NEGOTIATING THE TERMS OF A NEW SOCIAL CONTRACT:

PRIVATE COMPANIES, CIVIL SOCIETY AND THE STATE IN INDIA

Damien KRICHEWSKY

No. 24
2009

NEGOTIATING THE TERMS OF A NEW SOCIAL CONTRACT: PRIVATE COMPANIES, CIVIL SOCIETY AND THE STATE IN INDIA

by

Damien KRICHEWSKY

December 2009

CSH OCCASIONAL PAPER N°24/2009

Centre de Sciences Humaines (Centre for Social Sciences and Humanities): Created in 1990, the CSH is part of the network of 27 research centres of the French Ministry of Foreign Affairs. In 2007 it became UMIFRE 20 CNRS-MAEE, that is, a financially autonomous research institution under the dual tutelage of the French Ministry of Foreign and European Affairs (MAEE) and the French National Centre for Scientific Research (CNRS). The Centre's research work is primarily oriented towards the study of contemporary issues in the development of India and South Asia. The activities of the Centre are focused on four main areas, namely: Economic reforms and sustainable development; Politics and social change; Regional dynamics in South Asia and international relations; and Urban dynamics.

Centre de Sciences Humaines,
2 Aurangzeb Road,
New Delhi 110011, India
Tel: (91 11) 3041 0070
Fax: (91 11) 3041 00 79
Email: infos@csh-delhi.com
Website: http://www.csh-delhi.com

Institut Français de Pondichéry (French Institute of Pondicherry): Created in 1955 under the terms agreed to in the Treaty of Cession between the Indian and French governments, the IFP (UMIFRE 21 CNRS-MAEE) is a financially autonomous research institution under the dual tutelage of the French Ministry of Foreign and European Affairs (MAEE) and the French National Centre for Scientific Research (CNRS). It fulfills its mission of research, expertise and training in human and social sciences, and ecology, in South and South-East Asia. Major research works focus on Indian cultural knowledge and heritage (Sanskrit language and literature, history of religions, Tamil studies etc.), contemporary social dynamics (in the areas of health, economics and environment) and the natural ecosystems of South India (sustainable management of biodiversity).

Institut Français de Pondichéry
11 Saint Louis Street, PB 33,
Pondicherry 605 001, India
Tel: (91) 413 2334168
Fax: (91) 413 2339534
Website: http://www.ifpindia.org

ISSN- 0972 - 3579

ABOUT THE AUTHOR

Damien Krichewsky (d.krichewsky@cso.cnrs.fr) is currently a PhD candidate in sociology at the *Centre de Sociologie des Organisations* (Sciences-Po Paris/Centre National de la Recherche Scientifique), France. Since 2009, he is also a lecturer at the ESCP-Europe business school, Paris. Selected for the Sciences-Po–CSH Fellowship Programme, he worked from 2008 to 2009 as an affiliated PhD student in the Economics and Political Science divisions of the *Centre de Sciences Humaines*, New Delhi. In 2006, he was awarded the *Fondation Nationale des Sciences Politiques* scholarship. His areas of interest are sociology of enterprises, systemic and complexity theories, organizational evolutions of multinational companies, emerging structures of global capitalism, and corporate social responsibility. He has published papers in journals such as the *Indian Journal of Human Development*, *Etudes du CERI* and *La Vie des Idées*.

SUMMARY*

The post-interventionist development strategy adopted by the Indian government from mid-1980s onwards has led to an increased contribution of private companies to the country's economic growth. However, the benefits of the growth momentum are very unequally shared, at a time when social and environmental externalities weigh heavily on Indian society. In reaction to the state's policies that seek to loosen social and environmental regulatory constraints, which presumably act as impediments to private investments, numerous civil society organizations are multiplying their efforts to improve the social behaviour of companies. They also advocate more balanced public policies, so as to protect affected social groups and preserve the environment in a more effective fashion. In this context, private companies operating in India are revising their strategies and practices in the field of CSR (corporate social responsibility), in order to promote their social legitimacy and preserve the investor-friendly attitude of public authorities. Based on a vast array of primary and secondary data, including qualitative interviews both at the national and local levels, this paper offers a detailed analysis of the stakes and dynamics at play in the public, civil and self-regulation of companies in India. With the rapid growth and modernization of the country as the backdrop, this paper points towards a reconfiguration of relationships and the balance of power among market players, the state and civil society organizations.

Keywords: Corporate Social Responsibility, social and environmental regulation of companies, civil society, State in India

*This paper was originally published in French as D. Krichewsky, *La régulation sociale et environnementale des entreprises en Inde*, Etude du CERI, No. 155, June 2009, and has been translated into English by Latika Sahgal.

Table of Contents

ACKNOWLEDGEMENTS

I wish to express my sincere gratitude to all the organizations and persons who have helped me to conduct this study. I would like to thank first and foremost Denis Segrestin of the Centre de Sociologie des Organisations and Christophe Jaffrelot of the Centre d'Etudes et de Recherches Internationales for their close supervision, judicious comments and wholehearted encouragement. I would equally like to thank the Centre de Sciences Humaines for the warm welcome extended to me in New Delhi, the support of its academic and administrative staff, and for providing great working conditions during my stay in India. I would further like to express my profound gratitude to my Research Associate, Durga Jha, for her exceptional work, precious inputs and inexhaustible energy.

A large number of other organizations and persons have helped me carry out this study by generously sharing their contacts and information. Though not in a position to name them individually, I would like to thank the Economic Mission in New Delhi; French and Indian companies who opened their doors and reposed their trust in me by providing, in a spirit of openness, information on subjects that were sometimes of a sensitive nature; Indian elected representatives and bureaucrats for sparing their valuable time and sharing their views; and, last but not least, NGOs, social activists and trade union leaders who enriched this research study with their profound knowledge of social and environmental issues and their valuable reflections on Indian society.

INTRODUCTION

India's emergence as an economic power, marked by an average growth rate of 8 per cent during the last few years, has been accompanied by a profound change in Indian corporate capitalism. This change is to a great extent the result of a series of reforms undertaken by the government for the purpose of deregulating the economy and facilitating its integration with the world economy – the aim being to transform India into an economic superpower. While the socio-economic development of Indian society had been primarily led by the State since Independence, these reforms brought about a certain withdrawal of the State, leaving the role of 'primary agent of development' to private companies. This evolution raises a fundamental question regarding the relationship of private companies with the Indian society at large. In fact, apart from their prime objective of generating profits, companies have an ambivalent position in the society in which they operate. On one hand, they fulfill a number of positive functions, such as value creation, production of goods and services, creation of jobs, contribution to the state's revenue, and to a certain extent, participation in social development through philanthropy and local development initiatives. On the other hand, their activity generates negative externalities whose costs are borne by society: depending on the case, overexploitation of natural resources, pollution and contribution to climate change, destruction of biodiversity, exploitation of labour, displacement of population, and violation of human rights.

Because of this ambivalence, private economic activity raises major socio-political issues and justifies the regulation of companies in modern capitalist societies. The notion of social and environmental regulation of companies is difficult to define. What comes to mind first is the Anglo-Saxon use of the notion of regulation, that is, the production of legal norms and the setting up of administrative implementation mechanisms by the State. In the broader and more systemic perspective that we shall adopt here, the regulation of companies is about the social production and activation of "rules of the game" (Friedberg, 1993: 177-187; Reynaud, 1989), which are more or less formal and explicit, and which constrain the action of companies and shape their relations with their stakeholders (Freeman, 1984). These rules are, therefore, the

result of negotiations and power equations between a large number of interdependent actors (companies, government agencies, trade unions, NGOs, employers' associations, etc.). The various interactions of these actors create these rules and, at the same time, are structured by them. Thus, the legal norms – which the Anglo-Saxon approach refers to – are only a part of the social processes regulating companies, although they occupy a central position due to their formal nature – that is, clearly defining the rights and obligations of each of these actors – and also because they are framed and (more or less) enforced by state power.

Even though they are intrinsically linked, it is broadly possible to identify three types of social and environmental regulation of companies. First, there exists **public regulation** of companies, where the government constrains the action of companies by framing public policies, formulating laws, creating mechanisms for monitoring and disciplining them, and also by settling disputes between companies and their stakeholders through the administration and the judiciary. Secondly, there is **civil regulation** of companies where every person or organization, which is a part of civil society, constrains the action of companies through industrial relations (strikes, collective labour agreements, etc.), protest actions (demonstrations, information campaigns, boycotts, etc.), or through legal action. And finally, there is **self-regulation** of companies where they themselves adopt codes of conduct, seek social and environmental certification and participate in sustainable development initiatives (e.g. Global Compact).

At a time when economic activity is expanding rapidly in India, what is the combined effect of these different types of regulations in response to new economic, social and environmental challenges? To answer this question, the present study analyzes the rapidly evolving relationship among companies, the government and society in a context of economic emergence. To this end, the present study is based on a corpus of some 150 qualitative interviews, conducted in India between 2007 and 2009, with representatives of French and Indian companies, civil society organizations, trade unions and political parties, elected leaders, government officials, advocates, and members of village communities located near industrial sites. The study also uses a large number of academic writings, reports, legal documents and newspaper articles.

1 NEED FOR SOCIAL AND ENVIRONMENTAL REGULATION OF ECONOMIC ACTIVITY

To understand the dynamics of social and environmental regulation of companies in India, it seems necessary to first clarify the major issues related to the balance between the positive and negative externalities of companies.

1.1 Limited Contribution of Companies to Social Development

Development strategies and changes in Indian capitalism

Like most developing countries, after Independence, India opted for a development strategy based on state intervention, with the state taking over the role of the 'principal agent of development'. Together with various agricultural policies, this strategy was aimed at setting up a national industry based on socialist principles that would make the country economically self-reliant through import-substitution and reduce poverty by moving jobs from the agricultural sector to the industrial sector (Government of India, 1956).

Thus, right from Jawaharlal Nehru's era (1948-1964), India set up powerful public sector enterprises entrusted with the mission of supporting the development of remote areas, while supplying domestic markets with essential goods (minerals, metals, textiles, power, etc.). To sustain the creation of a nationwide labour-intensive industrial network, the Indian government adopted two resolutions, in 1956 and 1977, favouring small and medium enterprises (SMEs) by reserving some sectors and laying down production quotas to prevent monopolies. Further, by setting up large public financial institutions and introducing a widespread system of licensing of production and price-control (*License Raj*), the government was able to channel investments towards what were considered high priority sectors. All this was achieved within the framework of Five-year Plans prepared by the National Planning Commission. Finally, the desire to safeguard India's economic independence justified the obligation imposed on all Indian

companies to ensure that the major part of their capital and management remained in Indian hands (Government of India, 1948).

Under these circumstances, domestic companies, well-protected against foreign competition, were able to develop their activities. New groups like Mahindra & Mahindra, established in 1945, or Reliance Industries, set up in 1966, gradually joined the ranks of big Indian industrial houses – Tata, Birla, Bajaj and Godrej, to mention only the most important ones. However, the original plan of modernizing the economy and developing a powerful national industry did not materialize. In fact, although many public sector undertakings boosted the rapid growth of the manufacturing sector until the mid 1960s, two successive bad monsoons (1965-66) obliged the Indian government to review its investment plans and concentrate instead on the agricultural sector. Further, the quota policy limited the growth of companies within the same sector, thereby reducing the possibility of benefiting from economies of scale. Consequently, the growth of the industrial sector dropped from 6.7 per cent during the period 1951-65 to 4 per cent in the period 1965-81 (Panagariya, 2008: 11).

The international situation after the failure of the Soviet model and the spread of the neo-liberal policies introduced by Ronald Reagan and Margaret Thatcher, as well as the relative failure in India of economic policies inspired by socialist ideals (average economic growth of 3.2 per cent between 1965 and 1981), justified a change of development strategy towards liberalism in the mid 1980s. While a few administrative measures had already been adopted earlier, between 1975 and 1984, to relax state-control of the private sector, Rajiv Gandhi's new policy led to a significant relaxation of the regulatory framework between 1985 and 1987: companies were given more freedom to change the nature of production within the same quota; some sectors benefited from an automatic increase of their sanctioned production capacity; the number of companies coming under the Monopolies and Restrictive Trade Practices Act (1969) came down; the control of prices and distribution circuits in the cement and aluminum industries were abolished, so on and so forth.

Thanks to the structural adjustment plans proposed by the International Monetary Fund (IMF), which India adopted in the period 1991-93, as well as Dr. Manmohan Singh's appointment as Finance Minister in June 1991, economic reforms moved ahead at a brisk pace.

In the realm of foreign trade, tariff barriers came down from an average of 300 per cent in 1990-91 to 40 per cent in 1997-98 (Jenkins, 1999: 16), the import license system was abolished for the most part and the Reserve Bank of India (RBI) relaxed restrictions on foreign institutional investors (FIIs) and recourse to foreign commercial borrowing by Indian companies. Furthermore, the Indian government progressively opened the economy to foreign direct investment (FDI) with the exception of a few sectors, which are still subjected to certain limits. As for industrial policy reforms, a radical change was brought about in 1991-92 with the dismantling of the *License Raj* and the relaxation of the MRTP Act. Several formerly public sectors were opened to private investment (power, telecommunications, etc.), controls on investments were relaxed and a series of sectoral reforms were implemented. These reforms converged to act as a strong economic stimulus encouraging companies to increase their investments and re-structure their activities in an environment that had become more competitive in some sectors or more favourable to a double-digit growth of their profits (Panagariya, 2008: 78-109).

Economic reforms brought about a profound change in Indian corporate capitalism both directly, by removing restrictions which obstructed the development of private companies, as well as indirectly, by stimulating economic growth and encouraging competition between different states to attract industrial and infrastructure projects to their territories by offering various incentives. As for the big family-run Indian companies, what they lost due to the entry of foreign competitors was more than compensated for, by the opening of new business opportunities. This was the case with the Tata Group, for example, which entered new sectors (Tata Consultancy Services and Tata Indicom) and internationalized its operations (e.g. the acquisition of the steel giant Corus in 2006). Further, foreign competition drove domestic companies to modernize their production facilities, improve productivity and strengthen their research and development activities, investments that proved highly profitable. Besides, new giants emerged alongside the traditional industrial empires, especially in the information technology and back-office processing sectors as well as in telecommunications, pharmaceuticals and petrochemicals.

These evolutions of Indian corporate capitalism embody a deep-rooted change in the Indian government's development strategy. Based on the realization that the Indian government could not make a unequivocal success of its Nehruvian project of orchestrating the country's economic and social development through state intervention, reformers saw in the liberalization of the national economy and its integration with the global economy a means of transferring the role of the "development agent" from the state to private companies: "The major justification offered for economic liberalism and deregulation is that it will have a greater 'development impact' than previous interventionist programmes. The principal source of this development impact is expected to be private corporations, which are increasingly portrayed as the 'primary agents of development'." (Reed, 2004: 13). Thus, corporate development was seen as a way of helping India to leave the ranks of developing countries and join the club of the developed countries of the North. On one hand, by getting support from the state, companies would increase their contribution to the country's economic growth, considered as a prerequisite for financing the fight against poverty and creating job opportunities. On the other hand, the restructuring of companies would lead to the optimal use of the country's resources (inputs) and would increase consumer satisfaction (output). Reforms related to corporate governance would also help attract foreign investors and facilitate the transformation of savings into investments thanks to the development of the domestic financial market. This development strategy is based on the "trickle-down effect" principle, according to which the solution of social problems (e.g., poverty, malnutrition, child labour etc.) lies in the withdrawal of the state and the liberation of capitalist forces.

