Research on Chrysotile Asbestos: Failure of Ethics by National Institute of Occupational Health and National Human Rights Commission

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Abstract: The precondition of pursuit of the good is that there must be a notion of what counts as ethically good in research and what is ethically appropriate action and right conduct. Department of Chemicals and Petrochemicals, Ministry of Chemicals and Fertilizers had entrusted National Institute of Occupational Health (NIOH), Ministry of Health and Family Welfare to carry out a study on Health Hazards/Environmental Hazards resulting from the use of Chrysotile variety of Asbestos in the country. The application under Right to Application Act revealed that this was co-sponsored by asbestos industry. This has been admitted by two ministries in the Parliament. National Human Rights Commission (NHRC) relied on this admittedly conflict of interest ridden study to decline action. The paper will point out specific instances of unethical practice by both NIOH and NHRC.

The paper will point out the improprieties in the research, which financed by the chrysotile asbestos cement industries association. It will examine the ToR of the study and the proceedings of the NHRC.

The paper will share its findings based on the scrutiny of the relevant official documents about the necessity of strict adoption of Conflict of Interest Guidelines by research institutions like NIOH and public institutions like NHRC. The relationship between the case in question and the principle of right conduct will be inferred.

Introduction

This paper presents experiences from Gujarat based National Institute of Occupational Health (NIOH) and New Delhi based National Human Rights Commission (NHRC). It brings forth the violation of ethics by these two institutions in the matter of research on white chrysotile asbestos by the former and the use of the outcome of this research by the latter. Ignoring scientific and medical evidence of public health hazard and its own order about the harmful effect of asbestos, NHRC refrained from prohibiting use of carcinogenic mineral fibers of white chrysotile asbestos using an irrelevant and an admittedly questionable study by NIOH. NHRC committed a grave error by merely reproducing the submission of one Assistant Industrial Advisor, Ministry of Chemicals & Fertilizers, Department of Chemicals and Petrochemicals as part of its “Directions” (NHRC, 2016).\(^1\)

In doing so, NHRC ignored its own order (NHRC, 1998)\(^2\). In this case NHRC’s direction reads: “Replace the asbestos sheets roofing with roofing made up of some other material that would not be harmful to inmates. It is evident from it that the NHRC considered asbestos sheets as harmful but it allowed itself to be misled by NIOH’s study. White chrysotile asbestos fibers used for making asbestos based products like asbestos cement roofs cause preventable but incurable diseases and deaths. Asbestos is a carcinogenic mineral fiber banned in some 60 countries.

\(^1\) NHRC order in Case No.2951/30/0/2011
\(^2\) NHRC order in Case No.693/30/97-98
Scientific unanimity about harmful impact of white chrysotile asbestos

Health institutions and doctors have played both positive and negative roles in the “tragic history” of asbestos industry (Castleman, 2000). The world’s scientific and medical community has overwhelmingly concluded that chrysotile asbestos causes deadly diseases, such as asbestosis, mesothelioma and lung and other cancers. The International Agency for Research on Cancer (IARC) and the World Health Organization (WHO) have called for an end to all use of chrysotile asbestos in order to prevent further tragic epidemics of asbestos-related diseases. Public institutions like the World Federation of Public Health Associations, the International Commission on Occupational Health, the International Social Security Association, the Union for International Cancer Control (representing 770 member organisations in 155 countries, including the Indian Cancer Society and the Cancer Aid and Research Foundation of India), the International Trade Union Confederation (representing 175 million workers in 151 countries), the Collegium Ramazzini, the Joint Policy Committee of Societies of Epidemiology and the Indian Association of Occupational Health have all recommended elimination of the use of chrysotile asbestos because safe use of asbestos is impossible.

It is significant that the Ministry of Mines has informed that “the Grant of fresh mining leases and renewal of existing mining leases for Asbestos are presently banned in the country on Health Grounds” (PIB, 2003). Government had imposed this ban on mining of all kinds of asbestos in 1986. The core scientific question is: how can Indian asbestos be poisonous but Russian asbestos is not. India is the biggest importer of Russian asbestos. Can Indian Cyanide and Russian Cyanide have different health impacts? The Terms of Reference (TOR) that is awarded by the Experts Appraisal Committee, Industrial Project, Union Ministry of Environment & Forests to the project proponents for white asbestos based roofing factories states that asbestos based companies should prepare a “Health Management Plan for Mesothelioma, Lung cancer and Asbestosis related problems in asbestos industries.” A typical asbestos mineral fibre is about 2,000 times thinner than a human hair. It is believed that smaller, thinner, ‘respirable’ fibres are the ones which do the most damage. These asbestos fibres are invisible to the naked eye. Some of the small fibres remain in the lower parts of the lung for years. Some work their way through the lung lining inducing cancers (Perappadan, 2004). The government agencies like Directorate General, Factory Advice Service and Labour Institutes (DGFSALI) took note of Prevalence of Asbestosis and Related Disorders in an Asbestos Fiber Processing Unit in West Bengal as early as in 1996 (DGFSALI, 1996). But unmindful of Supreme Court’s order of 1995 no steps have been taken by the central and state governments for complete ban on asbestos despite admitting

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the “deleterious effect of asbestos on the health” and in spite of imposing ban on grant, renewal and expansion of asbestos mining in the year 1986, sixty two years after the first diagnosis of asbestosis was made in the UK in 1924 (Cooke, 1924)\(^7\).

Indian Council of Medical Research (ICMR) which has “informed that major health hazards of asbestos include cancer of lung, mesothelioma of pleura and peritoneum and specific fibrous disease of lung known as asbestosis. All types of asbestos fibers are responsible for human mortality and morbidity….Directorate General Factory Advice Service and Labour Institutes, (DGFASLI) under Ministry of Labour & Employment has intimated data of workers suffering from Asbestosis in factories registered under the Factories Act, 1948. As per the information provided by DGFASLI, it is informed that 21 no. of Asbestosis cases were reported in Gujarat in 2010 and 2 cases in Maharashtra in the year 2012”. This has been shared by the Union Minister for Health and Family Welfare in a written reply.

