

VIOLATIONS OF HUMAN RIGHTS BY INDIAN COMPANIES

Author- Kanubha- jain

Company secretary (C.S.), M.Com (Gold Medalist), B.Com (Gold-Medalist) , UGC.

Assistant Professor of Commerce, DAV College, Jalandhar.

Address: 212/1, Rose Park, Gulab Devi Hospital Road, Jalandhar City-144001

ABSTRACT: Human rights stem from the dignity and worth inherent in human being. Human rights and fundamental freedom have been reiterated in Universal Declaration of Human Rights and in the Constitution of India. There is no denying the fact that democracy, development and respect for human rights and fundamental freedoms are inter-dependent and have mutual reinforcement.

In the context of the industrial disasters like the Bhopal gas tragedy and frauds by the companies like the Satyam scam, the new law regulating the companies must contain comprehensive provisions to deal with all facets of human rights violations so that every man, woman and child is able to have a peaceful life.

KEYWORDS: Human Rights, violations, remedies, hazardous, injunction.

OBJECTIVES OF THE STUDY

1. To study the importance of preservation of Human Rights.
2. To study the various cases for violation of human rights.
3. To analyse the legal remedies for human rights abuses in India.
4. To study the legal and the procedural obstacles in their effective enforcement.
5. To suggest recommendations for prevention of Human Rights violation.

CONTENTS

1. Introduction To Human Rights
2. Various Indian companies offending human rights.
3. Available Legal Remedies for Human Rights abuses in India.
4. Legal and Procedural obstacles in violation of Human rights.
5. Conclusions and Recommendations.

INTRODUCTION

Section 2(d) of Protection of Human Rights Act, 1993 defines human rights to mean “the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution and embodied in the International Covenants and enforceable by courts in India”. Darren O’ Byrne talks of three generations of human rights - civil and political rights (first-generation rights), economic, social and cultural rights (second generation rights) and collective and land rights (third generation rights). To protect human rights is to ensure that people receive some degree of decent, humane treatment. To violate the most basic human rights, on the other hand, is to deny individuals fundamental moral entitlements. It is, in a sense, to treat them as if they are less than human and undeserving of respect and dignity.

Human rights abuses have been around for many centuries and history is littered with innumerable examples. And in the business world, there are instances where companies have indulged in unabashed abridgement and trampling of human rights of the people. And in most cases, these offending companies have evaded the law of the land for various reasons.

INDIAN COMPANIES OFFENDING HUMAN RIGHTS

Following is an illustrative list of human rights violations by the companies in India or Indian subsidiaries of the foreign companies or joint-venture enterprises:-

Coca-Cola plant in village Placimada (district Palakkad- Kerala) –

Coca-Cola set up a bottling plant in the village Placimada (district Palakkad- Kerala) in 2000 and began extracting 1.5 million liters of deep well water which it bottled and sold under the names of the Dasani and Bontequa. The groundwater was severely depleted affecting thousands of communities with water shortages and destroying agricultural activity. As a result, the remaining water became contaminated with high chloride and bacteria levels leading to scabs, eye problems and stomach aches in the local population. The company was also guilty of reselling its plants industrial wastes to farmers as fertilizers despite its continuing hazardous lead and cadmium. Upon the petition, filed by the aggrieved party, the single judge of Kerala High Court restrained the company from extracting further groundwater through the wells on its land. The decision was however reversed by a Division bench. The aggrieved party has now appealed to Supreme Court where the case is pending.

Bhopal gas tragedy-

Described as the worst disaster, Methyl isocyanate, a deadly gas, escaped from the Union Carbide (India) Ltd. plant at Bhopal (December 3, 1984) into the neighbourhood and beyond. Thousands of people were left severely disabled of whom 22,000 have since died of injuries. The disaster killed 3000 animals and has polluted water resources besides causing environmental degradation. It is said that even now, danger is posed by the continued storage of the offending chemicals in vats, hardly guarded in the premises of the factory.

Sriram Food and Fertilisers, New Delhi-

Shriram Foods and Fertilisers Industries, subsidiary of Delhi Cloth and General Mills Ltd, had several units engaged in the manufacture of caustic soda, chlorine, hydrochloric acid, stable bleaching powder, superphosphate, vanaspati, soap, sulphuric acid, alum, high test hypochlorite. All units were set up in a single complex and surrounded by thickly populated residential colonies in the heart of Delhi. On December 4 and December 6, 1985 a major leakage of oleum gas took place from one of the units which resulted in the death of several persons. On Dec 6 itself, the district magistrate directed that the establishment should cease carrying on the occupation of manufacturing and processing hazardous and lethal chemicals and gases.

