

Human Rights in India

STATUS REPORT 2012



UPDATED AND REVISED

WITH
FIRST AND SECOND
UN UNIVERSAL PERIODIC REVIEW
RECOMMENDATIONS



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Published by



**Working Group on Human Rights
in India and the UN**

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Print: December 2012

Cover photo: Sanjit Das

Design & Print: Aspire Design



This report is printed on CyclusPrint based on 100% recycled fibres

Foreword

The adoption of the Universal Periodic Review (UPR) mechanism by the United Nations (UN) in 2006ⁱ created a significant opportunity and space to hold governments accountable to their national and international human rights commitments. The UPR is a unique peer review process during which the UN Human Rights Council (HRC) reviews the human rights record of all 193 UN member states, once every four and a half years.ⁱⁱ India's first UPR (UPR I) took place in 2008.

To ensure active participation from civil society and independent experts in the process related to India's second Universal Periodic Review (UPR II) in May 2012, the Working Group on Human Rights in India and the UN (WGHR) initiated a series of activities. This process, which commenced in January 2010, included five regional consultations and a national consultation, and resulted in two publications: a stakeholders' report to the HRC in November 2011,ⁱⁱⁱ and a detailed report on the human rights situation in India in May 2012. This report titled, "Human Rights in India – Status Report 2012,"^{iv} provided a general overview of the most critical human rights issues in India. It included: information gathered from the various consultations held across India from August to October 2011^v; relevant case studies; WGHR's initial response to the Government of India's report for the second UPR; and, an analysis of the status of implementation of the 18 recommendations made to India during its first UPR.^{vi}

The report received a positive response from academicians, policy-makers, professionals, the media, different sections of the UN, governments across the world, and general readers. Encouraged by the overwhelming response, WGHR decided to publish a revised edition of the report. This new edition of the report attempts to update the human rights situation in the country since India's second UPR in May 2012. This report has been presented in a user-friendly format and includes: several key documents that have been annexed for ready reference; a list of recommendations

i Resolution adopted by the General Assembly, 60/251. Human Rights Council, 3 April 2006, A/RES/60/251, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/N05/502/66/PDF/N0550266.pdf?OpenElement>.

ii For a brief description of the importance of the UPR process, please see Annex B.

iii Working Group on Human Rights in India and the UN (WGHR), Human Rights in India - An Overview, November 2011, available at: www.wghr.org.

iv Working Group on Human Rights in India and the UN (WGHR), Human Rights in India – Status Report 2012, May 2012, available at: http://www.wghr.org/pdf/Human%20Rights%20in%20India%20-%20Status%20report%202012_updated%2024.9.2012.pdf.

v See: Annex C.

vi See: Annex D.

from India's first and second UPR in a tabular form, which includes the response of the Government of India; recommendations made during UPR I, which are still binding on the Government of India and therefore marked as 'accepted'; recommendations made during UPR II that have been accepted by the Indian government (marked as accepted); and, recommendations made during UPR II that the Indian government has not accepted (marked as 'not accepted').

Certain recommendations made during UPR II have been accepted by the Indian government in a revised form. The portions revised by the Indian government have been highlighted and the recommendations are marked as 'accepted in revised form.' The number indicated in this column is drawn from the official HRC documents listing the UPR I recommendations^{vii} accepted in 2008 and the UPR II recommendations^{viii} made to India in May 2012.

As is clearly evident from this report, much remains to be done to improve the human rights situation in India. In almost every aspect of human rights covered in the report, the situation in India remains dismal; yet the scope for improvement is immense.

India must meet the human rights accountability challenge defined by the contents of its Constitution, the international human rights instruments it has ratified, and the recommendations that have emanated from the UPR I and UPR II processes at the UN as well as from other UN treaty bodies and special procedures. To meet this enormous challenge, nothing but a radical shift in economic, social and security policies is needed – both at the central and state levels.^{ix}

This revised edition of "Human Rights in India – Status Report 2012" suggests steps that the Government of India needs to take to ensure the respect, protection and fulfillment of the human rights of people and communities across the country. The principal message from this report is that the government needs to embark on a serious process of consultation with all sectors of society in India to improve the human rights situation in the country and to close the implementation gap that grows as the human rights situation continues to deteriorate. A diligent approach to monitoring the implementation of India's UPR recommendations would be a critical first step. WGHR hopes that this report will contribute to the process of fundamental change required for the realisation of human rights for the vast majority of the residents of India.



Miloon Kothari
Convenor, WGHR

vii Report of the Working Group on the Universal Periodic Review: India – Addendum, 2008, A/HRC/8/26/Add.1, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/161/58/PDF/G0816158.pdf?OpenElement>

viii Report of the Working Group on the Universal Periodic Review: India, 2012, A/HRC/21/10, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/151/08/PDF/G1215108.pdf?OpenElement>

ix See: Annex H – WGHR Press Release, Comprehensive review of India's human rights record at the UN Human Rights Council: Glaring Omissions, Some Progress, September 21, 2012, available at: <http://www.wgmr.org/pdf/WGHR%20UPR%20press%20release%2021.09.2012.pdf>

Acknowledgments

This report is the fruit of thorough collective work. It was compiled and edited by the WGHR Secretariat with extensive input from all WGHR members: ActionAid India, Asian Centre for Human Rights, Citizens for Justice and Peace, Commonwealth Human Rights Initiative, FIAN India, HAQ: Centre for Child Rights, Housing and Land Rights Network, Human Rights Alert, India Alliance for Child Rights, Lawyers Collective, Multiple Action Research Group, National Campaign on Dalit Human Rights, Partners for Law in Development and People's Watch, as well as WGHR's independent experts: Vrinda Grover, Prof. Babu Mathew and Dr. Rajkumar.