The factsheet of World Health Organisation (WHO) states that the most efficient way to eliminate asbestos-related diseases is to stop the use of all types of asbestos and specifically states that its strategy is particularly targeted at countries still using chrysotile asbestos. The asbestos based products include fireproof coatings, concrete and cement, bricks, pipes, gaskets, insulation, drywall, flooring, roofing, joint compound, paints and sealants. Asbestos also exists in electrical appliances, plastics, rubber, mattresses, flowerpots, lawn furniture, hats and gloves. Chrysotile asbestos is often present in a wide variety of products and materials, including Chlor Alkali diaphragm membranes used to make chlorine, Drywall and joint compound (including texture coats), Plaster, Gas mask filters, Vinyl floor tiles, sheeting, adhesives, roofing tars, felts, siding, and shingles, acoustic ceilings, fireproofing and dental cast linings.

Since 1984, environmental monitoring and health surveys have led to in-depth studies in asbestos based industries in India, highlighting an occupationally vulnerable worker population. It was noticed that the workers occupationally exposed to asbestos have a maximum impairment in their pulmonary function test. Workers employed in the cement-asbestos factories suffer from the exposure to asbestos. Asbestos dust can be inhaled while drilling a hole, cutting a pipe, repairing, renovating or demolishing a building. Its effects are far-reaching, affecting everyone from the person mining it to the ultimate consumer. The incubation period of asbestos related diseases is long. It takes as long as 10 to 30 years for the fibers to make their presence felt in the human body but by then it is incurable. In the rich countries, insurance companies have stopped covering workers employed in asbestos factories and mines. Even World Trade Organisation (WTO)'s Dispute Settlement Panel on September 18, 2000, and its appellate body on March 12, 2001, accepted that white chrysotile asbestos is an established carcinogen and that "controlled use" is not an effective alternative to a national ban (Krishna, 2004)\(^8\).

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Given the fact that mining of asbestos is banned in India because of its hazardous nature, the company in question has informed the government and the public that the chrysotile type asbestos fiber “will be imported from Brazil, Canada and Russia” (Casado, 2017). White chrysotile asbestos, the serpentine variety is 95% of all asbestos in the global market. It is the only kind that remains to be totally banned in India. Now the fact is that Brazil and Canada have banned asbestos but India has emerged as the biggest consumer of Russian white asbestos although India has banned mining and trade of asbestos waste (dust and fibers). India should learn from the fall of the asbestos empire (Allen, 2017). In such a backdrop, it is significant that Parmanpur panchayat of Odisha’s Sambalpur district took a decision to cancel no objection certificate given to Visakha asbestos company and additional district magistrate approved their decision (Moyna, 2015). It is not surprising that Indian railways is currently phasing out of asbestos roofs from some 8000 railway stations across the country (Nair, 2018). It is significant that bitter protests of villagers led to the cancellation of asbestos based factories in Bhojpur, Muzaffarpur, Vaishali, West Champaran and Madhubani in Bihar.

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13 Nair, Manoj R. (2018), Railways are phasing out asbestos, a suspected health hazard, Hindustan Times, April 23, https://www.hindustantimes.com/mumbai-news/railways-are-phasing-out-asbestos-a-suspected-health-hazard/story-3laDnefgU8P1VgPXMYdTEP.html accessed on 15 September, 2018
16 Proposals Approved by State Investment Promotion Board (SIPB), industries.bih.nic.in/News/NE-01-20-09-2011.pdf, accessed on 11 September, 2018
Taking note of hazards from asbestos of all kinds, new rules have been framed in Maharashtra as a step to make the state free of asbestos (Vyas, 2018)\(^\text{18}\). Indian railway is beginning to realize that the disposal of asbestos debris requires proper scientific landfilling to avoid harmful repercussions (Aklekar, 2018)\(^\text{19}\).\(^\text{20}\) In a related development Bihar State Pollution Control Board (BSPCB) cancelled the “no-objection certificate” given to asbestos factory units (Thacker, 2016)\(^\text{21}\).

In an effort to make Delhi asbestos free, Chief Minister and Delhi’s Minister of Health & Family Welfare, State Government has issued instructions for appropriate necessary action (Gupta, 2017)\(^\text{22}\). In such a backdrop, both the study by NIOH and directions by NHRC have grave ethical implications that undermine their stature as public institutions.

### Status of asbestos industry in India

A paper presented at World Asbestos Congress, Tokyo argued that consumption of asbestos is sanctioned and encouraged by a government prepared to back powerful commercial interests at the expense of public health. There were some 673 small-scale asbestos based factories in India as of 2004 \(^\text{23}\) (Krishna, 2004). The table below provides details of factories and workers employed in asbestos industry till 2010.

<table>
<thead>
<tr>
<th>S. No.</th>
<th>State/Uts</th>
<th>No. Of Units</th>
<th>No. of workers</th>
</tr>
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<tbody>
<tr>
<td>1</td>
<td>Andhra Pradesh</td>
<td>7</td>
<td>1389</td>
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<td>2</td>
<td>Assam</td>
<td>2</td>
<td>45</td>
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<td>3</td>
<td>Delhi</td>
<td>6</td>
<td>231</td>
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<td>4</td>
<td>Gujarat</td>
<td>13</td>
<td>739</td>
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<td>5</td>
<td>Haryana</td>
<td>19</td>
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<tr>
<td>6</td>
<td>Jharkhand</td>
<td>2</td>
<td>153</td>
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<tr>
<td>7</td>
<td>Karnataka</td>
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<td>370</td>
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<tr>
<td>8</td>
<td>Kerala</td>
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<tr>
<td>9</td>
<td>Madhya Pradesh</td>
<td>11</td>
<td>610</td>
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\(^\text{20}\) But in practice in general in replacing asbestos roofs with harmless alternative roofing material is exposing unsuspecting passengers to hazardous asbestos fibers because discarded and broken asbestos roofs are lying strewn around on the railway platforms.