This strategy continues to be the basis of Indian government policies today. A typical example of this trend is undoubtedly the policy promoting the establishment of special economic zones (SEZs) adopted in 2005 under the Special Economic Zone Act. Based on the premise that the Indian government is not in a position to remove the constraints on economic development in its territory as a whole, the policy allows the creation of pockets of development where companies are safeguarded from problems that, in the rest of the country, obstruct the expansion of their activities. On one hand, SEZs provide companies with land, whose inhabitants have already been removed, as well as custom-built infrastructure such as uninterrupted water and power supply, good roads and an easy access to communication

networks by air (dedicated airports), by sea (in the case of SEZs located near ports), and by rail. On the other hand, companies benefit from a series of tax exemptions for a period that may extend up to 15 years. The introduction of a 'single window clearance' system, where all formalities can be completed by a single dedicated administrative division, also enables them to avoid bureaucratic hurdles and put their investments on the fast track. Finally, the SEZ Act provides for more flexible labour laws and environmental regulations: instead of being under the Labour Department of the state government concerned, the enforcement of labour laws is delegated to a Development Commissioner,[1] appointed by the central government to "ensure speedy development of the Special Economic Zones and promotion of exports from these zones".[2] SEZs enjoy the same status as the civil service in matters related to industrial relations. This makes it possible to ban strikes, thereby leaving trade unions very little room for manœuvre. At the same time, companies setting up production units in SEZs are not subject to the provisions of the Environment Impact Assessment Notification (see below).

Winners and losers in the new version of Indian capitalism

As far as positive externalities are concerned, economic reforms have substantially increased the involvement of the corporate sector in the country's economic growth (Panagariya, 2008: 97). Besides, the goal of improving corporate dynamism and efficiency has been achieved to a large extent. If we take the example of Tata Steel, we find that in 1991, its steel mills in Jamshedpur were producing 1 mtpa (million tons per annum) and employed 85,000 persons. In 2005, its production volume had reached 5 mtpa and it had only 44,000 employees on its rolls. During the same period, Tata Steel's turnover rose from US$ 800 million to US$ 4 billion (Luce, 2006: 50-51). In addition, Tata Steel completely revamped its internal organization by decreasing the number of hierarchical grades from 13 to 5 and replacing the function-based structure with a structure consisting of autonomous strategic units and profit centres (Singh, 2008: 120). As Luce points out, this in-depth transformation of Tata Steel illustrates a wider phenomenon affecting most of the big companies in India, "Tata Steel's story

[1] Government of India, *Special Economic Zone Rules,* 2006, Section 5 (5) e, f, g.

[2] Government of India, *Special Economic Zone Act*, 2005, Chapter IV, Section 12.1.

– in which it transformed itself from a labour-intensive company which supplied low-cost steel to the domestic market in 1991 to a capital-intensive company that supplies world-beating automobile steel to Japan's shiniest car companies today – parallels that of other successful Indian manufacturers." (Luce, 2006: 51). However, the benefits gained by Indian companies thanks to the new development strategy do not seem to have trickled down to the bottom of the pyramid, which raises doubts about the ability of private companies to successfully perform the role of 'primary agents of development'.

A first limitation comes from the structure of Indian society, which is predominantly rural, with more than two-thirds of the Indian population working in the agricultural sector. Moreover, almost 93 per cent of jobs in India are in the unorganized sector: small farmers, agricultural labourers, daily-wage workers, craftsmen and those engaged in micro-enterprises are not registered and, therefore, do not come under the country's labour laws nor are they entitled to social security (NCEUS, 2007). Hence private companies in the organized sector represent barely 3 per cent of the country's active population – the remaining 5 per cent being civil servants (Luce, 2006: 51).

Secondly, companies improved their performance at the cost of their employees. Although the profits of big companies before depreciation, interests and taxes increased eightfold between 1985-86 and 2000-01, more than 30 per cent of it has been made by investing a part of their funds in financial markets (R.U.P.E., 2004). In other words, a company's financial performance does not automatically imply increased activity and, therefore, the creation of new job opportunities. Moreover, the condition of workers has deteriorated on the whole. In the industrial sector, modernization of the means of production and pressure to improve profitability have driven companies to reduce their work-force, especially by resorting to "voluntary" retirement schemes, which are often imposed by the management on the less-productive workers. Consequently, employment growth has dropped in spite of a marked rise in the GDP. As Thakur observes, "The economy, particularly certain industries and service sector, has been growing relatively rapidly over the past two decades. Job opportunities have increased, but also millions of employed workers have lost their jobs and discovered their skills are turning obsolete in the emerging economy. Large-scale mergers and re-structuring,

sickness, closure and downsizing brought a radically harsh labour market reality." (Thakur, 2008: 13). Further, companies now tend to outsource a large number of non-strategic tasks to contractors operating in the unorganized sector. This leads to rising job insecurity within the value-chains. Thus, sectors that have contributed to the growth of job opportunities are often those where there has been an increase in informal jobs (Roy, 2008: 9). Finally, even though the salaries of executives have risen significantly, the mass of semi- or unskilled workers has been largely excluded from the benefits of growth: the ratio wage-bill / turnover in the private sector dropped from 11.16 per cent in 1985-86 to 5.1 per cent in 2000-01, while the difference between the salaries of executives and workers in the organized manufacturing sector rose from 155 per cent in 1980-81 to 255 per cent in 1999-2000 (Banerjee, 2005: 76). As for the service sector, which accounts for about 50 per cent of the economic boom during the last five years, its impact in terms of economic and social development is confined to about 0.25 per cent of the active population (Luce, 2006: 48), and the job flexibility prevalent in this sector exposes its employees to external economic shocks as observed in the aftermath of the recent global economic and financial crisis.

These different elements lead us to put into perspective the direct contribution of companies to economic growth with the socio-economic development of Indian society as a whole. Not only do companies in the organized sector lack the capability of creating enough jobs to serve as a significant channel for redistributing wealth, but the performance of the Indian economy in terms of economic growth has improved at the cost of unskilled or under-skilled workers, who constitute the majority of the active population outside the agricultural sector. As for the indirect involvement of companies in the country's socio-economic development, it is quite limited. Regarding the contribution of companies to public finances, the state has actually become richer thanks to five consecutive years of economic growth at the rate of 7-9 per cent between 2003 and 2007. Thus, in the 2008-09 budget, public spending on education and health increased respectively by 20 per cent and 15 per cent - the perspective of the 2009 national elections also played a role in the government's budget planning. However, the struggle to attract fresh investment and create jobs in the non-agricultural sector pushed the central and state governments to increase the tax benefits of companies (up to 10 years of tax exemption in some states and up to15 years in SEZs), offer them land at lower-than-market

prices as well as water and electricity at concessional rates, if not totally free of cost. As regards the contribution of companies to development through philanthropy and community development, it did not increase at the same pace as their own growth, and remains marginal. If we once again take the example of Tata Steel, which is usually regarded as a textbook case in philanthropy and development initiatives, the proportion of net profits ploughed into various social schemes fell from 15 per cent to 6 per cent during the last few years. As Singh observes, "In view of the intense competition in the global steel market, it [Tata Steel] cannot afford to carry the burden of social costs of such magnitude." (Singh, 2008: 131). In more general terms, although big Indian companies are known for the extent of their social commitment, which can be of great value for the beneficiaries, one cannot expect their social programmes to tackle the immense social problems affecting India's population. Notwithstanding the encouraging but questionable figures given out by the government, according to which 24 per cent of the Indian people live below the official poverty level (Rao, 2007: 3397), in reality about 69 per cent of Indians do not earn enough to satisfy their basic needs (Guruswamy, Abraham, 2006).

1.2 Increase of Negative Social and Environmental Externalities

Growth of inequalities and deterioration of working conditions

As we have seen earlier, the benefits of the recent economic boom in India and those of the good health of companies in the organized sector are not shared equally. Thus, even though official statistics indicate a drop in poverty and an improvement of the principal social indicators since the mid 1980s (Panagariya, 2008: 129-156), the gap between the direct beneficiaries of globalization, representing at most 10 per cent of the Indian population, and the remaining 90 per cent has widened (Pal, Ghosh, 2007). There are several types of inequalities (uneven distribution of GDP per capita, regional disparities, inequalities between urban and rural areas, gender inequality, inequality between the formal and informal sectors or between skilled and unskilled labour), as well as several types of companies (depending on their activity, size, whether they are labour-intensive or not, so on and so forth). The increase in

inequalities cannot therefore be attributed simplistically and unequivocally to the companies' activity. However, several connections are worth mentioning.

In the first place, companies contribute to inequalities within their own setups and in the value-chains in which they operate. Firstly, Indian capitalism has developed in response to a significant increase in the domestic and external demand for value-added goods and services (high-tech industries, chemicals, pharmaceuticals, information technology, etc.). This tendency has stimulated the rise in the demand for skilled labour, which contributes to increasing the disparities in income between skilled and unskilled workers (Acharyya, 2006: 3). Secondly, the restructuring of Indian companies, as well as the issues raised by rigid labour laws, have driven them to resort to large-scale outsourcing and hiring temporary workers from the informal sector whose share in companies in the organized sector went up from 12 per cent in 1985 to 23 per cent in 2002 (Ahsan, Pages, 2007: 6). In labour-intensive industries like steel and cement, this figure often crosses 50 per cent. Though this practice makes sense for companies from an economic point of view, it is *de facto* a source of inequalities between permanent and temporary employees or contract workers in terms of wages, working conditions and job security (NCEUS, 2007).

Several studies also underline the existence of significant caste-based discrimination in Indian companies at the time of recruitment: companies generally reserve posts involving greater responsibility for members of the upper castes, and practice discrimination at all levels against Muslim and lower caste candidates: "Our findings suggest that social exclusion is not just a residue of the past clinging to the margins of the Indian economy, nor is it limited to people of little education. On the contrary, it appears that caste favoritism and the social exclusion of *dalits* and Muslims have infused private enterprises even in the most dynamic modern sector of the Indian economy." (Thorat, Attewell, 2007: 4145). As for gender discrimination in companies, it is practised at several levels: lower starting salaries for women at the time of recruitment; fewer career opportunities; fewer openings for training; and lack of mechanisms to deal with cases of sexual harassment (SARDI, 1999). Gender discrimination is also found in the outsourcing sector and small enterprises in the informal sector: the vast

majority of case studies reveal severe gender discrimination, such as men receiving twice the wage of women for the same work (NCEUS, 2007).

Social impact of companies on local population

Apart from contributing to inequalities, companies give rise to numerous negative social externalities affecting the local population. India being a densely populated and predominantly agricultural country, the first of these negative externalities comes into play at the time of acquiring land for developing new industrial projects, infrastructure and special economic zones. The violent protests launched towards the end of 2006 by a section of farmers affected by the Tata Motors' automobile project in Singur were widely reported in the international press. However, Singur is far from being an isolated case, as more than thirty zones involving industrial and infrastructure projects are presently at the centre of major social conflicts.[3] In more general terms, about 2 per cent of the Indian population is said to have been displaced between 1947 and 1997 to make way for such projects (Mahapatra, 1999). Other research studies reveal even more alarming figures. Fernandes, for instance, estimates that more than 60 million people have been displaced since 1947 for setting up industrial and infrastructure projects, 80 per cent of whom have not benefited from any kind of rehabilitation.[4] Several factors have aggravated the socio-economic impact of projects involving land acquisition.

The acquisition of agricultural land generally takes place against the wishes of its occupants. And once a company or a promoter submits an official application to the state government for land acquisition and the application is accepted by the latter, farmers and other affected villagers have hardly any means at their disposal to oppose their expropriation. As far as the company is concerned, it usually bribes officials of the Revenue Department in charge of land management right up to the highest level. An official of the Revenue Department of Chhattisgarh explains, "Those companies who acquire the land, they are very rich companies. Generally, they purchase the Minister of concern."[5] The company's officials in charge of land

[3] Down to Earth, *Extreme Trespass*, 16/07/2008.

[4] Tehelka, *Develop, Displace, Forget the Poor*, 29/09/2007.

[5] Interview with a *patwari* in Chhattisgarh on 01/12/2008.

acquisition also approach villagers to persuade them to surrender their lands without raising any objections. During these visits, false promises are made to the villagers, such as the promise of a permanent job for one member of every affected family. Companies also try to exploit the villagers' ignorance of administrative procedures to threaten them: for example, villagers are told that if they refuse to surrender their land at the offered price, they will be dispossessed of it later without any compensation. As for the state governments responsible for the implementation of the Land Acquisition Act (1894), they can acquire a part of the land required by a company by invoking "reasons of public purpose" – job creation and participation in the country's economic development. This allows the company to obtain public support and use heavy-handed methods to force reluctant owners to give up their lands. In some cases, this coercion takes the form of beating up villagers. There have been cases in the recent past where the police has even resorted to firing (in Nandigram[6] and Kalinga Nagar[7]) and rape (in Lohandiguda[8]).

Apart from the use of force to acquire land, the social impact of industrial development and infrastructure projects is also visible in the shortcomings of schemes providing compensation to the local population. Firstly, only households having valid land-titles are entitled to compensation. But in most of the cases, lands in a village are held by 20 per cent to 30 per cent of families, and the major portion of the land belongs to a few big landowning families. The other villagers, mainly landless agricultural labourers, do not receive any compensation although they depend on agriculture for a living. Once the agricultural land has been acquired, their only option is to become migrant workers or settle down in a city slum to find a new source of livelihood. Secondly, when projects involve the acquisition of common land, often used as grazing land for the village cattle, no compensation is given to those who are deprived of its use. Thirdly, when there is compensation, it is often inadequate. With the

[6] See: Frontline, *Fanning the flames*, 16/11/2007 (pp. 27-29). Also see: Tehelka, *Why Nandigram?*, 24/11/2007.

[7] See: Amnesty International, *Inde, Un an après les tirs policiers à Kalinga Nagar*, Public Declaration dated 02/01/2007. Also see the powerpoint presentation made by the Jharkhand Mines Area Coordination Committee showing the photographs of 12 victims: www.teriin.org/events/docs/ajithageorge.pdf

[8] See in particular: Sen ,2006; Letter from the *Committee on Violence against Women*, addressed to the *National Commission on Women* dated 09/03/2007.

exception of big landowners, the money due to small farmers is often disbursed several months, if not years, after their expropriation and it is not enough to compensate for the loss of a regular source of income from the cultivation of a small plot of land. Further, when the whole village is displaced, families are often relocated on unfertile land (pieces of wasteland, roadsides, etc.), without adequate infrastructure (access to water, firewood, schools, public toilets, etc.). Finally, even when compensation is given for the loss of land, there is nothing to compensate for social impacts such as being brutally uprooted from one's traditional environment, weakening of traditional social structures and balances, impact on traditional culture or even increased exposure to sickness (Robinson C., 2003: 13).

Once these industrial development and infrastructure projects are in place, other negative social externalities are usually imposed on the local population. They vary according to the nature of the project and the specific features of the site. It is, however, possible to mention some of the most prevalent among them: destabilization of traditional social structures by the arrival *en masse* of labour from other regions, exposure to new illnesses or even a feeling of insecurity and lesser mobility for women in villages.

Environmental impact of companies in India

Corporate activities also give rise to environmental externalities at three levels: growing shortage of natural resources; risk of industrial pollution; and environmental risks in the marketed products.

Growing shortage of natural resources

As attested by the movements that arose during the period 1970-90 to protest against the destruction of India's forests and the impact of dams on the environment (see Part 3), there is nothing new about the issue of the conservation of natural resources in India. However, there has been an increase in the deterioration of natural resources due to the rapid development of companies and of economic activity in general (TERI, 2006).

