

ENVIRONMENTAL RIGHTS AND THE ROLE OF THE NATIONAL HUMAN RIGHTS COMMISSION OF INDIA

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ABSTRACT

This paper outlines the circumstances under which the NHRC was formed, its aims and its powers so as to provide a context for the interventions related to the protection of the environment. It then discusses the various interventions that the NHRC made, taking up issues that directly impacted the rights of the citizens, more specifically rights of the marginalized sections such as agricultural workers and miners. To the questions whether an overarching national institution for human rights should venture into areas where it does not have expertise, the paper argues that its early interventions were well intentioned though it did not have an immediate impact. Yet, the interventions led to a certain consciousness that can be termed positive.

KEYWORDS: Human Rights, Civil Liberties, Democratic Rights, Environmental Rights

INTRODUCTION

The evolution of the human race, the progress in science and technology and the ever growing need to utilize the resources that abound in nature has ensured that human beings have acquired a mastery over modifying and transforming their surroundings. Over the years, this modification and transformation has taken on hues of degradation or over-utilization of natural resources through unsustainable practices. Growing deserts, deforestation, contaminated food, polluted water bodies, poisoned air and extreme climatic variations have both increased the frequency and intensified the occurrence of natural calamities. Environmental disasters and crises are not contained to immediate surroundings nor are they experienced equally (Johnston 1995: 112). It has been seen that the least powerful, the most vulnerable and the poorest sections of the society bear the brunt of environmental disasters. The right to land, livelihood, food and health is often sacrificed in the name of “national interest.”

After the independence of India in 1947, there was a lot of expectation and optimism, and consequently, relative indifference to human rights issues. Even though there were violations, there was “a tendency to minimise those violations.” The “process of disillusionment” with the state machinery was gradual. The state power was seen in its most oppressive form during the Emergency. It was immediately after this period that various human rights groups established and consolidated themselves. The government’s response to indigenous rights organizations throughout has been one of indifference, when not branding them as working against the national interest. However, the government established the National Human Rights Commission (NHRC) as a national body in September 1993. This article seeks to review the role

of the NHRC in relation to environmental rights (for environmental laws, see Nomani 2000).

In the first part of this article, we briefly detail the circumstances under which the NHRC was formed, its aims and its powers so as to provide a context for the interventions. In the second part, we take a look at the interventions it has made in the area of environmental issues.

THE ESTABLISHMENT AND ROLE OF THE NHRC

Many countries find themselves in a position of being required by international opinion to endorse various international declarations, covenants, laws and treaties even though social divisiveness and political constraints, coupled with an inefficient institutional framework and inadequate resources, make it impossible to comply with the accepted requirements. Human rights, for developing countries, often become necessary due to international concerns.

According to one commentator the NHRC was established as the government was “keen to get a clear chit from” the international community (*India Today*, 15 December 1992, p. 18). It was essentially a matter of “image management.” Speaking at a Conference of Chief Ministers, P. V. Narashima Rao, the then prime minister, said, “If . . . there is a feeling within the country or abroad that Government is not serious about infringements of Human Rights then it is a matter of serious concern and needs to be dispelled with all the emphasis at our command” (GOI, nd., Affirmation). One way of dealing with this problem was to set up a National Human Rights Commission. The background paper, which discussed and suggested the creation of a commission, showed the same concern with international opinion (GOI, 1992:1-2). The same sentiments were expressed by the home minister in the parliament on 19

December 1993: that a commission was being formed to counter international allegations of human rights abuse in the country. He said that the creation of the NHRC “would foul the designs of some countries to malign India at the United Nations and other international fora” (*The Hindu*, 19 December 1993, p. 4).

While the government's motive seemed clear, how does the Commission see its role in relation to the government? According to the first chairman of the Commission, “the organization would not do anything directly in this matter, but its actions will obviously help the country in certain ways (Ranganath Misra, interview with author, 16 February 1994). The secretary general of the Commission explained it thus: We are not a government department. We are something outside it, though the efforts we are making are with a view to sort of helping itThe effort of NHRC is to promote and protect human rights. In the performance of this task, there may be areas where there is a conflict of interest with the government or there may be areas where the interest of the government and NHRC go hand in hand” (R. V. Pillai, interview with author, 16 February 1994). The non-governmental rights organizations, however, feared that it would be more the case of the government and the NHRC going “hand in hand.”