\(^\text{22}\) Gupta, Rajeev (2017), personal communication with O.S.D. to Chief Minister, Government of NCT of Delhi, February 20

The number of such asbestos-based factories has been increasing in the period after 2010 with scant regard for environmental and occupational health of workers, communities and consumers. Following a Supreme Court order on October 14, 2003 (Writ petition (civil) 657/1995), the Union Ministry of Labour constituted a Special Committee under Chairmanship of Director General, Directorate General Factory Advice Service and Labour Institutes (DGFASLI) on the issue of medical benefits and compensation to workers affected by handling of hazardous waste, toxic in nature. This Committee's report, submitted in May 2004, mentions lung cancer and mesothelioma caused by asbestos in all work involving exposure to the risk concerned. “Asbestos-related radiographic changes were seen in 36.1 percent workers” (Trivedi, 2004). This finding was based on a study on 789 asbestos workers. In general, asbestos workers refer to those who work in asbestos-based manufacturing like asbestos cement industry, asbestos textile industry, asbestos mining and milling besides thermal power plants. It also includes the construction industry and the shipbreaking industry because workers have to handle asbestos-based products or embedded asbestos in the structure of the ship. Besides this asbestos waste from different industries and end-of-life domestic and foreign ships are also handled by the workers without knowledge of the harmful effects of asbestos fibers (MoEF, 1998). The study “Medical Examination of the Asbestos Handlers” concluded, “The X-ray examination by NIOH showed linear shadows on chest X-rays of 15 (16%) of 94 workers occupationally exposed to asbestos. These are consistent with asbestosis…” (TEC Report, 2006). This study is consistent with the study that confirmed increased incidence of overall cancer, esophagus cancer, and trachea, bronchus, and lung cancer which have been found associated with the level of exposure to asbestos among shipbreaking workers (Wu, 2015).

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25 (1998), Union Ministry of Environment & Forests (MoEF) informed the Parliament that “Crocidolite (Blue Asbestos) has been placed on the restricted list of imports by Ministry of Commerce, Directorate General of Foreign Trade in October, 1994. Further, import of waste asbestos (dust and fibre) has been prohibited by Gazette Notification dated October 13
26 (2006), Final Report of the Technical Experts Committee (TEC) on Management of Hazardous Wastes relating to Ship breaking presented in to the Supreme Court of India, August 30
Epidemiological research shows that even in countries where asbestos is banned, earlier exposure could be causing around 30 deaths a day (Krishna, 2006). In its report titled 'Asbestos: The Iron Grip of Latency', the International Labour Organisation (ILO) organisation states that the dumping of asbestos on developing countries will "prove to be a health time bomb in these countries in 20 to 30 years' time". But the way National Institute of Occupational Health (NIOH) ended up taking the fiscal support from the chrysotile asbestos industry to do a study that is to be used at UN’s Rotterdam Convention meeting has made its outputs non-credible.

This study in question was partly funded by the Asbestos Cement Product Manufacturers Association. It remains surprising given the fact that this agency had conducted studies in that past that defended workers' health. The study's terms of reference revealed the government's intent. Here is what the ministry's April 2006 letter demanded of NIOH: "The deliverables will include generation of data which would justify the safe standards of its usage and the reasons justifying its non-inclusion/or otherwise in the pic ambit." The minutes of an April 2007 meeting of the ministry's review committee (half of which comprises asbestos industry representatives) gave NIOH a sharper focus: "It will specifically indicate as to how technology has made working conditions better. The same will include relevant photographs showing protective measures being undertaken." The minutes of the Review Committee obtained recently through Right to Information Act dated 19 December, 2006 reads: "The report will be finalised after due discussions with the asbestos industry" (Krishna, 2008).

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29 (2006), Asbestos: the iron grip of latency, International Labour Organiosation, January 10

30 This happened during the tenures of Dr. S.K. Dave, Officer In Charge, National Institute of Occupational Health (NIOH), Ahmedabad and Dr H.N. Saiyad, Director, NIOH. The latter had also attended the 3rd and 9th Meeting of the Committee of Technical Experts on Ship Breaking at Ministry of Environment & Forests, New Delhi on 20 May, 2006 and 18 -19 August 2006 as Director, NIOH. The former did the study on asbestos exposure of workers in the ship breaking industry and found that 16 % of the workers are exposed. In a August 2005 paper published in *American Journal of Industrial Medicine*, titled "Occupational Asbestos Exposure and Predictable Asbestos-related Diseases in India," Dr Dave, as Senior Deputy Director, NIOH concluded, "Based on knowledge of past and current exposures to asbestos in industry, we can predict a future occurrence of clinical asbestos-related diseases-pleural changes, pulmonary fibrosis, bronchogenic carcinoma, and diffuse malignant mesothelioma." He wrote that these cases of asbestos related disease are expected to occur in asbestos exposed workers from mining, milling, and manufacturing as well as in those with secondary exposures to asbestos-containing materials, including construction and maintenance workers, users of asbestos-containing consumer products, and the occupants of asbestos-containing buildings. Dr Dave's surveys of asbestos-exposed workers revealed significant occupational exposures but NIOH’s study took a contrary position.

It demonstrated that NIOH conducted a questionable study which does not inspire any confidence in the researchers who became complicit in this unethical work.

