

**Documents
on
Universal Periodic Review
Human Rights Report
India
(2008-2012)**

॥ न्यायस्तर प्रमाणं स्यात् ॥



NATIONAL LAW UNIVERSITY, DELHI
Sector-14, Dwarka, New Delhi-110078, India

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Universal Periodic Review
Human Rights Report
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Prof. (Dr.) Ranbir Singh
Vice Chancellor

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PREFACE

“The existence and validity of human rights are not written in the stars. The idea concerning the conduct of men toward each other and the desirable structure of the community have been conceived and taught by enlightened individuals in the course of history. Those ideals and convictions which resulted from historical experience, from the craving for beauty and harmony, have been readily accepted in theory by man – and at all times, have been trampled upon by the same people under the pressure of their animal instincts. A large part of history is therefore replete with the struggle for those human rights, an eternal struggle in which a final victory can never be won. But to tire in that struggle would mean the ruin of society”

Albert Einstein

The protection of basic human rights is one of the most pressing and elusive goals of the international community. Since the establishment of United Nations in 1945 and adoption of the Universal Declaration of Human Rights in 1948, there has been a rapid growth in international law mechanisms for the protection of human rights. There are nearly 100 universal and regional agreements regarding the protection of human rights to which a vast majority of nation States bind themselves today. Yet, the lingering effects of violence, disease, famine, and the destruction of economic and social infrastructure continue to violate human rights and increase the world's death toll.

The codification of human rights had been started over the centuries. In 1188 A.D., the Cortes, the feudal assembly of the Kingdom of Leon received confirmation of a series of rights, including right of the accused to a regular trial and their right to the inviolability of life, honour, home, and property from King Alfonso IX. In 1222, the Golden Bull of King Andrew II of Hungary guaranteed that no noble would be arrested or ruined without first being convicted in conformity with judicial procedure. In 1215 A.D. Magna Carta was accepted by King John at Runnymede. Clause 39 of Magna Carta says that no free man shall be taken or imprisoned or exiled or in any way destroyed except by the lawful judgment of his peers or (and) the law of the land. England secured the instruments like The English Petition of Rights, 1628 and the English Bill of Rights 1688 to improve rights of Englishmen. American Bill of Rights was passed in 1791 which was influenced by English documents and French philosophers under Rights of Man and of the Citizen Declaration of France in 1789. Justice V.R. Krishna Iyer says “The finest hour of humanity's modern history of human rights dawned when, overpowering Hitler's hordes and Nipponese hounds and their harshest and most horrendous savageries, fifty progressive, peace-seeking leaders of the planet adopted and signed on 26th June 1945 in San Francisco the Charter which founded the United Nations, the hallowed haven of the people of the earth”.

The purpose of publication of this compilation is to let the people get an insight into the perception which influenced my role as a Professor of Law about the importance of Universal Periodic Review as a tool of human right preserving instrument in India and around the world. Under the Universal Periodic Review (UPR), each member state is reviewed once every four years. The review is conducted by the UPR Working Group, which consists of all the members of the Human Rights Council. Each review is facilitated by a group of three council members representing a different region each, selected on a draw of lot basis. The set is referred to as the 'troika' which in India's case included Kuwait, Mexico and Mauritius. States are reviewed on the basis of the UN charter, UDHR and other UN human rights treaties to which the state is party to as well as other international commitments made by a state in the field of human rights. A review includes analysis of three reports: the national report (which is produced by state under review), Compilation of UN information (produced by OHCHR) and the Summary of stakeholders information (this report is compiled by the OHCHR on the basis of shadow reports submitted by NGOs, national human rights institutions, civil society organizations, academic sources and other regional organizations).

The idea to prepare the compilation is to make people aware about the importance of Universal Periodic Review in the domain of Human Rights and its status report submitted by India since the introduction of process of Universal Periodic Review in 2008. This compilation of documents includes basic information about Universal Periodic Review submitted by India in 2008 and 2012 along with Joint Stakeholders' Report to United Nations on Universal Periodic Review. The Report of Working Group on Human Rights in India has also been included stating an overview on Human Rights in India. This is a modest attempt to sensitize all the stakeholders against human rights challenges along with the challenges we face.

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About Universal Periodic Review

What is the 'Universal Periodic Review'?

The Universal Periodic Review (UPR) is a new mechanism that has been established under General Assembly *Resolution 60/251*, which created the Human Rights Council (the Council). The Resolution provides that the Council shall “undertake a universal periodic review, based on objective and reliable information, of the fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States; the review shall be a cooperative mechanism, based on an interactive dialogue, with the full involvement of the country concerned and with consideration given to its capacity-building needs; such a mechanism shall complement and not duplicate the work of treaty bodies”.¹ The Resolution does not set out the details of how the process will work but instead asks the Council to “develop the modalities and necessary time allocation for the universal periodic review mechanism within one year after the holding of its first session”.² At present, there is no information on how the process will be undertaken but below we explore some of the key issues and options that the Council could consider while developing the modalities of the process.

What are the objectives of the UPR?

The Commission on Human Rights (the Commission) had been criticised for selectivity and double standards in responding to the situation of human rights within countries. In response, the General Assembly created the new UPR mechanism under which *all* countries will be subject to a review. *Resolution 60/251* in paragraph 5 (e) sets out some of the objectives of the UPR. In addition to reviewing the fulfilment of each State of its human rights obligations and commitments, these include: universality of coverage and equal treatment of all States; a cooperative mechanism that gives consideration to a State's capacity-building needs; and complementing but not duplicating the work of treaty bodies. *Resolution 60/251* also details some other guidelines for the work of the Council, which will also be relevant for the UPR mechanism. The Resolution provides that the “work of the Council shall be guided by the principles of universality, impartiality, objectivity and non-selectivity, constructive international dialogue and cooperation, with a view to enhancing the promotion and protection of all human rights”³ and that “methods of work of the Council shall be transparent, fair and impartial and shall enable genuine dialogue, be results oriented, allow for subsequent follow-up discussions to recommendations and their implementation and also allow for substantive interaction with special procedures

1 Para 5 (e), General Assembly *Resolution 60/251*.

2 *Ibid*.

3 Para 4.

and mechanisms"⁴. The Resolution also states that "the Council should address situations of violations of human rights, including gross and systematic violations, and make recommendations thereon"⁵ and "contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies"⁶.

Key questions include:

- What should be the concrete objectives of the UPR?
- How can the Council comply with the principles identified by the General Assembly while developing the modalities for the UPR and carrying out the UPR?
- How can the UPR serve as a cooperative mechanism that gives consideration to a State's capacity-building needs while reviewing the State's fulfilment of its human rights obligations and commitments?
- What could be the advantages of having the Council, a political body made up of governments, undertaking or overseeing a review of States?

Who undertakes the UPR?

There is any number of options for who will carry out the UPR. The most important decision to be made is whether the UPR should be undertaken entirely by the Council itself or with the assistance of individual or a group of human rights experts? Some suggestions for the Council itself undertaking the entire review include setting up a panel made up of Council members which would hold an interactive dialogue with the State under review on the basis of a country dossier prepared by OHCHR on the most recent information already available⁷, or for multiple panels to be set up. In terms of involvement of independent human rights experts, some suggestions include appointing an independent session rapporteur for each State under review, selected among a roster of experts prepared by OHCHR. The independent session rapporteur would carry out a full visit to the State, prepare a background note on the human rights situation, and review summaries of information assembled by OHCHR in order to prepare written questions for the State to respond to in advance of the session.⁸ Other possibilities could include appointing a group of experts to review the information on the State and suggest questions or recommendations, or relying on the expert body⁹, if one is set up by the Council, to perform these tasks.

4 Para 12.

5 Para 3.

6 Para 5 (f).

7 Canada, *Human Rights Peer Review Mechanism–Non-paper version # 2*, available at: www.eyeontheun.org/assets/attachments/documents/hr_peer_review_mechanism_canada.pdf.

8 Human Rights Watch, *Human Rights Council: No More Business as Usual*, p. 4, available at: <http://hrw.org/backgrounder/un/un0506/un0506.pdf>.

9 See chapter on the Sub-Commission and system of expert advice for further discussion on a possible expert body.

The involvement of independent human rights experts in the process would have considerable advantages. It would allow for a more objective, consistent, and comprehensive analysis of the situation in the country; avoid political factors playing a role at the information collection and examination stages; and reduce the pressure on the Council's time. Relying on a group of experts from different countries and with expertise on a range of issues could also ensure a more balanced analysis.

Key questions include:

- What should be the composition of the body undertaking the UPR?
- Should the Council undertake the UPR entirely by itself? If so, how should it do so?
- Should experts be involved in the UPR? If so, how many experts should be involved and how should they be chosen?
- What parts of the UPR process should be delegated to experts?
- If different experts or panels of Council members undertake the UPR, how can consistency and equal treatment of States be ensured?

Which human rights obligations and commitments will be reviewed?

Resolution 60/251 refers to a review of the “fulfilment by each State of its human rights obligations and commitments in a manner which ensures universality of coverage and equal treatment with respect to all States”¹⁰. Different States have different human rights obligations and commitments based on the human rights treaties and other instruments that they have ratified. The key question therefore is what standards will be used for the review and if these will vary with the State in question? If different standards are used, some are concerned that this could defy the key purpose of consistency in the UPR¹¹. However, there would be legal issues about assessing a State's compliance with treaties that it has not signed. Options for standards that could be applied are: human rights treaties ratified by the State; the *Charter of the United Nations*; the *Universal Declaration of Human Rights*, and other standards that have reached the status of customary international law¹² or *jus cogens*¹³; resolutions adopted by the Commission; and other commitments undertaken by the State through

10 Para 5 (e).

11 International Council on Human Rights Policy, *UN Human Rights Reform*, (Flowerhill Exchange Note 5), p. 2, available at: www.ichrp.org/paper_files/130_w_01.doc.

12 Customary international law is international law that has arisen from custom or usage and need not be codified or written down. Certain standards contained in legal instruments can also reach the status of customary international law if they create a general and consistent practice of States, arising out of a sense of legal obligation, even if particular States have not signed the instrument or standard.

13 *Jus cogens* refers to a fundamental norm of international law, which applies to all States and cannot be changed by a treaty.

voluntary declarations and pledges¹⁴.

Key questions include:

- Which human rights standards should be used in the review process?
- How can concerns about consistency and common standards be addressed?
- How should potential overlaps with treaty bodies be addressed? How can the UPR strengthen and complement the work of treaty bodies?

Scheduling the UPR

The Council is required to review all 191 member States of the UN at periodic intervals. For the UPR to be timely and relevant, the Council will have to ensure that these periodic intervals are not too widely spaced apart. However, as reviewing 191 States will create immense pressure on the Council's workload it will have to develop methods to balance a substantive review with managing its schedule and avoiding backlogs in the system. Delegating at least the initial phases of the UPR to experts may help the Council in this balancing act.

Canada has calculated that if the Council spends three hours in an interactive dialogue with each State under review, six weeks of time will be required to review 60 States per year¹⁵ and it will therefore take a little over three years to review all States. This calculation is based on time spent on interactive dialogue and does not factor in additional time that the Council may take to discuss the findings and recommendations emerging from the interactive dialogue. Human Rights Watch (HRW) has recommended that “if the UPR is to be meaningful, the HRC should devote at least one half-day session per country, and if it is to be timely, states should come up for UPR at least once every five years. This means that the HRC would have to review an average of almost forty countries per year, the equivalent of twenty working days. The UPR should be carried out in sessions additional to the minimum ten weeks called for in the G.A. resolution”¹⁶.

The Council will have to determine whether the same amount of time is spent on each State irrespective of its size and human rights situation or if it needs to develop criteria for allocation of time. The Council will also have to determine the order in which countries are reviewed – should this be alphabetical, starting with the members of the Council, or based on other criteria? It would be useful for the Council to consider how it could undertake emergency or fast track reviews in cases of human rights emergencies within States (discussed in more detail below).

14 Canada, *Human Rights Peer Review Mechanism – Non-paper version # 2*, available at: www.eyeontheun.org/assets/attachments/documents/hr_peer_review_mechanism_canada.pdf.

15 Ibid., p. 4.

16 Human Rights Watch, *Human Rights Council: No More Business as Usual*, (n. 8 above), p. 3.

Resolution 60/251 provides that the members of the Council shall be reviewed under the UPR mechanism during their term of membership. The Council will therefore have to fit members into the schedule taking account of the staggered terms of membership¹⁷. This will be a particular challenge for the 14 members that have drawn one-year terms in the first election and whose term limits will therefore expire before the end of the one-year period given to the Council to develop the modalities of the UPR process. The Council could test the system it develops with these countries and revise modalities after seeing how they work with these test cases.

Key questions include:

- How much time should the Council allocate to reviewing each State? Should it spend the same time on all States or should it develop criteria for allocation of priorities and time to different States based on the human rights situation and other factors?
- In what order should States be reviewed?
- At what intervals should States be reviewed?
- Should the UPR be carried out in additional sessions instead of during the Council's three sessions totalling a minimum of ten weeks a year, identified by the General Assembly?
- How should the Council review members who have drawn one-year terms in the first election?

What will the UPR process consist of?

The UPR could be a short or long process, conducted entirely within the session or through inter-sessional processes. It could consist of a substantive review process ending in an interactive dialogue with the State or consist of just the interactive dialogue with the State. For the review to be substantive and meaningful, the Council will have to devote enough time to putting together and reviewing the information on each State, identifying key questions and issues for the interactive dialogue with the State, and producing clear and focused recommendations. As the Council will have other tasks that it needs to balance along with the UPR, delegating many of the tasks of the UPR to independent experts and undertaking this work outside the regular sessions of the Council would be preferable.

In a draft concept and options paper on 'peer review', Canada studied two possible models and compared the advantages and disadvantages of each¹⁸. According to

17 Para 9.

18 Canada, *Human Rights Peer Review: Draft Concept and Options Paper*, available at: www.eyeontheun.org/assets/attachments/documents/human_rights_peer_review_canada.pdf.

Canada, the UPR could be an extensive, rigorous undertaking with emphasis on quantity and quality of information and assessment. At the other end of the spectrum, it could be a light process with emphasis on an open and frequent discussion among peers.

The first model called the 'comprehensive approach', would borrow some of the features of peer reviews conducted by the Organisation for Economic Cooperation and Development (OECD)¹⁹, the African Peer Review Mechanism (APRM)²⁰, and the World Trade Organisation (WTO)²¹. The comprehensive approach could, according to Canada, include a choice or combination of 1) an expert group or panel of member States to conduct research and consider available information, and/or field trips and consultations with stakeholders in the country under review; 2) a questionnaire to be answered by the State under review; 3) a substantive and rigorous report, containing information, findings, and recommendations; 4) a formal open hearing, with a presentation or comments from the expert panel, the State under review, and other States; and 5) conclusions and recommendations. The advantages identified for this model were that the expert report would be an extensive, objective, and authoritative assessment of a country's human rights performance and the conclusions of the peer review would serve as authoritative guidance for follow-up and implementation by the State under review. The disadvantages were that the process would be labour-intensive and costly; the number of States subject to review every year would be rather limited and every State would come up for review at long intervals, possibly every five to eight years; and there was potential for significant overlap with the work of treaty bodies and other mechanisms. There was also a risk that the process would be so cumbersome that it would become difficult to launch and implement, with little results compared to the investment²².

The second, lighter model, which Canada called the 'interactive dialogue model' would consist of a three-hour session of interactive dialogue where the State under review would make a presentation on the state of human rights within the country, achievements, difficulties, challenges and plans, followed by comments and questions by other States and responses by the State under review. Before the interactive dialogue, OHCHR would provide information from the treaty bodies and the special procedures, and short summaries of this information; the State under review would publish a statement; and other States and civil society organisations could issue statements, submissions, or reports of their own. At the conclusion of the process, a

19 For further information see F. Pagani, *Peer Review: A Tool for Co-Operation and Change*, (OECD, 2002), available at: www.oecdobserver.org/news/fullstory.php/aid/881/peer-review.html.

20 For further information on the APRM, see www.au2002.gov.za/docs/summit_council/aprm.htm.

21 For further information on the WTO's trade policy review, see www.wto.org/english/tratop_e/tpr_e/tpr_e.htm.

22 Canada, *Human Rights Peer Review: Draft Concept and Options Paper*; (n. 18 above).

rapporteur of the session would publish a summary of the dialogue and the State under review would make a voluntary statement, three to six months after the dialogue, outlining its reactions, plans, and commitments in light of the peer review. The advantages identified for this model were that it would be simple and light to launch, and that every State could come under review within short intervals, every two to three years. While there would be no authoritative or extensive reports or findings, the open debate would allow information from various sources to circulate freely in the international and possibly national arenas. The process would provide incentives, through peer advice and public opinion, for States to improve their human rights performance. The disadvantages and risk were that the process would not be as rigorous or objective as the review by an expert group and that the dialogue may be influenced by considerations other than the actual human rights situation of the country under review²³. In a second non-paper, Canada seemed to prefer the lighter, interactive dialogue approach, and set out the modalities of the process in line with this model²⁴. Human Rights Watch has suggested various steps for the UPR that would be more in line with a comprehensive and substantive review. Essentially, the Council will have to decide whether the UPR²⁵ will be a lighter and superficial process or a more substantive and comprehensive one. The lighter process may be easier to administer but would raise fundamental questions about the value added by the mechanism and whether such a process would allow for a genuine review of the State's obligations and commitments.

Key questions include:

- Should the UPR provide for a substantive and comprehensive review of States or a lighter review?
- What phases or steps should the UPR process consist of?
- Should there be a separate phase for assembling and reviewing information prior to the Council's meeting?
- Should a list of questions be sent to the State under review?
- How long should the entire process last?
- How can concerns about overlaps with treaty bodies be resolved?
- How can concerns about the potential human resources and financial costs be addressed? How can the Council ensure that these resources are not taken away from other human rights activities and programs?
- What should be the role of OHCHR in the UPR process?
- What should the Council do if a State refuses to cooperate with or participate in the UPR?

23 Ibid.

24 Canada, *Human Rights Peer Review Mechanism – Non-paper version # 2*, available at: www.eyeontheun.org/assets/attachments/documents/hr_peer_review_mechanism_canada.pdf.

25 HRW, *Human Rights Council: No More Business as Usual*, (n. 8 above), pp. 3-4.

What kind of information will be considered?

Resolution 60/251 requires the Council to consider 'objective and reliable' information on the fulfilment by each State of its human rights obligations and commitments. This requirement would not be met if the UPR was undertaken solely on the basis of information provided by the State about itself. The Council should consider a variety of other information including: reports submitted by States to treaty bodies on the fulfilment of their human rights obligations under treaties they have ratified; concluding observations and recommendations made by treaty bodies; communications sent by special procedures as well as reports on country missions, if any, to the State; reports prepared by any other UN agency on the human rights situation in the State; and reports and information from NHRIs and NGOs. The Council will have to decide whether it will work on available information or if it will give the opportunity to NGOs, NHRIs, OHCHR field presences, and UN specialised agencies to submit information specifically for the purposes of the UPR. The latter option would allow for NGOs and agencies to submit targeted information on the issues that the Council will be focusing on and will also allow them to submit information that may not be available within existing publications.

The Council could also request selected special procedure mandates²⁶ to carry out missions to the State or designate another independent expert²⁷ to do so in advance of the UPR to ensure that there is sufficient detailed, objective, and reliable information on each State that is reviewed, collected by the main monitoring mechanisms of the Council itself. It may be useful for the Council to develop guidelines for the submission of information, which could focus on the extent to which the State has followed up and implemented recommendations made by treaty bodies, special procedures, and the Commission as well as other data that would be relevant to determine the fulfilment by each State of its human rights obligations and commitments. The Council may also have to consider whether it will consider only documents or whether it would be possible for NGOs and agencies to submit audio testimonies, videos, and other kinds of information.

26 Two or three special procedure mandate holders could be requested to carry out the mission to the State. These mandates could be chosen on the basis of: issues of particular concern in the State; balance between economic, social and cultural rights and civil and political rights monitoring; and the total number of missions planned for each mandate holder. The Council or special procedures themselves could choose which mandates visit each State. Where a country rapporteur exists for the State in question, he/she could be automatically selected to be part of the group.

27 See the recommendation made by HRW in Human Rights Watch, *Human Rights Council: No More Business as Usual*, (n. 8 above), p. 4.

The Council will have to decide what kind of information the State itself will have to submit and in what detail. States already submit reports to treaty bodies in respect of the treaties they have ratified and have highlighted that this reporting burden is quite considerable. They may be reluctant to take on another detailed reporting requirement. The Council may therefore wish to consider whether States will have to submit a detailed report along the lines of what they submit to treaty bodies or whether they could instead be asked to submit information on targeted areas such as follow-up and implementation of recommendations made by various bodies, and factors limiting their ability to implement their obligations. In addition or alternatively, they could be asked to reply to a list of questions and issues identified by the Council or the expert(s) to whom this task is delegated. As some States have only ratified a limited number of treaties and/or had few or no visits from special procedures, there may be very little information available on the human rights situation in the State. NGOs located in the State and others who are monitoring the human rights situation will have a particularly important role in this regard. The Council may also need to develop guidelines for the collection of additional information in these kinds of situations.

Key questions include:

- What kinds of information should the Council consider to assess the fulfilment by each State of its human rights obligations and commitments?
- What are the main sources of information that the Council should consider for each State?
- Should the Council work with available information or give NGOs, NHRIs, and UN agencies and offices the opportunity to submit information specifically for the UPR?
- What kind of information should the State be asked to submit?
- Should treaty bodies submit information to the Council on priority areas of concern and follow-up, based on their most recent examination of the State?
- Should the UPR be preceded by missions to the State by special procedure mandates or another independent expert designated by the Council? How should these special procedure mandates or other independent experts be selected?
- Should the Council develop guidelines for the submission of information? What should these guidelines focus on?
- How can the Council ensure that the information it receives is objective and reliable?
- Should the Council also receive audio or video documentation in addition to paper documents?

Interactive dialogue with the State

The interactive dialogue with the State could consist of presentations by the State, expert(s) who have reviewed the information on the State, NHRIs, and NGOs, as well as

questions by Council members and other States. If the Council intends to allocate half a day to the interactive dialogue, it will have to consider how this time can be best used. If the dialogue is to be truly interactive, the Council may have to limit the number of presentations that could be made and the time for various speakers, and provide more time for questions and replies. NHRIs and NGOs in particular would have to consider the trade-offs between using the dialogue as a forum to raise issues or using it to interact with and question the State. The latter option would limit the number of and time allocated for presentations, and may raise difficult questions about which NGOs could ask questions or how these questions would be selected.

Key questions include:

- How should the interactive dialogue be organised and what should be the format of the dialogue to make it more interactive and cooperative?
- How much time should be spent on the interactive dialogue?
- Who should be able to make presentations, what should the presentations focus on, and how long should they be?
- What should the State's presentation or statement focus on?
- How should time be divided between presentations and questions?
- Should special procedures be able to ask questions?
- Should NHRIs and NGOs be able to ask questions?
- How should the NGOs that can ask questions and the questions themselves be selected?
- Should there be a balance between questions from national, regional, and international NGOs?
- Should a fund be created or other initiatives set up to help smaller or less resourced NGOs participate in the Council's work?

Outcomes and follow-up

The outcomes of the UPR could be a detailed outcome document, which could contain findings of the experts or the Council and/or conclusions and recommendations and/or a decision/resolution. If the lighter model was adopted, the outcomes could be a summary of the dialogue and/or voluntary commitments or pledges by the State under review. In addition to recommendations about steps to be taken by the State under review, the Council could recommend measures to build the capacity of the State to implement its human rights obligations, including through technical assistance programs. The Council could also appoint a country rapporteur to monitor the situation in the State under review; ask for the establishment of an OHCHR office or presence in the country to monitor the situation and/or work with the State; and/or recommend action by other UN bodies or agencies such as the Security Council, the General Assembly, or UN specialised agencies.

As one of the weaknesses of the Commission was a lack of adequate follow-up to recommendations and resolutions, the Council may also wish to set up a system of follow-up to the UPR process. To achieve this, the recommendations and outcomes of the UPR should be framed in a clear manner, making it possible for the State and other actors to implement these recommendations. The Council could indicate areas of priority within its recommendations, i.e. which ones require immediate implementation and which are to be implemented in the medium or longer term. The Council could also institute a system of asking the State to report back on the extent to which it has been able to implement these recommendations and the obstacles, if any, faced by the State in implementation. Other stakeholders such as NHRIs, NGOs, OHCHR, and specialised agencies could also report back on the follow-up actions of the State. This information could be considered within the UPR schedule or within a broader agenda Item on follow-up if the Council creates such an Item. The failure of the State to take adequate follow-up action could lead to other action by the Council depending on the reasons behind this lack of follow-up, such as increased technical assistance, strengthening of monitoring, and/or recommendations for action by the General Assembly or Security Council.

Key questions include:

- What should be the outcomes of the UPR process?
- How should these outcomes be presented and communicated?
- What kinds of recommendations and actions could the Council suggest?
- What kinds of measures and steps could the Council take to build the capacity of the State?
- What kinds of technical assistance programs should the Council recommend to build the capacity of the State?
- Should the Council be able to adopt resolutions or other kinds of formal decisions as a result of the UPR?
- Should the Council be able to set up a country rapporteur or an OHCHR office or presence in the country if required? What should be the criteria for this?
- How should the Council follow up on the UPR process?
- Should there be a system for regular follow-up on recommendations and conclusions?
- How should States report back to the Council on follow-up and at what intervals?
- Should NGOs, NHRIs, and OHCHR be able to submit information on follow-up to the Council?
- What actions should the Council take if the State fails to follow up on its recommendations?

How will emergency situations in a country be dealt with?

Resolution 60/251 provides that the Council should “contribute, through dialogue and cooperation, towards the prevention of human rights violations and respond promptly to human rights emergencies”²⁸. The Council will have to develop processes by which it can address emergency situations in a country in a timely manner. The Council could consider prioritising States in which early warning signs of human rights emergencies are prevalent. Especially when special procedures, treaty bodies, OHCHR, NHRIs, or NGOs draw the Council's attention to these signs, it could carry out an emergency or fast track review of the State and make recommendations for essential actions by the State, strengthened monitoring, and involvement or action by other international bodies/States. This procedure should not in any way exclude the ability of the Council to consider emergency situations as part of its regular proceedings or in emergency sessions, and the Council may wish to develop broader procedures and guidelines to deal with human rights emergencies outside the UPR process.

Key questions include:

- How should the Council deal with human rights emergencies in a State?
- Should the Council make provision for an emergency or fast track review within the UPR mechanism? What should be the criteria and process for this?
- Should NGOs, NHRIs, OHCHR, treaty bodies and/or special procedures be able to request an emergency or fast track review of a State?
- What action should the Council take when it believes that there are signs of a deteriorating human rights situation in a country or a political crisis that may lead to human rights emergencies?
- Should the Council deal with human rights emergencies outside the UPR process? What kinds of procedures and criteria should it develop to do so?

Will countries be examined outside the UPR process?

Some States may argue that with the setting up of the UPR mechanisms, countries should no longer be examined outside the process. Some may also argue that country-specific resolutions should not be adopted outside this process or at all. The UPR is only one mechanism to examine States, and is at the moment an unknown and untested mechanism. The Council has a wide range of responsibilities²⁹ in relation to monitoring the situation of human rights and implementation, which cannot be exclusively met in the UPR process. It is essential that the Council retain the ability to

28 Para 5 (f).

29 See paras 3 and 5 (a), (c), (e) and (f) of General Assembly *Resolution 60/251*.

address country situations outside the UPR process as required by the nature of the human rights situation in the country, its urgency, and the extent to which appropriate action can be taken within the UPR framework.

Key questions include:

- Should the Council be able to examine country situations outside the UPR process?
- When should the Council examine country situations outside the UPR process? Should it develop criteria and procedures for doing so?
- Should the Council adopt resolutions or other kinds of decisions on countries, outside the UPR process?

Process of developing modalities and allocation of time

The process through which the Council will develop the modalities and time allocation for the UPR is still undefined. It seems likely that the Council will set up an open-ended working group or some other form of consultations by the president to do so, but this and other issues may only be decided once the Council meets in June. Essential elements for this process include that it be carried out in an open, transparent, and public manner and with the participation of all stakeholders, such as other States, special procedures, OHCHR, NGOs, and NHRIs. It may also be useful for treaty bodies to provide input into this process on the ways in which the UPR could complement and strengthen their work and avoid duplication.

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NATIONAL REPORT SUBMITTED IN ACCORDANCE WITH PARAGRAPH 15(a)
OF THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1*

India

*The present document was not edited before being sent to the United Nations translation services.

THE INDIA REPORT

UNIVERSAL PERIODIC REVIEW

PREFACE

The India Report under the Universal Periodic Review mechanism of the United Nations Human Rights Council seeks to provide an overview of how pluralism and respect for diversity inform all aspects of the polity and society in the world's largest democracy. Along with the freedom struggle which was for the realisation of the human rights of the people of India to live in freedom and dignity, a process of social reform was also underway to bring women and disadvantaged sections of society into the mainstream. Both these processes converged and found expression in the Indian Constitution which came into effect in 1950, less than three years after gaining independence. The forward looking Constitution embodies the very essence of the freedom struggle and is reflective of the ethos of pluralism and tolerance engendered by a multi-religious, multi-cultural, multi-lingual and multi-ethnic society.

2. The commitment to pluralism and tolerance continues and informs all aspects of the Indian Constitution. The Indian Constitution is one of the longest in the world and drew inspiration not only from the richness of our experience of assimilating many religions and cultures over the millennia, but also the leading democratic constitutions of the modern world and from the fledgling United Nations.

3. India, with a population of around 350 million at the time of independence in 1947, faced stupendous challenges. There were nearly 600 Princely States in addition to those areas known as British India which had to be integrated. The Indian economy was primarily an agrarian economy which was deficient in industries and dependent on imports for its basic needs. The literacy rate was around 18 per cent. In the first few decades, priority was given to building human and industrial capacity in keeping with the needs and priorities of the nation. This was the setting against which India began its journey as a democracy to ensure the basic political, economic, social and cultural rights of her people.

4. We are proud to say that in those early days of our independence several bold measures were enshrined in the Constitution that have enabled India to flourish as a democracy for nearly six decades and preserve its humanist traditions in the face of several challenges. The basic political, social and economic rights found pride of place in the Constitution and became the beacon guiding the political leadership of various hues and colour for over half a century.

METHODOLOGY

5. In the preparation of the India Report under the Universal Periodic Review, the General Guidelines for the preparation of information outlined in decision 6/102 of the Human Rights Council meeting held on 27 September 2007 as a follow-up to Human Rights Council resolution 5/1 have been followed broadly.

6. All concerned Ministries and Departments of the Government of India have contributed in the preparation of the report along with other stakeholders including the national and state human rights institutes and the non-governmental organisations working in the field of human rights and related aspects. Several meetings were held involving the Ministry of Home Affairs, the Ministry of Social Justice and Empowerment, the Ministry of Minority Affairs, the Ministry of Consumer Affairs, Food and Public Distribution, the Ministry of Health and Family Welfare, the Ministry of Housing and Urban Poverty Alleviation, the Ministry of Human Resource Development, the Ministry of Labour and Employment, the Ministry of Law and Justice, the Ministry of Panchayati Raj, the Ministry of Rural Development, the Ministry of Statistics and Programme Implementation, the Ministry of Tribal Affairs, and the Ministry of Women and Child Development. Several consultations were held with the National Human Rights Commission.

7. A broad consultation process was also held with the stakeholders consisting of several non-governmental organisations involved in human rights related activities along with Ministries in the Government of India. A liberal exchange of views, suggestions and information regarding protection and implementation of human rights took place, which helped in evolving the contours of the national report.

8. All these information collated subsequent to the rigorous and long process of consultations between the Ministries, the national human rights institutes and the non-governmental organisations were drafted together. A national report has thus evolved, which reflects the broad consultation process that was undertaken.

THE REPORT

9. India is home to over one billion people. Indian society is the culmination of centuries of assimilation of diverse peoples and ethnic groups. India has an inclusive, open, multi-cultural, multi-ethnic, multi-lingual society marked by unparalleled pluralism.

10. India is the seventh largest country in the world covering an area of 3.3 million sq. km. It is a subcontinent by itself extending from the snow-covered Himalayas to the tropical rain forests of the south. India accounts for 2.4 per cent of the world surface area

but supports and sustains 16.7 per cent of the world population. India has 18 major languages. More than 1650 dialects are spoken across the country.

11. Twenty-eight States and seven Union Territories constitute India into a federal polity. There are 604 Districts and 638,596 villages in India. With over 3 million elected local representatives in the *Panchayats*, which are units of local self-government at the village level, India is not only the largest but also the most representative democracy in the world. India is also the only country to ensure that out of the 3 million elected office bearers, more than 1 million are women. The electorate for the 2004 National Elections exceeded 668 million, voting in 800,000 polling stations spread across varying geographic and climatic zones.

12. Human rights in India are to be viewed in the backdrop of this diverse social and cultural ethos, the country's development imperatives and also the fact that for over two decades it has faced the scourge of terrorism which is aided and abetted from outside. For all the challenges, pressures, and dilemmas, India's approach towards protection and promotion of human rights has been characterised by a holistic, multi-pronged effort.

13. The framework for this effort derives from the Constitution of India, which provides for a sovereign, secular, democratic and socialist polity and confers the right to vote on every citizen of India above the age of 18 years. Universally recognised human rights and fundamental freedoms are guaranteed without discrimination to all citizens of India, which had taken an active part in the drafting of the Universal Declaration of Human Rights.

14. The Fundamental Rights and the Directive Principles of State Policy enshrined in the Indian Constitution represent the Indian people's declaration of their unflinching commitment to core human values, rights and responsibilities. The Indian Constitution and the various rights-centric statutes not only provide for the policy and institutional framework for human rights protection, but also facilitate the concerned institutions in discharging their responsibilities.

15. The Constitution offers all citizens, individually and collectively basic freedoms which are justiciable and inviolable in the form of six broad categories of Fundamental Rights:

- right to equality including equality before law, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth and equality of opportunity in matters of employment;
- right to freedom of speech and expression; assembly; association or union; movement;

- residence; and right to practice any profession or occupation;
- right against exploitation, prohibiting all forms of forced labour, child labour and traffic in human beings;
- right to freedom of conscience and free profession, practice and propagation of religion;
- right of any section of citizens to conserve their culture, language or script and right of minorities to establish and administer educational institutions of their choice; and
- right to constitutional remedies for enforcement of Fundamental Rights.

The bulwark of all Fundamental Rights is found in Article 21 which provides that no person shall be deprived of his life or liberty except in accordance with procedure established by Law.

16. The Constitution lays down certain Directive Principles of State Policy which though not justiciable, are 'fundamental in governance of the country' and it is the duty of the State to apply these principles in making laws.

- Equal justice and free legal aid.
- Organisation of village *panchayats* (local governments).
- Right to work, to education and to public assistance in certain cases.
- Provision for just and humane conditions of work and maternity relief.
- Living wage for workers.
- Participation of workers in management of industries.
- Uniform civil code for the citizens.
- Provision for free and compulsory education for children.
- Promotion of educational and economic interests of scheduled castes, scheduled tribes and other weaker sections.
- Duty of the state to raise the level of nutrition and the standard of living and to improve public health.
- Organisation of agriculture and animal husbandry.
- Protection and improvement of environment and safeguarding of forests and wild life.
- Protection of monuments and places and objects of national importance.
- Separation of judiciary from executive.
- Promotion of international peace and security.

17. The institutional safeguards for the rights enshrined in the Constitution include an independent judiciary and the separation of judicial and executive functions. Legislation in India is subject to review by courts as regards its constitutionality, and the exercise of executive power is subject to different forms of judicial review. In the event of infringement of an individual's fundamental rights, the highest court in the land, the Supreme Court, can be moved.

18. The Supreme Court has, in its concern for human rights, also developed a highly advanced public interest litigation regime. The judicial initiatives taken in this regard in the 1980s have now become the basis to seek redressal in situations of grave human rights violation. Any individual or group of persons highlighting a question of public importance, for the purposes of invoking its writ jurisdiction, can approach the Supreme Court and also the High Courts in the states. In the process, a wealth of jurisprudence has evolved on issues like prisoners' rights, bonded labour, right to clean environment and custodial violence. The Supreme Court has also recognised the justiciability of some vital economic and social rights, by interpreting the 'right to life' as meaning the right to a life with dignity.

19. As far as administrative structures are concerned, separate departments have been created both at the Centre and in the States for women and child development, social justice, health, education, labour, with a strong focus on the rights of citizens. A number of essential services like education, health and public distribution system of food have been kept in the public sector to ensure its reach across all sections of the population.

20. A number of Ombudsman type institutions have been created for the purpose of serving as 'watchdogs'. The National Human Rights Commission (NHRC) was established in 1993. The status and conditions of service of Chairperson of the NHRC is the same as that of the Chief Justice of India, and of Members of the Commission are those of Judges of the Supreme Court. Thus, the independence of the NHRC is expected to be the same as that of the Supreme Court of India. The Chairperson and Members are appointed on the recommendations of a High Level Committee, which is politically balanced. The Commission has its own independent Investigation Wing which is answerable to the Commission alone.

21. The National Human Rights Commission is playing a major role in the drawing of a National Action Plan for Human Rights, which will cover issues such as the right to health, education, food security, housing, custodial justice and trafficking in women and children. Specific benchmarks along with assessment indicators are being evolved to enable the preparation of a clear-cut road map.

22. Several National Commissions have also been created for women, minorities, Scheduled Castes, and Scheduled Tribes, whose Chairpersons are deemed Members of the National Human Rights Commission. The Government has also set up the National Commission for the Protection of Children's Rights, the National Commission for Denotified, Nomadic & Semi-nomadic Tribes, and the National Commission for Backward Classes and a Chief Commissioner for Persons with Disabilities. In addition, 18 States in India have constituted State Human Rights Commissions while a few more are in the pipeline. Many States have also constituted State Commissions for Scheduled Castes, Scheduled Tribes, Women and Minorities.

23. The Government has adopted a National Action Plan for Human Rights Education to promote awareness about human rights among all sections of the society. Specific target groups such as schools, colleges and universities, have been identified. Government officials, armed forces, prison officials and law officers are also sensitised to the protection of human rights. Human rights courses have been introduced as a part of the training at the SVP National Police Academy, Hyderabad, and at the Police Training Colleges. With a view to further sensitise the Indian Army, officers of the rank of Colonel are appointed in various headquarters to monitor cases relating to human rights. Training on human rights is beginning to have a beneficial effect and the standard operating procedures have been refined and improved. This is reflected in a decline of complaints of human rights violations from areas of insurgency.

24. Besides the institutional and administrative framework set up by the Government to extend and protect human rights, India has a strong tradition of non-governmental and voluntary action. An estimated 25,000 indigenous non-governmental organisations (NGOs) operate in India. India also has a strong tradition of community-based people's organisations.

25. The media in India - radio, television and print, exercise full freedom of expression and coverage of events and issues. The main radio and television channels of India, the All India Radio (AIR) and the Doordarshan (DD) are governed by an independent body of eminent persons who constitute the Prasar Bharati Board. A large number of private 24-hour news as well as entertainment channels also beam their programmes across the country freely through satellite. Newspapers and magazines in India are independent and largely privately owned. Over 5,600 newspapers, 150 of them major publications, are published daily in over 100 languages. Nearly 40,000 periodicals, some specialising in different subjects but most of general interest, are also published.

26. India is home to almost all religions of the world and secularism is a fundamental tenet of the Indian Constitution and political system. Every religious denomination has the right to establish and maintain institutions for religious, educational and charitable purposes, to manage their own affairs in matters of religion, to own and acquire property and to administer such property in accordance with law. No religious instruction can be imparted in any educational institution wholly maintained out of State funds and no person attending any educational institution recognised by the State or receiving aid out of State funds can be compelled to take part in any religious instruction without his or her consent. All persons are equally entitled to freedom of conscience and the right to freely profess, practice and propagate religion. Citizens residing in India have the right to conserve their distinct language, script or culture.

27. The Minorities Commission set up in 1978 became a statutory body in 1993 and was renamed as the National Commission for Minorities. The Commission is vested with broad statutory powers for the effective implementation of safeguards provided under the Constitution for the protection of interests of minorities and for making recommendations in this regard to the Central and State Governments. The Commission looks into the welfare of minorities, and has the powers to examine specific complaints regarding the deprivation of rights and safeguards of minorities. It is both a monitoring and standard setting body with powers to receive complaints.

28. The Government of India on 23 October 1993 notified five religious communities viz. Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis) as minority communities. The National Minorities Development and Finance Corporation (NMDFC) was incorporated in 1994 with the objective of promoting economic activities amongst the backward sections of notified minorities. To achieve its objective, the Corporation provides concessional finance for self-employment activities to eligible beneficiaries, belonging to the minority communities, having a family income below double the poverty line.

29. A new Ministry of Minority Affairs was created on 29th January, 2006 to ensure a more focused approach towards issues relating to the minorities and to facilitate the formulation of overall policy and planning, coordination, evaluation and review of the regulatory framework and development programmes for the benefit of the minority communities. The Prime Minister's New 15 Point Programme for the Welfare of Minorities was announced in June 2006. An important aim of the new programme is to ensure that the benefits of various Government schemes for the underprivileged reach the disadvantaged sections of the minority communities.

30. India has embarked on a programme of affirmative action which is, perhaps, without parallel in scale and dimension in human history. Part III of the Indian Constitution dealing with Fundamental Rights, contains powerful provisions to combat all forms of discrimination, notably those forms that were based on caste. These provisions of the Constitution, which are justiciable, include, *inter alia*, equality before the law or the equal protection of laws, non-discrimination against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them, special provision for the advancement of any socially and educationally backward class of citizens as well as Scheduled Castes and Scheduled Tribes, affirmative action through the reservation of appointments or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services of the State, and abolition of "Untouchability".

31. To effectuate the guarantees enshrined in these Constitutional provisions, an impressive range of legislative measures have been enacted to end discrimination

against Scheduled Castes and Scheduled Tribes. Article 17 of the Constitution of India abolished the practice of untouchability and in furtherance of the provision thereof the Protection of Civil Rights Act (PCR Act) was enacted in 1955. The Act provides for punishment for untouchability. Several schemes and programmes are being implemented for socio-economic and educational development of Scheduled Castes and Scheduled Tribes.

32. Political representation is guaranteed for Scheduled Castes and Scheduled Tribes through the proportionate reservation of seats in elected legislative bodies, from Parliament to village councils. To overcome the cumulative results of past discrimination, the government instituted a program of “compensatory discrimination” that reserved 15 per cent for Scheduled Castes and 7.5 per cent of all Central Government jobs for members of Scheduled Tribes. Comparable reservations were provided for state-level employment, and reservations were extended to college and university admissions. In addition, special provisions for Scheduled Castes and Scheduled Tribes have been provided in housing, poverty alleviation programmes, hostel schemes.

33. India presents a varied tribal population throughout its length and breadth. The Constitution of India incorporates several special provisions for the promotion of educational and economic interest of Scheduled Tribes and their protection from social injustice and all forms of exploitation. The Fifth Schedule empowers the Governor of a state to suspend any act of Parliament or State Legislature if he thinks it is not in the interest of the Scheduled Tribes. This he can do even with retrospective effect. A similar aspect is not found anywhere else in the constitution. The Sixth schedule enables an autonomous district level body to be formed where there are a large percentage of tribal groups. This unique scheme has been formulated especially for some States in the north-eastern region.

34. The Tribal Sub Plan (TSP) Strategy has been adopted for all round development of tribal areas throughout the country to ensure allocation of fund for tribal areas. A separate Ministry of Tribal Affairs was constituted in 1999 with the objective of more focused attention on integrated socio-economic development of the most under privileged section of Indian society, the Scheduled Tribes in a coordinated and planned manner. The National Level Tribal Development Finance Corporation was constituted for economic development of Scheduled Tribes.

35. The recognised rights of the forest dwelling Scheduled Tribes and other traditional forest dwellers include the responsibility and authority for sustainable use, conservation of biodiversity and maintenance of ecological balance, thereby strengthening the conservation regime of the forests while ensuring livelihood and food security of the forest dwelling Scheduled Tribes and other traditional forest dwellers.

36. To address the long standing insecurity of tenurial and access rights of forest dwelling Scheduled Tribes and other traditional forest dwellers, including those who were forced to relocate their dwelling due to State development interventions, the Parliament enacted the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006. It recognises and vests the forest rights and occupation in forest land in forest dwelling Scheduled Tribes and other traditional forest dwellers who have been residing in such forests for generations but whose rights could not be recorded; it also seeks to provide for a framework for recording the forest rights so vested and the nature of evidence required for such recognition and vesting in respect of forest land.

COMMITMENT TO INTERNATIONAL HUMAN RIGHTS CONVENTIONS

37. Section 2(d) of the Protection of Human Rights Act, 1993 defines “human rights” as the rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India. This definition is in conformity with international standards and the accepted interpretation of human rights.

38. India actively participated in the drafting and adoption of the Universal Declaration of Human Rights, 1948. Dr. Hansa Mehta, a Gandhian social worker, who had led the Indian delegation, had made important contributions in the drafting of the Declaration, especially by highlighting the need for reflecting gender equality. India is a signatory to the six core human rights covenants and is fully committed to the rights proclaimed in the Universal Declaration. It has signed and ratified international Human Rights Conventions which *inter alia* include the International Covenant on Civil and Political Rights, International Covenant on Economic, Social and Cultural Rights, Convention on the Elimination of all forms of Racial Discrimination, Convention on the Elimination of all forms of Discrimination against Women, and the Convention on the Rights of the Child. In 2005, it ratified the two Optional Protocols to the Convention on the Rights of the Child and more recently, it ratified the Convention on the Rights of Persons with Disability. It has also signed the Convention against Torture, and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the Convention on Enforced Disappearances signaling its intention to respect the provisions of these treaties and is taking steps towards their ratification.

39. India has played an active role in the human rights machinery of the United Nations. It was among the very few select countries who were members of the former Commission of Human Rights throughout over 60 years of its existence. India remains committed to make the new Human Rights Council a strong, effective and efficient

body capable of promoting and protecting human rights and fundamental freedoms for all. In this regard, we have extended cooperation to the mechanisms of the Human Rights Council. We also support the High Commissioner's office (OHCHR) in its efforts towards promotion and protection of human rights including through annual financial contributions.

40. While presenting its candidature to the Human Rights Council for a three-year term in December 2006, India made several voluntary pledges and commitments which, *inter alia*, include maintaining the independence, autonomy as well as genuine powers of investigation of national human rights bodies, setting up of a National Commission for the Protection of Child's Rights, working for the world-wide promotion and protection of human rights, based on the principles of cooperation and genuine dialogue, supporting the adoption of the Convention on the Rights of Persons with Disabilities. Most of these voluntary pledges and commitments made by India have been fulfilled and the rest are being carried out in earnest.

RIGHT TO LIFE AND LIBERTY

41. The right to life and liberty is the most fundamental of all human rights. This basic right forms the bedrock of human rights jurisprudence. The Constitution confers on every person the fundamental right to life and personal liberty, couched in the terms of Art. 21 under Part III. In an attempt to implement the civil liberties laid down in the ICCPR, the Supreme Court has liberally interpreted life and liberty and included a repository of rights under Art. 21. As aforementioned, the Apex Court has interpreted the right to life as denoting a right to a life with dignity, which includes the rights to health, education, clean environment, speedy trial, privacy etc.

RIGHT TO DEVELOPMENT

42. Prime Minister Dr. Manmohan Singh in an address to the Joint Session of the US Congress on 19 July 2005 said that *"Democracy is one part of our national endeavour. Development is the other. Openness will not gain popular support if an open society is not a prosperous society. This is especially so in developing countries, where a large number of people have legitimate material expectations which must be met. That is why we must transform India's economy, to raise the standard of living of all our people and in the process eliminate poverty."*

India's aspirations in the respect are not different from those of other developing countries. But we are unique in one respect. There is no other country of a billion people, with our tremendous cultural, linguistic and religious diversity, that has tried to modernise its society and transform its economy within the framework of a functioning democracy. To attempt this at our modest levels of per capita income is a major challenge."

43. India has recorded growth of around 9% in the past several years. India now has the fourth largest GDP in the world in terms of purchasing power. There is a confident, competitive private sector, endowed with remarkable entrepreneurial energy. The infrastructure of law and commercial accounting is conducive to modern business, and there is dynamism in many areas of advanced technology.

44. This is the result of decades of sustained effort to build institutions that provide the underpinnings of economic development. The dynamism of recent years is also the result of economic reforms. The economic policy changes have liberated Indian enterprise from government control and made the economy much more open to global flows of trade, capital and technology.

RIGHT TO INFORMATION

45. To increase transparency in the functioning of Government at all levels and accountability in public life, the Government brought forward a historic legislation, the Right to Information Act, 2005. The Act has wide reach, covering the Central and State Governments, *Panchayati Raj* institutions, local bodies, as well as recipients of Government grants. It has given citizens access to information with minimum exemptions. Even security agencies are subject to disclosure now in cases of allegations of corruption or violation of human rights. It has also imposed obligations on Government agencies to disclose information on their own, thus reducing the cost of access. An independent appeal mechanism in the form of Central and State Information Commissioners, coupled with extensive disclosure obligations and stringent penalties, have given teeth to the right and have made it a powerful instrument for good governance.

CIVIL AND POLITICAL RIGHTS

46. In the same speech at the US Congress on 19 July 2005, Prime Minister Dr. Manmohan Singh said that “ *The real test of a democracy is not in what is said in the Constitution, but in how it functions on the ground. All Indians can be proud of what we have achieved in this area and our experience is also relevant beyond our boundaries. Free and fair elections are the foundation of a democracy. Over the past six decades, governments in India, at both the national and State level, have regularly sought the mandate of the people through elections.*

Our elections are conducted under the supervision of a statutory independent Election Commission, which has earned respect for its fairness and transparency, both at home and abroad. The independent judiciary has been a zealous defender of our Constitution and a credible guarantor of the Rule of Law. The Press is a key institution in any

democracy and our media has a well-earned reputation for being free and fearless. Our minorities, and we have many, participate actively in all walks of national life - political, commercial and cultural. Civil society organisations are thriving and are vigilant in protecting human rights. They are also watchful of threats to the environment. Our Army has remained a professional force, subject throughout to civilian control.

Recently, the Constitution was amended to ensure constitutionally mandated elections to village and municipal councils. This process has produced no less than 3 million elected representatives in the country, with 1 million positions reserved for women. This has brought democracy closer to the people and also empowered women and promoted gender balance."

47. Lack of adequate resources and insufficient national capacity in developing countries handicaps the ability of the state to secure for its people the full enjoyment of the fruits of civil and political rights. In India, democracy and the values and principles that go with it, facilitate fight against poverty and the development of the country, and are seen as the only durable and sustainable framework within which the welfare of the people can be ensured.

48. The safeguards provided by the institutions of a democratic society, including an independent judiciary, a free press, an alert and vibrant civil society unafraid to question the government's actions and highlight its perceived failures, democracies are far less likely to tolerate abuses of human rights than societies which are closed, authoritarian and devoid of a system of checks and balances.

49. Terrorism aided and abetted from outside has emerged as a serious challenge for India. Terrorists are the biggest violators of the most basic of human rights, the Right to Life. The very same liberties and freedoms which democracies guarantee also tragically make them the most vulnerable to misuse and assault. Terrorism as a political instrument challenges the most fundamental and precious values of democracy by forcing a diminution of openness, tolerance, rights and freedom and negating the fundamental values of a democratic society. Terror must be seen as a principal threat to democracy and as well to development. No cause, no religion, no ideology, no so-called struggle justifies terrorism.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

50. The Government is committed to providing an environment for inclusive and accelerated growth and social progress within the framework of a secular and liberal democracy. Through a combination of offering entitlements, ensuring empowerment and stepping up public investment, the Government has sought to make the growth process more inclusive. All the major initiatives of the Government, in agriculture and rural development, in industry and urban development, in infrastructure and services, in

education and health care and in every other facet of life, are aimed at promoting "inclusive growth". Inclusive growth also means empowering the disadvantaged. The Government has sought to achieve this through a variety of legislative interventions for empowering women, tribals and scheduled castes, the minorities and other backward classes.

51. The Government believes that rural India should be seen as a growth engine and is determined to channel public investment in the area of rural infrastructure so as to unleash its growth potential. To upgrade rural infrastructure, the Government has conceived *Bharat Nirman*, a four year time-bound business plan for achieving identified goals in six selected areas i.e. irrigation, rural water supply, rural housing, rural roads, rural telephony and rural electrification.

52. A path-breaking initiative to provide legal guarantee to work and to transform 'the geography of poverty' is the National Rural Employment Guarantee Act, 2005 which recognises the right to work as a fundamental legal right. The Act envisages securing the livelihood of people in rural areas by guaranteeing 100 days of employment in a financial year to a rural household. It provides that employment be given within 15 days of application for work and if not so provided, daily unemployment allowance in cash has to be paid. It provides a social safety net for vulnerable households, and an opportunity to combine growth with equity. A social safety net of this dimension has not been undertaken ever before anywhere in the world. This programme was launched on 2 February 2006. Over 14 million households have benefited under the Rural Employment Guarantee Scheme operational in 130 districts. One third of jobs were reserved for women, who currently represent 40 per cent of beneficiaries. This scheme is being expanded to cover the entire country from 1 April 2008.

53. Even prior to India's accession to the Covenant on Economic, Social and Cultural Rights the importance of economic, social, and cultural rights was recognised in our Constitution which contained a separate section on the Directive Principles of State Policy. At the broadest level, they call upon the state to strive to promote the welfare of the people by securing and protecting, as effectively as it may, a social order in which social, economic and political justice would inform all the institutions of national life. Over the years, in a series of landmark judgements, the Indian Supreme Court has ruled that the "Directive Principles" must be "read into" the Fundamental Rights, as the two sets of rights are complementary to each other. The Supreme Court also ruled that the right to life, enshrined in the Constitution, includes within it the right to live with human dignity and all that goes with it, including the necessities of life, such as adequate nutrition, clothing, shelter and basic education. The 86th Constitution Amendment Act, which makes free and compulsory education for children between the age group of 6 to 14 years a fundamental right, is a historic step towards the realisation of the universal right to education in India.

54. Intrinsic to the dignity and worth of the human person is the enjoyment of the right to health. Indeed, in the Indian context, the right to life has been expanded, through liberal judicial interpretation, to encompass the right to health and to make the latter a guaranteed fundamental right. The National Rural Health Mission (NRHM) was launched on 12 April 2005 to provide accessible, affordable and accountable quality health services to the poorest households in the remotest rural regions. The thrust of the NRHM is on establishing a fully functional, community owned, decentralised health delivery system with inter-sectoral convergence at all levels, so as to ensure simultaneous action on a wide range of determinants of health like water, sanitation, education, nutrition, social and gender equality. Immunisation programme is one of the key interventions under the NRHM for protection of children from preventable life threatening conditions. A major exercise is underway to meet the health challenges of the urban population with a focus on urban poor living in slums, through the launch of the National Urban Health Mission. The Health Insurance Scheme for Workers in the Unorganised Sector is scheduled to be implemented from 1 April 2008.

WOMEN'S RIGHTS

55. India ratified the Convention on the Elimination of All Forms of Discrimination against Women in 1993. Our national commitment to women's rights, however, dates back to the time when independent India adopted its Constitution adopted in 1950. The Constitution was path-breaking, not only by the standards of the newly independent countries, but also of many of the developed countries, in its focus on the emancipation of women and removal of all forms of discrimination against them. The guaranteeing of equal rights and privileges for women by the Constitution marked the first step in the journey towards the transformation of the status of women in India.

56. Our approach to women's rights has rested on the belief that the progress of any society is dependent on its ability to protect and promote the rights of its women. As a result of concerted efforts and a comprehensive policy framework over the last five decades there have been significant advances in the socio-economic indicators for women. These include a considerable rise in life expectancy at birth, increase in mean age at marriage, and decline in the female death rate. Most importantly, there has been an increase in the female literacy rate from just under 30% in 1981 to over 54% in 2001, and for the first time, the absolute number of female illiterates has shown a decline in the 2001 Census. Other indicators such as the Gross Enrolment Ratio for girls at primary and middle levels, number of women in higher education, and the female work participation have also shown a marked positive trend.

57. Empowerment of women is critical for the socio-economic progress of any country. The 73rd and 74th Constitutional Amendments were enacted in 1993 to provide for reservation of seats for women in the democratic institutions at the village and local levels, and have laid a strong foundation for the participation of women at the decision making levels. In addition, several programmes have been put in place for the empowerment of women through mobilisation, organisation and awareness generation, so as to enhance the self-

confidence of women within the household and community and grant them access to resources from various available and new sources. The Joint Parliamentary Committee on Empowerment of Women, apart from monitoring the application of gender equality principles in all legislation, works to ensure that legislation in India is gender responsive.

58. The National Commission for Women was set up by an Act of Parliament in 1990 to safeguard the rights and entitlements of women in the country. The National Commission is responsible for the study and monitoring of constitutional and other laws relating to women, review of existing legislation and investigating complaints concerning the rights of women. In order to discharge its functions, the Commission has the powers of a civil court to take evidence and issue summons. The chairperson of the National Commission for Women is deemed to be a member of the National Human Rights Commission for the discharge of certain human rights functions. Ever since its existence the Commission has produced legal literacy manuals to educate women in their basic rights.

59. Education is the key to advancement of women. The spread of liberal education and values has unleashed forces for social reform and created awareness about the need for increased participation of women in the educational, social, economic and political life of India. The care of the girl child in the areas of health and nutrition, education and economic potential constitutes a major focus of state policy.

60. Comprehensive efforts have also been underway to secure gender justice by substantially increasing coverage of programmes for affirmative action, campaigns for equal rights to women in property, credit facilitation, income generating opportunities, provision of support services like day care facilities, crèches, and hostels for working women, etc. Specific provisions for women from the vulnerable sections of society have been made in the Prevention of Atrocities Act of 1989 and the Prevention of Atrocities Rules of 1995. States and Union Territories have been asked to formulate specific schemes under the Special Component Plan for the development of women from the vulnerable sections in the field of education, housing, drinking water supply facilities and also ownership rights on assets.

61. The Government of India adopted a National Policy for Empowerment of Women in 2001 to guide the approach to the empowerment of women in the Tenth Plan period from 2002 to 2007. An allocation of over 3 billion US dollars has been made for this period for the Department of Women and Child Development, the largest for any single department in the Government of India, for the implementation of the Plan.

62. In addition to the role of the State and the constitutional provisions that exist, the judiciary has played a key role in the advancement of gender justice in India, including through the mechanism of public interest litigation which has taken deep roots in the country. The Supreme Court of India has delivered landmark pronouncements on matters such as the need for equal property rights for women, particularly in case of inheritance and sexual harassment at the workplace. In addition, civil society groups have played a key role in raising awareness about women's rights.

RIGHTS OF THE CHILD

63. India has the largest child population in the world. This brings with it huge responsibilities to protect their rights and prevent exploitation in all its forms, as well as unlimited opportunities to create a better future for the coming generations of young Indians. It is in recognition of this that in addition to having acceded to the Convention on the Rights of the Child, India has also acceded to both the Optional Protocols to the Convention.

64. India's commitment to the rights of the child is enshrined in our Constitution. One of the Directive Principles of State Policy contained in the Constitution states that the State shall ensure that children are given opportunities and facilities to develop in a healthy manner and in conditions of dignity and that childhood and youth are protected against exploitation and against moral and material abandonment, unquote. In order to direct greater focus on issues relating to children, an independent Ministry of Women and Child Development has been created. The Common Minimum Programme of the Government pledges that the government will protect the rights of children, strive for the elimination of child labour, ensure facilities for schooling and extend special care to the girl child.

65. India has one of the most comprehensive legal regimes for the protection of children. Among the several laws in place is the Juvenile Justice Care and Protection of Children Act 2000 which aims at providing proper care protection and treatment by catering to the development needs of children, and adopting a child friendly approach in the adjudication and disposition of matters in the best interest of children and for their ultimate rehabilitation through various institutions established under the Act. The Act provides several safeguards for juveniles in conflict with law and for children in need of care and protection.

66. To eradicate child labour, a multi-pronged strategy is being followed involving strong enforcement of the Act with simultaneous efforts towards rehabilitation of working children and their families through linkages with the poverty eradication and income generation programmes of the Government. Government had initiated the National Child Labour Project (NCLP) Scheme in 1988 to rehabilitate working children in 13 child labour endemic districts of the country which has been extended to 250 districts in the country. Considering the magnitude and the nature of the problem, Government is following a sequential approach of first covering the children in hazardous occupations and then moving on to non-hazardous occupations. Under the NCLP Scheme, children are withdrawn from work and put into special schools where they are provided with bridging education, vocational training, mid-day meal, stipend, health-care facilities etc. About 0.5 million children have already been mainstreamed to regular education under the NCLP Scheme.

67. In order to ameliorate the condition of working children, the Government has decided to prohibit employment of children from 10 October 2006 as domestic servants or servant or in roadside eateries, restaurants, hotels, motels, teashops, resorts, spas or other recreational centres. Another important project for rehabilitation of child labour is the Indus Project, jointly launched in 2003 by Ministry of Labour & Employment, Government of India, and the US Department of Labour. It is being implemented in 21 districts of 5 States of Delhi, Madhya Pradesh, Maharashtra, Tamil Nadu and Uttar Pradesh.

