



Part 2

Environment and Human Rights

Chapter 2:

Sterlite: An Intersection of Human Rights, Environment Rights and Cronyism

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In recent months, Vedanta's Sterlite has been in the news for all the wrong reasons. Grave human rights violations were reported when protests seeking the closure of Sterlite Copper's smelter plant in Tuticorin or Thoothukudi in Tamil Nadu turned violent in May this year. This resulted in clashes with police and led to 14 casualties and property damage. It is such an irony that Sterlite has bagged a couple of awards in the past as a company that has strong commitment to its employees and Human Rights (HR) practices. However, this commitment has come under the scanner after the series of incidents that unfolded at Thoothukudi, around the public protest against the impact the company's operations had on the environment. Sterlite is a good example of an Indian business that has grown exponentially – creating enormous wealth. In 2017, its net worth was estimated at²⁸ \$3.3 billion (Rs 21,485

crore). It is this collective wealth creation by businesses that has been the key driver in pushing the GDP up by 2,216% and per capita income by 1,338% in 25 years. However, its inability to reduce unemployment (down by just 1%) or lift the vast number of Indians from abject poverty or improve the environment in which we live, is a telling of the skewed imbalance of this enormous wealth. While it has created very deep pockets for sections of businesses, it has left out the large majority - labour, society and environment - from its benefits. This naturally raises the question of not just distribution of profits, but how profits are made. Sterlite Copper's operations are a case in point that 2% Corporate Social Responsibility (CSR) isn't what matters, and how the company makes its profits is more critical to a sustainable business environment.

Frames of reference - national and international

From a business and human rights perspective, there are two guiding frameworks that are relevant in understanding the business operations of Sterlite Copper in Thoothukudi.

(i) The first is the National Voluntary Guidelines (NVG) formulated in 2011, anchored by Indian Institute of Corporate Affairs, and adapted by SEBI in the form of monitoring reports (Business Responsibility Report) which provides an excellent framework, outlined in nine principles, for companies to conduct their business responsibly.

While all nine principles are applicable, for the specific purpose of this Public Inquest, Principles 4, 5 and 6 have been examined.

- Principle 4: “Businesses should respect the interests of, and be responsive towards all stakeholders, especially those who are disadvantaged, vulnerable and marginalised”.
 - Principle 5: “Businesses should respect and promote human rights”.
 - Principle 6: “Businesses should respect, protect, and make efforts to restore the environment”.
- (ii) The second framework is the United Nations' Guiding Principles on Business and Human Rights: Implementing the United Nations 'Protect, Respect and Remedy' Framework' endorsed by the UN Human Rights Council, by consensus, in 2011. This framework consists of (i) the state duty to protect against human rights abuses, (ii) the corporate responsibility

to respect human rights, and (iii) greater access by victims to effective remedies.

Although the primary duty to protect human rights remains with national governments, companies have a responsibility to respect human rights in their operations. Guiding Principle 11 states: "Business enterprises should respect human rights. This means that they should avoid infringing on the human rights of others and

should address adverse human rights impacts with which they are involved." The official commentaries to the Guiding Principles on Business and Human Rights, endorsed by the UN Human Rights Council, state: "The responsibility to respect human rights is a global standard of expected conduct for all business enterprises wherever they operate...[It] exists over and above compliance with national laws and regulations protecting human rights."

Findings from People's Inquest

Secondary evidence

From its inception, the copper smelting plant seems to have paid no respect to rights of communities around the plant, including to life essentials like clean air, clean water and safe environs. Water contamination had been reported within a year of its operation in the area and studies by National Environment Engineering Research Institute (NEERI) found that Sterlite's Effluent Treatment Plant wasn't capable of meeting the Tamil Nadu Pollution Control Board (TNPCB) standards. It also found unacceptable levels of Sulphates, Lead, Selenium, Cadmium, Magnesium and Copper in samples collected from the plant site and neighbouring villages. NEERI also noted that the process of cooling the slag by spraying, leads to emissions of aerosols containing arsenic, selenium and lead, which can cause health hazards to workers and people living in the vicinity. Rather than addressing it responsibly, the company chose

to circumvent the issue by funding²⁹ NEERI to say differently later.

Primary evidence

"We don't need your schools, hospitals or water. Just get out of here" is the refrain that echoes across the villages that surround the Sterlite Copper plant in Thoothukkudi. And this sentiment is not just an outburst of anger arising from the killing of 13 (one succumbed to injuries later) people in police firing, the blame for which the people put squarely on Sterlite. It stems from the years of suffering from contaminated water, air and soil. Since the company's inception in 1994, there have been voices of protest against the ecologically damaging nature of their business. The jury also met community members who narrated their struggles against Sterlite's disrespect for their basic human rights for nearly quarter of a century.