Bichhri Village (Rajasthan) case-

Bichhri a small village in Udaipur district of Rajasthan. To its north is a major industrial establishment Hindustan Zinc Ltd, a public-sector concern. Sometime in 1987, Hindustan Agro Chemical Ltd started producing certain chemicals like oleum and single super phosphate. A sister concern Silver Chemicals commenced production of "H" acid in a plant located in the same complex. Jyoti Chemicals is another unit established to produce "H" acid. All the units were located in the complex within the limits of Bichhri village. The toxic untreated waste waters were allowed to flow out freely. The untreated toxic was thrown in the open in and around the complex. The toxic substances percolated deep into the bowls of the earth polluting the aquifers and the sub terranean supply of water. The water in the wells and the streams turned dark and dirty rendering it unfit for human consumption. It also became unfit for cattle to drink and for irrigating the land. The soil became polluted making it unfit for cultivation. It spread disease, death and disaster in the village and surrounding areas. Besides damage to the crops and the land, it led to the psychological and mental torture of the villagers.

Pollution by tanneries in Tamil Nadu –

Tanneries and other industries discharge untreated effluents into agricultural fields, road sides, water ways and open lands in the state of Tamil Nadu. The untreated effluents were finally discharged in the river Palar which was the main source of water supply to the residents of the area. The entire surface and the subsoil water of the river was polluted resulting in non-availability of potable water to the residents. Due to the operation of these tanneries, environmental degradation has been caused. A survey by Tamil Nadu Agricultural University Research Centre, Vellore revealed that nearly 35,000 hectares of agricultural land in the tanneries belt had turned out partially or totally unfit for cultivation. The effluents had also spoiled physio-chemical properties of the soil and contaminated groundwater by percolation. An independent survey found that 350 wells out of 467 used for drinking and irrigation purposes were polluted.

In re Bhavani River- Shakthi Sugar Ltd. Case

Sakthi Sugars Ltd was operating without caring for the grave environmental consequences. The seepage of the effluent from Lagoon C joined the drain and ultimately reached Bhavani river polluting river water. A writ petition was filed against the company. The affidavit filed by TN Pollution Board (Jan 1998) contained directions aimed at ensuring proper storage of effluents in lagoons and for proper treatment and disposal of the

treated effluents. The Supreme Court in its judgement on 30 July 1998 stated that the Division Bench of the Madras High Court had failed to appreciate the true significance of the matter regarding the need to arrest the unabated pollution which had become a health hazard and environmental enemy because of the discharge of objectionable effluents from the distillery into Bhavani River and the adjoining areas.

Dabhol Power Project Case –

In May 1992, India invited Enron Corporation to explore the possibilities of building a large power plant in Maharashtra. In December 1993, Maharashtra State Electricity Board signed an agreement with the Dabhol Power Corporation (DBC). It was a company based in Maharashtra formed to manage and operate the Dabhol Power plant. The plant was built through the combined effort of Enron, G.E. and Bechtel. GE provided the generating turbines to Dabhol, Bechtel constructed the physical plant and Enron was charged with managing the project through Enron International. The plant was to be constructed in two phases. In May 1995, hundreds of villagers swarmed over the site and a riot broke out. The security forces guarding Dabhol for Enron were charged with human rights abuses and Enron for being complicit. On August 3, 1995, Maharashtra Government ordered the project to be halted because of lack of transparency and environmental hazards. The first phase went on line in May 1999. Enron went bankrupt in 2005 and the plant was taken over by Ratnagiri Gas and Power Private Limited in July 2005.

There were human rights abuses allegations galore. The power plant had unfairly acquired villagers' lands and had diverted scarce water for its needs. The problem of water diversion became severe in 1996-97. It was further compounded by severe contamination of potable water due to untreated sewage being dumped into the water. The villagers' legitimate concerns for their livelihood and environment were ignored. The water which contained toxic effluents was likely to raise the temperature of the water and cause pollution which would kill fish and prawns. In essence, the Dabhol power project was found to be approved without adequate study of economy, environmental and social concerns and consequences.