68. The comprehensive and holistic National Plan of Action for Children, 2005 set time-bound targets for achievement in terms of reduction of infant and child mortality and HIV prevalence in infants, universal access to drinking water and basic sanitation, and the elimination of child marriages as well as the incidence of disabilities due to polio. The Pre- Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act, 1994 has been amended in 2003 to provide for the prohibition of sex selection, before or after conception, and more stringent enforcement. A Bill has been tabled for amending the Prevention of Child Marriage Act. It includes a salutary provision for declaration of a child marriage as void at the option of the child who contracted such marriage.

69. The Commissions for the Protection of Child Rights Act, 2005 has constituted the National Commission for the Protection of Child Rights. This statutory mechanism seeks to oversee and review the implementation of the National Policy for Children and recommend remedial action in instances of violation of child rights.

70. In addition, a National Charter for Children has been recently adopted which is a statement of intent embodying the Government's agenda for Children. The National

Charter emphasises India's commitment to children's rights to survival, health and nutrition, standard of living, play and leisure, early childhood care, education, protection of the girl child, equality, life and liberty, name and nationality, freedom of expression, freedom of association and peaceful assembly, the right to a family and the right to be protected from economic exploitation. The document also defines commitments to children in difficult circumstances, children with disabilities, children from marginalised and disadvantaged communities and child victims.

RIGHTS OF OLDER PERSONS

71. Demographic ageing is a global phenomenon. With a comparatively young population, India is still poised to become home to the second largest number of older persons in the world. Projection studies indicate that the number of 60+ in India will increase to 100 million in 2013 and to 198 million in 2030. The National Policy for Older Persons (NPOP) was announced in January, 1999, with the primary objective to encourage individuals to make provision for their own as well as their spouse's old age; to encourage families to take care of their older family members; to provide care and protection to the vulnerable elderly people, to provide health care facility to the elderly; and to create awareness regarding elderly persons to develop themselves into fully independent citizens.

72. The Government has constituted a National Council for Older Persons (NCOP) to advise and aid the Government on policies and programmes for older persons and also to provide feedback to the Government on the implementation of the National Policy on Older Persons as well as on specific programme initiatives for older persons.

73. The National Old Age Pension Scheme was introduced in 1995 as a response to the deprivation and insecurities faced by our elderly. This scheme was extended to all citizens above the age of 65 years and living below the poverty line in November 2007 as the Indira Gandhi Old Age Pension scheme. This scheme is a demand driven social security programme and is not restricted by budget allocations.

74. The Scheme of Integrated Programme for Older Persons is aimed to empower and improve the quality of life of older persons. Under the scheme, financial assistance up to 90% of the project cost is provided to non-governmental organisations for establishing and maintaining old age homes, day care centres, mobile medicare units and to provide non-institutional services to older persons.

75. India is a signatory to the Madrid International Plan of Action on Ageing 2002. Government has also enacted the Maintenance and Welfare of Parents and Senior

Citizens Act, 2007 to provide for more effective provisions including constitution of Tribunals for the maintenance and welfare of parents and senior citizens.

RIGHTS OF PERSONS WITH DISABILITIES

76. The Persons with Disabilities (Equal Opportunity, Protection of Rights and Full Participation) Act, 1995 was enacted much before the UN Convention on the Rights of Persons with Disabilities was adopted. It is a rights-based legislation and contains a range of measures for the prevention and early detection of disabilities, education, employment and non-discrimination. The Government has ratified the United Nations Convention on the Rights of Persons with Disabilities.

77. Recently, the National Policy for Persons with Disabilities and a scheme for providing 100,000 jobs every year to persons with disabilities have been approved by the Government. Besides, the Government has constituted a Group of Ministers with the mandate of generating awareness and monitoring all the activities undertaken by the Central Government to promote equal opportunities for the differently abled persons. There is also a strong legal framework for empowerment of Persons with Disabilities.

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First session
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NATIONAL REPORT SUBMITTED IN ACCORDANCE WITH PARAGRAPH 15(A)
OF THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1

India

Corrigendum

Paragraph 20,

For established in 1993 read established by an Act of Parliament in 1993

Insert after third sentence

The independence of the working of the Commission has been ensured, inter alia, through a provision in the Protection of Human Rights Act, 1993 that Chairperson/Member of the Commission cannot be removed from his office unless a proper enquiry has been conducted by the Supreme Court.

Insert at end of paragraph

The Annual Report of the Commission along with the Action Taken Report by the Government is laid before the Parliament.

The purview of NHRC covers the entire range of civil and political, as well as economic, social and cultural rights. The focus is to strengthen the extension of human rights to all sections of society, in particular, the vulnerable groups. The NHRC actively seeks out issues in human rights which are of significance, either *suo motu*, or when brought to its notice by the civil society, the media, concerned citizens, or expert advisers.

Paragraph 23, last sentence

For This is reflected in a decline of complaints of human rights violations from areas of insurgency read This is reflected in a decline of complaints of human rights violations even from areas affected by insurgency and terrorist activities and violence

Paragraph 24, insert after last sentence

In addition, there is a strong and fiercely independent media which inter-alia continuously acts as a watch dog for the protection of human rights.

Paragraph 33, delete last sentence

After paragraph 77, insert new heading and paragraphs

CUSTODIAL JUSTICE

78. A lot of emphasis has been given to importance of Custodial Justice. The Government of India has promulgated the Protection of Human Rights Act 1993 and in terms of this Act, the National Human Rights Commission has been set up in 1993. The National Human Rights Commission has been empowered inter-alia to inquire, *suo motu* or on a petition presented to it by a victim or any person on his behalf or on a direction or order of any court, into complaint of violation of human rights. Section 30 of the Protection of Human Rights Act 1993 provides for setting up of Special Courts for speedy trial of offences arising out of violation of human rights. Further, the National Human Rights Commission has been issuing directions/recommendations from time to time to all State Governments on (i) reporting of custodial deaths/custodial rapes within 24 hours to the Commission, (ii) periodical health care and medical examination of under-trial prisoners, (iii) visit by judicial officers to jail/prison at regular intervals to see the conditions of prisoners and for recommending suggestion for improvement, and

(iv) to follow a standardized procedure to deal with custodial crimes and police encounters.

79. The Honorable Supreme Court of India had also issued important guidelines in the case of D.K. Basu Vs. State of West Bengal which are to be followed by all authorities making arrest of individuals. One of the guidelines provides that a person who has been arrested or detained and is being held in custody in a police station or interrogation centre or other lock-up, shall be entitled to have one friend or relative or other persons known to him or having interest in his welfare being informed, as soon as practicable, that he has been arrested and is being detained at the particular place, unless the attesting witness of the memo of arrest is himself such a friend or a relative of the arrestee. These guidelines of the Supreme Court which have to be mandatorily followed have been circulated to all State Governments for compliance by Ministry of Home Affairs, Government of India.

80. The recent amendment in Section 176 of the Criminal Procedure Code to provide that in the case of death or disappearance of a person or rape of a woman while in the custody of the police, there shall be a mandatory judicial inquiry and in case of death, examination of the dead body shall be conducted within twenty four hours of death and this will go a long way to ameliorate the situation in the cases of custodial justice.

81. Similarly, there have been a number of important judgments delivered by the Honorable Supreme Court of India providing for payment of compensation to the persons affected by custodial crimes and such judgments have helped in curbing the tendency of committing custodial crimes.

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First session
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SUMMARY PREPARED BY THE OFFICE OF THE HIGH COMMISSIONER FOR
HUMAN RIGHTS, IN ACCORDANCE WITH PARAGRAPH 15 (C) OF
THE ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1*

India

The present report is a summary of 37 stakeholders' submissions¹ to the universal periodic review. It follows the structure of the general guidelines adopted by the Human Rights Council. It does not contain any opinions, views or suggestions on the part of the Office of the High Commissioner for Human Rights (OHCHR), nor any judgement or determination in relation to specific claims. The information included herein has been systematically referenced in endnotes and, to the extent possible, the original texts have not been altered. Lack of information or focus on specific issues may be due to the absence of submissions by stakeholders regarding these particular issues. The full texts of all submissions received are available on the OHCHR website. The periodicity of the review for the first cycle being four years, the information reflected in this report mainly relates to events that occurred after 1 January 2004.

*The present document was not edited before being sent to the United Nations translation services.

I. BACKGROUND AND FRAMEWORK

A. Scope of international obligations

1. The NHRC stated that it has been advocating for the ratification of the 1951 UN Convention relating to the Status of Refugees and the Torture Convention². People's Forum for UPR (PF for UPR) also noted that India has yet to ratify, *inter alia*, the ICRMW, CED, CEDAW-OP and ICCPR OP1 and OP2³. Amnesty International (AI) further noted that India has yet to sign the Rome Statute of the International Criminal Court⁴. The Asian Indigenous & Tribal Peoples Network (AITPN) and the International Working Group on Indigenous Affairs (IWGIA) highlighted that India has not ratified the ILO Convention No. 169 on Indigenous and Tribal Peoples in Independent Countries⁵.

B. Constitutional and legislative framework

2. The PF for UPR considered that as international laws are not self-executing in India the Government has failed to bring conformity with the ratified treaties at the domestic level⁶.

C. Institutional and human rights structure

3. The NHRC described its role as complementary to that of the judiciary. It stated that it has tackled a wide variety of issues such as trafficking in women and children, food security, education, health, disappearance of persons, displacement of persons due to disasters, conflict and development, child labour, custodial deaths and rape, prisons and disabilities not only by dealing with individual cases, but also by issuing policy guidelines for implementing agencies⁷. The PF for UPR stated that the guidelines of National Human Rights Institutions (NHRIs) including on rape, custodial deaths and encounter killings are not implemented⁸.

4. The PF for UPR noted that the Government has not complied with the Paris Principles with regard to the National Human Rights Commission (NHRC), and the National Commissions for Women, Minorities, Scheduled Castes and Scheduled Tribes, Children and De-notified Tribes due to a failure to provide powers, funds and resources, and autonomy⁹. According to Human Rights Watch (HRW) members and chairpersons of the NHRC are political appointees and this can reflect on their functioning. The NHRC cannot independently investigate violations by the armed forces under Section 19 of the Human Rights Protection Act.¹⁰ AI also stated that under Section 36(2) of the Act, the NHRC is only permitted to take cognizance of complaints relating to events which took place within the last year¹¹. HRW recommended amendment specifically to allow the NHRC to independently investigate allegations of

abuse by members of the armed forces¹². The Kashmir Institute of International Relations (KIIR) added that the NHRC has no legal jurisdiction over Jammu and Kashmir¹³.

5. The NHRC stated that some parts of the country like Jammu and Kashmir and North East region and some other States are facing the menace of militancy and terrorism. The Armed forces of the Union including para-military forces have been deployed in some disturbed areas to aid and assist the State Government authorities to handle the internal security situation. At times, there are allegations of human rights violations by the forces who conduct operations against terrorists and on receipt of such complaints, the Commission calls for reports from concerned authorities. The Army has issued strict guidelines to all ranks on the observance of human rights while operating in such areas¹⁴.

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

A. Cooperation with human rights mechanisms

6. AI regretted that India continues to display an unwillingness to cooperate with the UN Special Procedures¹⁵. PF for UPR noted that the largest democratic country has failed to extend a Standing Invitation to the Special Procedures¹⁶.

B. Implementation of international human rights obligations

1. Equality and non discrimination

7. HRW noted that despite the existence of laws protecting human rights, India has failed to properly implement laws and policies to protect its marginalized communities, particularly Dalits, tribal groups, religious minorities, women and children¹⁷.

8. NHRC stated that the predominantly patriarchal, social, cultural and religious set up based on the foundation that the family line runs through the male has contributed extensively to the secondary status of women in India. This has led to a strong desire to avoid the birth of a female child in the family resulting in the decline in the child sex ratio at an alarming rate. In some parts of the country parents are choosing to abort if the child is female¹⁸. The PF for UPR noted that across North India there is inverse juvenile sex ratio because of female foeticide¹⁹. PF for UPR also observed that poor socio-economic indicators, deplorable educational, reproductive and sexual health statistics highlight that women are increasingly being marginalized in the development and political agenda²⁰.

9. According to Christian Solidarity Worldwide (CSW) the caste system continued to dominate and shape Indian society to a considerable extent, detrimentally affecting the social status, treatment and socio-economic prospects of the Dalits, or Scheduled Castes, who represent 16% of the total population (at least 167 million)²¹. The PF for UPR and IDMC stated that Dalits continue to endure segregation and are denied access to public places and services including places of worship, electricity and water²². Tripura People's Democratic Front (TPDF) stated that discrimination against Dalits includes education inequality, economic disenfranchisement, religious discrimination, a poor system of medical care, and targeted violence against women²³. CSW noted that Dalits report facing discrimination not only in normal social transactions but also in their interaction with Indian officialdom. The experiences of educated urban Dalits include subtler forms of discrimination, including in matters of employment and promotion²⁴. The International Movement against All Forms of Discrimination and Racism (IMADR) and the Lutheran World Federation (LWF) emphasized that the non-availability of disaggregated data on some areas of the caste-based discrimination prevents in-depth analysis and targeted planning which may contribute to discrimination against Dalits in the right to land, housing, health, education and employment²⁵.

10. The Society for Threatened Peoples (STP) reported that, in spite of existing constitutional safeguards, for generations the Scheduled Tribes or Adivasi have been subjected to various kinds of discrimination. As a result, the Adivasi experience poor levels of health, education, food security and political representation. Together with these problems, the paramount issue remains the question of Adivasi land rights.²⁶ AITPN and IWGIA added that many of the Particularly Vulnerable Tribal Groups are on the verge of extinction²⁷. The PF for UPR also described the basic thrust of the 'Habitual Offenders Act' as identifying certain tribal groups as "habitual offenders"²⁸.

11. PF for UPR reported that religious minorities in India face persecution, stigmatization and marginalization in the economic, social and political spheres. The Justice Sachar Committee in 2007 also highlighted this²⁹. The Islamic Human Rights Commission (IHRC) noted the regrettable trend whereby 'terrorism-related' incidents are blamed on Muslim organizations with the press immediately reporting on it. If the suspicions are not realized, there are no press reports stating that the original report was wrong³⁰. Five years since the 2002 communal violence in the Indian state of Gujarat in which more than 2,000 people were killed, AI remained concerned about the ongoing impact of that violence on the Muslim minority in Gujarat, as there are wide-scale reports of social and economic boycotting of Muslim communities in Gujarat and as many as 5,000 families are living in "relief colonies" without basic amenities or recognition from the government of Gujarat³¹. Partners for Law in Development (PLD) reported that the draft Communal Violence Bill of 2005 has been widely debated by civil

society members and strongly criticized for its failure to dismantle impunity, state collusion or redress gender based crimes³². The PF for UPR noted that the bill does not define genocide³³.

2. Right to life, liberty and security of the person

12. PF for UPR stated that violations of the right to life through custodial deaths, encounter killings, indiscriminate and disproportionate use of fire-arms and enforced disappearances are rampant. The NHRC reported 136 deaths in police custody and 1,357 deaths in judicial custody and 122 cases of encounter killings, quoted the PF for UPR³⁴.

13. According to Liberation, India continues to have a veritable spectrum of draconian laws that are supposedly aimed at stopping terrorism but are used effectively by state agents to abuse human rights³⁵. Liberation and AAI reported that these laws include the Central Government enacted Armed Forces (Special Powers) Act 1958 (AFSPA), National Security Act 1980 and the amended Unlawful Activities Prevention Act 2004³⁶. Liberation stated that the Armed Forces (Special Powers) Act 1958 remained in effect in Nagaland, Manipur, Assam and parts of Tripura. It also reported that a version of the law was in effect in Jammu and Kashmir, the Armed Forces (Jammu and Kashmir) Special Powers Act 1990³⁷.

14. The South Asia Forum for Human Rights (SAFHR) added that the chronic use of anti-terrorist laws, preventive detention laws and the Armed Forces Special Powers Act, 1958 (AFSPA) have created a situation where the normal methods of 'investigation' have been replaced by disappearances, illegal detention, custodial torture, sexual violence against women and summary executions disguised as armed encounters.³⁸ The Committee on Human Rights Manipur (COHRM) noted that the invocation of the AFSPA for half a century in Manipur has blatantly violated non-derogable rights, primarily the right to life. Under section 4(a) of AFSPA, a non commissioned officer of the Indian army can shoot to kill in mere suspicion of crimes defined by the Government. Manipuri youths are primary victims of daily and routine extra-judicial executions³⁹.

15. AAI and Liberation also noted legislation enacted by State governments such as the the Jammu and Kashmir Public Safety Act 1978, the Jammu and Kashmir Disturbed Areas Act 1992, the Chhattisgarh Special Public Protection Act 2005 and the Madhya Pradesh Special Areas Security Act 2002⁴⁰. Recommendations for the repeal or review of the different National and State Acts were made by CORE and AAI⁴¹.

16. The KIIR reported that two years after the repeal of the Prevention of Terrorism Act (POTA), cases of all those under the Act had not been fully reviewed

within the stipulated period. Moreover, KIIR noted the concern of human rights organizations over amendments made to the Unlawful Activities (Prevention Act) which granted special powers to the state, similar to those previously provided by the POTA⁴².

17. The World Peace Forum (WPF) noted that section 4 (a) of the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 authorizes the armed forces of India to "fire upon or otherwise use force even to causing of death against any person" without fire orders⁴³. The Jammu and Kashmir Public Safety Act (PSA) permits administrative detention of any person for a period of one year purely on the purported presumption that they may in future commit any act that will be harmful to the maintenance of public order or to the security of the State, noted the WPF. Under section 8(2) of this Act, the authorities are empowered not to disclose the grounds of detention to the detainee⁴⁴.

18. The Internal Displacement Monitoring Centre of the Norwegian Refugee Council (IDMC) stated that in Jammu and Kashmir international humanitarian law and human rights violations and abuses by security forces and the armed militant groups continue to be extensively reported. An estimated 15,320 civilians had lost their lives in militancy-related violence in the state as of March 2005⁴⁵. The IDMC added that in Assam, the government has deployed large numbers of security forces to contain insurgencies. The forces have been responsible for arbitrary arrest, detention, torture and other abuses during search operations. The IDMC mentioned that there have been reports of serious international humanitarian law and human rights violations and abuses by all the parties - the security forces, the Maoists and the Salwa Judum cadres - in the Chhattisgarh conflict⁴⁶.

19. The Asian Legal Resource Centre (ALRC) stated that torture is not a crime in India. To convict a law enforcement officer concerning torture, the act has to qualify for all the requirements for any other crimes under the Indian Penal Code. The absence of an independent agency to investigate cases of custodial torture is exploited by the offenders since they know that even if a complaint is made regarding torture it will not be properly investigated⁴⁷. AI noted that widespread torture in police custody – particularly of members of marginalized groups – is generally acknowledged, as are political interference and widespread corruption, and safeguards to protect the rights of detainees are rarely implemented⁴⁸.

20. The Torture Prevention Centre India Trust (TPCIT) observed that prison conditions remain deplorable across India⁴⁹. The PF for UPR noted the NHRC statistics for the year 2004 that 70% of the total inmates were undertrials (persons standing trial)⁵⁰. The TPCIT stated that a total of 4026 cases of child rape were recorded during 2005 and that many of the cases of child-rape were committed by the law enforcement personnel⁵¹.

21. SAFHR added that in almost every police station of India 'accused' persons are routinely beaten and abused. Investigations show that the majority of the so-called 'criminals' who are tortured and abused in the police stations are poor, belonging to the communities of Dalits, tribals and minority religions like Islam and Christianity⁵². The TPDF reported that Christians in India face threats, physical attacks, and jail time for sharing their faith⁵³. Open Doors (OD) mentioned incidents where members of religious minorities who have been victims of beatings, evictions, looting, amongst others, were refused the right to file a First Incident Report by local police officers⁵⁴. The TPDF expressed the view that Sikhs are also highly victimized by the Indian government⁵⁵.

22. Women in India continue to face physical, sexual, emotional and economic violence according to the PF for UPR. Women, particularly those from tribal, Dalit and religious minorities, face sexual and gender based crimes during/after caste or communal conflict situations⁵⁶. According to the 2005 Annual Report of the National Crime Records, 1 crime was committed against women every 3 minutes, 1 rape every 29 minutes, 1 molestation every 15 minutes, 1 dowry death case every 77 minutes⁵⁷. The PF for UPR noted the statistics given by the National Crime Records that out of total 22,832 cases reported for kidnapping and abduction of women 43% were for marriage; 56,709 cases investigated by police during 2005 were of cruelty by husbands and relatives⁵⁸. The Youth Coalition for Sexual and Reproductive Rights (YCSRR) mentioned a study carried out by UNICEF and the NGO Prayas which revealed that 53% of children between the ages of 5 and 12 have been sexually abused and most often perpetrated by parents, legal guardians or close members of the family. Further, the study noted that more than half of all cases of sexual abuse and rape go unreported⁵⁹.

23. According to the Centre for Reproductive Rights (CRR), sham marriages are often performed for the purpose of facilitating trafficking of young women for sex work.⁶⁰ Sampada Gramin Mashila Santstha (SANGRAM) and VAMP also noted that current legislation has failed to protect the rights and safety of people in prostitution and sex work⁶¹.

24. Dalit activists giving testimony to CSW have asserted that a caste-based analysis of the various contemporary forms of slavery in India revealed to an overwhelming extent that the chief victims of, *inter alia*, human trafficking, sexual slavery and other forms of labour exploitation, are Dalits or members of 'low' castes, in particular, the *devadasi* system, bonded labour and manual scavenging. CSW mentioned that the implementation of laws to prevent such exploitation is extremely poor.⁶² NHRC further noted that it has been urging State authorities towards the complete eradication of the pernicious practice of manual scavenging and that under a Supreme Court directive, this is to be fully complied with by 2009⁶³.

25. The PF for UPR reported that the situation of children remained vulnerable with a lack of effective programmes for child labourers, recruitment as child soldiers, sexual violence against the girl child and deplorable conditions of juveniles in conflict with the law. Dalit and tribal children are more vulnerable to abuses. Torture and corporal punishment are rampant⁶⁴. The NHRC also expressed its deep concern about juvenile justice and that instances of sexual abuse have been on the rise⁶⁵. The Global Initiative to End All Corporal Punishment of Children (GIEACP) reported that corporal punishment is lawful in the home. There is no national prohibition in law of corporal punishment in schools, although it is prohibited under some States' laws, and no explicit prohibition in alternative care settings. Draft legislation under discussion, which purports to prohibit corporal punishment, retained the right to punish a child "if the Hurt rendered on a child is commensurate to the act undertaken by the child and is not unreasonable and does not harm the physical integrity of the child's body."⁶⁶

3. Administration of justice and rule of law

26. The Commonwealth Human Rights Initiative (CHRI) noted that the Indian criminal justice system is marked by extremely clogged courtrooms, lengthy delays at trial, and more significantly, corruption.⁶⁷ According to information submitted by PF for UPR there are at least 28.6 million cases pending before the courts in India. Presently, India has only 10.5 judges per million inhabitants. In addition, the legal aid system has collapsed.⁶⁸

27. The PF for UPR believed that there is virtual impunity for "public servants" and politicians and that the culture of impunity exacerbates human rights violations as the public officials consider themselves beyond the reach of the law.⁶⁹ CHRI stated that there is an urgent need for police reform in India. The police are commonly perceived as politicized, underperforming, brutal and unaccountable.⁷⁰

28. AI stated that while investigations into deaths in custody are mandatory under section 176 of the Code of Criminal Procedure such inquiries have mostly taken place following a public outcry. However, such inquiries remain under executive control, as opposed to the more independent inquiries carried out by magistrates. The police are often reluctant to bring forward evidence which might implicate their colleagues and senior officials have been known to participate in routine cover-ups of deaths resulting from torture. Even when Commissions of Inquiry have completed their work subsequent prosecutions have been rare⁷¹.

29. HRW pointed out that a series of Indian laws also make it difficult or impossible to prosecute abusers employed by the state. In particular, police and paramilitary forces are protected under Section 197 of the Criminal Procedure Code, which provides that no court will recognize any offence alleged to have been committed

by a public servant (including a member of the armed forces) in the discharge of official duty without the express sanction of the federal government. Permission to prosecute is rarely granted, even when an investigation has strong evidence of human rights violations.⁷²

30. HRW added that the army is provided with additional immunity when they are deployed in areas of internal conflict under the Armed Forces Special Powers Act (AFSPA). Under this Act, no prosecution, suit or other legal proceeding shall be brought, except with the express sanction of the federal government against any person regarding anything done or purported to be done in exercise of the powers under this Act⁷³. According to the CHRM, the invocation of AFSPA violated Article 4(a) of the ICCPR on declaration of "States of Emergency" since de facto emergency has been imposed without formal promulgation of any form of public emergency⁷⁴. CORE recommended that the AFSPA be repealed⁷⁵.

31. World Peace Forum (WFP) also noted that section 22 of the Jammu and Kashmir Public Safety Act (PSA) Act provides protection against prosecution, suit or legal proceedings to all acting under this Act and that this immunity against prosecution has resulted in widespread torture and arbitrary arrest and detention⁷⁶. HRW stated that various committees have been set up to address issues of impunity and accountability particularly in areas of armed conflict. However the findings of such committees are often not publicly disclosed and/or routinely ignored. HRW mentioned a committee to review the Armed Forces Special Powers Act, which submitted its report to the Home Ministry in June 2005. It also noted that, in April 2007, a working group on Jammu and Kashmir appointed by the Prime Minister also recommended the repeal of laws sanctioning impunity, such as the AFSPA. The Indian government has not acted on either of these recommendations.⁷⁷

32. The World Barua Organization (WBO) referred to the massacre in Gujarat in 2002, and in particular the fact that most of the cases filed by victims of the violence have never been investigated. Witnesses have been intimidated. No more than a dozen low-level culprits have been convicted⁷⁸. AI recommended that action be taken by the Government to effectively and promptly investigate incidents of violence against Muslim communities in Gujarat state, to prosecute perpetrators, including government and police officials, and to provide reparations for victims and survivors.⁷⁹ In a joint statement, Women's Research Action Group (WRAG) also mentioned the failure of the state government of Maharashtra to implement the recommendations of the Srikrishna Commission which was appointed by the government to enquire into communal violence in Mumbai in 1992-93, an example of large-scale impunity for communal violence in India.⁸⁰ Additionally, in the case of the secret cremations in Punjab, Ensaaf noted that the Supreme Court appointed the NHRC to examine all issues raised by the petitioners, granting it extensive powers to redress fundamental human rights

violations.⁸¹ AI noted that on 9 October 2006 the NHRC effectively closed the case, failing to investigate any cremation cases or record the testimony of a single victim family and relying exclusively on admissions and denials of state agencies to reach its determinations⁸². The NHRC noted that it recommended compensation to the next of kin of both the 195 deceased identified to be in custody of the police and of identified persons whose dead bodies were cremated by the Punjab police⁸³. Ensaaf recommended that the progress of the Punjab mass cremations case be monitored, as it is likely to come under review by the Indian Supreme Court in 2008, albeit the human rights violations occurred during the 1980 and 1990s.⁸⁴

4. Right to privacy, marriage and family life

33. PF for UPR noted that women's rights within family and marriage, especially her rights to property, inheritance, maintenance are not ensured and also that there are rampant child marriages - 24% of 15-19 age group are married.⁸⁵

34. PLD highlighted the petition in the High Court of New Delhi seeking judicial review of the provision which criminalizes consensual sexual acts between adults of the same sex (under section 377 of the Indian Penal Code).⁸⁶

5. Freedom of religion and belief, expression, association and peaceful assembly, and right to participate in public and political life

35. According to the Becket Fund (BF) the most troubling legal challenge to religious liberty in India is the existence of "freedom of religion" laws discouraging conversion ("anti-conversion laws"). Currently four Indian states, Orissa, Chhattisgarh, Madhya Pradesh, and Himachal Pradesh, have implemented anti-conversion laws. Gujarat and Arunachal Pradesh have anti-conversion laws that await enforcement regulations, and Rajasthan's anti-conversion law has been forwarded to the President for legal review. Many of India's state anti-conversion laws require a converted person to register their intention to convert to another religion. Some state anti-conversion laws discriminate against specific minority religions or social classes.⁸⁷ CSW noted that under current legislation, Dalits who convert to Christianity or Islam lose their Scheduled Caste status, and consequently their eligibility for the affirmative action-style system of reservation. It also observed that Dalit perception that religious conversions constitute a means of escaping caste is complicated by the fact that caste is practiced, to some extent, within all religious communities in India.⁸⁸ The European Centre for Law and Justice (ECLJ) stated that *souvent, ces lois sont invoquées, notamment par la population, afin de contrer la conversion de membres d'une religion majoritaire vers une religion minoritaire.*⁸⁹

36. CHRI raised certain concerns regarding the implementation of the Right to Information Act, in particular the lack of public awareness about the key provisions of the Act and the fact that fee structures vary widely from state to state.⁹⁰

37. Reporters Without Borders (RWB) stated that the Indian media is dynamic, protective of its freedoms and plays a crucial role in the country's democratic system. However, in states shaken by separatist or Maoist rebellions, journalists are caught in the crossfire. At least 65 were assaulted or received death threats from police officers, criminals, company heads or political militants during 2006 and two journalists were murdered. In Kashmir, the police did not respond to repeated inquiries by the NHRC about cases of imprisoned journalists.⁹¹

38. Front Line (FL) mentioned that restrictive legislation also contributes to further infringements of freedom of association and prevents some organisations from carrying out their legitimate work in defence of human rights.⁹² According to the CHRI the Foreign Contribution Regulation Bill 2006, which is currently before the Parliament, provides for severe restrictions on foreign funding for organisations that are classified as "organisations of a political nature, not being political parties". This classification and the power to grant a registration certificate authorising an organisation to receive foreign funds is left to administrative discretion in the Bill, which would massively decrease the space available for civil society work and advocacy in India.⁹³

39. CORE reported that human rights defenders and organizations are regularly victimized, including by search operations and the sealing of premises under different pretexts, confiscation of equipment and materials, harassment, false imprisonment, violence and threats of violence to self and family members.⁹⁴ FL is concerned that human rights defenders who tackle issues deemed sensitive by the government find themselves at considerable risk. Torture, preventive illegal or arbitrary detention, disappearances, ill-treatment, the use of excessive force, and the violation of due process rights are used by State actors to prevent human rights defenders from carrying out their legitimate and peaceful work. Human rights defenders who investigate and monitor atrocities committed by the police and custodial violence are at particular risk, as are Dalit and Tribal human rights defenders and those defending the rights of historically marginalized groups.⁹⁵ Several human rights defenders in Punjab, Jammu and Kashmir and states of the north-east have been killed, according to FL.⁹⁶

6. Right to social security and to an adequate standard of living

40. The PF for UPR observed that the denial and deprivation of the economic, social and cultural rights led to violations right to life through suicide, hunger and starvation. A staggering 89,362 farmers committed suicide between 1997 and 2005.⁹⁷ It

also observed that there is increased feminisation of poverty especially with males committing suicide.⁹⁸

41. CRR noted that the Indian government has formally introduced a wide range of policies and programs designed to improve women's reproductive health status by facilitating broad access to health-related services and information. However, implementation has been uneven and weak.⁹⁹ The CRR added that complications during pregnancy and childbirth are among the leading causes of death of women in India. The underlying causes of maternal mortality are poor health care facilities, lack of access to family planning services and safe abortions, and poor nutrition. These factors disproportionately affect women in rural areas. One in six Indian girls begin child bearing between the ages of 13 and 19, and less than 10% of married adolescents use contraception, stated the CRR. Unsafe abortion is believed to account for half of all maternal deaths among girls and young women aged 15 to 19 years. CRR also noted that in 2002, India amended its abortion law, the Medical Termination of Pregnancy Act, 1971, but, there is no evidence that law reform has increased access to safe, legal, and affordable abortion services.¹⁰⁰ YCSRR stated that in India, most schools do not have any form of sexuality education in their curricula. It recommended that India provide comprehensive sexuality education in all public and private schools.¹⁰¹

42. STP expressed its concern with the worrying mortality rate among Adivasi children reported by the Ministry of Tribal Health in its Annual Report 2005-2006, which at 84.2 deaths (per 1, 000 births) is significantly higher than the Indian average of 70 as well as the rates of other disadvantaged socio-economic groups.¹⁰²

43. The NHRC also reported that while India has overcome famines and moved away from being a food deficit country, there are instances of starvation and malnutrition.¹⁰³ Despite great advances in the justiciability of the right to food in India, Food First Information and Action Network (FIAN) stated that difficulties remain in enforcing existing legislation and in ensuring the implementation of court decisions and access to justice for the poor.¹⁰⁴ FIAN indicated that the necessary shift from Public Distribution System (PDS) to Targeted Public Distribution System (TPDS) in 1997, has not contributed to addressing the problem of hunger and starvation of millions of Indians. The TPDS has been introduced only to look after the food security of the people living below the poverty line. Poverty itself is not clearly defined by the government and the criteria to decide which people are below the poverty line are vague.¹⁰⁵ The Asian Legal Resource Centre (ALRC) observed that the management of this system suffers from corruption, particularly black-marketing, as well as caste prejudices and the failure of the local governments. It also reported that starvation and malnourishment affects about 53% of India's entire population.¹⁰⁶

44. FIAN noted that lack of access to clean drinking water and water for irrigation due to pollution of water resources, diversion of water for industrial purposes and steps towards privatisation of water are some of the threats to the right to water of the people in India.¹⁰⁷

7. Right to education

45. The KIIR mentioned that in Kashmir 80% of the school buildings are occupied by the Indian army and due to the fear of the armed forces the people are scared to send their children to schools.¹⁰⁸ AAI mentioned that although in 1993 manual scavenging of human waste was outlawed, there are records that 1.2 million persons still carry out this practice. No sooner the families surrender the practice of manual scavenging, their children are denied scholarship under the scheme for children of families practicing unclean occupations. This forces drop-out from schools, especially of girl children.¹⁰⁹

8. Internally Displaced Persons

46. The PF for UPR observed that over 84 million indigenous/tribals peoples of India, known as the Scheduled Tribes or Adivasi, continued to be disproportionate victims of “development”, displacement and dispossession.¹¹⁰ The STP noted that most of the Adivasi tribes live in the forests of remote and mountainous regions in central India, the so-called “Tribal Belt” and that their land contains large deposits of natural resources like bauxite, iron ore and coal. Consequently their lands have been increasingly targeted for industrial development by the fast-growing Indian economy. Mining operations, industrial complexes (frequently clustered in Special Economic Zones (SEZ)) and the building of infrastructure (particularly dams) have already taken a serious toll on Adivasi land and threaten to drive their distinct culture into extinction.¹¹¹ AI is increasingly concerned that the lack of transparency, inclusiveness and consultation with those who own the land in the acquisition modalities of land for industrial projects has sparked protests from local socially and economically marginalized communities fearing displacement from their land and homes. In the majority of cases the displacement is also a threat to their livelihood, which for most is entirely based on production from their land.¹¹² According to AAI, Indian security forces and police have been engaged in rape and killing to suppress the people's genuine protest against the acquisition of their farmland for special economic zones (SEZs) and unjust industrialization. Various state governments in India acquired land mostly from tribal communities, Dalits and farmers under the Land Acquisition Act 1894.¹¹³

47. According to the IDMC, at least 600,000 people are displaced in India for reasons related to conflict and localized violence.¹¹⁴ According to the Ministry of Home Affairs, quoted by AITPN and IWGIA, 21 out of 28 States are afflicted by armed conflict and the majority of these States are afflicted by Naxalite (Maoist) conflicts.¹¹⁵

AITPN and IWGIA noted that all the areas afflicted by internal armed conflicts, except Jammu and Kashmir are pre-dominantly inhabited by indigenous and tribal peoples, who constitute over 40% of conflict-induced IDPs in India and suffer serious human rights violations from both the security forces and the armed opposition groups.¹¹⁶ IDMC noted that India's largest situation of internal displacement stems from conflict in Jammu and Kashmir.¹¹⁷ IDMC added that the Indian government frequently denies international humanitarian organisations access to internally displaced people, arguing that local governments take full care of the affected people.¹¹⁸ According to the IDMC, the government's response to displaced people is often ad-hoc and largely insufficient, and the IDPs frequently find themselves in an extremely vulnerable situation.¹¹⁹ IDMC recommended that India adopt a national IDP policy¹²⁰ and Action Aid that India implement the UN Guiding principles on Internal Displacement.¹²¹

9. Right to Development

48. The NHRC stated that two challenges need to be met before the right to development can be taken seriously in policy and action. The first is to create a robust concept of development and the second to identify the practical steps to implement this right.

III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS

49. IMADR and LWF mentioned the statement made by the Indian Prime Minister in December 2006, in which he compared the untouchability practice in India to apartheid in South Africa, as a milestone in the recognition of the social discrimination against Dalits. They recommended that this public statement should be followed up by effective measures at the national level to implement the constitutional safeguards protecting Dalits from discrimination.¹²²

50. SAFHR noted the progress made in recent years India in institutionalising 'transparency in governance' through the enactment of Right to Information Act.¹²³

IV. KEY NATIONAL PRIORITIES, INITIATIVES AND COMMITMENTS

51. [n/a]

V. CAPACITY BUILDING AND TECHNICAL ASSISTANCE

52. [n/a]

Notes

1 The following stakeholders have made a submission (all original submissions are available in full text on: www.ohchr.org):

Civil society

AAI	Action Aid India, UPR Submission, November 2007*;
AI	Amnesty International, UPR Submission, November 2007*;
AITPN and IWGIA	Joint submission by Asian Indigenous & Tribal Peoples Network and International Working Group on Indigenous Affairs, UPR Submission, November 2007*;
ALRC	Asian Legal Resource Centre , UPR Submission, November 2007*;
BF	The Becket Fund for Religious Liberty, UPR Submission, November 2007*;
CHRI	Commonwealth's Human Rights Initiative, UPR Submission, November 2007*;
COHRM	Committee on Human Rights Manipur, UPR Submission, November 2007;
CORE	Centre for Organisation Research & Education, UPR Submission, November 2007;
CRR	Centre for Reproductive Rights, UPR Submission, November 2007;
CSW	Christian Solidarity Worldwide, UPR Submission, November 2007*;
ECLJ	European Centre for Law and Justice, UPR Submission, November 2007*;
Ensaaf	Ensaaf, UPR Submission, November 2007;
FIAN	Food First Information and Action Network, UPR Submission, November 2007*;
FL	Front Line, UPR Submission, November 2007*;
GIEACP	Global Initiative to End All Corporal Punishment of Children, UPR Submission, November 2007*;

HRW	Human Rights Watch, UPR Submission, November 2007*;
IDMC	Norwegian Refugee Council (Internal Displacement Monitoring Centre,)
UPR	Submission, November 2007*;
IHRC	Islamic Human Rights Commission, UPR Submission, November 2007;
IMADR and LWF	Joint submission by the International Movement against All Forms of Discrimination and Racism* and the Lutheran World Federation* in association with the National Campaign on Dalit Human Rights (NCDHR) and the International Dalit Solidarity Network (IDSN), UPR Submission, November 2007*;
Interfaith International	Interfaith International, UPR Submission, November 2007*;
KIIR	Kashmir Institute of International Relations, UPR Submission, November 2007;
Liberation	Liberation, UPR Submission, November 2007*;
OD	Open Doors International UPR Submission, November 2007;
OMCT	World Organization Against Torture, UPR Submission, November 2007*;
PF for UPR	Joint submission by People's Forum for UPR presented by Asia Centre for Human Rights on behalf of 129 organizations and 13 human rights defenders, UPR Submission, November 2007*;
PLD	Joint submission by Partners for Law in Development and 16 other NGOs, UPR Submission, November 2007;
RWB	Reporters Without Borders, UPR Submission, November 2007*;
SAFHR	South Asia Forum for Human Rights, UPR Submission, November 2007;
SANGRAM and VAMP	Joint submission by Sampada Gramin Mashila Santstha and VAMP, UPR Submission,

	November 2007;
STP	Society for Threatened Peoples, UPR Submission, November 2007*;
TPCIT	Torture Prevention Centre India Trust, UPR Submission, November 2007;
TPDF	Tripura People's Democratic Front, UPR Submission, November 2007;
WBO	World Barua Organization, UPR Submission, November 2007;
WRAG	Joint submission by Women's Research & Action Group and 23 other NGOs, UPR Submission, November 2007;
WPF	World Peace Forum, UPR Submission, November 2007;
YCSRR	Youth Coalition for Sexual and Reproductive Rights, UPR Submission, November 2007.

National Human Rights Institution

The National Human Rights Commission of India (NIHRC) **

NB: * NGOs with ECOSOC status; ** National Human Rights Institution with A-status

² National Human Rights Commission, UPR Submission, para. 28.

³ Joint submission by People's Forum for UPR, presented by Asia Centre for Human Rights, UPR Submission, November 2007, p. 11.

⁴ Amnesty International, UPR Submission, November 2007, p. 3. See also Committee on Human Rights Manipur, UPR Submission, November 2007, p. 1 and 4.

⁵ Joint submission by Asian Indigenous & Tribal Peoples Network and International Working Group on Indigenous Affairs, UPR Submission, November 2007, p. 6.

⁶ Joint submission by People's Forum for UPR, presented by Asia Centre for Human Rights., November 2007, p.

⁷ National Human Rights Commission, UPR Submission, paras. 6, 18 and 19.

⁸ Joint submission by People's Forum for UPR, presented by Asia Centre for Human Rights, November 2007, p.

- ⁹ Joint submission by People's Forum for UPR, presented by Asia Centre for Human Rights, November 2007, p. 11. See also Joint submission by Asian Indigenous & Tribal Peoples Network and International Working Group on Indigenous Affairs, UPR Submission, November 2007, p. 3
- ¹⁰ Human Rights Watch, UPR Submission, November 2007, p. 4. See also Centre for Organisation Research & Education, UPR Submission, November 2007, pp. 3-4.
- ¹¹ Amnesty International, UPR Submission, November 2007, p. 3.
- ¹² Human Rights Watch, UPR Submission, November 2007, p. 5. See also Torture Prevention Centre India Trust, UPR Submission, November 2007, p. 1.
- ¹³ Kashmir Institute of International relations, UPR Submission, November 2007, p.3.
- ¹⁴ National Human Rights Commission, UPR Submission, para. 15.
- ¹⁵ Amnesty International, UPR Submission, November 2007, p. 3.
- ¹⁶ Joint submission by People's Forum for UPR, presented by Asia Centre for Human Rights, November 2007, p.13.
- ¹⁷ Human Rights Watch, UPR Submission, November 2007, p. 1.
- ¹⁸ National Human Rights Commission, UPR Submission, para. 23.
- ¹⁹ Joint submission by People's Forum for UPR, presented by Asia Centre for Human Rights, November 2007, p.6.
- ²⁰ Joint submission by People's Forum for UPR, presented by Asia Centre for Human Rights, November 2007, p.6.
- ²¹ Christian Solidarity Worldwide, UPR Submission, November 2007, p. 2.
- ²² Joint submission by People's Forum for UPR, presented by Asia Centre for Human Rights, November 2007, p.6 and Norwegian Refugee Council (Internal Displacement Monitoring Centre), UPR Submission, November 2007, p. 2.
- ²³ Tripura People's Democratic Front, UPR Submission, November 2007, p. 3.
- ²⁴ Christian Solidarity Worldwide, UPR Submission, November 2007, p. 3.
- ²⁵ Joint submission by the International Movement against All Forms of Discrimination and Racism and the Lutheran World Federation in association with the National Campaign on Dalit Human Rights and the International Dalit Solidarity Network, UPR Submission, November 2007, p. 4.
- ²⁶ Society for Threatened Peoples, UPR Submission, November 2007, p. 1.
- ²⁷ Joint submission by Asian Indigenous & Tribal Peoples Network and International Working Group on Indigenous Affairs, UPR Submission, November 2007, p. 3. Joint submission by People's Forum for UPR, presented by Asia Centre for Human Rights, November 2007, p. 7
- ²⁸ Joint submission by People's Forum for UPR, presented by Asia Centre for Human Rights, November 2007, p. 8. See also Joint submission by Asian Indigenous & Tribal Peoples Network and International Working Group on Indigenous Affairs, UPR Submission, November 2007, p. 3.
- ²⁹ Joint submission by People's Forum for UPR, presented by Asia Centre for Human

Rights, November 2007, p.7.

³⁰ Islamic Human Rights Commission, UPR Submission, November 2007, p. 1.

³¹ Amnesty International, UPR Submission, November 2007, p. 4.

³² Joint submission by Partners for Law in Development and 16 other NGOs, UPR Submission, November 2007, p. 1.

³³ Joint submission by People's Forum for UPR, presented by Asia Centre for Human Rights, November 2007, p.8.

³⁴ Joint submission by People's Forum for UPR, presented by Asia Centre for Human Rights, November 2007, p.3.

³⁵ Liberation, UPR Submission, November 2007, p. 1.

³⁶ Liberation, UPR Submission, November 2007, pp. 1-3 and Action Aid India, UPR Submission, November 2007, page 2. See also Centre for Organisation Research & Education, UPR Submission, November 2007, pp. 1- 4.

³⁷ Liberation, UPR Submission, November 2007, p.,5.

³⁸ South Asia Forum for Human Rights, UPR Submission, November 2007, p. 1.

³⁹ Committee on Human Rights Manipur, UPR Submission, November 2007, p. 3.

⁴⁰ Action Aid India, UPR Submission, November 2007, page 2 and Liberation, UPR Submission, November 2007, pp. 1-3. See also Centre for Organisation Research & Education, UPR Submission, November 2007, pp. 1-4.

⁴¹ Centre for Organisation Research & Education, UPR Submission, November 2007, pp. 2-3; and Action Aid India, UPR Submission, November 2007, page 6

⁴² Kashmir Institute of International Relations, UPR Submission, November 2007, p. 4. See also Torture Prevention Centre India Trust, UPR Submission, November 2007, p. 5.

⁴³ World Peace Forum, UPR Submission, November 2007, p. 8.

⁴⁴ World Peace Forum, UPR Submission, November 2007, p. 5, 7.

⁴⁵ Norwegian Refugee Council (Internal Displacement Monitoring Centre), UPR Submission, November 2007, p.3.

⁴⁶ Norwegian Refugee Council (Internal Displacement Monitoring Centre), UPR Submission, November 2007, p.3.

⁴⁷ Asian Legal Resource Centre, UPR Submission, November 2007, p. 4-5.

⁴⁸ Amnesty International, UPR Submission, November 2007, p. 1.

⁴⁹ Torture Prevention Centre India Trust, UPR Submission, November 2007, p. 5.

⁵⁰ Joint submission by People's Forum for UPR, presented by Asia Centre for Human Rights, November 2007, p.3.

⁵¹ Torture Prevention Centre India Trust, UPR Submission, November 2007, p. 5.

⁵² South Asia Forum for Human Rights, UPR Submission, November 2007, p. 1.

⁵³ Tripura People's Democratic Front, UPR Submission, November 2007, p. 2. See also Christian Solidarity Worldwide, UPR Submission, November 2007, p. 6.

⁵⁴ Open Doors, UPR Submission, November 2007, p. 1.

- ⁵⁵ Tripura People's Democratic Front, UPR Submission, November 2007, p. 4-5. See also Interfaith International, UPR Submission, November 2007, pp.1-6
- ⁵⁶ Joint submission by People's Forum for UPR, presented by Asia Centre for Human Rights, November 2007, p.5.
- ⁵⁷ Torture Prevention Centre India Trust (TOP), UPR Submission, November 2007, p. 4.
- ⁵⁸ Joint submission by People's Forum for UPR, presented by Asia Centre for Human Rights, November 2007, p.5. See also Torture Prevention Centre India Trust, UPR Submission, November 2007, p. 4.
- ⁵⁹ Youth Coalition for Sexual and Reproductive Rights (YCSRR), UPR Submission, November 2007, p.4.
- ⁶⁰ Centre for Reproductive Rights, UPR Submission, November 2007, p. 2.
- ⁶¹ Joint submission by Sampada Gramin Mashila Santstha and VAMP, UPR Submission, November 2007, p. 2.
- ⁶² Christian Solidarity Worldwide, UPR Submission, November 2007, p. 4. See also See also Asian Legal Resource Centre, UPR Submission, November 2007, p. 3.
- ⁶³ National Human Rights Commission, UPR Submission, para. 17.
- ⁶⁴ Joint submission by People's Forum for UPR, presented by Asia Canter for Human Rights, November 2007, p.6.
- ⁶⁵ National Human Rights Commission, UPR submission, para. 23.
- ⁶⁶ Global Initiative to End All Corporal Punishment of Children, UPR Submission, November 2007, pp. 2-3.
- ⁶⁷ Commonwealth's Human Rights Initiative, UPR Submission, November 2007, p. 2.
- ⁶⁸ Joint submission by People's Forum for UPR, presented by Asia Centre for Human Rights, November 2007, p.8.
- ⁶⁹ Joint submission by People's Forum for UPR, presented by Asia Centre for Human Rights, November 2007, p.2.
- ⁷⁰ Commonwealth Human Rights Initiative, UPR Submission, November 2007, p. 2.
- ⁷¹ Amnesty International, UPR Submission, November 2007, p. 2.
- ⁷² Human Rights Watch, UPR Submission, November 2007, pp. 1-2. See also Amnesty International, UPR Submission, November 2007, p. 2.
- ⁷³ Human Rights Watch, UPR Submission, November 2007, p. 2. See also South Asia Forum for Human Rights, UPR Submission, November 2007, pp. 1-2 and 4. See also Liberation, UPR Submission, November 2007, p. 5-6.
- ⁷⁴ Committee on Human Rights Manipur, UPR Submission, November 2007, para.10.
- ⁷⁵ Centre for Organisation Research & Education, UPR Submission, November 2007, para 13.
- ⁷⁶ World Peace Forum, UPR Submission, November 2007, p. 7.
- ⁷⁷ Human Rights Watch, UPR Submission, November 2007, pp.3-4.

- 78 World Barua Organization, UPR Submission, November 2007, p. 3.
- 79 Amnesty International, UPR Submission, November 2007, p. 5.
- 80 Joint submission by Women's Research & Action Group and 23 other NGOs, UPR Submission, November 2007, p. 1.
- 81 Ensaaf, UPR Submission, November 2007, p. 3.
- 82 Amnesty International, UPR Submission, November 2007, p. 2.
- 83 National Human Rights Commission, UPR Submission, para 9..
- 84 Ensaaf, UPR Submission, November 2007, pp. 1-2.
- 85 Joint submission by People's Forum for UPR, presented by Asia Centre for Human Rights, November 2007, p.6.
- 86 Joint submission by Partners for Law in Development and 16 other NGOs Partners, UPR Submission, November 2007, p. 1.
- 87 The Becket Fund for Religious Liberty, UPR Submission, November 2007, p. 1, 3-4.
- 88 Christian Solidarity Worldwide, UPR Submission, November 2007, p. 5.
- 89 European Centre for Law and Justice, UPR Submission, November 2007, p. 3.
- 90 Commonwealth's Human Rights Initiative, UPR Submission, November 2007, p. 1.
- 91 Reporters Without Borders, UPR Submission, November 2007, p. 1-3.
- 92 Front Line, UPR Submission, November 2007, p. 4.
- 93 Commonwealth's Human Rights Initiative, UPR Submission, November 2007, p. 3. See also Action Aid India, UPR Submission, November 2007, p. 5.
- 94 Centre for Organisation Research & Education, UPR Submission, November 2007, para 8.
- 95 Front Line, UPR Submission, November 2007, p. 1.
- 96 Front Line, UPR Submission, November 2007, p. 4.
- 97 Joint submission by People's Forum for UPR, presented by Asia Centre for Human Rights. Peoples' Forum for UPR in India, November 2007, page 3.
- 98 Joint submission by People's Forum for UPR, presented by Asia Centre for Human Rights, November 2007, p.6.
- 99 Centre for Reproductive Rights, UPR Submission, November 2007, p. 1.
- 100 Centre for Reproductive Rights, UPR Submission, November 2007, p. 2.
- 101 Youth Coalition for Sexual and Reproductive Rights (YCSRR), UPR Submission, November 2007, paras. 3 and 19.
- 102 Society for Threatened Peoples, UPR Submission, November 2007, p. 4
- 103 National Human Rights Commission, UPR Submission, para. 24.
- 104 Food First Information and Action Network, UPR Submission, November 2007, p. 3.
- 105 Food First Information and Action Network, UPR Submission, November 2007, p. 3-4.

- ¹⁰⁶ Asian Legal Resource Centre, UPR Submission, November 2007, p. 5-6.
- ¹⁰⁷ Food First Information and Action Network, UPR Submission, November 2007, p. 5.
- ¹⁰⁸ Kashmir Institute of International Relations, UPR Submission, November 2007, p. 3.
- ¹⁰⁹ Action Aid India, UPR Submission, November 2007, p. 5.
- ¹¹⁰ Joint submission by People's Forum for UPR, presented by Asia Centre for Human Rights, November 2007, p. 7.
- ¹¹¹ Society for Threatened Peoples, UPR Submission, November 2007, p. 1. See also World Organization Against Torture, UPR Submission, November 2007, p. 1.
- ¹¹² Amnesty International, UPR Submission, November 2007, p. 4.
- ¹¹³ Action Aid India, UPR Submission, November 2007, p. 1. See also Amnesty International, UPR Submission, November 2007, pp. 4-5
- ¹¹⁴ Norwegian Refugee Council (Internal Displacement Monitoring Centre), UPR Submission, November 2007, p. 1.
- ¹¹⁵ Joint submission by Asian Indigenous & Tribal Peoples Network and International Working Group on Indigenous Affairs, UPR Submission, November 2007, p. 1.
- ¹¹⁶ Joint submission by Asian Indigenous & Tribal Peoples Network and International Working Group on Indigenous Affairs, UPR Submission, November 2007, p. 3.
- ¹¹⁷ Norwegian Refugee Council (Internal Displacement Monitoring Centre), UPR Submission, November 2007, p. 1.
- ¹¹⁸ Norwegian Refugee Council (Internal Displacement Monitoring Centre), UPR Submission, November 2007, pp. 5-6.
- ¹¹⁹ Norwegian Refugee Council (Internal Displacement Monitoring Centre), UPR Submission, November 2007, p. 1.
- ¹²⁰ Norwegian Refugee Council (Internal Displacement Monitoring Centre), UPR Submission, November 2007, p. 6.
- ¹²¹ Action Aid India, UPR Submission, November 2007, p. 6.
- ¹²² Joint submission by the International Movement against All Forms of Discrimination and Racism and the Lutheran World Federation in association with the National Campaign on Dalit Human Rights and the International Dalit Solidarity Network, UPR Submission, November 2007, p. 3.
- ¹²³ South Asia Forum for Human Rights, UPR Submission, November 2007, p. 1.

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COMPILATION PREPARED BY THE OFFICE OF THE HIGH COMMISSIONER
FOR HUMAN RIGHTS, IN ACCORDANCE WITH PARAGRAPH 15(B) OF THE
ANNEX TO HUMAN RIGHTS COUNCIL RESOLUTION 5/1

India

The present report is a compilation of the information contained in the reports of treaty bodies, special procedure, including observations and comments by the State concerned, and other relevant official United Nations documents. It does not contain any opinions, views or suggestions on the part of the Office of the High Commissioner for Human Rights (OHCHR) other than those contained in public reports issued by OHCHR. It follows the structure of the general guidelines adopted by the Human Rights Council. The information included herein has been systematically referenced in endnotes. The periodicity of the review for the first cycle being four years, most of the documents used as reference are dated after 1 January 2004. In the absence of recent information, the latest available reports and documents have also been taken into consideration, unless they are outdated. Since this report only compiles information contained in official United Nations documents, lack of information or focus on specific issues may be due to non-ratification of a treaty, and/or to a low level of interaction or cooperation with international human rights mechanisms.

