8.1 CASE STUDY 1: COMPLAINT REGARDING ACCUMULATION OF POLLUTED WATER IN HARIJAN BASTI, MAHANSAR, RAJASTHAN

1. Criteria for Selection of the Case
As mentioned in Chapter 7, out of the 100 respondents who were administered a semi-structured questionnaire sent for assessing their perception about the role of the NHRC in addressing environmental issues from a human rights perspective, 56 complainants had responded. After examination of the responses, two cases were identified for field study. In both cases, the human rights of the vulnerable section of society were affected. In the first case, which is discussed below, the human rights of people belonging to the Scheduled Caste (SC) community were being violated due to the inaction of the state authorities. In the second case, the human rights of children were being affected due to the location of the city’s waste dump adjacent to the school.

The present case highlights the plight of people belonging to the weaker sections of society. The matter raised by the complainant in his complaint to the NHRC is an issue that affects a large number of people in rural areas, wherein polluted water remains stagnant, causing harm to the health and well-being of the people. Moreover, the issue raised by the complainant is not an isolated issue. It has wide ramifications for the country as a whole as such problems occur in many villages in the country.

The case highlights NHRC’s complaint handling procedure, the role of multiple Governmental agencies in the matter, the overlap of their legal and administrative responsibilities, and the resulting inaction.

2. Research Techniques
The methodology adopted for assessment of the case study included the following steps:
   1. Collection of primary data through a semi-structured questionnaire;
   2. Examination of official documents;
3. Ethical Considerations
It was explained through a letter to the complainant that the data was being collected for research purposes. His consent was obtained prior to recording his interview on tape. Interviews were not recorded in the case of stakeholders who objected to it. Names have been withheld in case of the respondents who did not want their names to be disclosed. The consent of the complainant was taken to photograph his house and his family members.

4. Focus of the Case Study
The focus of the case study is on the manner in which the NHRC addressed the complaint regarding the violation of a human right (the right to health and right to life) caused by pollution. Did the Commission give any special consideration to the fact that the complainant belonged to a weaker section of society? What was the complainant’s expectation from the NHRC? What was the procedure adopted by the Commission and was it sensitive to the issue and effective in handling it? What lessons can be drawn from the entire exercise including making the complaint, handling of it by the NHRC, and its outcome?

5. Action Taken by the NHRC and State Authorities on the Complaint
A complaint dated 19 July 2002 was received by the NHRC, New Delhi, from Shri Ram Avtaar, s/o Shri Prahalad Ram, Ward No. 11, Village Mahansar, Bissau, Jhunjhunu, Rajasthan. In his complaint, he had drawn the attention of the NHRC to the accumulation of polluted water around his dwelling, and the playground of the Harijan Basti, Mahansar, which was affecting the health of his family members and other residents in the neighbourhood.

On 24 July 2002, taking cognisance of the complaint, the NHRC directed that a notice be issued to the District Collector, Jhunjhunu as follows:
“Call for a report from District Collector, Jhunjhunu, Rajasthan. Response in four weeks”.

In response to the above notice, the District Collector, Jhunjhunu, directed the Development Officer, Panchayat Samiti, Alsisar, on 5 August 2002 to take immediate action and report to him within three days, failing which administrative action would be taken against him. In pursuance of this direction, action was taken to construct an outlet in the form of a drain alongside the road in front of the complainant’s house.

On 11 November 2002, the Assistant Registrar (Law) informed the complainant, “With reference to your complaint dated 19/07/02, I am directed to say that the matter was considered by the Commission on 17/10/2002. The Commission has made the following directions. ‘From the report received in response to the notice issued by the Commission in this case, it is seen that the police authority has taken appropriate action in the matter as prayed for by the complainant. Hence, the Commission takes the report on record and closes the case. This is for your information.’

The case was closed by the NHRC in 2002. On 30 May 2006, three and a half years later, the complainant again wrote to the NHRC. The complaint was considered by NHRC on 3 August 2006, and the NHRC directed that “The complaint be transmitted to the concerned authority for such action as deemed appropriate.”

The complainant had simultaneously written to the Rajasthan State Human Rights Commission (RSHRC). The RSHRC, however, refused to intervene on the grounds that the matter was before the NHRC. The complainant then wrote to the President of India. The President’s Secretariat forwarded the letter to the state government. The Chief Accounts Officer, Rural Development and Panchayati Raj Department, Government of Rajasthan, forwarded the letter to the Chief Executive Officer, Zila Parishad (District Council), Jhunjhunu, to examine the matter and furnish their comments.

An earlier letter written in 2004 to the President of India was forwarded by the Under Secretary in the President’s Secretariat to the Chief Secretary, Government of Rajasthan, for appropriate action. According to the complainant, despite his having written to the various Central and state agencies, and finally the NHRC, the problem was persisting even after six years and adversely affecting human life. The NHRC,
however, summarily closed the case on the basis of a report obtained from the concerned District Collector.

6. Observations on the Field
A field visit was undertaken by the author to the complainant’s village, Mahansar in Jhunjhunu district, during 8-9 January 2009. During the course of this visit, the author interviewed the complainant, his family and other residents of the village. It was found that the complainant, aged 48 years, belongs to the SC community and works as a labourer earning daily wages. He has been living in this village since birth. Three generations of his ancestors have also lived in the same village over a period of 80-90 years. He has three children and lives jointly with his mother and two younger brothers, who are also married and have children. Together, there are 14 members in his family, including seven adults and seven children. The complainant has an electricity connection and is exempt from paying any house tax.

The author had a closer look at the wastewater pond, which poses a health hazard and is a serious environment and human rights issue. She also undertook a detailed interview of the ex-Sarpanch of the village, and of the officer in-charge of the affected school across the wastewater pond.

