of the GOI was a way of limiting liability and incorruptly avoiding any responsibility for allowing an ultra-hazardous corporation to function in Madhya Pradesh. Bhopal tragedy was a classic case of transferring a hazardous substance to a third-world/developing country.[125] The Indian government authorised the plant in India to manufacture 5000 tons of MIC

[122] Union Carbide (n 111) 675.

[123] See also Arthur (n 86); Allen (n 86).

[124] Hohfeld (n 83) 55.

[125] See Gunther Handl, 'Environmental Protection and Development in Third World Countries: Common Destiny-Common Responsibility' (1988) 20 NYU Journal of International Law and Politics 603; Craig D Galli, Note, 'Hazardous Exports to Third World: The Need to Abolish the Double Standards' (1987) 12 Columbia Journal of Environmental Law 71; Maureen Bent, Note, 'Exporting Hazardous Industries: Should American Standards Apply?' (1988) 20 NYU Journal of International Law and Politics 777.

based pesticides at Bhopal, Madhya Pradesh.[126] It knew about the dangers and refused to take any technical assistance from the parent company to run the Indian plant.[127] Though the GOI should have been answerable to the victims as a joint tortfeasor, it hid behind the *parens patriae* canon and took away the victims' right to be heard.

As discussed in the previous subsection, the GOI invoked its *parens patriae* jurisdiction through the Processing of Claims Act and took on the power to act as a negotiator in settling claims between UCC and the victims. As a negotiator, it could alter the relations of UCC with the victims. In that aspect, it had the power of deciding the fate of UCC and the compensation it had to pay to the victims, thereby making UCC liable to the GOI.

The use of the *parens patriae* doctrine is rather problematic, as the GOI is in a situation of considerable conflict of interest. The GOI became a shareholder of UCC in 1970, when India had designed policies to invite and encourage foreign companies to invest in the country. UCC was one such company that paved its way to the Indian market. As part of the deal, the GOI invested a significant percentage in UCC. The Bhopal factory was operated by Union Carbide of India. The project was initiated in 1969 through negotiations between UCC and UOI. UCC owned 50.9 percent, while Indian government financial institutions owned approximately 20 percent.[128] Being a stakeholder of UCC, the GOI had an interest in the protection of UCC and could structure the settlement to safeguard the interests of UCC.

Because of the GOI's position as a negotiator, it had safeguarded and immunised itself from any liability. The GOI can either be immune or liable. It cannot be both immune and liable simultaneously, as immunity and liability are jural opposites. Hohfeld's jural opposites refer to situations where, when one constituent is present in a factual context, its jural opposite cannot reside simultaneously in the same factual context.[129]

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[126] The Bhopal plant was constructed in accordance to the Indian government's policies and laws. The plant had to be modified in order to accommodate the growing developmental needs and most of the times, these modifications are not environmentally safe or economically sound. See Upendra Baxi and Amita Dhanda, *Valiant Victims And Lethal Litigation: The Bhopal Case* (NM Tripathi, 1990).

[127] ibid 39.

[128] *Charan Lal Sahu v Union of India* 1989 1 SCC 674 (India); Upendra Baxi (n 92).

[129] Hohfeld (n 83) 53.

VIII. VICTIMS AND THEIR RIGHTS IN BHOPAL

In the Bhopal Disaster, the GOI diverted its position of being liable as a shareholder of UCC to being a negotiator and settling claims on the victims' behalf. The GOI shifted its position from liability to that of immunity, disabling the judiciary's power to hold it liable as a tortfeasor in the disaster.

The facility in Bhopal was a disaster waiting to happen. Though the Union Carbide Corporation argued that the disaster was a result of 'a unique combination of unusual events,'[130] the signs of danger were there throughout its operations. When the GOI agreed to allow the manufacture and storage of such large quantities of MIC, it failed to assess the risks involved. There had already been several leaks at the plant and reported deaths and injuries.[131] The Union Carbide Corporation, being an employer, failed to assess risk and communicate hazards.[132] A local journalist's[133] report proves that the facility had been losing money for some years, and there was an absence of skilled workers. The plant was badly and poorly maintained and the safety equipment was either inadequate or inoperative.[134]

The law that governs the operation of hazardous processes in India is the Factories Act, 1948.[135] In the present context, UCC is the occupier, and as an occupier, UCC owes general duties to the workers that include: maintaining the plant and systems in the factory and ensuring that they are safe and do not pose

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[130] Larry Everest, *Behind the Poison Cloud: Union Carbide's Bhopal* Massacre (Chicago, Banner Press, 1986).