Water is a particularly sensitive subject in this respect, especially since more than two-thirds of India's population depend on agriculture for a living. The per capita availability of

water decreased from 6,000 cubic meters in 1947 to 2,300 cubic meters in 1997. Today it is about 1,050 cubic meters, which places India among the ranks of "water-stressed countries" (per capita availability of 1,000 to 1,700 cubic meters). In addition, access to water for domestic use in rural India fell from 86 per cent in 1997 to 81 per cent in 2006, and the proportion of natural reservoirs in a critical state is expected to rise from 15 per cent to 60 per cent by 2030. The growing industrialization of the country's economy is presently only of secondary importance, the main reasons for concern being the impact of high water consumption in the agricultural sector and the rapid population growth. However, the industrial consumption of water, which is now between 8 per cent and 13 per cent according to various estimates, is expected to triple by 2025.[9]

If water resources are becoming scarce, there is also a deterioration of its quality which poses major problems for the population concerned in terms of both access to drinking water and public health (gastric infections, worms, parasitosis, cancer, etc.) – illnesses caused by the consumption of contaminated water have an effect on children's school attendance and can lead to the loss of income, which in turn are factors that fuel the problem of child labour. The water in most streams and rivers in India is not fit for drinking without conventional treatment and sometimes even after treatment. According to the DBO (demand for biochemical oxygen) pollution indicator, 15 per cent of India's rivers extending over 45,000 km are highly polluted and 19 per cent are moderately polluted. The industrial sector in India discharges more than 30,000 million cubic metres of waste water per year and only a small proportion of this effluent is suitably treated: "Industry requires water of good quality for its use, and for this it uses cleaner upstream water. However, the water it discharges is always of lower quality than the feed-water and this wastewater is discharged downstream. At best, the wastewater discharged represents a quality that can be recycled for lower grade of industrial use and at worst represents water quality which is unsuitable for every use other than navigational purposes."[10]

The other natural resource affected by industrial activity is air, which has deteriorated considerably in India since Independence, partly in rural areas but even more in the cities,

[9] Down to Earth Supplement, *Industrial Water Use*, 29/02/2004.

[10] *Ibid*., p. 20.

especially megacities. According to the Oak Ridge Air Quality Index, which includes the level of sulfur dioxide (SO2), nitrogen oxide (NOx) and suspended particulate matter, in 2004, the quality of air in 24 per cent of India's 83 largest cities was considered to be "dangerous". The industrialization of India's economy has contributed significantly to air pollution. A large part of this pollution is caused by SMEs which do not follow the norms laid down by law and use obsolete and highly polluting technologies: "An estimated 70 per cent of the total industrial pollution load is attributed to small and medium enterprises (SMEs) many of which, especially small-scale units, continue to use obsolete technologies with no or primitive pollution control methods." (World Bank, 2007: 22). As regards the major industries, coal-based thermal power plants are amongst the worst polluters, as they account for more than 70 per cent of the electricity generated in the country: since they are rarely equipped with proper filters, they pollute the atmosphere with toxic gases and fly-ash. Other sectors of activity such as the steel and cement industries are also very polluting and follow regulations only partially (Bushan, 2005: 3, 106).

Figure 1: The Siltara Industrial Belt, Raipur (Chhattisgarh)

India's forests are also threatened by industrial activity. Apart from the issue of their essential environmental functions of stabilizing the soil, retaining rainwater and absorbing carbon dioxide, their degradation also gives rise to problems of a social nature, as some 70 million tribals and 200 million other traditional forest-dwellers depend on forests for their livelihood (MoEF, 2006). Thanks to the Forest Act (1980), the annual loss of forested land was

reduced from 144,000 hectares in 1980 to 24,500 hectares during the period 1980-95. Today, the area under forest cover has almost stabilized to around 20 per cent of the total area. However, the quality of India's forests is deteriorating and though official documents claim that 46 per cent of forests are being progressively degraded, several case studies point out that this figure is likely to be a gross underestimation of the actual situation (TERI, 2006).

Several factors contribute to this degradation, particularly the increase of population using firewood for cooking, heating and cremation, and forest fires. As regards industrial activity, it consumes forest resources at several levels. Even though the only available figures regarding the use of wood as industrial energy are for 1995 (16 million tonnes per year), it may be assumed that due to India's rapid industrialization since then, the present consumption of wood is significantly higher. The paper industry, the construction sector and other industries need 81.8 million cubic metres of wood per year. Considering that there is a shortage of 39 million cubic metres in India and that its imports contribute only 2 million cubic metres, a large portion of the shortfall is covered by the illegal exploitation of forests in defiance of environmental regulations. Finally, although afforestation has become more widespread, the development of quarries and mines is severely damaging forests (Bushan, Hazra, 2008: 7-9). Thus, the forest area taken over by mines rose from 35,000 hectares between 1980 and 1997 to 150,700 hectares between 1998 and 2005.[11]

Biodiversity too is affected by increased industrial activity, whether it is through deforestation, industrial pollution, construction of hydroelectric dams or through climate change. In this respect, India is even more vulnerable as it has a rich variety of flora and fauna (Earth Trend, 2003). India is home to 7.3 per cent of plant species and more than 10 per cent of animal species in the world. More than 33 per cent of species are native to India where 26 endemic centres have been identified. In addition, two of the eight hot spots of world biodiversity are located in India, namely the Western Ghats and the Eastern Himalayas. India is also home to 2.9 per cent of the world's species facing extinction. It ranks second as regards the number of mammalian species facing extinction and sixth as regards avian species. Among India's plant species facing extinction, 44 are in a critical condition, 113 are threatened and 87

[11] N. Bhalla, *Green Activists Assail India's Forest Mining Push*, Reuters, 17/08/2007.

are considered vulnerable. Among animal species, 18 are in a critical condition, 54 are threatened and 143 are considered vulnerable.

Environmental risks caused by industrial activity

As economic activity exerts increasing pressure on India's natural resources, its environment is threatened by risks directly related to industrial activity: "The damages are still dominated by 'poverty-related' risks such as lack of sanitation and indoor air pollution in rural areas. However, the share of 'growth-related' risks manifested by the deteriorating urban environment, industrial waste and chemical pollution is increasing." (World Bank, 2007: V). A textbook case of industrial risk, which has left a deep imprint on people all over the world and contributed to justify the creation of a Ministry of Environment and Forests by the Indian government, is the Bhopal tragedy. On 2 December 1984, there was a leakage of some 40 tonnes of methyl isocyanate, a highly toxic gas, in the Union Carbide pesticide plant in Bhopal resulting in more than 20,000 dead and 500,000 injured.[12] Though the Bhopal tragedy continues to be *the* reference case for industrial accidents in India, and perhaps the world over, together with Chernobyl in 1986, the risks of industrial accidents go well beyond this single case. A MoEF report indicates that between 1984 and 1995, there were 119 industrial accidents involving dangerous chemicals in India, some of which are listed below:

-1- Dumping of hexacyclopentadine in Cochin, Kerala in 1985: 200 dead.
-2- Explosion of a factory in Bombay in 1988: 35 dead and 26 injured.
-3- Fire in an oil refinery in Bombay in 1988: 35 dead and 16 injured.
-4- Dumping of sulphuric acid by a factory in Kalyan, Maharashtra in 1993: 49 dead and 1,123 injured. (Centre for Science and Environment, 2006)

Environmental pollution due to the release of toxic substances in the atmosphere or dumping them in the ground and in rivers is also a serious problem in India (Srivastava, 2003). Thus, substances like lead, arsenic, selenium, cadmium and mercury pose a serious risk to the environment. The ingestion of mercury, for instance, even in minute quantities of a few

[12] For more detailed information, see: Eckerman, 2005.

milligrams, can be extremely harmful to health, causing depression and suicidal tendencies, paralysis, kidney dysfunction, Alzheimer's disease, vision and speech defects, allergies and sterility. In 2003, the concentration of mercury in industrial effluents was estimated to range between 0.058 and 0.268 milligrams per litre (mg/l), compared to the norm of 0.001 mg/l, prescribed by the World Health Organization (WHO). The chloralkaline sector, which is the base for the battery industry, released more than 79 tonnes of mercury in the atmosphere between 1997 and 2000. Around the caustic chlorine factories, about 0.176 mg/l of mercury was found in the rivers and in ground water and 596.67 mg/kg in the soil, whereas WHO standards are 0001 mg/l and 0.05 mg/kg respectively. Other industries that are considered important sources of mercury pollution are coal-based thermal power plants, steel industry, cement, plastic, paper and medical measurement apparatus industries, as well as some pharmaceutical and agricultural inputs (pesticides) industries.

Finally, economic activity in India also contributes to climate change. Globally, India ranks fourth in greenhouse gas (GHG) emissions and second as regards the growth of emissions (+65 per cent between 2002 and 2007). Though India's per capita GHG emissions are the lowest in the world, the emission rate of Indian industry is very high: the consumption of energy generated from fossil fuels and industrial processes produced 1,169 million tonnes of CO_2 in 2004. Due to the immensity of its agricultural sector, exposure to the monsoons and the condition of its infrastructure, India is particularly vulnerable to climate change. Thus, a 2°C rise in the average annual temperature could lead to a faster melting of Himalayan glaciers, a tremendous increase in floods and droughts, a fall in agricultural productivity, exhaustion of piscatorial resources as well as massive movements of people in coastal regions (Stern, 2006). India is, therefore, even more exposed because a large part of its population is socio-economically vulnerable (Green Peace, 2007).

Environmental risks caused by consumer goods

Incomplete standards of toxicity permissible in commercial goods, obsolete technologies, high level of water pollution (heavy metals, arsenic, etc.) and ineffective control mechanisms are some of the numerous risk factors present in India as regards the

'environmental quality' of consumer goods. In this respect, two cases have been grabbing newspaper headlines over the last three years.

In July 2003, a study conducted by the CSE (Centre for Science and Environment) created a scandal of international proportions regarding the high level of pesticides found in beverages manufactured and marketed in India by Pepsico and The Coca-Cola Company. , CSE found a presence of pesticides in 100 per cent of the specimens collected from 12 different kinds of drinks. All the drinks contained lindane (upto 42 times the European norm – 0.0001mg/l) and chloropyrifos (upto 72 times EU norm), 81 per cent contained DDT (upto 25 times the EU norm) and 97 per cent malathion (upto 196 times the EU norm). According to the CSE, the presence of pesticides in these drinks is explained by the fact that Pepsico and Coca-Cola draw water for their plants from polluted groundwater sources and do not filter it through micro-membranes, the only known procedure for eliminating pesticide particles.[13]

Another study conducted by the NGO Toxics Link in 2006 revealed the presence of heavy metals in soft plastic toys manufactured in India. This sector of activity represents US$ 2.5 billion, of which US$ 1 billion is accounted for by the informal sector where more than 1,000 small production units share the market. Some multinational companies, such as Mattel, the world leader in the manufacture of toys, were also implicated. Lead and cadmium were found in 100 per cent of the tested toys with an average of 112.51 particles per cubic meter (ppm) of lead and 15.71 ppm of cadmium. As the report points out, "Children and pregnant women are especially vulnerable to lead poisoning. It also affects the cognitive function of the brain." (Kumar, Pastores, 2006: 2). In 2007, Toxics Link carried out another study, this time on interior paints. In the United States, the permissible limit for lead is 600 ppm. In India, a non-restrictive norm set by the Bureau of Indian Standards fixes the limit at 1,000 ppm. Of the different types of paints tested, 38 per cent contained more than 600 ppm of lead with the most toxic paint containing 14,000 ppm (Kumar, 2007). There are substitutes for lead, especially those based on titanium dioxide, which can be used without any significant increase in production costs. However, very few paint manufacturers in India seem to be willing to use these substitutes because they demand fresh investment for modifying the production machinery.

[13] D. Martin, *En Inde, Pepsi et Coca-Cola cristallisent les problèmes de qualité d'eau*, Novethic, 22/08/2003.

2 DOES THE EXISTING LEGAL FRAMEWORK FACILITATE ECONOMIC ACTIVITY?

The development of private companies in India, which advanced very rapidly after liberalization and the deregulation of the economy, was thus accompanied by an increase of their negative social and environmental externalities, even while they have shown themselves incapable of assuming the role of 'primary agents of development' assigned to them. How has the legal and public regulatory framework evolved with the development of these new challenges? Is public regulation capable of restoring the balance between their contribution to development and their negative externalities?

2.1 Social Regulation of Companies by the Government

Labour laws and their implementation: has the protection of workers' rights become weaker?

Labour law serves several functions. Firstly, it is an instrument that allows the government to regulate a naturally asymmetrical relationship between employers and employees with the aim of protecting the latter. Secondly, it is a legal framework within which individual workers earn their living in the labour market. Finally, labour law is an instrument in the government's hands enabling it to devise a national development model and promote the fundamental principles of social justice, equity and protection of the most vulnerable social groups.

India's colonial past has left a strong imprint on its labour laws. Since the British showed little interest in protecting Indian workers, the first initiatives for framing labour laws were taken by companies involved in the struggle for independence. Thus, as far back as 1912, the Tata Group adopted internal rules that were very progressive for that period and most of which were later incorporated in the national labour law (Singh, 2008: 123). The need for labour laws was later recognized by the freedom movement led by the Congress in its Karachi Declaration

on fundamental rights in 1930: "The State shall safeguard the interest of the industrial workers, and shall secure, by suitable legislation and in other ways, a living wage, healthy conditions of work, limited hours of work, suitable machinery for the settlement of disputes between employers and workmen, and protection against the consequences of old age, sickness and unemployment." (Thakur, 2008: 2). These principles were incorporated in 1950 in the Directive Principles of the State Nos. 41, 42 and 43 of the Indian Constitution.

India's first labour laws were enacted long before the adoption of the Indian Constitution in 1950 as a response to the growing industrialization of the Indian economy.[14] Thus, the first law was the Workmen's Compensation Act (1923), which obliges the employer to pay compensation to the worker, or his family, in case of an accident at the work-site leading to the worker's death or to a disability rendering him unfit for work. In 1926, the Trade Union Act was passed to protect trade union leaders and provide a legal framework for the emerging trade union movement. In 1936, the Payment of Wage Act was adopted to regulate the payment of wages and withholding part of a worker's wages was practiced by the employer as a punitive measure.

The Industrial Employment (Standing Orders) Act, adopted in 1946, clarifies the terms and conditions of contractual relations between an employer and his employees in companies having more than 100 workers. This law was followed by the Industrial Disputes Act of 1947, which is still one of the key labour laws. This law defines the legal procedures and the establishment of administrative machinery for regulating industrial relations; it also contains various measures for regulating strikes and lockouts; it defines the sanctions to be imposed in case these measures are violated; and it lays down the rules for dismissal and payment of compensation. In this regard, the Industrial Disputes Act, as amended in 1976, stipulates that a company having more than 300 workers should obtain permission from the government before laying off its workers. However, executives and contractual workers who have worked for less than 240 days out of 365 are not covered by it. In 1982, the limit of 300 employees was lowered to 100.

[14] Only the principal laws are mentioned here. For a general presentation on Indian labour law, see in particular: Malik, 2007; Thakur, 2008.

In 1948, another key element of labour legislation was passed, namely the Factory Act, whose objective is to control the working conditions in production units having more than 10 workers. This law forbids the employment of children under the age of 14 and limits working hours for minors to four and a half hours per day; it also forbids the employment of women and minors in night shifts from 7 p.m. to 6 a.m. (with certain exceptions); it obliges the employer to ensure proper working conditions (hygiene, ventilation, temperature, light, exposure to noxious fumes, etc.); it obliges the owner to obtain permission from a labour inspector before the opening of a new factory; and it authorizes officials of the labour department to carry out periodic inspections of factories. The Factory Act was accompanied the same year by the Minimum Wage Act with the aim of ensuring a minimum income for workers in order to promote social peace and eliminate extreme poverty. Other laws were enacted later to regulate remuneration such as the Payment of Bonus Act (1965) and the Payment of Gratuity Act (1972).

The Indian labour code also includes several laws to ensure minimum social security. Thus, the Employees' State Insurance Act of 1948 applies to companies having ten or more workers. It makes provisions for medical care for workers and their families, financial assistance during illness or pregnancy as well as the payment of the monthly salary in case of an accident on the work-site leading to death or to a disability rendering the employee unfit for work. The Employees' Provident Fund and Miscellaneous Provisions Act of 1952, covering companies having twenty or more workers, sets up a provident fund to which the employer and the worker contribute 12 per cent of the worker's salary. The accumulated amount is paid to the worker at the time of retirement or to the family in case of his/her demise.

Finally, the Contract Workers (Regulation and Abolition) Act (1970) and the Contract Labour and Inter-State Migrant Workers Act (1979) respectively monitor the employment of temporary and migrant workers, as these two categories constitute a significant part of poor and under-skilled workers outside the agricultural sector. These two laws oblige employers to ensure that their temporary workers have access to drinking water, toilets, healthy living conditions, a first-aid centre and a crèche or day-care centre for their children. In addition, section 10 of the Contract Workers Act authorizes the government to ban the hiring of

temporary workers if the work is of a perennial nature, if it is necessary and not incidental to the company's functioning, if the volume of work is sufficient to hire a considerable number of whole-time workers, and/or if the task is usually performed by a permanent worker in the establishment or in similar establishments.