The Human Rights Commission Bill (Bill No. 65 of 1993) was introduced in the Parliament in May 1993, but before this Bill could be passed, the government established the NHRC through an ordinance on 28 September 1993 (No. 30 of 1993). Subsequently, another Bill was introduced in the Parliament, which was passed in December 1993, and received the assent of the President of India on 8 January 1994 (No. 10 of 1994), and became an Act, the Protection of Human Rights Act 1993.

The aims and functions of the Commission are to inquire into cases of human rights violations, prevent such violations, to intervene in judicial proceedings related to human rights (with the approval of the court) or recommend appropriate measures to the government; to visit and review jails conditions; to review legal and constitutional provisions, international laws and treaties relating to human rights; to spread human rights literacy and awareness in the country; and to encourage and support the efforts of non-governmental organizations in this area. The Commission can, therefore, investigate any case of human rights violation by state agencies either on a complaint or on its own.

Upon completion of an inquiry, the Commission can recommend to the government to initiate proceedings for prosecution of the concerned public servant; recommend interim relief to the victim or the members of his family; and/or approach the Supreme Court or High Courts for directions, orders or writs. If the Commission makes a

recommendation to the government about any specific case, the government is obliged to reply detailing any action taken or proposed to be taken. The Commission is free to publish its recommendations together with the comments of the government. Over the years, the NHRC has been able to highlight various significant issues. In some cases that it has taken up, it has also met with partial success.

The Commission has powers to ask for any information from any agency. As the Commission's statements get wide media coverage, its actions have resulted in more public awareness about such issues. Its hearings are open to the press and its orders and recommendations to the government are publicized. Additionally, if the government fails to take action on its recommendations, the Commission is prepared to “generate public opinion through the media” (*Times of India*, 15 January 1994, p. 9).

In the early years, the Commission took up an “environmental issue” in response to petitions by a Supreme Court lawyer and a British human rights activist. It was a case of arsenic poisoning in West Bengal, where hundreds of thousands of people were affected by the high content of a deadly metalloid in tube-well water, causing “physical affliction such as skin disease and damage of the liver and nerves.” The Commission issued a notice to the government of West Bengal seeking details of “ecological disaster shaping up in six districts of the state” (*India Today*, 15 February 1995, p. 22).

Whereas environmental issues are recognized as part of human rights, and rights organizations have themselves been active in taking up such cases, this particular action by the Commission raised questions whether it should get involved in such “high-profile issues.” The action was not criticized *per se*, but legal experts questioned whether the Commission should venture into areas for which it did not have the requisite expertise. A Supreme Court lawyer and rights activist, Rajeev Dhavan, argued that “The NHRC is not an environmental body as such and such interventions could end up as empty gestures No Commission should spread itself too thin.” Another Supreme Court lawyer called for the establishment of a separate environmental commission. However, the NHRC did not stop taking up cases of environmental concerns. We shall now look at some of the cases where it intervened.

CASE STUDIES OF NHRC INTERVENTION

In this part, we will highlight some selected cases of NHRC intervention in environmental issues: (1) Silicosis among Adivasi Migrant Workers in Madhya Pradesh and Gujarat; (2) the Case of Kosi Embankments in Bihar; (3) Pesticide spraying in Kerala;

Silicosis among Adivasi Migrant Workers

During both the winter and the summer seasons, young Adivasi workers from the villages of Jhabua district (one of the poorest districts of India) migrate to neighbouring Gujarat in search of work as their own fields yield only sparse crops of maize, sorghum and millets – and there is no alternative employment available to these villagers. Many of these migrant workers are employed in the quartz crushing factories at rather low wages in Balasinor and Godhra in central Gujarat (Baviskar 2008: 8-10). Their work includes feeding the crushers with carcinogenic silica and packing the silica powder in bags. The workers inhale huge amounts of silica and this exposure results in silicosis, that is, scarring of the lung tissue by the tiny blade like silica dust. Within a short span of exposure to silica dust the workers are inflicted with many ailments (irregular breath, loss of weight, profound weakness) and within a few years their fate is sealed by untimely death. Most of these villagers are the chief wage-earners of their families and are in the most productive years of their working life.