I. BACKGROUND AND FRAMEWORK

A. Scope of international obligations¹

<i>Core universal human rights treaties²</i>	<i>Date of ratification, accession or succession</i>	<i>Declarations/reservations</i>	<i>Recognition of specific competences of treaty bodies</i>
ICERD	3 Dec. 1968	Art. 22	Individual complaints (art. 14): No
ICESCR	10 Apr. 1979	Arts. 1, 4, 7 (c) and 8	--
ICCPR	10 Apr. 1979	Arts. 1, 9, 12, 13, 19 (3), 21 and 22	Inter-State complaints (art. 41): No
CEDAW	9 Sept. 1993	Arts. 5 (a), 16 (1) and (2) and 29 (1)	--
CRC	11 Dec. 1992	Art. 32 (2) (a)	--
OP-CRC-AC	30 Nov. 2005	Art. 3 (2)	--
OP-CRC-SC	16 Aug. 2005	None	--
CPD	1 Oct. 2007	None	--
<i>Core treaties to which India is not a party: ICCPR-OP1, ICCPR-OP2, OP-CEDAW, CAT (signature only, 1997), OP-CAT, ICRMW, OP-CPD, CED.</i>			
<i>Other main relevant international instruments</i>		<i>Ratification, accession or succession</i>	
Convention on the Prevention and Punishment of the Crime of Genocide		Yes	
Rome Statute of the International Criminal Court		No	
Palermo Protocol ³		No	
Refugees and stateless persons ⁴		No	
Geneva Conventions of 12 August 1949 and Additional Protocols thereto ⁵		Yes, except the three Additional Protocols	
ILO fundamental conventions ⁶		Yes, except Nos. 87, 98, 138 and 182	
UNESCO Convention against Discrimination in Education		No	

1. Treaty bodies invited India to consider the ratification of CAT⁷, ICRMW⁸, Palermo Protocol,⁹ ILO Conventions 138 and 182 relating to the abolition of child labour,¹⁰ ILO Convention 169 concerning Indigenous and Tribal Peoples in Independent Countries,¹¹ 1951 Convention Relating to the Status of Refugees and its 1967 Protocol,¹² ICCPROP1,¹³ OP-CEDAW;¹⁴ as well as to making the optional declaration provided for in article 14 of ICERD.¹⁵

2. India was invited by treaty bodies to review the reservations or declarations it made to articles 1, 9, 13, 12, 19, paragraph 3, 21 and 22 of ICCPR¹⁶ and to articles 5 (a) and 16 (1) of CEDAW¹⁷ with a view to withdrawing them; and to consider withdrawing its reservation to article 16 (2) of CEDAW¹⁸ and its declaration to article 32 of the CRC.¹⁹

B. Constitutional and legislative framework

3. Notwithstanding the comprehensive constitutional and legal framework in India, the HR Committee noted that international treaties are not self-executing in India and recommended full incorporation of ICCPR provisions in domestic law so that they may be invoked directly before the courts.²⁰

4. CRC, CERD and CEDAW noted important advances with respect to the right to education, including the Constitution (86th Amendment) Act, 2002, providing for the right to free and compulsory education to all children aged 6-14.²¹ CEDAW called upon the State to consider using its powers under article 253 of the Constitution to enable the passing of legislation to operationalize this right.²² CRC welcomed the ratification of the Hague Convention on Protection of Children and Cooperation in respect of Inter-Country Adoption but reiterated its concern, inter alia, at the absence of uniform adoption laws and procedures in India.²³

C. Institutional and human rights structure

5. Four committees referred to various national human rights bodies,²⁴ including the National Human Rights Commission (NHRC), which received "A" status accreditation in 1999 that was reconfirmed in 2006,²⁵ as well as National Commissions dealing with issues concerning women, minorities, scheduled castes and scheduled tribes, and backward classes. UNICEF noted that a bill establishing a Commission on Children's Rights was recently passed.²⁶

6. In 1997, the HR Committee welcomed the setting up of human rights commissions as well as human rights courts at State level. The Committee regretted that the NHRC is prevented from directly investigating complaints of human rights violations against the armed forces but must request a report from the central Government, and that complaints to the Commission are subject to a one-year limit.²⁷

D. Policy measures

7. UNICEF reported positively on the recent elevation of the Department of Women and Child Development to an independent Ministry.²⁸ CRC also welcomed the

National Plan of Action for the Girl Child, the adoption of the National AIDS Prevention and Control Policy and the decision to provide antiretroviral drugs to children and adults free of charge.²⁹ CEDAW commended the State party on the National Policy on Persons with Disabilities.³⁰ It also commended India on establishing the Women Component Plan in the national budget and called on it to meet its commitment of allocating 6 per cent of GDP to education.³¹

II. PROMOTION AND PROTECTION OF HUMAN RIGHTS ON THE GROUND

A. Cooperation with human rights mechanisms

1. Cooperation with treaty bodies

<i>Treaty body</i>	<i>Latest report submitted and considered</i>	<i>Latest concluding observations</i>	<i>Follow-up response</i>	<i>Reporting status</i>
CERD ³²	2006	Mar. 2007	Due in 2008	Twentieth and twenty-first reports due in 2010
CESCR	1989	Jan. 1990	--	Second to fifth reports submitted in 2006
HR Committee	1995	July 1997	--	Fourth report overdue since 2001
CEDAW	2005	Jan. 2007	Due in 2008	Fourth and fifth reports due in 2010
CRC	2001	Jan. 2004	--	Third and fourth reports due in 2008
CRC-OP-AC			--	Initial report due in 2007
CRC-OP-SC			--	Initial report due in 2007

8. CRC in 2004 and CEDAW in 2007 indicated that India had not taken steps to address some of the recommendations made in previous concluding observations and urged India to proceed with their implementation.³³ India provided comments to CERD following the adoption of CERD's concluding observations in March 2007.³⁴

2. Cooperation with special procedures

<i>Standing invitation issued</i>	No
<i>Latest visits or mission reports</i>	Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of physical and mental health (22 November-3 December 2007); ³⁵ Special Rapporteur on the right to food (20 August-2 September 2005); ³⁶ Special Rapporteur on violence against women (28 October-15 November 2000). ³⁷
<i>Visits agreed upon in principle</i>	Special Rapporteur on toxic waste and Special Rapporteur on freedom of religion or belief
<i>Visits requested and not yet agreed upon</i>	Special Rapporteur on the question of torture (1993 and 2007); Special Representative of the Secretary-General on the situation of human rights defenders (2002, 2003 and 2004); Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance (2004 and 2006); Special Rapporteur on extrajudicial, summary or arbitrary executions (2000, 2005 and 2006); Special Rapporteur on the sale of children, child prostitution and child pornography (2004); and Working Group on Arbitrary Detention (2004, 2005 and 2006).
<i>Facilitation/cooperation during missions</i>	The Special Rapporteur on the right to food welcomed the invitation and the commitment of the Government of India to engage in open and frank discussions on the right to food. ³⁸
<i>Follow-up to visits</i>	
<i>Responses to letters of allegation and urgent appeals</i>	Between 1 January 2004 and 31 December 2007, a total of 119 communications were sent to the Government of India. In addition to communications sent for particular groups, 283 individuals were covered by these communications, including 66 women. During the same period, the Government replied to 23 communications (19,3 per cent).
<i>Responses to questionnaires on thematic issues³⁹</i>	India responded to none of the 12 questionnaires sent by special procedures mandate-holders ⁴⁰ between 1 January 2004 and 31 December 2007, within the deadlines. It did provide a response to the note verbale of the Special Rapporteur on extrajudicial, summary or arbitrary executions on transparency and the imposition of the death penalty which was sent to 12 States in 2005. ⁴¹

9. In 1997, the HR Committee expressed concern at the failure of the State party to receive the Special Rapporteur on the question of torture.⁴²

3. Cooperation with the Office of the High Commissioner for Human Rights

10. India has made voluntary contributions, on an annual basis, to OHCHR since 1996.⁴³ During the past four years, India has also hosted several meetings, including a 2007 workshop on using indicators to promote and monitor the implementation of human rights.⁴⁴

B. Implementation of international human rights obligations

1. Equality and non-discrimination

11. The HR Committee expressed concern about the persistence of preferred treatment for males and deplored the fact that practices such as foeticide continue.⁴⁵

CEDAW, CRC and UNICEF also referred to the alarming decline in sex ratios.⁴⁶ CRC, CCPR and CEDAW referred to the effect of the enforcement of personal laws based on religion in perpetuating gender inequality. CEDAW urged the State, inter alia, to encourage debate within the relevant communities and with women's groups to modify social and cultural patterns of conduct; and to reform personal laws of different ethnic and religious groups to ensure de jure equality and compliance with the Convention.⁴⁷

12. In 1997, the HR Committee noted with concern that members of scheduled castes and scheduled tribes as well as the so-called backward classes and ethnic and national minorities continue to endure severe social discrimination and to suffer disproportionately from violations of their rights, such as inter-caste violence, bonded labour and discrimination of all kinds.⁴⁸

13. CERD reaffirmed that discrimination on the ground of caste is fully covered by article 1 of ICERD.⁴⁹ The Committee also noted that de facto segregation of Dalits persists, in particular in rural areas, in access to places of worship, housing, hospitals, education, water sources, markets and other public places.⁵⁰ CERD, and the Special Rapporteur on freedom of religion in a communication, referred to reports that Dalits were denied equal access to emergency assistance or benefits during the post-tsunami relief and rehabilitation process. CERD also noted that according to the State those allegations merely concern isolated cases on the basis of information received.⁵¹ In its comments to CERD, India stated that caste-based discrimination is not a form of racial discrimination and hence not covered by the ICERD. India also stated that in the context of India, the situation of her scheduled tribes is not covered under the mandate of CERD.⁵²

14. CERD recommended that India formally recognize its tribal peoples as distinct groups entitled to special protection under national and international law, including ICERD.⁵³ CERD also expressed concern that the so-called denotified and nomadic tribes continue to be stigmatized under the Habitual Offenders Act (1952). It recommended that India repeal the Act and effectively rehabilitate the tribes concerned.⁵⁴

15. While welcoming initiatives to increase child participation, CRC remained concerned that traditional attitudes towards children in society, especially girls, still limit respect for their views, inter alia, within the family, at school and in institutions.⁵⁵ It also expressed concern about the discrimination experienced by children infected or affected by HIV/AIDS in society and the educational system, as well as widespread discrimination against disabled children.⁵⁶

2. Right to life, liberty and security of the person

16. In 1997, the HR Committee remained concerned at the continuing reliance on special powers under legislation such as the Armed Forces (Special Powers) Act, the Public Safety Act and the National Security Act in areas declared to be disturbed and at serious human rights violations, in particular with respect to articles 6, 7, 9 and 14 of the Covenant, committed by security and armed forces acting under these laws as well as by paramilitary and insurgent groups. It emphasized that terrorism should be fought with means that are compatible with the Covenant.⁵⁷

17. The HR Committee expressed concern about the incidence of custodial deaths, rape and torture. CRC expressed concern about reported violations in detention facilities and about allegations of children killed by law enforcement officials. Similar concerns were raised by CERD with respect to members of scheduled castes and tribes.⁵⁸ A number of communications sent by two special procedures relate to cases of alleged deaths in custody⁵⁹ or following detention.⁶⁰ The Special Rapporteur on torture has sent communications alleging ill-treatment⁶¹ and torture⁶² of individuals held in detention. Other cases deal with excessive use of force against demonstrators, including human rights defenders⁶³ and journalists covering demonstrations.⁶⁴ Where the Government has responded, it denied allegations of ill-treatment⁶⁵ or highlighted the existence of an investigation⁶⁶ and the provision of compensation to the victim.⁶⁷ The Special Representative of the Secretary-General on the situation of human rights defenders is also concerned about reports of defenders being killed as a result of their human rights work, including on land rights.⁶⁸

18. The HR Committee was concerned at overcrowding and poor health conditions and sanitation in many prisons, the inequality of treatment of prisoners and the lengthy periods of pretrial detention.⁶⁹ It also recommended that the State accept the admission of representatives of the International Committee of the Red Cross to all types of detention facilities, particularly in areas of armed conflict.⁷⁰

19. As at the end of 2006, the Working Group on Enforced or Involuntary Disappearances noted that there were 325 outstanding cases of disappearances and that most of the cases reported occurred between 1983 and 2004, in the context of ethnic and religious disturbances in the Punjab and Kashmir regions. The disappearances allegedly relate to wide powers granted to the security forces under emergency legislation.⁷¹

20. CEDAW recommended, inter alia, that India develop a coordinated and comprehensive plan to combat all forms of violence against women, and eliminate the practice of witch-hunting, based on an analysis of its causes, including control over land.⁷² Letters of allegation were also sent by the Special Rapporteur on violence against women concerning molestation of women and girls from Kashmiri families during

searches by the police or members of the army. In most instances, no action was reportedly taken against the perpetrators.⁷³

21. Concern about ongoing atrocities committed against Dalit women was raised by CEDAW.⁷⁴ CEDAW, CERD, CRC and the HR Committee expressed concern about the continuing practice of *devadasi*, whereby mostly Dalit girls are dedicated to temple deities and forced into ritualized prostitution, with CERD urging the effective enforcement of State laws prohibiting the practice.⁷⁵ CERD was also concerned about the sexual exploitation of Dalit and tribal women who were trafficked and forced into prostitution.⁷⁶ The high incidence of child prostitution and trafficking of women and girls into forced prostitution was deplored by the HR Committee.⁷⁷ CRC, while referring to various measures taken to address this issue, remained concerned that the Immoral Traffic Prevention Act, 1986 does not define trafficking and limits its scope to sexual exploitation.⁷⁸

22. CEDAW, while expressing appreciation at the enactment of the Domestic Violence Act 2005, recommended that India enforce this Act and ensure that all women victims of domestic violence are able to benefit from the legislative framework and support systems in place.⁷⁹ CEDAW also called upon India to widen the definition of rape in the Penal Code to reflect the realities of sexual abuse experienced by women and to criminalize other forms of sexual abuse, including child sexual abuse.⁸⁰

23. Concerns about communal violence, particularly in Gujarat, were raised by CEDAW. It welcomed India's statement that recommendations from the Committee will be considered for inclusion in the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill 2005, and requested, inter alia, that inaction or complicity of State officials in communal violence be urgently addressed under this legislation.⁸¹

24. CERD expressed concern about the frequent failure to protect scheduled castes and tribes against communal violence.⁸² Two mandate-holders also reported on a group of 200 people attacking a Dalit settlement.⁸³ In another letter, three mandate-holders raised allegations about torture, rape and the hacking to death of a woman and her three children belonging to the Dalit community.⁸⁴ In another case, two mandate-holders sent an allegation letter regarding a dispute between members of the Jat and Dalit communities in Haryana State.⁸⁵ The Special Rapporteur against racism noted that the Government's response in the latter case confirmed not only the political will but also the legal strategy of the Government to combat caste-based discrimination. However, he was particularly alarmed at the cultural depth of this form of discrimination in many parts of the countryside and by the continuing violence faced by the Dalit community.⁸⁶

25. Four special procedures expressed concern about the situation of the Manipuri indigenous communities in some areas of Manipur State. A case of rape and murder of

an indigenous woman, as well as cases of excessive use of force and mass arrests during peaceful demonstrations were brought to their attention.⁸⁷ Three mandate-holders also sent a letter regarding an indigenous human rights defender from Manipur who had allegedly been arrested without charge by the Manipur police commando.⁸⁸ The Government replied that it did not recognize any separate category of its citizens as "indigenous peoples" and that there is no internationally accepted definition of the term.⁸⁹ Mandate-holders in their response, stated, inter alia, that the absence of an international definition does not prevent the international community from taking constructive action.⁹⁰

26. One or more treaty bodies raised concerns about children working and/or living on the street,⁹¹ violence against children, particularly child abuse,⁹² corporal punishment⁹³ and child labour, including debt bondage.⁹⁴ UNICEF provided details of a major 2007 study on child abuse initiated by the Ministry of Women and Development.⁹⁵ Four treaty bodies raised concerns about the situation of children in hazardous occupations, with CEDAW raising particular concern about the abuse, including sexual abuse, of children employed as domestic help.⁹⁶ India stated that a ban on employment of children under 14 as domestic help or at eateries came into force from 10 October 2006 and UNICEF pointed to this initiative as a positive change.⁹⁷ CRC also recommended, inter alia, the prohibition of corporal punishment, and the undertaking of education campaigns on alternative ways of disciplining children.⁹⁸

27. In 2004, CRC expressed concern that the situation in areas of conflict, particularly Jammu and Kashmir and the north-eastern States, has seriously affected children. The Committee recommended that India ensure impartial and thorough investigations in cases of rights violations against children and the prompt prosecution of those responsible, and provide just and adequate reparation to the victims.⁹⁹

3. Administration of justice and the rule of law

28. The HR Committee regretted that some parts of India have remained subject to declaration as disturbed areas over many years, and that in these areas the State was in effect using emergency powers. It therefore recommended that the application of those emergency provisions be closely monitored to ensure strict compliance with the ICCPR.¹⁰⁰ The HR Committee, CEDAW and CERD raised particular concerns about the Armed Forces (Special Powers) Act, 1958 (AFSPA), and the Special Rapporteur on extrajudicial, summary or arbitrary executions sent an allegation letter to the Government regarding it. He recommended that the Government consider either repealing the AFSPA or ensuring its compliance with international law.¹⁰¹ CERD and CEDAW also referred to the report of the Committee to Review the Armed Forces (Special Powers) Act (1958) set up by the Ministry of Home Affairs, which recommended the repeal of this Act.¹⁰²

29. The HR Committee also noted with concern that criminal prosecutions or civil proceedings against members of the security and armed forces, acting under special powers, may not be commenced without the sanction of the central Government and stated that this contributes to a climate of impunity and deprives people of remedies to which they may be entitled in accordance with the ICCPR.¹⁰³ Rapporteurs have also brought to the attention of the Government special concerns relating to reports of alleged impunity for criminal acts committed by officials. In some cases relating to reports of death or ill-treatment while in detention, it is alleged that the authorities had attempted to block the investigation,¹⁰⁴ to destroy evidence,¹⁰⁵ or had taken no steps to investigate the allegations.¹⁰⁶ The Special Representative of the Secretary-General on the situation of human rights defenders also raised her concern about what she sees as a pattern of impunity for violations committed against human rights defenders.¹⁰⁷

30. Concern about the culture of impunity in relation to perpetrators of atrocities committed against Dalit women was expressed by CEDAW.¹⁰⁸ CRC, CEDAW and CERD also raised concerns about the effective enforcement of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, such as the failure to properly register and investigate complaints, the high percentage of acquittals and the low conviction rate in cases registered, and the alarming backlog of atrocities cases pending in the courts.¹⁰⁹ CRC added that a majority of States had failed to set up special courts provided for under the Prevention of Atrocities Act.¹¹⁰

31. In 1997, the HR Committee urged the institution of reforms to ensure a speedy trial of those charged with offences, prompt hearing in civil cases and similar urgency in hearing appeals.¹¹¹ In 2004, CRC expressed concern, inter alia, that mechanisms to implement the Juvenile Justice (Care and Protection of Children) Act, 2000 had not been set up in most states and that the Act does not apply to Jammu and Kashmir.¹¹²

4. Freedoms of religion and belief, opinion and expression and right to participation in public and political life

32. The Special Rapporteur on freedom of religion or belief sent communications relating to reported draft laws regulating religious conversions and expressed fear that such legislative measures and the controversies surrounding them might lead to increased tensions between the various religious groups.¹¹³ The Special Rapporteur also referred to cases of harassment against members of the Christian and Muslim communities and to the alleged illegal detention of numerous Muslim men, many of whom had been subsequently arrested under the Prevention of Terrorism Act.¹¹⁴ It was alleged that this Act was used arbitrarily and punitively against Muslims, and that threats had been made to the detainees.¹¹⁵ In its reply, the Government denied these allegations.¹¹⁶ CERD also expressed concern that Dalits who convert to Islam or

Christianity to escape caste discrimination reportedly lose their entitlement under affirmative action programmes, unlike converts who become Buddhists or Sikh.¹¹⁷

33. The Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression sent communications in relation to attacks on journalists, including murder attempts, as well as attacks on newspaper offices carried out by members of political parties or the police.¹¹⁸

34. CEDAW made reference to the important initiative of reserving one third of all seats for women in urban and local self-government. Additionally, it called upon the State, inter alia, to forge consensus on the constitutional amendment to reserve one third of the seats in Parliament and State legislatures for women, and to increase the number of women in government service, including in higher political, administrative and judicial posts.¹¹⁹ CERD, while also welcoming special measures adopted by India, noted with concern that Dalit candidates, especially women, are frequently forcibly prevented from standing for election or, if elected, forced to resign from village councils or other bodies or not to exercise their mandate. CERD also noted that many Dalits are not included in electoral rolls or are denied the right to vote and that the public service posts reserved for scheduled castes and tribes are almost exclusively in the lowest categories. It recommended, inter alia, that India effectively enforce the reservation policy of seats in Union and State legislatures and of posts in public service.¹²⁰

5. Right to privacy, marriage and family life

35. CEDAW congratulated the State, inter alia, for amendments to the Hindu Succession Act and the Indian Divorce Act.¹²¹ It was concerned, however, that the civil Special Marriage Act fails to ensure equality for women in marriage and its dissolution and recommended that the State amend the Act to give women equal rights to property accumulated during marriage.¹²² India was called upon, inter alia, to implement the commendable commitment that all marriages be registered by 2010¹²³ and all births by 2010 also.¹²⁴ UNICEF reported that birth registration increased from 56 to 62 per cent between 2004 and 2006.¹²⁵

36. Four treaty bodies raised concerns about one or more harmful practices towards women and girls, including: early or forced marriage,¹²⁶ dowry and dowry-related violence,¹²⁷ and *sati* (self-immolation of widows).¹²⁸ CERD also expressed concern about the persistence of social norms of purity and pollution which de facto preclude marriages between Dalits and non-Dalits and about violence and social sanctions against inter-caste couples.¹²⁹

6. Right to work and to just and favourable conditions of work

37. India pledged to expand the National Rural Employment Guarantee Programme, which provides for 100 days of assured employment annually to every rural

al household in the country.¹³⁰ CEDAW called upon India to ensure that rural women benefit de facto from this programme¹³¹ and CERD requested that India ensure the issuance of job cards under this scheme to Dalit applicants.¹³² CEDAW also expressed concern that 93 per cent of the workforce in the unorganized sector is facing job insecurity and unfavourable conditions of work and recommended the speedy enactment of the Unorganized Sector Workers Social Security Bill.¹³³

7. Right to social security and to an adequate standard of living

38. The Special Rapporteur on the right to food noted that 25 percent of the Indian population was still living below the national poverty line and that 80 per cent were living on less than US\$ 2 per day.¹³⁴ UNICEF noted that national-level indicators do not adequately reflect internal disparities and that poverty is more widespread in the populous States of Uttar Pradesh, Bihar, Rajasthan, Orissa, Chhattisgarh, Jharkhand and Madhya Pradesh.¹³⁵ CRC and CEDAW expressed appreciation of women's self-help groups, with CEDAW urging India, to establish programmes to issue credit to poor women unable to participate in these groups.¹³⁶ The Special Rapporteur on the right to food also noted that according to FAO, India is home to the largest share of the world's undernourished population¹³⁷ and received allegations of violations of the right to food, such as deaths from starvation/malnutrition.¹³⁸

39. CEDAW, while noting various programmes undertaken, remained concerned that the maternal mortality rate in rural areas is among the highest in the world and that the privatization of health services has an adverse impact on women's capacity to access such services.¹³⁹ CEDAW also urged India to study the health implications for Dalits of the practice of manual scavenging and to address the impediments to its eradication, including by putting in place modern sanitation facilities.¹⁴⁰ Furthermore, UNICEF reported that the under-five mortality rate among scheduled castes and scheduled tribes is more than 50 per cent higher than the rest of the population.¹⁴¹ CERD, concerned about reports on the situation of members of scheduled castes and scheduled and other tribes, recommended that India, ensure equal access to ration shops, health facilities, reproductive health services, and safe drinking water.¹⁴²

40. CERD expressed concern about reports that Dalits are often denied access to, and evicted from, land by dominant castes and that tribal communities have been evicted from their land under the Forest Act, 1980, or in order to allow private mining activities.¹⁴³ According to the Special Rapporteur on the right to food around 40-50 per cent of the displaced are tribal people even though they make up only 8 per cent of the population reflecting serious discrimination against tribal peoples.¹⁴⁴ CERD was concerned that large-scale projects such as the construction of dams on territories primarily inhabited by tribal communities, or the Andaman Trunk Road, are carried out without seeking their prior informed consent.¹⁴⁵ Three special procedures raised concern regarding the situation of Adivasi communities, including in the State of

Chhattisgarh, due to the construction of a steel plant.¹⁴⁶ Other communications related to the raising of the Sardar Sarovar dam¹⁴⁷ and concerns in the Andaman island.¹⁴⁸ CEDAW urged India to study the impact of mega projects on tribal and rural women and to institute safeguards against their displacement and violation of their rights, as well as to ensure that surplus land given to displaced rural and tribal women is cultivable.¹⁴⁹ CERD urged the State party to fully respect and implement the right of ownership, collective or individual, of the members of tribal communities of the lands traditionally occupied by them in accordance with ILO Convention No. 107 (1957) on Indigenous and Tribal Populations. It also recommended, inter alia, that adequate safeguards against the acquisition of tribal lands are included in the Recognition of Forest Rights Act (2006) and other relevant legislation.¹⁵⁰

8. Right to education

41. CEDAW expressed concern, despite advances with respect to the right to education, about the continuing disparities in the educational status of scheduled caste, scheduled tribe and Muslim women and their limited access to higher education and requested the State to provide information in its next periodic report about the action taken on the recommendations of the Sachar Committee with regard to the education of Muslim women and girls.¹⁵¹ CERD also recommended that the State take effective measures to reduce dropout rates and increase enrolment among Dalit children and adolescents at all levels of schooling.¹⁵² Additionally, CRC expressed concern that 60 million children do not attend primary school and at the striking disparities in terms of access to education, attendance at primary and secondary school and dropout rates between boys and girls, between different States, between rural and urban areas, and between affluent and poor and disadvantaged groups.¹⁵³

III. ACHIEVEMENTS, BEST PRACTICES, CHALLENGES AND CONSTRAINTS

42. The existence in India of a broad range of democratic institutions was noted with satisfaction by the HR Committee.¹⁵⁴ The important work of the Supreme Court of India was also noted, including its consideration of public interest litigation and its recognition of the justiciability of some economic and social rights as an extension of the right to life.¹⁵⁵

43. The HR Committee noted the persistence of traditional practices and customs, leading to women and girls being deprived of their rights, their human dignity and their lives, and to discrimination against members of the underprivileged classes and castes and other minorities, and ethnic, cultural and religious tensions which constitute impediments to the implementation of the ICCPR.¹⁵⁶ The CRC in 2004 also stated that extreme poverty, massive social inequality and the persistence of deeply discriminatory attitudes as well as the impact of natural disasters represent serious difficulties in the fulfilment of all the State's obligations under the CRC.¹⁵⁷ Furthermore, UNICEF

reported that almost 80 per cent of India's geographical area is considered vulnerable to natural disasters.¹⁵⁸

IV. KEY NATIONAL PRIORITIES, INITIATIVES AND COMMITMENTS

A. Pledges by the State

44. India stated that it will foster a culture of transparency, openness and accountability in the functioning of Government, as enacted in the Right to Information Act.¹⁵⁹ It is also committed to actively supporting domestic and international processes that advance the rights of the child and seek to advance the empowerment of women, women's rights and gender equality.¹⁶⁰ Furthermore, India pledged to work towards the elimination of violence against women through legislative measures and the effective implementation of existing policies.¹⁶¹

B. Specific recommendations for follow-up

45. CEDAW requested India to submit a follow-up report on the impact of the Gujarat massacres on women, and detailed eight areas for which it wished to receive information.¹⁶² CERD requested India to provide, within one year, information on the implementation of recommendations contained in paragraphs 12, 15, 19 and 26 of its concluding observations.¹⁶³

46. The Special Rapporteur on the right to food recommended, inter alia, instituting the monitoring of chronic undernourishment and malnutrition and accountability for starvation or malnutrition deaths;¹⁶⁴ implementation at all levels of Government of the decisions of the Supreme Court;¹⁶⁵ implementing land and agrarian reform to strengthen smallholder agricultural livelihoods;¹⁶⁶ the amendment of the Land Acquisition Act or adoption of new legislation, to recognize a justiciable right to resettlement and rehabilitation for all displaced or evicted persons, including those without formal land titles and including women;¹⁶⁷ and the non-implementation of dams, mining and infrastructure projects if this entails displacement and irreversible destruction of people's livelihoods.¹⁶⁸

V. CAPACITY-BUILDING AND TECHNICAL ASSISTANCE

47. UNICEF provided information on its capacity-building programmes and activities.¹⁶⁹

Notes

¹Unless indicated otherwise, the status of ratifications of instruments listed below may be found in *Multilateral Treaties Deposited with the Secretary-General: Status as at 31 December 2006*, ST/LEG/SER.E.25, supplemented by the official website of the United Nations Treaty Collection database, Office of Legal Affairs, <http://untreaty.un.org/>.

²The following abbreviations have been used for this document:

ICERD	International Convention on the Elimination of All Forms of Racial Discrimination
ICESCR	International Covenant on Economic, Social and Cultural Rights
ICCPR	International Covenant on Civil and Political Rights
ICCPR-OP 1	Optional Protocol to ICCPR
ICCPR-OP 2	Second Optional Protocol to ICCPR, aiming at the abolition of the death penalty
CEDAW	Convention on the Elimination of All Forms of Discrimination against Women
OP-CEDAW	Optional Protocol to CEDAW
CAT	Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
OP-CAT	Optional Protocol to CAT
CRC	Convention on the Rights of the Child
OP-CRC-AC	Optional Protocol to CRC on the involvement of children in armed conflict
OP-CRC-SC	Optional Protocol to CRC on the sale of children, child prostitution and child pornography
ICRMW	International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families
CPD	Convention on the Rights of Persons with Disabilities
OP-CPD	Optional Protocol to Convention on the Rights of Persons with Disabilities
CED	International Convention for the Protection of All Persons from Enforced Disappearance

³ Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children, supplementing the United Nations Convention against Transnational Organized Crime.

⁴ 1951 Convention relating to the Status of Refugees and its 1967 Protocol, 1954 Convention relating to the status of Stateless Persons and 1961 Convention on the Reduction of Statelessness.

- ⁵ Convention (I) for the Amelioration of the Condition of the Wounded and Sick in Armed Forces in the Field; Convention (II) for the Amelioration of the Condition of Wounded, Sick and Shipwrecked Members of Armed Forces at Sea; Convention (III) relative to the Treatment of Prisoners of War; Convention (IV) relative to the Protection of Civilian Persons in Time of War; Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of International Armed Conflicts (Protocol I); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Protection of Victims of Non-International Armed Conflicts (Protocol II); Protocol Additional to the Geneva Conventions of 12 August 1949, and relating to the Adoption of an Additional Distinctive Emblem (Protocol III). Source: Switzerland, Federal Department of Foreign Affairs, <http://www.eda.admin.ch/eda/fr/home/topics/intla/intrea/chdep/warvic.html>.
- ⁶ International Labour Organization Convention No. 29 concerning Forced or Compulsory Labour; Convention No. 105 concerning the Abolition of Forced Labour; Convention No. 87 concerning Freedom of Association and Protection of the Right to Organize; Convention No. 98 concerning the Application of the Principles of the Right to Organize and to Bargain Collectively; Convention No. 100 concerning Equal Remuneration for Men and Women Workers for Work of Equal Value; Convention No. 111 concerning Discrimination in Respect of Employment and Occupation; Convention No. 138 concerning Minimum Age for Admission to Employment; Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.
- ⁷ Committee on the Rights of the Child, concluding observations (CRC/C/15/Add.228), para. 43 (a).
- ⁸ Committee on the Elimination of All Forms of Discrimination against Women, concluding comments (CEDAW/C/IND/CO/3), para. 64.
- ⁹ CRC/C/15/Add.228, para. 75 (g).
- ¹⁰ Ibid., para. 73 (d).
- ¹¹ Committee on the Elimination of Racial Discrimination, concluding observations (CERD/C/IND/CO/19), para. 28.
- ¹² CERD/C/IND/CO/19, para 16; CRC/C/15/Add.228, para. 71; CEDAW/C/IND/CO/3, para. 51; and UNHCR, UPR submission, pp.1-2, available at <http://www.ohchr.org/EN/HRBodies/UPR/P.s/UPRIndiaUNContributionsS1.aspx>.
- ¹³ Human Rights Committee, concluding observations (CCPR/C/79/Add.81), para. 13.
- ¹⁴ CEDAW/C/IND/CO/3, para. 60.
- ¹⁵ CERD/C/IND/CO/19, para. 30.
- ¹⁶ CCPR/C/79/Add.81, para. 14.
- ¹⁷ CEDAW/C/IND/CO/3, para. 11.

¹⁸ Ibid., para. 59.

¹⁹ CRC/C/15/Add.228, para. 8.

²⁰ CCPR/C/79/Add.81, paras. 6 and 13.

²¹ CRC/C/15/Add.228, paras. 3 (a) and (d) and 64; CERD/C/IND/CO/19, para. 25; and CEDAW/C/IND/CO/3, paras. 6 and 31.

²² CEDAW/C/IND/CO/3, paras. 30-31.

²³ CRC/C/15/Add.228, para. 48.

²⁴ CCPR/C/79/Add.81, paras. 7-8; CRC/C/15/Add.228, para. 17; CEDAW/C/IND/CO/3, para. 17; CERD/C/IND/CO/19, para. 5; and report of the Special Rapporteur on the right to food, following his mission to India, E/CN.4/2006/44/Add.2, para. 28.

²⁵ For the list of national human rights institutions with accreditation status granted by the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), see A/HRC/7/69, annex VIII, and A/HRC/7/70, annex I.

²⁶ UNICEF, UPR submission, op. cit., p. 3. See also note verbale from the Permanent Mission of India (A/61/718),

²⁶ p. 3; and CRC/C/15/Add.228, para. 18.

²⁷ CCPR/C/79/Add.81, paras. 7 and 22.

²⁸ UNICEF, UPR submission, op. cit., p. 2.

²⁹ CRC/C/15/Add.228, paras. 29 and 54.

³⁰ CEDAW/C/IND/CO/3, para. 4 part (c).

³¹ Ibid., para. 4 (b) and 33.

³² The following abbreviations have been used in this document:

CERD	Committee on the Elimination of Racial Discrimination
CESCR	Committee on Economic, Social and Cultural Rights
HR Committee	Human Rights Committee
CEDAW	Committee on the Elimination of Discrimination against Women
CAT	Committee against Torture
CRC	Committee on the Rights of the Child
CMW	Committee on the Protection of the Rights of All Migrant Workers and Members of Their Families.

³³ CRC/C/15/Add.228, paras. 5-6 and CEDAW/C/IND/CO/3, paras. 8-9.

³⁴ For the full text of the comments see A/62/18, annex X.

³⁵ A/HRC/7/11/Add.4 (preliminary note).

³⁶ E/CN.4/2006/44/Add.2.

³⁷ E/CN.4/2001/73/Add.2.

³⁸ E/CN.4/2006/44/Add.2, para. 1.

³⁹ The questionnaires included in this section are those which have been reflected in a report by a special procedure mandate-holder.

- ⁴⁰ See (i) report of the Special Rapporteur on the right to education (A/HRC/4/29), questionnaire on the right to education of persons with disabilities sent in 2006;
- (ii) report of the Special Rapporteur on the human rights of migrants (A/HRC/4/24), questionnaire on the impact of certain laws and administrative measures on migrants sent in September 2006;
- (iii) report of the Special Rapporteur on the human rights aspects of victims of trafficking in persons, especially women and children (A/HRC/4/23), questionnaire on issues related to forced marriages and trafficking in persons, sent in July 2006;
- (iv) report of the Special Representative of the Secretary-General on human rights defenders (E/CN.4/2006/95 and Add.5), questionnaire on the implementation of the Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms sent in June 2005;
- (v) report of the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people (A/HRC/6/15), questionnaire on the human rights of indigenous peoples sent in August 2007;
- (vi) report of the Special Rapporteur on trafficking in persons, especially women and children (E/CN.4/2006/62) and the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2006/67), joint questionnaire on the relationship between trafficking and the demand for commercial sexual exploitation sent in July 2005;
- (vii) report of the Special Rapporteur on the right to education (E/CN.4/2006/45), questionnaire on the right to education for girls sent in 2005;
- (viii) report of the Working Group on the use of mercenaries as a means of violating human rights and impeding the exercise of the right of peoples to self-determination (A/61/341), questionnaire concerning its mandate and activities sent in November 2005;
- (ix) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (A/HRC/4/31), questionnaire on the sale of children's organs sent in July 2006;
- (x) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2005/78), questionnaire on child pornography on the Internet sent in July 2004;
- (xi) report of the Special Rapporteur on the sale of children, child prostitution and child pornography (E/CN.4/2004/9), questionnaire on the prevention of child sexual exploitation sent in July 2003;
- (xii) report of the Special Representative of the Secretary-General on the issue of human rights and transnational corporations and other business enterprise (A/HRC/4/35/Add.3), questionnaire on human rights policies and management practices.

⁴¹ E/CN.4/2006/53/Add.3, para. 3.

⁴² CCPR/C/79/Add.81, para. 23.

⁴³ OHCHR, *Annual Report 2004, Annual Report 2005, Annual Report 2006*. For 2007, information was obtained from the OHCHR External Relations Unit.

⁴⁴ See OHCHR, *Annual Report 2007* (forthcoming), *Annual Report 2004*, p. 193 and *Annual Report 2005*, p. 188.

⁴⁵ CCPR/C/79/Add.81, para. 16.

⁴⁶ CEDAW/C/IND/CO/3, paras. 38-39; CRC/C/15/Add.228, paras. 29-30, 33-34; and UNICEF, UPR submission, p. 1.

⁴⁷ CRC/C/15/Add.228, paras. 29-30 and 9-10. See also CCPR/C/79/Add.81, para. 17 and CEDAW/C/IND/CO/3, paras.10-11.

⁴⁸ CCPR/C/79/Add.81, paras. 15, 29 and 34.

⁴⁹ CERD/C/IND/CO/19, para. 8.

⁵⁰ *Ibid.*, para. 13. See also CRC/C/15/Add.228, para. 28.

⁵¹ CERD/C/IND/CO/19, para. 22 and Special Rapporteur on freedom of religion or belief, E/CN.4/2006/5/Add.1, para 140. See also the work of The United Nations Team for Tsunami Recovery Support (UNTRS) and the following reports: *Tsunami: India Two Years After*, a joint report of the United Nations, World Bank and Asian Development Bank, p. 16 and *Progress Report September 2007*, UNTRS, pp. 2-3.

⁵² For the full text of the comments provided by the State party see A/62/18, annex X.

⁵³ CERD/C/IND/CO/19, para 10. See also CERD general recommendation No. 23 (1997) on the rights of indigenous peoples.

⁵⁴ CERD/C/IND/CO/19, para. 11.

⁵⁵ CRC/C/15/Add.228, para. 36.

⁵⁶ *Ibid.*, paras. 54-57.

⁵⁷ CCPR/C/79/Add.81, para. 18.

⁵⁸ *Ibid.*, para. 23; CRC/C/15/Add.228, para. 42 and CERD/C/IND/CO/19, para. 14.

⁵⁹ A/HRC/4/33/Add.1, paras. 76 and 83; E/CN.4/2005/62/Add.1, paras. 727, 733, 736, 762; E/CN.4/2005/7/Add.1, para. 298.

⁶⁰ E/CN.4/2006/6/Add.1, para. 84 and E/CN.4/2005/62/Add.1, paras. 724, 725, 726, 737, 756.

⁶¹ A/HRC/4/33/Add.1, paras. 78 and 80-82; E/CN.4/2006/6/Add.1, para. 87; E/CN.4/2005/62/Add.1, paras. 729, 730, 732, 734, 735, 744, 745, 761.

⁶² E/CN.4/2005/62/Add.1, paras. 758, 759, 760.

⁶³ See E/CN.4/2005/62/Add.1, para. 768 and E/CN.4/2005/62/Add.1, para. 771.

⁶⁴ See E/CN.4/2005/62/Add.1, para. 775.

⁶⁵ E/CN.4/2005/62/Add.1, paras. 788, 791, 792.

⁶⁶ *Ibid.*, para. 795

⁶⁷ *Ibid.*, para. 790.

⁶⁸ E/CN.4/2006/95/Add.5, para. 746.

- ⁶⁹ CCPR/C/79/Add.81, para. 26.
- ⁷⁰ Ibid., para. 24.
- ⁷¹ A/HRC/4/41, paras. 211-218.
- ⁷² CEDAW/C/IND/CO/3, paras. 20-21 and 26-27.
- ⁷³ E/CN.4/2006/61/Add.1, paras. 67, 68, 70, 71.
- ⁷⁴ CEDAW/C/IND/CO/3, para. 28. See also CERD/C/IND/CO/19, para. 15.
- ⁷⁵ CERD/C/IND/CO/19, para. 18; CCPR/C/79/Add.81, para. 32; CRC/C/15/Add.228, para. 58; and CEDAW/C/IND/CO/3, para. 26.
- ⁷⁶ CERD/C/IND/CO/19, para. 15.
- ⁷⁷ CCPR/C/79/Add.81, para. 31.
- ⁷⁸ CRC/C/15/Add.228, para. 74.
- ⁷⁹ CEDAW/C/IND/CO/3, paras. 20 and 21.
- ⁸⁰ Ibid., paras. 22 and 23.
- ⁸¹ CEDAW/C/IND/CO/3, paras. 2 and 67-68, as well as paras. 24 and 25.
- ⁸² CERD/C/IND/CO/19, para. 14.
- ⁸³ E/CN.4/2005/72/Add.1, para. 181.
- ⁸⁴ A/HRC/4/34/Add.1, paras. 289-293.
- ⁸⁵ A/HRC/4/19/Add.1, paras. 85-87.
- ⁸⁶ Ibid., A/HRC/4/19/Add.1, paras. 96-98.
- ⁸⁷ E/CN.4/2005/72/Add.1, paras. 186 to 189.
- ⁸⁸ E/CN.4/2005/88/Add.1, para. 52.
- ⁸⁹ Ibid., para. 54.
- ⁹⁰ Ibid., para. 56.
- ⁹¹ CCPR/C/79/Add.81, para. 33 and CRC/C/15/Add.228, paras. 76-77.
- ⁹² CCPR/C/79/Add.81, para. 33 and CRC/C/15/Add.228, paras. 3 (f), 50-51 and 66-67.
- ⁹³ CRC/C/15/Add.228, paras. 44 and 45.
- ⁹⁴ CCPR/C/79/Add.81, para. 34; CRC/C/15/Add.228, paras. 72 and 73; CEDAW/C/IND/CO/3, paras. 48 and 49; and CERD/C/IND/CO/19, para. 23.
- ⁹⁵ UNICEF, UPR submission, op. cit., pp. 2-3.
- ⁹⁶ CCPR/C/79/Add.81, para. 34; CRC/C/15/Add.228, paras. 72 and 73; CEDAW/C/IND/CO/3, paras. 48 and 49; and CERD/C/IND/CO/19, para. 23.
- ⁹⁷ A/61/718, p. 2 and UNICEF, UPR submission, p. 2, para. 4.
- ⁹⁸ CRC/C/15/Add.228, paras. 44 and 45.
- ⁹⁹ Ibid., paras. 68-69.
- ¹⁰⁰ CCPR/C/79/Add.81, para. 19.
- ¹⁰¹ E/CN.4/2006/53/Add.1, p. 75.
- ¹⁰² CCPR/C/79/Add.81, paras. 18, 19, 21; CEDAW/C/IND/CO/3, paras. 8-9; CERD/C/IND/CO/19, para. 12.
- ¹⁰³ CCPR/C/79/Add.81, para. 21.

- ¹⁰⁴ E/CN.4/2005/62/Add.1, para. 726 and E/CN.4/2005/7/Add.1, para. 300.
- ¹⁰⁵ E/CN.4/2005/62/Add.1, para. 727.
- ¹⁰⁶ *Ibid.*, paras. 724, 725, 729 and 730. See also E/CN.4/2006/6/Add.1, para. 85 and A/HRC/4/33/Add.1, para. 77.
- ¹⁰⁷ E/CN.4/2006/95/Add.5, para. 747.
- ¹⁰⁸ CEDAW/C/IND/CO/3, para. 28.
- ¹⁰⁹ CRC/C/15/Add.228, paras. 27-28; CEDAW/C/IND/CO/3, paras. 28-29 and CERD/C/IND/CO/19, paras. 14, 15 and 26.
- ¹¹⁰ CRC/C/15/Add.228, para. 27.
- ¹¹¹ CCPR/C/79/Add.81, para. 27.
- ¹¹² CRC/C/15/Add.228, para. 78.
- ¹¹³ A/HRC/4/21/Add.1, paras. 170-171; E/CN.4/2006/5/Add.1, paras. 145-146.
- ¹¹⁴ E/CN.4/2006/5/Add.1, paras. 141-143 and E/CN.4/2005/61/Add.1, para. 129.
- ¹¹⁵ *Ibid.*
- ¹¹⁶ *Ibid.*, paras. 130-131.
- ¹¹⁷ CERD/C/IND/CO/19, para. 21.
- ¹¹⁸ E/CN.4/2005/64/Add.1, paras. 421-422 and A/HRC/4/27/Add.1, paras. 262-263.
- ¹¹⁹ CEDAW/C/IND/CO/3, paras. 42-43. See also CCPR/C/79/Add.81, paras. 10-11.
- ¹²⁰ CERD/C/IND/CO/19, paras. 4 and 17.
- ¹²¹ CEDAW/C/IND/CO/3, para. 5.
- ¹²² *Ibid.*, paras. 54-55.
- ¹²³ *Ibid.*, paras. 4 (a) and 58-59.
- ¹²⁴ CRC/C/15/Add.228, para. 39.
- ¹²⁵ UNICEF, UPR submission, *op. cit.*, p. 4, para. 2 (d).
- ¹²⁶ CRC/C/15/Add.228, paras. 29 and 60-61; CEDAW/C/IND/CO/3, paras. 56 and 57; and CERD/C/IND/CO/19, para. 18.
- ¹²⁷ CCPR/C/79/Add.81, para. 16; CRC/C/15/Add.228, para. 58; CEDAW/C/IND/CO/3, para. 26; and CERD/C/IND/CO/19, para. 18.
- ¹²⁸ CEDAW/C/IND/CO/3, para. 26 and CCPR/C/79/Add.81, para. 16.
- ¹²⁹ CERD/C/IND/CO/19, para. 18.
- ¹³⁰ A/61/718, p. 3. See also E/CN.4/2006/44/Add.2, para. 47.
- ¹³¹ CEDAW/C/IND/CO/3, para. 36.
- ¹³² CERD/C/IND/CO/19, para. 23.
- ¹³³ CEDAW/C/IND/CO/3, paras. 44-45.
- ¹³⁴ E/CN.4/2006/44/Add.2, para. 8.
- ¹³⁵ UNICEF, UPR submission, *op. cit.*, p. 1.
- ¹³⁶ CEDAW/C/IND/CO/3, paras. 36 and 37. See also CRC/C/15/Add.228, para. 3 (c).
- ¹³⁷ E/CN.4/2006/44/Add.2, para. 8.
- ¹³⁸ *Ibid.*, para. 42. See also A/HRC/4/32/Add.1, paras. 244-248, 249-253.

- ¹³⁹ CEDAW/C/IND/CO/3, paras. 40-41.
- ¹⁴⁰ Ibid., paras. 28-29. See also CRC/C/15/Add.228, paras. 28 and 73 and CERD/C/IND/CO/19, para. 23.
- ¹⁴¹ UNICEF, UPR submission, op. cit., p. 1.
- ¹⁴² CERD/C/IND/CO/19, para. 24.
- ¹⁴³ Ibid., para. 20.
- ¹⁴⁴ E/CN.4/2006/44/Add.2, para. 11.
- ¹⁴⁵ CERD/C/IND/CO/19, para. 19.
- ¹⁴⁶ A/HRC/6/15/Add.1, paras. 256-263.
- ¹⁴⁷ A/HRC/4/32/Add.1, paras. 238-242 and E/CN.4/2005/88/Add.1, para. 51.
- ¹⁴⁸ A/HRC/4/32/Add.1, paras. 257-260.
- ¹⁴⁹ CEDAW/C/IND/CO/3, paras. 46-47.
- ¹⁵⁰ CERD/C/IND/CO/19, paras. 19-20.
- ¹⁵¹ CEDAW/C/IND/CO/3, paras. 32-33.
- ¹⁵² CERD/C/IND/CO/19, para. 25.
- ¹⁵³ CRC/C/15/Add.228, para. 64.
- ¹⁵⁴ CCPR/C/79/Add.81, para. 6.
- ¹⁵⁵ Ibid., para. 6; A/61/718, p. 2; E/CN.4/2006/44/Add.2, paras. 16 and 24.
- ¹⁵⁶ CCPR/C/79/Add.81, para. 5.
- ¹⁵⁷ CRC/C/15/Add.228, para. 4.
- ¹⁵⁸ UNICEF, UPR submission, op. cit., p. 1.
- ¹⁵⁹ A/61/718, p. 3.
- ¹⁶⁰ Ibid., p. 4.
- ¹⁶¹ Ibid., p. 3.
- ¹⁶² CEDAW/C/IND/CO/3, paras. 67-68.
- ¹⁶³ CERD/C/IND/CO/19, para. 34
- ¹⁶⁴ E/CN.4/2006/44/Add.2, para. 48 (a).
- ¹⁶⁵ Ibid., para. 48 (c).
- ¹⁶⁶ Ibid., para. 48 (f).
- ¹⁶⁷ Ibid., para. 48 (g).
- ¹⁶⁸ E/CN.4/2006/44/Add.2, para. 48 (j).
- ¹⁶⁹ UNICEF, UPR submission, op. cit., pp. 4-5.

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UNIVERSAL PERIODIC REVIEW
Report of the Working Group on the Universal Periodic Review

India *

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Introduction

1. The Working Group on the Universal Periodic Review (UPR), established in accordance with Human Rights Council resolution 5/1 of 18 June 2007, held its first session from 7 to 18 April 2008. The review of India was held at the 8th meeting on 10 April 2008. The delegation of India was headed by H.E. Mr. Swashpawan Singh, Ambassador and Permanent Representative of India to the United Nations Office at Geneva. For the composition of the delegation, composed of 13 members, see appendix below. At its 12th meeting held on 14 April 2008, the Working Group adopted the present report on India.

2. On 28 February 2008, the Human Rights Council selected the following group of rapporteurs (troika) to facilitate the review of India: Ghana, Indonesia and the Netherlands.

3. In accordance with paragraph 15 of the annex to resolution 5/1, the following documents were issued for the review of India:

(a) A national report/written presentations submitted in accordance with paragraph 15 (a) (A/HRC/WG.6/1/IND/1);

(b) A compilation prepared by the Office of the High Commissioner for Human Rights (OHCHR), in accordance with paragraph 15 (b) (A/HRC/WG.6/1/IND/2);

(c) A summary prepared by OHCHR, in accordance with paragraph 15 (c) (A/HRC/WG.6/1/IND/3).

4. A list of questions prepared in advance by Ireland, Germany, Portugal, Italy, Sweden, Denmark, Finland, the Netherlands, United Kingdom and Latvia was transmitted to India through the troika. These questions are available on the extranet of the Universal Periodic Review.

I. SUMMARY OF THE PROCEEDINGS OF THE REVIEW PROCESS

A. Presentation by the State under review

5. At the 8th meeting, on 10 April, the Ambassador and Permanent Representative of India, H.E. Mr. Swashpawan Singh of India, introduced the national report and noted that India's national report seeks to provide an overview of efforts for the realization of all human rights based on a culture of respect for diversity and pluralism.

6. India is a country of over one billion people with unparalleled pluralism. It is home to almost all religions of the world. India is also the largest democracy in the world as well as one of the most stable. The Indian delegation stated that its commitment for the promotion and protection of human rights flows from the firm belief that in a truly pluralistic society like India, growth and welfare of citizens can be ensured only through a culture of promotion and protection of human rights. India, nonetheless, remained conscious of the challenges ahead and recognized that much remained to be done before it can say with satisfaction that it has conquered poverty, ignorance and disease. India has tried to address these challenges by trying to empower the affected in an institutionalized manner and also to seek to learn from the experiences of others.

7. India was also amongst the countries that have been affected most by the scourge of terrorism. Terrorism was a direct violation of human rights, in particular the most basic rights, the right to life and liberty. India noted that it remains committed to protect its citizens by taking effective measures within the framework of the Constitution and the basic values and institutions it embodies.

8. Mr. Goolam E. Vahanvati, the Solicitor General of India, stated that India has a long tradition of promoting and protecting human rights. The Solicitor General noted that after its independence, India chose democracy as its political set up to ensure a free and independent society and human dignity, freedom and advancement. This was the first step. The second was to draft and adopt a written constitution, so as to effectuate a constitutional democracy which becomes an organic guarantee of human freedoms and rights. And thirdly in the forefront of the Constitution, they incorporated a chapter on fundamental rights contained in articles 12 to 32 of the Constitution.

9. In the Constitution of India, the three pillars of human rights are (a) the right to equality including the prohibition of discrimination in any form, (b) the six vital freedoms of citizens (including the right to speech and expression) and (c) the right to life guaranteed to all persons. These rights have been recognized to be inalienable, unalterable and part of the basic structure of the Constitution which cannot be abrogated. India's Supreme Court has interpreted the right to life as including the right to live with dignity, right to health, education, human environment, speedy trial and privacy, to name a few. The Constitutional guarantee of human rights is ensured by making fundamental the right to access the Supreme Court for enforcement of human rights. Simultaneously, the broadest possible powers have been given under article 226 of the Constitution to the High Courts in the State to issue high prerogative writs for the enforcement of human rights and for any other purpose.

10. He noted that the functioning of democratic institutions for the last six decades has been extraordinary and that equally, and if not more importantly, is the smooth and seamless transfer of power on conclusion of elections.

11. Much of the focus of governmental activity has been to improve the provision of services through grass-roots local self-governance institutions, particularly in rural areas. This is because India believes that development through decentralized democratic institutions is more equitable and accountable.

12. India has taken an important initiative for the empowerment of women by reserving one-third of all seats for women in urban and local self-government, thus bringing over one million women at the grassroots level into political decision making.

13. India stated that it considers and accepts a free media as one of the most vital pillars of democracy and a valuable guardian for the protection of human rights.

14. The delegation noted that India has guaranteed human rights to all persons in India and this includes a commitment to secularism and the protection of minorities. India has secured their right to practice and preserve their religious and cultural beliefs as a part of the Chapter on Fundamental Rights. An array of legislative and executive measures has been taken for the effective implementation of safeguards provided under the Constitution for the protection of the interests of minorities.

15. India has been deeply conscious of the need to empower the Scheduled Castes and Scheduled Tribes and is fully committed to tackle any discrimination against them at every level. The Constitution of India abolished "untouchability" and forbids its practice in any form. There are also explicit and elaborate legal and administrative provisions to address caste-based discrimination in the country. The caste system, which is unique to India, is not racial in origin, and therefore, caste based discrimination cannot be considered a form of racial discrimination.

16. The inclusion of India's scheduled tribes in the rubric of "indigenous people" is often posed in multilateral forums. India stated that at independence, after the departure of the colonizers, all its people, including its tribal people, were considered as indigenous to India. This position has been clarified on various occasions, including while extending India's support to the adoption of the United Nations Declaration on the Rights of Indigenous Peoples at the Human Rights Council and the General Assembly.

17. India noted that it is conscious of the need to empower the disadvantaged. Education has been a priority programme. This was an essential building block for development. Elementary education has been declared to be a fundamental right. For the last seven years, India has implemented a novel and comprehensive educational programme known as *Sarva Shiksha Abhiyan* (Education for All). The goal was to achieve 100 per cent coverage in primary schools. India has implemented a Mid-day Meal Scheme which feeds more than 120 million children every day. Most importantly,

India was now among the few countries to have a nationwide employment guarantee act. The right to work was being significantly realized with the National Rural Employment Guarantee Programme. It provided a legal entitlement that only a handful of countries offer their citizens. It should not only provide employment but also check distress migration and most importantly, create productive assets for the community. More than 30 million rural families already had a "job card".

18. Major institutional mechanisms have been set up to make human rights secure and enforceable. Under the Protection of Human Rights Act 1993, a powerful and independent National Human Rights Commission has been working with an exemplary record for over a decade. Another revolutionary change has been the enactment of the Right to Information Act. This enabled citizens to seek and demand the right to information about the governmental officials and decision making which has led to transparency, accountability and openness in the governmental process.

19. Regarding terrorism, India stated that during the last more than two decades, terrorism has claimed the lives of thousands of innocent men, women and children in its country. The international community should recognize that terrorism is a direct violation of human rights, in particular the most basic rights, the right to life and liberty. While India's commitment to protecting its citizens was of paramount importance it will achieve this in conformity with a commitment to human rights.

20. India has actively participated in deliberations on human rights in international forums for the promotion and protection of human rights and fundamental freedoms for all. India played a leading role in the historical struggle for decolonization and abolition of apartheid. India was among the very few selected countries who were members of the former Commission of Human Rights throughout the 60 years of its existence.

21. The Indian delegation noted that in order to further strengthen the protection of human rights in India, the Parliament passed the Protection of Human Rights Act in 1993 to establish a National Human Rights Commission (NHRC). The State Human Rights Commissions have been set up in 18 states. The independence of the NHRC is expected to be the same as that of the Supreme Court of India. The NHRC of India was one of the most Paris Principles compliant national institutions in the world. Though the Commission was a recommendatory body, the reports of the commission are placed in the Parliament with the action taken report by the Government. In case the Government disagrees, it provides reasons thereof in the action taken report. The experience has been that 95 per cent of recommendations have been generally complied with. The NHRC is playing a major role in the drawing up of a National Action Plan for Human Rights, which will cover issues such as the right to health, education, food security, housing, custodial justice and trafficking in women and children. The Commission's role was complementary to that of the judiciary. The Supreme Court has referred a number of

important matters to the Commission for monitoring while the Commission has also taken specific cases of violations of human rights to the courts. The guidelines developed by the Commission on the treatment of mentally ill persons held in prisons and child rape cases have been adopted by the Delhi High Court and commended for adoption.

22. The Indian delegation, in regard to women and children, stated that a bill to prevent sexual harassment at the work place is on the anvil. The National Policy for Empowerment of Women 2001 aims at bringing about advancement, development and empowerment of women in all spheres of life. The National Commission for Women was constituted with the mandate to safeguard women's rights. Thirty per cent of all wage employment is reserved for women. Mobilization of women through Self-Help Groups for income generation activities has been successfully adopted in programmes such as Swayamsidha through which 70,000 Self-Help Groups have been formed, with 1 million members. The Government has initiated gender budgeting as a tool for gender mainstreaming in all sectors with the objective of making budgets more gender responsive. To provide protection for women in distress, over 565 home shelters and short stay homes and help lines are being operated. A Scheme for Prevention of Trafficking and Rescue, Rehabilitation of Victims of Trafficking for Commercial Sexual Exploitation has been launched. On the anvil was a new scheme for relief and support to rape victims. Special measures to improve the educational status of women include a pronounced gender focus in the *Sarva Shiksha Abhiyan* - universalization of elementary education. The health needs of women received special priority in the National Rural Health Mission.

23. India was implementing the world's largest child care programme - the Integrated Child Development Services, where supplementary nutrition is provided to over 78 million women and children and preschool education to 32 million children, as well as support and rehabilitation to those children. The Commission for Protection of Child Rights was set up in March 2007 to ensure effective implementation of child rights. The Government has adopted a multi-pronged sequential approach to eliminate the problem of child labour. The Action Plan of the National Policy on Child Labour 1987 included strict enforcement of the Child Labour Act 1986 and the prohibiting of employment of children in hazardous occupations and as domestic help. The National Child Labour Project (NCLP) Scheme was in operation in 250 high child labour endemic districts in the country and the spread is proposed to be increased in the coming years. Other initiatives include extensive awareness and sensitization programs of various stakeholders strict enforcement measures. An important measure taken very recently was the collaboration with corporate houses to clean supply chains for eliminating child labour. A beginning has been made with the garment industry for an action plan to enable eliminating child labour and at the same time provide gainful employment to their families.

B. Interactive dialogue and responses by the State under review

24. During the interactive dialogue, 42 statements were made by the following delegations.

25. While welcoming the fact that India is a party to a number of international human rights instruments, the United Kingdom of Great Britain and Northern Ireland noted that India has not ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment or its Optional Protocol. It recommended that India ratify both instruments at the earliest opportunity. The United Kingdom asked for additional information on (a) reports of attacks against persons from religious or other minorities, in particular in Orissa State; (b) steps to implement treaty body recommendations on the Armed Forces Special Powers Act; (c) anti-conversion legislation; and (c) the communal violence crimes bill. It welcomed the involvement of civil society in the national preparatory process for the UPR session and recommended that they be fully involved in the follow-up to UPR.

26. Ghana commended India for the laudable measures taken to ensure a country-wide balance in the enjoyment of human rights of its large population, including the implementation of the National Child Labour Project, the adoption of the National Charter for Children and a National Plan of Action for the Girl Child. Ghana encouraged India to continue strengthening existing institutions working to protect human rights. Ghana welcomed India's cooperation with Human Rights Council mechanisms and treaty bodies and recommended an enhanced cooperation with said bodies and relevant stakeholders in the pursuit of a society oriented towards the attainment of internationally recognized human rights goals.

27. Canada recognized that India is a highly diverse country facing many challenges. It raised issues concerning the Armed Forces (Special Powers) Act (AFSPA), the situation of civil society and the situation of Dalits. Canada referred to reports of torture and abuse by and impunity of police and security forces acting under the AFSPA. Canada spoke about the commitment of the Prime Minister and the studies undertaken to reform the AFSPA and asked what measures had been taken to repeal or reform this Act. Canada referred to India as a model where civil society and democracy flourishes and the press actively reports on human rights abuses. However, it mentioned allegations about the use of the Foreign Contributions Regulations Act in limiting civil society's work on sensitive issues and referred to reports that Amnesty International had to downsize its work on account of this Act. With reference to the follow-up of the 2007 concluding observations on India adopted by CERD, Canada recommended that India begin providing disaggregated data on caste and related discrimination.

28. Brazil noted the challenges facing and achievements of India. It asked several questions regarding (a) the measures taken to promote the empowerment of women and the main policies taken to mainstream gender into national plans, (b) the concrete measures implemented to combat extreme poverty and (c) the evaluation of the strategy to end child labour. Additionally, Brazil proposed that India consider signing and ratifying the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women as well as ILO Conventions No. 138 concerning Minimum Age for Admission to Employment and No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour.

29. Bhutan expressed appreciation for India's national report and, in particular for the broad consultative process undertaken towards its formulation. It mentioned that as a neighbour, Bhutan has drawn inspiration from India's commitment to pluralism and tolerance and benefited from its experience in the establishment of a flourishing democracy, independent judiciary, free press, and vibrant civil society. Bhutan asked that additional information be provided on the valuable lessons that could be shared from India's experience of managing national elections.

30. Mauritius commended India for its long democratic tradition which pervades all sections of the population down to the grassroots level in the Panchayats. It encouraged India to share with the international community its best practices in the promotion and protection of human rights taking into account the multi-religious, multi-cultural and multi-ethnic nature of the Indian society.

31. The Russian Federation stated that India is a democratic State, which over the last 60 years has demonstrated its commitment to the goals and ideals of democracy. It understood that not all problems have been resolved and that questions remained regarding the situation of vulnerable groups in India's population. It was impressed by the efforts of the Government to improve the human rights situation, including to eliminate discrimination and poverty, and to protect the rights of women and children. The delegation noted the support of India for the United Nations human rights mechanisms and its support for the work of OHCHR, including annual financial contributions. It stated that the Indian report reveals that one of the key elements is the national human rights institution, and thanked the Indian delegation for its explanations regarding the work on independent investigations of complaints against human rights violations. The Russian Federation expressed the view that India's experience was innovative as regards ensuring transparency in the work of the Government at every level and requested India to provide information on the scope and results of the 2005 law on the Right to Information.

32. Malaysia congratulated India on putting in place an institutional, legislative and administrative framework aimed at improving the human rights situation of its

people. It also noted the establishment of various institutions/national commissions which act as “watch dogs”, dealing with issues such as women rights, minorities, scheduled castes and tribes, backward classes and children rights. Additional information was requested on the implementation of their recommendations.

33. China noted with appreciation that India has a well established national system to guarantee human rights and also stated that it fully understood the pluralistic, multifaceted and multicultural nature of Indian society as well as appreciating the special protection measures taken to protect the rights of minorities and other vulnerable groups. China stated that with these measures India has not only achieved great progress in the field of human rights but has also accumulated a rich experience to be shared with other countries. As a developing country, China stated that it is faced with many similar challenges and that for this reason it would like to exchange views and experiences with India on the following issues. China noted that India has already taken many positive measures to guarantee the rights of women and children and asked whether women participated in the formulation of those measures and how India intended to increase women's participation in decision-making. With respect to the National Rural Employment Guarantee Programme and its present achievements, China asked how India intended to further implement this programme.

34. Cuba welcomed the exhaustive national report and commended India for the impressive work carried out in promoting and protecting both civil and political rights as well as social, economic and cultural rights and the right to development. Cuba stated that it had no question or recommendation but rather it came here to listen and learn from India.

35. Singapore congratulated India for its important successes in sustaining a path of high rate of economic growth, which has resulted in lifting hundreds of millions of people out of poverty. It stated that, in doing so India has also made great strides in advancing their most basic human rights - the rights to food, housing and health. Singapore asked for complementary information on steps being taken to address caste-based discrimination.

36. Belgium commended India for the advancements made, in particular regarding the justiciability of certain social and economic rights in the context of the right to life. Regarding caste-based discrimination, in particular against Dalit women, Belgium wanted to know what actions were being taken to implement anti-discriminatory legislation and the role of the National Commission on Human Rights was in that regard. Belgium recommended that there be disaggregated data on caste-based discrimination so as to allow for targeted planning to improve the situation of the Dalits.

37. Considering the prohibition of child labour, the Netherlands recommended that India review its reservation to article 32 of the Convention on the Rights of the Child and ratify ILO Conventions No. 138 and 182. It also sought additional details on how the recommendations of the Committee on the Elimination of Racial Discrimination on scheduled classes were being implemented. As a member of the troika it assured the Council and the State under Review that it would do its utmost to obtain a meaningful outcome of the exercise.

38. Saudi Arabia stated that India is known as a country of tolerance and pluralism and that the Constitution of India is a comprehensive document which provides for the promotion and protection of civil and political rights as well as economic social and cultural rights. Saudi Arabia took note of the activities reflected in India's report and mentioned the work of the National Human Rights Commission in preparing a national plan for human rights and of India's commitment to ensuring the independence of all bodies working in the area of human rights and to promoting human rights on the basis of effective dialogue and cooperation. In January 2006 a new Ministry for minorities was created to take account of these problems and this programme has 15 points and asked how this programme contributed to improving the situation of minorities, and of the role played by civil society.