In addition to WGHR members, we would like to thank warmly the following people and organisations who have made significant contributions to the report: Sudha Bharadwaj and Rajendra Sail (PUCL, Chhattisgarh); Roy Laifungbam (Centre for Organisation Research & Education); Satyajeet Mazumdar (Centre for Social Justice); Jayshree Satpute; Anisa Rehman, Smriti Minocha and Kerry Mcbroom (Human Rights Law Network); Yug Mohit Chaudhry; Annie Namala (Centre for Social Equity); Waliullah Ahmed Laskar and Dr. Prasenjit Biswas (Barak Human Rights Protection Committee); Reetika Khera; Javed Abidi, Dr. Shanti Auluck, Dr. Bhargavi Davar, Arun Rao, Radhika Alkazi, Rama Chari, Meenakshi Balasubramaniam, Shivani Gupta and Dorodi Sharma (National Disability Network).

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List of Abbreviations

(In alphabetical order)

AFSPA	Armed Forces Special Powers Act
ART	Anti-Retroviral Therapy
BPL	Below Poverty Line
BSF	Border Security Force
CRPD	Convention on the Rights of Persons with Disabilities
CRZ	Coastal Regulation Zone
CSPSA	Chhattisgarh Special Public Security Act
CWC	Child Welfare Committee
DAA	Disturbed Areas Act
ESCR	Economic, Social and Cultural Rights
FCI	Food Corporation of India
FPS	Fair Price Shop
FRA	Forest Rights Act
FTA	Free Trade Agreement
GMO	Genetically Modified Organism
IAY	Indira Awas Yojana
ICCPR	International Covenant on Civil and Political Rights
ICDS	Integrated Child Development Services
ICRC	International Committee of the Red Cross
IDP	Internally Displaced Persons
ILO	International Labour Organisation
INR	Indian National Rupee
IPC	Indian Penal Code
IPTK	International People's Tribunal on Human Rights and Justice in Kashmir
J&K	Jammu and Kashmir
JJB	Juvenile Justice Board
MDMS	Mid-Day Meal Scheme
MMR	Maternal Mortality Rate
MNC	Multi National Corporation
MNREGA	Mahatma Gandhi National Rural Employment Guarantee Act
MoU	Memorandum of Understanding
NAC	National Advisory Council
NAP	National Action Plan for Human Rights
NAP-HRE	National Action Plan for Human Rights Education


NCPCR	National Commission for the Protection of Child Rights
NCRB	National Crime Records Bureau
NFHS	National Family Health Survey
NFSB	National Food Security Bill
NGO	Non Government Organisation
NHRC	National Human Rights Commission
NRHM	National Rural Health Mission
OHCHR	Office of the High Commissioner of Human Rights
PCA	Police Complaints Authorities
PDS	Public Distribution System
PIL	Public Interest Litigation
PLHIV	People Living with HIV
POSCO	Pohang Steel Company
PSA	Public Safety Act
PTB	Prevention of Torture Bill
PUCL	People's Union for Civil Liberties
RTE	Right to Education
RTI	Right to Information
SC	Scheduled Caste
SCPCR	State Commission for the Protection of Child Rights
SCSP	Scheduled Caste Sub Plan
SEZ	Special Economic Zones
SPO	Special Police Officers
SSA	Sarva Shiksha Abhiyan
SSB	Sashastra Seema Bal
ST	Scheduled Tribe
TRIPS	Trade Related Intellectual Property Rights Agreement
TSP	Tribal Sub Plan
UN	United Nations
UNHCR	UN High Commissioner for Refugees
UPR	Universal Periodic Review
USD	United States Dollars
WTO	World Trade Organisation

I



Sandy Ford

ECONOMIC, SOCIAL AND
CULTURAL RIGHTS AND
RIGHT TO DEVELOPMENT



77% of Indians
live on a consumption
expenditure of less than INR
20 (around USD 0.4) a day.

0.8% was the
decline in poverty during
2007-11, whereas the average
growth rate was
8.2%.

134 out of **187**
countries is India's rank on
the UN human development
index.

Economic, Social and Cultural Rights and Right to Development

India has an impressive array of laws and schemes aimed at providing social services. These, however, have not succeeded in realising the economic, social and cultural rights for the majority of the population. Although India has achieved a sustained 'growth' rate, the promise of 'inclusion' has not been fulfilled.

As per UPR I Recommendations 10 and 18, India committed to address inequity. However, while the average growth rate over 2007-11 was 8.2%, poverty declined by only 0.8%.¹ Data indicates that more than three-fourths of the 1.2 billion Indians have faced further marginalisation during this period. According to the *Arjun Sengupta Committee* (2006) appointed by the Prime Minister, 77% of Indians live on a consumption expenditure of less than INR 20 (around USD 0.4²) a day.³ The national poverty rate in India is estimated at 37.2% according to the *Tendulkar Committee* report. The Indian Government national report for UPR II, while quoting the same Committee, highlights the decline in the poverty rate from 1993-94 (45.3%) to 2004-05 (37.2%).⁴ Ironically, the Planning Commission in March 2012 released the latest poverty estimates for 2009-10 showing a decline by 7.3% from the 2004-05 level stating that anyone with a daily per capita consumption of INR 28.65 (USD 0.54) and INR 22.42 (USD 0.42)⁵ in urban and rural areas respectively is above the poverty line.⁶ This reduced national poverty line – instead of the accepted international

1 Between 2007-2011 according to: Draft Approach Paper for the Twelfth Five-Year Plan, Planning Commission, Government of India, August 2011.