(i) Location of the Village:
Mahansar is a small village between Bissau and Fatehpur near Mandawa in the Shekhawati region of Rajasthan. It is located around 40 kilometres from the district
headquarters, Jhunjhunu, and lies at a distance of around 250 kilometres from Delhi. The population of Mahansar is around 5000.

The large pond of polluted water in the village becomes glaringly visible as soon as one enters the village. While on one side of the pond is a locality inhabited by the Harijan community, on the other side is a secondary school. Adjacent to the school is the Water Works Department of the state government. A primary school is also located in the same vicinity.

Photograph 2: View of the Accumulated Water from the Approach Road

The accumulated wastewater spreads across about two acres of land. Around it are situated 25 houses having around 125 inhabitants. The polluted water from the entire village flows into this pond through properly constructed drains. The playground of the school stands completely submerged under the water. The complainant has claimed that living in such unhealthy conditions is adversely affecting the children’s growth and that the inhabitants have been suffering from various kinds of ailments and skin allergies caused by the pollutants emanating from the wastewater. He also avers that the physical appearance of his children aged 14 years is that of 7- or 8-year
Photograph 3: View of Houses Affected by the Accumulated Wastewater

Photograph 4: View of the Complainant’s House and His Children

old children, indicating that their growth is being stunted due to exposure to pollution.

The house of the complainant had large cracks caused by water seepage. The overall environment in his premises was damp and smelly.
7. Background Information Collected during the Field Visit

The complainant and other inhabitants of the locality informed the author that initially there was no wastewater pond in the area. The land was a *Gair Mumkin Zamin* (unclaimed land), which was being used for making raw bricks for constructing houses in the village. Since 1991, however, this piece of land was being illegally used for the release of dirty water flowing from the village. Over the years, this continuous flow of wastewater has converted the vacant land into a pond, the size of which is increasing day by day.

The wastewater pond has no walls, enabling the dirty water to travel into the adjoining houses easily. In 2003, a child studying in the adjoining Seth Daulatram Rawatmal Nopani Primary Government School fell into the pond and died. An FIR was registered at the police station in Bissau. The matter was also reported in the local daily. Despite the FIR, however, no action was taken by the local administration to divert the wastewater or to prevent its accumulation in and around the locality. At the time of the author’s visit, the wastewater of the village continued to flow into this pond. Wastewater from the water supply pumps adjoining the pond also finds its way into the same pond. The problem gets aggravated during the rainy season. Although some works had been carried out by the district authorities to prevent the water from seeping into the houses, the structure did not hold and got wiped off during the rains. Around two acres of land now remains covered by the wastewater pond, which was at one time the playground of the adjoining government school.

*Photograph 5: View of the Village Wastewater Outlet*
In an interview, the ex-Sarpanch of the village confirmed that the land on which the pond exists was actually meant to be used as a sports ground of the government school. He was, however, unable to confirm whether there was a corresponding entry in the revenue records. Presently, the playground of the school stands totally submerged. Although the present Sarpanch of the village is well aware of the existence of this serious problem, he expressed his inability to act or to take any fruitful action to deal with the matter.

Although all the residents of the village who were interviewed admitted that the wastewater pond poses an extremely serious health hazard for the village, yet none of them came forward to join the complainant in his efforts to find a solution to the problem.

There is no wastewater disposal system in the entire village though there is sufficient land in government possession for creating such a system. The village Gram Panchayat has annual funds and it can obtain financial assistance in case it submits any written project proposal to the Government agencies. However, no specific scheme has been formulated by the Panchayat for the construction of any waste disposal system in the village or for shifting of the polluted pond.
The village does not face any problem with regard to access to electricity or drinking water. The village also has a Primary Healthcare Centre (PHC), which occasionally sprinkles a disinfectant in the pond. This exercise is undertaken at the most twice a year, which is hardly sufficient for countering the spread of various infections by the pollutants in the pond.

The complainant lamented that even though numerous NGOs are working in the state of Rajasthan, not one of them has ever visited the village or intervened in the matter. The complainant had very high expectations from the NHRC. He was hoping that some official of the NHRC would visit the site in the village, observe the ground reality, and intervene to take remedial measures.

**Chronology of Events Leading to the Complaint Made to the NHRC**

The complainant stated that he had first complained to the then District Collector in 1995 vide his letter sent by post, but no action was taken. He subsequently met the District Collector when he visited the village. Although the latter was shown the wastewater pond, he too took no action. The subsequent District Collector also did not take any action. According to the complainant, this District Collector he went to the extent of saying that such ponds exist throughout the villages in the entire state of Rajasthan and nothing can be done about them. Although the complainant kept pursuing his cause through personal meetings with the state government authorities and its functionaries, nothing much happened on the ground.

In 1999, the complainant attended the Public Grievance hearing at Bissau and met the Sub-Divisional Magistrate (SDM), who after hearing the complainant, assured him of action. Believing the assurances to be true, the complainant said that he handed over all the papers which were in his possession to the SDM, who asked him for the relevant documents. However, all assurances again proved to be false as the SDM too did not take any action.

The complainant stated that in 2000, he was able to draw the attention of the media. The matter was repeatedly reported in various local daily newspapers like *Dainik Jagran* but despite the press reports highlighting the issue, nothing was done by the local administration.
In 2002, the complainant again met the then Collector, who visited the wastewater pond and the surrounding area. The Collector directed the Vikas Adhikari (Development Officer) to look into the matter and sent a communication to this effect to the complainant. The Development Officer met the complainant and orally offered him an alternate piece of land. The same was not accepted by the complainant as it was an oral offer. Moreover, the complainant said that he wanted a redressal of the problem which had been persisting for so many years rather than endorsing any efforts to skirt the issue.