39. While congratulating India for the important constitutional and legislative measures taken to combat discrimination, Luxembourg endorsed Belgium's recommendation on disaggregated data. It asked for additional information on (a) statistics on jurisprudence related to discriminatory acts, (b) how recommendations from treaty bodies on scheduled castes and tribes were being implemented, (c) measures being taking to tackle discriminatory treatment in favour of males, including foeticide, and (d) right to food of the peasant population.

40. Germany asked India to provide complementary information on (a) how recommendations made by the Committee on the Elimination of Racial Discrimination and CEDAW on Dalits and scheduled castes were being followed up on, (b) what the position of the Government was regarding the recommendation of several treaty bodies to repeal the Armed Forces (Special Powers) Act of 1958, and (c) what concrete steps were being taken to implement national laws abolishing child labour.

41. The United States of America expressed its satisfaction to see a nation as diverse as India engaged in the UPR process. It asked for further details on (a) freedom of religion and expression and on the promulgation of state anti-conversion laws, (b) actions being undertaken to combat police and government corruption, (c) implementation of child labour laws, (d) crimes against women, including domestic violence, dowry-related deaths, honour crimes and sex-selective abortion of unborn girls, and (e) the social acceptance of caste-based discrimination.

42. Algeria congratulated India for the participatory approach adopted in the preparation of the national report. While noting that the economic growth being experienced by India has led to a widening of the gap between rich and poor, it asked whether any innovative approaches were being taken to ensure that this economic development was not detrimental to the enjoyment of human rights by all sections of the population. Algeria stated that it is aware of the fact that the high growth rate of India over recent years has not trickled down sufficiently to the poor, thus increasing social stratification between the richer segments of society and the destitute. Algeria recommended that India review new ways of reversing this worrying trend undermining the fundamental economic rights of vulnerable groups and that it share its findings with us in Africa where poverty is rife.

43. Bangladesh indicated that, as a neighbour, it understood the situation in India and also shared a common history. As a vibrant democracy achieving remarkable economic prosperity in recent years, there are high expectations of India. Bangladesh noted the establishment of a Ministry of Minority Affairs and also highlighted the commendable work of the National Human Rights Commission. In view of the consideration being given to the establishment of a national human rights institution in Bangladesh, the work of the India NHRC is being followed with great interest and Bangladesh is looking forward to emulating its good practices. Bangladesh asked how the Government of India is reconciling the needs to provide general education in view of its National Action Plan devoted to the provision of human rights education.

44. France commended India's commitment to human rights and pluralism. It raised a question and made a recommendation relating to the ratification of the Convention against Torture. It also asked what means were available to and what analysis might be drawn from the work of the National Human Rights Commission of India and the National Commissions dealing with Women, Minorities, Scheduled Castes and Scheduled Tribes. Lastly, regarding the most vulnerable communities and their integration, it wished to know what would be the results of any stock-taking of their integration.

45. The Indian delegation expressed its gratitude to all who actively participated in the dialogue and found it interesting and productive.

46. Regarding the Convention against Torture, the delegation noted that India is a signatory and is committed to its objectives. The Indian Penal Code also has clear provisions regarding torture and the Supreme Court of India in a well known judgment, D. K. Basu vs. Union of India, has issued important guidelines on provisions of detention that are applicable throughout India. The ratification of the Convention against Torture is being actively processed by the Government.

47. With regard to questions on the Armed Forces (Special Powers) Act, 1958, the delegation stated that even though India is a country which has had to confront with terrorism for well over two decades, its laws, including the special laws enacted in this context, have always had clear elements of administrative as well as judicial reviews. It is well settled in Indian jurisprudence that all legislation must conform to the basic structure of the Constitution and is subject to judicial review. The constitutionality of the Armed Forces (Special Powers) Act 1958 has been upheld by a Constitution Bench of the Supreme Court. Moreover, it is important to note that the Armed Forces of India are governed by provisions of their Acts, which also ensure that any violations are expeditiously dealt with. In so far as ensuring human rights even while being engaged in counter terrorism operations, special training and operating procedures are in place to guide the forces on the ground.

48. Regarding the Foreign Contribution Regulation Bill, 2006, the delegation stated that the primary purpose of the Bill was to consolidate the law to regulate the acceptance and utilization of foreign contributions for bona fide activities and to prohibit the use of the same for any activities detrimental to the national interest. The Bill sought to balance national security concerns and flow of foreign contributions for charitable purposes by providing a more explicit and transparent regime. The Bill is presently being examined by the Parliamentary Standing Committee and its recommendations are awaited.

49. In relation to the communal disturbance that erupted in the tribal dominated district of Kandhamal, Orissa on 24 December 2007 between tribal Hindus (Kui) and Christians (Panasa), the Indian delegation noted that the underlying cause appeared to be the long standing opposition by the tribal Hindus to the Christians' demand to be categorised as a Scheduled Tribe. In the clashes, 3 persons died and 25 were injured. The clashes led to the damage of private and public property. The situation was brought under control. One hundred and twenty-five cases have been registered and 173 persons have been arrested. The state Government has also ordered judicial probe to inquire into the incident. Further, 284 Peace Committees have been formed which have held 350 meetings so far. The State government has announced a rehabilitation package to those whose houses have been damaged and ex gratia of Rs. 100,000 to the next kin of the three deceased. The Prime Minister assured Christian delegations that the Government would take all steps to provide full security and protect the religious freedom guaranteed by the Constitution to all citizens and that it would not tolerate any efforts aimed at disturbing the communal harmony or secular fabric of the country.

50. The Republic of Korea welcomed efforts by India to promote and protect indigenous and tribal peoples' rights. It asked for further elaboration on plans to protect these rights in newly industrialized zones. The Republic of Korea asked for more

information on section 197 of the Code of Criminal Procedure of 1973 regarding the impunity of civil servants. It also asked about the position of India regarding the recommendations of CEDAW, particularly in relation to the situation of Dalit women.

51. Mexico congratulated India on its progress in the area of human rights and indicated that many countries could share in recognizing the challenges facing India and spoke of its admiration of India's democratic and humanist traditions. With reference to the development of a national action plan for human rights and of targets and indicators for assessment purposes, Mexico suggested, in that regard, that India view positively the recommendations made by the treaty bodies and special procedures particularly with respect to the situation of women and children. It also appreciated measures being adopted with a view to ratifying the Convention against Torture and recommended that India also make progress towards the ratification of that instrument. Lastly, Mexico stated that it was interested to learn more about the plan of action for human rights education in India.

52. Nigeria applauded India's policy to strike a balance between a human rights agenda and development issues. It recommended that India should take the necessary steps towards ratifying the international human rights instruments it had signed, including the Convention against Torture and the Convention on the Protection of Persons from Enforced Disappearance. Nigeria also noted that as India had really leapfrogged into the elite community of developed societies in terms of economic improvement it would like to see such improvement touch on a great number of Indians that are under the poverty line.

53. Italy asked for additional information on (a) human rights education relating to traditional practices and customs and scheduled castes and tribes and (b) the National Child Labour Project. Italy recommended the strengthening of human rights education specifically in order to address effectively the phenomenon of gender-based and caste-based discrimination. It also recommended that steps be taken towards the ratification of the Convention against Torture.

54. Latvia noted India's positive cooperation with the special procedures and stated that it would like India to consider extending a standing invitation to all special procedures of the Human Rights Council.

55. Venezuela stated that it valued the efforts made by India to promote and protect human rights. Venezuela emphasized that it attached, like India, particular importance to matters related to health and referred to the health insurance scheme for workers in the informal sector, which was referred to in India's report. Venezuela emphasized that this issue is also under discussion in Venezuela and that workers in that part of the economy should enjoy the benefits of social security, and that there should be equal conditions for

those working in the informal or formal sector or the public and private sector. It wished to know more about the scheme as well as the scope and prospects for the Indian Government to implement it.

56. Switzerland referred to the reported cases of torture noted by the Human Rights Committee and the Special Rapporteur on the question of torture and welcomed India's signature of the Convention against Torture and its determination to ratify it. It, therefore, recommended that India ratify the Convention as soon as possible. Additionally, it encouraged India to respond favourably to the renewed request made by the Special Rapporteur on the question of torture to be permitted to carry out a mission to the Indian territory as soon as possible. Lastly, it recommended that a standing invitation be extended by India to all the Council's special procedures.

57. South Africa stated that its delegation was encouraged by India's approach to embracing pluralism within the context of the promotion and protection of human rights. It also paid tribute to the efforts played by India in support of the struggle for freedom during the apartheid era. South Africa would appreciate receiving further information on (a) the functioning and results pertaining to the national commissions created to deal with minorities and vulnerable groups and (c) the system of the distribution of food and its application across all sections of the population.

58. Azerbaijan asked India to elaborate on (a) what practical measures were being taken to fight poverty, (b) what are the difficulties experienced by Scheduled Castes and Tribes in terms of their human rights, (c) what national plans exist on Internally Displaced Persons and what access is given to international humanitarian organizations to internal displacement affected regions, (d) school attendance of children in rural regions, and (e) human rights training among police and security forces.

59. The Islamic Republic of Iran commended India on its valuable efforts and commitments for the promotion and protection of human rights and asked that India provide further details on (a) the realisation of economic, social and cultural rights, in particular the right to development, (b) measures taken to develop a culture of human rights, and (c) the role that civil society and the national human rights institution can play in this regard.

60. Nepal stated that a few hours ago Nepal successfully completed historic elections to the Constituent Assembly to institutionalize the peace process, establish democracy and place human rights at the centre of governance. Nepal warmly congratulated Indian on having successfully completed 60 years of democracy and stated that India has proved to be largest and most representative democracy in the world. Nepal observed that the deepening of democratic roots in India has produced strong institutions, an independent judiciary, a vibrant and free media and giving people

their say and share in the governance of the country. Nepal commended India for its effective implementation of various policies, plans and programmes to promote equality and justice as well as its affirmative action programmes to address the situation of marginalized communities, to promote and protect of the rights of women and children and to support the disabled and elderly. Given the exemplary role of the National Human Rights Commission, Nepal asked how the Commission's experience could be shared with other countries as a best practice.

61. Sri Lanka spoke about its enormous respect and admiration for India's achievements. India had set an example of how to manage the vexed question of achieving unity in diversity. Sri Lanka stated that the thinking that has gone into the Indian Constitution approximates, in our part of the world, the achievement of the Framers of the Constitution of the United States of America and that this framework has served India well. Sri Lanka noted that despite the existence of a democratic federal political structure in India certain separatist terrorist insurgencies particularly in the north east of Indian territory have persisted for many decades and that this gives the lie to the received wisdom that federalism or a measure of federalism is a sufficient condition for the eradication of terrorist movements of a particularly intractable sort. Sri Lanka stated that it is a great admirer of the manner in which India has developed a notion of nationhood which is broad and inclusive and pluralist and admires India's determination that the preservation, advancement and protection of human rights in India shall be an Indian matter.

62. Ecuador noted that India is a country with a multi-cultural character and a vast legal history. Taking this into consideration, Ecuador would like to know more about India's approach to the progressive implementation of social and cultural rights and how this is done without affecting the cultural wealth, social diversity and customs and practices of the country.

63. Palestine expressed appreciation of India's ability to feed its population of over 1 billion people and stated that this is a great achievement that ought to be emulated and is a clear indication of India's success in economic planning and its implementation. Its Constitution is based on noble values and principles. It has pursued a democratic path caring for the rights of women, children, the elderly and disabled persons as well as respect for all religions. Palestine asked how has India combined between this progress and the maintenance of social and cultural rights that are closely linked to its traditions, civilization, legacies and time old humanist heritage.

64. The Syrian Arab Republic commended India for its report and the transparency and cooperative spirit in which it was prepared. It requested additional information on the role of the judiciary in setting the framework for promoting human rights in India.

65. Egypt mentioned that it was impressed with the extent to which fundamental human rights principles are embodied in India's Constitution as well as with its human rights infrastructure. It raised questions regarding (a) the Right to Information Act 2005 and the tangible results achieved so far through it, and (b) the successes and challenges encountered in integrating women in India's economic development efforts.

66. Slovenia thanked India for the comprehensive national report and asked questions on (a) steps being taken to address the lack of national laws prohibiting corporal punishment in schools, alternative care settings and the home, (b) measures taken to integrate a gender perspective into the UPR exercise and the ensuing consultation and follow-up process, and (c) the civil Special Marriage Act and the failure to amend the Act to give women equal rights to property accumulated during marriage. In the latter regard, and by way of recommendation, Slovenia asked whether India was planning to follow the recommendations made by CEDAW to amend the Act accordingly.

67. Sweden raised two questions, which it stated could also be seen as recommendations. India has ratified or acceded to several instruments of international law relating to human rights but there are also a number of instruments to which it is not a party, notably the Convention against Torture, the refugee convention and ILO Conventions Nos.138 and 182 relating to child labour. Sweden noted with interest India's intention to ratify the Convention against Torture and encouraged the Government to do so. It requested the Indian Government to elaborate on its efforts to ratify other instruments of international law relating to human rights, in particular ILO Conventions Nos. 138 and 182 relating to child labour. Secondly, it stated that homosexual conduct is prohibited by the Indian Penal Code and that civil society organizations have reported discrimination of homosexual, lesbian, bi-sexual, transgender and transsexual persons both by agents of the State and on a general societal level. Sweden asked the Indian Government about the measures it is taking to ensure full equality before the law regardless of a person's sexual orientation.

68. Tunisia commended India on its report, also as an example of the degree of pluralism and respect for diversity which pervades in the political and social life of the country. Tunisia noted India's engagement to further advance the rights of women and vulnerable groups. It encouraged India to continue its efforts to allow for a harmonious life in a multi-religious, multi-cultural, multi-ethnic and multi-lingual society and to guarantee a society constituting one fifth of the world's population to be well fed, well housed, well cared for and well educated.

69. Israel highlighted the importance of institutionalizing principles like freedom of expression in the world's most populous democracy and took note of the information provided by the state report in this regard. It mentioned that India was one of the first

countries to ratify the Convention on the Rights of Persons with Disabilities. In view of a 2004 recommendation of the Committee on the Rights of the Child addressing the limited facilities and services existing in India for children with disabilities as well as the limited number of trained teachers working with disabled children, Israel asked how India envisaged using the Convention to implement this particular recommendation. It also asked whether this Convention will serve as a national action plan to better integrate disabled persons into Indian society.

70. Qatar expressed its appreciation of the measures taken by India to meet its challenges without prejudice to human rights and in accordance with the Constitution that guarantees to all citizens, without any discrimination, the right to enjoy all human rights and fundamental freedoms. Qatar spoke about India as the home for almost all religions of the world where all sects enjoy the right to establish institutions for religious and educational purposes. Reference was made to the significant role of the National Human Rights Commission of India in laying down a national plan of action for human rights that covers issues like the rights to health, education, food, security, housing and justice. Qatar also mentioned other examples of India's commitment to human rights, including the adoption of a National Plan for human rights education especially in schools, colleges and universities, the work of thousands of NGOs in India and India's ratification of international human rights instruments and cooperation with international organizations.

71. Morocco welcomed the efforts made by India in advancing the rights of women and of their empowerment in the political and social fields. Given the importance of Indian communities worldwide, Morocco asked what are the plans and initiatives of India to protect the interests and rights of this community.

72. Following the dialogue, the delegation of India, in their responses, stated that they had listened with attention and respect and would take home the comments and deliberate on them and gain a lot of experience and knowledge. Brazil, Algeria, and Nigeria had referred to India's phenomenal growth but rightly raised questions about whether this was an all inclusive growth and if the gulf between the rich and poor is not growing. This is one of the greatest concerns of India and every effort is made to ensure there is no disparity between the rich and the poor. Recently, in the budget presented by the Finance Minister, India decided to write off US\$ 15 billion worth of farmers' debt. This is one of the largest schemes undertaken by any government to promote the welfare of its farmers. However, this was not a one time exercise. India is committed to make sustained efforts and coordinated programmes. The growth of India's economy was phenomenal and one of the engines is the Special Economic Zones. This has led to some agitation in some parts of the country but the accent of the Government is to see that special economic zones bring prosperity to the areas in which they are being set up. There were schemes for rehabilitation, reemployment and community development of

the affected people. India remained conscious that the path to reducing disparity was through providing opportunity for both employment and education. In this regard, India stated that it is likely to achieve 100 per cent success in primary education by 2010.

73. India noted that Canada, as well as others, referred to the impunity for human rights violations under the Armed Forces Act which was incorrect. India stated that no forces, armed or police, function with impunity. Armed forces were under strict orders not to transgress human rights and the strictest action is taken, and incidents are swiftly adjudicated, including through courts-martial.

74. Regarding castes and racial discrimination, India noted that both Canada and Germany mentioned India's position on the scope of the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). India stated that their position on ICERD is unchanged and that while they recognize that caste-based discrimination exists in India, since the caste system, which is unique to India, is not racial in origin, caste based discrimination cannot be considered a form of racial discrimination.

75. Regarding questions on minorities from Saudi Arabia and Bangladesh, India noted that minorities, both religious and cultural, enjoy a very special status. The right to administer institutions of their choice for imparting education and carry on their religious instructions and cultural life is a fundamental right which has been repeatedly protected in a series of judgments by the Supreme Court. The Prime Minister's 15-Point Programme contained interesting elements such as enhancing opportunities for education. One of the greatest successes in this area has been the increase in the number of Muslim women who are turning to organize education in the secular sphere. This will greatly contribute towards the mainstreaming of minorities. In communal-sensitive areas, India has set up street-level, district level committees to bring about a greater sense of understanding and tolerance. This has had great success in eliminating mistrust and suspicion.

76. With regard to human rights education, India stated that a novel programme in the form of the national legal literacy program, started in 2005, works to increase awareness of legal rights and make the people aware of their legal rights and that they have access to courts, particularly for people in rural areas.

77. India noted that they do maintain statistics with regard to scheduled castes and scheduled tribes and that these statistics are in the public domain.

78. In relation to a question by the Republic of Korea on the displacement of tribal people from forest lands, India noted that based on a Supreme Court decision, no land can be diverted from forest use, without prior approval and there can be no displacement

unless there is a comprehensive proposal to resettle the tribes as part of the project. This had been the position in regard to implementation of mining projects in Orissa as well.

79. India noted that some states have passed anti-conversion acts to check and regulate forced conversions.

80. Nigeria mentioned enforced disappearances and India noted that it had signed the Convention on the Protection of Persons from Enforced Disappearance on the day it opened for signature last year and that the process of ratification was now under way.

81. With reference to Latvia and Switzerland's question on a standing invitation for special procedures, India stated that it could not agree to standing invitations, but it had been extremely open and had extended invitations whenever approached. India believed that as a developing country with limited capacities, it needed to properly prepare for such visits for which sufficient notice is required.

82. In relation to a question from the Syrian Arab Republic on the role of the judiciary in protecting human rights, India noted that the judiciary is the sentinel and watchdog of human rights in India. The courts in India including the Supreme Court and the High Courts are easily accessible to the ordinary people and have acted even on the basis of information received on a post card from a person under detention.

83. India noted, in response to Egypt's question on the Right to Information Act, that the Act is one of the greatest achievements in the legislative history so far. The fact that the government and legislature decided to "expose themselves" under the Act is by itself a great check on their working.

84. Regarding Sweden's comments on homosexual conduct, India noted that under Section 377 of the 1860 Indian Penal Code, the concept of sexual offences "against the order of nature" was introduced. This was essentially a Western concept, which has remained over the years. The concept of homosexuality itself does not find a mention in the Indian Penal Code and it can be a matter of debate whether it is "against the order of nature". An NGO had filed a petition before the Delhi High Court for declaring Section 377 of the Indian Penal Code as unconstitutional. The High Court's judgment turning down the petition was challenged in the Supreme Court which has returned it to the High Court for reconsideration. The matter was referred to the Law Commission of India, which took the view that Indian society does not currently accept homosexuality as an acceptable form of behaviour. However, the matter is under the consideration of the courts in India.

85. In conclusion, the Ambassador and Permanent Representative of India, H.E. Mr. Swashpawan Singh, thanked everyone for their presence and constructive

participation in the free and frank dialogue. India stated that it had tremendously benefited from the discussion which provided a unique opportunity to know how India's efforts for the realisation of human rights were viewed and assessed by international community. It was satisfying to note that there was a positive recognition of India's efforts and that many initiatives launched by India are viewed as examples of best practices. India remained conscious of the challenges and was committed to persevere diligently within the parameters of its Constitution. India stated that it has always demonstrated its openness towards accepting evolving international human rights norms and remains committed to continue doing so. There are instances where India has adhered to the basic norms of an international instrument without becoming a party to it such as the 1951 Convention on the Status of Refugees. In some other cases, the domestic norms go beyond the prevalent international norms; such as the high level of justiciability of economic, social and cultural rights. India noted that its own experience of being reviewed reconfirmed its belief in the huge potential of the UPR. Yet, the process and the success of the mechanism would depend on constructive engagement by identifying concrete areas for cooperation which would make a real difference on the ground.

II. CONCLUSIONS AND/OR RECOMMENDATIONS

86. In the course of the interactive dialogue the following recommendations were made:

- 1. Expedite ratification of the Convention against Torture (United Kingdom France, Mexico, Nigeria, Italy, Switzerland, and Sweden) and its Optional Protocol (United Kingdom);**
- 2. Continue to fully involve the national civil society in the follow-up to the UPR of India, as was done for its preparation (United Kingdom);**
- 3. Continue energizing existing mechanisms to enhance the addressing of human rights challenges (Ghana);**
- 4. Encourage enhanced cooperation with human rights bodies and all relevant stakeholders in the pursuit of a society oriented towards the attainment of internationally recognized human rights goals (Ghana);**
- 5. Maintain disaggregated data on caste and related discrimination (Canada, Belgium, Luxembourg);**
- 6. Consider signature and ratification of the Optional Protocol to the**

Convention on the Elimination of All Forms of Discrimination against Women (Brazil);

- 7. Consider signature and ratification of ILO Conventions No. 138 and 182 (Brazil, Netherlands, Sweden);**
- 8. Share best practices in the promotion and protection of human rights taking into account the multi-religious, multi-cultural and multi-ethnic nature of Indian society (Mauritius);**
- 9. Review the reservation to article 32 of the Convention on the Rights of the Child (the Netherlands);**
- 10. Consider new ways of addressing growing economic and social inequities arising out of rapid economic growth and share experiences/results of best practices in addressing poverty (Algeria);**
- 11. Take into account recommendations made by treaty bodies and special procedures, especially those relating to women and children, in developing a national action plan for human rights which is under preparation (Mexico);**
- 12. Ratify the Convention on Enforced Disappearances (Nigeria);**
- 13. Strengthen human rights education, specifically in order to address effectively the phenomenon of gender-based and caste-based discrimination (Italy);**
- 14. Extend standing invitation to special procedures (Latvia, Switzerland);**
- 15. Receive as soon as possible the Special Rapporteur on the question of torture (Switzerland);**
- 16. Fully integrate a gender perspective in the follow-up process to the UPR (Slovenia);**
- 17. Follow up on CEDAW recommendations to amend the Special Marriage Act in the light of article 16 and the Committee's general recommendation 21 on giving equal rights to property accumulated during marriage (Slovenia);**

- 18. Continue efforts to allow for a harmonious life in a multi-religious, multi-cultural, multi-ethnic and multi-lingual society and to guarantee a society constituting one-fifth of the world's population to be well fed, well housed, well cared for and well educated (Tunisia).**

- 87. These recommendations will be examined by India which will provide responses in due time. The response of India will be included in the outcome report to be adopted by the Human Rights Council at its eighth session.**

- 88. All conclusions and/or recommendations contained in this report reflect the position of the submitting State(s) and/or the State under review. They should not be construed as endorsed by the Working Group as a whole.**

Annex

Composition of the delegation

The delegation of India was headed by H.E. Mr. Swashpawan Singh, Ambassador and Permanent Representative of India to the United Nations Office at Geneva, and composed of 13 members:

Mr. Goolam E. Vahanvati, Solicitor General of India;

Mr. Vivek Katju, Additional Secretary, Ministry of External Affairs dealing with International Organisations;

Mrs. Anita Choudhary, Additional Secretary in Ministry of Home Affairs;

Mr. Mohinder Singh Grover, Deputy Permanent Representative of India to the United Nations Office in Geneva;

Mr. Manjeev Singh Puri, Joint Secretary, United Nations Division dealing with human rights issues, Ministry of External Affairs;

Mr. Narinder Singh, Joint Secretary and heads the Legal and Treaties Division of the Ministry of External Affairs;

Mrs. Manjula Krishnan, Economic Advisor in the Ministry of Women and Child Development;

Mr. Rajiv Chander, Minister (Political and Economic), Permanent Mission of India to the United Nations Office at Geneva;

Mr. Raj William, Counsellor, Permanent Mission of India to the United Nations Office at Geneva;

Mr. Nilambuj Sharan, Deputy Secretary, Ministry of Social Justice and Empowerment;

Mr. Manu Mahawar, First Secretary, Permanent Mission of India to the United Nations Office at Geneva;

Ms. Paramita Tripathi, Under Secretary, United Nations Division of the Ministry of External Affairs,

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UNIVERSAL PERIODIC REVIEW

**Report of the Working Group on the Universal Periodic Review
India
Addendum**

**Response of the Government of India to the recommendations
made by delegations during the Universal Periodic Review of India***

* The present document was not edited before being sent to the United Nations translation services.

**Response of the Government of India to the recommendations
made by delegations during the Universal Periodic Review of India**

Government of India has examined the recommendations made by delegations during the Universal Periodic Review of India and has the following observations to make:

S. No.	Recommendation	Response of India
1.	Expedite ratification of the Convention against Torture (United Kingdom France, Mexico, Nigeria, Italy, Switzerland, Sweden) and its Optional Protocol (United Kingdom);	The ratification of the Convention against Torture is being processed by Government of India.
2.	Continue to fully involve the national civil society in the follow-up to the UPR of India, as was done for its preparation (United Kingdom);	Government of India accepts this recommendation
3.	Continue energizing existing mechanisms to enhance the addressing of human rights challenges (Ghana);	Government of India accepts this recommendation
4.	Encourage enhanced cooperation with human rights bodies and all relevant stakeholders in the pursuit of a society oriented towards the attainment of internationally recognized human rights goals(Ghana);	Government of India is committed to continue its constructive engagement with international human rights bodies and relevant stakeholders in its pursuit of realization of all human rights for all.
5.	Maintain disaggregated data on caste and related discrimination (Canada, Belgium, Luxembourg);	Extensive disaggregated data, including on caste, are available in the public domain.

S. No.	Recommendation	Response of India
6.	<p>Consider signature and ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (Brazil);</p>	<p>The Constitution of India provides for direct access to the Supreme Court and High Courts for redressal of violations of any fundamental right, for any individual or group of individuals. In addition, we have several other statutory mechanisms to address such violations including the National Human Rights Commissions and the State Human Rights Commissions. There is also a separate National Commission and State Commissions for Women which <i>inter alia</i> have a mandate to address cases of violations of women rights. There exists, therefore, effective legal and constitutional framework to address individual cases of violations within India.</p>
7.	<p>Consider signature and ratification of ILO Conventions No. 138 and 182 (Brazil, Netherlands, Sweden);</p>	<p>Government of India fully subscribes to the objectives and purposes of the Convention on the Rights of the Child (to which India is a party) as well as the ILO Conventions No. 138 and 182 (which India is yet to ratify). India fully recognizes that the child has to be protected from exploitation of all forms including economic exploitation. Towards this end, Government of India has taken a wide range of measures including prescribing minimum age of 14 years for employment in hazardous occupations, as domestic helps, at eateries as well as in certain other areas. Regulatory provisions regarding hours and conditions of employment have also been made. Recently, a National Commission for the Protection of Child's Rights has been set up for speedy trial of offences against children or of violation of child's rights. The present socio-economic conditions in India do not allow prescription of minimum age for admission to each and every area of employment or to raise the age bar to 18 years, as provided in the ILO Conventions. Government of India remains committed to progressively implement the provisions of Article 32 of the Convention on the Rights of the Child, particularly paragraph 2 (a), in accordance with its national legislation and international obligations.</p>

S. No.	Recommendation	Response of India
8.	Share best practices in the promotion and protection of human rights taking into account the multi-religious, multi-cultural and multi-ethnic nature of Indian society (Mauritius);	Government of India accepts this recommendation
9.	Review the reservation to article 32 of the Convention on the Rights of the Child (the Netherlands);	Government of India fully subscribes to the objectives and purposes of the Convention on the Rights of the Child. India fully recognizes that the child has to be protected from exploitation of all forms including economic exploitation. Towards this end, Government of India has taken a wide range of measures including prescribing minimumage of 14 years for employment in hazardous occupations, as domestic helps, at eateries as well as in certain other areas. Regulatory provisions regarding hours and conditions of employment have also been made. Recently, a National Commission for the Protection of Child's Rights has been set up for speedy trial of offences against children or of violation of child's rights. The present socio-economic conditions in India do not allow prescription of minimum age for admission to each and every area of employment. Government of India remains committed to progressively implement the provisions of Article 32 of Convention on the Rights of the Child, particularly paragraph 2 (a), in accordance with its national legislation and international obligations.
10.	Consider new ways of addressing growing economic and social inequities arising out of rapid economic growth and share experiences/results of best practices in addressing poverty (Algeria);	India is committed to the realization of the right to development of all its people and is pursuing this by providing an environment for inclusive and accelerated growth and social progress within the framework of a secular and liberal democracy.

S. No.	Recommendation	Response of India
11.	Take into account recommendations made by treaty bodies and special procedures, especially those relating to women and children, in developing a national action plan for human rights which is under preparation (Mexico);	Government of India accepts this recommendation
12.	Ratify the Convention on Enforced Disappearances (Nigeria);	India signed the Convention for Protection of All Persons from Enforced Disappearance on the day it opened for signature last year. The process of its ratification is underway.
13.	Strengthen human rights education, specifically in order to address effectively the phenomenon of gender-based and caste-based discrimination (Italy);	Government of India recognizes the role of human rights education in combating discrimination. India has adopted a National Action Plan for Human Rights Education to promote awareness about human rights among all sections of the society. Specific target groups, such as schools, colleges and universities, have been identified and human rights education has been made part of curricula. Government officials, armed forces, prison officials and law officers are also being sensitised to the protection of human rights. Regular training programmes are organized by the National Human Rights Commission as well as State Human Rights Commissions. Awareness campaigns are also run by NGOs.
14.	Extend standing invitation to special procedures (Latvia, Switzerland);	India has been regularly receiving and will continue to receive Special Rapporteurs and other Special Procedures mechanisms of Human Rights Council taking into account its capacity, the priority areas for the country as well as the need for adequate preparations for such visits.
15.	Receive as soon as possible the Special Rapporteur on the question of torture (Switzerland);	India has been regularly receiving and will continue to receive Special Rapporteurs and other Special Procedures mechanisms of Human Rights Council taking into account its capacity, the priority areas for the country as well as the need for adequate preparations for such visits.

S. No.	Recommendation	Response of India
16.	<p>Fully integrate a gender perspective in the follow-up process to the UPR (Slovenia);</p>	<p>Government of India accepts this recommendation</p>
17.	<p>Follow up on CEDAW recommendations to amend the Special Marriage Act in the light of article 16 and the Committee's general recommendation 21 on giving equal rights to property accumulated during marriage (Slovenia);</p>	<p>With regard to Article 16(1) of the Convention on the Elimination of All Forms of Discrimination Against Women, Government of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent.</p> <p>With regard to Article 16(2) of the Convention on the Elimination of All Forms of Discrimination Against Women, Government of India declares that it agrees to the principle of compulsory registration of marriages. However, failure to get the marriage registered will not invalidate the marriage particularly in India with its variety of customs, religions and level of literacy.</p>
18.	<p>Continue efforts to allow for a harmonious life in a multi-religious, multicultural, multi-ethnic and multi-lingual society and to guarantee a society constituting one-fifth of the world's population to be well fed, well housed, well cared for and well educated (Tunisia).</p>	<p>The Constitution of India seeks to secure to all its citizens "justice (social, economic and political); liberty (of thought, expression, belief, faith and worship); equality (of status and of opportunity); and to promote among them fraternity assuring the dignity of the individual and the unity and integrity of the Nation". Legislative and administrative measures of the Government of India are guided by this objective. In this context, the Government of India accepts the recommendation made.</p>

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UNIVERSAL PERIODIC REVIEW

Report of the Working Group on the Universal Periodic Review

India

Addendum

**Response of the Government of India to the recommendations made
by delegations during the Universal Periodic Review of India***

* The present document was not edited before being sent to the United Nations translation services.

**RESPONSE OF THE GOVERNMENT OF INDIA TO THE
RECOMMENDATIONS MADE BY DELEGATIONS DURING THE
UNIVERSAL PERIODIC REVIEW OF INDIA**

Government of India has examined the recommendations made by delegations during the Universal Periodic Review of India and has the following observations to make:

<i>S. No.</i>	<i>Recommendation</i>	<i>Response of India</i>
1.	Expedite ratification of the Convention against Torture (United Kingdom France, Mexico, Nigeria, Italy, Switzerland, Sweden) and its Optional Protocol (United Kingdom);	The ratification of the Convention against Torture is being processed by Government of India.
2.	Continue to fully involve the national civil society in the follow-up to the UPR of India, as was done for its preparation (United Kingdom);	Government of India accepts this recommendation
3.	Continue energizing existing mechanisms to enhance the addressing of human rights challenges (Ghana);	Government of India accepts this recommendation
4.	Encourage enhanced cooperation with human rights bodies and all relevant stakeholders in the pursuit of a society oriented towards the attainment of internationally recognized human rights goals(Ghana);	Government of India is committed to continue its constructive engagement with international human rights bodies and relevant stakeholders in its pursuit of realization of all human rights for all.
5.	Maintain disaggregated data on caste and related discrimination (Canada, Belgium, Luxembourg);	Extensive disaggregated data, including on caste, are available in the public domain.
6.	Consider signature and ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (Brazil);	The Constitution of India provides for direct access to the Supreme Court and High Courts for redressal of violations of any fundamental right, for any individual or group of individuals. In addition, we have several other statutory mechanisms to address such violations including the National Human Rights Commissions and the State Human Rights Commissions. There is also a separate National Commission and State Commissions for Women which <i>inter alia</i> have a mandate to address cases of violations of women rights. There exists, therefore, effective legal and constitutional framework to address individual cases of violations within India.

S. No.	Recommendation	Response of India
7.	Consider signature and ratification of ILO Conventions No. 138 and 182 (Brazil, Netherlands, Sweden);	Government of India fully subscribes to the objectives and purposes of the Convention on the Rights of the Child (to which India is a party) as well as the ILO Conventions No. 138 and 182 (which India is yet to ratify). India fully recognizes that the child has to be protected from exploitation of all forms including economic exploitation. Towards this end, Government of India has taken a wide range of measures including prescribing minimum age of 14 years for employment in hazardous occupations, as domestic helps, at eateries as well as in certain other areas. Regulatory provisions regarding hours and conditions of employment have also been made. Recently, a National Commission for the Protection of Child's Rights has been set up for speedy trial of offences against children or of violation of child's rights. The present socio-economic conditions in India do not allow prescription of minimum age for admission to each and every area of employment or to raise the age bar to 18 years, as provided in the ILO Conventions. Government of India remains committed to progressively implement the provisions of Article 32 of the Convention on the Rights of the Child, particularly paragraph 2 (a), in accordance with its national legislation and international obligations.
8.	Share best practices in the promotion and protection of human rights taking into account the multi-religious, multi-cultural and multi-ethnic nature of Indian society (Mauritius);	Government of India accepts this recommendation
9.	Review the reservation to article 32 of the Convention on the Rights of the Child (the Netherlands);	Government of India fully subscribes to the objectives and purposes of the Convention on the Rights of the Child. India fully recognizes that the child has to be protected from exploitation of all forms including economic exploitation. Towards this end, Government of India has taken a wide range of measures including prescribing minimum age of 14 years for employment in hazardous occupations, as domestic helps, at eateries as well as in certain other areas. Regulatory provisions regarding hours and conditions of employment have also been made. Recently, a National Commission for the Protection of Child's Rights has been set up for speedy trial of offences against children or of violation of child's rights. The present socio-economic conditions in India do not allow prescription of minimum age for admission to each and every area of employment. Government of India remains committed to progressively implement the provisions of Article 32 of Convention on the Rights of the Child, particularly paragraph 2 (a), in accordance with its national legislation and international obligations.
10.	Consider new ways of addressing growing economic and social inequities arising out of rapid economic growth and share experiences/results of best practices in addressing poverty (Algeria);	India is committed to the realization of the right to development of all its people and is pursuing this by providing an environment for inclusive and accelerated growth and social progress within the framework of a secular and liberal democracy.

S. No.	Recommendation	Response of India
11.	Take into account recommendations made by treaty bodies and special procedures, especially those relating to women and children, in developing a national action plan for human rights which is under preparation (Mexico);	Government of India accepts this recommendation
12.	Ratify the Convention on Enforced Disappearances (Nigeria);	India signed the Convention for Protection of All Persons from Enforced Disappearance on the day it opened for signature last year. The process of its ratification underway.
13.	Strengthen human rights education, specifically in order to address effectively the phenomenon of gender-based and caste-based discrimination (Italy);	Government of India recognizes the role of human rights education in combating discrimination. India has adopted a National Action Plan for Human Rights Education to promote awareness about human rights among all sections of the society. Specific target groups, such as schools, colleges and universities, have been identified and human rights education has been made part of curricula. Government officials, armed forces, prison officials and law officers are also being sensitised to the protection of human rights. Regular training programmes are organized by the National Human Rights Commission as well as State Human Rights Commissions. Awareness campaigns are also run by NGOs.
14.	Extend standing invitation to special procedure (Latvia, Switzerland);	India has been regularly receiving and will continue to receive Special Rapporteurs and other Special Procedures mechanisms of Human Rights Council taking into account its capacity, the priority areas for the country as well as the need for adequate preparations for such visits.
15.	Receive as soon as possible the Special Rapporteur on the question of torture (Switzerland);	India has been regularly receiving and will continue to receive Special Rapporteurs and other Special Procedures mechanisms of Human Rights Council taking into account its capacity, the priority areas for the country as well as the need for adequate preparations for such visits.
16.	Fully integrate a gender perspective in the follow-up process to the UPR (Slovenia);	Government of India accepts this recommendation
17.	Follow up on CEDAW recommendations to amend the Special Marriage Act in the light of article 16 and the Committee's general recommendation 21 on giving equal rights to property accumulated during marriage (Slovenia);	<p>With regard to Article 16(1) of the Convention on the Elimination of All Forms of Discrimination Against Women, Government of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent.</p> <p>With regard to Article 16(2) of the Convention on the Elimination of All Forms of Discrimination Against Women, Government of India declares that it agrees to the principle of compulsory registration of marriages. However, failure to get the marriage registered will not invalidate the marriage particularly in India with its variety of customs, religions and level of literacy.</p>

S. No.	<i>Recommendation</i>	<i>Response of India</i>
18.	Continue efforts to allow for a harmonious life in a multi-religious, multicultural, multi-ethnic and multi-lingual society and to guarantee a society constituting one-fifth of the world's population to be well fed, well housed, well cared for and well educated (Tunisia).	The Constitution of India seeks to secure to all its citizens "justice (social, economic and political); liberty (of thought, expression, belief, faith and worship); equality (of status and of opportunity); and to promote among them fraternity assuring the dignity of the individual and the unity and integrity of the Nation". Legislative and administrative measures of the Government of India are guided by this objective. In this context, the Government of India accepts the recommendation made.

**Opening Speech of
Shri Goolam E. Vahanvati,
Attorney General of India during
presentation of Universal Periodic Review-II:
National Report May 24, 2012**

**Universal Periodic Review of India 2012:
Opening Statement by Leader of the Indian delegation H.E.
Attorney General of India Shri. Goolam E. Vahanvati**

May 24, 2012

I thank you for the opportunity to make a presentation on India's National Report for the Second Universal Periodic Review 2012. The mechanism of the Universal Periodic Review has emerged as an extremely useful vehicle for the Human Rights Council and the world community to engage in an open discussion on the promotion and protection of human rights in member countries. India accepts all positive suggestions and constructive criticism in the right spirit. We certainly see this process as one of constructive engagement. The fact that we have brought with us a delegation consisting of experts from various ministries of the Central Government who have domain expertise in various aspects of Human Rights bears testimony to our commitment to the UPR.

We have prepared our current National Report after an extensive and inclusive consultation process involving various Ministries of the Government of India, experts and a range of civil society. The draft UPR report was posted on the website to make it accessible for the general public. Prof. Ranbir Singh, Vice Chancellor of National Law University, Delhi took up the task of preparing the National Report after extensive involvement of various special interest groups. I will request him later to give the Council an overview of this unique exercise.

We have also tried to highlight, in the annexures, the evolution of India's fundamental rights enshrined in Part III of our Constitution through judicial pronouncements over the years. This is, in our opinion, a unique addition to our UPR. The intention is to help you get a perspective on a vibrant and evolving Constitution which places human rights right in the forefront of our governance. This steady evolution at the hands of the Supreme Court of India and our Government has opened up new vistas in the field of human rights and fundamental freedoms. I may proudly assert that the contribution of the Indian Supreme Court in this behalf is unparalleled.

Over the last several years, several significant developments have taken place in the field of human rights. Let me highlight some important features. The Right to Information Act has revolutionized the concept of good governance and made it transparent and accountable. Several seminal legislations have brought in a rights-based approach to those areas which are fundamental to human existence inter alia work and employment, education and food security. These include the landmark Mahatma Gandhi National Rural Employment Guarantee Act, the Right to Education Act of 2009

and the National Food Security Bill, which has been introduced in Parliament a few months ago to provide food security. I will shortly elaborate on each of these issues.

The Government is bringing about transparency in governance through the Right to Information Act, Citizens Charter and E-governance and this has had an impact particularly on the way civil and political rights are being administered. The right to approach the Supreme Court, the highest court of the land, for enforcement of Fundamental Rights, is elevated by the Constitution to the status a Fundamental Right. The High Courts can also be moved. These provisions are used frequently and effectively. Advancement of social, economic and political rights has been achieved by the effective use of "public interest litigation" by the High Courts and the Supreme Court.

The challenges we face are by no means small. There are threats to the fabric of our country. Our country has been the target of terrorist activities over the last three decades. Terrorism and insurgency posed existential threats to us. Left-wing extremism and violence is an internal challenge which is being met with resolve coupled with compassion and people-oriented development.

We are aware of the concerns expressed regarding The Armed Forces Special Powers Act of 1948. It may be noted that this Act has been upheld as constitutional by our Supreme Court. Let me say that several checks and balances have been introduced to ensure that there are strict guidelines for the armed forces when dealing with terrorists and insurgents, and that violations are dealt with swiftly and transparently. We are constantly reviewing the implementation of this Act.

In response to our extending a standing invitation to the UN Special Procedures last year in this Council, we have just had the visit of Mr. Christoph Heyns, the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions.

The Supreme Court and National Human Rights Commission promptly look into allegations of enforced disappearances. India has been working closely with the United Nations Office on Drugs and Crime to strengthen response against trafficking in persons.

At this point, I would like to underline, our age-old ethos of religious tolerance and understanding, and the strength of our secular Constitution. Over centuries, India has welcomed all religious denominations, minorities and refugees, including the Jewish community which has become part of our fabric and lived in India for thousands of years without discrimination, and the Zoroastrians/Parsis over hundreds of years or, more recently, refugees from Tibet, Sri Lanka, Myanmar and other countries. Our practices on refugees are far more developed, caring and humane than the current international regime can provide for.

The last four years have seen tremendous strides in focusing on groups needing special attention including children, women, Scheduled Castes and Scheduled Tribes and minorities, and disabled and elderly.

Our efforts in the sphere of social and economic advancement have been significant. Poverty has declined by 9% in a decade. Our rights-based welfare schemes focus on taking people out of poverty and enhancing quality of their life.

The Rural Employment Guarantee Act has played an extremely crucial role. It has provided 54 million households employment in 2010 and 2011. 48% of the total employment created went in favour of women. A huge programme of this kind is bound to require effective monitoring which is being done not only by various arms of Government but also, wherever necessary, under directions of the Supreme Court. Social audit is also conducted and is available on the website to monitor performance.

The declining trend in the unemployment rate in rural and urban areas between 2004-2005 to 2009-2010 is equally visible among Scheduled Castes and Scheduled Tribes and minorities. It is a matter of satisfaction that the rising tide has been lifting all boats. The Central Vision of our 12th Five-Year Plan is to trigger a development process which ensures broad based improvement in the quality of life encompassing in an inclusive manner, all sections of society.

India is also striving to achieve the Millennium Development Goals. While there is considerable ground which needs to be covered, the progress in the last few years on some of the important indicators has been appreciable, given the enormity of the task which we were faced with. Apart from sharp decline in poverty levels in both rural and urban areas between 2004-05 and 2009-10, we are also on course to meet the universal primary education goals. The infant mortality rate has decreased appreciably from 58 per thousand live births in 2005 to 47 in 2010. Maternal mortality rate is down from 254 in 2004 to 212 in 2008 though much more needs to be done.

The Right to Education Act was brought into force on 1st April, 2010. It is an innovative concept meant to give effect to Article 21A of the Constitution, this article was inserted in 2002 by a Constitutional Amendment to make primary education a Fundamental Right and required the State to provide, by law, free and compulsory education to all children of the age of 6 to 14 years. The Right to Education Act contains several visionary changes. Free and compulsory education to all children, has been extended to all schools requiring them to admit at least 25% of children belonging to weaker sections and disadvantaged groups. This is a significant step towards social and cultural integration and elimination of disparities in the country.

17. I would like to draw the attention of the London-based “Global Initiative to end all corporal punishments to children” to the contents of section 17 of the Right to Education Act which mandates that no child shall be subjected to physical punishment or mental harassment.

The success of Government's programmes such as Sarvashiksha Abhiyan has led to achievement of high levels of enrolment in schools. Every effort is now made to contain and deal with the problem of drop outs. This programme has been fine-tuned to bring the Right to Education Act to reality.

Equal emphasis has been made on children's well being with emphasis on enhancement of their food and nutrition through Mid-day Meals programme in schools and also the availability of teachers and their retention. Civil society has contributed positively towards this end. Rural habitation with access to primary school has increased from 87% in 2002 to 99% in 2008. Female literacy has also shown considerable improvement by nearly 50% in the last decade. The good news is that the marginalized and minority group trends have also been converging towards the national average in terms of literacy rate.

While the figures of child labour have dropped sharply in the last decade, the problem of children who are neither working nor studying continues. There is no magic wand to solve the issues relating to child labour. It requires sensitivity and understanding. We remain fully conscious of these issues. In 2007, the National Commission for the Protection of Child Rights was established. The aim is to ensure that all legislative and administrative measures are in consonance with child rights as enshrined in the Constitution of India and the Convention on the Rights of the Child.

I would like to draw your attention to a unique feature in the quest for empowerment of Women. There are over 3 million elected local representatives in Panchayats, which are the units of local self-government at the village level, out of which around one million are women. We are mainstreaming gender through several initiatives, including gender budgeting in all Government policies and programmes. A National Mission for Empowerment of Women was launched in March 2010.

India's programme of affirmative action is unique in scale and dimension. Our jurisprudence recognizes that the guarantee of equality enshrined in Part III of the Constitution is a positive mandate for eradication of inequalities and discrepancies, requiring the State to take all steps to give disadvantaged an opportunity to lead a full and meaningful life.

While our Universal Periodic Review report gives details of development over the last four years, I would just like to underline that several recent steps have been taken to

impact positively on the lives of the Scheduled Castes as well as the tribal population in India. In particular, under the Scheduled Tribes and other Traditional Forest Dwellers (recognition of Forest Rights) Act, 2006, as on February this year, we have disposed 2.72 million claims out of the 3.17 filed i.e 86% of the claims and 1.25 million titles have been distributed already. Prime Minister's new 15-point programme for the welfare of minorities is being actively pursued. Certain proportion of development projects is being earmarked for minorities' concentration areas.

In a significant progress, we have been able to provide access to improved sources of drinking water both in rural and urban areas. More than 90% of the households used improved sources of drinking water in 2008-09.

The National Food Security Bill is a historic initiative for ensuring food security of the people. It marks a paradigm shift from welfare to rights based approach. The highlights are food and nutritional security in human life cycle approach, ensuring access to adequate quantity of quality food at affordable prices, to enable people to live a life with dignity. About two-thirds of the population will be entitled to receive subsidized food grains under Targeted Public Distribution System (TPDS). It will entitle upto 75% of the rural population (with at least 46% belonging to the priority households) and upto 50% of the urban population (with at least 28% belonging to the priority households) to subsidized food grains. There is a special focus on women, children and other Special Groups.

The Public Service Delivery Acts enacted by more than 12 states of India guarantees specified service standards including assurance of service, stipulated time frame, grievance redressal and accountability, to the vulnerable sections of the society – a testimony to the fact that rights based legislation has been infused into the states' domain also. I must also draw attention to “Aadhaar”, which will give a unique identity for all residents to ensure streamlined and effective access to social and organized infrastructure, including the public delivery systems.

India's establishment of the National Green Tribunal is yet another innovative action widely welcomed internationally. The intervention of courts in the matter of protection of the environment and other areas has not only been timely but also led to a wide spread understanding and appreciation of citizens' rights.

Last year, Ms Margaret Sekkagya, UN Special Rapporteur on Human Rights Defenders also visited our country. Allow me to mention here the increasing role being played by the civil society in the area of human rights. Government has actively started associating the civil society right from the planning to the implementation stage. Needless to add, in an open and free society like India and with the Right to Information Act in place, the Indian media, civil society and other activists have helped the Government to be vigilant

against transgressions and ensured that best practices are disseminated. Human Rights defenders continue to play an important role. Our National Human Rights Commission has strived to strengthen the edifice of our human rights practices and serve as the moral compass of the nation.

Allow me also to address one more aspect in a spirit of openness. This concerns freedom of religion in our country. Freedom of Religion is constitutionally guaranteed right under Article 25 of the Constitution. Everybody has a right to choose and follow his own path. The problem arises when the act of propagating one's religion transgresses the limits and stops being voluntary, and becomes coercive or induced. Some States have taken exception to this. Let me assure you that if any particular legislation exceeds Constitutional limits, this can be challenged and the person has every right to approach the Courts.

I would like to take this opportunity to thank the “Troika” countries of Kuwait, Mexico and Mauritius for facilitating the entire process.

We reiterate the pledge of continued enhancement of our engagement with the United Nations and the Human Rights Council. In recent years, we have made several voluntary contributions to human rights related bodies in the UN.

India is a huge country and by reason of its area and diversity alone there are bound to be problems. We cannot wish away problems. Problems can be dealt with if their existence is acknowledged. Moreover, India has the ability to self correct and has redressal mechanisms available. However, we cannot lose sight of the larger picture which is very reassuring. As Mahatma Gandhi said “You must not lose faith in humanity. Humanity is an ocean. If a few drops of the ocean are dirty, the ocean does not become dirty”. India is a vast ocean. We have full faith in our resolve and resources. We are confident that we will be able to deliver to every person living in our country his full share of rights and entitlements.

Thank You.

Geneva

May 24, 2012

**Concluding Speech of Shri Goolam
E. Vahanvati, Attorney General of India
during presentation of Universal Periodic
Review-II: National Report
May 24, 2012**

Universal Periodic Review of India 2012
(24th May 2012)

CONCLUDING REMARKS BY THE LEADER OF THE INDIAN
DELEGATION H.E. SHRI GOOLAM E. VAHANVATI

As we reach the end of this session, I stand before you as a representative of a new India – an India built on the solid foundations laid after independence, a new India, which is confident but not over-confident, a country proud of its strengths and at the same time willing to acknowledge and address weaknesses, and India which is self-assured but not arrogant, a country which is sensitive and humane without being weak or apologetic, and an Indian determined to promote and protect the human rights of its people in its secular democratic polity.

2. In the same spirit of openness and transparency which pervaded the preparation of our National report, we have tried to answer all your questions in an open and focused manner. Whenever we have problems, we have acknowledged them and have faced them squarely, never denying their existence.

3. India is an ancient country with strong social traditions. Some of these traditions may now be out of tune with modern values. They have to change but in a democracy, this can only be done in all inclusive manners, involving all, through persuasion, education and development. We are conscious of the need for change and are promoting it through legislation as well as by raising social awareness.

4. I wish to thank all member states for their comments and recommendations. We are encouraged by the words of appreciation and support. We have also taken note of the critical comments. I assure you that we will reflect carefully on all of them. I hope that our exchange has been mutually rewarding. We do not believe that we have all the answers but we do believe that we are on the right path. I would like to assure this august body that India will continue to strengthen its engagement with the Human Rights Council and its members.

Jai Hind

**Speech of Prof. (Dr.) Ranbir Singh,
Vice Chancellor, National Law University,
Delhi, during presentation of
Universal Periodic Review-II:
National Report May 24, 2012**

Universal Periodic Review of India 2012
(24th May 2012 Geneva)

Remarks by Prof. Ranbir Singh,
Vice Chancellor, National Law University

Thank you Madam Chair,

As the Vice Chancellor of the National Law University Delhi it was my privilege to prepare the first draft of the National Report of India for the UPR 2012 at the request of the Ministry of External Affairs.

A part from closely following the general guidelines of the UNHCR for the preparation, our effort has been to make it as exhaustive and inclusive as possible. The process started more than a year ago. I constituted a small group of committed individuals to assist me, which included a lawyer, an academician and a journalist. Our attempt was to receive all relevant inputs from the stakeholders, civil society, reputed experts, journalists and media, concerned government/ regulatory and statutory authorities, and most importantly, include various pertinent judgments of the Supreme Court of India.

Needless to add, all concerned Ministers and Departments of the Government of India have contributed in the preparation of the Report, including the Ministry of Home Affairs, the Ministry of Social Justice and Empowerment, the Ministry of Minority Affairs, the Ministry of Consumer Affairs, Food and Public Distribution, the Ministry of Health Consumer Affairs, Food and Public Distribution, the Ministry of Housing and Urban Poverty Alleviation, the Ministry of Human Resource Development, the Ministry of Labour and Employment, the Ministry of Law and Justice, the Ministry of Panchayati Raj, the Ministry of Rural Development, the Ministry of Statistics and Programme Implementation, the Ministry of Tribal Affairs, the Ministry of Women and Child Development, the Ministry of Mines, the Planning Commission and the Ministry of External Affairs.

In addition, effective consultations were held with stakeholders consisting of several non-governmental organizations, civil society and experts involved in human rights related activities. We had participated in the consultative workshop, which brought together a range of participants. The Government also participated in the consultations held by the National Human Rights Commission in various States of India to ensure that the inputs reflected the federal polity of our country and the diversity of views.

In a spirit of complete transparency, this draft was posted on the website of the Government. It was heartening for us to receive comments and inputs from all parts of India, much of which helped us sharpen our report.

All the information collected pursuant to the rigorous and long process of consultations has been woven into the report, which is before you. The final meeting of this process was chaired by the Foreign Secretary himself.

Before I conclude, I would like to draw your attention to another new feature of our report – an exhaustive annexure on the evolution of our Fundamental Rights under Chapter III of our Constitution.

Thank You.

Hon'ble Madam to your time.

**Universal Periodic Review of India – II,
2012: National Report Submitted
to United Nations**

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Thirteen session
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National report submitted in accordance
with paragraph 5 of the annex to Human Rights Council resolution 16/21*

India

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I. Introduction

1. As the largest democracy in the world, Indian polity weaves immense diversity into the fabric of a civilizational ethos of tolerance, respect and mutual understanding. India is home to 1.2 billion people. India has a very large population of Hindus (80% of the population), Muslims (13.4% i.e 138 million), and a great many followers of other faiths, including Christians (2.3% i.e. 24 million), Sikhs, Jains, Parsis and others. India has 22 scheduled languages, but more than 1,650 dialects are spoken across the country.

2. Twenty-eight States and seven Union Territories constitute India into a federal polity. There are 640 Districts and 640,867 villages in India. India is also the most representative democracy where, in a unique feature, there are over 3 million elected local representatives in the *Panchayats*, which are the units of local self-government at the village level, out of which around 1 million elected local representatives are women. Elections at regular intervals reinforce the democratic polity of the country.

3. The Constitution of India has ensured through its Fundamental Rights and Directive Principles of State Policy that India remains a multi-religious, multi-cultural, multilinguistic, multi-ethnic and secular democracy. The secular backbone to India's socioeconomic development has been vital in India's continued progress. India's approach towards protection and promotion of human rights has been characterised by a holistic, inclusive and multi-pronged effort. Prime Minister Dr. Manmohan Singh has observed "India's struggle for social and economic transformation of its 1.2 billion strong population in the framework of an open society and a democratic polity, committed to respect fundamental human rights and the rule of law has no parallel in history. Our success in accomplishing this gigantic task could have great significance for the evolution of human kind in this twenty first century of ours."

II. Methodology

4. In the preparation of the India Report under the Universal Periodic Review, the General Guidelines for the preparation of information have been followed broadly.

5. The process has been broad and inclusive involving concerned Ministries and Departments of the Government of India, including Ministry of External Affairs, Ministry of Home Affairs, Ministry of Social Justice and Empowerment, Ministry of Minority Affairs, Ministry of Defence, Ministry of Consumer Affairs, Food and Public Distribution, Ministry of Health and Family Welfare, Ministry of Housing and Urban Poverty Alleviation, Ministry of Human Resource Development,

Ministry of Labour and Employment, Ministry of Law and Justice, Ministry of Panchayati Raj, Ministry of Rural Development, Ministry of Statistics and Programme Implementation, Ministry of Tribal Affairs, and Ministry of Women and Child Development (MWCD). Planning Commission has also been consulted.

6. Consultations were held with the stakeholders consisting of several nongovernmental organisations and experts involved in human rights related activities. In addition, the Government also participated in the consultations held by the National Human Rights Commission in all parts of the country. The draft UPR - II was also posted on the website for comments prior to its finalisation. A National Report has thus evolved, reflecting this extensive consultation process. The Action Taken Report on recommendations on UPR 2008 is at **Annexure I**.

III. Background to fundamental rights and their impact on legislative and regulatory framework

7. India is not only the largest democracy, but is also distinguished by a vibrant and evolving Constitutional system which is founded on the recognition of human rights placed in the forefront of the Constitution, viz Part III and has taken root in the ethos of the nation. The spirit underlying the Chapter on Fundamental Rights in Part III of the Constitution and the Directive Principles of the State Policy in Part IV of the Constitution is the recognition and the need to balance the immense diversity of India with the imperative of maintaining the fabric of civilization and progress, coupled with tolerance, respect, mutual understanding, and recognition of the importance of human life and individual rights. Foremost among these are measures for the removal and eradication of inequality.

8. The Chapter on human rights has undergone a revolutionary interpretative evolution at the hands of the Supreme Court (fully supported by the Government), as a result of which new vistas have emerged around the dynamic content of human rights. To illustrate a few, India has broadened the traditional narrow approach towards equality and proceeded on the basis of a positive mandate to eradicate backwardness in any form, social, economic and educational. Similarly, the freedoms under Article 19 have been given a wide connotation as, for instance, the expansion of the freedom of speech and expression to include the right to obtain information. The Right to life and Personal Liberty in Article 21 has now come to encompass the right to a clean environment, right to legal aid, elimination of bonded labour, right to livelihood, right to speedy and fair trial, and right to education, amongst various other rights.

9. This National Report seeks to identify various steps taken by India in the ongoing effort of making fundamental human rights real and meaningful. A summary of some important judicial pronouncements which have enabled this progressive evolution of the fundamental rights incorporated in the Constitution is at **Annexure II**.

10. In recent years, India has taken several important initiatives aimed at securing human rights, including the following:

- In 2010, in a unique development and to ensure citizens their right to live with dignity in a healthy environment, the National Green Tribunal Act was enacted providing for effective legal protection for environment, forests and other natural resources.
- In the same year, the Government introduced in Parliament the Protection of Women against Sexual Harassment at Workplace Bill covering both organized and unorganized sectors.
- In 2009, the Right to Education Act was enacted, which introduced a new fundamental right for free and compulsory education of children in a neighbourhood school.
- In 2008, a Constitutional amendment bill was introduced in Parliament to reserve for women nearly one-third of seats in the Lok Sabha (Lower House of Parliament) and the state legislative assemblies for a period of 15 years. The Rajya Sabha (Upper House of Parliament) passed this bill in 2010. It is currently in the Lok Sabha.
- In 2007, the National Commission for the Protection of Child Rights (NCPCR) was established to ensure that all legislative and administrative measures are in consonance with the Child Rights perspective as enshrined in the Constitution of India and the Convention on the Rights of the Child.
- The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 rests forest rights and occupation with forest dwelling tribals and other forest dwellers.
- In 2005, the landmark Mahatma Gandhi National Rural Employment Guarantee Act was passed and the programme launched in 2006 to confer livelihood right on the poor.

- The Protection of Women from Domestic Violence Act 2005 came into force in 2006.
- During 2005, the historic Right to Information Act (RTI) was enacted.

11. As mentioned earlier, the judiciary has been a major catalyst for change, including through its Public Interest Litigation for protection against grave violation of human rights. The Judiciary has also ensured that, even if India has not signed or ratified any particular international instrument/protocol, cognizance of these is taken through its various judgments.