2 1 US dollar (USD) is equivalent of around 55 Indian Rupees (INR); exchange rate as of November 2012.

3 *Report on Conditions of Work and Promotion of Livelihoods in the Unorganized Sector* (Arjun Sengupta Committee Report), 2006; exchange rate as of April, 2012.

4 *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: India*, A/HRC/WG.6/13/IND/1, UN General Assembly, March 8, 2012, para 65.

5 1 US dollar (USD) was equivalent of around 53 Indian Rupees (INR) in April 2012.

6 K. Balchand, *Now, Planning Commission lowers the poverty line*, The Hindu, March 20, 2012, available at: <http://www.thehindu.com/news/national/article3013870.ece>

definition of USD 1.25 – drew severe and widespread criticism, following which the Prime Minister announced the setting up of a new team to work out a new method to assess the number of poor.⁷

India still ranks 134 out of 187 countries on the UN Human Development Index.⁸ The country's economic policies, driven by the neo-liberal economic paradigm, continue to perpetuate 'exclusion' and violate Fundamental Rights and Directive Principles of the Constitution.⁹

Number	Recommendation	Status
RIGHT TO DEVELOPMENT (in general)		
UPR 1		
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.	Accepted
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.	Accepted
UPR 2		
75	Put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including women, girls and children, as well as the Scheduled Castes and Scheduled Tribes and Minorities are well achieved.	Accepted
83	Continue incorporating the gender perspective in programmes and development plans with positive measures to the effective promotion and protection of women's rights.	Accepted
145	Continue encouraging socio-economic development and poverty eradication.	Accepted
18	Sign the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol and ratify the International Convention for the Protection of All Persons from Disappearance.	Not accepted
Rural Development		
UPR 2		
51	Continue its efforts to further spread in the country the model of rural growth in the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA).	Accepted
59	Intensify efforts in providing capacity-building and training programmes on human rights for its law enforcement officials as well as judicial and legal officials in the rural areas.	Accepted
74	Address the inequities based on rural-urban divide and gender imbalance.	Accepted
139	Further accelerate the sanitation coverage and the access to safe and sustainable drinking water in rural areas.	Accepted
143	Further strengthen the efforts in poverty eradication, paying special attention to the rural population.	Accepted

7 India Today, *Fresh group to devise new estimates of poverty: PM, Story*, March 22, 2012, available at: <http://india-today.intoday.in/story/poverty-estimates-plan-panel-manmohan-singh/1/178931.html>

8 Report of the Expert Group to Review the Methodology for Estimation of Poverty (Tendulkar Committee Report), 2009, available at: http://planningcommission.nic.in/reports/genrep/rep_pov.pdf; See also: *India: Human Development Indicators*, UN human development index report 2011, available at: <http://hdrstats.undp.org/en/countries/profiles/IND.html>

9 Including, *inter alia*, Articles 14, 15, 16, 17, 19, 21, 23, 24, 39, 42, 45 and 47 of the Constitution of India.

10 The number indicated in this column is drawn from the official Human Rights Council documents listing the UPR I recommendations accepted in 2008 (Report of the Working Group on the Universal Periodic Review: India – Addendum, 2008, A/HRC/8/26/Add.1, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/161/58/PDF/G0816158.pdf?OpenElement>) and the UPR II recommendations made to India in May 2012 (Report of the Working Group on the Universal Periodic Review: India, 2012, A/HRC/21/10, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/151/08/PDF/G1215108.pdf?OpenElement>).

Number	Recommendation	Status
148	Provide every possible support and assistance to the national project for rural health to raise the standard of nutrition and improve public health and to strengthen the relationship between health and indicators such as sanitation and personal hygiene.	Accepted
156	Take effective measures to fully implement National Rural Health Mission (NRHM).	Accepted
ERADICATION OF POVERTY		
UPR 1		
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.	Accepted
UPR 2		
83	Continue incorporating the gender perspective in programmes and development plans with positive measures to the effective promotion and protection of women's rights.	Accepted
130	Provide more resources for the enjoyment of economic and social rights, especially in favour of vulnerable groups like women, children, poor people and minorities.	Accepted
134	Make efforts to eliminate the large gap that exists between the rich and the poor.	Accepted
140	Continue to strengthen its poverty alleviation strategies, as well as its child protection strategies, particularly against the exploitation of children.	Accepted
141	Continue consolidating programmes and socio-economic measures essential to achieve poverty reduction and social exclusion to the utmost well-being of its people.	Accepted
142	Continue efforts to eradicate poverty and better living conditions as well as increase job opportunities.	Accepted
143	Further strengthen the efforts in poverty eradication, paying special attention to the rural population.	Accepted
144	Continue to advance the progress already underway on poverty eradication and improve the enjoyment of the most basic human rights of the people, especially women and children.	Accepted
145	Continue encouraging socio-economic development and poverty eradication.	Accepted

Right to Adequate Housing and Land

The human right to adequate housing is guaranteed in international law and in the Directive Principles of the Constitution of India. It has also been upheld by the Supreme Court, in various judgments, as an integral part of the right to life. The majority of the Indian population, in urban as well as rural areas, however, lives in extremely inadequate and insecure conditions.