**NHRC’s acts of omission**

Ignoring glaring and indisputable scientific, medical and judicial findings, Mr. Justice H.L. Dattu headed NHRC has issued the following Direction:

“Pursuant to the directions of the Commission, Dr. Rohit Misra, Assistant Industrial Advisor, Ministry of Chemicals & Fertilizers, Deptt. of Chemicals and Petrochemicals, Govt. of India vide letter dated 4th July, 2016 has informed the Commission that in order to take an appropriate and scientific stand in the International Forum on the issue related to health hazards posed by Chrysotile variety of Asbestos, Department of Chemicals and Petrochemicals had entrusted National Institute of Occupational Health (NIOH) to carry out a study on Health Hazards/Environmental Hazards resulting from the use of Chrysotile variety of Asbestos in the country. Later, with the approval of MoS (Ind. Charge) Chemicals & Fertilizers, it was decided to set up an Inter-Ministerial Committee for considering the issue of continuance or otherwise of the use of Chrysotile variety of asbestos in India, taking into account of NIOH report and other related issues. On 27.8.2014, a meeting was held under the Chairmanship of Minister (Chemicals & Fertilizer) to consider the NIOH report. It was decided in the meeting that the NIOH report does not indicate any significant health/environment hazards resulting from the use of Chrysotile asbestos under proper conditions, coupled with the fact that asbestos products are quite cost effective for use by the masses, India may not support the inclusion of Chrysotile in Annexure-III at the COP Meeting in 2015. In the light of the above report, no further action by the Commission is called for. The case is closed.” The Commission concluded on August 8, 2016.

It is quite bizarre that views of Secretary, Medical Education & Research & Assistant Labour Commissioner, Chandigarh Administration and Joint Secretary, Uttarakhand Government have been disregarded and NHRC allowed itself to be persuaded by views of Assistant Industrial Advisor, Ministry of Chemicals & Fertilizers. It is the same ministry which is dealing with public health disaster caused due to industrial disaster of Bhopal. This ministry’s callousness towards public health concerns due to hazardous chemicals and pesticides is well known. It does not even have the inventory all the chemicals used in the country and a register of its ill effects on human health and environment.

It is indeed quite strange that NHRC ignored Union Ministry of Labour’s concept paper that declares, "The Government of India is considering the ban on use of chrysotile asbestos in India to protect the workers and the general population against primary and secondary exposure to Chrysotile form of Asbestos. The Concept paper of the Central Government notes, "Asbestosis is yet another occupational disease of the Lungs which is on an increase under similar circumstances warranting concerted efforts of all stake holders to evolve strategies to curb this menace" (MOLE, 2011)\(^\text{32}\)."

\(^{32}\) Concept paper, Union Ministry of Labour, presented at the two-day 5th India-EU Joint Seminar on “Occupational Safety and Health” on 19-20 September, 2011, http://www.labour.nic.in/lc/Background%20note.pdf (URL has now been disabled)
As to NIOH study, while one disagrees with the findings of the conflict of interest ridden study conducted by the National Institute of Occupational Health, (NIOH), it is evident that even this study does not state that chrysotile asbestos is not a hazardous chemical. Had NIOH study concluded that Chrysotile Asbestos is not a hazardous chemical it may have become relevant. But even then it would have been legally unsustainable because under Indian laws chrysotile asbestos is a hazardous chemical.

NHRC ignored the fact that Union Minister of State for Environment and Forests had informed the Rajya Sabha in a written reply that the study of the health status of the workers and the residents in the vicinity of the asbestos industry by NIOH, Ahmedabad was co-sponsored by the Asbestos Cement Products Manufactures Association (ACPMA). Out of a total of Rs. 59.66 lacs allocated for the study by Ministry of Chemicals and Fertilizers, the Asbestos Cement Products Manufactures Association has contributed Rs. 16 lacs (PIB, 2008)33.

NHRC ignored that fact that every Environment Impact Assessment (EIA) Report of every asbestos based factory itself admits that asbestos is a hazardous substance. The EIA report is prepared under EIA Notification notified under Environment Protection Act, 1986. A reply sent to the author by the Ministry of Environment & Forests shared a 7 page note of Department of Chemicals and Petrochemicals (DCPC)’ dated June 18, 2013 on the issue of Government of Indias position on hazardous substance chrysotile asbestos at the Sixth Conference of Parties of (CoP-6) of the Rotterdam Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade held during April 28-May 10, 2013 in Switzerland. As to NIOH’s role, a perusal of this 7 page long note of the Department of Chemicals and Petrochemicals (DCPC), Union Ministry of Chemicals and Fertilizers on the subject of Chrysotile Asbestos titled “Department of Chemicals and Petrochemicals View on the use of Chrysotile Asbestos” in the country along with MoEF ‘s letter reveals that the contention of MoEF based DCPC’s note stating that “On the basis of the said note, the listing of Chrysotile Asbestos under Annex -A of Rotterdam Convention at CoP-6 during April 28th -May 10th 2013 at Geneva could not be supported” was/is misplaced. The note of the “line department”, i.e. Department of Chemicals and Petrochemicals (DCPC), Union Ministry of Chemicals and Fertilizers on the subject chrysotile asbestos illustrates that it has failed to understand the purpose of the Rotterdam Convention and ignorance about the objective of the Convention.

NHRC ignored the objective of Article 1 of the Rotterdam Convention which reads: “The objective of this Convention is to promote shared responsibility and cooperative efforts among Parties in the international trade of certain hazardous chemicals in order to protect human health and the environment from potential harm and to contribute to their environmentally sound use, by facilitating information exchange about their characteristics, by providing for a national decision-making process on their import and export and by disseminating these decisions to Parties.”