A major constraint on the impact of labour laws has been, and still is, the size of the informal sector. As a matter of fact, labour laws benefit effectively only a small section of workers such as government employees, employees of public sector undertakings and permanent employees of private companies in the organized sector. Owing to the spread of the practice of outsourcing work and the mechanization of production processes over the last 20 years, the number of workers who are not protected at all by labour laws, or protected only in a very small measure, has tended to increase (see Part 1). Hence, if one takes into consideration the general functions of the labour laws mentioned above, the continuance of informal employment appears to be the result of a triple failure of Indian labour laws. Firstly, the state is not in a position to protect the socio-economic rights of the vast majority of workers affected by the unequal relationship between an employer and his employees (availability of a large supply of man-power, oral contracts, economic insecurity of workers, etc.). Secondly, the Contract Labour (Regulation and Abolition) Act has not contributed to any reduction in informal employment, although the Act was supposed to limit the scope of contractual work to a backroom preceding access to a permanent job. Finally, in these conditions, labour laws seem to have had a limited effect in terms of promoting social justice,[15] equity (we refer in particular to the inequalities between permanent and temporary workers) and protecting the most vulnerable social groups.

In this context, it is worth emphasizing that economic reforms and India's entry into the World Trade Organization (WTO) have increased pressure of competition on Indian companies. To counterbalance the reforms, trade union movements have demanded greater job security and higher wages in order to guarantee a fair distribution of the fruits of growth (see below). On the other hand, industrial circles have increased their lobbying for more labour market

[15] This may change as the Unorganized Sector Workers' Social Security Bill was passed by the Indian Parliament at the end of 2008. See below.

flexibility, especially in terms of layoffs, redeployment of labour within production units, hiring of temporary workers and change of working hours. Faced with the dual challenge of increasing the competitiveness of the national economy and protecting the more fragile sections of the population, the public regulator has adopted a double-edged strategy consisting of responding indirectly to the companies' need for flexibility – making labour laws overtly and significantly flexible is not yet revised on paper for political reasons – and compensating for the social damages of this policy by initiating measures to make employment and social security more accessible to the most vulnerable sections of the population.

To make the labour market more flexible, there has been a *de facto* reduction of the constraints on companies. This change is all the more significant, since previously, government intervention in social conflicts tended to support workers in accordance with the principles of the Welfare State (Papola, 2008: 46). However, in keeping with the new policy, it has been observed that since the early 1990s, there have been fewer factory inspections by Labour Inspectors and the rules requiring them to 'report' errant companies have been relaxed (Thakur, 2008: 10-11). In cases where a violation of the labour law is reported, government officials tend to be more lenient, especially since most States have adopted aggressive policies to attract investments. Explicitly or implicitly, they promise investors that they will remove the pressure exerted by trade union movements and ensure an investor-friendly climate for pursuing their activities. The judiciary too, it is observed, tends to favour employers (Ahsan, Pages, 2007: 7).

Partly in order to counterbalance the effect of the trends mentioned above, the government adopted in 2005 the National Rural Employment Guarantee Act (NREGA). This law gives every family below the official poverty line (26 per cent of the population) the right to 100 days of work in a year. The beneficiaries are employed in public works and paid the minimum wage. A wide-ranging study conducted in 2008 on the implementation and impact of NREGA in India[16] describes it as a powerful and innovative instrument for economic redistribution and promotion of social justice. However, the impact has been mitigated due to several factors: confusion between the agencies in charge of its implementation; an absence of mechanisms for

[16] Frontline, *Battle for Work*, 16/01/2009.

dealing with complaints from those entitled to work and for redressing grievances; a lack of monitoring and assessment by independent agencies and widespread corruption with misappropriation of funds at all levels of the scheme. Thus, while NREGA has had a very positive impact for some, among those surveyed only 13 per cent of those entitled have actually received 100 days of employment, and 65 per cent have not taken the necessary steps to obtain employment under NREGA due to lack of information. Moreover, more than half the work-sites employing beneficiaries have not paid them the minimum wage (Drèze, Khera, 2009).

Further, under pressure from trade unions and other civil society organizations, the government drafted the Unorganized Sector Workers' Social Security Bill, passed by the Parliament in December 2008. This law is intended to benefit the 93 per cent of workers who are employed in the informal sector by providing them life insurance as well as insurance cover against illness, disability and professional accidents, and also a pension. According to the government, 340 million workers should be covered by this scheme by 2013. It must, however, be noted that this bill was a subject of much controversy because it does not include the recommendations of the National Commission in charge of enterprises in the informal sector, which had recommended a distinction between the agricultural and non-agricultural informal sectors as well as a wider range of interventions apart from just social security to cover working conditions, social assistance and help in the creation of income-generating activities. Furthermore, in the absence of a plan for funding, the Unorganized Sector Workers' Social Security Bill seems more like a measure outlining a general framework rather than defining a concrete course of action.

Public regulators' response to the social impact of industrial development projects

As we discussed earlier, the negative social externalities that some companies impose upon society go beyond the company's boundaries and directly affect the local population. To counter the aggravation of these externalities, the government has recently strengthened the regulatory framework.

As far as land acquisition and displacement of the local population are concerned, in an attempt to reduce the development of protest movements, the Indian government announced in October 2007 a new National Policy on Resettlement and Rehabilitation – NPRR 2007 – to replace NPRR 2003[17]. Among others, NPRR 2007 requires every project involving the involuntary displacement of at least 400 families in the plains or 200 families in hill regions to carry out an assessment report of its social impact (SIA). A committee of independent experts is supposed to study the SIA report and submit its opinion to the government before a project is approved. Another important advance is that the NPRR insists that projects should minimize their land requirements, especially when agricultural lands are affected. In addition, if a piece of land transferred to a private company is not put to use within a period of five years, it reverts automatically to the public domain. If the company sells the land or transfers it, 80 per cent of the appreciated value is to be paid to the persons from whom the land was acquired. Finally, the NPRR clarifies the conditions of compensation to expropriated families, notably that land will be acquired at the prevailing market price, compensation should, if possible, include an exchange of "land for land", and employment should be given to at least one member of the expropriated family on a preferential basis.[18] Thirdly, the NPRR offers displaced persons the option of taking 20 per cent of the compensation amount in the form of equity in the project, and this percentage can be increased to 50 per cent if authorized by the state government. Fourthly, the policy envisages the payment of a monthly lifetime pension to the most vulnerable among those affected by displacement (widows, orphans, disabled persons, so on and so forth).

This policy is very progressive from a social point of view. It is, however, necessary to express some reservations. NPRR 2007 still does not shed light on the problematic expression

[17] Since the approval of the policy by the Cabinet in October 2007, states and companies are supposed to align their practices with this policy. The Resettlement and Rehabilitation Bill was approved by the Lok Sabha in February 2009. The approval by the Rajya Sabha and the President's signature are further required before the bill becomes a law.

[18] Other components include a series of measures in the form of assistance to obtain employment, preference to cooperative societies and enterprises of displaced families when awarding outsourcing contracts, financial assistance ranging from Rs.10,000 to Rs.25,000 for launching micro-enterprises, as well as bearing the expenses for transport, temporary lodgings and basic utilities (water and electricity) in the area where the displaced families are relocated.

"public purpose". As A. Dhuru points out, "The government can show anything from employment generation to economic development as public purpose."[19] Further, it does not envisage monitoring mechanisms to ensure compliance with the principles and measures mentioned in the text. Regarding the SIA, the limit of 400 and 200 families to justify an SIA is higher than the average population of Indian villages, and the limited impact of the Environment Impact Assessment Notification of 1994 (see below) suggests that similar practices might be used by the project developers to bypass the provisions of the SIA. Another critique is that while NPRR 2003 provided for compensation to landless agricultural workers living on the land for more than three years, the limit has now been extended to five years. Finally, NPRR 2007 recognizes the validity of state government rules and regulations related to population displacement and rehabilitation, which are generally less favourable to displaced populations. In addition to diluting the national character of this policy, it allows state governments to relax the constraints imposed on investors by the NPRR 2007 in order to attract investments.

Recently, the Indian government has also increased the protection awarded to tribal populations. Until now, the latter were protected under the 5th Schedule of the Indian Constitution, which aims to curb the expropriation of their lands and resources by 'non-tribal persons'. In 2006, India decided to modify and strengthen the law protecting tribals through the Scheduled Tribes and Traditional Forest Dwellers (Recognition of Forest Rights) Act. One of its major innovations is the extension of benefits to traditional non-tribal forest dwellers (about 200 million persons). To be more precise, the law recognizes a series of rights of families who have been living in forests for at least three generations before 13 December 2005 and for whom the collection of forest products is the principal source of livelihood. The principal rights are the right to live in the forest; the right to collect minor forest products (leaves, roots, bamboo, honey, medicinal plants, etc.); the right to be rehabilitated *in situ*, or on other sites, in case of forced eviction before 13 December 2005; and as regards illegal occupants of forests, the law forbids their eviction before their individual cases have been examined by the administration.

[19] Down to Earth, *No Place to Go*, 15/11/2007 (p. 10).

2.2 Environmental Regulation of Companies by the Government

An ambitious legal framework for environmental regulation

The issue of environmental protection finds mention in several places in the Indian Constitution. Thus, Article 21 guarantees a citizen's right to life and to fundamental liberties. Three judgments have confirmed the interpretation of this Article by the Indian judiciary as including the right to live in an unpolluted environment: *Subhash Kumar vs. State of Bihar* (1991), *M.C. Mehta vs. Union of India* (1992) and *Virender Gaur vs. State of Haryana* (1995). In addition, in the 42nd Amendment (1976), Articles 48(a) and 51(a)(g) mention the responsibility of the central government and Indian citizens to protect and improve the environment as well as to safeguard forests and wildlife.

The first laws intended to protect the environment predate the Constitution. They go back to the British period with the Shore Nuisance (Bombay and Kolaba) Act of 1853, several articles of the Indian Civil Code of 1872, which provide for the prosecution of those responsible for the pollution of water and air, and the Forest Act of 1927, which defines water pollution in forest areas as a criminal offence. Finally, the Factory Act of 1948, mentioned earlier, forbids the discharge of wastewater into public drainage systems. However, it was only after the Stockholm International Conference, organized by the United Nations in 1972, that India started putting in place a proper legal and administrative framework for the environmental regulation of companies. The first law under this framework was the Water (Prevention & Control of Pollution) Act of 1974, which provides for the creation of administrative and regulatory bodies, namely Water Pollution Control Boards (WPCB), and defines the norms beyond which WPCBs can take administrative and legal measures against polluting companies. In 1977, this law was complemented by the Water (Prevention and Control of Pollution) Cess Act, which imposed taxes on companies for water consumption. The proceeds from these taxes were used for financing the WPCBs. In 1981, the Air (Prevention and Control of Pollution) Act extended the jurisdiction of the WPCBs to cover the regulation of air pollution. This also provided an opportunity for restructuring the administrative machinery and replacing the

WPCBs by a two-tier administrative structure consisting of the Central Pollution Control Board (CPCB) and its branches in the states, the State Pollution Control Boards (SPCBs).

In 1985-86, in the aftermath of the Bhopal tragedy, the Indian government took drastic steps to reinforce environmental regulation. The Department of Environment was replaced by a central ministry, the Ministry of Environment and Forests (MoEF), and extensive powers were granted to it under the Environment (Protection) Act of 1986: the power to define pollution standards in consultation with the Bureau of Indian Standards; to give rulings on the location of new industrial and infrastructure projects; to adopt security measures and measures for the treatment of toxic waste; to conduct inspections of industrial sites; to coordinate research programmes on the environment; and finally, collect and disseminate information. Under this new structure, the CPCB and the SPCBs enjoyed wider powers: grant of consent to establish new industrial projects; grant of consent to operate for existing units (which has to be renewed every two to three years); reinforcement of pollution standards in some States; and finally, in case of repeated violation of rules, sanction of punitive measures ranging from fines to prosecution and imprisonment. In 1987-88, the SPCBs were strengthened once again through a series of amendments in the rules, one of them authorizing the punishment of polluting companies by issuing administrative notifications without having to take legal action. Though some of these measures may act as incentives, for example, fines, the type of regulation preferred by this system generally follows the principle of "command and control" – command through a series of parameters requiring compliance and control through punitive action in case they are violated.

Even as the regulatory bodies were strengthened, environmental law was progressively supplemented in order to deal with new environmental issues and reinforce the regulatory framework. Following the launch of the *Chipko* movement in the 1970s (see **Part 3**), Prime Minister Indira Gandhi passed a new law for the protection of forests, the Forest (Conservation) Act of 1980. A year later, the government adopted the Genetically Engineered Organisms or Cells Rules and the Hazardous Wastes (Management and Handling) Rules. The Coastal (Regulation) Zone Notification (1991) banned development activities causing pollution along the coast. The Environmental Impact Assessment (EIA) Notification (1994; 2006) considerably

reinforced the regulatory framework as large industrial and infrastructure projects now require environmental clearance from the MoEF on the basis of an environmental impact assessment report to be presented to the local population in a public hearing before the MoEF processes the file. Finally, in the late 1990s, a series of environmental laws and regulations were adopted to deal with new environmental problems and incorporate a series of international treaties in the national law. This applies in particular to the Bio-Medical Waste (Management and Handling) Rules (1998), the Re-cycled Plastics Manufacture and Usage Rules (1999), the Municipal Solid Wastes (Management & Handling) Rules (2000), the Ozone Depleting Substances (Regulation) Rules (2000) and the Biological Diversity Act (2002).

Insufficient implementation of the regulatory framework by the government

Though the Indian environmental regulatory framework is quite substantial, numerous studies draw attention to its inefficient implementation as well as its inability to prevent the overexploitation of natural resources and increasing environmental pollution.

Firstly, the SPCBs do not have sufficient manpower and funds to closely monitor the companies operating in their States (Curmally, 2002: 99). As an official of the Himachal Pradesh SPCB explains, "We have 11 environmental engineers, and no supporting staff. It means they have to do each and every thing."[20] Secondly, the competition for attracting investments drives some States to relax the supervision of companies, often due to interference from local politicians in the SPCB's work: "Central and State governments and the CPCB and SPCBs have adopted a soft attitude towards polluting industries and have done little more than issue warnings. The result is that laws are practised more in violation than conformity and a large number of industries operate without proper safety and pollution control measures." (Curmally, 2002: 98). Thus, official data regarding compliance with environmental regulations belong more to the realm of fiction than reality (Panth, Shastri, 2008: 233). Thirdly, companies devise strategies involving collusion with officials in charge of their regulation, which considerably reduce the effectiveness of the 'command and control' principle. It is certainly

[20] Interview with an official of the Himachal Pradesh SPCB on 11/02/2008.

difficult to quantify these practices, especially those involving corruption. However, during several interviews with officials representing companies operating in India, their public relations managers or officers in charge of environmental issues explained how they had to maintain good relations at a personal level with SPCB officials so as to encourage them to adopt a soft attitude and treat the company favourably should problems arise. In some interviews, other collusive strategies, such as bribing government officials, were openly admitted: "Here, everybody is corrupt. Particularly the government, it is very corrupt. […] I face a lot of problems: they [the SPCB] make a lot of queries, they are putting delays, delays, 'we will see'. […] The senior officer, of course, he always prefers the other companies, because they are giving some money. So their work [clearing the administrative files] will be fast, and my work will be delayed."[21]

Finally, according to several studies, the regulatory framework is becoming obsolete due to recent changes and the exacerbation of environmental issues. For example, a World Bank report states, "The main focus on large point sources in applying environmental regulations does not match the scale and diversity of India's economy, with its multiple pollution sources, dominated by small-scale industrial units or often being outside the industrial sector. Nor is it responsive to changing pressures resulting from the country's accelerated growth, such as unwieldy urbanization and regional development that are overstretching both public infrastructure and the carrying capacity of the natural environment." (World Bank, 2007: viii).