Not taking into account displacement due to armed and ethnic conflict, India is estimated to have the highest number of people displaced annually as a result of ostensible 'development' projects. Independent experts estimate the number of those displaced by such projects since India's independence (1947), at between 60 and 65 million.¹¹ This amounts to around one million displaced every year since independence. Of these displaced, over 40% are tribals and another 40% consist of *Dalits* and other rural poor.¹²

The vast majority of the displaced have not received adequate resettlement. The NHRC stakeholders' report for India's second UPR states that, "NHRC's monitoring

¹¹ Planning Commission, Government of India, *The Draft Approach Paper for the Twelfth Five-Year Plan* [states this number to be 60 million], August 2011.

¹² Walter Fernandes, *Development-induced Displacement and Human Rights*, Seven Sister's Post, November 24, 2011, available at: <http://www.sevensisterspost.com/epaper/24.11.11.pdf>

finds that usually those displaced are given neither adequate relief nor the means of rehabilitation.”¹³

Urban Housing and Living Conditions

The current paradigm of urbanisation being promoted by the Indian government, including schemes such as the *Jawaharlal Nehru National Urban Renewal Mission* (JNNURM), contrary to the rhetoric, has extremely limited space and resources for the poor, with a continued focus on large-scale infrastructure development. While urban land is being diverted for profitable real estate and infrastructure projects, legislative tools are commonly used to condemn the urban poor as ‘illegal encroachers’. The housing that has been built under JNNURM for economically weaker sections is generally on the peripheries of urban areas, very far from people’s work places, schools and hospitals, and is thus not viable and does not meet the criteria of ‘adequate housing’ either. The *Interest Subsidy Scheme for Housing the Urban Poor* which commenced in 2008 has benefited only 8,734 people as against the 2012 target of 310,000. Similarly, only about 40% of houses planned for the poor under JNNURM for the period 2005-12 have been built.¹⁴

The national urban housing shortage estimated at the end of India’s Tenth Five-Year Plan was 24.7 million while for the Eleventh Five-Year Plan period (2007–12) it was estimated to be 26.53 million; around 99% of this pertains to the economically weaker sections and low income groups. No comprehensive housing scheme, however, exists for the urban poor as yet. The current proposed national scheme of *Rajiv Awas Yojana* (RAY) aimed at providing financial assistance to states willing to assign property rights to slum dwellers for provision of decent shelter and basic civic and social services for slum redevelopment, must also address the acute housing shortage and backlog, and focus on the provision of adequate low-cost housing.

A recent report by the Technical Group on Urban Housing Shortage (2012-17)¹⁵ terms ‘houseless households and those living in unacceptable conditions’ as being in ‘housing poverty’, and being unable to enter the housing market to claim ownership or acquire rental housing. It also raises the very important issue of lack of state intervention for providing housing for the homeless.

In the absence of affordable and low cost housing options, majority of the urban poor (around 60% in Mumbai and 50% in Delhi) are forced to live in overcrowded slums/informal settlements without

Girl in a slum in Kolkata



¹³ NHRC, *India Submission to the UN Human Rights Council for India’s Second Universal Periodic Review*, available at: <http://nhrc.nic.in/Reports/UPR-Final%20Report.pdf>.

¹⁴ The Hindu, *False ceiling that hides nothing*, available at: <http://www.thehindu.com/opinion/op-ed/false-ceiling-that-hides-nothing/article4035517.ece>

¹⁵ *Report of the Technical Group on Urban Housing Shortage* (2012-17), National Buildings Organization, Ministry of Housing and Urban Poverty Alleviation, Government of India, September 2012.

legal security of tenure or access to basic services, including water and sanitation, and often at great risk to their health. By mid-2011, India's urban slum population was estimated at 158.42 million.¹⁶

Those who cannot afford a space in a slum continue to remain homeless, being forced to live on pavements, railway platforms, under flyovers, and in other precarious conditions. The Supreme Court of India and the High Court of Delhi have played a very positive role through progressive interim orders protecting the rights of the homeless and calling for state action. While this has resulted in positive responses from a few state governments, the failure to implement these orders is widespread, and India's homeless population continues to rise and faces exclusion from most government schemes. Homeless people are routinely criminalised and brutalised by the police, including through targeted acts of violence and the implementation of the *Bombay Prevention of Begging Act, 1959*.¹⁷

India has one of the highest concentrations of street children in the world, with UNICEF estimating their number to be as high as 11 million. This figure, however, is considered to be conservative.¹⁸ Street children live in grossly inadequate conditions and remain largely outside the purview of the *Right of Children to Free and Compulsory Education Act, 2009*, and other schemes such as the *Integrated Child Development Services (ICDS)*. The recent announcement of the President of India to introduce a *National Programme for the Urban Homeless* is positive, but it remains to be seen how this will be implemented in order to protect the rights of the country's growing homeless population.

CASE STUDY

High Court of Delhi: *Suo Moto* Case on Homelessness

On 22 December, 2009, the Municipal Corporation of Delhi (MCD) pulled down a temporary tent shelter for the homeless at Rachna Golchakkar (Pusa Roundabout). Shortly thereafter, it was reported that two of the evicted persons died due to the cold. Following their deaths, on 4 January, 2010, a coalition of groups working on homelessness in Delhi – *Shabri Adhikar Manch: Begharon Ke Saath* (SAM: BKS – Urban Rights Forum: With the Homeless) organised a press conference on the human rights violations of the homeless. The story received extensive media coverage, and on 6 January, 2010, the former Chief Justice of the High Court of Delhi issued a notice, *suo moto*, to the MCD and Delhi Government, seeking an explanation for the demolition of the shelter.