Tests conducted by the National Institute of Occupational Health (NIOH) and the Gujarat Pollution Control Board on the air quality of some of these factories in 1982 concluded that very high concentration of silica dust was present in the air which made it highly unsafe (Baviskar 2008: 9). The owners of these factories are fully aware of the hazardous nature of this work and the toxicity of silica. No compensation or protection has been offered to the dying or to the families of the dead workers. Most of these migrant workers are unregistered workers who are brought to these factories by middlemen or contractors. A team from the NHRC visited the factories in October 2007 and found that most of the units were shut down (Baviskar 2008: 9). Apparently the news of their visit was leaked to the owners of these units.

Similar reports have also emerged from Kheda district of Gujarat, another place where the tribals from Madhya Pradesh have moved. Here, the Gujarat Industrial Corporation has set up crushing industrial units that manufacture quartz powder of different mesh size that are used in the glass, ceramic and chemical industries. Handling of the powder is known to cause silicosis. Legally, the silicosis victims could have claimed compensation under the Employees' State Insurance Act, 1948 (ESI Act) as this is a notifiable disease under the Factories Act, 1948. However, the factories here are not covered under the ESI Act. Also, none of the workers have any evidence of having worked in the factory as they are an unorganized group. The factory inspectors and pollution control department do not bother about violation of labour norms. Most workers do not speak of their health problems as they fear that their family members would then not be employed (*The Wire*, 8 October, 2015).

Several civil rights groups in Madhya Pradesh and Gujarat filed a petition regarding silicosis in the Supreme Court of India, which in March 2009 directed the NHRC to go ahead with the issue of compensation in respect of confirmed cases of death due to silicosis and rehabilitation in cases of workers living with silicosis. The NHRC teams visited factories and recommended that the Gujarat and Madhya Pradesh governments pay a total of Rs. 7.1 crore to the affected workers. The Gujarat government was directed to pay Rs. 3 lakh each to the kin of the 238 migrant workers from Madhya Pradesh who died due to silicosis while working in factories in Gujarat. The Madhya Pradesh government was directed to rehabilitate about 304 workers who were suffering from silicosis while working in Gujarat. After the 2010 order, more than 1000 cases of silicosis have been identified including 503 deaths. As the Gujarat government failed to pay any compensation to a single victim of silicosis, the NHRC went back to the Supreme Court in 2013 (*The Wire*, 8 October, 2015).

The Kosi Embankments

In the mid-1950s, embankments were built on the river Kosi to protect 2,14,000 hectares of land. However, this spelt doom for nearly two lakh people living in over 300 villages who were likely to be trapped within these embankments and face the ravages of floods henceforth. In the years 1963, 1968, 1971, 1980, 1984, 1987, 1991 and 2008 the Kosi bund breached and wrecked havoc upon lakhs of people—caused death, destroyed their homes, inundated their cultivated land and killed their cattle (Mishra 2008: 47). In spite of various reassurances given by the politicians and administrators, adequate compensation and rehabilitation remained a distant dream for these hapless sufferers. By 1970, about 6,650 families were relocated outside the embankments while 35,000 families still lived within. People trapped within these embankments have been subjected to complete state apathy and live a life of utter neglect and deprivations. The literacy level in some of these areas (Saharsha, Darbhanga and Madhubani districts) stood at 30.11% (2001 Census) (Mishra 2008: 49). In the absence of basic infrastructure like roads, electricity, hospitals and banks, people living within these embankments continue to eek out a very basic and vulnerable existence. In spite of constituting a Kosi Pirit Vikas Pradhikar (an authority for Kosi victims) on 14 April 1987 and a governmental committee, nothing much has been done to ameliorate the problems of the Kosi sufferers. The population trapped in these embankments has risen from two lakhs to about four and a half lakhs (Mishra 2008: 51). But not a single political party has seriously concerned itself with these issues and the NGOs working in these areas are seen only as providers of relief to flood victims.

