

Chapter 4:

Human Rights Defenders Are On Their Own: Will The NHRC Back Them Up?

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The United Nations (UN) Secretary General's recent report⁸⁸ on reprisals against activists for cooperating with the UN is a glaring testimony on the situation of human rights defenders (HRD) in India. They are facing more reprisals at present than ever. Activists, researchers, academicians, writers, journalists, students, civil society organisations, lawyers — any voice or peaceful act of dissent, faces a wide range of attacks: from murders, physical attacks, false and fabricated cases, restrictions to freedoms of speech as well as assembly and association, suspension/cancellation/non-renewal of foreign funds and other severe measures.

A dangerous discourse is being cultivated against human rights in addition to the vilification of human rights work, specifically about HRDs. There is no protection mechanism specifically for people who are protecting and promoting the rights of others.

HRDs raising issues of human rights violations by corporations and business houses, discrepancies and malpractices in land acquisition, issues concerning the environment and natural resources, etc are targeted by such corporations as well as the State. After the advent of globalisation, privatisation and liberalisation in the 1990s, ruling dispensations have demonstrated more proximity with private corporations. Over the past three decades, the push has been to ensure a better environment for privatisation. However, this has come at the cost of the people and the resources they owned.

The current dispensation at the centre has shown a greater zeal in the push for easier private control and the related mode of development. This has resulted in bringing down the existing

norms and practices related to environment protection. Existing environmental laws such as the Environment Impact Assessment Notification, 2006; the Coastal Regulation Zone Notification, 2011; etc have been diluted through office memoranda, notifications and changes in rules and procedures. Private infrastructure and industrial development are being facilitated through single-window clearances, detrimental to communities and beneficial to the corporates. The government proposed amendments to the Right to Fair Compensation and Transparency in the Land Acquisition, Rehabilitation and Resettlement Act, 2013 through an ordinance in 2014. Some states have amended this law and introduced exemptions for consent in cases of linear projects, public-private partnership projects, projects related to 'national security', Forest Rights Act, etc.

A trend clearly witnessed in the recent past is that when affected community/people oppose some illegitimate actions of the state/corporations, they are often met with brutal state repression. Section 144 of the Criminal Procedure Code (CrPC) is often misused to prevent freedom of assembly and to criminalise any public protest. Community members/HRDs active in organising and supporting protests have been charged with the Unlawful Activities Prevention Act (UAPA), the National Security Act (NSA) and other provisions of the CrPC and draconian laws. There are instances when in a protest area, thousands of unknown people are named in open First Information Reports (FIR), and police for years target individual voices of dissent and protest using those open FIRs.

This paper attempts to look at challenging situations faced by HRDs engaged with work on protecting human rights, natural resources and

the environment and the response from justice institutions. A representational case study format is used for articulating the above.

1. Case Studies

i) Tamil Nadu

For over two decades, the coastal town of Thoothukudi has witnessed a sustained protest against Sterlite Copper's plant. People in Thoothukudi believed it to be causing severe environmental degradation and impacting the health of the people in the district. The town witnessed a state of terror on May 22, 2018, which marked the 100th day of continuous peaceful protests since February 2018. As claimed by the people, anywhere between 70,000 and 100,000 from various parts of Thoothukudi marched to the district collectorate on May 22nd as there was no response from the administration to their demands of the past 100 days. The Thoothukudi Police responded by spraying the peaceful assembly of protestors with bullets from sniper guns, images of which went viral in the media. Fourteen persons were killed and hundreds were injured due to excessive, arbitrary use of police force on the people demanding the closure of Sterlite Industries, the copper business unit of Vedanta Limited.

The violence and state terror continued: People were arrested on false grounds under draconian preventive detention laws such as the NSA, the Goondas Act and were charged with sedition⁸⁹. Police registered 'omnibus' FIRs, incriminating thousands, through which they arrested activists and organisers of the protest. Though the government claims that the firing was an act of self-defence, a public inquest team highlighted how the firing happened in an unauthorised and arbitrary manner and, in fact, was targeted and not an act of self-defence. Only after this bloodshed, the Government of Tamil Nadu ordered for a closure of operations of Sterlite Copper through a government order. However, a cabinet decision would have been stronger; Sterlite Copper has challenged the government order in the National Green Tribunal⁹⁰.

This whole series of incidents saw a targeted and systemic attack on activists, including lawyers and HRDs who were part of anti-Sterlite protests. Advocates Vanchinathan and Hariraghavan, who represented those arrested on cases related to anti-Sterlite protests, were arrested under the National Security Act (NSA). Their detention was later quashed by the Madras High Court, which also questioned the manner in which NSA was imposed and asked whether it was a democracy or a police state⁹¹.