The complainant thereafter made representations to the President of India and also to the NHRC. He revealed that he learnt about the NHRC's existence from the radio and newspapers, and having high expectations from the Commission, he wrote to it, hoping that it would intervene and ensure that the problem of wastewater accumulation and its seepage into his house would be stopped and that the NHRC would uphold the ‘right to life’ for him and his family. He became hopeful of relief when he received a copy of the Notice sent by NHRC to the District Magistrate. However, soon thereafter, his expectation was belied, as the NHRC closed the case without any investigation.

The complainant was well aware of his human rights. To him it meant, ‘Jeene ka Adhikar’ that is, the ‘Right to Life’. He said that he and his family have a right to live in a healthy environment and conditions that foster well-being rather than causing damage to their health.

The complainant sent numerous letters and reminders and made representations to various government authorities, but the issue remained unaddressed, and the size of the pond kept multiplying due to the inaction of the authorities concerned, while the problems of the local inhabitants continued unabated.

8. **Case Analysis**

The fact that the complainant, who lived in a small village of Rajasthan, became aware of the existence of the NHRC by virtue of the radio and the local newspaper indicates that the existence of the NHRC received wide coverage in the media. Further, the Commission, through its own publicity, has tried to reach every section of the society in different parts of the country. Having learnt about the existence of the NHRC due to this wide publicity, the complainant felt encouraged to approach
the august body and had high expectations that the latter would act to protect his fundamental human right, that is, the right to life. Since the local administration failed to take suitable action the case merited an independent investigation and a more judicious intervention by the NHRC.

The complainant belongs to a poor community and does not have the means to pursue his case. Nevertheless, he has been relentlessly pursuing the matter. Even when he raised the matter before the NHRC once again in 2006, his complaint was mechanically forwarded to the same district administration for ‘such action as deemed appropriate’.

The inept handling of this case by NHRC leads to the following observations and inferences:

1. The NHRC did not hold an independent investigation through its own staff but relied on the report of the state authorities who were themselves responsible for the inaction in the first place and to whom the complainant had already made several petitions.

2. The complainant was sent the reply that “the police authority had taken appropriate action in the matter as prayed for by the complainant; hence, the Commission takes the report on record and closes the case”. As there was no role for the police in the instant case, it is apparent that the communicating official had sent a routine and careless reply without applying his mind to the complaint or the problem. The Commission ought to have given a speaking order instead.

3. The complainant again wrote to the NHRC on 30 May 2006 but the Commission routinely replied after two months that his complaint had been considered by the NHRC on 3 August 2006 and that NHRC has directed that ‘The complaint be transmitted to the concerned authority for such action as deemed appropriate.’ The NHRC ought to have examined why the same complaint had been made again by the complainant after a lapse of four years of the initial complaint. Even at this stage, which called for an independent investigation, the NHRC did not send its investigating team to study the problem. Moreover, instead of summoning the state authorities to question them as to why the problem was still persisting despite their assurance to the NHRC that they would deal with it, it further diluted the response by simply
forwarding the complaint again to the same authority ‘for taking action as deemed appropriate.’

4. This was a fit case for the NHRC to assess and address the problem in a generic manner as most villages in India face similar problems of accumulation of wastewater, resulting in the creation of stagnant ponds which are not only eye-sores but also breeding grounds for mosquitoes, or for cattle to splash in and local children to swim, thereby posing a serious threat to the health and life of the inhabitants. When the complainant made a second complaint about the same problem, the NHRC should have taken a reasoned view after hearing the complainant. It should have called the state authority to present a time-bound action plan with in-built provisions for monitoring compliance.

5. It was obvious that the complainant had pinned his hopes on the NHRC, expecting that the Commission headed by an ex-Chief Justice of India, the highest judicial body in the country, would act to ensure the redressal of his grievance by the state authorities and protection of his ‘right to life’. The routine response of the Commission, however, left the complainant disappointed and disillusioned with the role of the NHRC, and also dejected at the lack of any action to redress his grave grievance.

It can thus be concluded that the inadequate response of the NHRC to the serious complaint of pollution and health hazard to the local inhabitants and its inappropriate handling of the matter raises questions about the role of the Commission in issues of environmental preservation and protection of human rights of the people.
8.2 CASE STUDY 2: LOCATION OF A GARBAGE DUMPING SITE ADJACENT TO MANOVIKAS PUBLIC SCHOOL, AMRUT NAGAR, MARGAO, GOA

1. COMPLAINT MADE TO THE NHRC

Mr. H.N. Subramanya, a retired engineer, and resident of Amrut Nagar, Fatorda, Goa, filed a complaint before the NHRC on 19 October 2002, stating that a garbage dumping site was located in a residential area next to the Manovikas Public School, which was a potential risk to the health and life of the children studying in the school as also to the other residents living in the Amrut Nagar locality. He requested the NHRC to intervene in the matter and direct the shifting of the dumping site. However, as no action was taken and the garbage dumping site kept getting bigger, he sent another letter to the NHRC on 22 February 2005 complaining against the location of the dumping site.

While responding to the second letter of Mr. Subramanya, the Commission, vide its letter dated 25 February 2005 issued the following directions:

“The Commission received two complaints on the same incident and both were registered separately as case No 28/5/2002-2003 and 62/5/2001-2002. This fact has come to light on perusal of a report received in case under consideration. After perusing the report, the Commission vide proceedings dated 30th December 2002 closed Case No 62/5/2001-2002. In the circumstances explained above, no further action by the Commission is called for. File.”