Besides the above illustrative list, there are various other instances of human rights violations by the companies in the country. Some of which are listed below:-

- (1) Imbalances of ecology and hazard of healthy environment due to working of limestone quarries (Rural litigation and Entitlement Kendra, Dehradun 1985)
- (2) Reckless discharge of untreated sewage in river Ganga by a riparian owner (MC Mehta v/s Union of India 1988)
- (3) Drinking water problems and salination of ground-water, the denudation of mangrove areas and loss of agricultural land besides several social problems like denial of free SMS to fisherman, denial of job opportunities, social displacement, reduction in grazing ground of cattle, free access to water due to commercial shrimp farming in Chilka region (S. Jagannath v/s Union of India 1997)
- (4) Pollution by foundries in Agra and threat to Taj Mahal (MC Mehta V/S Union of India 1999)
- (5) Environmental and ecological issues due to construction of Span Hotels Private Limited on Beas River (MC Mehta v/s Kamal Nath)
- (6) Discharge of effluents from the respective factories causing serious pollution and public nuisance (State of MP v/s Kedia Leather and Liquor Ltd 2003).

- (7) Environmental damage and human rights violations of the tribals of Langigarh in District Kalahandi, one of the poorest districts of Orissa due to ecological and environmental impacts (Vedanta Aluminium Limited v/s Union of India).

AVAILABLE LEGAL REMEDIES FOR HUMAN RIGHTS ABUSES IN INDIA The ICJ report in the second part has listed the following comprehensive list of remedies:-

(1) Damages and Injunctions - A company involved in human rights abuses is most commonly sued under tort law principles for damages or compensation. The compensation can also be sought under writ petitions filed under Article 32 or Article 226 of the Constitution, or under statutory provisions. Damages may be substantial or exemplary. The Supreme Court in the Oleum Gas Leak case of MC Mehta v/s Union of India observed that there where a company was involved in hazardous or inherently dangerous activity, the composition must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect. The larger and the more prosperous the enterprise, the greater must be the amount of compensation payable by it for the harm caused on account of an accident in carrying on of hazardous activities by the enterprise.

Unfortunately, the damages awarded in tort actions in India are rather low and do not have any deterrent effect. This was, as per the ICG report, one of the reasons why the Govt. of India filed a suit against Union Carbide Corporation(UCC) before the US courts rather than in India.

(2) Criminal Sanctions –

- a) Under Code of Criminal Procedure, 1973: Section 305 implies that companies can be prosecuted for crimes. Further the courts may award compensation to victims under Section 357. By virtue of the amendment of 2008, the victims shall have a right to prefer an appeal against any order passed by the court acquitting the accused or convicting for a lesser offence or imposing inadequate compensation (Section 378)
- b) Under Indian Penal Code, 1860: Section 53 provides for imposing fine and forfeiture of property on corporations and Supreme Court has in Standard Chartered Bank v/s Directorate of Enforcement held that the companies can be prosecuted even for those offences for which the prescribed punishment is both imprisonment and fine.
- c) Under Factories Act 1948: The Supreme Court has in J.K. industries Ltd v/s Chief Inspector of Factories and Boilers, held that the offences under the act are strict statutory offences for which establishment of mens rea is not an essential ingredient. It added that where the company owns a factory, it is the company which is the occupier. It is the directors of the company who, in fact, control and determine the management of the company and are vicariously liable for commission of statutory offences.

(3) Writ Petition-

In case of violation of fundamental rights, the aggrieved party may approach the Supreme Court or High Court for redress and the Court shall have the power to issue directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto, and certiorari, whichever may be appropriate, for the enforcement of any of the rights. The Supreme Court in Oleum Gas Leak Case (MC Mehta v/s Union of India) held that the power of the court to grant such

remedial relief may include the power to award compensation in appropriate cases.

In various decisions, the Supreme Court has given diverse kinds of directions on a wide range of matters-from release and rehabilitation of bonded labourers to workplace, sexual harassment of women and the measures controlling pollution of the Ganges River.

(4) Public Interest litigation (PIL)-

The Supreme Court in *S.P. Gupta v/s Union of India* 1981) observed,

“It may therefore now be taken as well-established that where a legal wrong or legal injury is caused to a person or to a determinate class of persons by reason of violation of any constitutional or legal right....., any such person or class of persons is by reason of poverty, helplessness or disability or economically disadvantaged position, unable to approach the court for any relief, any member of the public can maintain an application for an appropriate direction, order or writ....”