12. The establishment of an autonomous National Human Rights Commission (NHRC) in 1993 under the Protection of Human Rights Act reflects our continuing commitment for effective implementation of human rights. Wide powers and functions have been given to the NHRC. State Human Rights Commissions (SHRCs) have been set up in 20 states. During the year 2010-11 99,185 cases were registered for consideration in NHRC and it disposed of 87,568 cases. During the said period, the Commission recommended payment of monetary relief in 583 cases amounting to Rs. 198,655,500. For e.g. in *Jaywant P. Sankpal v. Suman Gholap* (AIR 2010 SC 208), the Supreme Court upheld the award of compensation by the Maharashtra State Human Rights Commission for use of excessive force by police.

13. The Constitution has vested in the Election Commission of India the superintendence, direction and control of the entire process for conduct of elections to Parliament and Legislature of every State and to the offices of President and Vice-President of India. The Election Commission of India is a permanent Constitutional Body and has, over the decades, ensured free and fair elections.

14. The Comptroller and Auditor General is a Constitutional authority with powers to oversee and audit the accounts of the entire Government of India.

Transparency and good governance

15. The Government has taken following recent far-reaching steps to ensure transparency in governance:

1. Right to Information Act

16. To increase transparency in the functioning of Government and accountability in public life, and expanding the ambit of Article 19(1)(a) on the Freedom of Speech and Expression, the Government brought forward the historic Right to Information Act, 2005. The Act has a wide reach, covering the Central and State

Governments, Panchayati Raj Institutions, local bodies, as well as recipients of Government grants. It has given citizens access to information.

2. Citizens' Charters

17. The main objective of Citizens' Charters is letting people know the mandate of the each Ministry/ Department/ Organisation, how one can get in touch with its officials, what to expect by way of services and how to seek a remedy.

3. E-Governance

18. E-Governance in India has steadily evolved from computerization of Government Departments to initiatives such as citizen centricity, service orientation and transparency. The National e-Governance Plan (NeGP), takes a holistic view of e-Governance initiatives across the country. A massive countrywide infrastructure is evolving, and large-scale digitization of records is taking place.

IV. Civil and political rights

A. Right to Life and Liberty, Fundamental Rights and Directive Principles of State Policy

19. The Constitution offers all citizens, individually and collectively basic freedoms which are justiciable and inviolable in the form of Fundamental Rights in Part III of the Constitution (Commentary at Annexure II).

20. The Constitution also lays down certain Directive Principles of State Policy which are 'fundamental in the governance of the country' and it is the duty of the State to apply these principles in making laws.

21. India has the unique provision where the citizen has a right to invoke the highest court of the land directly where violation of Fundamental Rights and human rights are concerned under Article 32. Similar provision exists under Article 226 for the States and their High Courts. These provisions have been used frequently and effectively.

B. Recent developments/issues

22. India has borne the brunt of terrorist activities over the last three decades from across the border. Insurgency in some parts has added another dimension. Terrorists and insurgents have taken advantage of our open and democratic society to

perpetrate violence and killings with deleterious effect on the population and on their enjoyment of human rights. For e.g. the 26/11/2008 and 11/7/2006 terrorist attacks in Mumbai claimed several hundred lives and injured many more. Combatting these challenges has been a major priority since the threat they pose are existential. However, we are enthused by those insurgent groups and individuals, who have renounced violence and come forward to pursue the path of dialogue with the Government.

23. An internal challenge has been left wing extremism and violence. The Left Wing Extremists (LWE) have killed 464 civilians and 142 security forces between 1.1.11 to 31.12.11. Most of those killed by LWE belong to poor and marginalised sections of society. They torture and execute after holding kangaroo courts called Jan Adalats. The Government believes that through a combination of development and security related interventions, the LWE problem can be tackled. We do not underestimate the challenge these so-called "Maoists" pose. The civil society needs to build pressure on them to eschew violence, join the mainstream and recognise the fact that the socio-economic and political aspirations of a 21st century India are far removed from their world-view. India is committed to meet these threats with compassion, people-oriented development and resolve.

C. Armed/security forces and human rights

24. The Government of India remains committed to fulfil its obligation to secure to its citizens all civil and political rights. Concerns have been raised about the Armed Forces Special Powers Act, 1958. At the outset, it is important to point out that the constitutionality of this Act was upheld by the highest judicial body in India i.e Supreme Court of India in *Naga People's Movement for Human Rights v. Union of India* [AIR 1998 SC 431]. Even while doing so, the apex court has reduced the rigour of its provisions and laid down an elaborate list of dos and don'ts for army officials while working in disturbed areas.

25. This Act is considered necessary to deal with serious terrorist and insurgency/militancy situation arising in certain parts of the country and uphold the duty of the state to protect and secure its citizens. It provides necessary powers, legal support and protection to the Armed Forces for carrying out proactive operation against the terrorists in a highly hostile environment. An analysis of the ground realities shows that the violence levels and the fighting ability of terrorists have reduced over the years. Nevertheless, they still possess sophisticated weapons and modern communication equipment and the terrorist infrastructure across the borders is still active. The terrorists continue to intimidate the public. In such a challenging environment, where the very lives of its citizens and the unity and

integrity of India is at stake, as long as deployment of armed forces is required to maintain peace and normalcy, AFSPA powers are required. However, it is pertinent to point out that the extension of declaration of "disturbed areas" is a subject matter of periodic review in consultation with the State Government and security agencies.

26. The Army maintains continuous vigilance to prevent human rights violations by its forces. Human Rights Cell in the Army Headquarters was established in March 1993, even before the NHRC was constituted. These cells have been established at various levels. The investigations of violations are carried out swiftly and in a transparent manner and exemplary punishments are meted out to those involved. The troops are sensitized on upholding human rights and avoiding collateral damage. The Chief of the Army Staff has issued the Ten Commandments to be followed by the Army personnel while dealing with the militants and the insurgents. The Supreme Court has expressed its satisfaction with respect to these commandments in *Naga People's Movement for Human Rights v. Union of India* [AIR 1998 SC 431] case, and observed that they were in essence a set of guiding principles for the prevention of human rights violation by the soldiers.

27. Since January, 1994 until December, 2011, out of 1,429 complaints of human rights excesses received against the personnel of Army and Central Para Military Forces, 1,412 have been investigated and 1,332 found false. In 80 cases, where the complaints were found genuine, stringent punishment has been imposed. 17 cases are under investigation.

D. Death penalty

28. In India, the death penalty is awarded in the 'rarest of rare' cases. The Supreme Court has restricted the use of death penalty only where the crime committed is so heinous as to 'shock the conscience of society'. Indian law provides for all requisite procedural safeguards. Juvenile offenders cannot be sentenced to death under any circumstances and there are specific provisions for pregnant women. Death sentences in India must also be confirmed by a superior court. The President of India in all cases, and the Governors of States under their respective jurisdictions, have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence. For instance, 13 mercy petitions were decided between 1.11.2009 and 23.11.2012 of which 10 were commuted to life imprisonment and 3 rejected. The last death sentence in India was carried out in 2004.

E. Torture

29. India has signed the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. A Bill introduced in the Parliament was passed in the Lok Sabha in 2010. In Rajya Sabha, it was referred to a Parliamentary Select Committee which has made certain recommendations. These are under examination by the Government. Although India has not yet ratified the Convention, Article 21 and other Articles of the Constitution of India and the relevant provisions under the Indian Penal Code, 1860, provide for adequate safeguards. The Supreme Court of India, through its judgements, has also laid down exacting standards on this issue.

F. Detention and enforced disappearances

30. Article 21 and other articles of the Constitution as well as the Criminal Procedure Code provide protection to persons under detention. India has signed the Convention for Protection of all Persons from Enforced Disappearance in 2007. We are actively considering its ratification. The Constitution guarantees the right to approach the higher courts by way of Habeas Corpus petitions. Indian courts have also been awarding compensation in such cases even though our domestic laws do not have any such provision. Apart from Article 21 itself, under Article 20(3) of the Constitution, no person accused of any offence can be compelled to be a witness against himself. Articles 22 (1) and (2) provide that a person who is arrested must be informed of the grounds of his arrest. The person also has the right to consult a lawyer of his choice. An arrested person must be produced before the nearest magistrate within 24 hours of his arrest. To protect persons in police custody from abuse, the Supreme Court has laid down specific rules that police must follow while making arrests, such as informing relatives of an arrest or detention, recording the arrest in a diary, medical examination norms, signing of "Inspection Memo" both by the arrestee and the police officer effecting the arrest etc. (e.g. *D.K. Basu v. State of West Bengal* (AIR 1997 SC 610)).

31. In addition, the Code of Criminal Procedure (Amendment) Bill, 2010, was passed by Parliament and became law in 2010. It provides for additional protection to the accused from police arrests.

G. Access to justice and legal aid

32. In order to ensure greater access to justice for the cross-section of the population, India has taken important strides in this direction. The National Legal Services Authority (NALSA) was constituted in 1987 under the Legal Services Authorities Act, 1987 to provide free legal services to the weaker sections of the

society and to organize Lok Adalats for amicable settlement of disputes. In every State, State Legal Services Authority and District Legal Services Authority have been constituted to give effect to the policies and directions of the NALSA. Until March 31, 2009, about 9.7 million people have benefited through legal aid in which about 1.4 million persons belonging to Scheduled Castes and 464,000 persons of Scheduled Tribe communities were beneficiaries. More than 1 million people were women and about 235,000 people in custody were also benefitted. About 725,000 Lok Adalats have been held throughout the country in which more than 2.68 million cases have been settled.

33. The Gram Nyayalayas Act, 2008 which came into force in 2009, provides for the establishment of Gram Nyayalayas (Village Courts) at the grass roots level for the purposes of providing access to justice to the citizens at their doorsteps and to ensure that opportunities for securing justice are not denied to any citizen by reason of social, economic or other disabilities. Many States have established the Gram Nyayalayas.

H. Corruption

34. In order to curb corruption and in a path-breaking development, the Government has introduced the Lok Pal and Lokayukta Bill in the Parliament in 2011. This was passed by the Lok Sabha in December 2011, and is now before the Rajya Sabha for its consideration.

I. Human trafficking

35. India has ratified the United Nations Convention against Transnational Organized Crime and its two protocols, including the Protocol to Prevent, Suppress and Punish Trafficking in Persons, especially Women and Children, in May 2011. Article 23 of the Constitution prohibits both trafficking in human beings and forced labour. Substantive laws like the Indian Penal Code 1860, special legislations like the Immoral Traffic (Prevention) Act 1956, the Bonded Labour System (Abolition) Act 1976, etc. and local laws like the Goa Children's Act 2003, provide the legal regime. In addition, judgments by the Supreme Court and various High Courts have provided further legal strength to the law enforcement agencies.

36. India has made significant efforts on the issue of human trafficking. The Government has, *inter alia*, already set up 104 local anti-trafficking units and increased the numbers of convictions of people involved in human trafficking for forced labour. Project IND/S16 of the United Nations Office on Drugs and Crime, a joint initiative with the Government, was launched in April 2006. This project is focused on "Strengthening the law enforcement response in India against

trafficking in persons, through training and capacity building". It is proposed to establish 330 Anti-Human Trafficking Units throughout the country and impart training to 10,000 police officers through Training of Trainers (TOTs) component in three years. A comprehensive scheme for prevention of trafficking and rescue, rehabilitation, re-integration and repatriation of victims of trafficking for commercial sexual exploitation namely "Ujjawala" is being implemented since 2007 under which 86 rehabilitative homes have been sanctioned to accommodate nearly 4000 women victims. It is done in partnership with civil society.

J. Sexual orientation

37. Homosexual intercourse was a criminal offence until 2009 under Section 377 of the Indian Penal Code, 1860. The law was struck down by the Delhi High Court in 2009, in the matter of *Naz Foundation v. Govt. of NCT of Delhi* as a violation of fundamental rights in the case of consensual adults.

V. Economic, social and cultural rights

A. Developmental imperatives

38. The central vision of the 11th Plan (2007-2012) is to trigger a development process which ensures broad-based improvement in the quality of life in an inclusive manner. It includes several inter-related components, including rapid growth that reduces poverty and creates employment opportunities, access to essential services in health and education, equality of opportunity, empowerment through education, environmental sustainability, recognition of women's agency and good governance. Larger resources are being invested in sectors providing basic services to the poor and for improving their capabilities to participate in the growth process, and in economically weaker states and backward regions. In fact, there is now a mandatory requirement that all Cabinet proposals should specifically mention how 'equity' will be served.

B. Right of children to free and compulsory education

39. The right to education is now guaranteed under Article 21-A as a part of the right to live with dignity. The Right of Children to Free and Compulsory Education (RTE) Act, 2009 came into effect from April 1, 2010. It makes it mandatory for every child between the ages of 6-14 to be provided free and compulsory education by the State. It is a justiciable right up to 8 years of elementary education in an age appropriate classroom in the vicinity of his/her neighbourhood. The Act has special provisions for girl child education, including out of school girl children. It further mandates the private schools to ensure at least 25% of its seats are available for

marginalised households. The implementation of RTE Act is a shared responsibility of both the central and the state governments and the total expenditure managed by the centre-state ratio of 68:32.

40. The Act has considerable implications for the implementation of Sarva Shiksha Abhiyan (SSA), which is Government's flagship programme for achievement of Universalization of Elementary Education (UEE) in a time bound manner. SSA is being implemented in partnership with State Governments and address the needs of 192 million children in 1.1 million habitations. The vision, strategy and norms under SSA are being harmonised with the RTE Act of 2009 mandate. The Right of Children to Free and Compulsory Education Rules, 2010 have been formulated and a National Advisory Council was set-up in 2010 to advise on implementation in an effective manner.

41. The Sarva Shiksha Abhiyan (SSA) has positively impacted the access and retention in schools and availability of teachers. SSA has ensured almost universal access to primary education and provides special focus on education of girls. The following achievements are worth mentioning:

- Rural habitations with access to primary school increased from 87 per cent in 2002 to 99 per cent in 2008, and that of upper primary school from 78 per cent to 92 per cent during the same period.
- 99% of the rural population has a primary school within 1 km.
- An independent survey in 2010 shows that for age group 6-14 years in rural India, the percentage of children who are not enrolled in school has dropped from 6.6% in 2005 to 3.5% in 2010.
- Proportion of girls in the age group 11-14 years who were out of school has declined from 11.2% in 2005 to 5.9% in 2010.
- Gross Enrolment Ratio (GER) at the primary level improved from 96.3 in 2001-02 to 114.37 in 2008-09, that for upper primary from 60.2 to 76.23.
- Gender gap in enrolment at the elementary level impressively declined from 17 to 7 percentage points. Gender Parity Index has appreciably improved.

42. Further, for increased access to quality secondary education with equity, Rashtriya Madhyamik Shiksha Abhiyan (RMSA) was launched in March 2009.

C. Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (MGNREGA)

43. In India, where labour power is the only economic asset for millions of people, gainful employment becomes the channel for the fulfilment of the other basic rights. The right to work was included in the Directive Principles of State Policy as an aspirational goal but the MGNREGA has made this a legal guarantee.

44. The NREGA Scheme is one of the largest in the world in terms of finances and outreach. It is demand driven and people-centered and implemented through a decentralised, bottom-up and participatory process. This model of rural growth is revolutionary because of its basic principles of inclusive growth, the right to work and a rational centre-state relationship.

45. Under MGNREGA, which was enacted in 2005, at least one adult member of every household in rural India has a right to at least 100 days of guaranteed employment every year. The statutory minimum wage is paid for casual manual labour and it shall be paid within 7 days of the week during which work was done. It pays particular attention to marginalised groups and women.

46. Since April 2008, this scheme has been extended to all the districts of the country. More than 54 million households were provided employment in 2010-11, marking a significant jump in coverage. Out of the 2.57 billion person-days created under the scheme during this period, 31 and 21 per cent were in favour of the Scheduled Castes (SC) and Scheduled Tribes (ST) population respectively, while 48 per cent of the total person days created went in favour of women. An allocation of Rs 400 billion has been made for MGNREGA in the Budget for 2011-12.

47. It is worth mentioning that states have reported that social audit has been conducted in more than 90% of the Gram Panchayats. 244,000 reports on Social Audit have been uploaded on the MGNREGA website. A new scheme of monitoring by eminent citizens has also been introduced. MGNREGA has also made excellent use of ICT-enabled Management Information System, where data is made available in the public domain. India is conscious of the difficulties in implementation of this ambitious scheme across India and is constantly reviewing it to address shortfalls.

D. Food security and strengthening of Public Distribution System

48. To make a paradigm shift from welfare to rights approach and provide food security to ensure the right to live with dignity, the government introduced the National Food Security Bill, 2011 in the Parliament in December 2011. The

landmark Bill confers a legal right to cheaper food grains to 63.5 per cent of the country's population. Under this legislation, people eligible would be entitled to 7 kg of food grains comprising rice, wheat and coarse grains per person per month at very low rates. The law seeks to significantly extend the reach of India's existing public food distribution system that sells food items to low-income families much below market prices and, inter alia, give nutritional support to women and children. In a unique feature, the Bill provides that only woman can be treated as head of household for issue of ration cards.

49. The Public Distribution System (PDS) is the world's largest food programme and a crucial part of Government's policy for management of food economy. Given the joint responsibility of the Central and the State Governments, it is a dual purpose vehicle - on the one hand, for giving farmers assured and remunerative prices for their produce through Minimum Support Price (MSP), and on the other, to provide food security to the most vulnerable sections. Government also makes allocation of food grains for other welfare schemes at subsidized below-poverty-line (BPL) prices. In addition, the 11th Five Year Plan schemes also give added fillip keeping in mind the requirements of small and marginal farmers.

E. Social security and labour

50. The Government has enacted the Unorganised Workers' Social Security Act, 2008 for providing social security to unorganised workers. The National Social Security Board was constituted in 2009 for formulation of social security schemes, namely: i) health and maternity benefits ii) death and disability and iii) old age protection. The Government has also set up National Social Security Fund for unorganised sector workers to benefit 433 million workers in the unorganised sector, including weavers, toddy tappers, rickshaw pullers, beedi workers and women workers.

51. The Rashtriya Swasthya Bima Yojana providing for smart card based cashless health insurance cover of Rs. 30,000 to BPL families in the unorganised sector has been launched. More than 21.8 million BPL families have been covered as on 30.11.2010.

52. To provide a life of dignity, eradication of the practice of manual scavenging is an area of priority for the Government and a three-pronged strategy has been adopted through legislation, development and rehabilitation. Out of the 770,000 manual scavengers and dependents to be rehabilitated by the National Scheme for Liberation and Rehabilitation of Scavengers and their dependents (NSLRS), 428,000 have been rehabilitated into alternative occupations. For the remaining 342,000, the Self Employment Scheme for Rehabilitation of Manual Scavengers

(SRMS) was launched in January, 2007. The Scheme is being implemented at the national level through the four National Finance and Development Corporations. All states have confirmed that eligible and willing beneficiaries identified under SRMS have been given financial assistance for alternative occupations.

53. India is also constantly striving to enhance protection to its workers from exploitation during the process of recruitment and during their employment overseas, through bilateral agreements and a range of policies and schemes.

F. Health

54. Under Article 47 of the Constitution pertaining to the Directive Principles of State Policy, the State has a duty to raise the level of nutrition and improve public health. Recognising this, the Government has launched the National Rural Health Mission. The Mission adopts a synergistic approach by relating health to determinants of good health viz. segments of nutrition, sanitation, hygiene and safe drinking water.

55. Massive investment in this sector has led to drop in infant mortality rate from 58 per 1000 live birth in 2005 to 47 in 2010; Maternal Mortality Ratio from 254 per 100,000 live births for 2004-06 to 212 for 2007-09 and total fertility rate to 2.6 (2009) from 3.2 (2000). India has not reported a single polio case since 12 January 2011. The number of newly detected HIV positive cases has dropped by over 50% in the last decade.

56. However, there are inequities based on rural-urban divide, gender imbalance and child nutrition. The Government's Strategy Note to 'Address India's Nutrition Challenges' was discussed with various stakeholders and presented to Prime Minister's National Council for India's Nutrition Challenges. A multisectoral programme for addressing nutrition in 200 high burden districts is being finalised. To bring pregnant women into the institutional fold, Janani Suraksha Yojana has seen phenomenal growth in the last 6 years and the beneficiaries have increased from 644,000 in 2005-06 to 10.6 million in 2010-11. The Janani Shishu Suraksha Karyakaram started from June, 2011 entitles pregnant women to a range of services in public health institutions including free delivery, free medicines, free diet and treatment of sick newborns.

G. Housing and rehabilitation

57. Housing shortage remains an area of concern and Government has enhanced its focus on this issue. The Indira Awaas Yojana (IAY) is a flagship scheme of the Ministry of Rural Development to provide houses to the Below Poverty Line (BPL)

families in the rural areas. It has been in operation since 1985-86. Since inception, 27.3 million houses have been constructed at an expenditure of Rs. 795 billion (until January 2012). There is high degree of satisfaction with this scheme since beneficiaries participate in the construction of their own houses. The role of the State Government is limited to the release of funds and facilitating use of appropriate technology.

58. Jawaharlal Nehru National Urban Renewal Mission (JNNURM), 2005 provides focused attention to integrated development of urban infrastructure and services in select 65 cities with emphasis on urban poor, slum improvement, community toilets/ baths, etc. Under JNNURM, a total of 1.58 million dwelling units have been approved for construction. Out of these 533,000 dwelling units have been completed and 369,000 is under progress. The total Central share approved under JNNURM is Rs 231 billion and Rs. 124 billion has been released to the states. Apart from regular state and regional reviews, Government has empanelled agencies to play the role of Third Party Inspection and Monitoring Agency (TPIMA) for monitoring the progress and quality of projects under JNNURM and instalments are sanctioned only after the quality is certified by the TPIMA.

59. Further, to create a slum-free environment, a new scheme 'Rajiv Awas Yojana' (RAY) has been launched in June, 2011. This scheme provides financial assistance to states willing to assign property rights to slum dwellers and to avail of the same level of basic amenities as the rest of the town. The scheme is expected to finally cover about 250 cities by 2017 and funds have been released to 157 cities for preparatory work. The Affordable Housing in Partnership scheme has been dovetailed into this new scheme.

60. In a recent ruling in January 2012, the Supreme Court directed compliance with Article 21 by providing night shelters for the homeless since people sleeping on pavements in the night was a breach of their right to live with dignity. The Delhi High Court also ordered reopening of temporary night shelters.

61. Conscious of the need to address the issue of rehabilitation of displaced persons, the new National Mineral Policy of 2008 states that "... all measures proposed to be taken will be formulated with the active participation of the affected persons, rather than externally imposed."

H. Sanitation and drinking water

62. Total Sanitation Campaign (TSC) is a comprehensive programme to ensure sanitation facilities in rural areas. TSC has been able to accelerate the sanitation coverage from a mere 22% as per 2001 census to approximately 68% in December 2010.

63. The National Rural Drinking Water Programme is a flagship scheme to ensure that all households in rural areas have access to safe and sustainable drinking water facilities. More than 1.23 million rural habitations have been provided with this facility under this scheme. It is estimated that during the 11th Five Year Plan, an amount of nearly Rs.900 billion has been spent for this purpose. The latest NSSO survey of 2008-09 reveals that about 90% of the rural households obtain their drinking water from improved sources.

64. In a significant development, all schools in all States of India will have toilet facilities by April 2012, as directed by the Supreme Court of India under Article 21A. Similar directions by the Supreme Court have also ensured drinking water facilities to all schools in the country.

I. Poverty eradication

65. While, as per the Lakdawala Committee constituted by the Planning Commission, poverty declined from 36% in 1993-94 to 27.5% in 2004-05, as per the Tendulkar Committee, also constituted by the Planning Commission, poverty declined from 45.3% in 1993-94 to 37.2% in 2004-05. Significantly, in both the Committees' methodologies, the extent of poverty reduction in appreciable and in comparable percentage point is broadly the same.

VI. Groups in need of special attention

A. Children

66. A combination of law and robust policy initiatives has given a strong thrust to the protection and welfare of children in India. Children have received considerable attention in the 11th Five Year Plan. It takes forward the agenda of child rights by further strengthening legislations and expanding the delivery systems. Some of the initiatives include universalization of services for nutrition and development of children in the age group of 0-6 years; adoption of free and compulsory education for the age group of 6-14 years; amendment of existing legislations; and launch of comprehensive schemes for protection of children in difficult circumstances, working children, victims of trafficking and other vulnerable children.

B. National Commission for Protection of Child Rights

67. The National Commission for Protection of Child Rights (NCPCR) was set up on March 5, 2007 under the Commissions for Protection of Child Rights (CPCR) Act, 2005. It is one of the few commissions of its kind in Asia. The Commission ensures that all laws, policies, programmes, and administrative mechanism are in

consonance with the child rights perspectives enshrined in the Constitution and Convention on the Rights of the Child. In addition, it takes *suo motu* cognizance of violation of rights and analyses data on children. During the year 2010-2011 (up to February 28, 2011), NCPCR has dealt with 675 complaints of violations/deprivations of child rights. The Commission constituted an Expert Group in 2009 with eminent persons for advice NCPCR's role in monitoring children's right to education. NCPCR has also involved civil society in the Social Audit of the RTE to strengthen the process of performance and delivery.

68. The impressive developments through the Sarva Shiksha Abhiyan have been dealt with earlier in the report.

69. The Juvenile Justice (Care and Protection of Children) Act, 2000, (JJ Act) is the principal legislation for the protection of children. The JJ Act was amended in 2006 and The Juvenile Justice (Care and Protection of Children) Rules, 2007, (JJ Rules, 2007) were also framed for effective implementation of the Act. In 2006, the scope of the Act was expanded, inter alia, by including child beggars and working children in the category of children in need of care and protection. In November, 2010, the Government introduced the Juvenile Justice (Care and Protection of Children) Amendment Bill, 2010, with the aim of removing discriminatory references against children affected by diseases such as leprosy, Hepatitis B, sexually transmitted diseases and tuberculosis. It has since been passed by the Parliament.

70. In 2006, the Prohibition of Child Marriage Act (PCMA) was enacted repealing the Child Marriage Restraint Act of 1929 making child marriage an offence.

C. Integrated Child Protection Scheme (ICPS)

71. The Integrated Child Protection Scheme (ICPS) for children in difficult circumstances was launched in 2009-10 and aims to reduce their vulnerability to situations and actions that could lead to abuse, neglect, exploitation, abandonment and separation. The Scheme subsumes three central schemes, namely: (i) Programme for Juvenile Justice, (ii) Integrated Programme for Street Children, and (iii) Scheme of 'Assistance to Homes (*Shishu Greh*) for Children. More than 90,000 children are benefiting under the Scheme.

Initiatives include:

- Establishing Statutory Bodies in every district and service delivery structures for child protection at State and District levels
- Upgrading and establishing standard institutional services and putting dedicated

child protection personnel in place

- Expansion of Emergency Outreach services (Childline services, 1098)
- Promotion of non-institutional care
- Initiation of Child Protection Division in the National Institute for Public Cooperation and Child Development (NIPCCD)
- Child Tracking System

D. **Integrated Child Development Services (ICDS)**

72. The period from birth to six years of age, especially those below two years of age is considered the most important period for any intervention on malnutrition. The ICDS, launched in 1975, is a comprehensive programme addressing the health, nutrition and preschool needs of children under six. It provides a package of services comprising of supplementary nutrition, pre-school non-formal education, nutrition & health education, immunization, health check-up and referral services. The Scheme, inter alia, aims to improve the nutritional and health status of pregnant and lactating mothers and children below 6 years of age. The Central Government contributes 90% of all costs and 50% of the cost of supplementary nutrition and the remaining is funded by the state governments. The budgetary allocation for ICDS has been greatly increased from Rs. 103 billion in Tenth Plan to Rs. 444 billion in the Eleventh Plan. Additionally, Rs. 90 billion has been allocated for maternity entitlements scheme. Recognising the need to cover children under two years of age, the 11th plan focused on 'restructuring' the ICDS, so that the programme is universalised, supplementary nutrition is of better quality, fund transfer is made on time and maternity and child care services are provided. Beneficiaries of the ICDS are 97.5 million, including 79.5 million children (6 months to 6 years) and 18 million pregnant and lactating mothers. The Prime Minister's National Council on Nutritional Challenges decided in November 2010 to strengthen the ICDS scheme.

73. The Pre-School Education (PSE) component of the ICDS Scheme is being strengthened to ensure universalisation of early childhood education and preparation of children, particularly those belonging to socially disadvantaged groups, for formal schooling. The beneficiaries under PSE have increased from 21.4 million in 2004-05 to 33 million in 2007-08 and further to 35 million by December 2010.

E. Exploitation of children

74. The Information and Technology Act was amended in 2008 to address exploitation of children through the internet. Section 67 (b) of the Act provides for punishment for publishing or transmitting material depicting children in sexually explicit acts, etc. in electronic form.

75. Since sexual offences against children are not fully addressed by existing legislation, the Government introduced a Bill in Parliament on Protection of Children from Sexual Offences in March, 2011, which is currently under consideration of the Rajya Sabha. The Bill, inter alia, defines the offences, provides for special courts for such offences and stringent punishment to offenders.

F. Adoption and alternative care

76. Adoption procedures in the country are governed by specific guidelines notified by the Government and clearly define the roles and responsibilities of those involved. In order to incorporate the amended JJ Act, 2006 and Model Rules, 2007, wherein surrendered children could be rehabilitated through adoption in accordance with guidelines of Central Adoption Resource Agency (CARA), and keeping in mind the various directions from different courts and stipulations for inter-country adoptions laid down by the Special Commission of the Hague Convention held in 2010, it became imperative to revise the guidelines in June 2011 to reflect these changes. A web-based Child Adoption Resource Information and Guidance System (CARINGS) has been launched making the process of adoption more transparent.

G. Child labour

77. Given the socio-economic conditions in the country, a multi-pronged strategy for elimination of child labour has been adopted, which emphasises on legislative measures; general development programmes for the benefit of families of child labour and projectbased action in areas of high concentration of child labour.

78. As per Child Labour (Prohibition & Regulation) Act, 1986, children below the age of 14 years are prohibited for employment in hazardous occupations/processes specified in the Act. India has not ratified ILO Conventions No. 138 and 182 since they fix minimum age of employment as 18 years. The Government is working on the modalities of ratifying these ILO Conventions, particularly No. 182. Consultations are taking place. However, it is pertinent to point out that the Government issued three notifications in the last five years, expanding the list of banned and hazardous processes and occupations in Schedule II of the *Child*

Labour (Prohibition and Regulation) Act, 1986. The number of occupations listed in Part A now is 18 and the number of processes listed in Part B is 65. Further, the worst forms of child labour are already prohibited under various Acts such as Bonded Labour System (Abolition) Act, 1976, Immoral Traffic Prevention Act 1956, the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 and Child Labour (Prohibition and Regulation) Act, 1986. Consequently there is no dearth of inclination to progressively eliminate child labour from India.

79. The Government is implementing National Child Labour Project (NCLP) for the rehabilitation of child labour. The NCLP is operational in 266 Districts, with about 7300 special schools. These special schools are mainly run by NGOs and impart non-formal/formal education, vocational training, etc. to children withdrawn from employment, so as to prepare them to join mainstream education system. 852,000 children have been mainstreamed under NCLP. There has been a 45% reduction in child labour over the last 5 years (2009-10).

H. Mid-Day Meals Scheme for children in schools

80. The coverage of this immensely popular and effective Mid-Day Meals Scheme for children in schools, which satisfies both 'hunger' and 'education,' has been extended even further in August 2009 and now covers all children studying in Classes I-VIII in Government, Government-aided and Local Body schools and Education Guarantee Scheme (EGS) and Alternative and Innovative Education centres supported under SSA, including Madarasas and Maqtabas as well as children under National Child Labour Projects.

I. Women

81. The Constitution of India guarantees equality of status of women and has laid the foundation for such advancement. It also permits reverse discrimination in favour of women and many important programmes have been designed specifically to benefit girls and women. A number of laws have been enacted by the Indian Parliament, which has brought forth a perceptible improvement in the status of women. Some of these are: Prohibition of Child Marriage Act, 2006, Hindu Succession Act, 1956; Indecent Representation of Women (Prohibition) Act, 1986; Dowry Prohibition Act, 1961; Maternity Benefit Act, 1961; the Equal Remuneration Act, 1976; The Immoral Traffic (Prevention) Act, 1956; Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994; and Protection of Women from Domestic Violence Act, 2005.

82. The Planning Commission of India, through its Five Year Plans is committed to enable women to be “equal partners and participants in development”. The Eleventh Five Year plan has recognized women as agents of sustained socio-economic growth and change and funding is being provided to a large number of gender specific schemes.

83. The amendment of the Hindu Succession Act in 2005 was an important legal reform which will contribute towards economic empowerment of women, giving daughters equal rights in the ancestral property.

84. Domestic violence against women is integrally linked to women’s economic dependence and lack of support systems. Recognising this, the Protection of Women from Domestic Violence Act, 2005 has been envisaged as a civil law, which not only defines for the first time ‘domestic violence’ and entitles women to get a Protection Order, but also contemplates various forms of reliefs such as maintenance, compensation, residence and custody.

85. Declining Child Sex Ratio is a matter of concern. To deal with this, the Government has in place, inter alia, the Pre-Conception and Pre-Natal Diagnostic Technique (Prohibition of Sex Selection) Act 1994 which prohibits sex selection and regulates prenatal diagnostic techniques to prevent their misuse leading to sex-selective abortion. Recent steps include amendment of Rules to provide for confiscation of unregistered machines, further punishment for unregistered ultrasound clinics and reconstitution and strengthening of the National Inspection and Monitoring Committee.

86. The Government launched the National Mission for Empowerment of Women (2010-15) in March 2010 to, inter alia, secure convergence of schemes of different Ministries of Central and State Governments, review gender budgeting and various social laws concerning women.

87. In several milestone decisions, the Supreme Court of India has established jurisprudence reinforcing women’s rights and the provision of a safe and healthy environment at home and work.

88. Many women have also joined the Armed Forces. The Delhi High Court in a landmark verdict on March 12, 2010 has directed the Indian Air Force (IAF) to allow its lady officers to be eligible for the Permanent Commission (PC) status. Prior to this, women officers were restricted to Short Service Commission (SSC) status, which entitles a maximum service period of 14 years as against a PC officer who is eligible to serve till the age of 60 and are also eligible to various other benefits.

89. The National Commission for Women is a statutory body with the mandate to safeguard the constitutional and legal rights of women, redress deprivation of women's rights and promote gender justice and equality.

90. Mandatory registration of the wife in all property owned or acquired by the husband is another progressive step taken by many State Governments. Further, government financed asset ownership schemes have women's ownership of assets. Accordingly, in housing schemes like the Indira Awaas Yojana (IAY) or the Rajiv Gandhi Gramin LPG Vitak (RGGLPGV) Scheme, the allotment is done in the name of the female member of the households or in the joint names of husband and wife.

91. Recognising that increased female literacy is a force multiplier for social development programmes, the Government has launched a National Mission for Female Literacy in 2009 to make every woman literate in five years.

92. The significant advance made by women today is evident from various socioeconomic indicators relating to health, literacy and education, workforce participation rate etc. In the field of education, girls constitute approximately 48.46% of the total enrolment of the primary level and 41.12% at the upper primary level (2009-10). The 2011 Census has shown improvements in the literacy rate of women, from 53.67% in 2001 to 65.46% in 2011, and in the total sex ratio, from 933 females in 2001 to 940 females per 1000 males in 2011.

93. The Janani Suraksha Yojana (JSY) has been covered above under 'Health.' Several schemes are being implemented to address infant and child mortality. Notable among these are Universal Immunisation Programme for immunisation of children against six vaccine preventable diseases; Integrated Management of Neonatal Childhood Illnesses (IMNCI), which focuses on the preventive, promotive and curative aspects among newborns and children; and the Reproductive and Child Health (RCH) Programme, which has entered its second phase (2005-2010).

94. In order to incentivise the birth of a girl child and encourage families to place a premium on her education and development, a number of States are implementing Conditional Cash Transfer schemes. Government is also implementing a similar scheme – 'Dhanalakshmi', launched in March, 2008, on a pilot basis. For nutrition and skill development of adolescent girls, a pilot scheme 'Sabla' has been launched in 200 districts.

95. Recognising the problem of "missing" girls as a result of sex-selective abortions, infanticide or neglect, the ICPS envisages setting up Cradle Baby

Reception Centres in each district.

96. Recognising the compulsions faced by many women who continue to work till the last stage of pregnancy and resume work soon after childbirth, a new initiative has been launched recently in 2010-11 by the Ministry of Women and Child Development (MWCD). 'Indira Gandhi Matritva Sahyog Yojana (IGMSY)' is a Conditional Maternity Benefit (CMB) Scheme that has been launched on a pilot basis in 52 districts, with the two-fold objective of providing cash assistance to pregnant and lactating women to overcome loss of working days and providing better nutrition. The Scheme uses the ICDS platform and covers approximately 1.4 million women in the initial years.

97. Government has a unique provision where a 2-year child care leave can be availed of by its women employees anytime during the childhood years.

J. Mainstreaming gender

98. One of the key initiatives undertaken by the Government to promote gender equality has been the adoption in 2005 of Gender Budgeting as a tool for mainstreaming gender in all government policies and programmes. Through Gender Budgeting, the Government aims to ensure the translation of Government's policy on gender equity into budgetary allocations. To institutionalise this process, the Government had initiated the formation of Gender Budget Cells (GBCs) within all Central Ministries/ Departments. So far 56 Ministries/Departments have set up GBCs. One of the focus of the National Mission for Empowerment of Women 2010 is to review gender budgeting.

99. The Government has also been focusing on interventions in the sphere of economic empowerment through generating employment opportunities for poor and women, capacity-building especially through the Self-Help Groups (SHGs) movement. There are around six million SHGs of which 80% are women's groups.

K. Registration of marriages

100. In spite of the socio-economic challenges, India is working towards making registration of all marriages compulsory. This direction comes from the Supreme Court which in *Seema v. Ashwini Kumar* (2006 (2) SCC 578), directed that registration of marriages of all persons, irrespective of their religion, who are citizens of India should be made compulsory in their respective states. In this context, 19 States have already taken necessary legislative measures.

L. Persons with disability

101. According to Census 2001, there are 2.19 million persons with disabilities in India who constitute 2.13 percent of the total population. Seventy-five (75) per cent of persons with disabilities live in rural areas, 49 per cent of them literate and only 34 per cent are employed.

102. The emphasis is now on social rehabilitation and mainstreaming them in the society. The Government has enacted three legislations for persons with disabilities, namely, (i) Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995, which provides for education, employment, creation of barrier free environment, social security, etc. (ii) National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act, 1999 has provisions for legal guardianship of the four categories and creation of enabling environment for as much independent living as possible (iii) Rehabilitation Council of India Act, 1992 deals with the development of manpower for providing rehabilitation services.

103. India became a party to the United Nations Convention on Rights of Persons with Disabilities (UNCRPD) in 2008. The Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 (PWD Act) requires to be modified to incorporate areas recognized in the UNCRPD. The Chief Commissioner and Commissioner respectively in the Centre and States function as Ombudsmen for Persons with Disabilities under the 1995 Act. The Government is in the process of drawing up legislation in place of PWD Act, 1995, in a consultative manner involving all stakeholders and keeping in view all developments in this sector. The courts have been active as well. For e.g. in *Suchita Srivastava v. Chandigarh Administration* (AIR 2010 SC 235), where a mentally challenged woman refused to give her consent for the termination of pregnancy, the Supreme Court held that a woman's right to personal liberty includes the right to make reproductive choices and that the state must respect her choice.

M. Older persons

104. As our society is witnessing a withering away of the joint family system, a large number of parents and senior citizens are being neglected. The Maintenance and Welfare of Parents and Senior Citizens Act of 2007 was enacted in December, 2007 to ensure their need-based maintenance and welfare. The Act has already been notified by 23 States and all UTs. In pursuance of the National Policy on Older Persons, a National Council for Older Persons was constituted as the highest body to advise the Government and oversee the implementation of the policies. Due to uneven implementation, review is being carried out to strengthen implementation.

The Ministry of Rural Development launched the Annapurna scheme in 2000-01 for indigent senior citizens of 65 years of age or above who are not getting pension under the National Old Age Pension Scheme, where 10 kilograms of food grains per person per month are supplied free of cost.

N. Scheduled castes and scheduled Tribes and minorities

1. Scheduled Castes (SC) and Scheduled Tribes (ST)

105. India's programme of affirmative action is without parallel in scale and dimension in human history. Apart from the Fundamental Rights to prohibit discrimination in any form, the Constitution also provides for advancement of Scheduled Castes (SC), Scheduled Tribes (ST) and other backward classes (OBC). Legislative measures and guaranteed political representation provides for strong and robust protection for SCs and STs. A programme of 'compensatory discrimination' reserves 15% for SCs and 7.5% for STs in employment, education and a range of areas. Quota for the OBCs has also been earmarked. Their socioeconomic backwardness has been specifically addressed in the Eleventh Plan through the approach of 'faster and inclusive growth' and a three-pronged strategy has been adopted namely: (i) social empowerment; (ii) economic empowerment; and (iii) social justice, to ensure removal of disparities and elimination of exploitation.

106. In upholding the constitutional commitment, specific legislations and programmes are being implemented specifically for SCs and STs:

- a) Central assistance is being provided for the effective implementation of the Protection of Civil Rights (PCR) Act, 1955, and the Scheduled Caste and Scheduled Tribes (Prevention of Atrocities [PoA]) Act, 1989, mainly for:
 - i) State level SC and ST Protection Cell and Special Police Stations;
 - ii) Special Courts;
 - iii) Awareness generation;
 - iv) Inter-caste marriages; and
 - v) Relief to atrocity victims.

- b) In order to ensure speedy trial of cases under the SC/ST (Prevention of Atrocities) Act, 1989, special courts and special police stations for offences against SCs and STs have been set up in a number of States. 177 special courts and 77 special police stations have been set up.

- c) Constitution provides for several special provisions for protecting interests of Scheduled Tribes. A separate Ministry for Tribal Affairs was set-up in 1999.

107. There is a National Commission for Scheduled Castes, a Constitutional Ombudsman body, set up under Article 338 having wide powers to protect and promote the interests of SCs, and a National Commission for Scheduled Tribes as well.

108. Improving the educational status of SCs, especially of women and girl children in this category is one of the main priorities. The Centrally Sponsored Scheme (CSS) of postmatric Scholarships to SC students, involving 100 per cent Central assistance, has been accorded high priority in the Eleventh Plan. This scheme benefits about 4 million SC students annually and has been revised in 2010. Rajiv Gandhi National Fellowship (RGNF) scheme for SC students was launched in 2006 for providing financial assistance to SC students pursuing MPhil and PhD. Under this scheme, 2000 fellowships are provided annually to SC beneficiaries. There are parallel educational development schemes for ST candidates and students also.

109. The National Scheduled Castes Finance and Development Corporation (NSCFDC) was set up in 1989 to provide soft loans to SCs living below the poverty line for taking up income generating self-employment ventures. Rs 3250 million have been released towards equity of NSCFDC in the Eleventh Five-Year Plan. Beneficiaries covered under the scheme since its inception is 762,000 of which 410,000 (53.34%) are women. The National Scheduled Tribe Finance and Development Corporation is the counterpart organisation for the Scheduled Tribes.

110. India's sensitivity to the interests of the tribal population is equally unparalleled. The STs and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 rests forest rights and occupation in forest dwelling STs and other forest dwellers to address their insecurity of tenurial and access rights.

111. The revised CSS Strengthening Education among ST Girls in Low Literacy Districts scheme is being implemented in 54 identified low literacy districts where the ST population is 25 per cent or more and ST female literacy rate is below 35 per cent. Besides formal education, the scheme also takes care of skill upgradation.

112. The Planning Commission set up a Task Force to review guidelines on Scheduled Castes Sub-Plan (SCSP) and Tribal Sub-Plan (TSP) in June 2010. Pursuant to its recommendations, implementation of SCSP is being streamlined.

2. Minorities

113. The Ministry of Minority Affairs was created in 2006 in order to ensure a more focussed approach towards issues relating to the minorities. The National Commission for Minorities is a statutory body under the National Commission for Minorities Act of 1992. Other organisations like the Maulana Azad Education Foundation and National Minorities Development and Finance Corporation function under the Ministry.

114. The Government is actively pursuing minority related programmes under the Prime Minister's New 15-Point Programme for the Welfare of Minorities announced in 2006. It, inter alia, provides for earmarking 15% of the outlays for minorities in the flagship programmes of other Ministries, enhancing education opportunities, equitable share in economic activities and employment and equitable flow of benefits in development. Further, under this programme, 11.7 million scholarships have been given for minority students. Certain proportion of development projects is also to be earmarked for the minority concentration areas. Public Sector banks have been directed to open branches in districts having substantial minority population and 15,204 such branches have been opened till March 2011. Active consultation with the civil society is integral to the formulation of plans.

115. To monitor minority welfare schemes, a system of National Level Monitors was launched. Government has approved a sub-quota of 4.5% reservation for minorities within 27% OBC quota. In order to amend the Waqf Act 1995, the Waqf Amendment Bill 2010 was passed by the Lok Sabha and now is with the Rajya Sabha. Consequent to the recommendation of the High-level Committee, Government is implementing Multi-sectoral Development Programme since 2008 aimed at 90 Minority Concentration Districts with an allocation of Rs. 37 billion under the Eleventh Plan.

VII. Environment and National Green Tribunal

116. Fully conscious of India's role in environmental protection, in an unprecedented development, the National Green Tribunal has been established in October 2010 under the National Green Tribunal Act 2010 for, inter alia, effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right and giving relief and compensation for damages to persons and property. It is a specialized body equipped to handle environmental disputes involving multi-disciplinary issues. The Tribunal's dedicated jurisdiction in environmental matters shall provide speedy environmental justice and help reduce the burden of litigation in the higher courts.

VIII. Human rights education

117. The National curriculum for school education of National Council of Educational Research and Training (NCERT) has included the human rights education component in social science subjects. In order to create human rights education sensitivity and skills amongst the teachers in schools, a module for teacher training programme has also been prepared by the taskforce of the NHRC for this purpose. NHRC has continued to play an active role in raising all round human rights literacy and awareness including month-long internship programmes for University students and programmes focussed on public servants especially police in collaboration with the Administrative Training Institutes and Police Training Institutions. In addition, the Central Board of Secondary Education (CBSE) has also evolved a syllabus for human rights education at lower level, which has come into force in 2008.

IX. India and the United Nations

118. India continues to play an active and constructive role in all human rights related issues in the UN, including the UN Human Rights Council. India has extended a standing invitation to Special Procedures Mandate Holders during the 18th Session of HRC in September 2011, in keeping with our Voluntary Pledges and Commitments made to the HRC in May 2011. India's contribution to the Voluntary Fund for technical Cooperation has been doubled to US\$ 100,000. We have also started contributing to the Voluntary Trust Fund on Contemporary Forms of Slavery of US\$ 25,000 per year and Voluntary Fund for Victims of Torture of US\$ 25,000 per year. These were also part of our Voluntary Pledges to HRC. We also contributed US\$ 1 million to UN Women.

119. In conclusion, India has a robust legislative and institutional framework to address the twin tasks of protection and promotion of human rights. In spite of a number of serious challenges, India remains deeply committed to human rights and has taken significant strides towards these goals.

Annex I Recommendations of UPR 2008 for India	
<i>S.No.</i>	<i>Recommendations</i>
<i>Action taken report</i>	
1.	<p>Expedite ratification of the Convention against Torture (United Kingdom, France, Mexico, Nigeria, Italy, Switzerland, Sweden) and its Optional Protocol (United Kingdom)</p>
	<p>To enable ratification of the UNCAT, the “Prevention of Torture Bill 2010” was introduced and passed by the Lower House of Parliament (Lok Sabha) in May 2010. The Select Committee of the Upper House (Rajya Sabha) has made certain recommendations which are currently being examined by Government. Although India has not yet ratified the Convention, Article 21 and other Articles of the Constitution of India and the relevant provisions under the Indian Penal Code, 1860, provide for adequate safeguards. The Supreme Court of India, through its judgements, has also laid down exacting standards on this issue.</p>
2.	<p>Continue to fully involve the national civil society in the follow-up to the UPR of India, as was done for its preparation (United Kingdom)</p>
	<p>The various Ministries/ Departments involve the national civil society, as appropriate, in the formulation, implementation and assessment process relating to their respective policies, programmes and schemes. These include the process to operationalise of the recommendations of the UPR process. We will continue to involve the national civil society in this process. For e.g. with respect to the highly successful national employment programme initiative namely Mahatma Gandhi National Rural Employment Guarantee Act, 2005, it is worth mentioning that states have reported that social audit has been conducted in 91% of the Gram Panchayats. 244,000 reports on Social Audit have been uploaded on the MGNREGA website.</p>
3.	<p>Continue energizing existing mechanisms to enhance the addressing of human rights challenges (Ghana)</p>
	<p>Government has continued to energize the various institutions/ mechanisms for protection and promotion of Human Rights. Some of the legislative and other initiatives address directly the human rights challenges India faces. The judiciary has also played its part to impart new momentum through its far-reaching pronouncements. In spite of a number of serious challenges, India will continue to promote and strengthen human rights.</p>
4.	<p>Encourage enhanced cooperation with human rights bodies and all relevant stakeholders in the pursuit of a society oriented towards the attainment of internationally recognized human rights goals (Ghana)</p>
	<p>GoI is engaging with domestic and international Human Rights procedures/mechanism at various levels so as to attain internationally recognized human rights goal. Judiciary in India has also played an important role in taking cognizance of international instruments on human rights through its judgments. For e.g. in 2007, the National Commission for the Protection of Child Rights (NCPCR) was established to ensure that all legislative and administrative measures are in consonance with the child rights perspective as enshrined in the Constitution of India and the Convention on the Rights of the Child.</p>

<p>5. Maintain disaggregated data on caste and related discrimination (Canada, Belgium, Luxembourg)</p>	<p>India's programme of affirmative action is without parallel in scale and dimension in human history. In the Census of 2011, extensive data has been collated. Indian Census has always provided data/investigations of anthropological nature such as the socio-economic survey of villages, preparation of ethnographic notes on SC/ST etc. Data on weaker sections/minorities in the society is also available extensively in the public domain.</p>
<p>6. Consider signature and ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (Brazil)</p>	<p>The Constitution of India provides for direct access to the Supreme Court and High Courts for redressal of violations of any fundamental right, for any individual or group of individuals. In addition, we have several other statutory mechanisms to address such violations including the National Human Rights Commissions and the State Human Rights Commissions. There is also a separate National Commission and State Commissions for Women which <i>inter alia</i> have a mandate to address cases of violations of women rights. There exists, therefore, effective legal and constitutional framework to address individual cases of violations within India. Also India has been supportive and responsive to the various International Human Rights mechanism such as that of confidential complaint and of visits of Special Rapporteur.</p>
<p>7. Consider signature and ratification of ILO Conventions No. 138 and 182 (Brazil, Netherlands, Sweden)</p>	<p>Government of India fully subscribes to the objectives and purposes of the Convention on the Rights of Child (to which India is a party) as well as the ILO Conventions No. 138 and 182. At the time of accession to Convention on Rights of Child, Government made a declaration to Article 32 of the Convention stating "<i>Measures would be undertaken to progressively implement the provisions of Article 32 since it is not practical immediately to prescribe minimum age for admission to each and every area of employment in India.</i>" Given the socio-economic conditions in the country, a multipronged strategy for elimination of child labour has been adopted, which emphasises on Legislative measures; general development programmes for the benefit of families of child labour; and projectbased action in areas of high concentration of child labour. As per Child Labour (Prohibition & Regulation) Act, 1986, children below the age of 14 years are prohibited for employment in hazardous occupations/processes specified in the Act. Consequently, India has not ratified these two ILO Conventions since minimum age is fixed at 18 years. The Government is working on the modalities of ratifying these ILO Conventions, particularly on No. 182. However, it is pertinent to point out that the Government issued three notifications in the last five years,</p>

	<p>expanding the list of banned and hazardous processes and occupations in Schedule II of the <i>Child Labour (Prohibition and Regulation) Act, 1986</i>. The number of occupations listed in Part A now is 18 and the number of processes listed in Part B is 65. Further, the worst forms of child labour are already prohibited under various Acts such as Bonded Labour System (Abolition) Act, 1976, Immoral Traffic Prevention Act-1956, the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substance Act, 1988 and Child Labour (Prohibition & Regulation) Act.</p>
<p>8. Share best practices in the promotion and protection of human rights taking into account the multi-religious, multicultural and multi-ethnic nature of Indian society (Mauritius)</p>	<p>Best Practices are being included in the body of UPR – II for sharing with Human Rights Council.</p>
<p>9. Review the reservation to article 32 of the Convention on the Rights of the Child (the Netherlands)</p>	<p>Response at S.No. 7 above applies to this issue as well.</p>
<p>10. Consider new ways of addressing growing economic and social inequities arising out of rapid economic growth and share experiences/ results of best practices in addressing poverty (Algeria)</p>	<p>The central vision of the 11th Plan (2007-2012) is to trigger a development process which ensures broad-based improvement in the quality of life of the people in an inclusive manner. It includes several inter-related components, including rapid growth that reduces poverty and creates employment opportunities, access to essential services in health and education, equality of opportunity, empowerment through education, environmental sustainability, recognition of women's agency and good governance. In fact, there is now a mandatory requirement that all Cabinet proposals should specifically mention how 'equity' will be served by the proposal under discussion. As can be seen from our UPR – II, several policies and programmes have been put in place to address such inequities.</p>
<p>11. Take into account recommendations made by treaty bodies and special procedures, especially those relating to women and</p>	<p>India has always taken into account the recommendations made by the treaty bodies and special procedures and, in accordance to our socio economic conditions, we have strived to implement these recommendations. While the NHRC is in the process of drafting an National Action Plan for Human Rights,</p>

<p>children, in developing a national action plan for human rights which is under preparation (Mexico)</p>	<p>various Ministries have fully integrated human rights issues in their own National Plans in their respective spheres. For e.g. India has a National Action Plan for Children. This has led to focus on promotion and protection feeding into the overall national commitment to protect and promote of human rights.</p>
<p>12. Ratify the Convention on Enforced Disappearances (Nigeria)</p>	<p>India has signed the Convention for Protection of all Persons from Enforced Disappearance. Government is studying the extent of changes in the domestic laws that would be required to bring domestic legislation compatible with the Convention. The Constitution, however, continues to provide strong protection in such matters and guarantees the right to approach the higher courts by way of Habeas Corpus petitions. Indian courts have also been awarding compensation in such cases even though our domestic laws do not have any such provision.</p>
<p>13. Strengthen human rights education, specifically in order to address effectively the phenomenon of genderbased and caste-based discrimination (Italy)</p>	<p>The National curriculum for school education of National Council of Educational Research and Training (NCERT) has included the human rights education component in social science subjects. In order to create human rights education sensitivity and skills amongst the teachers in schools, a module for teacher training programme has also been prepared by the taskforce of the NHRC for this purpose. NHRC has continued to play an active role in raising all round human rights literacy and awareness including month-long internship programmes for University students and programmes focussed on public servants especially police in collaboration with the Administrative Training Institutes and Police Training Institutions. Human rights education, as indeed every aspect of our policies and schemes, is sensitive to gender and Scheduled Castes and Scheduled Tribes and Other Backward Classes.</p>
<p>14. Extend standing invitation to special procedures (Latvia, Switzerland)</p>	<p>India has extended a standing invitation to Special Procedures in September 2011 in accordance to our voluntary pledges and commitments made to the HRC in May 2011.</p>
<p>15. Receive as soon as possible the Special Rapporteur on the question of torture (Switzerland)</p>	<p>Since we have extended a Standing Invitation to the Special Procedures, we will schedule this visit depending on mutual convenience.</p>

<p>16. Fully integrate a gender perspective in the follow-up process to the UPR (Slovenia)</p>	<p>Women related issues and gender perspective has been fully integrated into India's policies in various spheres and in the follow-up to the UPR process. A detailed account of all our policies, including gender budgeting, and legislative developments has been given in the UPR II report. It will be seen that all policies have strong gender perspective.</p>
<p>17. Follow up on CEDAW recommendations to amend the Special Marriage Act in the light of article 16 and the Committee's general recommendation 21 on giving equal rights to property accumulated during marriage (Slovenia)</p>	<p>India is working towards making registration of all marriages compulsory. This direction comes from the Supreme Court which in its judgment in the case of Seema v. Ashwini Kumar (2006) directed that registration of marriages of all persons, irrespective of their religion, who are citizens of India should be made compulsory in their respective States. In this context, 19 States have already taken necessary legislative measures for compulsory registration of marriages. Mandatory registration of the wife in all property owned or acquired by the husband is another progressive step taken by many State Governments. Further, government financed asset ownership schemes have women's ownership of assets. Accordingly, in housing schemes like the Indira Awaas Yojana (IAY) or the Rajiv Gandhi Gramin LPG Vitrak (RGGLPGV) Scheme, the allotment is done in the name of the female member of the households or in the joint names of husband and wife. Further, the amendment of the Hindu Succession Act in 2005 was an important legal reform which will contribute towards economic empowerment of women, giving daughters equal rights in the ancestral property.</p>
<p>18. Continue efforts to allow for a harmonious life in a multi-religious, multicultural, multi-ethnic and multilingual society and to guarantee a society constituting one-fifth of the world's population to be well fed, well housed, well cared for and well educated (Tunisia)</p>	<p>Constitutional guarantees, legislation, judicial pronouncements, policies and programmes and civil society have strived to address the issue of providing its diverse population fundamental rights, justice, welfare, protection, human rights, affirmative action, inclusive economic growth and all requirements to lead a life of dignity and prosperity as well as promoting the unity and integrity of the Nation. In spite of a number of serious challenges, India remains deeply committed to human rights and has taken significant strides towards these goals. Our recent efforts have been documented in the UPR – II report.</p>

Annex II

1. EQUALITY RIGHTS (ARTICLES 14–18)

1.1 Article 14 of the Constitution of India reads as under:

“The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India.”

1.2 The said Article is clearly in two parts – while it commands the State not to deny to any person ‘equality before law’, it also commands the State not to deny the ‘equal protection of the laws’. Equality before law prohibits discrimination. It is a negative concept. The concept of ‘equal protection of the laws’ requires the State to give special treatment to persons in different situations in order to establish equality amongst all. It is positive in character. Therefore, the necessary corollary to this would be that equals would be treated equally, whilst un-equals would have to be treated unequally

Article 15 secures the citizens from every sort of discrimination by the State, on the grounds of religion, race, caste, sex or place of birth or any of them. However, this Article does not prevent the State from making any special provisions for women or children. Further, it also allows the State to extend special provisions for socially and economically backward classes for their advancement. It applies to the Scheduled Castes (SC) and Scheduled Tribes (ST) as well.

Article 16 assures equality of opportunity in matters of public employment and prevents the State from any sort of discrimination on the grounds of religion, race, caste, sex, descent, place of birth, residence or any of them. This Article also provides the autonomy to the State to grant special provisions for the backward classes, underrepresented States, SC & ST for posts under the State. Local candidates may also be given preference in certain posts. Reservation of posts for people of a certain religion or denomination in a religious or denominational institution will not be deemed illegal.

1.3 Articles 14, 15 and 16 form part of a scheme of the Constitutional Right to Equality. Article 15 and 16 are incidents of guarantees of Equality, and give effect to Article 14. However, initially, Articles 15(4) and 16(4) were considered *exceptions* to Articles 15(1) and 16(1).

1.4 The Hon’ble Supreme Court, in **G.M. Southern Railways v. Rangachari**, AIR 1962 SC 36 held Article 15(4) of the Constitution of India to be an exception to Article 15(1). The relevant portion is reproduced hereunder:

“Article 15(4) which provides, inter alia, for an exception to the prohibition of discrimination on grounds specified in Article 15(1) lays down that nothing contained in the said Article shall prevent the State from making any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes”

1.5 It was further held that Article 16(4) is an exception to Article 16(1): “I have already said that it is implicit in the Article that reservation cannot be of all appointments or even of a majority of them, for that would completely destroy the fundamental right enshrined in Article 16(1) to which Article 16(4) is in the nature of a proviso or an exception or at any rate make it practically illusory.”

1.6 In **M.R. Balaji v. State of Mysore**, AIR 1963 SC 649, this view was followed, and it was held that:

“Thus, there is no doubt that Article 15(4) has to be read as a proviso or an exception to Articles 15(1) and 29(2).” 1.7 This view, that Articles 15(4) and 16(4) were exceptions to Articles 15(1) and 16(1), was again reiterated in **Triloki Nath v. State of Jammu and Kashmir**, AIR 1969 SC 1, and in **State of A.P. v. U.S.V. Balram**, (1972) 1 SCC 660.

1.8 The majority of a 7-Judge Bench of the Hon’ble Supreme Court, in **State of Kerala v. N.M. Thomas**, (1976) 2 SCC 310, introduced a change in the concept of equality. It held that Articles 14, 15, and 16 are all equality rights, and that the scheme of equality sought to achieve real equality. It was held that Articles 15(4) and Article 16(4) are not exceptions to Articles 15(1) and 16(1) respectively. The relevant portions of the majority judgments are reproduced hereunder:

Ray, C.J.

37. Article 16(4) clarifies and explains that classification on the basis of backwardness does not fall within Article 16(2) and is legitimate for the purposes of Article 16(1). If preference shall be given to a particular under-represented community other than a backward class or under-represented State in an all-India service such a rule will contravene Article 16(2). A similar rule giving preference to an under-represented backward community is valid and will not contravene Articles 14, 16(1) and 16(2). Article 16(4) removes any doubt in this respect.