The implementation of the EIA Notification is very interesting as it reveals the gap between the law and its declared intentions on one hand, and the laxity of its enforcement on the other. The EIA insists on an environmental impact study for 32 types of industrial projects. Once the study is conducted, the report has to be made public within 30 days and then presented and discussed in a public hearing between the project developer, local officials, the local population and local civil society representatives. The public meeting is also a forum where letters and petitions can be submitted. The report, the minutes of the public meeting as well as the various documents expressing opinions on the project are then put together and

[21] Interview with a Public Relations Officer on 16/11/2008.

sent to an expert committee of the MoEF, which conveys its opinion and advice to the MoEF so that it can decide whether the project should be given a clearance.

Although the principle underlying the EIA is very progressive, there are several constraints that reduce its actual impact:

- The consultants appointed to conduct the environmental impact study are paid by the project's promoters. Therefore, it is not in their interest to go openly against the persons commissioning the study.
- The data used in impact studies lack accuracy, they are easy to manipulate and are generally incomplete.
- In some cases, while the data presented in the reports foresee serious environmental impact, the conclusion does not take them into account and systematically claims that the project does not pose any environmental problem that cannot be resolved.
- Those participating in the public hearing are often subject to pressure, which can even lead to unrest requiring police intervention.[22]
- In most cases, the opinions expressed by the local population during the consultative phase are not taken into account in the MoEF's decision.
- In most cases, there is no verification to ensure the implementation of measures that companies promise to undertake to mitigate their environmental impact and, in the absence of effective enforcement, there are no punitive measures. (Menon, Kohli, 2007: 2493)

The inefficient implementation of environmental regulation has had two major consequences, namely a recent shift from regulation towards management of natural resources; and the reinforcement of the judiciary's role in implementing environmental regulation of companies.

[22] See, for example, the video-recording of a public meeting in Raigarh (Chhattisgarh): http://fr.youtube.com/watch?v=v8mUWIU3rFY (sourced on 14/01/2009).

From regulation to management of natural spaces: does it amount to the dilution of environmental regulation?

Apart from the problems caused by the deficient implementation of the regulatory framework, environmental regulation has been frequently criticized for its lack of coherence. In fact, the basic laws were passed even before the Indian government had framed its initial environmental policies, and the various environmental policies have not always been translated into laws (Curmally, 2002: 98). In response to this criticism and fully aware of the worsening of the environmental situation in India, the government framed the New Environmental Policy (NEP) in 2006 with the intention of modernizing and integrating the different environmental policies (National Forest Policy 1988, National Conservation Strategy and Policy Statement on Environment and Development 1992, Policy Statement on Abatement of Pollution 1992, National Agriculture Policy 2000, National Population Policy 2000 and National Water Policy 2002). In addition to defining the guiding principles such as equitable access to resources and compliance with principles of good governance when managing the environment, NEP 2006 insists on the need to use the tools of environmental economics more extensively and manage the environment more efficiently through a system of tax incentives (Pigou Principle), and on the internalization of costs by economic agents ('the polluter pays' principle).

Though it may be assumed *a priori* that framing a new environmental policy is the sign of a strong political will to safeguard the environment, a closer examination raises numerous questions. The NEP is no more than a series of general directives, with no concrete commitments or allocation of additional funds. Moreover, the importance given to market tools in corporate regulation marks a shift from the principle of 'command and control' to environmental management. Even if the earlier system was only partially implemented, its approach, based on 'strict regulation', defined standards, rights, obligations and penalties allowing affected individuals and groups to go to court to defend their rights. In contrast, a case-by-case management approach when dealing with companies and the attempt to find a balance between safeguarding economic interests and the environment increases the likelihood of diluting the constraints imposed upon companies, as the economic and electoral interests of public decision-makers and the lobbying capacities of companies and investors

might result in an imbalance between economic interests and protection of the environment. In other words, in spite of its official objective of introducing environmental concerns into economic development, NEP 2006 might have the opposite effect, that is, introducing economic concerns into the protection of the environment (Lele, 2007).

As in the case of NEP 2006, the principle of 'concerted' management of natural resources has been explicitly adopted while changing the environmental regulatory framework for coastal regions. In fact, the Coastal Zone (Regulation) Notification of 1991 defines a list of activities declared illegal on coastal zones, as they are liable to affect the biodiversity and fragile ecosystems, as well as destroy the traditional habitat of fishing communities (about 6 million people). Since 1991, 21 amendments have been notified, almost all of which lead to a reduction in the protection of coastal zones. As an environmentalist points out, "Almost every one of the 21 amendments to the coastal zone regulation notification was done to benefit one industry or the other. It might be the tourism industry, it might be the mining industry, it might be the thermal power industry, the harbour industrial estates. […] Initially, it said only fisher communities, who are the only ones to have a direct connection with proximity to the sea, will be allowed to stay and naturally expand. […] But then, as the years went by, industries were allowed, and now we are in a situation where the fisher folk are being evicted from the coast. And the industries will be there. So we see a complete reversal."[23] In February 2005, an expert committee of the MoEF proposed to replace the Coastal Zone (Regulation) Notification by a new notification, the Coastal Zone Management Notification (2007). This new notification is currently in the process of being validated. Two major changes mark its break with the earlier notification. Firstly, the 'universal' definition of what constitutes a coastal zone has been abandoned in favour of a procedure of case-by-case definition of the limits of sensitive coastal zones by competent authorities. Secondly, the definition of a list of banned activities in coastal zones has been replaced by the principle of integrated management defined as "a process by which decisions are made for sustainable use, development and protection of coastal and marine areas and resources" (MoEF, 2007). This actually allows the local authorities to give

[23] Interview with a member of the Corporate Accountability Desk on 08/10/2007.

priority to the development of companies over the protection of ecosystems and the habitat of fishing communities.

How the judiciary deals with the failures of the government

Another significant change in environmental regulation is the increased role played by the judiciary due to the government's failure to efficiently implement the regulatory framework. It is interesting to note that environmental laws have been inspired to a large extent by the judgments of the Supreme Court and the High Courts of different States. In this regard, a liberal interpretation of Article 21 of the Indian Constitution as including the right to live in a pollution-free environment marked a significant advance for environmental regulation in India. Other judgments have also widened the scope of environment regulation. In the case *M.C. Mehta vs. Union of India* (1987), for instance, Justice Bhagwati brought in a major legal innovation by establishing the principle of absolute liability. This principle, which applies to all companies engaged in dangerous activities, implies that the latter are fully liable to take precautions, that the acquisition of the company at fault by another does not exempt it from its liabilities and that the bigger the company the higher the compensation to be paid to the victims. In addition, this principle implies that governments and companies are not exempt from legal liability in the case of violation of fundamental rights. Justice Bhagwati's innovative judgment serves as an illustration of the proactive role played by the judiciary to arrive at a balance between economic development and environmental protection through regulation: "Law has to grow in order to satisfy the needs of the fast-changing society and keep abreast of the economic development taking place in the country."

The case *Godavaram vs. Union of India* (1995) also illustrates the importance of environmental case law. In this case, the Supreme Court enlarged the legal definition of "forest" beyond the zones officially listed by the MoEF to include all that corresponds to a forest according to its dictionary meaning. This case thus extended the scope of the Forest (Conservation) Act of 1980. Since this judgment, the Supreme Court has been seized of a growing number of cases pertaining to forest-related conflicts. To avoid being submerged under a massive inflow of such cases, the Supreme Court has appointed a Central Empowered

Committee (CEC), whose task is to study forest-related cases and convey its opinion to the Supreme Court. The CEC is empowered to demand access to any document from any person or any government department, summon anyone who can provide information and receive evidence from this person through testimony or declaration under oath. It can also conduct field enquiries, meet NGOs and organize public meetings. In urgent cases, the CEC can even give temporary administrative orders. As an environmentalist points out, this example is particularly interesting in that it illustrates the tensions between the executive and the judiciary in the realm of environmental regulation: "Now, the CEC has become pretty powerful. They are ruling on a huge number of cases, and gradually, they gained a lot in power. Some of the recommendations that they make to the Supreme Court are not liked by the ministries, because it contests their efficiency. So the ministries want the CEC to be dissolved. So right now, there is a big standoff between the government and the judiciary."[24]

Finally, in many of its judgments, the Supreme Court has invoked the principles of sustainable development to justify its verdict. For example, in the case *State of Himachal Pradesh vs. Ganesh Wood Products* (1996) the principle of intergenerational equity was invoked to give a ruling in favour of the protection of forest resources. In the case *Vellore Citizen Welfare Forum vs. Union of India* (1996), in which tanneries were accused of discharging effluents and thereby affecting access to drinking water, the Supreme Court invoked the principle of caution and that of 'the polluter-pays'. The notion of sustainable development was also invoked in the case *N. D. Jayal vs. Union of India* (2003) as the Supreme Court declared, "The adherence to sustainable development is a *sine qua non* for the maintenance of a symbiotic balance between the right to development and development."

Secondly, the degradation of the Indian environment – due largely to the shortcomings of the public regulatory mechanism – has led environmentalists, NGOs and affected populations to take legal action to ensure that their rights are protected. In other words, the judge has supplanted the administration in the implementation of environmental regulation (Prasad, 2008). In most cases, justice is sought by filing a public interest litigation (PIL) – a procedure introduced to ease the access of Indian citizens to the judicial system and enable the

[24] Interview with a member of *Kalpavriksh Environment Action Group*, 28/09/2007.

most vulnerable and the least educated sections of the population to claim their fundamental rights.[25] Thanks to the PIL, any individual or organization can approach the Supreme Court (Article 32 of the Constitution) or the state High Court (Article 226 of the Constitution), in his/her own name or on behalf of another individual or organization, in case of violation of fundamental or statutory rights. As a World Bank report points out, "In most countries, the courts have been viewed as a last resort in resolving environmental conflicts. In India, however, it has often become the first resort because of the perceived inabilities or lack of political will of the regulatory agencies to enforce environmental laws and regulations. This has resulted in an increasing number of court directives that have established new environmental policies and implementation requirements for both the public and private sectors." (World Bank, 2007: 19).

[25] Frontline, *In public interest*, 01/02/2008.

3 'CIVIL SOCIETY' EXERTS MORE PRESSURE ON COMPANIES

As we have seen earlier, the new post-reforms strategy for socio-economic development has led to a shift in the problematic balance between supporting companies and controlling their negative social and environmental externalities. In this context, numerous civil society organizations (CSOs)[26] have employed a wide array of actions to question the state in its role as the guarantor of collective interest and to force companies to accept their responsibilities. What are the attributes of this 'civil regulation' and how has it evolved? Is it in a position to counter-balance an economic development strategy that endangers the social and environmental balance required for a truly sustainable development of Indian society?

3.1 Emergence of a Dissenting Movement

Preliminary remarks on the notion of 'civil society'

The notion of civil society is often criticized for being vague and difficult to use in a rigorous way. In fact, the term 'civil society' tends to create the illusion of an organized and coherent body of actors and it is often invoked without really defining the concrete reality that is referred to. In addition, the meaning attributed to it varies considerably according to the time and place where it is used and the author using it (Chandhoke, 1995). We will adopt here the definition given by Tandon and Mohanty, which is the sum of non-state and non-corporate individual and collective initiatives which pursue the common interest – whose representation changes from case to case – or the collective interest of identified social groups (Tandon, Mohanty, 2002: 6-8). Thus, civil society is both a heterogeneous group of actors and projects as well as a social space where the former contribute to establish a contingent meaning of collective interest and work for its fulfillment. Interestingly, the meaning of civil society in India

[26] The term 'civil society organization' is used here in the wider sense of a more or less formalized collective action by legally established organizations, activist networks and citizens' movements revolving around a common objective.

is quite original as compared to its Western equivalent. While Western tradition makes a clear distinction between civil society and political society, in the Indian context, "groups and organizations wedded to particularist ideological agendas consciously treat the spheres of civil and political society as complementary and interchangeable. Political practice results in a deliberate blurring of the distinctions between those two domains, and questions the assumed separation of organizational practices in civil society on the one hand, and the role of political parties, legislative activity, and elections on the other." (Robinson M., 2003: 358)[27].

In the course of this study, we shall limit ourselves to an examination of the initiatives taken by Indian civil society organizations that are directly related to the social and environmental regulation of companies.

Decline of Indian trade-unionism

As regards the civil regulation of companies, trade unions are undoubtedly a prominent actor, as their objective is to protect workers' interests by controlling corporate practices through various means. Today, of the ten largest national trade-union federations, four major federations are affiliated to political parties: Indian National Trade Union Congress (INTUC), to the Congress Party; All India Trade Union Congress (AITUC), to the Communist Party of India; Centre of Indian Trade Unions (CITU), to the Communist Party of India-Marxist; and Bharatiya Mazdoor Sangh (BMS), to the Bharatiya Janata Party. According to unverified figures provided by these ten federations, they represent a total of about nine million workers.

The earliest form of corporate regulation by Indian trade unions was the influence they had on public policies and the development of Indian labour laws. The proximity of large trade-union federations to major political parties allowed them to exert considerable influence until the mid 1970s. In fact, these political parties supported their respective trade unions mainly to develop their voter-bank among industrial workers. In return, trade union leaders used political

[27] The argument of Robinson is not to question the theoretical differentiation between civil society and political society (Chatterjee, 2003), but to underline the fact that Indian civil society organizations also operate at the interstices of political and civil society.

parties as an institutional channel to convey their demands to government agencies. In addition, the influence of public sector enterprises in Indian industry facilitated the organization of workers on a massive scale and the number of registered trade unions rose from 3,522 in 1950 to 29,438 in 1975 (Bhattacherjee, 1999: 43).

In the context of the mixed economy model prevailing in India until the 1980s, trade unions participated in corporate regulation by taking part in national and centralized negotiations among the government, large trade-union federations and industrialists' associations. However, the state's predominant role in monitoring wages and working conditions as well as the increasing fragmentation of trade unions along political lines limited their influence within companies. In addition, the proclamation of a state of emergency by Indira Gandhi between 1975 and 1977 marked a break in the history of trade-unionism as their rights were suspended during this period. Later, their influence continued to decline – except in the case of issues related to the mechanization and privatization of the public sector and reform of labour laws (Bhattacherjee, 2001). Thus, with the progressive liberalization of the economy and the consequent withdrawal of the state, the role of trade unions changed from one of proactive stakeholders in a Welfare State to a defensive role of limiting layoffs by consenting to voluntary retirement schemes as a means of avoiding, at least for the time being, the shut-down of public and private sector factories considered to be insufficiently profitable.

A second type of civil regulation of companies by trade unions occurs within the company itself through collective bargaining. In the organized sector, particularly the industrial sector, representatives of trade unions and industrialists meet at regular intervals to negotiate issues like productivity and changes in wages and working conditions. However, the presence of trade unions at these meetings does not reflect their strength in the factory, because employers often negotiate only with the more cooperative unions – or the ones whose leaders are more corruptible. Further, the severe fragmentation of the trade union scene in India is also tangible at the company level, with struggles between competing unions to attract members, which tend to be considered as a vote-bank because of the links between trade unions and political parties. As a national-level trade-union leader explains, "Another issue, which started in the early '70s, is that a large portion of the trade union energy has been focused on poaching

each other's union members. National federations forget about solving grass-root issues and focus on membership. And the grass-root issues - they thought they could sort them out in the corridors of power."[28] Thus, regular meetings between trade-union representatives and the company management maintain a dialogue between workers and employers, but it does not mean that workers have a significant influence on the company's management.