After the High Court took up the matter [writ petition (civil) 29/2010], the Supreme Court Commissioners in the Right to Food Case [I.A. No. 94 in writ petition (civil) No. 196 of 2001], sent a letter to the apex court explaining the vulnerability of homeless citizens to the extreme cold, the increase in starvation-related deaths in winter, and the negligence by the Government of Delhi. It proposed the setting up of 100 temporary shelters and 500 community kitchens in the city within a week, and 140 permanent shelters by the end of December 2010. On 20 January, 2010, the Supreme Court ordered the Delhi government to provide both shelter and food to the city's homeless immediately. A week later, the apex court issued notices to all state governments in the country to provide information on the facilities for the homeless in their respective states. According to the

16 *Report of the Committee on Slum Statistics/Census*, National Buildings Organization, Ministry of Housing and Urban Poverty Alleviation, Government of India, 2010.

17 *The Bombay Prevention of Begging Act, 1959* is in force in 18 states and two Union Territories in India. Other states have different anti-vagrancy laws.

18 Consortium for Street Children, *Street Children Statistics*, June-August 2009, page 5, available at: http://www.streetchildren.org.uk/_uploads/resources/Street_Children_Stats_FINAL.pdf

order, all state governments are required to build at least one well-equipped shelter per 100,000 population. These shelters are supposed to be functional throughout the year on a 24-hour basis.

The High Court of Delhi has (from January 2010 to January 2012) passed 42 interim orders protecting the rights of Delhi's homeless. This has led to several improvements, including in the number of shelters for the homeless. The Supreme Court continues to monitor the status of services for the homeless across India. Both cases are ongoing and full implementation of the progressive orders of both courts by all state governments could lead to a significant amelioration in the condition of homelessness in the country.

Source: Housing and Land Rights Network

Homelessness and the crisis of inadequate housing are further exacerbated by regular forced evictions and slum demolitions across the country. Most of these are carried out in the name of 'development' such as urban 'renewal' schemes, city 'beautification' projects, real estate development, and sporting events like the 2010 Delhi Commonwealth Games that displaced around 200,000 people,¹⁹ which included many persons of Scheduled Castes. An illustrative example is the slum cluster of 368 families of Dalit families at Jangpura's Barapullah Nullah, New Delhi, which was demolished to construct a parking area for the Commonwealth Games.



Lakshman Anand/ActionAid

Homeless people sleeping on the streets of Delhi, India

Forced evictions are generally carried out without due process or any rehabilitation. In the few cases where resettlement is provided, the sites are located very far from people's original places of residence, work, education and healthcare. People are not consulted and the quality of housing and services at most resettlement sites violates human rights standards. Kannagi Nagar, Okkiyum Thoraipakkam, located outside Chennai, is Asia's largest resettlement site in which 15,000 evicted families from 68 slums have already been relocated. The absence of adequate rehabilitation and feasible alternative housing options, forces many to become homeless and live on the streets. *"Given the relentless growth of urban population and the difficult economic environment for the poor, the housing problem will further worsen unless concerted efforts are taken to ameliorate the living conditions of the vast majority of vulnerable sections of society, i.e. the slum dweller/urban poor."*²⁰

Unchecked real estate speculation contributes to escalating prices, which makes housing and property more and more unaffordable for the majority, resulting in people being forced to live in inadequate conditions and without security of tenure.

¹⁹ According to a fact-finding mission conducted by Housing and Land Rights Network, Delhi. The report titled, *Planned Dispossession: Forced Evictions and the 2010 Commonwealth Games*, available at: www.hic-sarp.org.

²⁰ Report of the Committee on Slum Statistics/Census, National Building Organization, Ministry of Housing and Urban Poverty Alleviation, 2010.

Rural Housing, Land, and Living Conditions

The total national rural housing shortage for the Twelfth Five-Year Plan period (2012-17) was estimated at 43.67 million, of which 90% was for 'below poverty line' (BPL) households. The lack of adequate investment in rural housing, livelihoods and development, along with large-scale displacement, a severe agrarian crisis, and growing landlessness and homelessness, contribute to the majority of the rural poor living in grossly inadequate conditions.

The *Indira Awas Yojna* (IAY), a rural housing scheme for BPL families, especially of Scheduled Castes and Scheduled Tribes, has failed to reach the poorest of the poor, including the landless. The national report of the Government of India for India's second UPR provides that "since inception, 27.3 million houses have been constructed at an expenditure of INR 795 billion (USD 14.8 billion) (until January 2012)." It also claims that, "there is high degree of satisfaction with this scheme since beneficiaries participate in the construction of their own houses".²¹ While IAY contains certain progressive elements such as mandating release of funds in instalments and registration of houses in the names of women, it needs to be implemented better while ensuring that the process of beneficiary selection is accurate and that the neediest, including the landless, are able to benefit. An evaluation done for the Planning Commission has found lack of quality control under the scheme, even in seismic zones. The safety of residents and lack of sanitation remain serious concerns under the scheme.²² The recent announcement of the Ministry of Rural Development to improve the functioning and implementation of IAY is welcomed. This includes a proposal to increase the per unit allocation of INR 45,000 (USD 900) to INR 75,000 (USD 1,500), to provide additional funds to build toilets, and to extend the scheme to the landless poor.

