

National Human Rights Commission
New Delhi, India
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Business And Human Rights:
The work of the National Human Rights Commission of India
On the State's duty to protect

A. The Indian context

In a report submitted in 2006, a *National Commission on Enterprises in the Informal Sector* estimated that 86% of the Indian workforce was in the unorganised sector, another 6.2% was informally employed, without contracts, and therefore 92.6% was not in the employ of organised businesses. A report prepared in February 2012 by the National Statistical Commission put the figure at “more than 90%”, which means that not much has changed. Employers in the informal sector do not know about, and would argue that they cannot afford, the voluntary commitments to corporate social responsibility adopted by trade and industry associations. In India, therefore, a focus on the corporate responsibility to protect would cover less than 10% of the workforce. It is essential to place emphasis on the State's duty to protect, and on the need to ensure that those who are victimised have access to remedies. These are the two areas to which the National Human Rights Commission of India (NHRCI) therefore gives the greatest attention. It is possible that in other developing countries as well, the bulk of the workforce is in the informal or unorganised sector, and the experience of NHRCI might be of some interest to them. This paper is a selective overview of the work that NHRCI does on business and human rights.

B. Implementation of laws that protect labour

2. Most workers in the unorganized sector are poor. Many are in debt to labour contractors, to whom they are forced to pledge their labour. Very large numbers therefore become bonded labour, a practice proscribed by the *Bonded Labour System (Abolition) Act, 1976*. Because the employers in the unorganized sector, to whom the contractors send them, do not know or flout their legal obligations, the workers are often denied the benefit of the *Minimum Wages Act, 1948*. Most workers travel as families, their children joining them in work in industries where this is banned by the *Child Labour (Prohibition and Regulation) Act, 1986*; other children are directly recruited and sent into the same industries or made to work under terms that breach the law. It is frequently the case that these workers, adults and children, travel from the poorer States of India to those where there is more scope for employment; they should, therefore, get the protection of the “*Inter-State Migrant Workmen (Regulation of Employment and Condition of Services) Act, 1979*”, but NHRCI finds that they rarely do.

3. It is essential, therefore, for public servants to be aware of the laws which it is their duty to uphold, and to ensure that they are implemented. The large number of complaints that NHRCI receives each year shows that officers of the State have often failed in their duty to protect. In these cases, the practice evolved by NHRCI is as follows:

- a) invoking its powers as a civil court trying a suit under the Code of Civil Procedure, it directs the local authorities to immediately inspect the business or enterprise against which the complaint has been made;
- b) if the report is perfunctory, or reflects ignorance of the laws, NHRCI spells out provisions of the law which must be applied;
- c) where the scope of the problem merits it, it sends its own inspectors;
- d) when its enquiries establish that conditions of bonded labour exist, it directs the local authorities to issue discharge certificates, freeing the workers from their bondage;
- e) it directs the local authorities to pay the relief and to organize the rehabilitation for freed bonded labour, mandated under the Acts, while also taking action under the law against the employers;
- f) it takes similar action when child labour has been illegally employed;
- g) it closes files only after receiving proof that its directives have been acted upon;
- h) it arranges regular training workshops for officials, to educate them on the problems faced by labour in the unorganized sector, and on their responsibility to ensure that these are redressed;
- i) it has set up a special cell in NHRCI to work on these issues.

C. Impact of Business on the Environment

4. NHRCI receives several complaints against industries that have created environmental problems. In these cases as well, NHRCI uses its quasi-judicial powers and the same process to ensure that these units function in accordance with law, including environmental laws. Its practice is to:

- a) direct the Government and local authorities concerned to inspect the organization or industry in question and report if it is in compliance with all the laws;
- b) when there is prima facie evidence of an impact on the environment or the local population, ask for corrective action to be taken;
- c) after the State reports that it has done so, to check with the complainant that the problem has indeed been corrected;
- d) send its own inspectors and experts to investigate and report both on the scale of the problem and on the measures taken by the State;
- e) close its file only if it is satisfied that the problem has been removed.

5. The sustained intervention of NHRCI usually leads to corrective action. As one example out of many, it received a complaint late in 2008 that workers in the stone-crushing industry in a District in a mineral-rich State were exposed to health hazards. In the course of its enquiry, it became clear that this was a problem endemic to the State, and it therefore called on the Government to take corrective action throughout its territory. Under the monitoring of NHRCI over three years, the State now has an inventory of all stone-crushing units and a rigorous licensing process for all 1862; 181 units have been closed down and another 134 ordered to close, because they had not met environmental standards. NHRCI's intervention has therefore had a State-wide impact on an industry that has the potential to damage health and the environment if not carefully regulated.

6. In the rare cases where NHRCI cannot get the State to take corrective action, it explores other options. In a case of an abattoir that functioned well beyond its licensed capacity and polluted its environs in one of the most populous cities of India, NHRCI used all its powers to ensure that the environmental damage was stopped. It sent its own Inspectors, summoned the District Magistrate and eventually the Chief Secretary (the senior-most civil servant of the State), and received assurances that its recommendations would be complied with. Unfortunately, other compulsions prevailed and the problem continued. Therefore, NHRCI filed a writ petition in the local High Court, on whose directions the abattoir was demolished.