Thirdly, trade unions contribute to regulate companies in case of individual or collective disputes. When such a dispute arises, the trade union concerned first lodges a complaint with the Labour Department. The Labour Welfare Officer then contacts the employer and asks him/her to regularize the situation. If the latter refuses to take any action, the official handling the case starts a conciliation process, which is a tripartite dialogue among the government, the trade union and the employer, in order to arrive at a compromise. If these negotiations fail, the Labour Commissioner, who is higher up in the official hierarchy, takes note of the failure of the conciliation process and sends the file to the Secretary of the Labour Department, and then to the Labour Ministry (at the State level). If more than a year elapses since the inception of the dispute, which is usually the case, the Ministry has to ask the courts to accept the file. At this stage, the Labour Ministry sends the file to the Labour Court in the case of individual disputes and directly to the Industrial Relations Court in the case of collective disputes. Then, if the employer goes in appeal at every level, the case is referred to the High Court for a first judgment and then again for a second judgment before finally going to the Supreme Court. In this long process, the trade union's role is to represent its members all through the judicial process, use its political network to move the file and, in some cases, mobilize the workers to go on strike. However, when a legal resolution is involved, the trade unions' ability to effectively regulate companies is quite limited. Firstly, companies generally have at their disposal more resources for bribing Labour Department officials at various levels, so that several years can elapse before the case reaches the court. Secondly, as mentioned above, the administration and the judiciary have tended to favour employers for the past twenty years or so, thereby increasing the possibility of adverse judgments at various levels of the judicial process. Thus, it can take more than fifteen years for a case to be closed and the cost for the

[28] Interview with an office-bearer of the *New Trade Union Initiative* on 23/04/2008.

plaintiffs in terms of lawyers' fees and bribes added to the high level of uncertainty about the outcome, can act as a deterrent. In other words, the whole system discourages workers and trade unions from lodging a complaint and pursuing the matter to the end.

Lastly, trade unions can exert pressure on companies through social conflicts and protest movements: demonstrations, strikes, pickets, hunger strikes, etc. From this perspective, the period 1965-1974 was the golden age of trade unionism. Due to an economic slowdown and high inflation, there was a decrease of industrial production and the rate of job creation fell from 2.2 per cent in 1967-69 to 1.8 per cent in 1974-79. As a reaction to the tightening of the labour market, there was a significant increase in the number of social conflicts during this period, with numerous cases of violent repression of protesting unions. Following the suspension of the right to strike during the state of emergency between 1975 and 1977 and after a brief return to the earlier situation, there was an almost continual decrease in the number of strikes and lockouts (see **Figure 2**). This trend can be explained to a large extent by a diminishing ability of trade unions to mobilize their members to engage in costly social conflicts fraught with risks for the workers.

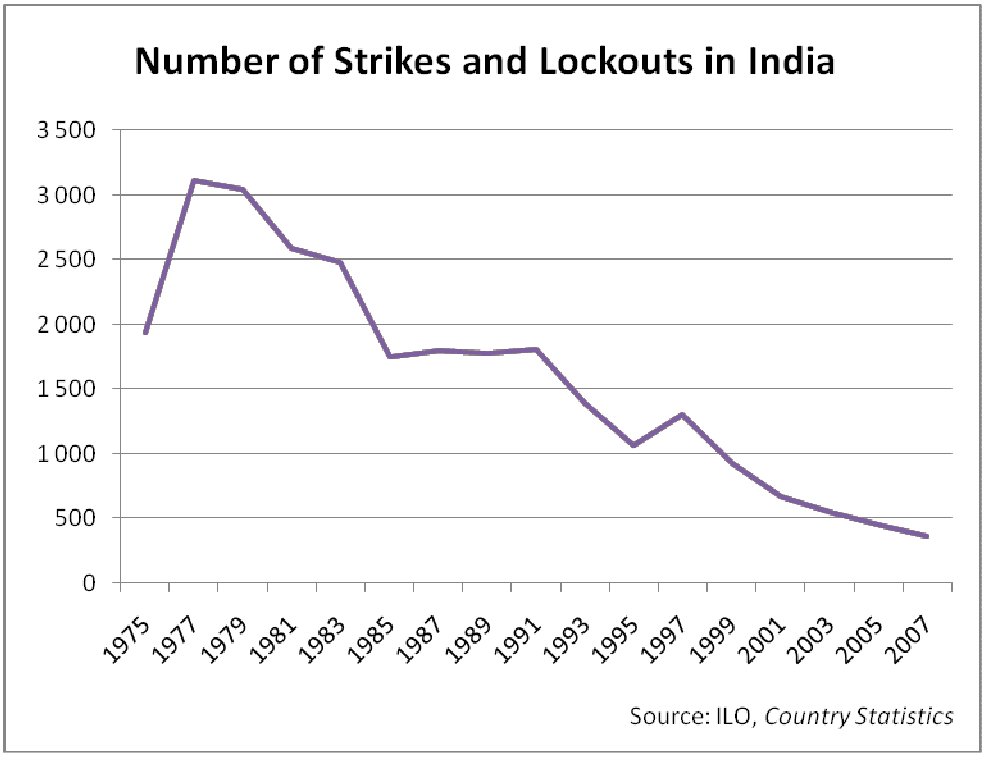

Figure 2: Number of Strikes and Lockouts in India

Several factors are responsible for the crisis in trade unionism. As for exogenous factors, the transformation of Indian capitalism, as described earlier, has weakened the workers' position. On one hand, the restructuring of companies, the introduction of 'voluntary' retirement schemes that are often imposed on the employees, and the growing use of temporary workers, increase the insecurity of employment in Indian industry. Under these circumstances, the fear of losing their jobs deters workers from resorting to collective action. On the other hand, while the government used to play an important role in supporting trade unions and was sensitive to workers' problems, its position vis-à-vis trade unions has become harsher during the last two decades as the latter came to be seen as an obstacle at a time when the States have been keen on creating a favourable climate for new investments. Hence, at the local level, the trade unions' proximity to political parties has become a lever in the hands of state governments for influencing union leaders and dissuading them from entering into conflict with industrialists. Finally, as far as the more leftist unions like AITUC and CITU are concerned, the dissolution of the Soviet Union in the early 1990s and, to a greater extent, the ideological crisis that is plaguing Communism in India, have weakened them considerably. An AITUC leader pointed out: "After the collapse of the Soviet Union, there was a lot of lethargy and disappointment in the Communist movement and the trade union movement. […] Previously, there were a lot of trade union classes among workers. In the Soviet Union, there were propagandists in trade unions. They used this term. In India also, there was this type of activity: 'We are not only for small changes, we are here to change the system'. AITUC union's motive was to bring socialism. Nowadays, it is lacking. […] Some trade union leaders are very close to the management. They are treated as employees of the factory. Management is paying some money to the trade union leaders. Due to this, trade union leaders are very soft. They are losing their credibility. There is a lot of such type of trade union leaders. They become professional leaders, and they tell good bye to Marxism and Leninism."[29]

Finding itself at a disadvantage as a result of these exogenous changes, the Indian trade union movement is also weakened from within. As it can be gathered from the interview quoted above, trade union leaders are often bought over by the company management.

[29] Interviewed on 26/11/2008.

Understandably, it is difficult to quantify these underhand practices, but interviews with several union leaders and company managers have confirmed the prevalence of this practice. As a senior union leader pointed out, "Every trade unionist receives offers from companies all the time. So we have to be careful. It is not always an envelope. It starts with a car to bring you to a meeting, the company paying a hotel bill, or inviting you for a meeting in a nice restaurant. If the person accepts these small offers, the company will know that it can propose more and bribe the trade unionist. So yes, it is a widespread phenomenon, but it is difficult to quantify."[30] In addition, a fall in the rate of unionism (presently about 7.5 per cent in the organized sector and almost non-existent in the informal sector) has fuelled the competition between unions to attract new members (Cadland, 2007: 33). This trend hampers the ability of workers to negotiate collectively and in a united manner as the management exploits the existence of several unions to play them off each other.

Although civil corporate regulation by trade unions has weakened, it is necessary to take note of two recent developments. On one hand, the more left-leaning unions have been trying for some years to increase their presence in factories by organizing workers in the informal sector. Their task is long and difficult because employers can easily nip in the bud all such efforts to unionize their workers by asking their labour contractors to get rid of the more unruly elements. On the other hand, organizations like the New Trade Union Initiative (NTUI) working for the reunification of leftist unions incite union leaders to distance themselves from political parties so as to refocus their action on protecting workers' interests.

Indian civil society and globalization

As opposed to the decline of trade unionism, there has been an upsurge of initiatives on the part of Indian civil society organizations (CSOs) to monitor corporate activities and regulate them more strictly. Since the time India became independent, civil society organizations tend to concentrate mainly on the government's failure to fulfill the goals of national development and social justice, either by advocating for policy changes or by trying to compensate the State's failure in delivering welfare. However, new problems cropped up in the 1970s, particularly in

[30] Interview in 2008 with a union leader wanting to remain totally anonymous.

the domain of ecology, human rights and discrimination against women and lower castes. After the economic reforms of the 1980-90 decades, the state's disengagement, and the opening of the Indian economy to globalization, private companies and the relationship between the market and the state became a new area of contestation. Thus, civil society became a crucial space for negotiation between citizens, the market and the state (Tandon, Mohanty, 2002: 39-53).

From this point of view, the emergence of a civil regulation of companies goes back to the 1970s and the launch of the *Chipko* movement which brought together several non-violent movements to resist the felling of forests in hill regions for commerce and industry. The first wave of protests occurred in the Alakananda valley (Uttarakhand) in April 1973 and later spread to other North Indian states, especially Uttar Pradesh, as well as the Western Ghats on the border between Kerala and Tamil Nadu. In many respects, the Chipko movement marks the beginning of a civil corporate regulation by agencies other than trade unions. It brought together, for the first time, people affected by an industry in a protest movement targeting both companies and the government. It also established a link between environmental protection and people's socio-economic rights, beyond the issue of conserving the country's biodiversity. Finally, the movement became sufficiently widespread to lead to more stringent public regulation: in 1980, in the aftermath of this movement, Prime Minister Indira Gandhi passed a new law for the protection of forests and issued an order banning the commercial exploitation of forests in many Himalayan regions for a period of fifteen years.

Shortly afterwards, another protest movement grew around the Sardar Sarovar Dam Project (SSDP), which involved the construction of a large dam as part of an extensive project intended to control the River Narmada in order to irrigate four to five million hectares of agricultural lands, generate 2,700 megawatts of electricity and supply water for domestic and industrial use. The SSDP was to create a 410 km^2 reservoir, which would have displaced some 130,000 persons. In the early stages, the protests were supported by the Congress Party for political reasons and later by powerful NGOs like Oxfam and the Environmental Defense Fund. Thus, during the 1980s, several NGOs – both Indian and international – opposed the project and also took up the problems of the displacement of people, their rehabilitation and

compensation. In the late 1980s, the protests were crystallized with the setting up of the *Narmada Bachao Andolan*. Within a few years, the *Narmada Bachao Andolan* succeeded in getting several projects withdrawn by bilateral funding agencies (Japan and countries of the European Union), forcing the Indian government to terminate its contract with the World Bank and launching an international movement demanding the World Bank to stop funding the construction of big dams all over the world (Dwivedi, 1998: 148). In 1994, the *Narmada Bachao Andolan* approached the Supreme Court to dissolve the SSDP. The Supreme Court has issued several notifications since then (1994, 2000, 2005 and 2006), but the case has not yet been closed and the SSDP is still waiting for a political and judicial decision about its future.

The case of the *Narmada Bachao Andolan* marks a considerable advance in the civil regulation of enterprises. In organizational terms, this movement gave Indian CSOs the opportunity to integrate international networks and become part of the anti-globalization movement. In ideological terms, the CSOs involved moved from criticizing the shortcomings of the Welfare State to a radical questioning of the predominant development paradigm. This ideological stance has been confirmed on many occasions since then, as a vast constellation of organizations and citizens' initiatives have made anti-globalization one of the main pillars of their action, which seeks to defend the socio-economic and human rights of people affected by industrial and infrastructure projects – rights that, according to these organizations, are regularly disregarded in the name of 'development', allowing the economic and political élites to enrich themselves and increase their influence at the cost of the poor. The importance of the Indian anti-globalization movement became apparent during the World Social Forum in Mumbai in January 2004: according to popular estimates, based on articles in the press, this event brought together more than 100,000 participants, 85,000 of whom were Indians.

3.2 The Diversity of 'Civil Society': Strengths and Weaknesses of Civil Corporate Regulation

Diversity as strength: the variety of social action repertoires

Indian civil society involved in civil regulation of companies constitutes a very heterogeneous group. To some extent, this diversity has strengthened the civil, social and environmental regulation of companies as the variety of the social action repertoires (Tilly, 2006) mobilized by CSOs has enabled them to exert their influence at several relevant levels.

Firstly, there are a number of research centres and institutes in India whose aim is to put social and environmental issues linked with economic activities onto the political agenda. To begin with, these organizations finance and coordinate research and fact-finding missions. Once collected, this information is communicated to mainstream newspapers, magazines with a political commitment (Tehelka, Down To Earth, Civil Society, etc.) and academic circles, through reports or direct posts on the Internet. In terms of civil regulation, this activity constrains companies to the extent that it puts their operations under the scrutiny of the public eye. From this perspective, the adoption of the Right to Information (RTI) Act in 2005 has provided Indian citizens and CSOs with a very powerful tool for accessing information. This law allows citizens to obtain a copy of any administrative document on the basis of a simple application to the RTI Commission: information contained in land registers and documents related to land acquisition, data available in the SPCBs and even documents used by the MoEF as support to grant environmental approval. Actually, it was after the Bhopal tragedy in 1984 that several CSOs launched a campaign asking the government to pass such a law.

Even though information campaigns are directly aimed at companies, they also provide CSOs with arguments to exert pressure on the government for the improvement of standards, as well as the adoption of more effective regulatory mechanisms and public policies that would force companies to internalize their social and environmental externalities. CSOs regularly meet government officials, either informally to discuss problems in areas where they have some expertise or during public consultations, held before a bill is tabled in the Parliament. For example, an environmentalist commenting on the participation of CSOs in the framing of the

NEP 2006 told us, "We were about 100 groups protesting about this new policy because civil society had not been consulted, nor had we participated. The government took one more year, and we succeeded to improve the policy by adding new development parameters and issues into it."[31] However, according to several CSOs, they do not get the same kind of hearing from government officials as industrial lobbies. Regarding the new EIA notification, an activist commented, "The communities were given sixty days' time to respond to a notification which is posted in English on the website of the MoEF. So these people have absolutely no way of knowing that even such a law exists, that this law has been redrafted and that their comments are being sought. Secondly, before it came out for publication, the drafting process had the input of industries. The CII, the FICCI, all these people were actively consulted. And the notification was drafted so as to take their point of view into consideration. Then it was put up for sixty days for public consultation. Within the public consultation time, the MoEF did not organize one public meeting with community groups. […] See, in the redrafting phase again, the MoEF has gone back to the construction industries and other industries, and sought their inputs, although at that time, all public consultations were closed."[32]

Research centres and institutes generally work in close collaboration with other CSOs working at the grassroots level. For the latter, the aim is to directly assist people affected by some activities of companies through public meetings during which CSOs inform people about their rights, by organizing victims into local associations, putting these associations in contact with other CSOs, providing technical and legal assistance (for example by filing a PIL), or even organizing protests (demonstrations, marches to the capital, hunger strikes, etc.). Here too, civil regulation functions at different levels. On one hand, CSOs are able to exert pressure on the government and on elected representatives and prevent the administration from being too lenient with companies. On the other hand, thanks to the filing of PILs (see **Part 2**), CSOs can go to court to defend their rights, thus offsetting to some extent the weak enforcement of laws by the administration. As Bushan observes, "Even in developing countries where mandatory laws are poorly implemented, the very fact that such law exists allows people and NGOs to demand

[31] Interview with a member of *Toxics Link* on 07/07/2007.

[32] Interviewed on 08/10/2007.

action from the government or the judiciary if their lives are affected." (Bushan, 2005: 3) In cases where court judgments favour the plaintiffs, civil society initiatives strengthen the legal framework of social and environmental regulation through case law.

While some CSOs adopt a confrontational stance *vis-à-vis* companies, others approach the problem with the intention of building up a dialogue. Thus, some CSOs offer to help companies to improve their practices by framing policies for sustainable development, focusing on the social and environmental impact of their activity, setting up partnerships with specialized NGOs, or participating in initiatives like the Global Compact and the Global Reporting Initiative (see **Part 4**). Further, some CSOs work with companies to implement philanthropic initiatives and development projects, the degree of collaboration between the NGO and the company ranging from simple funding to setting up strategic partnerships, including the outsourcing of corporate social activities to NGOs.