[131] In 1981, one worker had died and three others were severely injured due to a gas leak. Later, in 1982 twenty-five workers were hospitalised because of another leak. This was reported in Union of India, Memorandum that was reproduced in Upendra Baxi and Thomas Paul, *Mass Disasters and Multinational Liability: The Bhopal Case* (NM Tripathi, 1986) at 72.

[132] UCC had a duty of reasonable care to assess risk and warn the employees of any dangers associated with the manufacture of methyl isocyanate. It failed to warn the employees of these dangers and acted negligently. Micheal Ciresi of Robins, Zelle represented the Union of India and this was drafted by him in the complaint.

[133] A local journalist named Rajkumar Keswani tried to warn the people of the dangers of the facory. He wrote an article titled 'Please Save this City.' In the Union Carbide's report it was found that there was a 'potential for the release of toxic materials' and a consequent 'runway reaction' due to 'equipment failure, operating problems or maintenance problems.'

[134] ibid. See affidavit of Rajkumar Keswani in the Supreme Court in *Rajkumar Keswani v Union of India* WP 281 of 1989 (India).

[135] Factories Act 1948, s 2 defines 'hazardous process' as any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, by-products, wastes or effluents thereof would cause material impairment to the health of the persons engaged in or connected therewith, or result in the pollution of the general environment.

any risk to the workers, providing arrangements for ensuring the safety and health of the workers while handling, storing and transporting hazardous items, providing information and training and providing supervision to the workers.[136] In a nutshell, the occupier has a duty to ensure that the working conditions are safe and adequate.[137]

With this duty comes a correlative right of the worker to be warned about any imminent danger.[138] The occupier has a duty to take immediate remedial action if he is satisfied that there is an imminent danger to the workers' lives. As previously stated, UCC defaulted on this duty as there were previous warnings in 1976 and 1982 of pollution within the plant and a phosgene leak, and UCC took no steps to curb this. Apart from these general duties of an occupier, there are specific duties imposed upon the occupier in relation to hazardous processes.[139] The occupier of a factory engaging in hazardous processes has to maintain accurate and up-to-date health records of the workers, appoint only those persons who are qualified in handling these hazardous substances, and provide for medical examination of every worker.[140] UCC defaulted on these duties as an occupier, resulting in the largest chemical industrial accident ever.[141] The Bhopal disaster was not a coincidence or a combination of unexpected events but a series of failures at the planning, implementing, and managing stages.

The principles enunciated in *Rylands v Fletcher*[142] on strict liability are guiding principles to the law on liability. Strict liability imposes the obligation to

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[136] Micheal Cmichiresi of Robins (n 132).

[137] Factories Act 1948, s 41C specifies the occupier's responsibility concerning hazardous processes. Every occupier of a factory involving any hazardous process shall maintain accurate and up-to-date health records or, as the case may be, medical records, of the workers in the factory who are exposed to any chemical, toxic or any other harmful substances which are manufactured, stored, handled or transported and such records shall be accessible to the workers subject to such conditions as may be prescribed; appoint persons who possess qualifications and experience in handling hazardous substances and are competent to supervise such handling within the factory and to provide at the working place all the necessary facilities for protecting the workers in the manner prescribed.

[138] The Factories Act, 1948.

[139] ibid.

[140] ibid.

[141] An industrial disaster such as the Bhopal gas leak repeated recently at Visakhapatnam, India from the LG polymers plant. For a detailed description of the accident, see V Ramana Dhara, '35 years later, Bhopal gas leak failures resurface in *Vizag*' *Hindustan Times* (8 May 2020) <https://www.hindustantimes.com/india-news/35-years-later-bhopal-gas-leak-failures-resurface-in-vizag/story-blOMncph2Az8RJO4yKTvUO.html> accessed 27 July 2025.