Mathew, J

78. I agree that Article 16(4) is capable of being interpreted as an exception to Article 16(1) if the equality of opportunity visualized in Article 16(1) is a sterile one, geared to the concept of numerical equality which takes no account of the social, economic, educational background of the members of Scheduled Castes and scheduled tribes. If equality of opportunity guaranteed under Article 16(1) means effective material equality, then Article 16(4) is not an exception to Article 16(1). It is only an emphatic way of putting the extent to which equality of opportunity could be carried viz., even up to the point of making reservation.

Krishna Iyer, J

“136. The next hurdle in the appellant’s path relates to Article 16(4). To my mind, this subarticle serves not as an exception but as an emphatic statement, one mode of reconciling the claims of backward people and the opportunity for free competition the forward sections are ordinarily entitled to...

Fazal Ali, J

184. ... Clause (4) of Article 16 of the Constitution cannot be read in isolation but has to be read as part and parcel of Article 16(1) and (2). ...That is to say clause (4) of Article 16 is not an exception to Article 14 in the sense that whatever classification can be made can be done only through clause (4) of Article 16. Clause (4) of Article 16, however, is an explanation containing an exhaustive and exclusive provision regarding reservation which is one of the forms of classification. It is true that there are some authorities of this Court that clause (4) is an exception to Article 16(1) but with due respect I am not in a position to subscribe to this view for the reasons that I shall give hereafter.

1.9 A 9-Judge Bench of the Hon’ble Supreme Court settled this issue in **Indra Sawhney v. Union of India, 1992 (Supp) 3 SCC 217**, where the majority upheld the principle laid down in **Thomas’** case that Articles 15(4) and 16(4) were not exceptions to Articles 15(1) and 16(1), but were an emphatic statement of equality.

1.10 Therefore, equality, as guaranteed in our Constitution, not only conceives of providing formal equality but also to provide for real and absolute equality. Articles 14 and 15(1) enable and contemplate classification to achieve the Constitutional Objective of real equality. Articles 15(4) and 16(4) flow out of Articles 15(1) and 16(1) respectively, and can never be considered as exceptions to Article 15(1) and Article 16(1).

1.11 Once this is established, that Article 15(4) and 16(4) are not exceptions to the mandate of equality but are concrete measures to bring about the mandate of equality enshrined in Article 14, the effect of this is that the State is obliged to remove inequalities and backwardness. This obligation of the State has its source in the mandate of equality itself under Article 14.

1.12 In **Thomas'** case, it was held that Government has an *affirmative duty* to eliminate inequalities and to provide opportunities for the exercise of human rights and claims Fundamental rights as enacted in Part III of the Constitution are, by and large, essentially negative in character. In **Indira Sawhney's** case, Sawant, J concurring with the majority observed that to bring about equality between the unequals, it was necessary to adopt *positive measures* to abolish inequality. The equalising measures would have to use the same tools by which inequality was introduced and perpetuated. Otherwise, equalisation will not be of the unequals. These equalising measures would be validated by Article 14 which guarantees equality before law.

1.13 **Article 15** is an instance and particular application of the right of equality provided for in Article 14. While Article 14 guarantees the general right, Articles 15 and 16 are instances of the same right in favour of citizens in some special circumstances. (*Dasarathav. State of A.P., AIR 1961 SC 564*).

1.14 Therefore, the equality contemplated by Article 14 and other cognate Articles like 15(1), 16(1), 29(2), and 38(2) are secured not only by treating equals equally, but also by treating un-equals unequally. This empowers positive discrimination in favour of the disadvantaged, particularly the SCs and STs.

1.15 In **E.V. Chinniah v. State of A.P.**, (2005) 1 SCC 394, it was held that a legislation may not be amenable to challenge on the ground of violation of Article 14 if its intention is to give effect to Articles 15 and 16 or when the differentiation is not unreasonable or arbitrary.

1.16 Articles 15 and 16 prohibit discriminatory treatment, but not preferential treatment of women, which is a positive measure in their favour. Affirmative action including by way of reservation is enabled by the equality clause in the Constitution.

1.17 In **Preeti Srivastava (Dr) v. State of M.P.**, (1999) 7 SCC 120, it was observed as under:

"12. Article 15(4), which was added by the Constitution First Amendment of 1951, enables the State to make special provisions for the advancement, inter

alia, of Scheduled Castes and Scheduled Tribes, notwithstanding Articles 15(1) and 29(2). The wording of Article 15(4) is similar to that of Article 15(3). Article 15(3) was there from the inception. It enables special provisions being made for women and children notwithstanding Article 15(1) which imposes the mandate of nondiscrimination on the ground (among others) of sex. This was envisaged as a method of protective discrimination. This same protective discrimination was extended by Article 15(4) to (among others) Scheduled Castes and Scheduled Tribes. **As a result of the combined operation of these articles, an array of programmes of compensatory or protective discrimination have been pursued by the various States and the Union Government...**"

13. **Since every such policy makes a departure from the equality norm, though in a permissible manner, for the benefit of the backward, it has to be designed and worked in a manner conducive to the ultimate building up of an egalitarian non-discriminating society. That is its final constitutional justification.** Therefore, programmes and policies of compensatory discrimination under Article 15(4) have to be designed and pursued to achieve this ultimate national interest. At the same time, the programmes and policies cannot be unreasonable or arbitrary, nor can they be executed in a manner which undermines other vital public interests or the general good of all. All public policies, therefore, in this area have to be tested on the anvil of reasonableness and ultimate public good. In the case of Article 16(4) the Constitution-makers explicitly spelt out in Article 335 one such public good which cannot be sacrificed, namely, the necessity of maintaining efficiency in administration. Article 15(4) also must be used and policies under it framed in a reasonable manner consistently with the ultimate public interests.

1.18 It has been held, in *Govt. of A.P. v. P.B. Vijayakumar*, (1995) 4 SCC 520, that:

8. What then is meant by "any special provision for women" in Article 15(3)? This "**special provision**", which the State may make to improve women's participation in all activities under the supervision and control of the State **can be in the form of either affirmative action or reservation.**

1.19 In the *Thomas* case, it was held:

74. The concept of equality of opportunity in matters of employment is wide enough to include within it compensatory measures to put the members of the Scheduled Castes and scheduled tribes on par with the members of other

communities which would enable them to get their share of representation in public service. How can any member of the so-called forward communities complain of a compensatory measure made by the Government to ensure the members of Scheduled Castes and scheduled tribes their due share of representation in public services?

75. It is said that Article 16(4) specifically provides for reservation of posts in favour of Backward Classes which according to the decision of this Court would include the power of the State to make reservation at the stage of promotion also and therefore Article 16(1) cannot include within its compass the power to give any adventitious aids by legislation or otherwise to the Backward Classes which would derogate from strict numerical equality. If reservation is necessary either at the initial stage or at the stage of promotion or at both to ensure for the members of the Scheduled Castes and scheduled tribes equality of opportunity in the matter of employment, I see no reason why that is not permissible under Article 16(1) as that alone might put them on a parity with the forward communities in the matter of achieving the result which equality of opportunity would produce. Whether there is equality of opportunity can be gauged only by the equality attained in the result. **Formal equality of opportunity simply enables people with more education and intelligence to capture all the posts and to win over the less fortunate in education and talent even when the competition is fair. Equality of result is the test of equality of opportunity.**

1.20 **Article 17** of the Constitution abolishes the practice of untouchability. Practice of untouchability is an offense and anyone doing so is punishable by law. The Untouchability Offences Act of 1955 (renamed the Protection of Civil Rights Act in 1976) provided penalties for preventing a person from entering a place of worship or from taking water from a tank or well.t

1.21 This is a self-operating Article, and read with Article 39(a)(ii), it becomes clear that untouchability has been abolished and its practice forbidden.

1.22 This Article is levelled more against private conduct, than against conduct of the State. The chances of the State promoting or supporting untouchability is rare.

2. FREEDOM RIGHTS (ARTICLES 19–22)

2.1 Article 19(1) of the Constitution reads as under:

“19. Protection of certain rights regarding freedom of speech etc

- (1) All citizens shall have the right
 - (a) to freedom of speech and expression;
 - (b) to assemble peaceably and without arms;
 - (c) to form associations or unions;
 - (d) to move freely throughout the territory of India;
 - (e) to reside and settle in any part of the territory of India; and
 - (f) omitted
 - (g) to practise any profession, or to carry on any occupation, trade or business “

2.2 Articles 19(2) to 19(6) contain reasonable restrictions on the rights enshrined under Article 19(1).

2.3 The inter-relationship between Articles 14, 19, and 21 was carefully examined in *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248. Discussing this relationship, it was observed that:

“6. The law, must, therefore, now be taken to be well settled that Article 21 does not exclude Article 19 and that even if there is a law prescribing a procedure for depriving a person of “personal liberty” and there is consequently no infringement of the fundamental right conferred by Article 21, such law, insofar as it abridges or takes away any fundamental right under Article 19 would have to meet the challenge of that article. This proposition can no longer be disputed after the decisions in *R. C. Cooper case*, *Shambhu Nath Sarkar case* and *Haradhan Saha case* Now, if a law depriving a person of “personal liberty” and prescribing a procedure for that purpose within the meaning of Article 21 has to stand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation, ex-hypothesi it must also be liable to be tested with reference to Article 14.

2.4 In *Minerva Mills Ltd. v. Union of India*, (1980) 3 SCC 625, Chandrachud, C.J., as he then was, observed:

“74. Three Articles of our Constitution, and only three, stand between the heaven of freedom into which Tagore wanted his country to awake and the abyss of unrestrained power. They are Articles 14, 19 and 21.”

2.5 This was the first mention of what was later to be termed as the Golden Triangle, i.e. Articles 14, 19, and 21. As observed in *Bachan Singh v. State of Punjab*, (1982) 3 SCC 24:

“11. There are three Fundamental Rights in the Constitution which are of prime importance and which breathe vitality in the concept of the rule of law. They are Articles 14, 19 and 21 which, in the words of Chandrachud, C.J. in *Minerva Mills case* constitute a golden triangle. “

2.6 Hansaria, J. very aptly observed in **T.R. Kothandaraman v. T.N. Water Supply & Drainage Board**, (1994) 6 SCC 282 that, “*The golden triangle of our Constitution is composed of Articles 14, 19 and 21. Incorporation of such a trinity in our paramount parchment is for the purpose of paving such a path for the people of India which may see them close to the trinity of liberty, equality and fraternity.*”

2.7 It is apparent that **the right to information** was not spelt out as a separate right under Article 19. However, it is now well-settled in a catena of cases that the right to freedom of speech and expression enshrined in Article 19(1)(a) includes the right to information.

2.8 In **State of U.P. v. Raj Narain**, (1975) 4 SCC 428, it was observed that the right to know is derived from the concept of freedom of speech. It was held that:

“74. In a Government of responsibility like ours, where all the agents of the public must be responsible for their conduct, there can be but few secrets. The people of this country have a right to know every public act, everything that is done in a public way, by their public functionaries. They are entitled to know the particulars of every public transaction in all its bearing. The right to know, which is derived from the concept of freedom of speech, though not absolute, is a factor which should make one wary, when secrecy is claimed for transactions which can, at any rate, have no repercussion on public security.”

2.9 This was further confirmed in **S.P. Gupta v. Union of India**, 1981 Supp SCC 87, where it was held that:

“The concept of an open Government is the direct emanation from the right to know which seems to be implicit in the right of free speech and expression guaranteed under Article 19(1)(a). Therefore, disclosure of information in regard to the functioning of Government must be the rule and secrecy an exception justified only where the strictest requirement of public interest so demands.”

2.10 The law in this regard has been developed over the years, in **Union of India v. Association for Democratic Reforms**, (2002) 5 SCC 294 and in **PUCL v. Union of India**, (2003) 4 SCC 399.

2.11 In consonance with its duty, Parliament enacted the Right to Information Act in 2005. The Preamble of the Act reads as under:

“An Act to provide for setting out the practical regime of right to information for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability in the working of every public authority, the constitution of a Central Information Commission and State Information Commissions and for matters connected therewith or incidental thereto.”

2.22 **Article 20** of the Constitution is with respect to protection in respect of conviction of an offence. It imposes limitations on the powers of the State, which it otherwise possesses under Article 21, to enact and enforce criminal laws.

2.23 The case of **Kalpna Rai v. State**, (1997) 8 SCC 732 discussed Article 20(1) with respect to the Terrorist and Disruptive Activities Prevention Act, 1987, which was amended in 1993. By the said amendment, all ingredients would have to be satisfied against the accused for being convicted as a terrorist under Section 3(5) of the Act. It was held that:

“**34.** Sub-section 3(5) was inserted in TADA by Act 43 of 1993 which came into force on 23-5-1993. Under Article 20(1) of the Constitution “no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence”. So it is not enough that one was member of a terrorists' gang before 23-5-1993.”

2.24 Article 20(2) is aimed at protecting an individual from being subjected to prosecution and conviction for the same offence more than once. (See *Maqbool Hussain v. State of Bombay*, AIR 1953 SC 325)

2.25 Article 20(3), which protects an individual against self-incrimination, has been termed a ‘humane’ Article. It gives protection to a person accused of an offence against compulsion to be a witness against himself. This is in consonance with the expression ‘according to procedure established by law’, enshrined in Article 21, within the ambit of which just and fair trials lie.

2.27 **Article 21** of the Constitution reads as under:

“21. Protection of life and personal liberty No person shall be deprived of his life or personal liberty except according to procedure established by law “

2.28 From the wording of the Article, it is obvious that the language is negative. However, Article 21 confers on every person the fundamental right to life and personal liberty. It is the most fundamental of human rights, and recognizes the sanctity of human life.

2.29 Initially, the approach to Article 21, as in **A.K. Gopalan v. State of Madras**, AIR 1950 SC 27 was restricted to a rather literal interpretation of the Article. It was a circumscribed approach. The majority held that Article 22 was a self-contained code, and that the law of preventive detention did not have to satisfy the requirements of Articles 14, 19, and 21. A narrow interpretation was placed on the words "personal liberty", to confine the protection of Article 21 to freedom of the person against unlawful detention. This judgment led to a theory wherein the freedoms under Articles 19, 21, 22, and 31 were considered to be exclusive. The basis for this was the thought process that certain Articles in the Constitution exclusively deal with specific matters and in determining if an infringement of fundamental rights had occurred, the object and form of State action alone needed to be considered, and the effect of the law on the fundamental rights of the individuals in general would be ignored.

2.30 This was overruled in, **R.C. Cooper v. Union of India**, (1970), where it was held that even where a person is detained in accordance with the procedure prescribed by law, as mandated by Article 21, the protection conferred by the various clauses of Article 19(1) does not cease to be available to him and the law authorising such detention has to satisfy the test of the applicable freedoms under Article 19(1).

2.31 The concept of "personal liberty" gradually began to be liberally interpreted by the judiciary. The Hon'ble Supreme Court of India, in **Kharak Singh v. State of UP**, AIR 1963 SC 1295, held, with respect to 'personal liberty', that *"We feel unable to hold that the term was intended to bear only this narrow interpretation but on the other hand consider that "personal liberty" is used in the Article as a compendious term to include within itself all the varieties of rights which go to make up the "personal liberties" of man other than those dealt with in the several clauses of Article 19(1). In other words, while Article 19(1) deals with particular species or attributes of that freedom, "personal liberty" in Article 21 takes in and comprises the residue."*

2.32 In the case of **Maneka Gandhi v. Union of India**, (1978) 1 SCC 248, the Court examined the judgments in **A.K. Gopalan's** case, **R.C. Cooper's** case, and **Kharak Singh's** case in detail. It was observed that:

“The expression “personal liberty” in Article 21 is of the widest amplitude and it covers a variety of rights which go to constitute the personal liberty of man and some of them have been raised to the status of distinct fundamental rights and given additional protection under Article 19.”

2.33 It was further observed that any law interfering with personal liberty of a person must satisfy a triple test: (i) it must prescribe a procedure; (ii) the procedure must withstand the test of one or more of the fundamental rights conferred under Article 19 which may be applicable in a given situation; and (iii) it must also be liable to be tested with reference to Article 14. As the test propounded by Article 14 pervades Article 21 as well, the law and procedure authorising interference with personal liberty and right of privacy must also be right and just and fair and not arbitrary, fanciful or oppressive. If the procedure prescribed does not satisfy the requirement of Article 14 it would be no procedure at all within the meaning of Article 21.

2.34 In today’s world, new needs of a person for liberty in different spheres of life can now be claimed as a part of “personal liberty”, and these cannot be restricted, apart from satisfying Articles 14 and 19.

2.35 Some of the rights which could fall under the ambit of Article 21 have been clearly spelt out by the judiciary in various judgments, to be a part of Article 21:

- (i) Right to counsel [M.H. Hoskot v. State of Maharashtra, (1978) 3 SCC 544]
- (ii) Right of a person to not be subjected to bonded labour [PUCL v. Union of India, (1982) 3 SCC 235]
- (iii) Right to livelihood [Olga Tellis v. Bombay Municipal Corpn, (1985) 3 SCC 545 – also see DTC v. DTC Mazdoor Congress, AIR 1991 SC 101]
- (iv) Right to immediate medical aid [Parmanand Katara v. Union of India, (1989) 4 SCC 286]
- (v) Right to free legal aid [State of Maharashtra v. MP Vashi, AIR 1996 SC 1]

2.36 The right to education has also been held to be a part of Article 21. A series of decisions, including **Mohini Jain v. State of Karnataka, (1992) 3 SCC 666**, **Unnikrishnan J.P. v. State of A.P., AIR 1993 SC 2178**, etc. culminated in an

amendment to the Constitution being moved in 1997, leading to the incorporation of **Article 21-A**, which reads as under:

“The State shall provide free and compulsory education to all children of 6 to 14 years in such manner as the State, may by law determine”

2.37 Following this, the Right of Children to Free and Compulsory Education Act, 2009 was enacted.

2.38 **Article 22** provides for protection against arrest and detention in certain cases. It is not a complete code of constitutional safeguards with respect to preventive detention. Points which are expressly or implicitly not dealt with by Article 22, are covered under Article 21.

2.39 The reasoning behind the inclusion of Article 22 in Part III of the Constitution was discussed in **Pankaj Kumar Chakrabarty v. State of W.B., (1969) 3 SCC 400**, where it was held that:

“8. Article 21 guarantees protection against deprivation of personal liberty save that in accordance with the procedure established by law. At first sight it would appear somewhat strange that the Constitution should make provisions relating to preventive detention immediately next after Article 21. That appears to have been done because the Constitution recognises the necessity of preventive detention on extraordinary occasions when control over public order, security of the country etc. are in danger of a breakdown. But while recognising the need of preventive detention without recourse to the normal procedure according to law, it provides at the same time certain restrictions on the power of detention both legislative and executive which it considers as minimum safeguards to ensure that the power of such detention is not illegitimately or arbitrarily used. The power of preventive detention is thus acquiesced in by the Constitution as a necessary evil and is, therefore, hedged in by diverse procedural safeguards to minimise as much as possible the danger of its misuse. It is for this reason that Article 22 has been given a place in the Chapter on guaranteed rights.

2.40 Sawant, J. in **Addl. Secy. to the Govt. of India v. Alka Subhash Gadia (Smt)**, 1992 Supp (1) SCC 496 made it clear that Article 22 had to be tested on the anvil of Articles 14, 19, and 21. It was stated as under:

“8. ...After the decision of this Court in *Rustom Cavasjee Cooper v. Union of India* which is otherwise known as the *Bank Nationalisation case* and in

Maneka Gandhi v. Union of India, it is now well settled (if ever there was any doubt) that the fundamental rights under Chapter III of the Constitution are to be read as a part of an integrated scheme. They are not exclusive of each other but operate, and are, subject to each other. The action complained of must satisfy the tests of all the said rights so far as they are applicable to individual cases. It is not enough, that it satisfies the requirements of any one of them. **In particular, it is well settled that Article 22(5) is not the sole repository of the detenu's rights. His rights are also governed by the other fundamental rights particularly those enshrined in Articles 14, 19 and 21.** Article 14 guarantees to all persons equality before the law and equal protection of the laws. Articles 19, 20, 21 and 22 are grouped under the broad heading "Right to Freedom". Article 19 is breached if any citizen is deprived whether, temporarily or permanently, of any of the rights which are mentioned therein. Although Article 19 confers freedoms mentioned therein only on citizens, neither Article 14 nor Articles 20, 21 and 22 are confined to the protection of freedoms of citizens only. They extend the relevant freedoms even to non-citizens. **The freedoms given to the citizen by Article 19 are, as if, further sought to be guaranteed by Articles 20, 21 and 22 in particular.** Hence while examining action resulting in the deprivation of the liberty of any person, the limitations on such action imposed by the other fundamental rights where and to the extent applicable have to be borne in mind." It was further observed that:

"11. The provisions of Articles 21 and 22 read together, therefore, make it clear that a person can be deprived of his life or personal liberty according to procedure established by law, and if the law made for the purpose is valid, the person who is deprived of his life or liberty has to challenge his arrest or detention, as the case may be, according to the provisions of the law under which he is arrested or detained. This proposition is valid both for punitive and preventive detention. The difference between them is made by the limitations placed by sub-clauses (1) and (2) on the one hand and sub-clauses (4) to (7) on the other of Article 22, to which we have already referred above. What is necessary to remember for our purpose is that the Constitution permits both punitive and preventive detention provided it is according to procedure established by law made for the purpose and if both the law and the procedure laid down by it, are valid."

3. RIGHTS AGAINST EXPLOITATION (ARTICLES 23–24)

3.1 **Article 23** enacts a very important fundamental right in the following terms:

“23. Prohibition of traffic in human beings and forced labour.—

(1) Traffic in human beings and begar and other similar forms of forced labour are prohibited and any contravention of this provision shall be an offence punishable in accordance with law.

(2) Nothing in this article shall prevent the State from imposing compulsory service for public purposes, and in imposing such service the State shall not make any discrimination on grounds only of religion, race, caste or class or any of them.”

3.2 This Article has been clearly designed to protect the individual not only against the State, but also against private individuals. It prohibits not only forced labour, but also ‘traffic in human beings’, which includes trafficking women for immoral or other purposes.

3.3 The reasoning behind the inclusion of this Article in Part III is examined in **People's Union for Democratic Rights v. Union of India**, (1982) 3 SCC 235 12. ...**The reason for enacting this provision in the Chapter on Fundamental Rights is to be found in the socio-economic condition of the people at the time when the Constitution came to be enacted.** The Constitution-makers, when they set out to frame the Constitution, found that they had the enormous task before them of changing the socio-economic structure of the country and bringing about socioeconomic regeneration with a view to reaching social and economic justice to the common man. Large masses of people, bled white by wellnigh two centuries of foreign rule, were living in abject poverty and destitution, with ignorance and illiteracy accentuating their helplessness and despair. The society had degenerated into a status-oriented hierarchical society with little respect for the dignity of the individual who was in the lower rungs of the social ladder or in an economically impoverished condition. The political revolution was completed and it had succeeded in bringing freedom to the country but freedom was not an end in itself, it was only a means to an end, the end being the raising of the people to higher levels of achievement and bringing about their total advancement and welfare. Political freedom had no meaning unless it was accompanied by social and economic freedom and **it was therefore necessary to carry forward the social and economic revolution with a view to creating socio-economic conditions in which every one would be able to enjoy basic human rights and participate in the fruits of freedom and liberty in an egalitarian social and economic framework.** It was with this end in view that the Constitution-makers enacted the directive principles of state policy in Part IV of the Constitution setting out the constitutional goal of a new socio-economic order. Now there was one

feature of our national life which was ugly and shameful and which cried for urgent attention and that was the existence of bonded or forced labour in large parts of the country. This evil was the relic of a feudal exploitative society and it was totally incompatible with the new egalitarian socio-economic order which “we the people of India” were determined to build and constituted a gross and most revolting denial of basic human dignity. It was therefore **necessary to eradicate this pernicious practice** and wipe it out altogether from the national scene and this had to be done immediately because with the advent of freedom, such practice could not be allowed to continue to blight the national life any longer. Obviously, it would not have been enough merely to include abolition of forced labour in the directive principles of state policy, because then the outlawing of this practice would not have been legally enforceable and it would have continued to plague our national life in violation of the basic constitutional norms and values until some appropriate legislation could be brought by the legislature forbidding such practice. The Constitution-makers therefore decided to give teeth to their resolve to obliterate and wipe out this evil practice by enacting constitutional prohibition against it in the Chapter on Fundamental Rights, so that the abolition of such practice may become enforceable and effective as soon as the Constitution came into force. This is the reason why the provision enacted in Article 23 was included in the Chapter on Fundamental Rights. The prohibition against “traffic in human beings and begar and other similar forms of forced labour” is clearly intended to be a general prohibition, total in its effect and all pervasive in its range and it is enforceable not only against the State but also against any other person indulging in any such practice.

3.4 The Court further went on to elaborate on ‘forced labour’, and stated that:

“**14.** ...Any factor which deprives a person of a choice of alternatives and compels him to adopt one particular course of action may properly be regarded as “force” and if labour or service is compelled as a result of such “force”, it would be “forced labour”.

3.5 The rights of the ‘fallen women and their children’ were very succinctly traced in **Gaurav Jain v. Union of India**, (1997) 8 SCC 114 as under:

“**4.** Let us, therefore, first consider the rights of the fallen women and their children given by the Constitution and the Directive Principles, the Human Rights and the Convention on the Right of Child, before considering the social ignominy attached to them and before looking for the remedy to relieve them from the agony and make them equal participants in a normal social order. **Article 14** provides for equality in general. **Article 21** guarantees right to life

and liberty. **Article 15** prohibits discrimination on the grounds of religion, race, caste, sex or place of birth, or of any of them. **Article 15(3)** provides for special protective discrimination in favour of women and child relieving them from the moribund of formal equality. It states that “nothing in this article shall prevent the State from making any special provision for women and children”. Article 16(1) covers equality of opportunity in matters of public employment. **Article 23** prohibits traffic in human beings and forced labour and makes it punishable under **Suppression of Immoral Traffic in Women and Girls Act, 1956** which was renamed in 1990 as the **Immoral Traffic (Prevention) Act** (for short the “ITP Act”). **Article 24** prohibits employment of children in any hazardous employment or in any factory or mine unsuited to their age.

5. Article 38 enjoins the State to secure and protect, as effectively as it may, a social order in which justice — social, economic and political, shall inform all the institutions of national life. It enjoins, by appropriate statutory or administrative actions, that the State should minimise the inequalities in status and provide facilities and opportunities to make equal results. **Article 39(f)** provides that children should be given opportunities and facilities to develop in a healthy manner and in conditions of freedom and dignity; and that childhood and youth are protected against exploitation and against moral and material abandonment. **Article 46** directs the State to promote the educational and economic interests of the women and weaker sections of the people and to protect them from social injustice and all forms of exploitation. **Article 45** makes provision for free and compulsory education for children, which is now well settled as a fundamental right to children up to the age of 14 years; it also mandates that facilities and opportunities for higher educational avenues be provided to them. Social justice and economic empowerment are firmly held as fundamental rights of every citizen.

3.6 **Article 24** prohibits the employment of children in factories, etc., and reads as follows:

“No child below the age of fourteen years shall be employed to work in any factory or mine or engaged in any other hazardous employment”

3.7 In the case of **M.C. Mehta v. State of Tamil Nadu**, (1996) 6 SCC 756, the Hon’ble Supreme Court took judicial notice of child labour in Sivakasi, where the provisions of Article 24 were being violated. It was held that abolition of child labour is definitely a matter of great public concern and importance. Poverty was held to be the driving force behind the evil of child labour.

3.8 This was affirmed in **Bandhua Mukti Morcha v. Union of India**, (1997) 10 SCC 549. Certain directions were given in this case to ameliorate the problems faced by children, and to eradicate child labour:

13. We are of the view that a direction needs to be given that the Government of India should convene a meeting of the Ministers concerned of the respective State Governments and their Principal Secretaries holding Departments concerned, to evolve the principles of policies for progressive elimination of employment of the children below the age of 14 years in all employments governed by the respective enactments mentioned in *M.C. Mehta case*; to evolve such steps consistent with the scheme laid down in *M.C. Mehta case*, to provide (1) compulsory education to all children either by the industries themselves or in coordination with it by the State Government to the children employed in the factories, mine or any other industry, organised or unorganised labour with such timings as is convenient to impart compulsory education, facilities for secondary, vocational profession and higher education; (2) apart from education, periodical health check-up; (3) nutrient food etc.; (4) entrust the responsibilities for implementation of the principles. Periodical reports of the progress made in that behalf be submitted to the Registry of this Court. The Central Government is directed to convene the meeting within two months from the date of receipt of the order. After evolving the principles, a copy thereof is directed to be forwarded to the Registry of this Court.

3.9 Article 21-A, providing for free and compulsory education to children, was introduced into the Constitution as a fundamental right vide the 86th Amendment Act, 2002.

4. FREEDOM OF RELIGION (ARTICLES 25–28)

4.1 Right to freedom of religion, covered in Articles 25, 26, 27 and 28, provides religious freedom to all citizens of India. The objective of this right is to sustain the principle of secularism in India. According to the Constitution, all religions are equal before the State and no religion shall be given preference over the other. Citizens are free to preach, practice and propagate any religion of their choice.

4.2 It has repeatedly been held that the constitutional scheme guarantees equality in the matter of religion. The majority of a 5-Judge Bench in the case of **M. Ismail Faruqui (Dr) v. Union of India**, (1994) 6 SCC 360 held that:

“37. It is clear from the constitutional scheme that it **guarantees equality in the matter of religion to all individuals and groups** irrespective of their faith emphasising that there is no religion of the State itself. The **Preamble of the Constitution read in particular with Articles 25 to 28 emphasises this aspect** and indicates that it is in this manner the concept of secularism embodied in the constitutional scheme as a creed adopted by the Indian people has to be understood while examining the constitutional validity of any legislation on the touchstone of the Constitution. The **concept of secularism is one facet of the right to equality woven as the central golden thread in the fabric depicting the pattern of the scheme in our Constitution.**”

4.3 The Hon’ble Supreme Court, in **Commissioner of Police v. Acharya Jagadishwarananda Avadhuta**, (2004) 12 SCC 770, has extensively examined the scope and ambit of Articles 25 and 26.

4.4 In **Acharya’s** case, the Court also touched upon the freedom of religion with respect to Article 14, and held that:

“49. ...If one religious denomination is allowed to carry on its religious practice but another religious denomination is restrained from carrying on religious practice and almost similar religious practices, the same makes out a clear case of discrimination in violation of the principles of Article 14 of the Constitution.”

4.5 A very interesting question of law arose in **Sri Venkataramana Devaru v. State of Mysore**, AIR 1958 SC 255 as to whether the right of a religious denomination to manage its own affairs in matters of religion guaranteed under Article 26(b) is subject to, and can be controlled by, a law protected by Article 25(2)(b), by throwing open a Hindu public temple to all classes and sections of Hindus.

4.5 The Hon’ble Court observed that the two provisions were of equal authority. Following the rule of harmonious construction, it was held that Article 26(b) must be read subject to Article 25(2)(b). The relevant portion of the judgment reads as under:

“29. The result then is that there are two provisions of equal authority, neither of them being subject to the other. The question is how the apparent conflict between them is to be resolved. The rule of construction is well settled that when there are in an enactment two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect could be

given to both. This is what is known as the rule of harmonious construction. Applying this rule, if the contention of the appellants is to be accepted, then Article 25(2)(b) will become wholly nugatory in its application to denominational temples, though, as stated above, the language of that Article includes them. On the other hand, if the contention of the respondents is accepted, then full effect can be given to Article 26(b) in all matters of religion, subject only to this that as regards one aspect of them, entry into a temple for worship, the rights declared under Article 25(2)(b) will prevail. While, in the former case, Article 25(2)(b) will be put wholly out of operation, in the latter, effect can be given to both that provision and Article 26(b). **We must accordingly hold that Article 26(b) must be read subject to Article 25(2)(b).**"

4.6 The reason behind the enactment of Articles 25 to 30 of the Constitution was discussed at length in the case of **Bal Patil v. Union of India, (2005) 6 SCC 690**. Dharmadhikari, J. speaking for the Court, observed:

24. It is against this background of partition that at the time of giving final shape to the Constitution of India, it was felt necessary to allay the **apprehensions and fears in the minds of Muslims and other religious communities** by providing to them a special guarantee and protection of their religious, cultural and educational rights. Such protection was found necessary to maintain the unity and integrity of free India because even after partition of India communities like Muslims and Christians in greater numbers living in different parts of India opted to continue to live in India as children of its soil.

25. It is with the **above aim in view that the framers of the Constitution engrafted group of Articles 25 to 30** in the Constitution of India. The minorities initially recognised were based on religion and on a national level e.g. Muslims, Christians, Anglo-Indians and Parsis. Muslims constituted the largest religious minority because the Mughal period of rule in India was the longest followed by the British Rule during which many Indians had adopted Muslim and Christian religions.

33. ... India is a world in miniature. The group of Articles 25 to 30 of the Constitution, as the historical background of partition of India shows, was only **to give a guarantee of security to the identified minorities and thus to maintain the integrity of the country**. It was not in the contemplation of the framers of the Constitution to add to the list of religious minorities. **The Constitution through all its organs is committed to protect religious, cultural and educational rights of all. Articles 25 to 30 guarantee cultural and religious freedoms to both majority and minority groups.** Ideal of a

democratic society, which has adopted right to equality as its fundamental creed, should be elimination of majority and minority and so-called forward and backward classes.

5. CULTURAL RIGHTS (ARTICLES 29–30)

Article 29. Protection of interests of minorities.—(1) Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same.

(2) No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them.

(ii) **Article 30. Right of minorities to establish and administer educational institutions.**—(1) All minorities, whether based on religion or language, shall have the right to establish and administer educational institutions of their choice. (1A) In making any law providing for the compulsory acquisition of any property of an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause.

(2) Article 30 (2) is another prohibition against discrimination by the State. In granting aid to educational institutions, the State shall not discriminate against institutions managed by any minority-religious or linguistic. Hence, minority institutions will be entitled to State aid in the same way as other institutions. Where aid is denied on the ground that the educational institution is under the management of a minority, then such a denial would be invalid. Also, the receipt of aid cannot be a reason for altering the nature or character of the recipient institution. Article 30(2) recognizes that the minority nature of the institution should continue, notwithstanding the grant of aid

5.1 In *Sidhajibhai Sabbai v. State of Gujarat*, (1963) 3 SCR 837, the Court considered the validity of an order issued by the Government of Bombay whereby from the academic year 1955-56, 80% of the seats in the training colleges for teachers in non-government training colleges were to be reserved for the teachers nominated by the Government. The petitioners, who belonged to the minority community, were, *inter alia*, running a training college for teachers, as also primary schools. The said primary schools and college were conducted for the benefit of the religious denomination of the United Church of Northern India and Indian

Christians generally, though admission was not denied to students belonging to other communities. The petitioners challenged the government order requiring 80% of the seats to be filled by nominees of the Government, *inter alia*, on the ground that the petitioners were members of a religious denomination and that they constituted a religious minority, and that the educational institutions had been established primarily for the benefit of the Christian community. It was the case of the petitioners that the decision of the Government violated their fundamental rights guaranteed by Articles 30(1), 26(a), (b), (c) and (d), and 19(1)(f) and (g). While interpreting Article 30, it was observed by the Court as under:

“All minorities, linguistic or religious have by Article 30(1) an absolute right to establish and administer educational institutions of their choice; and any law or executive direction which seeks to infringe the substance of that right under Article 30(1) would to that extent be void. This, however, is not to say that it is not open to the State to impose regulations upon the exercise of this right. The fundamental freedom is to establish and to administer educational institutions: it is a right to establish and administer what are in truth educational institutions, institutions which cater to the educational needs of the citizens, or sections thereof. Regulation made in the true interests of efficiency of instruction, discipline, health, sanitation, morality, public order and the like may undoubtedly be imposed. Such regulations are not restrictions on the substance of the right which is guaranteed: they secure the proper functioning of the institution, in matters educational.”

5.2 It was further held:

“The right established by Article 30(1) is a fundamental right declared in terms absolute. Unlike the fundamental freedoms guaranteed by Article 19, it is not subject to reasonable restrictions. It is intended to be a real right for the protection of the minorities in the matter of setting up of educational institutions of their own choice. The right is intended to be effective and is not to be whittled down by so-called regulative measures conceived in the interest not of the minority educational institution, but of the public or the nation as a whole”

5.3 In **State of Kerala v. Very Rev. Mother Provincial**, (1970) 2 SCC 417, the Court held that the minority institutions could not be allowed to fall below the standards of excellence expected of educational institutions, or under the guise of the exclusive right of management, allowed to decline to follow the general pattern. The Court stated that while the management must be left to the minority, they may be compelled to keep in step with others. It was pointed out that an exception to the

right under Article 30 was the power with the State to regulate education, educational standards and allied matters.

5.4 The Hon'ble Supreme Court, in **Ahmedabad St. Xavier's College Society v. State of Gujarat, (1974) 1 SCC 717**, considered the scope and ambit of the rights of the minorities, whether based on religion or language, to establish and administer educational institutions of their choice under Article 30(1) of the Constitution. In dealing with this aspect, Ray, C.J., observed as follows:

“9. Every section of the public, the majority as well as minority has rights in respect of religion as contemplated in Articles 25 and 26 and rights in respect of language, script, culture as contemplated in Article 29. The whole object of conferring the right on minorities under Article 30 is to ensure that there will be equality between the majority and the minority. If the minorities do not have such special protection they will be denied equality.”

5.5 Elaborating on the meaning and intent of Article 30, the learned Chief Justice further observed as follows:

“12. The real reason embodied in Article 30(1) of the Constitution is the conscience of the nation that the minorities, religious as well as linguistic, are not prohibited from establishing and administering educational institutions of their choice for the purpose of giving their children the best general education to make them complete men and women of the country. The minorities are given this protection under Article 30 in order to preserve and strengthen the integrity and unity of the country. The sphere of general secular education is intended to develop the commonness of boys and girls of our country. This is in the true spirit of liberty, equality and fraternity through the medium of education. If religious or linguistic minorities are not given protection under Article 30 to establish and administer educational institutions of their choice, they will feel isolated and separate. General secular education will open doors of perception and act as the natural light of mind for our countrymen to live in the whole.”

5.6 While advocating that provisions of the Constitution should be construed according to the liberal, generous and sympathetic approach, and after considering the principles which could be discerned by him from the earlier decisions of the Court, Khanna, J., observed as follows:

“89... The minorities are as much children of the soil as the majority and the approach has been to ensure that nothing should be done as might deprive

the minorities of a sense of belonging, of a feeling of security, of a consciousness of equality and of the awareness that the conservation of their religion, culture, language and script as also the protection of their educational institutions is a fundamental right enshrined in the Constitution. The same generous, liberal and sympathetic approach should weigh with the courts in construing Articles 29 and 30 as marked the deliberations of the Constitution-makers in drafting those articles and making them part of the fundamental rights. The safeguarding of the interest of the minorities amongst sections of population is as important as the protection of the interest amongst individuals of persons who are below the age of majority or are otherwise suffering from some kind of infirmity. The Constitution and the laws made by civilized nations, therefore, generally contain provisions for the protection of those interests. It can, indeed, be said to be an index of the level of civilization and catholicity of a nation as to how far their minorities feel secure and are not subject to any discrimination or suppression.”

5.7 In *St. Stephen’s College v. University of Delhi*, (1992) 1 SCC 558, the right of minorities to administer educational institutions and the applicability of Article 29(2) to an institution to which Article 30(1) was applicable came up for consideration. The Court referred to the earlier decisions, and with regard to Article 30(1), observed as follows:

“54. The minorities whether based on religion or language have the right to establish and administer educational institutions of their choice. The administration of educational institutions of their choice under Article 30(1) means ‘management of the affairs of the institution’. This management must be free from control so that the founder or their nominees can mould the institution as they think fit, and in accordance with their ideas of how the interests of the community in general and the institution in particular will be best served. But the standards of education are not a part of the management as such. The standard concerns the body politic and is governed by considerations of the advancement of the country and its people. Such regulations do not bear directly upon management although they may indirectly affect it. The State, therefore has the right to regulate the standard of education and allied matters. Minority institutions cannot be permitted to fall below the standards of excellence expected of educational institutions. They cannot decline to follow the general pattern of education under the guise of exclusive right of management. While the management must be left to them, they may be compelled to keep in step with others.”

5.8 According to the learned Judges, the question of the interplay of Article 29(2) with Article 30(1) had arisen in that case for the first time, and had not been

considered by the Court earlier; they observed that “*we are on virgin soil, not on trodden ground*”. Dealing with the interplay of these two articles, it was observed, as follows:

“**96.** The collective minority right is required to be made functional and is not to be reduced to useless lumber. A meaningful right must be shaped, moulded and created under Article 30(1), while at the same time affirming the right of individuals under Article 29(2). There is need to strike a balance between the two competing rights. It is necessary to mediate between Article 29(2) and Article 30(1), between letter and spirit of these articles, between traditions of the past and the convenience of the present, between society’s need for stability and its need for change.”

5.9 It was further noticed that the right under Article 30(1) had to be read subject to the power of the State to regulate education, educational standards and allied matters. In this connection, it was observed as follows:

“**59.** The need for a detailed study on this aspect is indeed not necessary. The right to minorities whether religious or linguistic, to administer educational institutions and the power of the State to regulate academic matters and management is now fairly well settled. The right to administer does not include the right to maladminister. The State being the controlling authority has right and duty to regulate all academic matters. Regulations which will serve the interests of students and teachers, and to preserve the uniformity in standards of education among the affiliated institutions could be made. The minority institutions cannot claim immunity against such general pattern and standard or against general laws such as laws relating to law and order, health, hygiene, labour relations, social welfare legislations, contracts, torts etc. which are applicable to all communities. So long as the basic right of minorities to manage educational institution is not taken away, the State is competent to make regulatory legislation. Regulations, however, shall not have the effect of depriving the right of minorities to educate their children in their own institution. That is a privilege which is implied in the right conferred by Article 30(1).”

5.10 In **T.M.A. Pai Foundation v. State of Karnataka**, (2002) 8 SCC 481, an 11-Judge Bench of the Supreme Court considered the entire scope of Articles 25 to 30 of the Constitution:

“**82.** Article 25 gives to all persons the freedom of conscience and the right to freely profess, practise and propagate religion. This right, however, is not absolute. The opening words of Article 25(1) make this right subject to public order, morality and health, and also to the other provisions of Part III of the

Constitution. This would mean that the right given to a person under Article 25(1) can be curtailed or regulated if the exercise of that right would violate other provisions of Part III of the Constitution, or if the exercise thereof is not in consonance with public order, morality and health....

83. Article 25(2) gives specific power to the State to make any law regulating or restricting any economic, financial, political or other secular activity, which may be associated with religious practice as provided by sub-clause (a) of Article 25(2). This is a further curtailment of the right to profess, practise and propagate religion conferred on the persons under Article 25(1). Article 25(2)(a) covers only a limited area associated with religious practice, in respect of which a law can be made....

84. The freedom to manage religious affairs is provided by Article 26. This article gives the right to every religious denomination, or any section thereof, to exercise the rights that it stipulates. However, this right has to be exercised in a manner that is in conformity with public order, morality and health. Therefore, while Article 25(1) grants the freedom of conscience and the right to profess, practise and propagate religion, Article 26 can be said to be complementary to it, and provides for every religious denomination, or any section thereof, to exercise the rights mentioned therein. This is because Article 26 does not deal with the right of an individual, but is confined to a religious denomination. Article 26 refers to a denomination of any religion, whether it is a majority or a minority religion, just as Article 25 refers to all persons, whether they belong to the majority or a minority religion. Article 26 gives the right to majority religious denominations, as well as to minority religious denominations, to exercise the rights contained therein.

85. Secularism being one of the important basic features of our Constitution, Article 27 provides that no person shall be compelled to pay any taxes, the proceeds of which are specifically appropriated for the payment of expenses for the promotion and maintenance of any particular religion or religious denomination. The manner in which the article has been framed does not prohibit the State from enacting a law to incur expenses for the promotion or maintenance of any particular religion or religious denomination, but specifies that by that law, no person can be compelled to pay any tax, the proceeds of which are to be so utilized. In other words, if there is a tax for the promotion or maintenance of any particular religion or religious denomination, no person can be compelled to pay any such tax.

86. Article 28(1) prohibits any educational institution, which is wholly maintained out of State funds, to provide for religious instruction. Moral

education dissociated from any denominational doctrine is not prohibited; but, as the State is intended to be secular, an educational institution wholly maintained out of State funds cannot impart or provide for any religious instruction.

87. The exception to Article 28(1) is contained in Article 28(2). Article 28(2) deals with cases where, by an endowment or trust, an institution is established, and the terms of the endowment or the trust require the imparting of religious instruction, and where that institution is administered by the State. In such a case, the prohibition contained in Article 28(1) does not apply. If the administration of such an institution is voluntarily given to the Government, or the Government, for a good reason and in accordance with law, assumes or takes over the management of that institution, say on account of maladministration, then the Government, on assuming the administration of the institution, would be obliged to continue with the imparting of religious instruction as provided by the endowment or the trust.

88. While Article 28(1) and Article 28(2) relate to institutions that are wholly maintained out of State funds, Article 28(3) deals with an educational institution that is recognized by the State or receives aid out of State funds. Article 28(3) gives the person attending any educational institution the right not to take part in any religious instruction, which may be imparted by an institution recognized by the State, or receiving aid from the State. Such a person also has the right not to attend any religious worship that may be conducted in such an institution, or in any premises attached thereto, unless such a person, or if he/she is a minor, his/her guardian, has given his/her consent. The reading of Article 28(3) clearly shows that no person attending an educational institution can be required to take part in any religious instruction or any religious worship, unless the person or his/her guardian has given his/her consent thereto, in a case where the educational institution has been recognized by the State or receives aid out of its funds.

89. Articles 29 and 30 are a group of articles relating to cultural and educational rights. Article 29(1) gives the right to any section of the citizens residing in India or any part thereof, and having a distinct language, script or culture of its own, to conserve the same. Article 29(1) does not refer to any religion, even though the marginal note of the article mentions the interests of minorities. Article 29(1) essentially refers to sections of citizens who have a distinct language, script or culture, even though their religion may not be the same. The common thread that runs through Article 29(1) is language, script or culture, and not religion. For example, if in any part of the country, there is a section of society that has a distinct language, they are entitled to conserve the

same, even though the persons having that language may profess different religions. Article 29(1) gives the right to all sections of citizens, whether they are in a minority or the majority religion, to conserve their language, script or culture.

90. In the exercise of this right to conserve the language, script or culture, that section of the society can set up educational institutions. The right to establish and maintain educational institutions of its choice is a necessary concomitant to the right conferred by Article 30. The right under Article 30 is not absolute. Article 29(2) provides that, where any educational institution is maintained by the State or receives aid out of State funds, no citizen shall be denied admission on the grounds only of religion, race, caste, language or any of them. The use of the expression "any educational institution" in Article 29(2) would (*sic* not) refer to any educational institution established by anyone, but which is maintained by the State or receives aid out of State funds. In other words, on a plain reading, State-maintained or aided educational institutions, whether established by the Government or the majority or a minority community cannot deny admission to a citizen on the grounds only of religion, race, caste or language.

91. The right of the minorities to establish and administer educational institutions is provided for by Article 30(1). To some extent, Article 26(1)(a) and Article 30(1) overlap, insofar as they relate to the establishment of educational institutions; but whereas Article 26 gives the right both to the majority as well as minority communities to establish and maintain institutions for charitable purposes, which would, *inter alia*, include educational institutions, Article 30(1) refers to the right of minorities to establish and maintain educational institutions of their choice. Another difference between Article 26 and Article 30 is that whereas Article 26 refers only to religious denominations, Article 30 contains the right of religious as well as linguistic minorities to establish and administer educational institutions of their choice"

5.11 After tracing the evolution of Articles 25 to 28, and after considering the entire caselaw on the subject, it was observed:

"138. As we look at it, Article 30(1) is a sort of guarantee or assurance to the linguistic and religious minority institutions of their right to establish and administer educational institutions of their choice. **Secularism and equality being two of the basic features of the Constitution, Article 30(1) ensures protection to the linguistic and religious minorities, thereby preserving the secularism of the country.** Furthermore, the principles of equality must necessarily apply to the enjoyment of such rights. No law can be framed that

will discriminate against such minorities with regard to the establishment and administration of educational institutions vis-à-vis other educational institutions. Any law or rule or regulation that would put the educational institutions run by the minorities at a disadvantage when compared to the institutions run by the others will have to be struck down. At the same time, there also cannot be any reverse discrimination.

148. Both Articles 29 and 30 form a part of the fundamental rights chapter in Part III of the Constitution. Article 30 is confined to minorities, be it religious or linguistic, and unlike Article 29(1), the right available under the said article cannot be availed by any section of citizens. **The main distinction between Article 29(1) and Article 30(1) is that in the former, the right is confined to conservation of language, script or culture.** As was observed in *Father W. Proost case* the right given by Article 29(1) is fortified by Article 30(1), insofar as minorities are concerned. In *St. Xavier's College case* it was held that the right to establish an educational institution is not confined to conservation of language, script or culture. When constitutional provisions are interpreted, it has to be borne in mind that the interpretation should be such as to further the object of their incorporation. They cannot be read in isolation and have to be read harmoniously to provide meaning and purpose. They cannot be interpreted in a manner that renders another provision redundant. If necessary, a purposive and harmonious interpretation should be given.”

5.12 The issues of equality and secularism were discussed in the judgment from para 156, and the Court observed:

“159. Each of the people of India has an important place in the formation of the nation. Each piece has to retain its own colour. By itself, it may be an insignificant stone, but when placed in a proper manner, goes into the making of a full picture of India in all its different colours and hues.

160. A citizen of India stands in a similar position. The Constitution recognizes the differences among the people of India, but it gives equal importance to each of them, their differences notwithstanding, for only then can there be a unified secular nation. Recognizing the need for the preservation and retention of different pieces that go into the making of a whole nation, the Constitution, while maintaining, *inter alia*, the basic principle of equality, contains adequate provisions that ensure the preservation of these different pieces.

161. The essence of secularism in India is the recognition and preservation of the different types of people, with diverse languages and different beliefs, and placing them together so as to form a whole and united India. Articles 29 and 30

do not more than seek to preserve the differences that exist, and at the same time, unite the people to form one strong nation.”

5.13 The Supreme Court, in P.A. Inamdar v. State of Maharashtra, (2005) 6 SCC 537, considered the inter-relationship between Articles 19(1)(g), 29(2) and 30(1) of the Constitution. It was observed that the right to establish an educational institution, for charity or for profit, being an occupation, was protected by Article 19(1)(g). Notwithstanding the fact that the right of a minority to establish and administer an educational institution would be protected by Article 19(1)(g) yet the founding fathers of the Constitution felt the need of enacting Article 30, which was intended to instill confidence in minorities against executive/legislative encroachment.

5.14 An important distinction was drawn between elementary and higher education, and the Court observed that:

107. Educational institutions imparting higher education i.e. graduate level and above and in particular specialised education such as technical or professional, constitute a separate class. While embarking upon resolving issues of constitutional significance, where the letter of the Constitution is not clear, we have to keep in view the spirit of the Constitution, as spelt out by its entire scheme. Education aimed at imparting professional or technical qualifications stands on a different footing from other educational instruction. Apart from other provisions, Article 19(6) is a clear indicator and so are clauses (h) and (j) of Article 51-A. Education up to the undergraduate level aims at imparting knowledge just to enrich the mind and shape the personality of a student. Graduate-level study is a doorway to admissions in educational institutions imparting professional or technical or other higher education and, therefore, at that level, the considerations akin to those relevant for professional or technical educational institutions step in and become relevant. This is in the national interest and strengthening the national wealth, education included.

5.15 This Court recognized that Articles 29 and 30 confer absolutely unfettered rights to minorities to determine the manner of instruction and administration in their educational institutions.

“119. A minority educational institution may choose not to take any aid from the State and may also not seek any recognition or affiliation. It may be imparting such instructions and may have students learning such knowledge that do not stand in need of any recognition. Such institutions would be those where instructions are imparted for the sake of instructions and learning is only for the sake of learning and acquiring knowledge. Obviously, such institutions would fall in the category of those who would exercise their right under the protection and privilege conferred

by Article 30(1) "to their hearts' content" unhampered by any restrictions excepting those which are in national interest based on considerations such as public safety, national security and national integrity or are aimed at preventing exploitation of students or the teaching community. Such institutions cannot indulge in any activity which is violative of any law of the land."

6. Right to Constitutional Remedies (Articles 32–35)

(i) **Article 32. Remedies for enforcement of rights conferred by this Part.—**

(1) The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this Part is guaranteed.

(2) The Supreme Court shall have power to issue directions or orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, whichever may be appropriate, for the enforcement of any of the rights conferred by this Part.

(3) Without prejudice to the powers conferred on the Supreme Court by clauses (1) and (2), Parliament may by law empower any other court to exercise within the local limits of its jurisdiction all or any of the powers exercisable by the Supreme Court under clause (2).

(4) The right guaranteed by this article shall not be suspended except as otherwise provided for by this Constitution.

(ii) **Article 226. Power of High Courts to issue certain writs.—**

(1) Notwithstanding anything in article 32 every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of *habeas corpus*, *mandamus*, prohibition, *quo warranto* and *certiorari*, or any of them, for the enforcement of any of the rights conferred by Part III (Fundamental Rights) and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is

Annex III

Scheduled Castes and Scheduled Tribes

1. The Scheduled Castes are depressed sections of the society who, because of the nature of their work, have faced social exclusion and prejudice. The Scheduled Tribes are tribal communities who have been isolated from the mainstream of society and are economically weak.

2. Being socially handicapped and economically poor, these sections of society require special protection and help for the amelioration of their social, economic and political condition. The Constitution of India empowers the state to specify these castes or tribes by listing them in a schedule to the Constitution (hence called Scheduled Castes and Scheduled Tribes) and make special provisions for their uplift.

**Human Rights in India:
Joint Stakeholders' Report
United Nations Universal Periodic Review
submitted by the Working Group on
Human Rights in India and the UN (WGHR)**

Human Rights in India

AN OVERVIEW

JOINT STAKEHOLDERS' REPORT

UNITED NATIONS

UNIVERSAL PERIODIC REVIEW (UPR)

Submitted by the Working Group on Human Rights in India and the UN

FOREWORD

The Universal Periodic Review (UPR) is a unique process conducted by the UN Human Rights Council, involving a review of the human rights record of all 192 UN Member States once every four and a half years. The UPR is a peer review process, whereby UN Member States monitor each others' human rights record. It provides an opportunity for all States to declare the actions they have taken to improve the human rights situation in their countries and overcome challenges. The ultimate goal of the UPR is the improvement of the human rights situation in every country.

There are three documents on which the reviews are based:

Document 1: Information provided by the State under review, which can take the form of a 'national report'.

Document 2: Information contained in the reports of independent human rights experts and bodies, known as 'Special Procedures', human rights treaty bodies, and other UN entities.

Document 3: Information from 'other stakeholders' including non-governmental organizations (NGOs) and national human rights institutions.

The reviews are conducted by the UPR Working Group (consisting of the 47 members of the Human Rights Council) and take place through an interactive discussion between the State under review and other UN Member States.

The UPR assesses the extent to which States respect their human rights obligations set out in: (1) the UN Charter; (2) the Universal Declaration of Human Rights; (3) human rights treaties ratified by the State under review; (4) voluntary pledges and commitments made by the State and, (5) applicable international humanitarian law.

India was part of the first series of States to be reviewed by the Human Rights Council in April 2008. It will be reviewed again between 28 May and 1st June 2012. Following India's first review, the Government of India accepted 18 recommendations (see full list in Annex D). The second review will examine the implementation of these recommendations as well as the development of the human rights situation in the country.

The main engagement of civil society actors in the UPR process is through submission of a 'stakeholders' report'¹,* submitted to the Office of the High Commissioner for Human Rights (OHCHR), which then prepares a summary of all relevant stakeholders' reports (Document 3 mentioned above).

The present report is a 'joint stakeholders report' submitted by the Working Group on Human Rights in India and the UN (WGHR) to OHCHR on 28 November 2011 (deadline for submission of stakeholders' reports). Prior to India's second UPR, WGHR will be publishing another more detailed report on the human rights situation in India.

* Stakeholders' reports have a tight word limit of 2815 words in the case of individual submissions and 5630 words for submissions by coalitions of stakeholders. For more details, see: www.ohchr.org/en/hrbodies/upr/pages/uprmain.aspx

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METHODOLOGY AND CONSULTATION PROCESS

1. This submission is made by the Working Group on Human Rights in India and the UN (WGHR), a coalition of fourteen human rights organizations and independent experts from India.¹ It has been endorsed by a large coalition of 86 organizations and individuals from across the country², and is the result of an extensive consultation process involving more than 210 people, five regional and one national consultation.³ WGHR also prepared a chart with an assessment of implementation of the recommendations made to India during the first UPR.⁴
2. As per UPR Recommendation 2 and India's 2011 pledge,⁵ the Government of India (GOI) committed to involve civil society in the follow-up to the UPR I but has not held any formal consultation with civil society.⁶ MEA's oral commitment to post its draft UPR II report online⁷ is, however, welcome.



IMPLEMENTATION OF UPR I RECOMMENDATIONS AND OVERVIEW OF HUMAN RIGHTS SITUATION

3. In UPR Recommendation 11, India accepted the need for a national action plan for human rights (NAP). In its response to UPR Recommendation 13, India stated that it had adopted a national plan for human rights education (NAP-HRE). However, there is no information available to the public of either plans being developed. Recommendation:

- Prioritise the drafting of the NAP and the NAP-HRE with support of the National Human Rights Commission and civil society⁸

A. Economic, Social and Cultural Rights and Right to Development

4. Though India has achieved a sustained 'growth' rate, the promise of 'inclusion' has not been fulfilled. As per UPR Recommendations 10 and 18, India committed to address inequity but while the average growth rate over 2007-2011 was 8.2%, poverty declined by only 0.8%.⁹ Data indicates further marginalisation for more than three-fourths of the 1.2 billion Indians.¹⁰ The national poverty rate is estimated at 37.2%.¹¹ India's economic policies¹² continue to perpetuate 'exclusion' and violate Fundamental Rights and Directive Principles of the Constitution.¹³

RIGHT TO ADEQUATE HOUSING AND LAND

5. Majority of Indians live in inadequate/insecure housing. Major threats to housing and land rights include: forced evictions,¹⁴ land grabbing, failed agrarian reform, real estate speculation, and absence of social housing¹⁵ and rights-based legislation. This leads to multiple human rights violations including: increased homelessness and landlessness, adverse health impacts, and further impoverishment and marginalisation of the urban and rural poor.
6. The number of people displaced from ostensible 'development' projects¹⁶ over the last 60 years is estimated at 60 million; only a third of whom have been resettled.¹⁷

Most of the displaced are the rural poor, marginal farmers, fisher-folk; 20% are Dalits and 40% are tribals/*adivasis*,¹⁸ who continue to face severe displacement threats.¹⁹ Resettlement, where provided, is on peripheries of cities/towns with inadequate housing or access to civic services, livelihoods, natural resources, healthcare, and education. Acquired land is seldom replaced with alternative land of commensurate or better quality. Climate change²⁰ and rise in disasters will increase displacement of the most vulnerable.

7. India faces an acute housing shortage,²¹ 90% of which affects economically weaker sections.²²
8. Around 13-18 million families in rural India are landless; 8 million of them lack homes of their own.²³ The *Indira Awas Yojana* rural housing scheme does not benefit the poorest.²⁴ Less than 2% of women hold land titles.²⁵ Land reform measures lack implementation and desired impact.²⁶
9. Land grabbing, acute agrarian crisis and inadequate investment in rural development is forcing thousands to migrate. Cities have limited space and resources for the poor.²⁷ The *Jawaharlal Nehru National Urban Renewal Mission* focuses mainly on large infrastructure projects, largely failing to provide improved civic services for the poor. Absence of affordable housing forces many to live in overcrowded slums without tenure, security and access to basic services.²⁸ By mid-2011, India's urban slum population was estimated at 158.42 million.²⁹ Countless others are rendered homeless and face police brutality and criminalization.³⁰
10. Inadequate living conditions most severely impact women, children, persons with disabilities and minorities, including Dalits and nomads.