Through PIL, environmental lawyer MC Mehta and NGOs like Common Cause, People’s Union for Democratic rights have been instrumental in bringing many issues like relocation of polluting industries out of Delhi, the protection of Taj Mahal from polluting industries and the closure of polluting tanneries near the Ganges.

(5) Administrative Measures-

Various statues and regulations govern the functioning of companies. Remedial administrative measures can include cancellation of approvals and licenses. For example, the Environmental Impact Assessment (introduced in 1994) imposes restrictions and prohibitions on the expansion and modernisation of specified developmental or industrial projects unless environmental clearance has been accorded. In *Utkarsh Mandal v/s Union of India*, the Delhi High Court quashed the environmental clearance after finding several procedural improprieties in the approval process. In Orissa, there were human rights violations and environmental pollution caused by the mining and refinery operations of Vedanta.

(6) Intervention by National human rights commission-

The NHRC set up under the *Protection of Human Rights Act*, 1993 has the power to inquire, suo-moto, on a petition by a victim or an order of any court, into the complaint regarding a human rights violation and intervene in any proceeding involving any allegation of violation of human rights pending before the court.

The NHRC has intervened in some business and human rights measures in cases involving the employment of bonded labour by companies and sexual harassment at workplace. It also took cognizance of case related to large-scale violence in protest against the acquisition of land to establish an SEZ in Nandigram (West Bengal). It may inquire into corporate human rights abuses on the request of the court.

LEGAL AND PROCEDURAL OBSTACLES IN VIOLATION

The ICJ talks of legal and procedural obstacles as under:-

- (1) **Lack of laws and tax enforcement:** There have been occasions when the courts had to issue guidelines to fill in legislative gaps in matters ranging from sexual harassment at workplace to bonded labour, arrest and detention procedure.
- (2) **Corruption:** The BBC News (November 19, 2010) stated that India has lost more than four \$460 billion since independence because of companies and the rich illegally funnelling their wealth overseas. The all- pervasive corruption in institutions that make, implement and adjudicate the law, can make companies influence the course of justice through their economic power and potential connections.
- (3) **Delay in judicial process reasons:** Reasons may be any- population and litigation explosion, insufficient resources and infrastructure, cumbersome court procedures, delaying tactics by the lawyers but judicial delays operate as obstacles in seeking justice. According to court news, at the end of November 2010, there were 54,644 cases pending before Supreme Court of which 35,206 were pending for more than one year.
- (4) **Absence of robust and institutional mechanisms:** The non-judicial or quasi-judicial mechanisms which can strengthen accountability, promote alternative dispute resolution, improve access to justice and remove judicial flaws are conspicuous by their absence. And the constitutional guarantees of prohibition against prohibition do not go far enough in redressing discrimination by non-state actors like companies.
- (5) **Expensive litigation limites legal aid:** The current court fees system discourages victims from suing or seeking adequate compensation from the company in mass tort cases. Though the Legal Services Authorities Act 1987 provides that every person who has to file or defend the case shall be entitled to legal services if he falls within the list of specified categories of people or as annual income less than Rs.12,000 if the case is before the Supreme Court and less than Rs. 9000 if the case is before other courts, it offers legal aid to very limited number of people.
- (6) **Difficulties and piercing the corporate veil:** It is not generally easy to convince the court to pierce the corporate veil, especially when it becomes necessary to sue a parent company even though the actual violation might have resulted from the acts of its subsidiaries. It may be difficult for the victims to ascertain which company of a corporate group actually took, or the subsidy in question may lack the economic capacity to provide compensation (Bhopal gas leak Case).
- (7) **Difficulties in criminal prosecution of companies:** Though the Companies Act, 1956 and other laws allow companies as well as its officers to be held criminally liable for specified wrongs, prosecuting and convicting companies and their officers is not easy. The Bhopal gas demonstrates very clearly how difficult, time consuming and resource- intensive the quest to impose criminal liability on a company can be. And it is all the more cumbersome when there is an attempt to prosecute a corporate officer living in a foreign country.
- (8) **Ignorance of one's rights and indifference to the rights of others:** Low levels of literacy, extensive poverty, lack of adequate awareness of others right, ignorance about available legal mechanisms and increasingly individualistic focus - all contribute to challenges to the realisation of human rights.
- (9) **Weak implementation of court judgements:** Weak implementation of judicial orders arises mostly because of the corruption, powerful actors whose interests are at stake, governmental indifference or

institutional incapacity to implement orders. In the Bhopal case, victims groups had to approach the Supreme Court to ensure that interim relief is provided, that compensation reaches rightful victims swiftly and efficiently and that the settlement money lying with the government is distributed to all victims on pro-rata basis.