Displacement due to Infrastructure and other Projects

Large infrastructure projects, including dams, ports and mining, environmental conservation projects, and designation of large areas as tax-free Special Economic Zones (SEZs), have been responsible for the displacement of millions of rural families, most of whom have not received rehabilitation. A total of 582 SEZs have been formally approved under the *Special Economic Zones Act, 2005* across India.²³

The majority of natural resource-rich areas in India are occupied by indigenous peoples (tribals/ *adivasis*) who face the worst onslaught of large dams, mining, and other natural resource extraction

*Peaceful march for land
to the landless in Bihar.*



Ranian Rani/ActionAid

²¹ National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: India, A/HRC/WG.6/13/IND/1, UN General Assembly, March 8, 2012, para. 57.

²² NHRC, *Submission to India's Second Universal Periodic Review*, available at: http://www.nfhsindia.org/nutrition_report_for_website_18sep09.pdf.

²³ SEZ India, available at: <http://www.sezindia.nic.in/writereaddata/pdf/StatewiseDistribution-SEZ.pdf>

projects. States like Chhatisgarh, Jharkhand, Andhra Pradesh, Odisha, and the north-eastern states of Manipur, Meghalaya, Sikkim, Arunachal Pradesh, Mizoram, and Tripura, in particular, face acute threats of displacement due to such projects. In Arunachal Pradesh itself, 148 Memorandums of Understanding have been signed to construct dams. The *Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 (Forest Rights Act, FRA)*, a progressive law aimed at recognising rights of forest dwellers, is not being adequately implemented and many tribals are being denied their right to forest resources. As of 30 September, 2011, of the 2,808,494 claims of land titles considered, a staggering 1,577,831 claims (56.1%) have been rejected.²⁴ Most of the displaced in India constitute the rural poor, marginal farmers, fisher folk and tribals/*adivasis*, who continue to face severe displacement threats.²⁵ The recent amendment to the rules for the implementation of the FRA in September 2012 is a positive development, as they provide greater clarity on provisions relating to recognition of forest dwellers' rights to conserve and manage community forest resources, including improved access to minor forest produce. The revised rules also give more powers to *gram sabhas* (village level units of self governance) to ensure sustainable use of these resources.

The Eleventh Five-Year Plan clearly identified that, *"Major alienation of tribal land in the scheduled areas has taken place through the means of compulsory acquisition using the government process of land acquisition. The present arrangements of resettlement and rehabilitation are detrimental and prejudicial to the interests of the tribals. The process of erosion of the corpus of tribal land continues at an accelerated pace under the new economic dispensation while the policy options are being debated"*.²⁶

CASE STUDY

The POSCO Project, Odisha

In 2005 the Government of Odisha signed a Memorandum of Understanding (MoU) with the South Korean conglomerate the Pohang Steel Company (POSCO), the world's third largest steel company, for setting up an export-oriented integrated steel plant, captive power plant, and marine port near Paradeep, Jagatsinghpur District, Odisha. It is supposedly the largest foreign direct investment in India with a total investment of USD 12 billion. The Government of Odisha will grant POSCO mining lease rights for 30 years that will ensure an adequate supply of 600 million tonnes of iron ore to POSCO. The costs of this operation for POSCO have been estimated at less than 1% of the prevailing global market price for iron ore.

4,000 acres of land have been earmarked in Ersama block of Jagatsinghpur District for the purpose of setting up the steel project and associated facilities. The land that would be required for the railway, road expansion and mines is not included in this. The project will have large-scale, irreversible socio-economic and environmental impacts. The proposed plant and port will adversely affect 11 villages and hamlets in three *Gram Panchayats* (village councils) in Jagatsinghpur District, namely – Dhinkia, Nuagaon and Gadakujang. According to the local

24 Ministry of Tribal Affairs, *Status report on implementation of the Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006 [for the period ending 30th September, 2011]*, available at: <http://www.tribal.nic.in/writereaddata/mainlinkFile/File1317.pdf>

25 Planning Commission, Government of India, *Draft Approach Paper for the Twelfth Five-Year Plan*, August 2011. The Special Rapporteur on the right to food, Jean Ziegler, also stated that around 40 – 50% 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, E/CN.4/2006/44/Add.2).

26 Planning Commission of India, Government of India, *Eleventh Five-Year Plan (2007-2012)*, 2007.

leadership of the movement against POSCO, more than 4,000 families and a population of around 22,000 will be affected by the project. These include all those persons directly dependent on betel vine cultivation, pisciculture, cashew-nut cultivation and fishing in Jatadhari Muhana – the proposed site of the port. The MoU signed between the Odisha government and POSCO establishes that the government has agreed to transfer resources worth millions for almost no returns to the state exchequer.

For the last six years, villagers of Jagatsinghpur District have been consistently protesting against the establishment of the steel and captive power plant by POSCO. In response to the villagers' protests, the state government and administration, allegedly in collusion with POSCO sent police and paramilitary forces, which in some instances used excessive force against the resisters. The government has engaged in grave violations of laws, democratic processes and human rights, which include use of state force and intimidation to quell dissent against the POSCO project, setting up of barricades to prevent free movement, attempts of forced evictions, and account of loss of land, housing and livelihood. The numerous instances of human rights violations reported against the police include beatings, arrests, shootings, torture of suspected anti-POSCO protestors, filing of false cases against them, as well as arbitrary arrest and detention of one of the leaders of the anti-POSCO movement. To date, the Government has registered 152 cases against the villagers; 825 warrants have been issued, of which 340 are for women.