2. Background of the Case

Mr. H.N. Subramanya, a retired engineer, aged around 67 years, came to settle in Goa in 1967. He built his own house in Margao, South Goa, in 1987. A dumping pit was located within one kilometer of his residence. At the time when he received the approval for the construction of his house from the local authorities, he was also given an assurance by the authorities that the garbage dumping site would be shifted. In any case, since it was a small pit, he did not bother much about it. He had, however, not anticipated that instead of being shifted to another location, the same pit would, over the years, grow to gigantic proportions. He continued to believe that the local authorities would act and shift the dumping site. Gradually, more houses came up in the area. According to the complainant, construction of the Manovikas Public School, which is located adjacent to the garbage pit, was approved by relaxing the rules. Presently, about 2000 children are studying in the school. According to the
complainant, what was initially a small garbage dumping pit in the original plan gradually increased in size. According to the local authorities, the total area wherein the garbage is dumped is 15,000 sq. m., and they also have some additional land in their possession. Garbage from the south part of Goa is brought in trucks for dumping at this site. Over the years, the number of trucks bringing garbage has increased manifold. On an average, 50 metric tons of garbage per day is dumped at this site. The complainant also alleges that often the trucks come during the morning hours, that is, around the same time that the children are going to school, and create a nuisance by blocking the lane leading to the school. The wall of the dumping yard is next to the school playground. The numerous complaints made by the complainant to the local authorities have not yielded any result.

The complainant revealed that he came to know about the NHRC through a colleague, who advised him to send a complaint to the NHRC. As mentioned above, the complainant sent a letter to the NHRC on 19 October 2002 against the growing menace from the dumping site, explaining how it is a grave nuisance and a health risk because of being located next to a school and near a residential area wherein the complainant lives. He had hoped that the NHRC would direct the local authorities to shift the garbage dumping site and that the latter would be bound by the directions of NHRC. However, as he did not hear from the NHRC for more than two years, he sent a reminder of his complaint on 22 February 2005, to which he received the reply that the NHRC had issued direction to close his case.

The complainant stated that he had approached the NHRC when his efforts at the local level to get the dumping site shifted failed, in the belief that the NHRC had an overall governing power and that it would direct the local authorities, compelling them to act and actually shift the dumping site. He presented all the facts before the NHRC, stating that in the first instance, the local authorities should not have given a clearance for a school to come up in the immediate vicinity of the garbage dumping site, and that even if they had given the permission, they should have moved the dumping site elsewhere, as it was a great threat to the health of the children and the residents in the locality.

The complainant expressed the feeling that the local authorities had a moral duty to protect the rights of the citizens, especially the children, to breathe pollution-free air.

144 Personal interview, 07 February 2010.
a right that was being grossly violated. He also alleged that the school authorities had been given the clearance for construction of their building only after the local authorities took an undertaking from the school that the latter would not complain about the garbage dump. It is perhaps for this reason why the school has not agitated over the issue before the authorities even though the rights of the children are being violated. The complainant also averred that sometimes the problem of foul smell and polluted air emanating from the dump is so severely aggravated by the direction of the wind that it starts affecting the children seriously, causing them to suffer from nausea, vomiting and sickness.

The complainant also stated that in 2005, the local authorities had assured the people in the area that they would start treating the garbage on site, and that the work for this task had been awarded to a company called Comex. Unfortunately, nothing happened and this assurance, according to the complainant, was just an eyewash. Subsequently, the work for treating the garbage was awarded to another company, Hycup, which did not pursue the task seriously. At the time of the field visit, the author learnt that the work had just then been awarded to another concern, a local company called Fomento.

The complainant argued that he had not been aware of the fact that the powers of the NHRC were limited to only making recommendations. He had believed the NHRC to be some kind of a supra body that had the power to direct the local authorities to act. In this belief, he expected that once the issue of the violation of human rights of the school-children and other residents in the vicinity was brought to the notice of the NHRC, the Commission would take a pro-active stand and ensure the removal of the garbage dump yard. His contention was that the school and the dumping site cannot co-exist. The authorities must move one of the two, as the human rights of children are involved and the garbage dump would adversely affect their health and physical development in the long run. Eventually, the complainant’s plea brought no result and ended in disappointment for him as the NHRC closed the case in 2002 on the basis of an assurance issued by the local authorities concerned that they were taking the necessary action in the case. There was also no follow-up on the part of the NHRC to determine as to whether the local authorities fulfilled their assurance. In fact, if there had been any follow-up and monitoring action, this problem would have been resolved much earlier.

145 The field visit took place on 06 February 2010.
3. Field Observation

The garbage dumping site, Sontodo, is visible from the main road. As one advances towards the dumping site, the stench starts permeating the air from a distance of about one km of the dumping site. The garbage dump is indeed mountainous in size. One was also surprised to learn that the foul odour from the site is particularly strong at a recreation hall, situated right opposite it, which is regularly used for social functions, but that no complaint has been made on behalf of the latter.

Photographs 1 and 2 (below): View of the Garbage Dump from the Road

Photographs 2: Another View of the Garbage Dump from the Road
The author met the Chief Executive Officer (CEO) of the Municipal Council of Margao on 8 February 2010, who pointed out that the right to a clean environment has been included in the policy of the Municipal Council, and that it takes due care to keep the area clean. The CEO stated that the problem with regard to the garbage

146 Personal interview (08 February 2010)
dumping site is that it has been in existence since the erstwhile Portuguese Government prior to the liberation of Goa in 1961, and that the school was constructed much later. He remarked, “The whole issue crops up because of the fact that the area near the dump yard was not frozen from development by getting its declaration as a ‘no development zone’ from the Margao Planning and Development Authority under the Goa Town and Country Planning Act.”

As of now, there is no proposal to shift the dumping site. The Municipal Council has awarded a work contract to a local company Fomento, at a total estimated cost of Rupees 7,31,04,362 for treating the garbage dumped there. The company is also expected to control the air, water, and noise and odour pollution emanating from the dump. It has to comply with the Management of Solid Waste Rules, 2000, framed under the EP Act, 1986 and to obtain the requisite clearances from the Goa State Pollution Control Board and the state government. It is also proposed to freeze further development in the area.

The CEO expressed his appreciation of the work of the NHRC, arguing that even the smallest complaint is being taken note of by the NHRC and that it gives suggestions too in this regard. He also claimed that a seminar on general human rights organised by the NHRC in Goa during 2009 proved to be very useful and led to constructive suggestions.