A fear of reprisal came across in many testimonies. Initially the several persons who were injured did not go to the GH for fear of arrest and many left before getting the full course of treatment in spite of going there, on account of the increased police presence. There were also cases reported of injured who did not want to be discharged fearing police reprisal after leaving the protection of the hospital. People who had been detained and had their properties taken into custody are scared to go and collect their articles for fear of arrest. People have testified credibly that the police are continuing with harassment and the threat of being implicated in open FIRs which provide space for picking up 400 to 7000 unnamed accused persons under various sections, has left them terrorised. Such omnibus FIRs are a recipe for misuse by the police.

Source: https://peopleswatch.org/sites/default/files/reports/full_report/PI%20TUT%20-%20Part%20I%20Final%20without%20Annexures.pdf

The jury members also found all random samples of ground water from the villages visited to be visibly polluted and clearly not potable nor fit for domestic use. It was also clear that communities were forced to buy water for drinking. Health issues ranging from skin ailments, eye irritations, breathing difficulties, delayed puberty, frequent miscarriages, infertility and cancer were reported by community in every village that the jury visited.

The jury also met members of local merchants associations, chamber of commerce and bar association and their wholehearted support was evidence of the legitimacy and the wider acceptance of the struggle by the affected communities. The issue is no longer that of just a few villages but of the entire industry town Thoothukudi, and its surrounding villages.

During the visit, the Sterlite officials available for comment took refuge saying "we are a compliant company" that follows the norms laid down by various monitoring authorities like TNPCB rather than demonstrate a willingness to respond to the grievances that the communities around had been pouring out to the members of the jury. Reading this together with subsequent public statements and actions by the company, it seems they are in no mood to give an ear to what aggrieved communities have to say, let alone taking corrective measures.

From both secondary and primary evidence, it is very clear that Sterlite Copper plant in Thoothukudi is in clear violation of Human Rights principles outlined in the NVGs as well as the UNGP on Business and Human Rights.

The People's Inquest (PI) team observes that many young men have been forced to leave their homes, as they fear arrest and torture at the hands of the police, even though they were not part of anti-Sterlite rally on May 22 or even before that. Those who took part in the protests apprehend arrest as police have filed open FIRs against thousands of unnamed persons. There have even been instances where all the members of a family have fled their home, fearing false cases. There are also several injured people who have not availed medical treatment or reported their injury out of fear of being targeted by the police. The PI team witnessed a huge presence of police personnel and observed people living in terror even ten days after the rally. Testimonies also stated that the CCTV cameras in Thoothukudi South Police Station were covered with cloth when persons are illegally detained were taken to its precincts.

Source: https://peopleswatch.org/sites/default/files/reports/full_report/PI%20TUT%20-%20Part%20I%20Final%20without%20Annexures.pdf

State's response

The state, which is duty bound to protect its people against human rights abuses, seems to have not only clearly failed to do so, but also, in the eyes of the affected communities, been a co-conspirator. Its actions of closing down the plant in the aftermath of massive police violence against

them has not cut any ice with the communities affected. For them the state not only clearly failed in its role to protect its people but also actively connived against them and continues to do so with threats of fabricated police cases against them.

Way forward

Though both NVGs and UNGP on Business and Human Rights are guiding frameworks, much of the violations come under the purview of

enforceable laws of the land. The state will do well in redeeming itself in the eyes of the people whom they represent by expediting exemplary actions

against the company for all its violations and not let its deep pockets interfere with justice to the affected communities. In a situation of unequal

power, the state is meant to be an arbitrator in favour of the less powerful and not a protector of the perpetrator.

While in areas surrounding the plants, there are doctors who call skin patches as ‘sterlite patches,’ Sterlite website boasts of its CSR, ‘a bus with team of professional doctors travels through the villages of Thoothukudi to provide free primary and secondary health care access benefitting 50,000 population covering 28 villages’. Adding to that, it even received ‘BT-CSR excellence award’ in 2017.

For businesses, this rejection of Sterlite’s CSR outreach by the surrounding villages is in more ways than one, a clear indication of the shape of things to come. CSR cannot give companies the goodwill of people if the core business is problematic. The sooner the companies incorporate this into their business vision, the better. Times are changing and corporate India is dealing with a new generation that is more aware, more inquisitive and more connected. This generation’s eyes do not dazzle at the CSR goodies on offer. Nor do their spines bend obligingly at the staged benevolence. They emphatically say that in a welfare state, it is the responsibility of the state to deliver basic services and it cannot abdicate that responsibility to companies. They want a

strong state and not a state that is subservient to the wishes of corporates. While this may not yet be a universal scenario given the geographical imbalances in education and political awareness among other issues, companies will do well to heed to these signs and not make hay till trouble breaks out.

The communities while scarred and scared from the brutal police violence against them, are in no mood to give up their struggle against Vedanta/ Sterlite Copper. It is a cause that is striking at their very existence and the future of their children. The State and Vedanta will have to heed their voices sooner rather than later – and, in their own interest, the sooner, the better.

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28. <https://www.thenewsminute.com/article/history-sterlite-thoothukudi-story-betrayal-crony-regulators-78481>

29. <https://www.thenewsminute.com/article/sterlite-here-s-proof-data-how-smelter-likely-cause-water-pollution-79055>