On 29 November, 2007, a peaceful protest of the anti-POSCO movement was attacked by private/corporate militia and at least 17 anti-POSCO protestors were injured. On 20 June a bomb was thrown on anti-POSCO villagers, killing a villager Dula Mandal, and severely injuring Dhruba Sahani. Similarly, more than 100 injuries occurred on 15 May, 2010, which were caused by blind-firing of rubber bullets by police forces during a cruel dispersal of protesters, violating the constitutional right to dissent. Villagers refrain from moving out of the village, even for medical treatment, for fear of getting arrested.²⁷ On 23 December, 2011, Mr. Narayan Reddy was arrested, brought before a local court, and kept in custody for two weeks after he was falsely charged with murder and is reportedly being held in connection with violent incidents among peaceful anti-POSCO protesters and workers engaged by a contractor group. During the clashes one person died and 25 protesting villagers were seriously injured.²⁸

In July 2010, a four member committee was set up by the Ministry of Environment and Forests to investigate the status of implementation of existing legislation on environmental issues, including the *Forest Rights Act, 2006* (FRA) and Coastal Regulation Zone (CRZ) rules by POSCO India Pvt. Ltd. Three of the four members of the committee observed that environmental laws were being violated and provisions of the FRA were not followed. The report stated that there are grave violations of environmental laws and forests rights in addition to fabrication of evidence and suppression of information. The committee recommended the prosecution of the responsible authorities who violated the environmental laws, as well as the provisions of FRA. On 2 May 2011, the Government of India instead of accepting these recommendations gave a forest and environmental clearance to the POSCO project. On 30 March, 2012, the National Green Tribunal, however, suspended the environmental clearance accorded to POSCO.

Source: Housing and Land Rights Network

An estimated 13 to 18 million families in rural India today are reported to be landless, of which about eight million lack homes of their own.²⁹ Almost 80% of the agricultural population owns only about 17% of the total agriculture land, making them near

27 Odisha Development Review, State of Human Rights Due to Corporate Activities, Stakeholders' Report to the United Nation's Second Universal Periodic Review of India (2012), November 28, 2011.

28 FIDH, *Arbitrary detention of and judicial harassment against Mr. Narayan Reddy*, January 13, 2012, available at: <http://fidh.org/Arbitrary-detention-of-and-11143>.

29 Planning Commission of India, Government of India, *Eleventh Five-Year Plan (2007-2012)*, 2007.

landless workers. *Dalits* face systemic discrimination in land ownership and are often forced to live on the peripheries of villages. Contract and guardianship laws of the land oust people with disabilities from the right to own property, or other assets. Land reform measures have not been successfully implemented in most states, neither has surplus land been equitably distributed. The Eleventh Five-Year Plan also acknowledged that: “*The quantum of land declared surplus is far short of land which was estimated to be surplus on the basis of various national surveys. Thus, it is clear that reform measures have not been able to achieve the desired impact.*”³⁰ The Draft Approach Paper to the Twelfth Five-Year Plan, however, does not talk about land reform at all, reflecting a clear lack of priority accorded to the issue.

The forced acquisition of agricultural farmland is further exacerbating landlessness and the country's agrarian crisis is threatening food security. Despite the existence of the *Mahatma Gandhi National Rural Employment Guarantee Act, 2005*, (MNREGA) the loss of homes, habitat and lands is forcing thousands of families across rural India to move to urban areas in search of survival options. ‘Distress migration’ is one of the most striking findings of India's 2011 census, reflected in the increase of urban population, which is higher than the rural one.³¹ Natural disasters like the 2004 Indian Ocean tsunami, earthquakes, and annual floods have also been responsible for displacing large sections of the population.

Across rural and urban areas, women, children and minorities, especially Scheduled Castes and Scheduled Tribes, suffer disproportionately from the adverse impacts of evictions, homelessness, landlessness, and inadequate housing and living conditions.

In October 2012, as a result of a long and relentless struggle of the landless poor across India, the Ministry of Rural Development agreed to implement a ten-point agenda on land reforms. Among other goals, the agreement speaks about developing a National Land Reforms Policy.³² The development is a positive one, but much needs to be done to make the agenda a reality and for the benefits of land reform and redistribution to reach the millions of landless poor across India.

Law and Policy

Despite the dismal status of housing and land rights in the country, there is no comprehensive human rights-based national housing law or policy. *The National Housing and Habitat Policy, 2007*, while stating ‘shelter for all’ as a goal does not consider housing to be a human right but focuses more on a market approach to housing. The proposed national urban scheme *Rajiv Awas Yojana*, which aims to provide security of tenure for residents of slums/informal settlements also needs to focus on incorporating a strong ‘human right to adequate housing’ approach in order to be successful.

Almost 80% of the agricultural population owns only about 17% of the total agriculture land, making them near-landless workers.

30 Planning Commission of India, Government of India, *Eleventh Five-Year Plan (2007-2012)*, 2007.

31 The Hindu, *Census findings point to decade of rural distress*, September 25, 2011, available at: <http://www.thehindu.com/opinion/columns/sainath/article2484996.ece?homepage=true#.ToAHZ9HBvuV.facebook>

32 For more information on the ten-point agreement, see: <http://ektaparishad.com/Portals/0/Documents/JanSatyagraha-Agreement-on-Land-Reforms.pdf>.