4. Critical Analysis
In this particular case, the NHRC handled the complaint against the dumping site in a routine manner, and did not bother to check the ground reality on the manner in which the human rights of children were being violated by the state authorities. Consequently, the problem escalated to gigantic proportions over the period of a decade. Despite the complainant’s sincere efforts to get the garbage dump relocated, nothing happened on the ground. The state authorities have been extremely casual about the serious matter of violation of the children’s right to health and right to life. The recognition of the impact of the environment on a child’s life was explicitly established in the UN Convention on the Rights of the Child, 1989. Article 24(2)(c) of the Convention calls for appropriate measures to combat disease and malnutrition through the provision of adequate quantities of nutritious foods and clean drinking water, while taking into consideration the dangers and risks of environmental pollution. It further contains the provision of disseminating information to and
spreading education among all segments of the society on the issues of hygiene and environmental sanitation.

The reply of the NHRC to the complainant was not in the form of a speaking order. Therefore, it is not clear as to why the Commission closed the case. Nor did the NHRC send its team to investigate the matter, otherwise the gravity of the problem would have come to light in 2002 itself and its escalation could have been stopped. The Commission also did not take any follow-up action or bother to call for a report when the complainant brought the matter to its notice in 2005. The problem of the dumping of garbage is a major one in the entire state of Goa and the NHRC needed to take up the issue in a systemic manner. It could have asked for a time-bound action plan from the concerned authorities before closing the case and monitored the progress of action taken by the latter. This case thus corroborates the inferences drawn in Chapter 7 about the routine handling of environmental complaints by the NHRC and the peoples’ perception of its role. It is also obvious that this is yet another case which demonstrates that the ground reality is very different from the NHRC’s claims that it stands for the protection of the rights of the more vulnerable sections of society.
8.3 CASE STUDY 3: SUO MOTU COGNISANCE IN THE MATTER OF ‘SILICOSIS’

1. Cognisance of Cases Relating to ‘Silicosis’ by the NHRC

Exercising its powers under Section 12 (a) of the PHR Act, 1993, the NHRC took suo motu notice of a news report which appeared on 19 April 2003 in *Frontline*. The NHRC sought a report from the Government of Pondicherry regarding deaths in a factory manufacturing glass containers in Pondicherry. The Government of Pondicherry confirmed five cases of death and five other cases of workers suffering from silicosis.

The NHRC directed that this case be linked with an earlier suo motu case of 2001, regarding the plight of labourers working in the quartz mines of Andhra Pradesh Mineral Development Corporation (APMDC) in the Shadnagar and Mahboobnagar villages of the state of Andhra Pradesh. It was alleged in a report published in *The Week* that the villagers of Shadnagar and Mahboobnagar and the workers of Andhra Pradesh Mineral Development Corporation (APMDC) were suffering from a deadly occupational disease named silicosis and that the company had stopped its operation by citing the reason as the non availability of adequate power supply. However, according to the report, the actual reason was that it had foreseen that the disease would cause deaths and consequently a major upheaval in the factory. The company thus halted its operations and invoked the provisions of the Industrial Disputes Act to retrench the workers. A number of workers who had contracted the disease subsequently died.

The NHRC called for a report from the Health Secretary, Government of Andhra Pradesh. The latter responded by submitting the report of an Expert Committee on Silicosis, which confirmed the contents of the news item in *The Week*. The NHRC then called for a further report from the Chief Secretary, Government of Andhra Pradesh on the steps taken by the authorities to protect the health of workers. The matter was disposed with directions “that as the matter was of considerable importance and wider issues were involved it should be placed before the Full Commission”.

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147 NHRC Case No. 19/32/2003-04.
148 NHRC Case No. 270/1/2000-20001.
When the matter was placed before the Full Commission in 2004, the Commission directed that it should be transferred by the Law Division to the Policy, Research, Projects and Programme Unit (PRP&P) of the NHRC for the latter to pursue it in a comprehensive manner. The PRP&P unit of NHRC convened a meeting in 2004 of the Commission with the Secretaries of the Central Ministries in charge of Mining, Labour, Coal, and Environment, and the state Departments of Mining of the Government of Andhra Pradesh. Nothing concrete, however, came out of the meeting. The NHRC took expert advice from the former Chairman of the Central Pollution Control Board (CPCB) to formulate a questionnaire for eliciting the requisite information from the concerned agencies. This questionnaire was sent out to the concerned departments on 8 July 2004. The PRP&P unit pursued the matter and collected the information regarding the steps taken by each of the above-mentioned agencies of the Government. Despite PRP&P unit’s pursuit of the matter, however, some agencies did not furnish the information.

On 17 December 2005, the NHRC once again took suo motu cognisance of a news item that appeared in the daily newspaper, The Indian Express, titled, ‘Silica disease hits tribals in Godhara stone crushing units’. The Commission then directed that a copy of the press report be forwarded to the Chief Secretary, Government of Gujarat, to look into the matter and submit a report on it within two weeks. Pursuant to the directions of the NHRC, a report was thus sent by the Assistant Director (Industrial Safety and Health) Godhara, District Panchmahal.

2. Complaint to the NHRC and Efforts Made by an NGO, PRASAR

Meanwhile, in 2003, when the NHRC had taken suo motu cognisance of the deaths due to silicosis in the states of Pondicherry and Andhra Pradesh, a Delhi-based NGO named ‘Peoples Rights and Social Research (PRASAR)’ led by S.A. Azad, took up the cause of workers suffering in Lal Kuan, a village in south-east Delhi near the Mehrauli–Badarpur road where the workers engaged in stone quarrying had allegedly contracted silicosis due to the nature of their work. This claim was made by Azad, who petitioned the NHRC, seeking compensation and rehabilitation for the silicosis victims. In 1992, the quarries were closed down and shifted to Haryana in pursuance of a Supreme Court Order in the M.C. Mehta vs. Union of India case. According to Azad, “the workers lost their livelihood and their health”. He found that the men and women affected by the disease were bone thin and desperately poor.