NHRC has been kept in dark about the concluding sentence of the DCPC’s note which reads: “In view of the above, India may take a stand in the next CoP meeting of Rotterdam Convention for not inclusion of chrysotile asbestos in Annexure-III of Convention.” NHRC ignored the fact

that the note is irrelevant from the point of view of the objective of the Convention for which it was prepared. It ignored that the NIOH study which has been mentioned was admittedly tainted because of proven conflict of interest and thus its inference was questionable. This was admitted in Parliament by the Labour Minister and the Environment Minister. The Press Information Bureau (PIB) release with regard to the same is available on its website which reveals that the conclusion of the DCPC’s note titled “Department of Chemicals and Petrochemicals’ View on the use of Chrysotile Asbestos in the country” is based on manifestly flawed reasoning.

NHRC ignored the fact that at the first meeting, the Chemical Review Committee (CRC) under the Rotterdam Convention on the Prior Informed Consent (PIC) Procedure for Certain Hazardous Chemicals and Pesticides in International Trade, the committee agreed to recommend to the Conference of the Parties that Chrysotile Asbestos should be listed in Annex III of the Rotterdam Convention. The CRC is a group of government designated experts established in line with Article 18 of the Convention that evaluates candidate chemicals for possible inclusion in the Convention. Chrysotile (serpentine forms of asbestos) is included in the PIC procedure as an industrial chemical.

NHRC has failed to appreciate that what is poisonous and hazardous within India cannot be deemed non-poisonous and non-hazardous under the unscientific influence of DCPC and Asbestos Cement Products Manufacturers Association (ACPMA) at the conference of Parties of Rotterdam Convention. DCPC’s untenable position is ridiculous.

NHRC ignored the fact that the Union Ministry of Finance has announcement that asbestos related diseases will be covered under Rashtriya Swasthya Bima Yojana (National Health Insurance Scheme) is an acknowledgement of the fact that asbestos is a health hazard although this is hardly sufficient in the absence of environmental and occupational infrastructure.

NHRC failed to get the report of the 13 member- Advisory Committee of Union Ministry of Labour which has been set up to implement Supreme Court’s order. This Advisory Committee is supposed to incorporate the ILO resolution of 2006 in the matter of asbestos as per Supreme Court’s order of 1995 and 2011 under the Chairmanship of Joint Secretary, Union Ministry of Labour but as of November 20, 2016, the Advisory Committee has not submitted its report despite the fact that more than 4 years have passed since it was entrusted the task on January 23, 2012. The ministry is supposed to incorporate specific directions of the Court with regard to fresh ILO Resolution of June 14, 2006 introducing a ban on all mining, manufacture, recycling and use of all forms of asbestos besides WHO’s resolution of 2005 seeking elimination of future use of asbestos.

NHRC ignored the approval and the recommendations of the Chemical Review Committee under Rotterdam Convention that has endorsed listing of chrysotile asbestos in the PIC list of hazardous substances.

NHRC ignored the fact that Government of India’s Environmental Impact Assessment, Guidance Manual for Asbestos Based Industries. The Manual refers to WHO’s “Environmental Health Criteria 203; Chrysotile Asbestos (http://www.who.int/en/)” but fails to incorporate the criteria. Although requirements underlined in the Manual has neither been complied with in the past nor are they being adhered to at the present and it is quite unlikely that it will be done in future, NHRC has failed to apply it mind to such grave situation.
NHRC ignored that the official Inventory of Hazardous Chemicals Import in India lists “Asbestos” at serial no. 26 as one of the 180 hazardous chemicals in international trade which is imported in India. This inventory has been prepared by Central Pollution Control Board (CPCB), under Union Ministry of Environment & Forests, Govt. of India.”

NHRC ignored that Schedule I of Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 under the Environment (Protection) Act, 1986 provides the List of Processes Generating Hazardous Wastes. The list has 36 processes generating hazardous wastes. It may be noted that Production of Asbestos or Asbestos containing materials which generates Asbestos-containing residues, Discarded Asbestos, Dust/particulates from exhaust gas treatment is at the serial no. 15 in the list.

NHRC ignored the Schedule VI of Hazardous Wastes (Management, Handling and Transboundary Movement) Rules, 2008 under the Environment (Protection) Act, 1986 which provides List of Hazardous Wastes Prohibited for Import and Export. The list had 30 such hazardous wastes which are also covered under UN”s Basel Convention on Transboundary Movement of Hazardous Wastes and Their Disposal. The list mentions Waste Asbestos (Dust and Fibers) at serial no. 16 with its Basel No. A2050.

NHRC ignored that the Factories Act, 1948, which provides the list of 29 industries involving hazardous processes is given under Section 2 (cb), Schedule First, asbestos is mentioned at serial no. 24. The Act defines "hazardous process" as “any process or activity in relation to an industry specified in the First Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished products, bye-products, wastes or effluents thereof would--(i) cause material impairment to the health of the persons engaged in or connected therewith, or (ii) result in the pollution of the general environment"\textsuperscript{34}. This leaves no doubt that asbestos is a hazardous substance.

NHRC ignored the findings of Supreme Court constituted High Powered Committee (HPC) headed by Prof. MGK. Menon (by order dated October 13, 1997) for examination of all matters relating to hazardous wastes. The HPC had dealt with issues of asbestos based industries and their wastes.

NHRC ignored the findings of Supreme Court constituted Technical Experts Committee on Hazardous Wastes relating to Ship-breaking in 2006-7 that had asked National Institute of Occupational Health, (NIOH) to undertake an epidemiological study was planned to find out the magnitude of asbestos related health problems and other disorders among ship breaking workers. The study observed that 15 (16 %) of 94 workers occupationally exposed to asbestos showed linear shadows on chest X-rays, and 26 workers (39%) showed restrictive impairment. But despite Supreme Court’s order dated January 27, 1995 fixing Rs 1 lakh for victims of asbestos related diseases these workers have not been compensated.