7. The lesson to be drawn is that in most cases an NHRI that exercises its quasi-judicial powers to the full will be able to persuade Governments to comply with its directives, leading to systemic improvements. In the rare cases when it cannot, the NHRI must not hesitate to approach the Courts.

D. Impact of Business on Health

8. The NHRCI examines this crucial issue from four aspects – the impact on health as an outcome of government policy, as an outcome of business practices, as an outcome of industrial processes and as an effect of industrial products. It uses its quasi-judicial powers to obtain redress for victims, approaches the courts when necessary, educates civil servants about their responsibilities and briefs other key players, including Parliament. As examples:

- a) As an outcome of government policy – NHRCI received a complaint that the new Pharmaceuticals Pricing Policy would favour manufacturers and make essential drugs too costly for the poor. Having examined the documents sent to it, including the Draft Policy, and hearing representations from NGOs, the Commission has decided to intervene in the Supreme Court of India, where a petition is presently being heard on the same issue.

- b) As an outcome of business practices – NHRCI has received several complaints that drug companies were conducting clinical trials of new medicines on the poor, without their informed consent. After calling for and studying reports from all concerned, NHRCI has set up an Advisory Group of eminent experts to try to formulate a set of guidelines for these trials. Separately, since a petition on this matter is also being heard in the Supreme Court, it has decided to intervene there as well.
- c) As an outcome of industrial processes – NHRCI has found that, particularly, in mineral-based industries and in all industries where stone is the basic product, there is a high incidence of occupational disease, including silicosis. In the course of its enquiries, it has also found that, because there are very few doctors qualified in occupational health, these diseases are often not diagnosed. NHRCI has therefore taken the following steps :
- i) issued recommendations for relief for victims in individual cases where it has established that they had contracted the disease because of the lack of awareness of the employer or of protective measures at the work-place;
 - ii) held a National Seminar, followed by regional review meetings, to raise awareness about the scope of the problem and examine what needs to be done;
 - iii) submitted a special report to Parliament on silicosis to sensitize legislators.
- d) As an effect of industrial products – For a number of years, NHRCI has monitored the effect of the pesticide endosulfan, which has crippled many who came in direct contact with it, and also appears to have a trans-generational impact. It has taken the following action:
- i) commissioned a study from the Indian Council of Medical Research on the population most severely affected;
 - ii) sought the advice of the eminent medical specialists in its Core Group on Health (an advisory body it has set up);
 - iii) on the basis of their advice and its own examination of the issues involved, recommended to the Government of India that it ban the use of endosulfan;
 - iv) held a series of meetings with the senior-most officers of the Central Government and the State Government to ensure that the victims received adequate relief and ongoing rehabilitation.

E. Impact of Displacement by Industrial Projects

9. In its work NHRCI has found that, while the major industries that are set up in greenfields areas will probably abide by CSR in their operations, the needs and problems of the populations displaced by these projects are often overlooked. In a series of interventions on major industrial projects, NHRCI has taken the following steps:

- a) asked the State Government to ensure that the rehabilitation of those who are displaced goes hand in hand with the project;
- b) urged that compensation be fair, and that alternative livelihoods be arranged for those deprived of their traditional means of income;
- c) examined all complaints of arbitrary action against those who protest peacefully against these projects, ensuring that, whenever its enquiries establish that the complaint was justified, the State gives redress to victims and takes action against the civil servants concerned;
- d) monitored assurances given or actions taken by the State, including by sending its own teams to assess the progress made.

10. NHRCI believes these are essential functions for NHRIs to discharge, particularly in countries going through a period of rapid industrialization.

F. Code of Business Ethics

11. Several associations of trade and industry in India have already adopted undertakings on CSR and are participants in the UN Global Compact. However, practice in the corporate sector is uneven and much remains to be done to persuade trade and industry that human rights is good for business, not in conflict with it. NHRCI is therefore trying to see if a set of guidelines can be framed that trade and industry would accept. It has commissioned and received a study on "*Developing a Code of Ethics for Indian Industry*". It will now hold consultations with representatives of trade and industry, using this study as a basis for discussions. Eventually, after broader consultations with civil society and the Ministries concerned, the objective is to arrive at a set of guidelines or a code of ethics which Indian trade and industry will embrace and implement.

G. Need for cooperation between NHRIs

12. As a postscript, NHRCI's work on asbestos highlights the need for more cooperation between NHRIs on business and human rights, not only because many face similar problems, particularly in the developing world, but also because, in a globalised world, some serious problems are imported and can best be settled through international cooperation.

13. Acting on a complaint in 2011 that, while asbestos was considered a carcinogen and its use had been banned in many countries, its use was growing in India, NHRCI took the following steps:

- i) it asked for reports from all State Governments and from the Central Government on the issues raised in the complaint;
- ii) it also asked two leading medical institutions for their advice.

14. Once all reports are in, NHRCI will consider its next steps. It notes, however, that the complaint makes the telling point that India, now the world's largest importer of white asbestos, sources most of it from a country where its use is banned. That country, however, resists international efforts to place asbestos in the list of hazardous chemicals under the Rotterdam Convention, and exports almost half of what it mines to India. Once NHRCI has completed its enquiry, it may need the cooperation of its counterpart in the exporting State to stop the export and use of asbestos.

Reported by: Sree Harica