149 Writ Petition (Civil) No. 4677 of 1985.
Some of them were taking medicines for tuberculosis (TB) instead of silicosis. Thereafter, PRASAR and some other NGOs and individuals joined hands together to form the Khan Mazdoor Adhikar Manch. They approached various agencies of the Government and sent a copy of their petition to the NHRC as well. The NHRC forwarded a copy of the complaint to the Secretaries of the Union Ministries of Labour, Health and Industry; the Labour Commissioner; and Director, Pollution Control Department of the Government of Delhi, to examine the allegations made in the complaint, and to submit their comments and an Action Taken Report (ATR) within four weeks.

3. Health Survey by the Centre for Occupational and Environmental Health (COEH)

In pursuance of the efforts made by PRASAR, a health survey of the Lal Kuan victims was conducted by the Centre for Occupational and Environmental Health (COEH), at Maulana Azad Medical College. COEH’s report\(^{150}\) stated that “silicosis, one of the oldest occupational diseases, still kills thousands of people every year everywhere in the world. It is an incurable lung disease caused by inhalation of dust containing free crystalline silica. It is irreversible and, moreover, the disease progresses even when exposure stops. Extremely high exposures are associated with much shorter latency and more rapid disease progression. Silica dust is released during operations in which rocks, sand, concrete and some ores are crushed or broken. Work in mines, quarries, foundries, and construction sites, in the manufacture of glass, ceramics, and abrasive powders, and in masonry workshops is particularly risky. Silicosis results in conditions such as lung fibrosis and emphysema. The form and severity in which silicosis manifests depends on the type and extent of exposure to silica dusts: chronic, accelerated and acute forms are all recognized. In later stages the critical condition can become disabling and is often fatal. A frequent cause of death in people with silicosis is pulmonary tuberculosis (silico-tuberculosis). The causative agent is free crystalline silica which is one of the most common minerals in the earth’s crust and is a major component of sand and many rocks such as granite, sandstone, flint and slate and in some coal and metallic ores. Three most common forms are quartz, tridymite and cristobalite. Inhaled crystalline silica from occupational sources is classified by the International Agency for Research on Cancer (IARC) as a Group 1 human lung carcinogen. Silica dust

\(^{150}\) See ‘Short Report on Health Survey of Lal Kuan Victims’, submitted by Centre for Occupational and Environmental Health (CEOH), Maulana Azad Medical College, New Delhi (2002).
may be invisible to the naked eye. It is so light that it can remain airborne for a long time. It can thus travel long distances in the air and so affect populations not otherwise considered to be at risk."\textsuperscript{151}

The study entailed an examination of 165 subjects in the Lal Kuan area. It was found that of the total number of subjects examined, 68 per cent were suffering from silicosis, silico-tuberculosis or tuberculosis. The report\textsuperscript{152} recommended that as per the survey there was a high incidence of silicosis, silico-tuberculosis and tuberculosis, all of which are incurable, and that hence supportive treatment be provided to the victims, and moreover with their socio-economic condition being unsatisfactory, the report also recommended their rehabilitation.

Lakhs of workers in India, with a majority of them being engaged in the unorganised sector, encounter high-risk silica exposures. Some prominent examples of the industries and activities that pose the greatest potential risk for worker exposure to silica-related diseases include: construction, stone-cutting, glass manufacturing, mining, agriculture, ship-building, ceramics, railroad, clay and pottery, and manufacturing of soaps and detergents\textsuperscript{153}.

Although there is no cure for the disease, it is fully preventable if the employers, workers and health professionals’ work together to reduce exposures to silica. The process of control of silicosis consists of dust control measures and medical measures. The safety measures that may be adopted by the employers include the application of appropriate technology to prevent the formation of silica containing dust. Silicosis can also be contained by compliance with the prescribed exposure limits and technical standards. Medical surveillance, early detection and the use of protective equipment, though temporary measures, also signify other modes of protection against the disease.\textsuperscript{154}

It has, however, been found that there is a lack of awareness about the seriousness of the disease among workers as well as doctors and health authorities. The extant statistical and epidemiological data on silicosis are very poor, especially with regard to the small enterprises and construction industry, wherein many workers are not

\textsuperscript{151} Ibid.
\textsuperscript{152} Ibid.
\textsuperscript{153} See Update Collective, Issue No. 1, January 2008.
\textsuperscript{154} Ibid
even registered.

4. Lack of Follow-up by the NHRC
Despite PRASAR’s petition before the NHRC in 2003, and the issuance of notices by the NHRC to the concerned state governments, the issue of the occurrence of silicosis was not given the attention it deserved. None of the concerned departments responded to the NHRC’s direction to assess the allegations, and submit their comments and an ATR within four weeks. In 2003, when PRASAR approached the NHRC, nothing significant happened. Three years later, PRASAR became more aggressive and started campaigning rigorously against the spread of the disease. “Close down the NHRC,” said Azad. “After so many years you did nothing. ‘Justice delayed is justice denied’.” However, it was only four years later, at the National Review Meeting on Health held in March 2007, that the NHRC identified and took up the occurrence of silicosis as a serious issue of human rights violation.

5. Action by the Government of Delhi
In a parallel action, in response to PRASAR’s representation made to the Government of Delhi, the Chief Minister of Delhi convened a meeting in October 2005 with the concerned officers and NGOs, and agreed to carry out a survey to explore details of the issue. The Chief Minister also decided to extend medical facilities to the affected persons, to assist the latter in improving their skills for availing of alternative livelihood opportunities, and to introduce a special pension for the silicosis victims. The Delhi Government came up with a model rehabilitation package, and also initiated some important steps to rehabilitate the silicosis victims of Lal Kuan, Delhi area.