NHRC ignored the report of the Working Group of a Planning Commission on Occupational Safety and Health at the workplace which noted that “The workers are also exposed to a host of

\textsuperscript{34}(1948), Factories Act, http://labour.nic.in/upload/uploadfiles/files/ActsandRules/Service_and_Employment/The%20Factories%20Act,%201948.pdf accessed on 18 November, 2018
hazardous substances, which have a potential to cause serious occupational diseases such as asbestosis…” It has recorded that various studies conducted by the Central Labour Institute have revealed substantial prevalence of occupational health disorders amongst the workers such as Asbestosis. The prevalence rate for Asbestosis was reported to be 7.25%” (Planning Commission, 2001)\(^{35}\).

In its report dated 1 August, 2011, NHRC provided details of its interventions including Banning use of white asbestos wherein it claimed “The Commission took cognizance of a complaint that about fifty thousand people die every year in the country from asbestos-related cancer. The complainant requested the Commission’s intervention to ban chrysotile asbestos (white asbestos), which is used on walls and roofs claiming that it caused various incurable diseases, and that the Government illogically had technically banned the mining of asbestos but allowed its import from countries which do not let it be used domestically. The Commission issued notices to the Secretaries of the Union Ministries of Chemical & Fertilizers, Environment & Forest, Health & Family Welfare, Industry & Commerce, and Labour and to the Chief Secretaries of all States and Union Territories, calling for reports on the issues raised in the complaint” (NHRC, 2011)\(^{36}\).

NHRC failed to appreciate that Russia, the world’s biggest asbestos producer remains India’s biggest supplier of raw asbestos given the fact that India has banned asbestos mining because of its deleterious impact on health. India remains the world’s biggest asbestos importer. India is consuming 15 % of the total world asbestos production, as per US Geological Survey estimates.

NHRC ignored its own statement dated June 5, 2012, wherein it wrote, “The Commission had asked them (the central and state authorities) to share with it the information on the action taken by them with regard to the Supreme Court judgment dated the January 21, 2011 in Writ Petition (Civil) No. 260 of 2004 on exposure to asbestos.” It further wrote, “The Commission, while seeking their responses, had particularly drawn their attention the Supreme Court directions with regard to Para 16 of the Writ Petition, which are as follows: a) Ministry of Labour in the Union of India and Department of Industries and Labour in all the State Government shall ensure that the directions contained in the judgment of this Court in the case of Consumer Education and Research Centre (supra) are strictly adhered to; b) In terms of the above judgment of this Court as well as reasons stated in this judgment, we hereby direct the Union of India and the States to review safeguards in relation to primary as well as secondary exposure to asbestos keeping in mind the information supplied by the respective States in furtherance to the earlier judgment as well as fresh resolution passed by the ILO”(NHRC, 2012)\(^{37}\). NHRC’s final order of August 2016 ignored its own statement.

NHRC ignored the decision of Kerala Human Rights Commission dated January 31, 2009 with the following recommendations: a) The State Government will replace asbestos roofs of all school buildings under its control with country tiles in a phased manner. b) The Government will take steps to see that the schools run under the private management also replace the asbestos

\(^{35}\) (2001), Report of Working Group on Occupational Safety and Health at the workplace the Xth Five Year Plan, Planning Commission, September

\(^{36}\) NHRC, Press Release, Case No.2951/30/0/2011

roofs with country tiles by fixing a time frame. c) The Government should see that in future no new school is allowed to commence its functions with asbestos roofs. It is noteworthy that “Asbestos poisoning” was highlighted in a meeting of the Core Group of NGOs that discussed Right to Environment which was held in the Commission on September 12, 2007, under the chairmanship of Justice Y. Bhaskar Rao, Member NHRC. The order of NHRC in August 2016 ignored these deliberations.

NHRC ignored the Supreme Court's order dated January 27, 1995 and recommendation of World Health Organisation (WHO)'s outline for the Development of National Programmes for elimination of asbestos related diseases38 make a case for stopping all asbestos based products to prevent the imminent public health crisis as a consequence of which more than 60 countries have banned all forms of asbestos (Supreme Court, 1995) 39. This order has been reiterated in 2011 by the Court.

NHRC ignored, Vision Statement on Environment and Human Health (Para 4.3.1) of Union Ministry of Environment, Forests & Climate Change (MoEFCC) that reads: “Alternatives to asbestos may be used to the extent possible and use of asbestos may be phased out” (MoEFCC)40.

NHRC ignored the reply to NHRC dated May 29, 2012, Joint Secretary, Government of Uttarakhand in Case No.2951/30/0/2011, has submitted to the NHRC a document Medline Plus Trusted Health Information for You, U.S. National Library of Medicine and the prescription of National Institutes of Health (NIH) highlighting the Treatment stating: “There is no cure. Stopping exposure to asbestos is essential.”

NHRC ignored the submission of Secretary, Medical Education & Research, Chandigarh Administration which has categorically informed National Human Rights Commission (NHRC) that “a. White Asbestos (Chrysotile Asbestos) is implicated in so many studies with the following diseases:-Mesothelioma (Cancer of Pleura), Lung Cancer, Peritoneal Cancer, Asbestosis, And also consider as cause of following cancers:- Ovarian Cancer, Laryngeal Cancer, Other Cancer b. Diseases are produced in the person involved in Asbestos Industry.” It states that “No. of cancer deaths due to asbestos requires further large scale study from India”. It informed NHRC that “It is definitely harmful material, causing cancer and other related diseases.” It quoted from Pulmonary Medicine journal saying, “Asbestos is a set of six naturally occurring silicate minerals exploited commercially for their desirable physical properties. However, it has been proved beyond doubt that Asbestos is hazardous to humans. White asbestos has been found to have causal relationship with various diseases like pulmonary asbestosis, lung cancer and mesothelioma leading to deaths of thousands of people every year.” Considering the

risk, its use has been banned more than 50 countries including Japan, European Union and Australia and efforts are being made for its prohibition in many countries.