Recommendations:

- Develop a rights-based national housing policy/law with focus on social housing
- Ensure that the *Land Acquisition, Rehabilitation and Resettlement Bill, Land Titling Bill, Mining Bill, and Rajiv Awas Yojana*³¹ protect human rights
- Prevent forced evictions, real estate speculation and privatization of services
- Implement the *Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006*

RIGHT TO FOOD

11. Despite a number of food entitlement programmes,³² food subsidy schemes,³³ and the required available grains, nearly 50% of the world's hungry live in India.³⁴ India also has the world's highest number of malnourished³⁵ and hungry children (46%).³⁶
12. Since 2001, over 40 Supreme Court interim orders have treated the right to food as justiciable.³⁷ Yet, high levels of food insecurity, corruption, inefficiency and discrimination in distribution³⁸ remain.
13. India's *Public Distribution System (PDS)*³⁹ is the world's largest food subsidy programme. While being a progressive scheme, the shift from universal to targeted applicability—providing subsidised food only to Below Poverty Line (BPL)⁴⁰ cardholders—excluded genuinely poor households⁴¹ through targeting errors.⁴² 50% of poor rural households do not have a BPL card.⁴³ Problems of implementation include: losses during transportation, poor storage, rotting grains⁴⁴ and illegal sale.⁴⁵ The draft *National Food Security Bill, 2011* (NFSB) has positive features.⁴⁶ However, it fails to universalise the PDS.⁴⁷ Tamil Nadu has introduced a successful system of quasi-universal PDS,⁴⁸ which should be emulated across the country.
14. Since 2001, the country has witnessed an alarming number of farmer suicides with a baseline of 15,000 each year,⁴⁹ primarily due to indebtedness and agrarian distress. Liberalised trade,⁵⁰ patenting of agricultural products, and the introduction of Genetically Modified Organisms (GMOs), especially under the draft *Biotechnology Regulatory Authority of India Bill, 2011*,⁵¹ could further aggravate India's food crisis.⁵²

Recommendations:

- Expand focus beyond welfare schemes; promote land reform and access to natural resources
- Support production and utilisation of coarse grains grown by local communities for the PDS⁵³
- Ensure conformity of the NFSB with India's human rights obligations and Supreme Court orders
- Expand ICDS centres to counter malnourishment and provide child care as per Court's orders

RIGHT TO HEALTH

15. India's healthcare infrastructure is sub-standard and inadequate, lacking doctors and hospital beds.⁵⁴
16. The *National Rural Health Mission* was launched to improve availability and access to quality health care for the rural poor.⁵⁵ Growing privatisation of healthcare⁵⁶ has, however, resulted in gross disparities in service distribution between rich and poor,⁵⁷ and rural and urban areas. The growing neglect of primary health centres and the inability to establish 'compulsory licensing'⁵⁸—particularly for essential and life saving drugs—is disturbing. The only means of addressing serious illnesses is through health insurance, available to less than 15% of the population.
17. India has the world's highest child mortality, with more than two-thirds of deaths occurring during the first four weeks after birth.⁵⁹ Although maternal mortality has decreased, the rate is still 230 maternal deaths per 100,000 live births.⁶⁰
18. Public funding for HIV/AIDS treatment and prevention is inadequate. The government has been unable to ensure the availability of 'third-line' and improved treatment varieties.⁶¹
19. Between 2008 and 2010, 1,600 people died during clinical trials of drugs by multinational pharmaceutical companies;⁶² compensation was paid only in few cases.⁶³ Mentally ill patients are inducted into clinical trials without their consent.⁶⁴
20. Though provision of water and sanitation is claimed to be a priority, the situation is dismal. 21% of communicable diseases are related to unsafe water.⁶⁵ India has the largest number of people in the world who defecate in the open – 665 million.⁶⁶

Recommendations:

- Increase current budget allocation on health (4.4%)⁶⁷
- Review regulations to prevent unethical medical trials⁶⁸
- Improve access to potable water and sanitation

IMPACT OF TRADE AND INVESTMENT AGREEMENTS

21. India's proposed Free Trade Agreements (FTAs)⁶⁹ threaten the rights to food,⁷⁰ health, work and development,⁷¹ especially of vulnerable groups.
22. They create legally binding obligations on the government, severely affecting livelihoods related to agriculture, fisheries and manufacturing. FTAs' demands in trade, services, investment and intellectual property rights impact ability to access affordable healthcare, education, water and sanitation.⁷² The EU-India FTA, for example, would cut tariffs to zero for key sectors that support many producers and workers, thus exposing them to highly competitive international markets. Clauses in the FTA involving investment protection, especially related to land expropriation, could become an obstacle to land reforms.

Recommendation:

- Ensure that trade and investment agreements meet India's constitutional and international commitments to human rights and environmental standards

RIGHT TO WORK AND LABOUR RIGHTS

23. India's economic policies are steadily eroding rights, working conditions and living standards for the majority of the labour force, 92%⁷³ of which belongs to the unorganized/informal sector, including rising migrant labour and construction workers.⁷⁴
24. Major challenges include: (i) erosion of real wages due to continuous price rise and failure to compensate for inflation; (ii) absence of basic services and social security;⁷⁵ and (iii) difficulty to unionise⁷⁶. Several progressive labour laws,⁷⁷ including on minimum wages and child labour exist but are not implemented. The concept of 'flexible labour' further threatens rights and implementation of laws.
25. The *Mahatma Gandhi National Rural Employment Guarantee Act, 2005* (MNREGA)—which guarantees 100 days of work⁷⁸ to every rural household—is a progressive measure. Corruption and inadequate implementation, however, remain challenges.

Recommendations:

- Promote freedom of association and social audit, increase transparency, and provide social security for the unorganised sector

RIGHT TO EDUCATION

26. In a significant development, the right to education (RTE) was made a fundamental right in the Constitution.⁷⁹ The *Right of Children to Free and Compulsory Education Act, 2009* guarantees the right to free and compulsory education to every child between 6 and 14.⁸⁰ Although progressive, implementation of the Act remains a challenge because of inadequate financial allocations and lack of effective enforcement mechanisms.⁸¹ The *Child Labour (Prohibition and Regulation) Act, 1986*, contradicts the RTE as it allows children under 14 to work in certain occupations.⁸²
27. In response to UPR **Recommendation** 9 on the need for India to review its reservation to article 32 of the Convention on Rights of the Child, GOI admitted the undesirability of child labour but claimed it was unrealistic to entirely ban it.⁸³
28. 81 million children are still out of school.⁸⁴ Government schools have severe shortcomings,⁸⁵ including entrenched discrimination, which affects enrolment⁸⁶ and retention.⁸⁷ Schools are also not disability-inclusive.⁸⁸
29. The *Sarva Shiksha Abhiyan*, the government's flagship programme aimed at universal primary and elementary education, while positive, has not yet achieved targets.⁸⁹ The *Mid Day Meal Scheme (MDMS)* aims at enhancing enrolment, retention and attendance, while improving nutritional levels.

Recommendations:

- ? Ensure greater enrollment and retention in schools; improve access⁹⁰ and quality of schools
- Enhance the impact of the MDMS by creating a better management structure, addressing 'caste bias' and improving food quality
- Amend the *Child Labour Act* to ban all forms of child labour and ensure equal education for all

B. Militarisation and Security Laws/Apparatus

30. Due to historical and political reasons, there are insurgency movements in the Northeast of India (Nagaland, Manipur, Assam, Meghalaya, Arunachal Pradesh) and Jammu and Kashmir (J&K). In spite of the decrease in insurgency related violence⁹¹, the state's response to these political issues has remained mainly militaristic, accompanied by draconian security laws, leading to widespread human rights violations.

31. Central India (Chhattisgarh, Andhra Pradesh, Jharkhand, Orissa and West Bengal) is home to impoverished communities of indigenous peoples (*adivasis*). With corporate acquisition and privatisation of land, mineral and other resources — primarily affecting the already marginalised *adivasis*⁹² — strong resistance movements, both popular protests as well as Maoist ('Naxalite') insurgencies, have grown. The Supreme Court strongly condemned the state-sponsored counter-insurgency militia *Salwa Judum* — spearheaded by 'Special Police Officers' (SPOs) — and directed the disbandment of SPOs in Chhattisgarh.⁹³ Grave human rights abuses have been inflicted on the population by security forces, SPOs and even by the '*Naxalites*'. Violating the spirit of the Court's order, SPOs have been reabsorbed into the Chhattisgarh Auxiliary Armed Force through law.⁹⁴
32. In all these conflict areas, several special security laws operate,⁹⁵ which violate national and international human rights guarantees, provide extensive powers (to arrest, detain without trial and "shoot to kill" on suspicion) to security forces and exempt them from prosecution in absence of executive sanction, spawning a culture of impunity.
33. This military approach and the ongoing conflicts contradict GOI's position at the UN, that "*India does not face either international or non-international armed conflict*."⁹⁶
34. The *Armed Forces Special Powers Act* (AFSPA) has come under severe criticism both domestically⁹⁷ and internationally⁹⁸ for contravening international human rights law.⁹⁹ While upholding the constitutionality of AFSPA, the Supreme Court laid down guidelines, which are routinely violated.¹⁰⁰ Sections of the government are calling for re-examining the law, which is opposed by the army.¹⁰¹

Recommendations:

- Implement the relevant recommendations of treaty bodies, including the repeal of AFSPA, and ensure impartial investigation of all human rights violations and justice to the victims

RIGHT TO LIFE, LIBERTY AND SECURITY

Torture

35. As per **UPR Recommendation 1** and its 2011 pledge, India committed to expedite ratification of the Convention against Torture (CAT). Ratification is to be preceded by the enactment of a domestic law. *The Prevention of Torture Bill, 2010* (PTB) was referred to a Parliamentary Select Committee of the Upper House in August

2010. Considering representations from human rights groups, the Committee substantially revised PTB, which now partially¹⁰² complies with CAT. The PTB must prohibit cruel, inhuman or degrading treatment and punishments.¹⁰³

36. Custodial torture and violence remain an entrenched and routine law-enforcement strategy across India. Police practices include assault, physical abuse, custodial rape, threats, psychological humiliation, as well as deprivation of food/water/sleep and medical attention. A study concluded that 1.8 million people are victims of police torture in India every year.¹⁰⁴ Most torture cases go unreported because victims fear persecution. From 2001-2010, 14,231 people died in police and judicial custody, largely as a result of torture.¹⁰⁵
37. The practice of torture is even more widespread and condoned in conflict areas, where it is routinely and violently practiced, leading to physical and mental disability or impotence.¹⁰⁶ A communication of the International Committee of the Red Cross with US officials confirmed the widespread use of torture in Kashmir.¹⁰⁷

Recommendations:

- Adopt the *Prevention of Torture Bill* after addressing its shortcomings, and then immediately ratify CAT

Enforced disappearances and extra-judicial killings

38. As per **UPR Recommendation 12** and India's 2011 pledge,¹⁰⁸ GOI committed to ratify the Convention on Enforced Disappearances (CED), stating that ratification was 'underway', but there are no visible signs of a process of ratification.
39. Enforced disappearances¹⁰⁹ and extrajudicial killings remain entrenched in conflict areas,¹¹⁰ reinforced by extraordinary powers of arrest, detention and immunity available to the security forces. In Manipur, 789 extra-judicial executions were documented between 2007 and 2010.¹¹¹ In Kashmir, justice evades well-known cases of extra-judicial killings¹¹² and enforced disappearance.¹¹³ A People's Tribunal established the presence of 2,700 mass unmarked graves,¹¹⁴ confirmed by the J&K State Human Rights Commission (SHRC) in 2011.¹¹⁵ In West-Bengal, the Border Security Force (BSF) has been responsible for extra-judicial killings at the Indo-Bangladesh border.¹¹⁶

Recommendations:

- Ensure that enforced disappearances and extrajudicial killings are codified as offences under criminal law¹¹⁷

- Ensure that the legal process of investigation, accountability and justice is followed¹¹⁸
- Ratify CED

Arbitrary arrest and detention

40. Arbitrary arrest and detention in conflict zones is largely carried out through the use of special laws¹¹⁹ like the *Chhattisgarh Special Public Security Act, 2005* (CSPSA),¹²⁰ and preventive detention laws like the *J&K Public Safety Act, 1978* (PSA).¹²¹
41. 147 persons were detained under CSPSA in 2010.¹²² A large number of *adivasis* have been arbitrarily arrested in Central India and languish in jail.¹²³ A person booked under PSA can be detained for up to two years¹²⁴, with the possibility of reinstating those charges on expiry of the said period. After the 2008 and 2010 protests in Kashmir,¹²⁵ there have been numerous arrests under PSA¹²⁶, including arrest and torture of minors and their aides suspected of stone-pelting.¹²⁷ The *J&K Juvenile Justice Act, 1997* puts the age of minority at below 16, which contravenes both national¹²⁸ and international law.¹²⁹

Excessive powers, use of force and sexual violence

42. AFSPA empowers the armed forces to 'shoot to kill', arrest, demolish structures, and conduct warrantless searches on mere suspicion. Measures are being taken to further enhance powers of the armed forces. For instance, a new law seeks to widen the scope for deployment of BSF for counter-insurgency and 'anti-Naxal' operations with additional powers of 'search, seizure and arrest'.¹³⁰
43. The police is being increasingly militarised in conflict areas and given charges of counter-insurgency operations.¹³¹ Paramilitary forces are being intensely trained by the army for operations in Central India.¹³²
44. Disproportionate force is routinely used¹³³ to suppress protest.¹³⁴ For example, in Chhattisgarh, peaceful protests by safai karamcharis¹³⁵ and anganwadi¹³⁶ teachers were met with disproportionate force and tear gas shelling.¹³⁷ In Kashmir, the use of lethal force against unarmed protestors waist-above is widespread. In 2010, paramilitary and police forces killed 110 unarmed protestors and 800 others were injured.¹³⁸ The use of supposedly 'non-lethal' weapons like 'tear gas launchers,' 'pellet guns' and custodial torture have caused serious injuries, disability¹³⁹ and even death.¹⁴⁰

45. Sexual assault by security forces is widespread¹⁴¹ but rarely are cases of rape investigated or punished.¹⁴² For example, in Assam, a deaf and dumb woman was raped by the paramilitary in 2011 in front of her husband.¹⁴³ National Human Rights Commission (NHRC) stated: "because no appropriate action was taken so far to punish the culprits involved in previous incidents, the crimes have been repeated again and again in the district."¹⁴⁴

LEGAL IMMUNITY

46. Special security laws¹⁴⁵ and Section 197 of the Criminal Procedure Code (Cr.P.C) grant immunity to public servants and members of the armed forces for acts committed in the discharge of their official duty. Alleged crimes can be prosecuted only with previous sanction of the state or central government. In practice, such sanction is almost never granted, leading to a culture of impunity for human rights abuses. Recent official data confirms that sanction is almost never granted for crimes committed by the armed forces.¹⁴⁶ Moreover, NHRC doesn't have regular investigative powers over offences committed by armed forces, further exacerbating their lack of accountability.¹⁴⁷

MILITARISM AND DENIAL OF ECONOMIC, SOCIAL AND CULTURAL RIGHTS (ESCR)

47. Militarisation has also led to denial of ESCR with the security apparatus increasingly used to implement the government's 'development' agenda. In the Northeast, development sites such as dams are manned by armed forces to suppress protest. For example, the Mapithel Dam area is one of the most militarised zones in Manipur. Security forces beat and tortured 40 women forces during protests against construction of the dam. Public hearings are controlled through cash payments and heavy militarisation.¹⁴⁸
48. Occupation of hospitals and schools by the army and paramilitary is common. The Supreme Court has acknowledged the practice and ordered security forces to vacate schools in Chhattisgarh since 2007, however nothing much has been done.¹⁴⁹
49. Agricultural land, particularly in border districts, is occupied by armed forces for camps or temporary shelters, denying farmers access to their lands and affecting their livelihood. In Central India, the tribal population living in forests has been forcefully displaced by security forces, including that of 645 villages in Dantewada.¹⁵⁰ The number of people displaced due to armed conflict is estimated at 650,000,¹⁵¹ with the following break-up, Kashmir: 265,000,¹⁵² Northeast: 208,000¹⁵³ and Central India: 148,000.¹⁵⁴

C. Access to Justice

50. In a significant legislative development, India enacted the *Right to Information Act*, 2005. This Act has given citizens across India the ability to procure information on issues vital to their lives, thereby also promoting their access to justice and a culture of transparency and accountability in administration.¹⁵⁵
51. Proper implementation of the many progressive laws and schemes, however, demand that the many structural and functional problems in the justice system be addressed.

BARRIERS TO ACCESS TO JUSTICE¹⁵⁶

Regressive laws

52. The *Police Act*, 1861 and the *Prisons Act*, 1894 are two of the oldest statutes in force. Despite countless recommendations for their repeal and replacement with legislation in harmony with the current democratic, constitutional framework, they continue to operate.
53. Several other legislations violate the Constitution and international human rights law, such as *Land Acquisition Act*, 1894; *Bombay Prevention of Begging Act*, 1956; India's colonial sedition provisions;¹⁵⁷ and the *Mental Health Act*, 1987¹⁵⁸.

Violations by the police and resistance to reform

54. A majority of complaints brought before NHRC between 2008-2009 involve police violations.¹⁵⁹ Police are regularly accused of beatings, torture, abduction, rape, deaths in custody and extra-judicial killings through fake 'encounters'. They have a reputation for corruption, non-registration of cases¹⁶⁰ and arbitrary arrests. Procedural safeguards are routinely violated.¹⁶¹ Socially and economically disadvantaged sections are most vulnerable to police brutality and corruption.¹⁶²
55. The 2006 Supreme Court judgment with guidelines on police reform and orders to pass new police acts is a step forward.¹⁶³ However, less than 20 states have taken measures to implement the Court's directives and the new acts being passed are proving even worse.¹⁶⁴

Inadequate legal aid and assistance

56. The *Legal Services Authorities Act*, 1987, gave a statutory base to the fundamental right to legal aid.¹⁶⁵ However, there remains a serious lack of awareness amongst

litigants on free legal aid services, which often doesn't reach the most needy.¹⁶⁶ Other problems include: (i) acute underutilisation of funds (example, 87.33% underutilization in Madhya Pradesh);¹⁶⁷ (ii) lack of an implementation structure; and (iii) lack of experienced lawyers. The legal aid services are promoting alternative resolution approaches for women's/family law issues that tend to compromise women's statutory rights in the name of expediency and efficiency.

Lack of witness protection programme

57. To date, India lacks a law or a scheme for witness protection.¹⁶⁸ To fill this gap, the Supreme Court has developed principles of witness protection¹⁶⁹ none of which encompass all aspects. Such measures are particularly important in communal violence cases where conviction is low mainly because witnesses tend to turning hostile due to fear of reprisals.

Lack of independence of public prosecutors

58. This is a major concern given the appointment of public prosecutors by the executive, especially since victims often depend entirely on them.¹⁷⁰ This phenomenon, together with section 197 Cr.P.C leads to a culture of entrenched impunity that pervades all institutions. The tendency to allow perpetrators off-the-hook, despite proven involvement in mass and individual crimes, has been most apparent in cases such as the Bhopal Gas tragedy verdict,¹⁷¹ and cases of mass targeted crimes: Delhi 1984,¹⁷² Gujarat 2002,¹⁷³ Odisha 2008¹⁷⁴.

Recommendation:

- Create an Independent Directorate of Prosecution

DISCRIMINATION IN ACCESS TO JUSTICE

Women

59. Discrimination against women is systemic in India, embedded in socio-cultural norms. Family laws are codified with reference to religion and custom rather than constitutional rights.¹⁷⁵ Despite piece-meal legal reform, women have unequal succession, guardianship rights, and no right to matrimonial property. The state justifies this inequality as being essential to respect minorities and cultural diversity. As per **UPR Recommendation 17**, India was requested to withdraw its reservations to CEDAW Article 5 and 16, undertake modification of customs that subordinate women, and review its refusal to interfere in religion-based family law.

GOI should reform religion-based family laws to bring parity between spouses in divorce, matrimonial property, guardianship, and succession.¹⁷⁶

60. Violence against women is highly pervasive and perpetrated with impunity. Reports indicate that every 60 minutes two women are raped, and every six hours a young married woman is found beaten to death, burnt or driven to suicide. Women are also targeted on account of their caste, sexuality, disability, and other status. Targeted violence of Dalit women,¹⁷⁷ stigma, systemic persecution, and violence against lesbians, transgenders, and women with disability occurs with impunity. Sexual violence is not fully addressed by penal law.¹⁷⁸ A comprehensive law must include all forms of sexual assault, in aggravated and non-aggravating circumstances, and include reform in procedure and rules of evidence.¹⁷⁹ There is no reparative justice for sexual violence in peace times or during riots, or conflicts¹⁸⁰ or any law on sexual abuse of children.
61. Violence against women (and men) in the name of 'honour' is a serious concern, where family members, or community leaders ostracise and kill young couples, often with the collusion of the police.¹⁸¹
62. The targeting of middle-aged and elderly single women as 'witches', leading to social stigma, displacement, economic boycott, torture and murder must be addressed through a national law on witch-hunting.¹⁸²
63. The *Protection of Women from Domestic Violence Act, 2005* provides protection to women victims of domestic violence,¹⁸³ through a mechanism of protection officers and support services. However, due to low appointment of such officers, inadequate orientation to new machinery and police, lack of support services and shelter, and poor budgetary allocations,¹⁸⁴ the Act has not been effectively implemented.¹⁸⁵
64. The law on sexual harassment at the workplace lacks enactment, despite 1997 Supreme Court guidelines on the issue.¹⁸⁶
65. India ranks among the worst countries in tackling human trafficking,¹⁸⁷ impinging on the most disadvantaged socio-economic strata.¹⁸⁸ Child trafficking is endemic.¹⁸⁹ Despite ratifying the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (Trafficking Protocol), India is still to bring its law in conformity with international standards¹⁹⁰ against trafficking. The *Immoral Traffic (Prevention) Act, 1956* covers trafficking for prostitution alone, contrary to the Trafficking Protocol, which requires States to address trafficking into all forms of forced labor, slavery and servitude. Police led raid and rescue operations undermine the rights of victims¹⁹¹, who may be prosecuted for soliciting or engaging in sex work in public places,¹⁹² even if they are coerced. The Act

undermines sex workers' ability to claim protection by the law, while the absence of safeguards has intensified violence and exploitation by brokers, agents and the mafia.¹⁹³ Relief and compensation for victims are non-existent. Recently, the Supreme Court directed the Central and State Governments to provide voluntary and effective rehabilitation to sex workers, in accordance with their right to live with dignity.¹⁹⁴

Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI)

66. Until recently, homosexuality was criminalised by the law punishable with a maximum of life sentence, by section 377 of the Indian Penal Code (IPC), leading to multiple levels of stigma, discrimination, and violence, without recourse to the law.¹⁹⁵ In 2009, homosexuality was de-criminalised by the Delhi High Court.¹⁹⁶ Discrimination however continues¹⁹⁷ and the judgement is under appeal in the Supreme Court by conservative sections of society. The state has abdicated its role to defend the judgement, relegating defence of human rights of the LGBTI to civil society.

Children¹⁹⁸

67. India has 12 special laws for children apart from legal provisions in the penal and criminal codes. The *Juvenile Justice (Care and Protection) Act, 2000*¹⁹⁹ is the only law in the world based on a preventative approach to juvenile justice.²⁰⁰ However, poor implementation of the law, lack of support structures,²⁰¹ low conviction rates and inadequate resources lead to derailment of justice. Children's ages are often falsified and they are tried in adult courts or sent to adult prisons, and child victims find themselves further victimised in non-child sensitive judicial processes. While children's courts were established by the *Protection of Child Rights Act, 2005*, Delhi was the first state to open such facilities for speedy trials in 2011. Protection of children still continues to receive only 1.26% of the national budget.

Scheduled Castes (SCs)²⁰² and Scheduled Tribes (STs)

68. SCs²⁰³ (also known as 'Dalits') and STs²⁰⁴ (India's tribal population) have long been targets of acute discrimination and violence, therefore requiring a special law to guarantee increased protection. The *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989*²⁰⁵ seeks to provide such protection. However, weak implementation²⁰⁶ and low conviction rates (29.32%) are disturbing,²⁰⁷ as is police refusal to register cases under this Act.²⁰⁸

69. Despite the *Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act*, 1993, more than 770,000 'manual scavengers' in India²⁰⁹ (including more than 80% Dalit women) continue to be forced to clean human excrement with their bare hands for little or no wages, even in the public sector.²¹⁰ A number of manual scavengers have been assisted under the *National Scheme of Liberation and Rehabilitation of Scavengers* but many are still to be rehabilitated.²¹¹
70. Under the *Scheduled Caste Sub Plan*,²¹² funds ought to be allocated for the welfare and development of SCs in proportion to their population. However, huge diversions were discovered in 2010 and 2011, both at the union and state levels, where money earmarked for SCs was used for general infrastructure projects.²¹³
71. Despite protective laws and constitutional provisions, the rights of indigenous peoples/tribals²¹⁴ to self-determination, land²¹⁵, and culture, continue to be seriously violated. Funds allocated under the *Tribal Sub Plan* are diverted or unspent.²¹⁶ Tribals also face: (i) denial of control over their development, based on their values, needs and priorities; (ii) political under-representation and lack of access to social and other services; and (iii) marginalization resulting from mega projects exploiting their lands and natural resources, and causing large scale evictions and loss of livelihoods.

Persons with disabilities

72. Despite the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act*, 1995, all major issues e.g. accessibility, education, employment, health etc. continue to remain neglected. Where established, state disability commissions have not been effective. There is a lack of proper planning and implementation of disability programs and schemes. Rights of people with psychosocial and high support needs²¹⁷ continue to be ignored. 100 civil laws in the country²¹⁸ deprive legal status for persons with psychosocial and cognitive disabilities. A widespread shift from a charity to a rights based approach is required. The process of formulation of a new law in consonance with international standards²¹⁹ is a good initial step.

Religious minorities

73. Religious minorities in India (mainly Muslims and Christians) face severe discrimination.²²⁰ A number of Muslim men have been falsely implicated in terrorist cases.²²¹ Dalit Christians and Dalit Muslims face discrimination on accounts of both religion and caste. The rough systematic mobilisation of hate and divisive politics, communal pogroms against minorities have been masterminded in complete impunity.²²² In 2008, mobs torched Christian homes in Kandhamal (Orissa), killing

at least 38 people.²²³ In Gujarat, over 5000 families still live as IDP's in 89 camps as a result of the 2002 carnage.²²⁴ The *Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011*, seeks to protect the victims of this violence from institutional bias and hold public servants and those in position of superior or command responsibility criminally liable.²²⁵

Refugees

74. India counts more than 184,821 refugees²²⁶ but has not yet ratified the 1951 *Convention on the Status of Refugees* and its Protocol and does not have a domestic law either. The status of refugees (simply treated as foreigners) remains arbitrary and ad hoc, decided by the administrative authorities. The *Refugee and Asylum Seekers (Protection) Bill, 2006*, should be adopted at the earliest.

HUMAN RIGHTS DEFENDERS

75. Human rights defenders are key to India's vibrant civil society. However, they have faced increased threats and harassment in the past few years.²²⁷ As highlighted by the Special Rapporteur on human rights defenders in 2011,²²⁸ they and their families face surveillance,²²⁹ are threatened, arbitrarily arrested²³⁰ and detained²³¹, falsely charged, their offices raided and files stolen,²³² and in extreme cases even tortured and killed. They are also mislabeled as 'Naxalites/Maoists',²³³ 'militant sympathizers', or 'anti-national'. Defenders in conflict areas face these problems even more acutely; passports are denied and colonial sedition laws are used against them.²³⁴ A new worrying trend is the targeting of activists seeking implementation of progressive laws/schemes like RTI and MNREGA.²³⁵ Some have even been murdered.²³⁶

76. The stringent provisions under the *Foreign Contribution Regulation Act, 2010* could threaten the functioning of human rights organizations, especially those critical of the government.²³⁷



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HUMAN RIGHTS INSTITUTIONS

77. As per UPR **Recommendation 3**, GOI accepted to strengthen existing mechanisms for the protection of human rights. India has eight national²³⁸ and over 180 state human rights institutions (N/SHRIs), charged with protecting and promoting human rights. Although these institutions have great potential, systemic impediments affect the functioning of many.²³⁹ Moreover, a number of state commissions are yet to be set up²⁴⁰ and some lack chairpersons.²⁴¹

Recommendations:

■² In order to strengthen N/SHRIs, ensure:²⁴²

- (i) Diversity, plurality and transparency in appointment of members
- (ii) Independence of institutions, notably by ensuring that they don't have government servants on deputation in senior positions
- (iii) Independent mechanism for handling complaints
- (iv) Effective collaboration between various N/SHRIs

IV

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COLLABORATION WITH UN MECHANISMS

TREATY BODIES

78. As per UPR **Recommendation 4** and its 2011 pledge, GOI committed to continue its constructive engagement with international human rights bodies. However, one major cause of concern remains GOI's delays in reporting to treaty bodies, especially to the Human Rights Committee (report pending since 2001).

SPECIAL PROCEDURES

79. As per UPR **Recommendations 14** and its 2011 pledge, GOI announced²⁴³ that it was extending a standing invitation to Special Procedures, a very significant and welcome step. GOI already demonstrated commendable openness and support during the recent visit of the Special Rapporteur (SR) on human rights defenders.

Recommendation:

- The government should ensure regular visits of SRs to India, including, with priority, mandates that have already made repeated requests, including the SR on torture (**UPR Recommendation 15**)

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CONCLUSION

80. The situation of persistent human rights violations across the country presents manifold challenges. A number of progressive legal and policy initiatives have been taken by GOI. The lack of implementation, however, of these measures due to bureaucratic inertia, lack of adequate allocation of resources, contradiction between economic policies, 'development priorities' and national and international human rights commitments, continue to act as obstacles to the realisation of human rights for India's most vulnerable. WGHR hopes that the second cycle of the UPR will highlight the need for more concerted action on the part of India to meet its human rights obligations.

Notes

- 1 See full list of WGHR members in Annex A.
- 2 See full list of endorsements in Annex B.
- 3 See report of national consultation in Annex C. The regional consultations were held in Shillong (28-30 August 2011), New Delhi (15-16 September), Ahmedabad (18-20 September), Puri (22-24 September) and Bengaluru (26-28 September). The national consultation was held in Delhi on 11th and 12th October 2011 in partnership with the National Law University, Delhi (NLUD). See map of WGHR consultations at: <http://www.wghr.org/pdf/Map%20of%20WGHR%20UPR%20consultations.pdf>
- 4 See full chart with assessment of implementation of the 18 recommendations made to India during the first UPR in Annex D.
- 5 Pledge made by India at the UN GA in February 2011 at the time of its re-election at the Human Rights Council. See *Voluntary Pledges and Commitments by India*, UN General Assembly, 25 February 2011, A/65/758, available at: http://www.un.org/ga/search/view_doc.asp?symbol=A%2F65%2F758&Submit=Search&Lang=E
- 6 The MEA did, however, actively participate in the National Consultative Workshop on the UPR organised by WGHR in April 2011, where representatives from the MEA, the National Human Rights Commission (NHRC) various UN agencies, diplomats and civil society came together. Following this workshop, WGHR decided to play a role of catalyst in civil society's efforts in the run-up to India's second UPR and to build a large coalition around the UPR process.
- 7 See: WGHR written statement at the UN Human Rights Council, 25 May 2011, A/HRC/17/NGO/50, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G11/135/17/PDF/G1113517.pdf?OpenElement>
- 8 The government did not respond to the evaluations after the UN decade for human rights education, as well as after the implementation of the first phase of the UN World Programme on human rights education in 2010.
- 9 Between 2007-2011 according to: Draft Approach Paper for the Twelfth Five-Year Plan, Planning Commission, Government of India, August 2011.
- 10 According to the Arjun Sengupta Committee (2006) appointed by the Prime Minister, 77% of Indians live on a consumption expenditure of less than 20 rupees (around USD 0.4) a day. [1 US dollar (USD) is the equivalent of around 50 Indian Rupees (INR); exchange rate as of November 27, 2011].
- 11 Tendulkar Committee Report, 2009; India ranks 134 of 187 countries on the UN human development index report 2011, available at: <http://hdrstats.undp.org/en/countries/profiles/IND.html>
- 12 Including the Structural Adjustment Programme.
- 13 Including, inter alia, Articles 14, 15, 16, 17, 19, 21, 23, 24, 39, 42, 45 and 47 of the

Constitution of India.

- 14 See: Concluding Observations of the Committee on Economic, Social and Cultural Rights: India, 2008, E/C.12/IND/CO/5, para 71.
- 15 See: Concluding Observations of the Committee on Economic, Social and Cultural Rights: India, 2008, E/C.12/IND/CO/5, para 70.
- 16 Including 'city beautification,' mining, dams, Special Economic Zones (SEZs), mega events, and industrial projects. For instance, 200,000 people were displaced for the 2010 Delhi Commonwealth Games (See: *Planned Dispossession: Forced Evictions and the 2010 Commonwealth Games*, Housing and Land Rights Network, Delhi, 2011, available at: www.hic-sarp.org); Over 35,000 families have already been displaced because of SEZs ('*Analysis of SEZs and Human Rights Impacts of SEZs*,' Seminar, February 2008); Also see: '*SEZs and Land Acquisition*', Citizens' Research Collective, available at: http://www.sacw.net/Nation/sezland_eng.pdf. Also see: Concluding Observations of the Committee on Economic, Social and Cultural Rights: India, 2008, E/C.12/IND/CO/5, para 31.
- 17 Draft Approach Paper for the Twelfth Five Year Plan, Planning Commission, Government of India, August 2011, states that only a third of those displaced have been resettled according to plan.
- 18 Draft Approach Paper for the Twelfth Five Year Plan, Planning Commission, Government of India, August 2011. The Special Rapporteur on the right to food, Jean Ziegler, also stated that around 40-50 per cent of the displaced in India are tribal people though they make up only eight per cent of the population (See: report of the Special Rapporteur on the Right to Food, Jean Ziegler, Mission to India, 2005, E/CN.4/2006/44/Add.2, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/119/16/PDF/G0611916.pdf?OpenElement>).
- 19 According to the Draft Approach Paper for the Twelfth Five Year Plan of the Planning Commission (August 2011), 90% of India's coal, 50% of minerals and most prospective dams are located in tribal regions. The Vedanta mining project, for instance, threatens to displace Kondh tribals in Odisha while destroying their livelihoods and the environment. Over 160 dams are being planned across the northeast region that will result in widespread displacement and social unrest.
- 20 Climate change will affect a range of human rights. Mitigation and adaptation measures to address climate change must conform to human rights standards and not discriminate against the poor and vulnerable communities, including forest dwellers, coastal communities and those living in arid regions and low-lying areas.
- 21 47.43 million for rural housing, of which 90% are below poverty line households (Report of the Eleventh Five Year Plan Working Group on Rural Housing, Ministry of Rural Development, Government of India, 2007) and 26.53 million for urban housing (Report of the Eleventh Five Year Plan Working Group on Urban Housing, Ministry of Housing and Urban Poverty Alleviation, Government of India, 2007).

- 22 See: Concluding Observations of the Committee on Economic, Social and Cultural Rights: India, 2008, E/C.12/IND/CO/5, para. 30.
- 23 Eleventh Five Year Plan (2007-2012), Planning Commission, Government of India.
- 24 Ibid.
- 25 Almost 80% of the agricultural population owns about 17% of the agricultural land making them near-landless.
- 26 Eleventh Five Year Plan (2007-2012), Planning Commission, Government of India.
- 27 According to the National Urban Housing and Habitat Policy 2007, 80.7 million are poor in urban India.
- 28 A projection based on the 2011 census estimates that around 60% of Mumbai lives in slums. According to the Municipal Corporation of Delhi, in 2010, 49% of the city's population lived in slums and non-regularised settlements, and only 5% lived in planned areas (facts submitted in an affidavit to the Supreme Court of India in April 2010).
- 29 Ministry of Housing and Urban Poverty Alleviation, Report of the Committee on Slum Statistics/Census, National Buildings Organization, 2010.
- 30 *The Bombay Prevention of Begging Act*, 1959 is a punitive law that is used in different parts of the country to arbitrarily arrest and detain the homeless. In August 2010, 40 'beggars' died in a 'beggars' home' in Karnataka, several of them were disabled. See Karnataka State Human Rights Commission, case n° 5978/SM-1242/2010, dated 18th September 2010, heard by Justice S.R. Nayak. Despite positive legal interventions from the Supreme Court of India and the High Court of Delhi, India's homeless population continues to rise and is excluded from most government schemes. National data on the homeless is grossly underestimated. Just in the capital city of Delhi, civil society estimates place the number of homeless at 100,000 – 150,000. The UN Committee on Economic, Social and Cultural Rights in its Concluding Observations on India in May 2008 called for disaggregated data on homelessness and forced evictions as well as the implementation of measures to check against both phenomena. See: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/436/08/PDF/G0843608.pdf?OpenElement>
- 31 Rajiv Awas Yojana is a new central government scheme aimed at providing tenure security and affordable housing for the urban poor. It however needs to be grounded in a strong human rights approach in order to be effective.
- 32 ICDS: Integrated Child Development Scheme (all children under six, pregnant and lactating mothers) and MDMS: Mid-Day Meals Scheme (all primary and upper primary school children).
- 33 Targeted Public Distribution System 35 kilogrammes (kgs)/ month of subsidised food grains and Annapurna: 10 kgs of free food grain for indigent senior citizens of 65 years or above who are not getting old age pension.

- 34 United Nations World Food Programme, India page, available at <http://www.wfp.org/countries/india>
- 35 Percentage of children under age five years classified as malnourished according to three anthropometric indices of nutritional status: height-for-age, weight-for-height, and weight-for-age, according to state, India, 2005-06: (1) Height-for-age (stunting): 48%; (2) Weight-for-height (wasting): 19.8%; and (3) Weight-for-age (underweight): 42.5% age (stunting): 48%; (2) Weight-for-height (wasting): 19.8%; and (3) Weight-for-age (underweight): 42.5% - International Institute for Population Sciences and Macro International. 2007. *National Family Health Survey 3 (NFHS-3), 2005-06 : India*. Mumbai IIPS, available at: <http://www.nfhsindia.org/nfhs3.html>
- 36 UNICEF, *Progress for Children: A Report Card on Nutrition*, available at: http://www.unicef.org/publications/files/Progress_for_Children_-_No._4.pdf
- 37 *People's Union for Civil Liberties v. Union of India*, Writ Petition (Civil) No. 196 of 2001 (India).
- 38 See: Concluding Observations of the UN Committee on Economic Social and Cultural Rights, 2008, E/C.12/IND/CO/5, Para. 28, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/436/08/PDF/G0843608.pdf?OpenElement>; Also see: CESCR's definition of adequate food availability, apart from the possibilities for feeding oneself, also refers to the possibilities for "well functioning distribution, processing and market systems that can move food from the site of production to where it is needed in accordance with demand. - General Comment 12 of the UN Committee on Economic, Social and Cultural Rights, 1999, E/C.12/1999/5, Para. 12, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G99/420/12/PDF/G9942012.pdf?OpenElement>
- 39 The PDS is a major scheme in India meant to ensure availability of selected commodities at affordable subsidized prices. It operates under the joint responsibility of the central and state governments. The state's responsibilities include the distribution of food grains to consumers through "Fair Price Shops" (FPSs), the identification of families below poverty line (BPL), the issuance of BPL cards, as well as the movement and the storage of food grains. - Ministry of Consumer Affairs, Food and Public Distribution, available at: http://fcamin.nic.in/dfpd/EventListing.asp?Section=PDS&id_pk=1&ParentID=0
- 40 The Tendulkar Committee was set up in 2009 to look into the methodology for estimating the poverty line. Using the methodology of the Committee, the Planning Commission, in an affidavit to the Supreme Court on 20.09.2011 (in the case W.P.C. (196/2001)), claims that any person who has a per capita per day expenditure of INR 26 (USD 0.5) in rural India and INR 32 (USD 0.62) in urban areas will be considered 'above poverty line.' [1 US dollar (USD) is the equivalent of around 50 Indian Rupees (INR); exchange rate as of November 27, 2011].
- 41 "A large proportion of manual workers' households, households belonging to

Scheduled Castes and Tribes, households with little or no land, as well as households in the lowest income classes, are excluded from the PDS today.” – Swaminathan, M., *The Case of State Intervention*, UN Chronicles, 2008, available at: <http://www.un.org/wcm/content/site/chronicle/home/archive/issues2008/pid/5101?print=1>

- 42 The Planning Commission, *Nutrition and Social Safety Net*, page 135, available at: http://planningcommission.nic.in/plans/planrel/fiveyr/11th/11_v2/11v2_ch4.pdf
- 43 National Sample Survey, 2004-2005.
- 44 A 2010 Right to Information (RTI) application revealed serious inefficiencies in the government’s monitoring of storage facilities and distribution. In an affidavit to the Supreme Court filed in September 2010, the food ministry itself admitted that more than 67,000 tonnes of grains were rotting in the godowns of the Food Corporation of India (FCI). This quantity would be enough to feed 190,000 families during one month. See: www.hindustantimes.com/News-Feed/India/Rotting-grain-more-than-Govtclaimed/Article1-596981.aspx. Also see: www.hindustantimes.com/News-Feed/ColumnsSamarHalarnkar/Not-a-grain-of-truth/Article1-597806.aspx
- 45 However, considering its adverse impacts, cash transfers should not be seen as a viable alternative to the PDS.
- 46 The recognition of women as heads of the household for the distribution of BPL cards and the statutory recognition of Mid-Day Meal and Integrated Child Development Schemes.
- 47 Rather the Bill opts for a targeted approach.
- 48 “The State has introduced an option for households that do not want to purchase rice from the PDS, and given them scope for buying more sugar or kerosene. There are 100,000 card holders who have exercised this option, and another 52,000 who have withdrawn from the PDS completely. As the State is buying grain from the centre at higher prices (BPL allocation at the BPL price and APL allocation at the APL price), it is incurring an additional subsidy to maintain a universal system with rice at specially subsidized low price.” – Swaminathan, M., *Neo-Liberal Policy and Food Security in India: Impact on the Public Distribution System*, available at: <http://www.networkideas.org/ideasact/jan09/PDF/Madhura.pdf>.
- 49 National Crime Records Bureau, *Accidental Deaths and Suicides in India 2010*, available at: <http://ncrb.nic.in/50> “The World Trade Organization and the Post-Global Food Crisis Agenda: Putting Food Security First in the International Trade System,” Briefing note 04, November 2011, available at: http://www.srfood.org/images/stories/pdf/otherdocuments/20111116_briefing_note_05_en.pdf?utm_source=SRFood+Newsletter&utm_campaign=de320c25fb-2011-1116_Trade-rules-must-not-hold-back-efforts&utm_medium=email.
- 51 Raghuvansh Prasad Singh: BRAI Bill - *Bulldozing public opinion*, Business Standard, September 17, 2011, available at: <http://www.business-standard.com/india/news/raghuvansh-prasad-singh-brai-bill-bulldozing-public->

opinion/449406/.

- 52 See: Concluding Observations of the Committee on Economic, Social and Cultural Rights: India, 2008, E/C.12/IND/CO/5, para 29
- 53 This would cut transportation costs and support small and marginal farmers.
- 54 There are 6 doctors and 9 hospital beds per 10,000 people. Source: WHO, World Health Statistics 2011, available at: <http://www.who.int/whosis/whostat/2011/en/index.html>
- 55 National Rural Health Mission 2005-2012, Mission Document, Ministry of Health & Family Welfare, available at: http://mohfw.nic.in/NRHM/Documents/Mission_Document.pdf.
- 56 See: Concluding Observations of the Committee on Economic, Social and Cultural Rights: India, 2008, E/C.12/IND/CO/5, para 38.
- 57 A welcome 2011 Supreme Court direction ordered private hospitals, built on subsidised government land in Delhi, to provide free treatment and hospitalisation to the poor. See: India Today, *Supreme Court Tells Private Hospitals to Provide Free Treatment to Poor*, September 1, 2011, available at: <http://indiatoday.intoday.in/story/supremecourt-tells-private-hospitals-to-provide-free-treatment-to-poor/1/149695.html>.
- 58 In compulsory licensing, under the World Trade Organization's (WTO) Trade Related Intellectual Property Rights Agreement (TRIPS) Agreement, the government allows a generic firm to produce a patented product without the consent of the patent owner. The Economic Times, *Natco Pharma files India's first compulsory licence plea*, Aug 2, 2011, available online at: http://articles.economictimes.indiatimes.com/2011-08-02/news/29842834_1_compulsory-licence-sorafenib-tosylate-natco-pharma
- 59 Of the 26 million children born in India every year, approximately 1.83 million children die before their fifth birthday. Causes of death include waterborne diseases such as diarrhea - one out of five children dying world wide of diarrhea is from India; respiratory diseases (of the 133 million childhood pneumonia cases around the world, India counted for 44 million); malaria; and parasitic infections. See Registrar-General of India Report on Causes of Death in India 2009 and *The Situation of Children in India*, UNICEF, 2011.
- 60 2008 statistics quoted in: WHO, World Health Statistics, 2011; Causes of maternal mortality include: poor health infrastructure, lack of specialists, inadequate budget, and persistent discrimination, including against economically weaker sections, minorities, persons with disabilities, Scheduled Castes and Scheduled Tribes. See: Center for Reproductive Rights and Human Rights Law Network, *Maternal Mortality in India – Using International and Constitutional Law to Promote Accountability and Change – 2011 Update*, available at : <http://reproductiverights.org/en/document/maternal-mortality-in-india-2011-update-document-download>; Also see : Report of the Special Rapporteur on the right of everyone to the

enjoyment of the highest attainable standard of health, Paul Hunt, mission to India, 2010, A/HRC/14/20/Add.2.

- 61 Some government policies have also deviated from the right to health approach, threatening to exacerbate discrimination of people living with HIV/AIDS. For example, the National AIDS Control Organisation has introduced line listing, which violates privacy rights.
- 62 Figures revealed by a RTI application.
- 63 22 cases out of the 668 cases that occurred in 2010 - Records of the Directorate General of Health Services.
- 64 See *Mental Health Care Act*, 1987.
- 65 World Bank, *India's Water Economy, Bracing for a Turbulent Future*, 2005.
- 66 "Diarrhoea: Why Children Are Still Dying and What Can Be Done," World Health Organization and UNICEF, 2009; 74% of the rural and 16.8% of the urban population does not have facility of a toilet - National Family Health Survey III, 2005-06.
- 67 2008 statistics quoted in: WHO, World Health Statistics, 2011, available at: http://www.who.int/whosis/whostat/EN_WHS2011_Full.pdf. The global median for health budget is 11.5%.
- 68 Sandhya Srinivasan, *Ethical Concerns in Clinical Trials in India: an investigation*, February 2009, page 45, available at: http://www.fairdrugs.org/uploads/files/Ethical_concerns_in_clinical_trials_in_India_An_investigation.pdf 69 Ongoing FTA Negotiations: European Union, Japan, EFTA (Iceland, Norway, Liechtenstein, Switzerland), New Zealand, Malaysia, Gulf Cooperation Council, BIMSTEC (Bangladesh, Myanmar, Sri Lanka, Thailand, Bhutan and Nepal), Mauritius, SACU (South Africa, Botswana, Lesotho, Namibia). FTAs signed, but under negotiation for expansion: Sri Lanka (1998), Thailand (2003), SAFTA (South Asia Free Trade Area, 2004) and ASEAN (Association of Southeast Asian Nations, 2009). FTAs under consideration and/ or at various stages of development: Australia, Chile, China, Colombia, Egypt, Hong Kong, Israel, Russia, Uruguay, and Venezuela. India has also launched the process for a potential FTA with the United States through the "Framework for Cooperation on Trade and Investment." (Source: Ministry of Commerce and Industry, Department of Commerce, Government of India, available at: http://commerce.nic.in/trade/international_ta.asp?id=2&trade=i. Also see: Asian Regional Integration Center, <http://aric.adb.org/FTAbByCountryAll.php>.) These agreements include not only trade in goods but also investment, government procurement, intellectual property and competition policy.
- 70 "The deepening of the trade liberalization path will not result in farmers in developing countries being able to compete on equal terms with producers in industrialized countries, unless wages and agricultural prices in the South are repressed at very low levels to compensate for a much lower productivity per active

- laborer. This will inevitably result in more violations of the right to food.” - Report of the Special Rapporteur on the right to food, Olivier De Schutter mission to the World Trade Organization, March 9, 2009, available at: <http://www.srfood.org/images/stories/pdf/otherdocuments/11-reportmissiontowtosummary-en.pdf>. Also see: ‘How India’s Free Trade Agreements Will Undermine our Right to Food,’ available at: <http://www.forumagainstftas.net/PDF/Right%20to%20Food%20and%20FTAs.pdf>
- 71 The Hindu, *FTA will hurt livelihoods in India, Europe: civil society*, December 10, 2010, available at: <http://www.thehindu.com/news/national/article942068.ece>
- 72 The EU-India FTA and acquisition and mergers by Multi-National Corporations (MNCs) of several major Indian generic medicine producers are a cause of concern as they make the use of existing TRIPS flexibilities more difficult, thus restricting access to low-cost, high-quality generic medicines. The government should rather facilitate the access and affordability of medicines, essential diagnostics and medical devices.
- 73 457 million in 2004-05 according to the National Sample Survey Organization (NSSO); See: *Concluding Observations of the Elimination of Discrimination against Women: India, 2007*, CEDAW/C/IND/CO/3, para 44.
- 74 Construction workers, including women and children are most numerous in this segment and among the worst exploited. Three specific laws that apply to them but are not implemented are: *Building and Other Construction Workers Act, 1996*, *Contract Labour (Regulation and Abolition) Act, 1970* and *Interstate Migrant Workmen Act, 1979*.
- 75 This includes compensation for injury, health, maternity and retirement benefits.
- 76 This is due to hostility and failure of the state to respect freedom of association.
- 77 *The Trade Unions Act, 1926*, *The Payment of Wages Act, 1936*, *The Employees’ State Insurance Act, 1948*, *The Minimum Wages Act, 1948*, *The Employees’ Provident Funds and Miscellaneous Provisions Act, 1952*, *The Maternity Benefit Act, 1961*, *The Payment of Bonus Act, 1965* and *The Payment of Gratuity Act, 1972*.
- 78 Unskilled manual work.
- 79 India is one of the few countries where the right to education is a fundamental right. The eighty-sixth constitutional amendment made education a fundamental right (Article 21A) in 2002.
- 80 The constitutional amendment and the RTE Act came in to force in April 2010.
- 81 The Act empowers the National Commission for the Protection of Child Rights (NCPCR) and the State Commissions for the Protection of Child Rights (SCPCRs) with the responsibility to monitor the RTE. However, only 18 states have set up SCPCRs (some of which are not yet functional). It is thus difficult for the NCPCR to keep a vigilant eye on millions of classrooms across India and protect children from corporal punishment, discrimination, lack of quality education and teachers with the meagre infrastructure at its disposal.

- 82 The listing of occupations as 'hazardous' and 'non-hazardous' leaves many unsafe forms of work sheltered behind the assumption that they are 'safe'.
- 83 India's 2008 UPR report speaks of sequential/progressive eradication, but this is not borne out by the law, or by enforcement.
- 84 Statement by Human Resource Development Minister Kapil Sibal - *The Hindu*, 8 million children still out of school, April 1, 2011, at: <http://www.thehindu.com/education/article1591845.ece>. Enrolment of girls is at 48%.
- 85 Short comings include: (i) lack of trained teachers; (ii) perpetuation of multi-grade teaching (one teacher for many classes); (iii) lack of minimum school infrastructure (this includes lack of toilets for girls and classrooms for all grades); (iv) failure to provide quality education to children of 'excluded' households.
- 86 Only 19.7% of enrolment is reported from Scheduled Castes and 11% from Scheduled Tribes. – UNICEF, *The Right to Education Factsheet*, available at: http://www.unicef.org/india/education_6145.htm
- 87 Drop out rate is 50% before class 8. Source: Planning Commission, Eleventh Five Year Plan 2007-12, Vol. II. Social Sector, *Education*, Government of India, 2008.
- 88 Promises of 'inclusion' in education remain a lip service in the absence of infrastructure and support. Only 1.38% of disabled children has been reported by the District Information System For Education 2008-09. For example, only 47.5% of schools have ramps for access. - District Information System for Education 2008-09, available at: <http://www.dise.in/>; Also see: Concluding Observations of the Committee on the Rights of the Child: India, 2004, CRC/C/15/Add.228, para 57.
- 89 Targets were universal primary education (five years of schooling) by 2007 and universal elementary education (eight years of schooling) by 2010.
- 90 The government should promote inclusive schools for children with disabilities.
- 91 Unofficial estimates place the concentration of troops in Kashmir at half a million making it one of the most militarized zones in the world. Ministry of Home Affairs' Annual Report (2009-10) states that the number of insurgency related incidents and casualties have progressively reduced between 2004 and 2010 in J&K and that the "overall security situation in the state has shown perceptible improvement". The report also reveals that the situation in Northeastern states has improved with reduction in the levels of violence and casualties, available at: [http://mha.nic.in/pdfs/AR\(E\)0910.pdf](http://mha.nic.in/pdfs/AR(E)0910.pdf). A ceasefire is effective in Nagaland since 1997 and a major insurgent group, United Liberation Front of Asom (ULFA) operative in Assam, has also declared ceasefire since early 2011. Also, recent estimates by the Intelligence Bureau and a census conducted by J & K Police declare that only 119-200 militants are operative in Kashmir, which is the lowest in the past two decades. Asian Age, *Intelligence Bureau: Militants in Kashmir Valley just 200, time to strike*, available at: <http://www.asianage.com/india/intelligence->

- bureau-militants-kashmir-valley-just-200-time-strike-374; Also see: Indian Express, 119 *militants active in Kashmir, lowest in 20 years*, June 6 2011, available at: <http://www.indianexpress.com/news/119-militants-active-in-kashmir-lowest-in-2/799806/>
- 92 The state has launched a major military and paramilitary offensive against the Maoists, with Dantewada in Chhattisgarh as its epicentre. Jairam Ramesh, the Minister of State for Rural Development, while recognizing the economic undercurrents of the Maoist insurgency has stated: "The long-festered socio-economic concerns of the weaker sections of society must be addressed meaningfully if the influence of Naxal groups is to be countered effectively."
- 93 *Nandini Sundar & Ors. v. State of Chhattisgarh*, Supreme Court, Writ Petition (C) No.250 of 2007, July 2011, Para 75.
- 94 Sec 11 (3), *Chhattisgarh Auxillary Armed Police Act*, 2011.
- 95 These include: The *Armed Forces (Assam & Manipur) Special Powers Act*, 1958, and the *J&K Armed Forces Special Powers Act*, 1990, *J&K Public Safety Act*, 1978 (PSA), *Chhattisgarh Special Public Security Act*, 2005 (CSPSA), *Nagaland Security Regulation Act*, 1962, *Unlawful Activities (Prevention) Act*, 1967 (UAPA), and *Enemy Agents Ordinance*, 1948.
- 96 See India's 2011 National Report on the Option Protocol to the Convention on the Rights of the Child on the Involvement of Children in Armed Conflict, available at: wcd.nic.in
- 97 By government appointed Committees: The "Jeevan Reddy Committee" and the Administrative Reform Commission (ARC), available at: <http://www.hindu.com/2007/07/27/stories/200707270010001.htm> and <http://www.hindu.com/2007/07/27/stories/200707270010002.htm> and civil society.
- 98 By UN human rights bodies: Human Rights Committee (1997), CEDAW (2007), CERD (2007) and CESCR (2008), available at: www.wgcr.org/pdf/compilation-AFSPA.pdf and international NGOs: Amnesty International, available at: <http://www.amnesty.org/en/library/asset/ASA20/022/2009/en/014577cc-00bc-40c7-9177-8571efc0950a/asa200222009en.html> and Human Rights Watch, available at: <http://www.hrw.org/news/2008/08/17/india-repeal-armed-forces-special-powers-act>.
- 99 AFSPA works in conjunction with the Disturbed Area Acts of J &K and Assam (1990 & 1955 respectively).
- 100 These guidelines include: (a) The army cannot act as a substitute for state civil authorities, but is strictly required to act with their cooperation to maintain public order. (b) The power of arrest of a person without warrant under Sec. 4 is to be read with Sec. 5 which requires the detainee to be handed over to the nearest police station with 'least possible delay', which under the CR.P.C means within 24 hours. (c) In conducting search and seizure, armed forces are bound by the same rules as the civilian authorities under the Code of Criminal Procedure. (d) The court interpreted the search and seizure powers under Sec. 4(d) to mean that the armed

forces have to turn the seized property over to the local police. See NPMHR v. *Union of India*, 1997, S.C. Also see: <http://www.hrdc.net/sahrdc/hrfeatures/HRF168.htm>.

- 101 In J&K, AFSPA has been at the centre of a debate between the Chief Minister and various quarters of the government and the army. The former wants it removed from some parts of the state, while some sections of the government, opposition and the army are resisting. The Chief Minister is however, offering to amend the Code of Criminal Procedure Code in order to offer immunity to the armed forces in case AFSPA is removed, which creates more problems than it solves, as it would provide perpetual and overarching immunity to all armed forces in all areas in the state.
- 102 There remain certain areas of concern in the draft Prevention of Torture Bill: (a) It introduces death penalty for those causing death by torture (Sec 4(2) of the revised Bill); (b) The definition of torture is restrictive and doesn't encompass the full range of the CAT definition (Sec 3); It also defines cruel, inhuman or degrading treatment or punishment narrowly; (c) There is a two-year statute of limitation starting from the date when the offence was committed, after which the complaint becomes time barred; (d) The compensation scheme under Sec. 4 does not take moral damage into account; (e) The Bill has no provision codifying non-refoulement; (f) There are no provisions for prevention of torture; (g) The Bill does not recognize state responsibility for prevention of torture committed by private individuals; (h) There is no provision excluding evidence obtained by torture; (i) Prohibition of incommunicado detention or detention in secret places is absent.
- 103 See *Prithipal Singh Etc v. State of Punjab & Anr Etc*, Criminal Appeal No. 528 of 2009, Supreme Court of India, Criminal Appellate Jurisdiction, 4 November 2011, para 7. The Supreme Court held that in view of "the provisions of Art 21 of the Constitution of India, any form of torture or cruel, inhuman or degrading treatment is inhibited. Torture is not permissible whether it occurs during investigation, interrogation or otherwise... The State must protect victims of torture ill treatment as well the Human Rights defender fighting for the interest of the victims... Therefore the State must ensure prohibition of torture, cruel, inhuman or degrading treatment to any persons particularly at the hands of any State agency/police force."
- 104 People's Watch, *Torture and Impunity in India*, National Project on Preventing Torture in India (NPPTI), November 2008, available at: www.peopleswatch.org/preventing_torture.php.
- 105 National Human Rights Commission Annual Reports, 2001-2010 (quoted in Asian Centre for Human Rights, *Torture in India*, 2011, p1).
- 106 Common methods of torture in Kashmir and the Northeast include: assault, placement of an iron rod on the legs on which many persons sit, placement of a burning stove between the legs and administration of electric shocks to the genitals.
- 107 See report in the Guardian available at: <http://www.guardian.co.uk/world/2010/dec/16/wikileaks-cables-indian-torture-kashmir>

- 108 UPR I Recommendation 12: Ratify the Convention on Enforced Disappearances; India's 2011 Pledge: "India remains committed to ratifying the Convention on Enforced Disappearances."
- 109 Human Rights Alert submitted four cases of enforced disappearances to the Working Group on Enforced Disappearances between 2010 and 2011. It is believed that 8,000 to 10,000 people have been subject to enforced disappearances in Kashmir. See Association of Parents of Disappeared Persons' statement, available at: <http://www.disappearancesinkashmir.com/>
- 110 The National Crime Records Bureau Report 2010, reveals higher incidence of police firing and resultant civilian casualties and injuries for all conflict zones, with J&K ranking the highest under each category followed by Uttar Pradesh and Chhattisgarh, National Crime Records Bureau Report (2010), page 567.
- 111 Fact-finding report by Human Rights Alert.
- 112 See: Kashmir Observer, *Machil Killings Exhumed*, May 2010, available at: http://www.kashmirobservers.net/index.php?option=com_content&view=article&id=4689:machil-killing-victims-exhumed-three-held-so-far&catid=15:top-news&Itemid=2).
- 113 Chairperson of the Association of Parents of Disappeared Persons, Parveena Ahanger's 16 year old son was picked up by soldiers and is since disappeared. Police investigations accused three Army men for the disappearance, following which the State government sought sanction for prosecution from the Union Home Ministry in 1997. The sanction was denied on the ground of 'improper investigation'. See: Tehelka Magazine, Umar Baba, *Screams from the Valley*, Vol 7, Issue 52, January 01, 2011, available at: http://www.tehelka.com/story_main48.asp?filename=Ne010111SCREAMS_FROM.asp
- 114 International People's Tribunal on Human Rights and Justice in Indian-administered Kashmir (IPTK), *Buried Evidence*, available at: <http://www.kashmirprocess.org/reports/graves/BuriedEvidenceKashmir.pdf>.
- 115 While confirming the presence of such graves, the SHRC took suo moto cognizance of the matter and ordered the state government to conduct an investigation for ascertaining the identity of the buried.
- 116 MASUM, *BSF Enjoy Impunity*, available at http://www.masum.org.in/rabiul_aug2011.htm; Also See Human Rights Watch, MASUM, Odhikar report, "Trigger Happy: Excessive Use of Force by Indian Troops at the Bangladesh Border," 2010, available at <http://www.hrw.org/reports/2010/12/09/trigger-happy-0>.
- 117 The UN Principles on the Effective Prevention and Investigation of Extra-legal, Arbitrary and Summary Executions specifically call for the codification of the offence of 'extralegal, arbitrary and summary executions. Similarly, codification of enforced disappearance as a criminal offence is required of state parties under the International Convention for the Protection of All Persons from Enforced Disappearance, 2006.