Diversity as weakness: ideological, organizational and tactical divisions

Although the diversity of Indian civil society enriches the social action repertoires, it can also weaken civil corporate regulation. Even though CSOs constitute a dense network of activists, citizens' organizations, initiatives and people's movements, Indian civil society is beset with serious divisions that reduce the level of cooperation between various organizations.

The first difference is ideological. Many CSOs inspired by a Gandhian ideology seek to promote a development model based on the local village economy and self-reliance; solidarity with the most underprivileged; probity and the refusal to accept a materialistic society driven by mass consumption; respect for traditional Indian values and non-discrimination towards untouchables and lower castes – without questioning the relevance of the caste system. Firmly rooted in the Gandhian tradition of non-violence and pacific resistance, this group also tends to reject violent confrontation, preferring marches and peaceful demonstrations, hunger strikes or non-cooperation, but openness to dialogue. At the other end of the spectrum, a large number of CSOs subscribe to a Marxist ideology. Though they share some views with the Gandhian CSOs – like the importance of India being free from foreign political influence – they differ on a series of fundamental points. Firstly, this freedom is based on the rejection of "the imperialism of

capitalist powers" and they oppose the presence of foreign funding agencies and are critical of the pro-globalization economic reforms. Secondly, Marxist CSOs criticize the action of charitable NGOs and community development projects, which are seen as bolstering what they consider to be a destructive capitalist system. Thirdly, they reject the caste system, which is perceived as an obstacle to the unification of the "working classes" against the "exploitative capitalist élite". Finally, since they support class struggle, many of them favour direct confrontation, sometimes even a violent one, with a view to unite the oppressed social classes against their "oppressors".

Another issue that divides Indian civil society is organization and tactics. On one hand, there is a constellation of structured organizations such as NGOs, trusts, research centres and institutes engaged in social activism. Active in the field of civil corporate regulation, these CSOs have a legal structure and most of them act within the political and judicial system. Further, even though the discourses and objectives of these organizations may be radical, many of them are inclined to enter into a dialogue with companies and the government. On the other hand, there are a number of less structured CSOs, in the form of activist groups, people's movements or militant networks. These CSOs, which are generally more radical, are skeptical about entering into a dialogue with the government and especially with companies. At the extreme end of the spectrum, there are tens of thousands of tribals and landless farmers swelling the ranks of the Naxalites, who have taken up arms against companies and security forces – the government being seen as a puppet manipulated by predatory capitalism. Today, Maoist militia are estimated to comprise of 50,000 persons, while the number of sympathizers is not known. They are active in 14 states and more than 150 districts are affected by Naxalite violence (Chakravarti, 2007).

4 CSR AS AN INSTRUMENT OF SELF-REGULATION FOR COMPANIES

Being increasingly exposed to pressure from local stakeholders and CSOs, companies operating in India are faced with a dual challenge. First, they must make the most out of the advantages offered by the present economic and political environment to develop their activities and generate profits, while at the same time, maintaining an acceptable degree of social legitimacy in order to limit the costs of active civil regulation – bad reputation, time and costs involved in legal action, so on and so forth. Secondly, they have to ensure that government agencies continue to adopt a conciliatory attitude towards them and that their negative externalities do not justify the tightening of public regulation. In response to this dual challenge, Indian companies have recast their strategies and practices of corporate social responsibility (CSR) and sustainable development. What are the dynamics involved in the development of corporate self-regulation? Is this self-regulation an appropriate response to the growing pressure exerted by economic activity on society and its natural environment?

4.1 From Traditional Forms of Social Action towards Corporate Self-Regulation

Historic relations between traditional forms of social action and self-regulation

In India, corporate practices identifiable with CSR (that is, actions implemented by companies to further social good, beyond pure economic interests and compliance with legal obligations) date back to the emergence of big Indian companies at the end of the nineteenth century (Sundar, 2000). It should be kept in mind that traditionally trading communities in India played a particularly important social role, for instance, by funding temples, or helping rural communities in case of famines or other calamities. The first industrialist families like the Tatas, Birlas or Bajajs followed this tradition by financing irrigation projects, building schools and dispensaries, etc. Though some writers make a distinction between these philanthropic

practices and CSR in the strict sense (Gupta, 2005), we have decided to treat philanthropic actions as an integral part of the 'traditional' forms of CSR, in consonance with what big Indian companies treat and describe as being their social responsibilities. A second phase, which lasted from 1914 to the early 1960s, was strongly marked by the struggle for independence and the Gandhian notion of 'trusteeship'. In fact, the leading capitalist families saw in India's social development a means of encouraging its independence as well as contributing to the emergence of a domestic market. Thus, many companies were inspired by Gandhi's development programme and took part in setting up schools, training-centres, research institutes and hospitals. In addition, big Indian companies developed during this period a paternalist management style, which was similar to the European model of voluntary patronage (Hommel, 2006: 32). In brief, it meant providing infrastructure and basic services to workers and their families in the form of housing, access to water, health care and children's education. Here too, the influence of Gandhi's philosophy is evident as Gandhi promoted the idea of family-based, or even symbiotic industrial relations between employers and their employees – the employer being explicitly treated as a father and the workers as children (Cadland, 2007: 25-26).

As we have seen earlier, in 1956 Jawaharlal Nehru opted for a mixed economy with tight government control over the private sector. The close relationship between the government and industrialists was facilitated by the structure of Indian capitalism, in which the major portion of industrial production was concentrated in the hands of a few leading families belonging to prominent business communities (Parsis, Baniyas, Gujaratis, Marwaris, Jains and Chettiars) (Dorin *et. al.*, 2000). This context corresponds with a third phase in the history of CSR. As the state had opted to involve industrialists in its national development policy, voluntary paternalism and local initiatives gave way, to some degree, to public policies. Moreover, the strict control of economic activity by the state drove entrepreneurs to devise strategies to bypass rules and disregard the constraints of the *License Raj*. This contributed to tarnish the reputation of business communities and put 'negative' practices on the Indian CSR agenda (Chahoud *et. al.*, 2007: 27).

Although paternalism and corporate contribution to nation-building lost their significance over the years and a new development strategy emerged during the period 1980-90, philanthropic initiatives and community development remained predominant in CSR in India. In fact, the problems of extreme poverty and the failure of the Welfare State to provide local infrastructure still persist (Guruswamy, Abraham, 2006), so that village communities located in the vicinity of production sites continue to expect assistance from companies in these areas. Further, the continuation of traditional CSR practices by Indian companies can be explained with the help of the notion of path dependency (Nelson, Winter, 1982): the understanding that companies have of their social responsibilities; their relations with their stakeholders; as well as the internal structures they have set up, all of which contribute to inducing a certain amount of inertia.

Increasing but limited integration of CSR self-regulatory mechanisms by Indian companies

In the early 1990s, despite the inertia mentioned above, India entered the fourth phase of the development of CSR with the progressive spread of more 'contemporary' forms of CSR (that is, matching global benchmarks), combining self-regulation, systematic management of stakeholders and integration of sustainable development parameters in production processes and commercial activities – aiming at strategic synergies between commercial and collective interests. Several elements explain the spread of new forms of CSR.

First, the evolution of CSR strategies and practices is a response of Indian companies to new social and environmental challenges, as well as to changing expectations from society (**Parts 1** and **3**). Today, companies are experiencing increasing protests and information campaigns denouncing the negative externalities they impose on society. Since communities situated at the periphery of their production sites are now more educated and aware of their rights, local tensions have increased. Thus, companies have to adapt their CSR strategies to this new context in order to maintain their social legitimacy and improve the control they have on their social environment. Moreover, the opening up of the Indian economy, the integration of some SMEs within international value-chains and the internationalization of large Indian

companies increase their exposure to new practices of corporate governance, which include a CSR dimension.

Secondly, we have recently witnessed the development of a market for CSR[33], where prescribing agents develop a wide range of incentives in order to promote new CSR approaches. As for employers' associations, both the Confederation of Indian Industries (CII) and the Federation of Indian Chambers of Commerce and Industry (FICCI) have a dedicated division for CSR and sustainable development. The statement made by an official of the CII-ITC Centre of Excellence for Sustainable Development (CESD) illustrates the aim of these organizations: "Our goal is to make Indian industries become eco-efficient. This covers a broad field with issues like solid waste management, mining techniques, norms and management systems like SA 8000 for social issues and ISO 14001 for environmental issues, Environment Health and Safety, and CSR. At the CESD, we developed a sustainability framework, which was created with the companies. Here in India, CSR has long been seen as doing philanthropic missions. With this framework, we try to convince industries that CSR is not philanthropy. […] We want to convince companies that CSR can bring a win-win situation."[34] For this purpose, the three Indian employers' associations, CII, FICCI and ASSOCHAM (Associated Chambers of Commerce and Industry), regularly organize conferences, international summits and meetings with company representatives that provide an opportunity to promote the use of CSR practices in line with the global benchmarks. Finally, every year, CII and FICCI give CSR awards to reward the most efficient and innovative companies in this domain and encourage others to emulate them.

The Indian government is equally active in promoting new forms of CSR through the Ministry of Corporate Affairs (MCA). In October 2008, for instance, the MCA started developing voluntary CSR guidelines for Indian as well as foreign subsidiaries operating on Indian Territory. A Director in the MCA explained, "Since CSR should be voluntary, since only the management of a company can decide if the company should adopt CSR or not, the Government can only incite the companies, encourage them, upskill them. […]We have instances where local communities

[33] Regarding the links between the promotion of CSR and corporate practices, see: Acquier, Gond, 2006.

[34] Interviewed on 25/07/2007.

have raised issues, and sometimes have strongly opposed industrial projects. The now very famous case of the Nano project is a good example. We also realize that the government alone is not equipped to solve the social problems like education, health, local infrastructure, etc., on its own. We need the business sector to work with us, so as to make sure that the benefits of development reach the bottom of the pyramid. The whole interest in CSR is emanating from this concern only."[35]

Finally, as far as CSOs are concerned, many of them are actively promoting CSR in India. The Energy and Resources Institute (TERI), for example, has set up a Business Council for Sustainable Development. Every year, it gives Corporate Awards for Environmental Excellence, Corporate Awards for Corporate Social Responsibility, and since 2007, the Corporate Award for Business Response to HIV/AIDS. To cite another example, the Centre for Science and Environment (CSE) has conducted operations in several sectors to classify companies on the basis of their environmental management. This classification, which requires the cooperation of companies, makes it possible to reward the most efficient companies and incite others to improve their practices. Finally, several civil society organizations work with companies and government agencies to specifically promote more progressive CSR practices so as to resolve concrete social problems related to their activities (see **Part 3**).

In this context, Indian companies are increasingly adopting self-regulatory forms of CSR. In fact, 190 out of 1200 SA 8000 (a social certification norm) certified companies are Indian.[36] In addition, the number of IS0 14001 (an environmental certification norm) certified companies in India rose from 257 in 2000 to 1,698 in 2005.[37] As for international CSR initiatives, 150 Indian companies out of a total of 5,042 were members of the Global Compact in 2008.[38] The same

[35] Interviewed on 11/12/2008.

[36] See: http://www.sa-intl.org/

[37] See: http://www.iso.org/iso/fr/iso_14000_essentials

[38] See: http://www.unglobalcompact.org/

year, nine out of 25 Indian companies putting out an annual report on sustainable development followed the procedure set by the Global Reporting Initiative (GRI)[39].

4.2 Limitations and Dangers of Using CSR as a Tool for Social and Environmental Regulation

CSR: a tool with limited scope for development and self-regulation

As we have seen earlier, India is marked by the predominance of traditional forms of CSR, representing the company's contribution to the country's economic and social development, apart from its core business activities. Generally, companies justify these social actions with a principle of reciprocity: giving back to society what it has given the company (education, civil tranquility, so on and so forth). Beyond these kinds of standard and discursive justifications, companies are actually exposed to a variety of pressures from their local stakeholders. Hence, development initiatives are often voluntary only in appearance; for the company, it is a matter of safeguarding its social legitimacy necessary for maintaining cordial relations with the surrounding communities instead of entering into a confrontation, which might cost them dearly. In other words, the company is often obliged by external pressures to contribute to local development, in order to "compensate" for pollution and the use of natural resources (agricultural land, water, etc.), as well as to maintain good relations with government agencies and local elected representatives who pressurize the company to satisfy their constituency.

If we confine ourselves to a macro-level analysis, it seems that the contribution of the traditional forms of CSR to the country's economic and social development is quite marginal. In fact, with the exception of companies dependent on the proximity of mineral resources (cement, steel industry, mining), the activities of most Indian companies are concentrated in industrial zones or near major logistical hubs (Chakravorty, Lall, 2007). Thus, while problems of extreme poverty and lack of local infrastructure mainly affect rural areas or slums in big cities,

[39] See: http://www.globalreporting.org

development initiatives in the proximity of production sites cover only a small part of the territory. In addition, when companies concentrate their social action in adjoining areas, they are not always in a position to compensate for the negative socio-economic impact of their activities on the local population.[40] The construction of a classroom in a village, for instance, the installation of a few water-pumps or the organization of an annual medical camp cannot always compensate for the loss of income caused by the acquisition of agricultural lands, the drying of wells and tanks or the exposure of villagers to enhanced pollution which has long-term effects on their health (noxious fumes, suspended particles, toxic effluents in streams, so on and so forth).

There are, in addition, other problems such as the concrete impact of social actions initiated by companies. In most cases, corporate initiatives do not necessarily address the most urgent needs of the local population. Companies prefer visible actions that can be easily valued in their communication reports. Typically, they will build a classroom with a board bearing the company's name hanging at the door, even though what the village needs badly is not an extra classroom but trained teachers. Further, rather than conducting a study of the villagers' requirements, they generally allow the *sarpanch*, or president of the village council, to decide what is to be done. The *sarpanch* often has a prejudiced view of the villagers' priorities or seeks to promote his/her own interests. For example, s/he is likely to give preference to the construction of infrastructure as the construction contract could then be given to a friend, or s/he may overcharge the company and pocket the difference. Moreover, companies tend to prefer sporadic charitable actions, which increase the villagers' dependence on the company, instead of adopting an integrated and participative approach to local development, which would allow it to deal with problems in a structured manner and strengthen local capabilities. Finally, it usually happens that the activities described in the company's publications do not correspond with the ground reality: the dispensary turns out to be just a room without any medical equipment, the doctor (without a medical degree) shows up only once or twice a month, the money sanctioned for the project is embezzled or sometimes activities that no longer exist still figure in the company's reports.

[40] On this subject, also see: Newell, 2005.

It is, however, necessary to point out that the limitations mentioned above do not refer to all companies; there are also initiatives that have a considerable local impact. In addition, it has been observed during the last few years that the more committed companies tend to improve their approach to local development by adopting more integrated and participative methods, as well as by focusing on local needs and using the expertise of specialized NGOs in the framework of partnerships.

Regarding the self-regulatory aspect of CSR, it may be pointed out that it too has had a relatively limited impact. Though an increasing number of Indian companies are seeking social and environmental certifications, their number is still marginal as compared to the total number of companies. Furthermore, certification by private bodies is largely confined to large companies or 1st to 2nd tier subcontractors, who are also the ones most exposed to public pressure and legal supervision by the state. Furthermore, the concrete improvements of social and environmental practices induced by private certifications vary considerably depending on the seriousness of the management's attitude to the problem. Let us take the example of ISO 14001 certification: it does not evaluate the company's impact on the environment, but rather the procedures in place to manage this impact. Thus, as long as the company can show that it is making progress in setting up these procedures, it can take shelter under the certification. An activist explains, "Suppose I say 'you are polluting,' the company can reply 'no, I am IS0 14001'. The answer is not what answers the question. Being ISO 14001 does not mean one is not polluting. It is mere documentation. ISO 14001 is there to ensure that the company's documentation is good."[41] The limited impact of self-regulation also applies to the Global Compact initiative: apart from the absence of control mechanisms and sanctions, which has already been widely criticized, most Indian member companies are not really involved and there has been no significant change in their approach to CSR after becoming a part of the initiative (Chahoud *et al.*, 2007). On a more general level, Newel observes: "A significant limitation of many existing CSR approaches is that while they may encourage 'responsible' business to go 'beyond compliance', they provide few checks and balances on the operations of

[41] Interviewed on 08/10/2007.