In an endeavour to prevent silicosis in other states and implement plans like that of the Delhi Government, PRASAR filed a Public Interest Litigation (PIL) in the Supreme Court (SC). Admitting the petition in 2006, the SC issued notices to the state governments of Rajasthan, Gujarat, Pondicherry, and Haryana, as also to the Union Ministries of Labour, of Health, and of Law and Justice to formulate guidelines for the prevention of dust exposure in stone quarries and crushers all over India. With these notices, the occurrence of silicosis became a national issue.

155 Reiterated during personal interview on 19 August 2009.
156 WP (Civil) No. 110 of 2006.
6. PIL before the Supreme Court of India

The NHRC filed an application before the SC to be impleaded as a party to the PIL filed by PRASAR before the SC. The latter further issued a notice to the Central Pollution Control Board to be impleaded as a respondent in the case. The NHRC informed the SC that according to its preliminary report, the problem of silicosis is prevalent in many states and that there is need for conducting a further survey on the issue. The SC then directed the Ministry of Health and Ministry of Labour to provide all assistance to the NHRC in examining the matter. It further directed the NHRC to take up the specific and confirmed cases of persons who were suffering from silicosis and to recommend the provision of immediate medical relief to them through the concerned authorities, and also ordered the provision of compensation by the concerned authorities in case of victims succumbing to the disease.

PRASAR has been highlighting the plight and concerns of the silicosis victims at various forums. A national workshop was convened in Mumbai in December 2007 to develop strategies for dealing with the problem. During the workshop, the NGOs, trade unions and individuals working in the sectors of mining, stone crushing, glass, and gems and jewellery were asked to come forward for providing information and filing complaints regarding silicosis. The concerned organisations were also asked to submit their complaints directly to the NHRC or to PRASAR, and to follow up the redressal of their complaints with the NHRC. Representatives of Khedut Mazdoor Sangh of Madhya Pradesh, and NGOs from Gujarat and Jharkhand, among others from different parts of the country, who have been working to mitigate the plight of silicosis victims, also appeared before the NHRC. Most importantly, some silicosis victims and the family members of those who had died of the disease also presented their grievances to the NHRC.

7. Co-ordinating Role of the NHRC with Regard to the Measures to be Taken

Dr. Shivraj Patil, the then Member of the Commission, held a meeting on 24 April 2007 with various officials belonging to the Ministry of Labour and Employment; Directorate General of Factory Advice Services, Mumbai; Directorate General of Mines Safety, Dhanbad; Department of Industrial Policy and Promotion, Ministry of Commerce and Industries; National Institute of Occupational Health; Ministry of

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157 Ibid.
Health and Family Welfare, Government of India; and Indian Council of Medical Research (ICMR), in addition to officers of the NHRC. It was noted during the meeting that though Government policies and provisions to tackle the issue of silicosis were in place, there is further need to address the seriousness of the issue and also resolve the problem prevailing in the unorganised sector where even basic precautions for the prevention of the disease are not taken. The participants at the meeting also deliberated on issues regarding the adequacy of existing laws to address the problem and whether there was a need to frame a separate legislation for dealing with it. It was felt that the dangers of silicosis and the possibilities of its occurrence had been ignored by the concerned Union Ministries and Departments of Health, Labour and Industries.

While concluding the deliberations at the meeting, the NHRC recommended both short-term as well as long-term interventions, and stated that it would call upon both individual state authorities to monitor the execution of these recommendations.

The short-term recommendations of the NHRC highlighted the need to work aggressively to create awareness amongst workers, medical practitioners and employers about silicosis as a health hazard, and to monitor the states wherein a high number of cases of silicosis had been identified. The main short-term measures suggested by the Commission included:

- Directing the states to issue a notification under Section 85 of the Factories Act so that entrepreneurs employing less than ten labourers could also be brought within the ambit of the legislation;
- Analysing the measures taken by the state of Madhya Pradesh with a view to determine how prevention of the disease, and the promotion of healthcare and insurance had been incorporated;
- Collecting and assessing findings of the surveys available with different agencies to identify and map the pockets characterised by a high incidence of silicosis;
- Working to counter the inefficiency and lethargy displayed by the State and enforcing agencies;
- Summoning State government officials to monitor the effectiveness of the steps being taken; and
- Launching a national programme for the eradication of silicosis.

The NHRC also committed to devote half a day to the National Review Meeting on Health to the issue of silicosis alone or to organise a separate National Review on the disease, as also to work out the issue of compensation and its modality towards the victims or their next of kin and to invite select NGOs to make a presentation on the status of silicosis and share experience.

As a long-term measure, the NHRC recommended an examination of the adequacy of the existing laws concerning the matter, and whether there is a need for introducing a separate legislation to deal with the issue; and also directed the constitution of a National Working Group termed as a ‘National Task Force on Silicosis’ or a ‘National Core Group on Silicosis’.

The first meeting of the Task Force on Silicosis was held in September 2007, wherein it was decided that the NHRC and Ministry of Labour and Employment would jointly work out the details regarding the format of the survey and hold a pre-survey meeting with all the state governments. The proposed meeting on silicosis was held at the NHRC on 29 October 2007, wherein the NGO, Jan Swasthya Abhiyan, was requested to identify both the pockets where silicosis was occurring and also the victims of the disease. The issue of awarding compensation to the latter was also discussed. The Director General, Factory Advice Service and Labour Institute (DGFASLI) was asked to provide a list of the confirmed cases of silicosis, which the NHRC took upon itself the task of addressing the individual complaints and recommending the implementation of necessary relief measures for the victims in consultation with the Ministry of Labour and Employment.