- 118 See: *Andhra Pradesh Civil Liberties Committee v. The Government of Andhra Pradesh & Ors*, A.P High Court, W.P.No. 15419/2006. The court ruled in 2009 that “whether an alleged perpetrator is named or not”, the case “shall be recorded and registered as FIR and shall be investigated”. It further held that “a magisterial enquiry (inquest) is neither a substitute nor an alternative” to recording an First Information Report (FIR) and conducting an investigation “into the facts and circumstances of the case and if necessary to take measures for the discovery and arrest of the offender”. The AP Police Association (APPA) has appealed this judgement to the Supreme Court, where it is pending decision.
- 119 The UN Working Group on Arbitrary Detentions has opined that the use of preventive detention laws by the Indian government should conform to international standards and obligations of the Government of India and that India should consider bringing domestic law in line with International law (mainly referring to PSA). Opinion no.45/2008 (India) adopted on 26 November 2008, Opinions adopted by the Working Group on Arbitrary Detention, Human Rights Council Thirteenth Session, 2 March 2010, A/HRC/13/30/add.1, paras. 51 & 53, available at <http://www2.ohchr.org/english/bodies/hrcouncil/docs/13session/A-HRC-13-30-Add1.pdf>
- 120 Sec 8(4), CSPSA., Detailed analysis of the act by Peoples Union for Democratic Rights, available at: http://cpjc.files.wordpress.com/2007/07/memo_on_chattisgarh_bill.pdf
- 121 Amnesty International, *A Lawless Law: Detentions under the Public Safety Act*, 2011, available at: <http://www.amnesty.org/en/library/asset/ASA20/001/2011/en/cee7e82a-f6a1-4410-acfc-769d794991b1/asa200012011en.pdf>
- 122 RTI application filed by People’s Union for Civil Liberties (PUCL), Chhattisgarh unit.
- 123 An RTI application filed by Chhattisgarh Mukti Morcha revealed the presence of 2,499 detainees in Chattisgarh (including Kanker and Jagdalpur districts). Most of these detainees are adivasis.
- 124 In 2011, the J&K Cabinet has approved certain amendments to the PSA.
- 125 The 2010 protests were primarily in reaction to a series of teenager killings by the paramilitary and the police.
- 126 A person booked under PSA can be detained for up to two years , with the possibility of reinstating those charges on expiry of the said period Sec. 18, J&K Public Safety Act, 1978.
- 127 For example, 334 persons were booked under PSA in J&K between January and February 2010. Data provided by the J&K Home Department in response to an opposition legislator’s question in the Legislative Assembly in March, 2010. Moreover, estimates place administrative detentions in Kashmir over the past two decades between 8000 to 20000 in Kashmir, See Amnesty International, *A Lawless Law: Detentions under the Public Safety Act*, 2011, available at:

- <http://www.amnesty.org/en/library/asset/ASA20/001/2011/en/cee7e82a-f6a1-4410-acfc-769d794991b1/asa200012011en.pdf>, page 12; For more details see: Asian Centre for Human Rights' report, *Juveniles of Jammu and Kashmir: Unequal Before Law and Denied Justice in Custody*, 2011 (It studies 51 representative cases), available at: <http://www.achrweb.org/reports/india/JJ-J&K-2011.pdf>.
- 128 India's *Juvenile Justice (Care and Protection) Act*, 2000 sets majority at 18.
- 129 Convention on the Rights of the Child, 1989. For more details see: Asian Centre for Human Rights' report, *Juveniles of Jammu and Kashmir: Unequal Before Law and Denied Justice in Custody*, 2011 (It studies 51 representative cases), available at: <http://www.achrweb.org/reports/india/JJ-J&K-2011.pdf>
- 130 The *Border Security Force (Amendment) Bill*, 2011. At present, counter-insurgency and 'anti-Naxal' operations, 'require state police personnel, who have the power of "search, seizure and arrest" to accompany them.'
- 131 The Ministry of Home Affairs' Annual Report (2009-10) states that the role of the state police in counter militancy/terrorism operations in J&K has "progressively increased with commendable results."
- 132 As per People's Union for Civil Liberties (PUCL) Chhattisgarh, about 54,543 hectares of forest land are being used as an army training camp in Narainpur, where training is being imparted in jungle warfare. For further details see: http://www.telegraphindia.com/1110414/jsp/frontpage/story_13853082.jsp.
- 133 For example, in the Northeast, public hearings challenging mega projects have been disrupted and protestors tortured and beaten.
- 134 The United Nations Code of Conduct for Law Enforcement Officials, 1979, is hardly ever respected in these regions.
- 135 *Safai karamcharis* are workers involved in public cleaning work.
- 136 *Anganwadi* teachers are those working in ICDS centres.
- 137 By the Special Task Force and armed forces.
- 138 Divisional Commissioner Kashmir confirmed that 110 protestors were killed during incidents spreading through only a few months. See: Hindustan Times, *Valley victims accept compensation, quietly*, February 20, 2011, available at: <http://www.hindustantimes.com/Valley-victims-accept-compensation-quietly/H1-Article1-664528.aspx#>
- 139 Both physical and mental disabilities; Psychological disorders, particularly "Post-Traumatic Stress Disorder (PTSD)", have been reported.- Arooj Yaswi & Amber Haq, *Prevalence of PTSD Symptoms and Depression And Level of Coping Among the Victims of Kashmir Conflict*, Journal of Loss and Trauma, Vol 13, 2008, p471-480.
- 140 For example in Kashmir, Wamiq Farooq (13 years) was killed by a tear gas shell fired by police, while he was out playing. Yawar Ibrahim (13 years) was seriously injured in his head by a tear gas shell, when he was on his way to buy butter. He is

now speech impaired and the lower half of his body is completely paralyzed.

- 141 For example in West Bengal (Sunamukhi village), six women were raped and tortured by the police in 2010 with one beaten to death. In Chhattisgarh, six women raped by members of Salwa Judum still await justice from the Court and many other complaints of sexual violence in Central India are yet to be probed.
- 142 In the 2010 rape and murder cases in Shopian (Kashmir), the investigation lacks credibility and appears more like a cover up.
- 143 Deobari Basumatary was raped by the paramilitary force in front of her husband in Kokrajhar, Assam. See: *The Sentinel*, *Jawans 'gang rape' physically impaired woman in Kokrajhar district*, September 11, 2011, available at: <http://www.sentinelassam.com/mainnews/story.php?sec=1&subsec=0&id=89475&dtP=2011-09-13&ppr=1>
- 144 See: *Justicia*, *Gang Rape by Indian Army soldiers in front of husband at Indo-Bhutan border*, September 18, 2011, available at: <http://www.justicia.in/gang-rape-by-indianarmy-in-front-of-husband-at-indo-bhutan-border/>
- 145 These include: *The Armed Forces (Assam & Manipur) Special Powers Act (AFSPA) 1958*, and the *J&K Armed Forces Special Powers Act 1990*, *J&K Public Safety Act 1978 (PSA)*, *Chhattisgarh Special Public Security Act 2005 (CSPSA)*, *Nagaland Security Regulation Act 1962*, *Unlawful Activities (Prevention) Act 1967 (UAPA)*, and *Enemy Agents Ordinance 1948*.
- 146 In response to a RTI application by the Jammu and Kashmir Coalition of Civil Societies, the J&K State Home Department revealed that from 1989 to 2011, the government of J&K sought sanctions for prosecution under section 7 of AFSPA in only 50 cases. Out of these, sanction for prosecution is awaited in 16 and has been declined in 26 cases, while in 8 cases sanction has been 'recommended', without elaborating on what 'recommended' status entails. Thus in effect, not a single unequivocal sanction has been granted in all the 50 cases.
- 147 *The Protection of Human Rights Act, 1993*, Sec 19, available at: <http://nhrc.nic.in/Publications/HRAActEng.pdf> See: *Concluding Observations of the Human Rights Committee, India*, 4th August 1997, CCPR/C/79/Add.81, para 22, available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.79.Add.81.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.81.En?OpenDocument).
- 148 The phenomenon is particularly acute in Arunachal Pradesh.
- 149 See: *Nandini Sundar and Ors v. State of Chhattisgarh*, Supreme Court, Writ Petition (C) No.250 of 2007, paras 18, 25, 26 ; Also see: *Ibid Interlocutory Appeal No.7 of 2011*, order dated 18/11/2011.
- 150 As studied by the People's Union for Civil Liberties, Chhattisgarh; About 40,000 paramilitary forces are posted in Bastar, who have started military training camps, which has caused displacement.
- 151 Internal Displacement Monitoring Centre, available at: [http://www.internal-displacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/90E174CA3D9CF](http://www.internal-displacement.org/idmc/website/countries.nsf/(httpEnvelopes)/90E174CA3D9CF)

- 14CC1257790002402F2?OpenDocument. The majority of those displaced from conflict have been living in displacement for years, as they have not been able to find a durable solution to their displacement – be it sustainable return, local integration, or settlement elsewhere in India [(United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA), Guiding Principles on Internal Displacement, 1998; United Nations General Assembly (UN GA), Framework on Durable Solutions for Internally Displaced Persons, 9 February 2010)].
- 152 Ibid, 250,000 Kashmiri Pandits displaced from the Kashmir Valley since 1990 (Reuters AlertNet, 19 June 2010); about 15,000 people in Poonch district of J and K state who were cut off from their land and livelihoods by border fencing in 2009 (The Hindu, 20 December 2009).
- 153 Ibid, 47,000 people displaced by Bodo-Muslim and Bodo-Santhal violence in 1993, 1996 and 1998 and staying in camps in Kokrajhar and Bongaigaon districts of Assam state (ACHR, 6 June and 19 November 2009); 125,000 people displaced by Bodo-Muslim violence in 2008 staying in camps in Darrang and Udalguri districts of Assam state (ACHR, 6 August 2009; AITPN, June 2009); 4,000 people displaced by violence between Khasis and Nepali-speakers in 2010 in the Assam-Meghalaya border region (Nepal News, 21 May 2010); 31,703 Brus displaced from Mizoram state to Tripura state in 1997 and 2009 (PTI, 15 August 2010).
- 154 Ibid, 40,000 *Adivasis* living in displacement at the end of 2009, of whom half were staying in camps in Chhattisgarh and half were scattered across Andhra Pradesh (AI, 27 May 2010, p.167); 8,000 *Adivasis* living in displacement in West Bengal (AI, 27 May 2010, p.167); more than 100,000 people displaced from Chhattisgarh since June 2009 (Deccan Chronicle, 12 June 2010). As of 2011, In Chhattisgarh, about 14,000 people are living in camps. See details furnished by the government of Chhattisgarh in *Nandini Sundar & Ors. v. State of Chhattisgarh*, Supreme Court, Writ Petition (C) No.250 of 2007. The Supreme Court had ordered the petitioners in the case to prepare a rehabilitation plan, the starting point of which was to conduct a survey but the state government is refusing to act on it.
- 155 For more information on the RTI Act and the many challenges in its implementation, see: www.righttoinformation.info
- 156 This topic is discussed at length in the UPR submission of the Commonwealth Human Rights Initiative (a member of WGHR), Access to Justice in India.
- 157 Including Section 124A of the Indian Penal Code (IPC).
- 158 The Act allows arrest without warrant of persons with disabilities.
- 159 See: National Human Rights Commission, Annual Report 2008-2009, p. 186, available at: www.nhrc.nic.in/Documents/AR/Final%20Annual%20Report-2008-2009%20in%20English.pdf. Also see: Concluding Observations of the Human Rights Committee: India, 1997, CCPR/C/79/Add.81, para 23.
- 160 This trend is particularly acute in the case of women reporting domestic violence.
- 161 For example, the mandatory need to produce arrested persons before a magistrate

within 24 hours and guidelines on arrest.

- 162 See: Concluding Observations of the Committee on the Elimination of Racial Discrimination: India, 2007, CERD/C/IND/CO/19, para 14; Concluding Observations of the Committee on the Elimination of Racial Discrimination: India, 2007, CERD/C/IND/CO/19, para 26
- 163 *Prakash Singh and Others v. Union of India and Others* (2006) 8 SCC 1.
- 164 A total of 13 states have passed new Police Acts since the Prakash Singh judgment, and only a handful more have draft Bills waiting to be passed. Alarming, the new acts give statutory sanction to many bad practices (including executive control of the police, the curtailing of existing legal safeguards, and the dilution of accountability). The independence of new accountability mechanisms is diminished in many states through politicised composition, weakened powers, or in extreme cases, refusal to establish these bodies (See: *Complaints Authorities: Police Accountability in Action*, Commonwealth Human Rights Initiative, 2009, available at: http://www.humanrightsinitiative.org/publications/police/complaints_authorities_police_accountability_in_action.pdf).
- 165 Right recognized under articles 21 (right to life) and 39A of the Constitution. Article 39A provides that State shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disability.
- 166 According to a study conducted by the Centre for Social Justice in seven states (Rajasthan, Chhattisgarh, Madhya Pradesh, Jharkhand, Bihar, Orissa and Uttar Pradesh) only 20% of litigants were aware of free legal aid services and 52.2% of surveyed litigants had to pay money to lawyers appointed by the State Legal Services Authority, available at: http://www.centreforsocialjustice.net/access_to_justice.html; Legal aid rarely reaches persons living with physical, mental and multiple disabilities living in custodial institutions like mental asylums, 'beggars' home' and other state institutions for women and children.
- 167 Data obtained in response to an RTI application regarding the utilization of funds for the year 2009-2010. Under-utilization of funds amount to the following in other states: Jharkhand (53.87%), Uttar Pradesh (44.8%) and Orissa (35.16%).
- 168 See: *Supreme Court, NHRC v. State of Gujarat* (2003): "... no law has yet been enacted, not even a scheme has been framed by the Union of India or by the State Government for giving protection to the witnesses". Over 560 witnesses have been given central paramilitary protection by the Supreme Court before, during, and after the trial, following the impleadment application by Citizens for Justice and Peace (CJP).
- 169 *Neelam Katara v. Union of India* (judgment dated 14.10.2003), Bimal Kaur Khalsa AIR 1988 P&H 95 (protection of witness from media).

- 170 In the Gujarat genocide carnage cases of 2002, public prosecutors were found by the Supreme Court of India to be acting more like defence counsel and their close allegiance to political parties in power was acknowledged and criticized. See: 2004 SOL Case No. 295, *Zahira Habibullah Shaikh & Anr v. State of Gujarat & Ors.*
- 171 Not only were the more serious and criminally indicting sections of the law deliberately omitted from the charge sheet by India's apex court, despite the Central Bureau of Investigation urging their inclusion, powerful men from the multinational's Board of Directors were let off the hook. This despite the evidence that showed criminal inaction of a high level manifest in not just the plant's design but also in allowing exposure to a poisonous and toxic gas.
- 172 In the 1984 Delhi massacre of over 3,500 Sikhs, following the assassination of former Prime Minister Indira Gandhi by two of her bodyguard who happened to be Sikhs, there has been a shocking level of complicity in the non-punishment of perpetrators. Twenty-five years later, the politically powerful masterminds and police officers guilty of dereliction of duty remain unpunished. Barely 20 persons have been convicted for the massacre of 2,733 people (the official death toll).
- 173 The genocidal carnage in Gujarat in 2002 is still being prosecuted though several efforts have been made to undermine the justice effort underway. An investigation into criminal culpability at the highest level (the case is SLP 1088/2009, *Zakia Ahsan Jafri & Anr v. State of Gujarat & Ors*) has been probed and will now be addressed by the Indian Supreme Court.
- 174 See paragraph 73.
- 175 See: Concluding Observations of the Human Rights Committee: India, 1997, CCPR/C/79/Add. 81, para 17, available at: [http://www.unhchr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.79.Add.81.En?OpenDocument](http://www.unhchr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.81.En?OpenDocument)
- 176 These changes should be introduced as well through a secular marriage and family law by way of an option. It is recommended that a law on matrimonial property be enacted to entitle women equal share in assets acquired during the period of marriage. See: Concluding Comments to India from the Committee on the Elimination of Discrimination against Women, CEDAW/C/IND/CO/3, 2007, para 55.
- 177 Data from the National Crime Records Bureau (NCRB). Atrocities against Dalit women include: Verbal abuse and sexual epithets, naked parading, pulling out of teeth, tongue and nails, and violence, including murder. Dalit women are also threatened by rape as part of collective violence by higher castes. See: Concluding Observations of the Elimination of Discrimination against Women: India, 2007, CEDAW/C/IND/CO/3, para 29.
- 178 The offence of rape, is the only significant offence and suffers from a narrow definition that criminalises only penile penetration of the vagina – despite advocacy for comprehensive reform spanning two decades. Rape prosecution requires medico forensic investigation, such as the two-finger test, that is irrelevant to the

- determination of rape (as reiterated by judicial pronouncements), and demeaning to women. The legal investigation and process subjects the victim-survivors to moral scrutiny and judgement, without securing victim or witness protection. As a result, sexual violence is rarely reported, and survivors who report often cannot assist prosecution through the length of long, hostile and demeaning proceedings.
- 179 See: Concluding Comments to India from the Committee on the Elimination of Discrimination against Women, CEDAW/C/IND/CO/3, 2007, para 23, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/243/98/PDF/N0724398.pdf?OpenElement>
- 180 Although sexual violence is integral part of sectarian violence – involving targeting of one community by another, there is no special rules of evidence or procedures to redress mob sexual violence; See: Concluding Observations of the Committee on the Elimination of Discrimination against Women: India, 2007, CEDAW/C/IND/CO/3, para 24.
- 181 People’s Union for Democratic Rights Report, ‘*Courting Disaster: A report on Inter-Caste Marriage, Society and the State*’ 2003 (New Delhi); AALI Report, National Consultation on Women’s Right to Chose, if, when, and who to Marry: Report and Recommendations, Lucknow (2003). A special law to address honour based crimes is needed, and changes are sought in the *Special Marriage Act*, a secular civil marriage law codified without reference to religion, to allow young people fleeing their hometown to marry easily.
- 182 See: Concluding Comments to India from the Committee on the Elimination of Discrimination against Women, CEDAW/C/IND/CO/3, 2007, para 26-27, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N07/243/98/PDF/N0724398.pdf?OpenElement> ; Studies suggest that although disguised as superstition, this practice is a means to divest single women of productive resources and land, or to punish those who transgress social norms, or refuse sexual advances. ‘Witch-hunting’ impacts the most marginalised women, and official crime records, although under-reported, show a prevalence in 13 states in India. See: 2nd NGO Shadow Report to CEDAW coordinated by NAWO, at pages 16-17, available at: <http://www.nawoindia.org/Second-NGO-Shadow-Report-on-CEDAW.asp>.
- 183 Under the Act domestic violence includes abuse or the threat of abuse whether physical, sexual, verbal, emotional or economic. It provides protection to the wife or female live-in partner or his relatives, extends its protection to women who are sisters, widows or mothers.
- 184 *Staying Alive*, Fourth Monitoring and Evaluation report 2010 on the Protection of Women from *Domestic Violence Act*, 2005, Lawyers Collective Women’s Rights Initiative, page 51
- 185 See: Concluding Observations of the Committee on Economic, Social and Cultural Rights: India, 2008, E/C.12/IND/CO/5, para 67.
- 186 *Vishaka and Ors v. State of Rajasthan* AIR 1997 SC 3011. The proposed bill has

- been widely critiqued for non-inclusion of domestic workers, and a penalty provision against complaints found to be false or malicious. Given the widespread nature of the problem and the silence that surrounds it, such a provision would deter complaints and be used for retribution.
- 187 A Report on Trafficking in Women and Children in India 2002-2003, NHRC – UNIFEM – ISS Project. Also see: *The Hindu*, *India among worst ranked countries in tackling human trafficking*, June 16, 2010, available at: <http://www.thehindu.com/news/article458420.ece>
- 188 Scheduled Tribes, Scheduled Castes, Other Backward Castes, ethnic minorities, tribal communities, undocumented migrant workers, stateless people or people in refugee camps.
- 189 Children are being trafficked for a number of purposes within and outside India. See: HAQ: Centre for Child Rights, *Still Out of Focus, Status of India's Children 2008*. <http://www.haqrc.org/publications/status-indias-children-2008>
- 190 See: Concluding Observations of the Human Rights Committee: India, 1997, CCPR/C/79/Add.81, para 31 & Concluding Observations of the Committee on Economic, Social and Cultural Rights: India, E/C.12/IND/CO/5, para 27 & 66.
- 191 Zeenews, *Sex workers' abuse during raids a concern in Pune*, April 16, 2011, available at: http://zeenews.india.com/news/maharashtra/sex-workers-abuse-during-raidsa-concern-in-pune_700338.html
- 192 Offences under the *Immoral Traffic (Prevention) Act*, 1956 include soliciting and engaging in sex work in public places. These provisions are not directed at trafficking but are meant to safeguard public decency and morality. Almost all convictions are against sex workers, including those who may have been trafficked.
- 193 National Network of Sex Workers and Layers Collective HIV/AIDS Unit (WGHR member), *Sex Workers Meet Law Makers*, 2011. Available online at: <http://www.lawyerscollective.org/files/Report%20Sex%20workers%20meet%20Law%20makers.pdf>
- 194 *Budhadevkarmaskar v. State of West Bengal*, Criminal Appeal No. 135 of 2010, Supreme Court of India.
- 195 Naz Foundation International (NFI) and Centre for Media and Alternative Communication (CMAC), *My Body is Not Mine - Stories of Violence and Tales of Hope, Voices from the Kothi community in India*, 2007; People's Union for Civil Liberties (Karnataka), *Police Violence Against Transgender Community*, Bangalore, September-December 2005 (2nd edition) and 2003 (1st edition); Human Rights Watch, *Epidemic of Abuse – Police Harassment of HIV/AIDS Outreach Workers in India*, Vol.14, No. 5 (c), July 2002; PUCL (Karnataka), *Human Rights Violations against Sexual Minorities in India*, February 2001; 'Less than Gay: A citizens report on the status of homosexuality in India' ABVA, 1991 (New Delhi). The threat of criminality routinely exposed the transgender and gay men to abuse, violence, extortion, and blackmail. Same sex desiring women

- experience compulsory heterosexuality, through marriage under family-community pressure, stigma and criminal charges for exercising choice, eviction, violence and report a high rate of suicide. See Rights in Intimate Relationships: Towards an Inclusive and Just Framework of Women's Rights and the Family (a resource book by Partners for Law in Development), 2010 (New Delhi) see pages 62-72. See also: Devaki Menon, coordinator of a lesbian support group, Sahayatrika (Kerala), in India Today, 25 December 2002.
- 196 *Naz Foundation India v. Government of National Capital Territory of Delhi and others*, (2009) 160 DLT 277.
- 197 Stigma and discrimination are common in the family, in housing, employment and other areas of public sphere. Reports of persecution of workplace, eviction, harassment and murder continue with impunity. See: The Hindu, *Mystery shrouds death of AMU professor*, April 8, 2010, available online at: <http://www.thehindu.com/news/national/article391265.ece>
- 198 For a more detailed analysis of the situation of children, please refer to the UPR stakeholders' joint report of the NGO child rights coalition.
- 199 Amended in 2006.
- 200 It identifies two sets of children: those "in need of care and protection" and those "in conflict with the law".
- 201 For example, *the Juvenile Justice Act* requires setting up Juvenile Justice Boards and Child Welfare Committees in all districts.
- 202 For a more detailed analysis on the situation of Scheduled Castes in India, please refer to the UPR stakeholders' report initiated by the National Campaign on Dalit Human Rights (NCDHR), on behalf of a large coalition.
- 203 Scheduled Castes account for around 166.6 million people in India, representing 16.23% of the total population (2001 Census).
- 204 The tribal population of India is 84.3 million, constituting 8.2% of the total population (2001 Census).
- 205 Than those available under the Constitution (Article 21, 17 and 46), Indian Penal Code 1869, *Protection of Civil Rights Act*, 1955. It defines 'atrocities' for the first time, enhances punishment for the offences and addresses various crimes affecting social disabilities, property, malicious prosecution, political rights and economic exploitation. It also defines legislation under various mechanisms to enforce the act in its later spirit which includes mechanisms for prevention, Special Courts, Special Public Prosecutors, investigation by Dy.S.P, State and District Level Vigilance and monitoring committees, Special Officers, Nodal Officers etc.
- 206 See: Concluding Observations of the Committee on Economic, Social and Cultural Rights: India, 2008, E/C.12/IND/CO/5, para 19 & 59.
- 207 This conviction rate is the fourth lowest in comparison to over 20 other legislations of a similar nature.
- 208 Between 1995 to 2010, 638,725 cases of atrocities are reported to have been

committed against SCs/STs . Of these, 67.16% (against SCs) and 79.83 % (against STs) were not registered under the Act.

- 209 Annual report of the Ministry of Social Justice and Empowerment (Government of India 2009), The highest number of manual scavengers was in Uttar Pradesh (2,13,975), followed by Madhya Pradesh (81,307), Maharashtra (64,785), Gujarat (64,195), Andhra Pradesh (45,822) and Assam (40,413). Also see: Concluding Observations of the Committee on the Elimination of Racial Discrimination: India, 2007, CERD/C/IND/CO/19, para 23.
- 210 A large number of 'manual scavengers' are still employed in the Indian railways. In the recent case of *Safai Karamchhari Andolan & Ors v. Union of India & Ors*, Writ Petition (C) No. 845 of 2011, the petitioner noted that the 1993 Act was not being implemented effectively and that manual scavengers were being employed in the military engineering services, the army, public sector undertakings and particularly at the Indian Railways. The Ministry of Railways has chosen to deny the existence of manual scavenging in the Indian Railways entirely, most recently in the affidavit dated 21.3.2011 filed before the Court. However, the Court ordered a change of the toiletry system in the trains, raising public awareness on public hygiene, and prohibited manual carrying of human excreta.
- 211 Annual Report of the Ministry of Social Justice and Empowerment, 2009.
- 212 Also known as Special Component Plan.
- 213 During the Financial Year 2011-12, the central government has allocated Rs. 30,551 crore (USD 5,964,455) instead of Rs. 55,121 crore (USD 10,760,702) [1 crore equals 10,000,000; exchange rates in USD as of December, 2011.] The Delhi government spent money from the SCP for the 2010 Commonwealth Games (for more information see www.hic-sarp.org), Madhya Pradesh used the money for large dams and Uttar Pradesh spent the money for the construction of engineering and medical colleges.
- 214 The UN Declaration on the Rights of Indigenous Peoples is applicable to India's Scheduled Tribes, including adivasis and other tribal and indigenous communities.
- 215 See: Concluding Observations of the Committee on the Elimination of Racial Discrimination: India, 2007, CERD/C/IND/CO/19, para 19.
- 216 A 2007 study conducted in seven states reveals that the guidelines of the Ministry of Social Justice and Empowerment, Ministry of Tribal Affairs, and Planning Commission on implementation of the Scheduled Caste and Tribal Sub Plans (SCSP and TSP) are not being followed. It also states that funds to the tune of 60-65% are being allocated in 'indivisible' sectors like irrigation, industry, roads and bridges which have only 10-15% coverage of SC and ST areas and even less percentage of actual beneficiaries. Source: *Livelihood Options and Asset Creation in SCSP and TSP Schemes and Impacts among SCs and STs*, Planning Commission, November 2007.
- 217 Intellectual disability, autism, cerebral palsy and multiple disabilities.

218 Including the Constitution.

219 United Nations Convention on the Rights of Persons with Disabilities 2007, ratified by India in 2007.

220 See Sacchar Committee Report on the social, economic and educational status of Indian Muslims, available at: <http://minorityaffairs.gov.in/sachar> and Ranganath Mishra Commission report, available at: minorityaffairs.gov.in/ncrlm

221 See for example: Seven men falsely implicated by the police in the 2006 Malegaon bomb blasts. – The Hindu, *Malegaon blasts accused want dignity back*, November 17, 2011, available at: <http://www.thehindu.com/news/states/other-states/article2633599.ece>

222 See: Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, mission to India, 2009, A/HRC/10/8/Add.3, para 63

223 See: Report of National People's Tribunal on Kandhamal, 22-24 August 2011, New Delhi. Available at: www.nationalsolidarityforum.org. As reported, only 24 people have been recently convicted by the court in the case. See: Indian Express, *Court convicts 24 people for Kandhamal riots*, October 1, 2011, available at: <http://www.indianexpress.com/news/court-convicts-24-people-for-kandhamal-riots/854050/>

224 The High Court of Gujarat has asked the government of Gujarat to implement the Prime Minister's relief package, however, those that were not enumerated by the state government in the first stage have been totally left out. These 5000 "families live in makeshift colonies hastily constructed by NGOs and community organization, on the outskirts of towns and villages, both literally and symbolically, on the margins of society". See: Centre for Social Justice and Anhad, *The Uprooted: Caught between Existence and Denial*, 2007. For more information see *The Wretched: A profile*, Act Now for Harmony and Democracy & Antarik Visthapit Hak Rakshak Samiti, 2008.

225 See: Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, mission to India, 2009, A/HRC/10/8/Add.3, para 67

226 United Nations High Commissioner for Refugees (UNHCR) 2011, available at: <http://www.unhcr.org/pages/49e45b156.html>

227 See: Concluding Observations of the Committee on Economic, Social and Cultural Rights: India, 2008, E/C.12/IND/CO/5, para 12 & 50.

228 See: Statement of the Special Rapporteur on the situation of human rights defenders following her visit to India in 2011, available at <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10660&LangID=E>

229 For example, tapping of phones, surveillance of emails and tracking of activities of human rights defenders on social networking sites. In his annual report, the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, Frank La Rue, expressed deep concern "by actions taken by States against individuals communicating via the Internet, frequently justified broadly as

being necessary to protect national security or to combat terrorism. While such ends can be legitimate under international human rights law, surveillance often takes place for political, rather than security reasons in an arbitrary and covert manner. For example, States have used popular social networking sites, such as Facebook, to identify and to track the activities of human rights defenders.” 26 April 2011, A/HRC/17/27, para. 54, available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf

- 230 See for example case of arbitrary arrest on 25 November 2011 in Orissa of Abhay Sahu, the leader of POSCO Pratirodh Sangram Samiti (PPSS).– First Post, *Anti-POSCO leader Abhay Sahu arrested*, November 26, 2011, available at: <http://www.firstpost.com/india/anti-posco-leader-abhay-sahu-arrested-140774.html>; Pohang Steel Company (POSCO) from South Korea is setting up a steel plant at Paradeep, Odisha, with a total investment of US \$12 billion. The proposed plant and port will adversely affect 11 villages and hamlets. According to the local leadership of the movement against POSCO, more than 4000 families and a population of around 22,000 will be affected by the project. Since POSCO launched the project, villagers have been opposing the project, and calling for the protection of their land and the forest where they have been living for generations.
- 231 See for example, case of human rights defender Gautam Navlakha from Peoples’ Union for Democratic Rights (PUDR) detained by the police at Srinagar airport on 28 May, 2011 and denied entry into J&K. For details: www.pudr.org/old/index.php?option=com_content&task=view&id=283&Itemid=60
- 232 For example, the house of reputed human rights defender Kavita Srivastava (General Secretary, People’s Union for Civil Liberties) was raided by the Chhattisgarh police on 3rd October, 2011. – See PUDR *condemns the raid on the house of Kavita Srivastav, a noted human rights activist and General Secretary of People’s Union for Civil Liberties*, available at: <http://www.pudr.org/content/pudr-condemns-raid-house-kavita-srivastav-noted-human-rights-activist-and-general-secretar-0>
- 233 See for example case of human rights defender Arun Ferreira (activist working on the rights of tribals, slum dwellers and poor farmers) first arrested in 2007 on charges, among others, to be a Naxalite, tortured in prison, acquitted of all eight cases lodged against him in September 2011, released from the Nagpur central jail on 27 September 2011, seized outside the prison gate by a group of men in civil clothes moments after his release, and finally arrested in a fresh case. See: www.freebinayaksen.org/?p=2697
- 234 Sec 124 (Sedition) and Sec 122 (waging war against the state) of Indian Penal Code, *The Prevention of Seditious Meetings Act*, 1911. For example: The well known doctor and human rights activist Binayak Sen from the Peoples Union for Civil Liberties (PUCL) has been imprisoned for years under *the Unlawful Activities Prevention Act*, for fabricated accusations of having Maoist connections.

- 235 NDTV, *Activist beaten to death for exposing NREGA scam in Jharkhand*, available at: <http://www.ndtv.com/article/india/activist-beaten-to-death-for-exposing-nrega-scamin-jharkhand-89038>
- 236 Since 2010, 12 RTI activists have been murdered. See: RTI Activists: *Sitting Ducks of India* 2011 report, Asian Centre for Human Rights' (member of WGHR), available at: <http://www.achrweb.org/ihrhq/issue3-4/India-Sitting-Ducks-2011.pdf>
- 237 For example: Sec 12(6) provides for the expiry of the *Foreign Contribution Regulation Act*, 2010 certificate after 5 years, after which permission to receive foreign funds has to be sought again from the Central Government.
- 238 National Human Rights Commission (NHRC), National Commission for Women, National Commission for the Protection of Child Rights, National Commission for Scheduled Castes, National Commission for Schedules Tribes and National Commission for Minorities, Central Information Commission, and Central Commissioner for Persons with Disabilities.
- 239 See: Report and Recommendations of the Session of the Sub-Committee on Accreditation, International Coordinating Committee of National Institutions for the promotion and protection of Human Rights, 2011, available at: <http://nhri.ohchr.org/EN/WhoWeAre/News/Lists/News/DispForm.aspx?ID=38&ContentTypeId=0x0104006A3D2D731523E24B9C932DE5D6E5EDFF>
- 240 For example, State Commissions for the Protection of Child Rights have been established in only 12 states.
- 241 For example, the position of Chairperson is vacant in 6 of the 20 State Human Rights Commissions (Assam, Gujarat, Himachal Pradesh, Madhya Pradesh, Manipur and Rajasthan). See: www.nhrc.nic.in
- 242 See also: recommendations in the Statement of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, as she concludes her visit to India, available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=10660&LangID=E>
- 243 Announcement made in September 2011.

ANNEX A

List of WGHR Members

Organisations

ActionAid India | www.actionaid.org/india

Asian Centre for Human Rights | www.achrweb.org

Citizens for Justice and Peace | www.cjponline.org

Commonwealth Human Rights Initiative | www.humanrightsinitiative.org

FIAN India | www.fian.in

HAQ: Centre for Child Rights | www.haqcrc.org

Housing and Land Rights Network | www.hic-sarp.org

Human Rights Alert

India Alliance for Child Rights

Lawyers Collective | www.lawyerscollective.org

Multiple Action Research Group | www.ngo-marg.org

National Campaign on Dalit Human Rights | www.ncdhr.org.in

Partners for Law in Development | www.pld-india.org

People's Watch | www.peopleswatch.org

Independent experts

Ms. Vrinda Grover | *Lawyer*

Dr. Rajkumar | *Advisor to human rights organisations*

Prof. Babu Mathew | *Visiting Professor, National Law University, Delhi*

Advisers

Ms. Indira Jaising | *Member, UN Committee on the Elimination of Discrimination against Women*

Mr. Anand Grover | *Special Rapporteur on the right to health, UN Human Rights Council*

Convener

Mr. Miloon Kothari | *Former Special Rapporteur on adequate housing, UN Human Rights Council*

ANNEX B

Endorsements

List as of 28 November 2011, more expected before India's UPR II

List of organisations endorsing this report

- 1 AccessAbility
- 2 Ahimsa Group-PKFoundation
- 3 AICCTUC & Orissa Lokaadhikar Manch
- 4 All India Christian Council
- 5 Andhra Pradesh Civil Liberties Committee
- 6 Association for Advocacy and Legal Initiatives
- 7 Association of Parents of Disappeared Persons
- 8 Bachpan Bachao Andolan
- 9 Banglar Manabdhikar Suraksha Mancha
- 10 Barak Human Rights' Protection Committee
- 11 Bhartiya Jan Sewa Ashram
- 12 Borok People's Human Rights Organisation
- 13 Center for Mountain Dalit Rights
- 14 Centre for Organization Research & Education
- 15 Centre for Social Equity and Inclusion
- 16 Centre for Social Justice
- 17 Civil Society Women's Organisation
- 18 Centre for the Sustainable use of Natural and Social Resources
- 19 Dalit Bahujan Front
- 20 Darshan
- 21 DICE Foundation
- 22 EKTA, Madurai
- 23 FIAN, Rajasthan
- 24 Forum Against Oppression
- 25 Goti Mukti Andolan
- 26 HOPE
- 27 Human Rights Law Network

- 28 Humanity Welfare Organisation Helpline
- 29 Impulse NGO Network
- 30 Indraprastha Public Affairs Centre (IPAC)
- 31 Institute of Human Rights Education
- 32 Jagori
- 33 Jal Jungle Jamin Surakhya Manch
- 34 Jammu & Kashmir Coalition of Civil Societies
- 35 Jan Sahas & Garima Abhiyan
- 36 Jana Unnayan Samiti Tripura
- 37 Jananeethi
- 38 Janhit Vikas Trust
- 39 Justice and Peace Commission
- 40 Koshish Charitable Trust
- 41 Lesbians and Bisexuals in Action
- 42 Mahila Samakhya
- 43 Manab Adhikar Sangram Samiti
- 44 Mountain Children Foundation
- 45 Mphasis
- 46 National Centre for Advocacy Studies,
- 47 National Dalit Movement for Justice
- 48 Nirantar
- 49 North East Network
- 50 People's Union for Civil Liberties, Andhra Pradesh
- 51 People's Union for Civil Liberties, Chhattisgarh
- 52 People's Union for Civil Liberties, Jharkhand
- 53 People's Union for Civil Liberties, Karnataka
- 54 People's Vigilance Committee on Human Rights
- 55 Peoples' Democratic Forum
- 56 Phoenix Organisation for Woman and Child
- 57 PRASHANT – A Centre for Human Rights, Justice and Peace
- 58 RAJAGIRI
- 59 Rashtriya Jagriti Seva Sansthan, Jaunpur
- 60 Right to Food Campaign, Jharkhand

- 61 Right to Food Campaign, Odisha
- 62 SASVIKA
- 63 Sewartham
- 64 Shahri Adhikar Manch Begharon Ke Saath (SAM-BKS)
- 65 Social Awareness For Democratic Art and Research (SAFDAR)
- 66 South India Cell for Human Rights Education and Monitoring (SICHREM)
- 67 St Xavier Social Service Society (SXSSS)
- 68 Tarshi
- 69 Tarun Chetna Sansthan
- 70 TEDS Trust
- 71 Th e Hunger Project
- 72 Th e SUN
- 73 Vanvasi Chetna Ashram
- 74 Women's Research and Action Group
- 75 World Vision India

List of experts endorsing the report in their individual capacity

Organisations are listed with the names of experts for the purpose of identification rather than endorsement of the report by their institution.

- 1 Aasha Ramesh | *Women's Activist and Gender Consultant*
- 2 Arun Kumar | *Indian Council of Trade Union*
- 3 Farrukh Faheem | *Delhi University*
- 4 Irengbam Arun | *Journalist*
- 5 Nandini Sundar | *Delhi School of Economics*
- 6 Rajpal | *Social Activist*
- 7 Sheila Jayaprakash | *Advocate*
- 8 Sudhamani N | *Independent Consultant*
- 9 Sumit Baudh | *Advocate, Voices Against 377*
- 10 Swagata Raha | *Independent Consultant on Human Rights Law*
- 11 Wajahat Ahmad | *Islamic University of Science and Technology*

ANNEX C

Overview of WGHR national and regional consultations on the UPR

1. Consultative workshop on the UPR process (April 2011)

WGHR organised a national consultative workshop on the Universal Periodic Review (UPR) process in New Delhi on the 4th and 5th of April 2011. It brought together representatives from the Ministry of External Affairs, the National Human Rights Commission (NHRC), various UN agencies, diplomats and civil society.*

The workshop achieved three main objectives, namely:

- Provided training to all the actors on how best to engage with the UPR process;
- Examined contemporary and critical human rights issues in India;
- Provided a first of its kind forum for dialogue between various stakeholders (government, national human rights institutions and members of civil society) on the UPR process both in terms of implementation of UPR I recommendations and preparation for UPR II.

2. Regional UPR consultations (August-September 2011)

In order for the WGHR stakeholders' report to reflect the current human rights challenges in the country as precisely as possible, WGHR held a series of five regional consultations with civil society actors across India from 28 August to 28 September 2011. These consultations aimed at creating a broad and inclusive movement around the UPR process and gathering precise information that would feed into WGHR's stakeholders' report.

Apart from training participants on the UPR process, the regional consultations aimed at gathering testimonies, documentation and information on the most pressing human rights challenges in each region. In order for the consultations to be as effective as possible, WGHR chose a thematic approach, where a series of five themes were suggested to the participants as basic framework for group discussions. The given themes were:

1. Access to Justice
2. Economic, Social and Cultural Rights (ESCR) & the Right to Development

3. Discrimination
4. Militarisation & Security Legislation and Apparatus
5. Human Rights Defenders

The groups conducted discussions on these themes looking at how they affect constituencies most vulnerable to human rights abuse. These constituencies include: (1) Dalits, (2) Indigenous People, (3) Economically Most Disadvantaged, (4) Women, (5) Children, (6) Religious or other Minorities, (7) Persons with Disabilities, (8) Lesbian, Gay, Bisexual, Transgender and Intersex (LGBT).

Further details about the regional consultations held:

North-Eastern Consultation

- Place: Shillong (Meghalaya)
- Dates: 28-30 August, 2011
- * *For full report on the consultation, see:*
www.wghr.org/pdf/Report%20on%20UPR%20Workshop.pdf
- States covered: Meghalaya, Assam, Arunachal Pradesh, Nagaland, Manipur, Mizoram, Sikkim and Tripura

Northern consultation

- Place: New Delhi
- Dates: 15-16 September, 2011
- States covered: Uttar Pradesh, Uttarakhand, Himachal Pradesh, Jammu & Kashmir, Punjab, Haryana and Delhi

Western consultation

- Place: Ahmedabad (Gujarat)
- Dates: 18-20 September, 2011
- States covered: Gujarat, Rajasthan, Madhya Pradesh, Maharashtra and Goa

Eastern consultation

- Place: Puri (Odisha)
- Dates: 22-24 September, 2011
- States covered: Bihar, Jharkhand, Chhattisgarh, West Bengal and Odisha

Southern consultation

- Place: Bengaluru (Karnataka)
- Dates: 26-28 September, 2011
- States covered: Andhra Pradesh, Karnataka, Tamil Nadu and Kerala

3. National consultation (11th and 12th October 2011)

In collaboration with the National Law University, Delhi (NLUD), WGHR organized a two days National Consultation on the UPR at the NLUD campus. It brought together more than 60 participants from across the country; representatives from each of the UPR regional consultations, WGHR members, and representatives from the National Human Rights Commission, the National Commission for Protection of Child Rights and UNICEF. WGHR's national consultation aimed at the following objectives: (i) consolidate the findings from the regional consultations, (ii) establish national patterns of human rights violations, (iii) prioritize the most pressing human rights issues, and (iv) continue a constructive engagement and dialogue between civil society and National Human Rights Institutions around the UPR process.

At the national consultation, consensus was reached that the final WGHR Stakeholders' report should focus on three main themes:

- ESCR and the Right to Development
- Militarisation and Security Laws/Apparatus
- Access to Justice

The final WGHR stakeholders' report reflects the highlights of the main outcomes of the regional and national consultations.

ANNEX D
WGHR Assessment of Implementation of UPR I Recommendations

S. No.	Recommendation	Response of India	Current status:	Further measures required:
1.	Expedite ratification of the Convention against Torture (United Kingdom, France, Mexico, Nigeria, Italy, Switzerland, Sweden) and its Optional Protocol (United Kingdom).	The ratification of the Convention against Torture is being processed by Government of India.	Domestic legislation (The Prevention of Torture Bill 2010) was drafted by the government and passed by the Lok Sabha (Lower House of Parliament) in May 2010 without any open consultation. Human rights groups held that the Bill did not conform to CAT and launched a campaign aimed at rectifying this. Consequently, in August 2010, the Rajya Sabha (Upper House) referred the Bill to a Parliamentary Select Committee. The Committee took into consideration submissions by human rights experts and drafted an alternate Bill that more closely aligns with the Convention.	The Select Committee has to present its re-drafted Bill to the Rajya Sabha. As the Bill has been totally altered, it has to be placed before and passed by both Houses of Parliament. It is crucial that there is no dilution of the Bill as amended by the Select Committee. Any dilution will stand foul of India's obligations under CAT and undermine meaningful ratification.
2.	Continue to fully involve the national civil society in the follow-up to the UPR of India, as was done for its preparation (United Kingdom).	Government of India accepts this recommendation	There have been no debriefing session or consultations with civil society after the 1st UPR in 2008. However, government representatives attended and participated actively in a national workshop on the UPR organised by civil society in April 2011. During the workshop, the government said it would consider posting the draft of UPR II national report on the website of the Ministry of External Affairs (MEA) and invite comments from civil society. As of now, there is no official information on whether the government is holding regional or national consultations in the run-up to UPR II.	The government should initiate public efforts to hold regional and national broad-based consultations on the UPR with civil society. As discussed at the UPR workshop, the government should also post a draft version of its national report on the MEA website well before the deadline for submission and invite comments from civil society.
3.	Continue energizing existing mechanisms to enhance the addressing of human rights challenges (Ghana);	Government of India accepts this recommendation	This is a broad recommendation which requires a sustained approach on many levels, including at the levels of the judiciary and the national and state human rights institutions.	In brief, WGHR suggests that any further action to "energize" existing mechanisms is geared towards strengthening institutional responses. Close attention should be given to the appointment procedures to ensure independence and autonomy of these institutions, in line with India's pledge at the UN GA regarding the independence of national human rights institutions.
4.	Encourage enhanced cooperation with human rights bodies and all relevant stakeholders in the pursuit of a society oriented towards the attainment of internationally recognized human rights goals (Chana);	Government of India is committed to continue its constructive engagement with international human rights bodies and relevant stakeholders in its pursuit of realization of all human rights for all.	This is a broad recommendation which requires a sustained approach on many levels. The recent announcement by the GOI to extend a standing invitation to special procedures is a very good step. However, the delay in the GOI's reporting to treaty bodies, in particular to the Human Rights Committee, is an issue of concern.	In brief, WGHR recommends that the government strengthens the level and quality of engagement with both domestic and international human rights bodies, and increases consultation on human rights issues with all relevant stakeholders. The GOI should submit all its reports to treaty bodies in time, in line with India's pledge at the GA to cooperate with UN treaty bodies. It should submit its long overdue report to the Human Rights Committee at the earliest.
5.	Maintain disaggregated data on caste and related discrimination (Canada, Belgium, Luxembourg);	Extensive disaggregated data, including on caste, are available in the public domain.	Some of the key areas where disaggregated data on caste is missing are: (i) crimes committed against SC and ST women; (ii) position of employment in the private sector and entrepreneurship; and (iii) access to health and civic amenities. Regarding crimes against SCs and STs, the existing data don't reveal the true nature and extent of violence as many crimes against SCs don't fall under the NCRB's official category of "crimes against SCs". For example, there is no official disaggregated data on: custodial violence, illegal detention, torture, violence against women other than rape, bonded labor, child labor, manual scavenging (no data available at all).	It is strongly recommended that the government monitors through its surveys the current practices of caste-based discrimination (CBD) as well as economic and social conditions of communities affected by CBD, disaggregated gender wise.

S. No.	Recommendation	Response of India	Current Status	Further measures required
6.	Consider signature and ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (Brazil).	The Constitution of India provides for direct access to the Supreme Court and High Courts for redressal of violations of any fundamental right for any individual or group of individuals. In addition, various other remedies are available under the National Human Rights Commission and the State Human Rights Commissions. There is also a separate National Commission and State Commissions for Women which inter alia have a mandate to address cases of violations of women rights. There exists, therefore, effective legal and constitutional framework to address individual cases of violations within India.	There is still no move from the government to sign and ratify the CEDAW Optional Protocol (OP).	WGHR fully supports signature and ratification of the CEDAW Optional Protocol (OP). The OP provides mechanisms to enhance state compliance to CEDAW. It also provides a platform for women to voice their grievances despite exhaustion of all domestic remedies, and not prematurely or in substitution of domestic remedies. The recommendations of CEDAW under the OP typically provide structural solutions, and cannot be viewed as being parallel to or substituting the domestic mechanisms available for addressing discrimination against women.
7.	Consider signature and ratification of ILO Conventions Nos. 138 and 182 (Brazil, Netherlands, Sweden).	Government of India fully subscribes to the objectives and purposes of the Convention on the Rights of the Child to which India is a party as well as the ILO Conventions Nos. 138 and 182. Government of India fully subscribes to the objectives and purposes of the Convention on the Rights of the Child to which India is a party as well as the ILO Conventions Nos. 138 and 182. Government of India fully subscribes to the objectives and purposes of the Convention on the Rights of the Child to which India is a party as well as the ILO Conventions Nos. 138 and 182. Government of India fully subscribes to the objectives and purposes of the Convention on the Rights of the Child to which India is a party as well as the ILO Conventions Nos. 138 and 182.	The government has yet to ratify ILO Conventions No. 138 and 182. Not only is there is very poor implementation of child law in the newly independent states, but also there is a significant gap between the standards in direct violation of the Constitution and a child's fundamental rights to education. The National Commission for the Protection of Child Rights is a Commission, not a court; and hence does not have the power to conduct speedy trials.	Current inconsistencies within all child-related laws need to be addressed immediately. The government needs to take steps to ensure that the child labour laws are strictly enforced. Child tracking systems, inter-departmental coordination and convergence of services, legislative provisions to regulate placement agencies and other such measures. There needs to be better functioning of Child Welfare Committees, proper rehabilitation of rescued children, and prosecution of the accused employers.
8.	Share best practices in the promotion and protection of the rights of indigenous peoples and multi-ethnic nature of Indian society (Mauritius).	Government of India accepts this recommendation	WGHR has no information on this.	WGHR has no information on this.
9.	Review the reservation to article 32 of the Convention on the Rights of the Child (the Netherlands).	Government of India fully subscribes to the objectives and purposes of the Convention on the Rights of the Child. India fully recognizes that the child has to be protected from exploitation of all forms including economic exploitation. Towards this end, Government of India has taken a wide range of measures including prescribing minimum age of 14 years for employment in hazardous occupations, as domestic helps, at eateries as well as in certain other areas. Regulatory provisions regarding hours and conditions of employment have also been made. These will be a necessary step towards ensuring that child rights are best protected for every child of every age. Government of India does not allow prescription of minimum age for admission to each and every area of employment or to raise the age bar to 18 years, as provided in the ILO Conventions. Government of India remains committed to progressively implement the provisions of Article 32 of the Convention on the Rights of the Child, particularly paragraph 2 (b). In accordance with its national legislation and international obligations.	The government admits child labour is undesirable, but claims poverty and ignorance perpetuate it. It also admits child labour-related laws are poorly enforced. Current official thinking holds it is 'not realistic' to ban all child labour.	The legal scenario has changed as being at school and not at work is now a Fundamental Right for all children (Art. 21A) backed by a powerful 'Right to Free and Compulsory Education Act, 2008'. The logical corollary to this far-reaching change in the legal regime for the GOI to revisit its earlier prohibition and follow the lead of the International Labour Organization (ILO) under the 'Ratification Act 1988' in order to make it fully compliant with the new Fundamental Right.
10.	Consider new ways of addressing growing economic and social inequalities arising out of rapid economic growth and share experiences/results of best practices in addressing poverty (Algeria).	India is committed to the realization of the right to development of all its people and is pursuing this by providing an environment for inclusive and accelerated growth and social progress within the framework of a secular and liberal democracy.	While it is true that the government is aware of the urgent need for inclusive development, the government has not addressed the root causes that are responsible for exclusion. This is leading to deepening growing economic and social inequities even while a strong economic growth rate is sustained.	The root causes of exclusion are embedded in the current economic growth model. The government must consider revisiting the current model. The alternative is to achieve growth through social justice which has never been given any serious consideration.
11.	Take into account recommendations made by treaty bodies and special procedures, especially those relating to women and children, in developing a national action plan for human rights which is under preparation (Mexico).	Government of India accepts this recommendation	The National Human Rights Commission (NHRC) has been tasked with drafting a national action plan for human rights (NAP). In 2008, the NHRC stated that the NAP was under preparation and that a draft would be circulated to members of the NHRC core group of NGOs for comments. However, the process seems to have been abandoned, with no visible outputs.	WGHR strongly recommends that the NHRC monitors the implementation of recommendations made by UN treaty bodies and special procedures. It is strongly suggested that the government requests the NHRC to prioritise the drafting of a NAP. The finalisation of this plan, however, has to be based on broad-based consultations with civil society across India.

S. No.	Recommendation	Response of India	Current status	Further measures required
12.	<p>12. Ratify the Convention on Enforced Disappearances (Nigeria).</p> <p>13. Strengthen human rights education, specifically in order to address effectively the phenomenon of gender-based and caste-based discrimination (Italy).</p> <p>14. Extend standing invitation to special procedures (Latvia, Switzerland).</p> <p>15. Receive as soon as possible the Special Rapporteur on the question of torture (Switzerland).</p> <p>16. Fully integrate a gender perspective in the follow-up process to the UPR (Slovenia).</p> <p>17. Follow up on CEDAW recommendations to amend the Special Marriage Act in the light of article 16 and the Committee's general recommendation 21 on giving equal rights to property accumulated during marriage (Slovenia).</p> <p>18. Continue efforts to allow for a harmonious life in a multi-religious, multicultural, multi-ethnic and multi-lingual society and to guarantee a society constituting one-fifth of the world's population to be well fed, well housed, well cared for and well educated (Tunisia).</p>	<p>India signed the Convention for Protection of All Persons from Enforced Disappearance on the day it opened for signature last year. The process of its ratification is underway.</p> <p>Government of India recognizes the role of human rights education in combating discrimination. India has adopted a National Action Plan for Human Rights Education to promote awareness about human rights among all sections of the society. Specific target groups, such as women, children, persons with disabilities, and tribal communities, are also being included in the education has been made part of curricula. Government officials, armed forces, prison officials and law officers are also being sensitized to the protection of human rights. Regular training programmes are organized by the National Human Rights Commission as well as State Human Rights Commissions. Awareness campaigns are also run by NGOs.</p> <p>India has been regularly receiving and will continue to receive Special Rapporteurs and other Special Procedures mechanisms of Human Rights Council taking into account its capacity, the priority areas for the country as well as the need for adequate preparations for such visits.</p> <p>India has been regularly receiving and will continue to receive Special Rapporteurs and other Special Procedures mechanisms of Human Rights Council taking into account its capacity, the priority areas for the country as well as the need for adequate preparations for such visits.</p> <p>Government of India accepts this recommendation</p> <p>With regard to Article 16(1) of the Convention on the Elimination of All Forms of Discrimination Against Women, Government of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any community without its initiative and consent.</p> <p>With regard to Article 16(2) of the Convention on the Elimination of All Forms of Discrimination Against Women, Government of India declares that it agrees to the principle of compulsory registration of marriages. However, failure to get the marriage registered will not invalidate the marriage particularly in India with its variety of customs, religions and level of literacy.</p> <p>The Constitution of India seeks to secure to all its citizens justice (social, economic and political); liberty of thought, expression, belief, faith and worship); equality (of status and of opportunity); and to promote among them, fraternity assuring the dignity of the individual and the unity and integrity of the Nation'. Legislative and administrative measures of the Government of India are guided by this objective. In this context, the Government of India accepts the recommendation made.</p>	<p>Although the GOI stated that the process of ratification was "underway", there are no signs of a process of ratification, despite the fact that the GOI has already signed the Convention. The government has also to undertake a concerted effort to codify enforced disappearances as a criminal offense in domestic law. Existing provisions are not being used to penalize those implicated in enforced disappearances. In cases where initial progress is made, the government does not grant the required sanction to prosecute security forces personnel.</p> <p>There is no official proof of a national action plan of action for human rights education being in place. The government did not respond to the evaluations after the UN decade for human rights education, as well as after the implementation of the first phase of the UN World Programme on human rights education in 2010.</p> <p>The GOI has announced in September 2011 that it was extending a standing invitation to special procedures. WGHHR very much welcomes this significant step. The government already demonstrated commendable openness and support during the recent visit of the UN Special Rapporteur (SR) on the situation of human rights defenders to India.</p> <p>The Special Rapporteur on Torture made a request in 1993, followed by reminders in 2007 and 2010. As far as we are aware, there has been no response as yet from the government.</p> <p>Although the government has accepted this recommendation, no consultations or reviews with civil society organisations to discuss the process of integrating a gender perspective have been organised following India's first review.</p> <p>It must be noted that this recommendation is tied to India's declarations to articles 5 (a) and 16 (1) of CEDAW. There has been no follow-up on these recommendations to date.</p>	<p>The government should expedite the process of ratification of the Convention on Enforced Disappearances. Further recommendations on this issue. The Special Rapporteur on Human Rights Education, WGHHR also joins the demand of civil society for the repeal of the Armed Forces Special Powers Act.</p> <p>The development of a national policy and action plan for human rights education in schools is urgently required. The Ministry of Social Justice and Empowerment needs to incorporate human rights education as a component in all its special schools and hostels.</p> <p>WGHHR urges the GOI, nevertheless, to ensure that there are regular visits of Special Rapporteurs to India, including in priority mandates that have made repeated requests, for example Working Group on Arbitrary Detention (SR), Working Group on Enforced or Involuntary Detentions (SR), Working Group on Arbitrary Executions (4); SR on Sale of Children (3); and SR on Racism (2).</p> <p>Given the fact that custodial torture remains endemic in India, it is crucial for the government to allow the Special Rapporteur on Torture to visit India and demonstrate the same openness that was shown to the SR on human rights defenders</p> <p>It is crucial to integrate a gender perspective in the UPR process, so that women's concerns are well represented, and thereby addressed. WGHHR strongly recommends that the government prioritises the holding of consultations with civil society, unions, and women's groups in particular, at the earliest.</p> <p>As stated by the CEDAW Committee in 2007, the GOI is strongly recommended to withdraw its declarations to articles 5 (a) and 16 (1) of CEDAW, and also review its policy of non-interference in personal laws. It is clarified here that the Special Marriage Act 1954 is a secular law, not a personal law. Thereby, the policy of non-interference does not apply to the Act.</p> <p>On compulsory registration of marriages, it is agreed that it is undesirable because it would exclude women whose marital status is not clear such as live-in and common law partners. We express concern and call the government's attention to the state of state level regulations pursuing compulsory registration of marriages that has been underway (in accordance with the judgment, Seema v. Ashwani Kumar (2006) 2 SCC 578).</p> <p>The extensive range of measures needed to fulfill this recommendation require a comprehensive "inclusivity of human rights approach" at all levels of government. Given India's disturbing socio-economic realities, a sustained effort to implement economic, social and cultural rights, including the right to food, housing, education and health, is required. Details of measures required to achieve this enormous task are to extensive to be summarized here.</p>

ANNEX E

List of Abbreviations

AFSPA	The Armed Forces (Assam and Manipur) Special Powers Act, 1958
BSF	Border Security Force
CAT	The United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, 1984
CED	International Convention for the Protection of All Persons from Enforced Disappearance, 2006
CEDAW	Committee on Elimination of Discrimination Against Women, 1979
CERD	Committee on the Elimination of All Forms of Racial Discrimination, 1969
CESCR	Committee on Economic, Social and Cultural Rights
Cr.P.C	Code of Criminal Procedure
CSPSA	The Chhattisgarh Special Public Security Act, 2005
FTAs	Free Trade Agreements
GOI	Government of India
HIV/AIDS	Human Immunodeficiency Virus / Acquired Immunodeficiency Syndrome
HRC	Human Rights Council
ICDS	Integrated Child Development Scheme
J&K	Jammu and Kashmir
MDMS	Mid Day Meal Scheme
MEA	Ministry of External Affairs
MNREGA/NREGA	Mahatma Gandhi National Rural Employment Guarantee Act, 2005
NGOs	Non-Governmental Organizations
NHRC	National Human Rights Commission
PSA	J&K Public Safety Act, 1978
PUCL	People's Union for Civil Liberties
RTE	Right of Children to Free and Compulsory Education Act, 2009
RTI	Right to Information Act, 2005
SEZs	Special Economic Zones



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Vice-Chancellor

Prof. (Dr.) Ranbir Singh is the founder Vice-Chancellor of National Law University, Delhi established by the Delhi Government in 2008. He was the founder Vice-Chancellor of NALSAR University of Law, established by the Andhra Pradesh Government in 1998. He has been there for ten years as the Vice-Chancellor of the well-known premier institution for legal education and research in the country which was rated as one of the Best University in the Country in the year 2008 in 'India Today'. He has been a Vice-Chancellor for over 14 years now. Prof. Singh's contribution in redesigning legal education in the country

has been significant as a member of the Legal Education Committee of the Bar Council of India. His legal writings span the areas of Jurisprudence, Human Rights, Legal Education, Legal Aid, Personal Laws and Justice Education, and has more than 50 research publications to his credit. **He recently became the President of Shastri Indo-Canadian Institute, Delhi.** He is also a Member of **Sectoral Innovation Council on IPR, constituted by DIPP, Min. of Commerce, GOI.**

He prepared the India's National Report for the First UPR in 2008, while he was the Vice-Chancellor of NALSAR University of Law, Hyderabad and now while at NLU Delhi on the request of MEA/ GOI he prepared the **Second Universal Periodic Review which was recently presented at United Nations Human Rights Council, Geneva, Switzerland.** He is a **Member (part-time) of The 19th Law Commission of India.** He was also a member of **Committee for Consultations on the situation in Andhra Pradesh.**

His achievements and accomplishments while at Rohtak as a Law teacher and researcher earned him the prestigious '**Excellence Award**' by the **Governor of Haryana.** At a **Golden Jubilee Commemorative Special Convocation** of Kurukshetra University, Prof. Singh was awarded the **Alumnus of Distinction** for his outstanding achievements in his professional career by **Hon'ble Dr. A. P. J. Abdul Kalam, former President of India.** He also received the "**Professor N.R. Madhava Menon Best Law Teacher Award - 2011**" by **Hon'ble Mr. Justice Altamas Kabir, Judge, Supreme Court of India.** In July 2012 he was awarded the "**Karmayogi Samman**": by **Hon'ble Shri Kuldeep Sharma, Speaker, Haryana Legislative Assembly,** in a function organized by Haryana Institute of Fine Arts.

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