The state also witnessed how the police curbed the people-led movement against Koodankulam Nuclear Power Plant in Tirunelveli district using excessive force, defamation, arrests, false and fabricated cases against villagers and activists⁹².

Recent instances of reprisals on HRDs in Tamil Nadu:

- Thirumurugan Gandhi, a social activist and HRD, was arrested on charges of sedition for uploading a video of his speech about the anti-Sterlite movement and other peoples' movements at the June 2018 session of the UN Human Rights Council⁹³.
- Valarmathi, a student-activist was detained under Goondas Act for distributing pamphlets about the Methane extraction project in Tamil Nadu in 2016⁹⁴. She was arrested again in July 2018 while meeting villagers affected by the Salem-Chennai Greenfield Highway project.
- Prof T Jeyaraman, who had been organising and creating awareness about projects with environmental concerns such as a hydrocarbon extraction project, was arrested in February 2018 along with villagers protesting against Oil and Natural Gas Corporation's (ONGC) hydrocarbon extraction project at Kathiramangalam village⁹⁵.
- Prof Yogendra Yadav was detained and man-handled by the police in Tiruvannamalai district while he was going to meet farmers affected by the Chennai-Salem expressway project⁹⁶.

- Environmentalist Piyush Manush was arrested on false charges of instigating the public against the Salem-Chennai greenfield highway project and land acquisition for the expansion of Salem Airport⁹⁷.

ii) Odisha

The people of Odisha, especially the marginalised tribes, have been continuously struggling to protect natural resources from exploitation and against displacement. The state has had strong people-led movements such as Niyamgiri Suraksha Samiti (NSS) and Posco Pratirodh Sangram Samiti (PPSS).

Abhay Sahoo is an anti-displacement activist and has been the president of PPSS since 2005, which spearheaded the movement against the establishment of Posco's steel plant in Odisha. Since then, he has been targeted by the state machinery and more than 60 false cases have been brought against him in order to restrict and suppress his active human rights work. Sahoo was arrested in 2016 for his association with 'Jamihara Chasi Sangh', a formation, which works on the issues of displacement and land rights of villagers in Kujang tehsil of Jagatsinghpur district due to construction of an oil refinery by Indian Oil Corporation Ltd (IOCL)⁹⁸.

NSS is a platform to protect the Niyamgiri forests, formed by native and tribal inhabitants belonging to Dongria Kondh tribes. NSS has spearheaded the movement to safeguard life, livelihood and environment under and have been resisting bauxite mining by Vedanta. After the Supreme Court's interference, gram sabhas voted unanimously against the \$1.7 billion mining project⁹⁹.

In its annual report for 2016-17, the Ministry of Home Affairs (MHA) associated Niyamgiri Suraksha Samiti with extremist organisations¹⁰⁰. The report stated "In Niyamgiri Hills area (Districts Rayagada and Kalahandi, Odisha), the outfit [the Maoists] continued to guide the activities of the Niyamgiri Suraksha Samiti". This

received strong condemnation from various quarters of civil society and environmental groups and activists in particular, who wrote to the President and the Prime Minister, condemning the linking of NSS with Maoist organisations by the MHA¹⁰¹.

A few days after the release of this report, on May 1, 2017, the police raided Gorata village at midnight and picked up 20-year-old Kuni Sikkaka, daughter of NSS co-founder Dosi Pusika. The police claimed she had links with Maoist organisations and were motivating her to surrender¹⁰². Her family and other NSS member categorically denied the police version and said they believed intimidation tactics were being used to create a fear of psychosis among the community to make them agree to the mining project.

In the past, the police arrested other tribal leaders associated with movements against mining, including Dasru Kadraka, Lada Sikaka and Haribandhu Kadraka¹⁰³. The police have also threatened tribal villagers who were proceeding to file a complaint with the National Commission of Scheduled Tribes (NCST) regarding the intimidation, abduction and wrongful confinement of members of NSS by Odisha Police and para-military forces in June 2017¹⁰⁴.

iii) Assam

The Government of India decided to put 12 small oilfields¹⁰⁵ belonging to public sector enterprises, Oil India Limited and ONGC, for global auction. There were wide-spread condemnations and protests across Assam by different groups against the move to privatise natural resources in the state and auction the oil fields to private parties, including foreign investors. The decision was taken by the central government unilaterally without consulting the people of the state. In June 2016, when activists of Krishak Mukti Sangram Samiti (KMSS) were demonstrating against the decision, police and para-military personnel tried to remove them forcibly. They later physically assaulted protesters indiscriminately with batons, leaving around 20 persons injured and also detained protestors, including Akhil Gogoi, the

chief functionary of KMSS. Later, in September 2017, he was detained under the NSA for protesting against forceful evictions in Kaziranga National Park¹⁰⁶.