An advocate Dev Kumar Sinha of Kosi Mukti Sangharsh Samiti (KMSS) wrote to the NHRC on 30 May 1998 with a request to intervene. The NHRC wrote to the government of Bihar first in 1998 and then again in March 1999 as the first letter remained unanswered (Mishra 2008: 51). In October 2001, the government of Bihar replied stating that more than 40,000 people living within the embankments had been rehabilitated in accordance with the Rehabilitation Scheme of 1957 (Mishra 2008: 52). Further, more money was spent on the development of civic amenities for the people: thus the project had spent more than the estimated amount and had rehabilitated more than 40,000 families. Regarding the Barahkshetra dam, the government of Bihar stated that the dam would be constructed only after an agreement between India and Nepal. The NHRC forwarded the reply of the government of Bihar to the KMSS, in response to which the KMSS asked the NHRC to take a fresh look at the entire issue. The NHRC sent this letter to the government of Bihar so that it could reevaluate the whole situation and closed the case on 10 December 2004. It would appear that the NHRC failed to effectively intervene. The NHRC did not visit these districts before disposing off the case; nor did it send a rejoinder to the government of Bihar asking for full details mentioned in its letter of March 1999 (Mishra 2008:52).

Pesticide spraying in Kerala

In the 1970s, the state run Plantations Corporation of Kerala (PCK) sprayed toxic pesticides like endrin and endosulfan on its cashew plantations in six panchayats of Padre village in Kasargod district of Kerala. This was done to control the pest attacks on cashew trees and for a better harvest. Little did the PCK realize that by spraying toxic endrin and in later years endosulfan, they were not only contaminating the entire ecosystem but were also exposing the local population to health hazards like cancer and skin and lung ailments. (Rajendran 2002: 2206). It is only when the Centre for Science and Environment (CSE), a Delhi-based NGO tested blood samples from the affected villagers that the enormity of the catastrophe was revealed. Endosulfan residues, several hundred times the residue limit for water were found in the blood samples. In the period of 11 years, from 1990 to 2001, 156 cases of ailments in 123 households were detected by a single doctor in a single village. Of these 156 cases, there were 49 cases of cancer alone (Rajendran 2002: 2206).

While many developed countries have banned the use of endosulfan in 1999, in India it continued to be used by state run organizations like PCK. And despite high levels of literacy and public awareness in the state of Kerala, no punitive action was taken against PCK. Instead the PCK officials went to the victims and asked them to sign papers, claiming that spraying of endosulfan did not cause ill health (Rajendran 2002: 2207). The NHRC served notices to the

Indian Council of Medical Research, the chief secretary of Kerala and the ministers of health and agriculture. The NHRC also sent its team to the affected areas for assessment (Rajendran 2002: 2207). It also took into account the alleged signature collection by PCK officials.

OTHER CASES

There are also some other cases that merit a brief mention: A] Kabani Reservoir, B] Asbestos Deaths, C] Ganga Pollution, D] Industrial Hazards, and E] Internally Displaced Persons.

A] Kabini Reservoir. The construction of the Kabini Reservoir and the building of the Bandipur Project Tiger National Park in the early 1970s led to the displacement of many tribals in the Mysore district of Karnataka. In 2003, the NHRC communicated to the state government the need for providing suitable land to the displaced tribal families. The Karnataka government complied and the displaced persons were provided with 200 hectares of forestland. A committee was also constituted with the special rapporteur of the NHRC to supervise the rehabilitation process and to ensure its speedy completion (NHRC, nd).

B] Asbestos Deaths. The NHRC has intervened in the case of asbestos deaths and diseases as India has paid no heed to the recommendations of the ILO and WHO to ban all forms of asbestos. Victims of asbestos related diseases in Gujarat have not been compensated inspite of the order of the Supreme Court. The NHRC which received a complaint regarding asbestos related deaths in the country sought “additional information.” The complainant made a complaint on 27 January 2014 regarding the death of Virendra K Singh, an asbestos worker who worked in Ramco Industries in Bhojpur, Bihar. The intervention sought was a ban on the use of Chrysotile asbestos, a fibrous material used primarily in building roofs. The NHRC had issued notices to various ministries and also communicated with the Cancer Epidemiology Division of the Tata Memorial Hospital, Mumbai to review the situation and report (Krishna 2014)

The counsel on behalf of Cement Product Manufacturers Association appeared before the NHRC and stated that the Supreme Court had already dealt with the case and therefore the NHRC should dispose off the case. In response, the NHRC stated that its only concern was the “Right to Health” of the people and whether the directions of the Supreme Court had been complied with. The government of Gujarat replied to the NHRC stating that asbestos was declared “notifiable occupational disease” under the Factories Act, and workers were entitled to compensation. Gujarat Composite Ltd., an asbestos factory – where 22 workers were suspected victims and two were confirmed— was asked to pay compensation of Rs. One lakh each to the two victims. But the industry refused

to pay the compensation as they challenged the medical report of the victims (Krishna 2014). Acting on a complaint filed by Toxics Watch Alliance (TWA) in a June 2012 release, the NHRC stated that most of the state governments had failed to give reports to the NHRC on safeguarding exposure to white asbestos or chrysotile asbestos. The NHRC therefore issued reminders to all state governments and union territories to send their report in six weeks (Krishna 2014).