[142] *Rylands v Fletcher* 1868 LR 3 HL 330.

repair, which arises from the perception that the intentional infliction of harm may give rise to responsibility to repair even in a situation where the infliction could be justified. The law on strict liability gave rise to absolute liability, which does not accommodate any exceptions and holds the occupier of a dangerous item absolutely liable upon its escape. In India, the law on absolute liability has been set out in the *M.C. Mehta v Union of India*,[143] where the court stated:

> [A]n enterprise which is engaged in a hazardous or inherently dangerous industry. . . owes an absolute and non-delegable duty to the community to insure that no harm results to anyone. . . . [A]nd if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm. . . .[144]

If we were to apply Hohfeld to a rule such as absolute liability, it would mean that the occupier would be liable for any damage caused by the escape of a thing that is likely to make mischief. In that sense, there is a duty imposed on the occupier, and this duty is of a particular kind and begins from the time the occupier has kept the dangerous thing under his control. There is a duty to stop the thing from escaping and creating mischief.

The correlative is a right to be protected from any injury caused because of the thing escaping. Another correlative to fit into the equation of Union Carbide Corporation and the victims is power and liability. The victims have the power to hold Union Carbide Corporation liable by using the legal process, and Carbide is susceptible to such a process. The victims have a legal power to secure a remedy by way of legal proceedings, and this power has been exercised to enforce a duty or secure a remedy for that breach of duty by the Union Carbide Corporation. The victims' power stems from Union Carbide Corporation's liability to take all steps to anticipate any risks and plan and prevent them from materialising.

The Bhopal story depicts the *parens patriae* power of the GOI to shift focus and flip the role of the GOI from a tortfeasor to a negotiator. Hohfeld's theory can only act as an analytical tool when applied to two parties to determine their relationship.

In the above discussion, there is ambiguity in categorising who the victim of the Bhopal disaster was? Was the GOI also a victim, as it was siding with the

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[143] *MC Mehta v Union of India* 1987 SCR (1) 819.
[144] ibid.

victims of the disaster and representing and settling their claims? Was it the ones injured during the gas leak? Was it the ones who lost their families to the disaster? Was it the ones who continued to suffer in the years to come? While responding to this question, the Indian courts in the case of *Charan Lal Sahu v Union of India*,[145] termed 'victims' as those who were disabled due to physical, mental, financial, and economic situations. It stated that they were the 'ones who needed the State's protection to assert, establish and maintain their rights against the wrong-doers in the mass disaster.'[146] Though this statement by the Indian Courts provides some perspective into defining the term 'victim', there remains an opening for evasion and avoidance that could be imposed on the deciding bodies to attract liability.

IX. REDEFINING VICTIMHOOD IN INTERNATIONAL LAW

The Hohfeldian Analysis of jural rights, when applied to the Bhopal gas leak, demonstrates the changing relationship between parties in the aftermath of an industrial disaster. The examination of the denotation of 'victim' under different schools of international law paints a picture for us to interpret our meaning of victimhood. The relationship between a State and its individuals, and more significantly, a class of individuals who have suffered oppression, demonstrates that victims have been evolving as a powerful class, inevitably making a State responsible for upholding and protecting their rights. The interrelation between the State and the victims has been changing, mostly unpredictably. From being a mere witness in a criminal proceeding to becoming the prime focus and backbone of a proceeding, it has become impossible to proceed without a victim's active participation from time to time in the different phases of the proceedings.

We can observe that their role has been transcending. This has strengthened the idea that individuals are central to human rights law and are entitled to these rights without discrimination. States are bound to respect these rights by refraining from interfering with or curtailing the enjoyment of these rights. States are obligated to protect individuals and groups against human rights abuses.

Sovereignty and international human rights law are complementary. Human Rights law strengthens the moral foundations of a State and lends it

[145] *Charan Lal Sahu* (n 39).
[146] ibid.

more credibility in the world community. In several human rights treaties and conventions, there is an obligation placed on the State to investigate, prosecute, and punish perpetrators of mass atrocities.[147] Furthermore, since the end of the Cold War, there has been an expectation on the international community to involve itself in addressing peace and stability issues in countries emerging from conflict. The international community plays an unquestionably large role in establishing systems that acknowledge and respond to human rights violations. Take, for instance, the genocide in Rwanda in 1994. In addition to the Rwandan government of establishing 'Gacaca Courts' to address challenges,[148] the International Criminal Tribunal for Rwanda was established by the United Nations Security Council to prosecute individuals responsible for crimes against humanity and other serious violations of humanitarian law.