iv) West Bengal

The Power Grid Corporation of India Ltd proposed to construct transmission lines in Bhangar area of West Bengal that would pass over a number of villages¹⁰⁷. This project caused agitation among farmers who feared loss of agricultural fields, damage to crops and environmental concerns, they also alleged that they were not provided any information about the project before parting with their lands. The villagers formed the Jami, Jibika, Poribesh O Bastutantra Raksha Committee (Committee to Protect Land, Livelihood, Environment and Ecosystem), in December 2016 to protest against the project. The agitation intensified in early 2017 and Sharmistha Choudhury, associated with the Communist Party of India (Marxist-Leninist) Red Star, worked along with farmers and villagers in the agitation against the power project. The farmers' demands were to shift the project elsewhere. In January, two protestors were killed in police firing and the agitation intensified, leading to the arrest of Choudhury who was later charged under the UAPA.

v) Arunachal Pradesh

The government has planned to construct 37 dams in the state's Tawang (located 10,000 feet above sea level) and West Kameng districts that make up the Mon region. The largest of these are Tawang-I (600 megawatt) and Tawang-II (800MW) on the Tawang Chu river and Nyamjang Chhu (780 MW) in Tawang district. Tawang is considered an ecologically sensitive region. The National Green Tribunal had on April 7, 2016, suspended the environmental clearance to the 780 MW Nyamjang Chhu project in response to an appeal filed by the Save Mon Region Federation¹⁰⁸. Lama Lobsang Gyatso who heads the Save Mon Region Federation (SMRF) that works towards ecological and environmental conservation in Mon region of Arunachal Pradesh, was arrested¹⁰⁹. In May 2016,

the police opened indiscriminate fire on hundreds of people demanding his release and two persons were killed¹¹⁰.

vi) Madhya Pradesh

The Narmada Bachao Andolan (NBA) through its struggle covering 31 years has managed to get the promised land rehabilitation for approximately 14,000 tribal and Dalit farmers and their families¹¹¹ – especially those from Gujarat and Maharashtra. However, the status of rehabilitation is shockingly slow and shameful when one considers that submergence started in 1995 and in 2016 more than 40,000 families were still awaiting their rightful rehabilitation. Farmers and their families were forcefully made to sacrifice their homes, farms and forest resource base in the name of “development” and progress of the country.

In 2017, the Government of Madhya Pradesh issued orders directing affected families in the submergence area of the dam, close to the Narmada river in Madhya Pradesh, to vacate their dwellings by July 31, 2017. But it provided no rehabilitation to them, which is in complete violation of the Supreme Court order. The move of the government to increase the height of the dam from 122 meters to 139 meters has caused unexplainable misery to large numbers of people. 178 villages and a town will be submerged in Madhya Pradesh. This move, for so-called development, will render 40,000 families displaced and with no rehabilitation.

To protest this move, Medha Patkar, along with 12 project-affected women, went on an indefinite hunger strike since July 27, 2017. Patkar and five other protestors were forcefully moved from the place of protest. Nearly 2,000 police personnel were mobilised who came down heavily on the peaceful meeting. They used force to break pandals and when women protestors tried resisting the arrest of Patkar, they were beaten and manhandled by policemen. Several were injured and the police broke the stage, pandals, chairs and rope fencing, etc at the protest site¹¹².

vii) Gujarat

The Mumbai-Ahmedabad High Speed Rail (Bullet Train) project has been proposed with financial aid from Japan through Japan International Cooperation Agency (JICA). There is a discontent brewing among affected farmers and people as not much information has been shared with them by project authorities about the impact and likely displacement¹¹³. On May 14, 2018, environment consultation for the Bullet Train project was announced by National High Speed Rail Corporation Ltd (NHSRCL), a special-purpose company registered under the Companies Act with the ownership of Government of India through the Ministry of Railways. The consultation was organised by Arcadis, a company from Netherland holding the contract to undertake surveys.

Though a public call for participation was made regarding the consultation, there was unprecedented police deployment and an atmosphere of fear and intimidation created by the police to intimidate the farmers and deter them from representing themselves in a fair manner. Before the start of the consultation, the police took Darshan Nayak, member of the Surat District Panchayat and director of Sayan Sugar Co-operative Society who was in conversation

with the designated land acquisition officer, into custody. The farmers and environment activists sought his whereabouts, the police forcibly took them away from the venue and illegally detained them for more than two hours, thus preventing them from participating in the public hearing and to raise and share legitimate concerns and issues¹¹⁴.

viii) Uttar Pradesh

Sukalo Gond is an Adivasi women leader and is associated with All-India Union of Forest Working People (AIUFWP). She has been working for implementation of Forest Rights Act in the Sonebhadra area of Uttar Pradesh. Sukalo, along with others in her community, filed claims on forest land as per the community resource claims made available through Forest Rights Act, on March 23, 2018. On June 6, soon after they submitted a representation on police atrocities to Uttar Pradesh Forest Minister Dara Singh Chauhan and were returning from Lucknow, they were illegally detained and beaten up by the police¹¹⁵. Sukalo has worked to mobilise people and create awareness about the Kanhar dam project since 2014. She was arrested for holding a dharna for asserting their rights and was sent to prison.