- (10) **Development -driven land acquisition:** There has been considerable resistance for acquisition of land by the government for the construction of dams on Narmada river for Tata's car manufacturing unit in Singur (West Bengal) and for setting up Special Economic Zones to promote exports on the ground of human rights' violations of displaced persons.
- (11) **SLAPP Suits:** The companies have of late, resorted to so-called Strategic Lawsuit Against Public Participation (SLAPP) suits against human rights campaigners and activists. However, the Madras High Court in Dow Chemical International V/s Nithyanandam and International Campaign for Justice in Bhopal (July 2009) held that the people of India have a right to protest, even against a multinational company and that unless a situation is shown where the life and liberty of an aggrieved individual or an organisation is threatened from its very existence or their right to carry on business is curtailed, neither the State authorities nor the court will rush to prevent such actions through preventive orders to impose prior restraints.

CONCLUSIONS AND RECOMMENDATIONS

Finally, the report of International Commission Jurists (ICJ) mentions conclusions and recommendations, which are as under:-

(1) **Better implementation of laws and court decisions:**

Due to administrative apathy and red- tape or corruption, there is a wide gap between law on paper and law in practice. The executive in several instances doesn't put into force a law that has been enacted by the legislature which is fatal to the efficacy and efficiency of a legal system. Further, the government agencies should do all within their means to implement in both letter and spirit judicial orders and directions aimed at safeguarding of human rights.

(2) **Improving access to justice:**

The measures suggested are increase in the number of courts and judges, promptly filling of vacancies, better use of Lok Adalats and the alternative dispute resolution (ADR) mechanism, tailored disincentives for frivolous litigants, availability of legal aid to a larger section of people, encouragement to lawyers to do work, overhauling of court fees system so as not to be seen as source of revenue for the State.

(3) **Locating stakeholders' interest in company law:**

Since the law relating to regulation of companies has an important role to play in developing a corporate culture in which business decisions are informed by a concern for Human rights, the new company law should impose a duty on directors to consider the interests of stakeholders and require companies to disclose their non-financial performance in annual reports.

(4) **Dealing with the menace of corporate corruption:**

In view of inadequacy of existing mechanisms (Prevention of Corruption Act, Prevention of Money Laundering Act and the Right to Information Act), the report has proposed establishment of an

independent anticorruption commission backed with investigative powers, prosecutorial heft and fast-track tracks to tackle the menace of corruption.

(5) **Transparent, participatory and humane developmental process:**

In order to pave way for a transparent, participatory and humane development process, there is a need for participation of all relevant stakeholders in the decision making process and adequate consideration to the interests of those adversely affected by the developmental projects including their rehabilitation.

(6) **Strengthening institutional mechanisms:**

Suggested measures include giving more powers to the National Human Rights Commission to investigate alleged human rights abuses by companies, adequate resources to National Green tribunals to deal with all kinds of pollution complaints by companies and establishment of a National Commission to take cognizance of discrimination and unequal treatment in the private sector.

Though the Companies Bill, 2011 and Companies Act 2013 has inserted certain provisions, concern is being raised on the conspicuous absence of detailed provisions to deal with the hydra-headed monster of black money and corporate funding for electoral campaigns. It is alleged that the root of rampant corporate crimes committed with impunity, environmental destruction, poisoning of food chain and human right violations by security forces has been traced to corporate funding of political parties. In the context of industrial disasters (Bhopal GasTragedy), frauds by companies (Satyam computers) and Kingfisher Airlines, the new law regulating the companies must contain comprehensive provisions to deal with all the facets of Human rights violations so that every man, woman and a child lives a happy and a peaceful life.

REFERENCES

1. Chartered Secretary
2. International Commission of Jurists Report
3. www.business-standard.com