'irresponsible' businesses, for which strategies of regulation, sanction and protest continue to be key drivers of change." (Newell, 2005: 542).

Will CSR lead to privatization of public affairs management?

Apart from its limited impact, the very principle of CSR, as embodied in the actions of companies, poses problems on several counts. Firstly, the contribution of companies to the local development of neighbouring communities puts the latter in the position of beneficiaries, which, under certain circumstances, hampers their ability to make political demands based on the sharing of local resources and the protection of their fundamental rights (Newell, 2005: 547). Secondly, CSR is used by companies and employers' associations to convince the government not to subject them to a restrictive regulation, their argument being that thanks to CSR, companies are in a better position to optimize, both locally and internally, the balance between their economic performance, social justice and environmental protection (for example, the notion of triple bottom line). So, once CSR pacifies public opinion through information – and sometimes misinformation – campaigns, the government might no longer be interested in adopting restrictive regulatory measures, whose implementation is costly and which can bring down the performance of the national economy. Though the development of CSR can strengthen, wherever possible, the synergy between a company's business interests and society's welfare, it cannot compensate for the shortcomings in public regulation, nor can it provide a solution when there is a conflict between the interests of the company and those of its stakeholders.

In more fundamental terms, numerous civil society organizations have drawn attention to the political dangers of CSR. In fact, in the Indian context, marked by an inefficient Welfare State and a certain nexus between companies and government bodies (Mazumdar, 2008), CSR blurs the boundaries between private companies and public affairs management - the latter being political by nature. In other words, while it is in their nature to pursue their private interests (in fact, it is even a legal requirement of the corporate law), and since they have no

democratic legitimacy, there is a danger that companies may use CSR to subordinate the protection of collective interests to their own economic and commercial performance.

CONCLUSION

After studying the structures and dynamics of the social and environmental regulation of companies in India, we have drawn two major inferences. First, the changes in the country's development strategy and the underlying transformation of Indian corporate capitalism have led to a reconfiguration of the relationships among companies, the state and society. By assigning to private companies the role of primary agents of the country's development, which is understood as being based on economic growth, the state tries to relax the restrictions on the companies' competitiveness and expansion. From a strict regulatory framework, defining what is allowed and what is not, there has been a shift towards a concerted management of the social and environmental costs of companies' activities. In order to maintain social cohesion, the state is adopting compensatory measures whenever its legitimacy, or that of the companies, is seriously challenged. In response, the civil society, traditionally critical of the state's shortcomings, has strengthened its initiatives for directly influencing the behaviour of companies. Denouncing the collusion between private companies and government agencies, it advocates the reinforcement of public regulation and tries to make companies take their social and environmental responsibilities into account. In this context, companies have to perform on two contradictory fronts: they have to take advantage of an investor-friendly climate in order to increase their market shares and maximize their profits in an increasingly competitive market, which means that they have to compress and/or externalize their costs; while at the same time, they have to look after declining social legitimacy and growing pressure to become more responsible, which means they have to internalize their social and environmental costs. As a result, companies have started recasting their CSR strategies during the last few years to be able to respond more effectively to the demands of their stakeholders, improve their reputation and avoid the tightening of public regulation by adopting soft self-regulatory measures.

This leads us to our second inference: in the present configuration of balances of power between the various actors involved, short-term private interests (financial interests of investors, but also electoral interests of political parties and personal interests of corrupted

public servants) seem to take precedence over the preservation of social and environmental equilibria, which can lead to increasingly violent conflicts triggered by the negative externalities of companies (for example, the rise of Naxalite militia). This risk calls for a new social compromise on contemporary Indian corporate capitalism, based on a more equitable distribution of the costs and benefits of economic activity. Thus, to our mind, such a compromise requires not only the development of CSR but primarily the consolidation of Indian democracy so that democratic institutions are able to safeguard collective interests wherever they are endangered by the pursuit of short-term private interests.

BIBLIOGRAPHY

- ***Academic Publications***

Acharyya, R. 2006. Trade Liberalization, Poverty, and Income Inequality in India. *INRM Policy Brief* No. 10. New Delhi: Asian Development Bank.

Acquiera, A., Gond J-P. 2006. Les enjeux théoriques de la marchandisation de la responsabilité sociale de l'entreprise. *Gestion* 31(2): 83-91.

Ahsan, A., Pages, C. 2007. Are All Labor Regulations Equal? Assessing the Effects of Job Security, Labor Disputes and Contract Labor Laws in India. *SP Discussion Paper*, No.0713, World Bank.

Banerjee, D. 2005. *Globalization, Industrial Restructuring and Labour Standards*. New Delhi: Sage Publications.

Bhattacherjee, D. 1999. Organized Labor and Economic Liberalization in India: Past, Present, and Future. *ILO Discussion Paper* DP/105/1999.

Bhattacherjee, D. 2001. The evolution of Indian industrial relations: a comparative perspective. *Industrial Relations Journal* 32(3): 244-263.

Bushan, C. 2005. Strategic Planning Workshop – Comments on the editorial. *Copenhagen Business School*.

Cadland, C. 2007. *Labor, Democratization and Development in India and Pakistan.* New York: Routledge.

Chahoud, T. *et al.* 2007. *Corporate Social and Environmental Responsibility in India – Assessing the UN Global Compact's Role*. Bonn: Deutsches Institut für Entwicklungspolitik.

Chakravarti, P. S. 2007. *Red Sun.* New Delhi: Penguin Books.

Chakravorty, S., Lall, S. V. 2007. *Made in India*. New Delhi: Oxford University Press.

Chandhoke, N. 1995. *State and Civil Society: Exploration in Political Theory*. New Delhi: Sage Publications.

Chatterjee, P. 2003. Beyond the Nation? Or Within?. In *Civil Society and Democrac: a Reader*, edited by C. M. Elliott. New Delhi: Oxford University Press.

Curmally, A. 2002. Environmental governance and regulation in India. In *India Infrastructure Report.* New Delhi: Oxford University Press.

Dorin, B. *et al.* 2000. *Le patronat en Inde*. New Delhi: Centre de Sciences Humaines.

Dwivedi, R. 1998. Resisting Dams and "Development": Contemporary Significance of the Campaign against the Narmada Projects in India. *European Journal of Development Research* 10(2).

Eckerman, I. 2005. *The Bhopal Saga.* Hyderabad: Universities Press.

Friedberg, E. 1993. *Le pouvoir et la règle.* Paris: Seuil.

Gupta, D. 2005. Corporate Responsibility. *Seminar* No.545 (January 2005).

Guruswamy, M., Abraham, R. J. 2006. Redefining the poverty line in India. *Public Policy Research* 13(3).

Hommel, T. 2006. Paternalisme et RSE : continuités et discontinuités de deux modes d'organisation industrielle. *Entreprises et Histoire* No.45.

Jenkins, R. 1999. *Democratic Politics and Economic Reform in India*. Cambridge: Cambridge University Press.

Lele, S. 2007. Draft NEP 2004: a flawed vision. *Seminar*, 4 December.

Luce, E. 2006. *In Spite of the Gods.* London: Little Brown.

Mazumdar, S. 2008. Crony Capitalism and India: Before and After Liberalization. *ISID Working Paper* No. 2008/04.

Mahapatra, L. K. 1999. Testing the Risks and Reconstruction Model on India's Resettlement Experiences. In *The Economics of Involuntary Resettlement: Questions and Challenges*, edited by Michael Cernea. Washington DC: World Bank.

Menon, M., Kohli, K. 2007. Environmental Decision-Making: Whose Agenda?. *Economic & Political Weekly* 42(26).

Nelson, R., Winter, S. 1982. *An Evolutionary Theory of Economic Change.* Cambridge: Harvard University Press.

Newell, P. 2005. Citizenship, accountability and community: the limits of the CSR agenda. *International Affairs* 81(2): 541-557.

Pal, P., Ghosh, J. 2007. Inequality in India: a Survey of Recent Trends. *Economic and Social Affairs*, DESA Working Paper No.45.

Panagariya, A. 2008. *India – The Emerging Giant*. New Delhi: Oxford University Press.

Panth, P., Shastri, R.A. 2008. Patterns of Pollution Compliance. In *Corporate Accountability and Sustainable Development* edited by P. Utting, J. Clapp. New Delhi: Oxford University Press.

Papola, T. S. *et al.* 2008. Labour Regulation and its Impact. *Labour Regulation in Indian Industry* 3. New Delhi: ISDS.

Rao, V. M. 2007. Making Safety Nets Effective for Hardcore Poor. *Economic & Political Weekly* 42(33).

Reed, D. 2004. Corporate Governance Reforms in Developing Countries. In *Corporate Governance, Economic Reforms and Development* by D. Reed, S. Mukherjee. New Delhi: Oxford University Press.

Reed, A.M., Reed, D. 2004. Corporate Governance in India. In *Corporate Governance, Economic Reforms and Development.* New Delhi: Oxford University Press.

Reynaud, J-D. 1989. *Les Règles du jeu : L'action collective et la régulation sociale.* Paris: Armand Colin.

Robinson, C. 2003. *Risks and Rights –The Causes, Consequences and Challenges of Development-Induced Displacement*. Washington DC: The Brookings Institution.

Robinson, M. 2003. Civil Society and Ideological Contestation in India. In *Civil Society and Democracy – a Reader* by C. M. Elliot. New Delhi: Oxford University Press.

Roy, S. 2008. Structural Change in Employment in India since 1980s. *ISID Working Paper* No.2008/05.

R.U.P.E. 2004. Where are Corporate Profits Coming From?. *Aspects of India's Economy* Nos.36 & 37.

Singh, J. 2008. Tight Rope Walk at Tata Steel: Balancing Profits and CSR. *South Asian Journal of Management* 15(1).

Stern, N. 2006. *The economics of climate change.* Cambridge: Cambridge University Press.

Sundar, P. 2000. *Beyond Business: from Merchant Charity to Corporate Citizenship*. New Delhi: Tata McGraw-Hill.
Tandon, R., Mohanty, R. 2002. *Civil Society and Governance.* New Delhi: Pria.

Thakur, C. P. 2008. Labour Policy and Legal Framework in India. In *Labour Regulation in Indian Industry* n°1, edited by T. S. Papola. New Delhi: Institute for Studies in Industrial Development.

Thorat, S., Attewell, P. 2007. The Legacy of Social Exclusion. *Economic & Political Weekly* 42(41).

Tilly, C. 2006. *Regimes and Repertoires*. Chicago: University of Chicago Press.

- ***Reports & Legal Documents***

Baskin, J. 2005. Corporate Responsibility Practices of Emerging Market Companies. *Working Papers on International Investment,* No.2005/3. Organisation for Economic Cooperation and Development Economique.

Bhushan *et al.* 2005. *Concrete Facts – The Lifecycle of the Indian Cement Industry*. New Delhi: Centre for Science and Environment.

Bhushan, C., Hazra, M. Z. 2008. Rich Lands, Poor People – Is 'Sustainable' Mining Possible?. *State of India's Environment*, No.6. New Delhi: Centre for Science and Environment.

CSE. 2006. CSE Draft Dossier – Health and Environment. New Delhi: Centre for Science and Environment.

Drèze, J., Khera, R. 2009. The Battle for Employment Guarantee. *Frontline* 26(1).

Earth Trend. 2003. *Biodiversity and Protected Areas – India.* Country Profile.

Government of India. 1948. *Industrial Policy Resolution.*

Government of India. 1956. *The industrial policy resolution*. Government of India Press.

Green Peace. 2007. *Hiding Behind the Poor.*

Kumar, A., Pastore, P. 2006. *Toying with Toxics.* Toxics Link.

Kumar, A. 2007. *Brushed with Toxics.* Toxics Link.

Ministry of Environment and Forests. 2006. *Report of the National Forest Commission.* Government of India.

Ministry of Environment and Forests. 2007. *Draft notification – Coastal Zone Management Notification 2007.*

NCEUS. 2007. *Report on Conditions of Work and Promotion of Livelihoods in the Unorganized Sector*. Dolphin Printo Graphics.

OECD. 2006. *Environmental Compliance and Enforcement in India: a Rapid Assessment.*

Prasad, D. M. 2008. Environmental Jurisprudence in India – the Role of Supreme Court. Published on-line by www.openbooklive.com on 28/07/2008.

SARDI. 1999. *Report of the Survey of Women Workers' Working Conditions in Industry.* New Delhi: SARDI.

Sen, I. 2006. Ground-clearing with the Salwa Judum. *Himal Southasian* (November 2006).

Srivastava, R. C. 2003. *Guidance and Awareness-Raising Material under new UNEP Mercury Programs – Indian Scenario*. Centre for Environment Pollution Monitoring and Mitigation.

TERI. 2006. *Looking Back to Change Track.* New Delhi: TERI Press.

The World Watch Institute. 2006. *State of the World Report.* Washington DC.

World Bank. 2007. *India – Strengthening Institutions for Sustainable Growth.* South-Asia Environment and Social Development Unit.

Other CSH Occasional Papers

BISWAS R., MARJIT S., MARIMOUTOU V., *Fiscal Federalism, State Lobbying and Discretionary Finance in India*, CSH Occasional Paper 23, New Delhi, 2008, 48p.

HUCHON A., TRICOT G., *Between Citizens and Institutions: The dynamics of the integration of Water Supply and Sanitation Services in Hyderabad*, CSH Occasional Paper 22, New Delhi, 2008, 135p.

MENON-CHOUDHURY D., SHUKLA P.R., HOURCADE J-CHARLES, MATHY S., *Aligning Development, Air Quality and Climate Policies for Multiple Dividends*, CSH Occasional Paper 21, New Delhi, 2007, 95p.

GRAVEL N., MUKHOPADHYAY A., *Is India better off today than 15 years ago? A robust multidimensional answer*, CSH Occasional Paper 20, New Delhi, 66p.

HENRY L., *Trade and Economic Arrangements Between India and South East Asia In the Context of Regional Construction and Globalisation*, CSH Occasional Paper 19, New Delhi, 138p.

CHAKRABORTY D., SENGUPTA D., *IBSAC (India, Brazil, South Africa, China): A Potential Developing Country Coalition in WTO Negotiations***,** CSH Occasional Paper 18, New Delhi, 2006, 162p.

DUPONT V., SRIDHARAN N. (eds.), *Peri-Urban Dynamics: Case studies in Chennai, Hyderabad and Mumbai*, CSH Occasional Paper 17, New Delhi, 2006, 109p.

EGRETEAU R., *Instability at the Gate: India's Troubled North-East and its External Connections*, CSH Occasional Paper 16, CSH/IFP, New Delhi, 2006, 165p.

OLIVEAU S., *Periurbanisation in Tamil Nadu: a quantitative approach*, CSH Occasional Paper 15, CSH/IFP, New Delhi, 2005, 90p.

DUPONT V.(ed.)**,** *Peri-urban dynamics: Population, Habitat and Environment on the Peripheries of Large Indian Metropolises. A review of concepts and general issues*, CSH Occasional Paper 14, New Delhi, 2005, 144p.

CHAISSE J., *Ensuring the Conformity of Domestic Law With World Trade Organisation Law. India as a Case* Study, CSH Occasional Paper 13, New Delhi, 2005, 188p.

GARG A., MENON-CHOUDHARY D., SHUKLA P.R., *Assessing Policy Choices for Managing SO2 Emissions from Indian Power* Sector, CSH Occasional Paper 12, New Delhi, 2005, 87p.

CHAPELET P., LEFEBVRE B., *Contextualising The Urban Healthcare System: Methodology for Building up a Geodatabase of Delhi's healthcare System*, CSH Occasional Paper 11, 2005, 135p.