CJ Ganga Pollution. With regard to the pollution of the river Ganga, the NHRC reacted to a newspaper report in 2013, and issued notices to the Union ministry of environment and Forests and to the government of Uttar Pradesh asking them to submit a report regarding the efforts that had been made to clean the river in four weeks. Chemical waste from the tanneries, untreated industrial effluents, domestic waste, sewage, waste from cremation grounds and toxic pesticides and fertilizers have led to some serious pollution of the river. The NHRC observed that the pollution of the river raised a serious issue of violation of human rights as the right to safe and clean environment is one of the most important rights.

DJ Industrial Hazards. The petitioner, Ms Subhashini Ali, brought to the attention of the NHRC a deadly accident in the premises of a factory, Jyoti Capsules on 4 January 1998 in Kanpur, in which eight workers died because of an explosion caused by the leakage of hexane, a combustible chemical. The special rapporteur of the NHRC investigated the case and came to the conclusion that adequate safety norms were not followed by the factory owners in handling and storing explosive chemicals. It was also noted that a supervisory lapse was committed by the inspector of factories. The NHRC directed the government of Uttar Pradesh to file a criminal case against the owner and disallow the factory to operate until all safety norms were met. The Labour Department of the government was ordered to investigate the reasons for the supervisory lapse and to punish the culprits. The district magistrate of Kanpur was instructed to ensure that financial compensations were paid at the earliest. The NHRC's intervention brought about the award of immediate relief of Rs. 5000 each to the victims apart from the compensation sanctioned by the government.

EJ Internally Displaced Persons. The displacement of large sections of the population due to "development" has been happening for sometime now. Most of these development projects are often based in the most backward areas of the country and affect some of the most vulnerable groups of people. Land is acquired by the state through provisions of the Land Acquisition Act 1894 (as amended in 1967 and 1984). However, resettlement and rehabilitation as a policy measure is a recent development. The first policy draft was prepared in the 1980s. The preamble of the National Policy on Resettlement and Rehabilitation (NPRR) though states the

need to support the rural poor—has done very little in this direction (often women are ignored, allowances are meagre, no safeguards against double or triple displacement, R&R officials cannot be penalized). In this context, the NHRC has advocated the importance of transparency while framing R&R policies. It suggested the constitution of a committee that would look after the interests of the displaced people. It also admitted that the land acquisition laws need to be reviewed and asked for a review of the National Rehabilitation Policy of 2006. It has also pointed out that effective governance on the basis of public participation can protect the rights of the displaced persons better (Basu, nd).

CONCLUSION

Allegations of rights abuse by state agencies in a systematic way began to be made by human rights organizations in the early 1970s. The government response has varied in different decades, one of the responses being to set up the NHRC. The NHRC took up issues of environmental concerns right from the start despite some apprehensions and criticism. Its record so far has been mixed. While in some cases like the Kosi embankment and tribal workers affected by silicosis, it has failed to make any real impact, but in other cases like industrial hazard in Kanpur and spreading awareness, its intervention has been successful.

In the wake of the proclamation of the World Programme for Human Rights Education by the United Nations on 10 December 2004, there has been an increasing recognition that human rights education produces far-reaching results. The NHRC has strived to spread human rights education at both school and university levels. One such effort was to publish dossiers prepared by activists and experts on issues related to environmental destruction, pollution, degradation and efforts towards its revival, reconstruction and restitution (Kothari and Patel 2006). The NHRC has also prepared a set of nine books in the series for the purpose of developing reference material on human rights education in the universities – with two the books dealing specifically with environmental concerns (see Nayak and Vijayan 2006; Sangvai 2006).

We contend that the NHRC should intervene in cases where human lives are endangered as a result of environmental degradation or pollution. However, it should also seek the help of expert bodies and the courts in this battle. The cause of environmentalism and human rights are complementary.

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