X. CONCLUSION

The Bhopal gas tragedy presents a paradigmatic case for rethinking the concept of victimhood in international legal discourse. While initially framed as a mass tort and addressed through domestic civil litigation, the scale, complexity, and transnational dimensions of the disaster reveal deeper normative tensions in the treatment of victims under international law. What emerges from Bhopal is not merely a failure of corporate accountability, but a reframing of the relationship between the state and the individual: the Indian government positioned itself simultaneously as the representative, gatekeeper, and litigant on behalf of the victims, thereby monopolising access to justice while excluding those directly affected from substantive participation. This model unsettles the conventional frameworks of international human rights law, which often presuppose direct victim agency and procedural standing, as well as international criminal law,

[147] For example, take Article IV of the UN Convention on the Prevention of the Crime of Genocide UN Convention on the (Prevention of the Crime of Genocide 1948). Furthermore, Article IV of the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment 1984.) Both these lay an obligation on the State concerning genocide and torture. Another source is the International Covenant on Civil and Political Rights. An important judgment in light of this obligation is the case of *Velázquez Rodriguez v Honduras* (Inter-American Court of Human Rights). The Inter-American Court on Human Rights stated that states are responsible for preventing, investigating, and punishing violations of rights recognised by the Convention. Additionally, there has to be an attempt to restore the right that has been violated and provide compensation

[148] The law on Gacaca laid out four categories of suspects. These included: the people that conceived, planned, and executed genocide and were tried by the convention courts, the second, third, and fourth categories were tried by the Gacaca courts.

which largely confines victimhood to atrocity crimes committed within the context of conflict. In Bhopal, however, the victim is entangled in a postcolonial state's performance of sovereignty, development, and global capital, raising urgent questions about who may speak for the victim and under what institutional and normative conditions.

This case study thus provides a critical site for an innovative redefinition of victimhood, one that foregrounds the relational dynamics between state and subject rather than treating victim status as a static legal designation. By applying Hohfeld's theory of jural relations, the analysis exposes the shifting legal positions of the Bhopal victims, not simply as holders of rights against a negligent corporation, but as subjects whose entitlements and exclusions were mediated through the state's strategic legal positioning. In this sense, Bhopal functions as a hybrid model that engages, yet also unsettles, the normative assumptions of international human rights law, international criminal law, and transitional justice. It challenges the prevailing notion of the victim as an individual harmed by clearly delineated state or non-state actors in conflict or authoritarian contexts, and instead introduces a model in which structural violence, regulatory complicity, and delayed justice in peacetime contexts constitute equally pressing sites for the legal recognition of victimhood. In doing so, the Bhopal case demands a recalibration of international legal frameworks to account for victims not only as recipients of post-facto redress but as central figures in the construction and critique of legal responsibility itself.

The increasing emergence of a victim's rights and a victim's participation in international law has caused the emergence of a new kind of interpretation of victimhood. The individual has been contacted with international law and is no longer a mere witness but rather an active participant from time to time in the different phases of proceedings. The developments in various international law areas, more specifically, international human rights law obligate the State to protect individuals and lay down rules on State responsibility in the context of human rights.[149] As observed under Sections I and II of this article, the victim's role under international law has been asserted by creating different categories of victims. These include victims of abuse of power, victims of crime, victims of gross violations of international humanitarian law, victims of international

[149] Charter of the United Nations, art 1(3).

criminal law violations, and victims of serious violations of international humanitarian law.

Consequently, these categories have their own definition of a 'victim.' However, despite the diversity, we can find certain common elements in all these definitions. These common elements have helped us interpret our definition of a victim by joining the dots between victimhood and intersectionality under Section III.

Hohfeld's fundamental legal relations have permitted us to describe the power-liability dynamic between the State and an individual in the context of human rights. By defining the victim as a powerful actor in international law, we recognise an individual's legal personality under international law.[150] States are no longer the subjects of international law, and there is an increasing disposition to treat individuals as the subjects of international law.[151] Victims in international law have risen as powerful actors, holding the State liable and abiding the State to protect individuals and groups against human rights abuses.

[150] This opinion of the recognition of an individual's legal personality in international law has been shared in LFL Oppenheim, *International Law* (8th edn, H Lauterpacht ed, Longmans, Green & Co 1955) 636.
[151] ibid 639.