The NHRC held a national conference on 1st March 2011 with the representatives of Central Government Ministries/organisations as well as State/Union Territory Governments and the NGO’s working in the area to assess the action taken by the state governments to tackle the problem of silicosis with reference to the preventive, rehabilitative and remedial recommendations issued by the NHRC in December 2010. On 23 August 2011, the NHRC submitted a Special Report to the Parliament, drawing the attention of the Parliamentarians towards the inhuman conditions faced by the people affected by silicosis. NHRC holds review meetings periodically to discuss the action taken by the Union Ministry of Labour and Employment and the
states on its recommendations regarding prevention, detection and eventual elimination of silicosis in the country.

7. Case Analysis
The case brings to light the struggle undertaken by the NGO, PRASAR against silicosis, an incurable occupational disease, and its efforts to bring it to the forefront as a serious health concern. In the course of its struggle, PRASAR has highlighted the crucial issues of labour standards, occupational safety and protection of human rights in the mining and quarrying industry. The NGO has not only exposed the deficiencies in the policies of the State and the politics of inaction but has also succeeded in engaging the various arms of the State, ranging from Union Ministries to the NHRC and even the Supreme Court, in dealing with the serious issue.

In 2003, the NHRC took *suo motu* cognisance of media reports emanating from different parts of the country regarding the occurrence of silicosis. The Commission acted promptly in the matter by sending notices to the concerned departments and Ministries of the Government of India, and various state governments. However, the follow-up action was weak. The matter was not pursued with the same vigour with which it had been initiated. The concerned agencies of the government did not bother to respond to the NHRC directive, and the latter too issued only some routine reminders, that too, four months after the expiry of the deadline by which the report ought to have been received. This lack of follow-up shows that the NHRC itself did not sustain the zeal and seriousness with which it had sent the notices and taken cognisance of such a serious environmental and health issue.

Subsequently, even when the matter was brought before the Full Commission, the seriousness of the issue was neither expressed nor discussed, and instead only a routine direction was given that the case of 2003 be linked with another pending matters pertaining to mining and that all the cases be transferred to the Policy and Research Division of NHRC to be treated as generic issues. After a pendency of two years, when in 2005, the NHRC convened a meeting of the concerned Secretaries of the Government of India and senior officials of the state governments, still no crucial decisions taken, and the concerned departments were only asked to provide details of the policies and programmes in place in this regard. Some of the agencies did not respond even to this directive and the NHRC neither summoned them nor pursued the matter further.
Meanwhile, the NGOs, who had been struggling for almost seven years to bring the issue to the forefront of discussion and redressal, received a major breakthrough when the Chief Minister of Delhi took an initiative and convened a meeting to discuss the prevalence of silicosis in the Lal Kuan area. The Government of Delhi announced concrete plans to set up a dedicated hospital for the treatment of occupational diseases in Lal Kuan, while providing a mobile van comprising a doctor, an attendant and a nurse to visit the area, to conduct a survey of the affected persons, and to grant relief to the silicosis victims.

It can be seen from the above case study that only when PRASAR filed a PIL in the Supreme Court in 2006 that the NHRC impleaded itself as a party and played a more active role in the matter. The timely intervention and implementation of proactive measures by the NHRC could have helped save many lives in the silicosis-prone areas of the country. Thus, in incidences of life-threatening violations of human rights, it is imperative for the NHRC to act promptly, to accord top priority to the issue, and to monitor the execution of various critical measures by setting up internal monitoring committees. When it took suo motu cognisance of the matter in 2003 and sent its investigating teams, it could have assumed a more aggressive role in terms of its functions under Section 12 (a) of the PHR Act.

The four-year delay in the assumption of a co-ordinating role by the NHRC in pursuance of the Supreme Court directive could also easily have been avoided if the Commission had treated this human rights violation with the seriousness that it deserved. Eight years later, the NHRC seems to be playing a more active role in the matter, but even though the crusader NGO, PRASAR, which has been pursuing the issue relentlessly, claims that it is now satisfied with the role being played by NHRC to contain this serious human rights violation, the fact remains that the NHRC could and should be more proactive in such cases.

In India, lakhs of workers, a majority of whom are employed in the unorganised sector, encounter high-risk silica exposures. Although presently, there is no cure for the disease, it can be prevented fully if employers, workers and health professionals all work together to reduce the risk of such exposures. The workers too need to be made aware of the potential risks involved in their employment in industries and activities such as mining and quarrying.
In conclusion, it may be said that in such a case, the NHRC should have assumed a more proactive role in 2001 itself when the matter first came to its notice or even in 2003, when some more reports came to its notice. NHRC became active only years later when the NGO agitating before it expressed its extreme frustration at the lack of action and after the Supreme Court gave directions to NHRC in March 2009, in a PIL\(^{159}\) before it on the same issue. It needs to be reiterated that in environment-related health issues, timely action is of great essence for protecting the people’s ‘right to health’, and more importantly, the ‘right to life’ itself.

8.4 Inferences drawn from the Case Studies: The three case studies delineated here corroborate the inferences drawn from an analysis of the data regarding the complaints examined in Chapter 7. The deficiencies in the complaint-handling process and the closure of cases by the NHRC on the basis of reports furnished by the state authorities without adequately resolving the issue or verifying the ground reality are all pointers to the fact that the complaint-handling system of the NHRC with respect to environment-related cases is neither effective nor efficient. It is evident that the NHRC has also fallen short of people’s expectations. In fact, while expressing their anger and disappointment over the inadequate role played by the NHRC and its supposed effectiveness ‘on paper only’, some complainants have even gone to the extent of advocating its closure. In the matter of ‘silicosis’ the NHRC could have assumed a more pro-active role, much earlier when it took suo-motu cognisance of the matter rather than becoming active only after it was pressurised by an NGO and directed by the Supreme Court.

The ways and means whereby the NHRC can overcome its shortcomings and play a more effective and meaningful role in protecting the environment from a human rights perspective have been elaborated in the next chapter.

\(^{159}\) Peoples Rights and Social Research Centre (PRASAR) v Union of India. WP (Civil) No 110/2006