The reply of Chandigarh Administration concluded saying, “Hence, use of white asbestos should be completely banned in India also and the same may be replaced by some safe alternative material.” Chandigarh Administration has realized the public health consequences of exposure to fibers of asbestos. In a separate reply to NHRC, Assistant Labour Commissioner, Union Territory, Chandigarh has referred to para 16 of the judgment of Supreme Court dated January 21, 2011 passed in Writ Petition (Civil) No.260 of 2004 wherein directions of January 27, 1995 in the Writ Petition (Civil) No. 206 of 1986 is required to be strictly adhered to. It further states, “In terms of the above judgement of this Court as well as reasons stated in this judgement, we hereby direct the Union of India and States to review safeguards in relation to primary as well as secondary exposure to asbestos keeping in mind the information supplied by the respective States in furtherance to the earlier judgement as well as fresh resolution passed by the ILO. Upon such review, further directions, consistent with law, shall be issued within a period of six months from the date of passing of this order.” As to ‘fresh resolution passed by the ILO’, it is noteworthy that “A Resolution concerning asbestos was adopted by the International Labour Conference at its 95th Session in 2006. Noting that all forms of asbestos, including chrysotile, are classified as human carcinogens by the International Agency for Research on Cancer (IARC), and expressing its concern that workers continue to face serious risks from asbestos exposure, particularly in asbestos removal, demolition, building maintenance, ship breaking and waste handling activities, it calls for: – the elimination of the future use of asbestos and the identification and proper management of asbestos currently in place as the most effective means to protect workers from asbestos exposure and to prevent future asbestos-related diseases and deaths.” NHRC ignored this resolution as well. It also ignored the fact that the United Nations Committee of Experts on the Transportation of Dangerous Goods classifies Chrysotile Asbestos in Hazard Class and Packing Group.

This backdrop makes it pertinent to note that Justice Dattu began serving as the chairperson of the NHRC in February 2016. Prior to him Justice K G Balakrishnan and Justice Cyriac Joseph headed the Commission that looked in to the issue of banning use of White Asbestos. It appears that concerned institutions got intimidated by the influence of asbestos industry through its non profit NGO, ACPMA. The “Direction” of NHRC is a setback to public health amidst epidemic of asbestos related diseases.

Conclusion

Deeply disturbed by the state of affairs in India with regard to asbestos consumption, Professor Elihu D Richter MD MPH, Hebrew University-Hadassah School of Medicine, Israel said, “All form of asbestos kill. India should bury asbestos, not people. Here is a case for examining whether those countries which export asbestos to India are committing a crime against humanity, because they are engaging in willful neglect. India should not repeat the mistakes of going back

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41 UN number 2590, Class 9 – Miscellaneous dangerous goods and articles, its International Maritime Dangerous Goods (IMDG) Code is UN No: 2590: Class or division 9
some 70 years which will kill tens of thousands of workers and their families” (Krishna, 2011)\textsuperscript{42}. Richter called on experts in human rights to reframe exposure to this carcinogen as a human rights violation. “Science has shown that Chrysotile causes asbestosis, lung cancer and mesothelioma. This is the conclusion of World Health Organisation. The International Agency for Research on Cancer, and other organizations that have no biases except for protecting people’s health,” said Prof. Arthur L Frank, PhD, Department of Environmental and Occupational Health, Drexel University School of Public Health, US\textsuperscript{43}.

In a recent order even the National Green Tribunal (NGT) did not deem it fit to refer to the verdict of Supreme Court in the case pertaining to acts of omission and commission by Hyderabad Asbestos Cement Product Limited (now Hindustan Industries Limited), Union of India and others. The company in question undertook mining of asbestos in the Roro hills of Jharkhand from 1963 to 1983 and stopped mining 32 years ago but left the tailings. It did not take safety measures required for closure, restitution and removal of asbestos dust, a human health hazard which caused asbestos related diseases notified under the Mines Act, 1952. But in its very weak and an apparently a non-binding order, NGT has not given relief to either the victims or the affected local environment. It has relied on an unsatisfactory joint inspection report. In a stark act of unacceptable omission the joint inspection team (comprising of S.I. Minz, Additional Director Mines, (HQ), Department of Mines and Geology, Jharkhand, B.P. Kerketta, Senior Assistant Controller of Mines, Indian Bureau of Mines, Kolkata and R.N. Kashyap, Board Analyst, Jharkhand State Pollution Control Board, Ranchi) constituted by Jharkhand Government in compliance with NGT’s order. NGT did not set it right by recommending monetary compensation for damage to the human health and restoration of human environment so far. It has ended up committing a blunder by failing to distinguish case laws pertaining to strict and absolute liability as laid down in M.C. Mehta v. Union of India (1987) and the Principle of strict liability as established of Rylands v Fletcher (1868) (NGT, 2018)\textsuperscript{44}.

Prior to this Dr Gokaraju Ganga Raju, Member of Parliament raised questions on the subject of Import of Asbestos. He asked whether it is a fact that the import of white asbestos from Russia, Kazakhstan, Brazil and China continues to rise according to Indian Minerals Yearbook published in December, 2015 despite technical ban on mining of all kinds of asbestos in India; (b) if so, the details thereof and the reasons therefor; (c) whether the Government proposes to curb imports of deadly material of asbestos; and (d) if so, the details thereof and if not, the reasons therefor?. On 28 December, 2017, Haribhai Parthibhai Chaudhary, Union Minister of State for Mines and Coal replied: “White Asbestos is used for various purposes viz. asbestos cement pipes, roofing of households, asbestos based manufacturing products like brake linings etc. India’s asbestos requirement is mainly met through imports from Russia, Kazakhstan, Brazil and Republic of China since the mining activity of asbestos mineral has been banned in the country on health ground.” The reply of Ministry of Mines did not disclose that Brazil’s Supreme Court has banned all kinds of asbestos to safeguard the health of Brazilians. On August 24, 2017 the constitutional Supreme Court of Brazil decided the production and the selling are unconstitutional. The

\textsuperscript{43} Ibid
\textsuperscript{44} (2018), Order of National Green Tribunal, Kalyan Singh v Hindustan Industries Limited, August 14
President of the Supreme Court observed, 'In concern of the environment, if any doubts, it must be prohibited so that the rights for us today and tomorrow won't be lost for the ones that come after us.' It held that the extraction, processing, use and marketing of all forms of asbestos, including white chrysotile asbestos violate the Brazilian federal constitution.