Role of the National Human Rights Commission

i) Response to cases on attacks on HRDs

Though the National Human Rights Commission of India (NHRC) has a focal point for HRDs, the NHRC has not evolved any separate mechanism to deal with cases on attack on HRDs. All the above-mentioned cases were intervened into by Human Rights Defenders Alert – India (HRDA) and taken up with the NHRC. In not a single case did the NHRC intervene in an independent manner and uphold the constitutional right to protest freely. The NHRC did not exercise its powers to the fullest in even a single case and order either compensation or prosecution. For example, in the recent case of Thoothukudi, the NHRC only undertook an independent investigation after the

ruling by the Delhi High Court and even in the same, it has not yet made the report public.

On incidents of false and fabricated cases against HRDs, the NHRC disposes off the complaint saying that the defender has to seek appropriate legal recourse and never used its powers under Section 12 of the Protection of Human Rights Act to intervene in courts.

HRDA, since 2010, has filed more than 550 complaints on incidents of attacks on HRDs across the country. While most of the cases are pending with the Commission, the main reason for this pendency is the non-response

by state authorities. In 2015, the High Court of Allahabad in a landmark judgment ruled that the recommendations made by the NHRC cannot be ignored as mere “opinion or suggestion” and be allowed to be disregarded with impunity¹¹⁶.

The NHRC also transfers cases sent to them by State Human Rights Commissions (SHRC) using their powers¹¹⁷. But these state institutions themselves lack capacity to deal with complaints as there are high numbers of vacancies of chairpersons and members of SHRCs, inadequate funding, infrastructure, resources and staff.

There were also instances where complaints were closed solely based on reports by police authorities, which amounts to a travesty of justice as police personnel are themselves the perpetrators of attacks on HRDs in many such cases¹¹⁸.

ii) Initiatives on Business and Human Rights

The NHRC has recently constituted a core group on Business, Environment and Human Rights and its terms of reference are listed below ¹¹⁹:

- Promote implementation of United Nations Guiding Principles on Business and Human Rights
- Review exiting law and regulations relevant to business, environment and human rights
- Assist NHRC on recommending to concerned

Conclusion

Development is essential for a country, but dissent and discourse are equally paramount for a democracy. No development project can be forcefully imposed on people with utter disregard to the concerns of displacement, the environment and other livelihood issues.

As the NHRC celebrates its 25th year of existence alongside the commemoration of 20 years of United Nation declaration on HRDs, the NHRC as an institutional HRD should stand in solidarity with the HRDs in the country and ensure justice for them. One hopes they will be more proactive

Ministries on implementation and revision of laws and regulation

- Identify barriers in effective access to remedy on human rights violations and suggest revising the provisions to make it more accessible to victims
- Advise NHRC on updating National Voluntary Guidelines on Social, Environment and Economic Responsibilities of Business
- Undertake national mapping of business, environment and human rights issues
- Advise NHRC in recommending to the Ministry of Corporate Affairs to address the identified risks in the National Action Plan on business and human rights

Experiences from the case studies mentioned in this article demonstrate that the NHRC’s actions are merely on paper, falsely showing compliances to the existing international and national requirements. The NHRC has, as an institution, failed to protect the rights of the community/ people/HRDs on several occasions when corporations were involved. On several occasions, the cases were dismissed stating that they were not against public officials. The NHRC as the apex human rights body in the country, needs to take serious and urgent measures to ensure that human rights of Indian citizens are protected and hold supremacy in cases where businesses’ and governments’ actions are affecting the citizens, their environment and natural resources.

in their mandate on protection of HRDs. The NHRC has a double responsibility to ensure that businesses adhere to human rights and alongside protect the HRDs who work on issues of business and human rights. According to the Edinburgh Declaration¹²⁰ on business and human rights to which NHRC is also a party, it should monitor and document human rights violations by corporations.

The role of corporations is huge in terms of protecting human rights in their business, it includes legal, ethical and moral measures to

protect human rights and create a space and dialogue with people defending human rights. Corporations should see HRDs who work towards creating sustainable business and reducing violations as partners in their work. There is an increased responsibility of the government to

prevent and act upon human rights violations by public sector enterprises. The human rights are guaranteed by the state and in no case should the state step back and leave it to the businesses. The NHRC has a larger role in ensuring this.

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