With regard to question “whether the Government proposes to curb imports of deadly material of asbestos, Ministry of Mines replied saying, "Information in this regard is not held in Ministry of Mines since the import/export of minerals is regulated through EXIM policy of Directorate General of Foreign Trade, Ministry of Commerce and Industry." The minister of Mines did not inform the Parliament that as per International Agency for Research on Cancer (IARC) all commercial asbestos fibers - including chrysotile, the most commercially used form of asbestos - cause lung cancer and mesothelioma. In addition, IARC newly confirmed that there is sufficient evidence that asbestos causes ovarian cancer and reconfirmed asbestos causes laryngeal cancer. The recent estimate is that asbestos causes 194,000 occupational deaths globally every year. It did not factor in the reply of the Union Minister of Health and Family Welfare in the Lok Sabha wherein he said, “The Indian Council of Medical Research (ICMR) has informed that major health hazards of asbestos include cancer of lung, mesothelioma of pleura and peritoneum and specific fibrous disease of lung known as asbestosis. All types of asbestos fibers are responsible for human mortality and morbidity. Studies have been carried out at National Institute of Occupational Research, an Institute of ICMR, Ahmedabad which show that workers when exposed to higher workplace concentration of asbestos fiber have higher incidence of interstitial lung disease and pulmonary function impairment. Directorate General Factory Advice Service and Labour Institutes, (DGFASLI) under Ministry of Labour & Employment has intimated data of workers suffering from Asbestosis in factories registered under the Factories Act, 1948. As per the information provided by DGFASLI, it is informed that 21 no. of Asbestosis cases were reported in Gujarat in 2010 and 2 cases in Maharashtra in the year 2012” (Azad, 2014).

It emerges from this reply of Minister of Health and Family Welfare based on the considered scientific opinion of the ICMR and revised opinion of NIOH that the NHRC erred in disregarding the submission of the minister in Parliament and in according superior status to the letter of Dr. Rohit Misra, Assistant Industrial Advisor, Ministry of Chemicals & Fertilizers, Department of Chemicals and Petrochemicals, Government of India vide letter dated 4th July, 2016.

NHRC also erred in closing the case by merely reiterating India’s position on the inclusion of white chrysotile asbestos in the list of Rotterdam Convention on Prior Informed Consent Procedure (PIC) for Certain Hazardous Chemicals and Pesticides in International Trade and by stating that “no further action by the Commission is called for”. NHRC did so despite recording that “a complaint alleging that about fifty thousand people die every year in the country due to Asbestos related cancer. The complainant has sought Commission's intervention for a ban on the use of Chrysotile Asbestos (White Asbestos), which is hazardous for the health of people and causes various incurable diseases. The white Asbestos is a fibrous material used for building

roofs and walls and various in other forms” (NHRC, 2011). NHRC also recorded that “though the mining of Asbestos has been technically banned by the government, but it allows its import and that too from the countries which do not prefer its domestic use. It is also alleged that white Asbestos is considered a hazardous chemical substance for environment by a number of countries in the world. However, it is being used in a number of industries in India affecting the workers employed therein. The complainant has also requested for grant of a compensation package for present and future victims of Asbestos diseases.” NHRC also noted that it has been alleged that government is taking “contradictory position” with regard to mining asbestos and trade, manufacturing and use of white chrysotile asbestos.

During a visit to New Delhi, Dr Alec Farquhar, as Managing Director, Occupational Health Clinics for Ontario Workers, Canada said, “We now have around 500 asbestos cancer cases every year in Ontario from a population of 13 million. If you (India) continue on your current path, you will multiply our death count by 100 times. That would be 50,000 Indian workers dying every year from asbestos. In Ontario, we learned that safe use of asbestos is impossible. I urge you from the bottom of my heart, please do not make the same mistake as we made in Canada. Stop using asbestos and use a safe alternative” (Krishna, 2011).

By the order dated January 23, 2012, Union Ministry of Labour and Employment constituted an Advisory Committee of 13 members to develop control strategies and to review the safeguards in relation to primary exposure to Asbestos by the workers in pursuance of the judgment of Supreme Court. There are four terms of reference (TOR) of this Advisory Committee. Two of these TORs deal with ‘ILO guidelines’ and ‘fresh resolution passed by ILO’ mentioned in June 2006 resolution (MoLE, 2012). This Advisory Committee was set up to implement Supreme Court’s order since International Labour Organization (ILO) has also made certain specific directions vide its Resolution of 2006 introducing a ban on all mining, manufacture, recycling and use of all forms of asbestos. In compliance of the six specific directions with the order of the Court to maintain the health record of every worker up to a minimum period of 40 years from the beginning of the employment and for 15 years after the retirement or cessation, whichever is later (Supreme Court, 1995). It has been 23 years since the order was passed but non-compliance with it has become the norm even as some 30 people continue to die every day (Sehgal, 2011).

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49 (1995), Judgment of Supreme Court, Writ Petition (Civil) N. 206 of 1986, January 27

Disregarding Court’s findings and global practices, admittedly questionable study by NIOH and directions of NHRC based on such a study has made Indian position scientifically and ethically inconsistent wherein while India has rightly banned mining of all kinds of asbestos and trade in asbestos waste but it continues to export and import asbestos from countries like Russia. This manifestly unethical and unscientific position is endangering the life and public health of present and future generations.

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