Several bills, which relate to housing and land, are currently in the process of being finalised in India. These include: *the Real Estate (Regulation and Development) Bill, 2011*; *the Land Acquisition and Rehabilitation and Resettlement Bill, 2011* (recently renamed *The Right to Fair Compensation, Resettlement and Rehabilitation and Transparency in Land Acquisition Bill 2012*); *the Land Titling Bill, 2011*; and *the Mines and Minerals (Development and Regulation) Bill, 2011*. All these draft bills need to undergo review and extensive consultation while incorporating a human rights approach.

The Right to Fair Compensation, Resettlement and Rehabilitation and Transparency in Land Acquisition Bill, 2012, is at the centre of a debate, as it is premised on the contentious colonial principle of ‘eminent domain’, under which the state can acquire private property for public use, following the payment of compensation to the owner. The Bill does not aim at minimising evictions; does not have a rights-based definition of ‘public purpose’ and does not include adequate human rights safeguards for rehabilitation. It is also weak with regard to urban eviction and displacement issues. While the draft Bill has been amended and approved by a Group of Ministers set up especially for its review, it has still to be finalised before it is presented to the Parliament at its next session.

Number	Recommendation	Status
RIGHT TO ADEQUATE HOUSING AND LAND		
UPR 1		
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.	Accepted
UPR 2		
130	Provide more resources for the enjoyment of economic and social rights, especially in favour of vulnerable groups like women, children, poor people and minorities.	Accepted
142	Continue efforts to eradicate poverty and to better living conditions as well as increase job opportunities.	Accepted
144	Continue to advance the progress already underway on poverty eradication and improve the enjoyment of the most basic human rights of its people, especially women and children.	Accepted
137	Continue to implement plans Accepted in the area of housing and rehabilitation, particularly the plan launched in 2011 aimed at preventing the construction of new slums	Not accepted

Right to Food

Ensuring access to natural resources and/or income to feed oneself with adequate nutritious food is of crucial importance for the enjoyment of all other rights. India has ratified core international human rights instruments that have strong reference to the right to food.³³ Nonetheless, in 2008 the Committee on Economic Social and Cultural Rights expressed deep concern over the high levels of food insecurity in the country, as well as on the reports of corruption, inefficiency and discrimination

³³ International Covenant on Economic, Social and Cultural Rights (ICESCR Art. 11), the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW, Art.24 &27), and the Convention on the Rights of the Child (CRC, Art. 12&14).

in distribution³⁴ that impede the realisation of the right to adequate food.³⁵

In 2000, India adopted the *UN Millennium Declaration*, a joint effort to reduce poverty and hunger by 50% before 2015. Yet, high levels of food insecurity, corruption, inefficiency and discrimination in distribution remain. The *Right to Food Guidelines* of the Food and Agriculture Organization (FAO), adopted by the FAO Council in 2004, reiterate the legally binding standards already existing for the right to food and focus on how states can fulfil their obligations under the right to food by developing, implementing and monitoring their public policies, through benchmarking and increased accountability.



Liba Taylor/ActionAid

The Constitution of India provides a strong framework for the protection and promotion of the right to food. Article 21 secures the protection of life and personal liberty, while Article 47 of the Directive Principles states that “*the State shall regard the raising of the level of nutrition and the standard of living of its people and the improvement of public health as among its primary duties*”.

India also has a number of food entitlement programmes like the *Integrated Child Development Scheme* (ICDS) tenable by all children under six, pregnant and lactating mothers and the *Mid-Day Meal Scheme* (MDMS) available to all primary and upper primary school children. Food subsidy schemes – like the targeted *Public Distribution System*, which guarantees up to 35 kg per month of subsidised food grains, and the *Annapurna Scheme* that provides for 10 kg of free food grain for indigent senior citizens of 65 years or above who are not getting old age pension – also exist. However, despite the presence of such programmes and the required available grains, 21% of India’s total population remains undernourished,³⁶ with women, girls and older persons being the most affected. Since 1997, the country has experienced an average annual GDP rate of 7%, yet India still has the world’s highest number of malnourished.³⁷ Despite significant economic growth in the last couple of years, levels of malnourishment are still very high. According to a recent study,³⁸ 42% of children under five are underweight and 59% are stunted.

34 CESCR’s definition of adequate food availability, apart from the possibilities for feeding oneself, also refers to the possibilities for “*well functioning distribution* (emphasis added), 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>

35 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>

36 Food and Agriculture Organization of the United Nations, India, available at: <http://www.fao.org/countries/55528/en/ind/>

37 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%- International Institute for Population Sciences and Macro International, *National Family Health Survey 3 (NFHS-3)*, 2005-06: India, Mumbai, available at: <http://www.nfhsindia.org/nfhs3.html>

38 Naandi, The HUNGaMA Survey Report 2011, available at, www.hungamaforchange.org/FlierA4copy.pdf

Commenting on the issues, the Prime Minister stated: “... *what concerns me and what must concern all enlightened citizens, is that 42% of our children are still underweight. This is an unacceptable high occurrence.*”

Supreme Court Orders

In addition to these national legal entitlements, since 2001, over 40 Supreme Court interim orders have treated the right to food as justiciable.³⁹ In 2001, when the food stocks reached at unprecedented level in the country while hunger in drought-affected areas was immense, the People's Union for Civil Liberties (PUCL) filed a petition against the Government of India, the FCI, and six state governments on the plea of inadequate food relief.⁴⁰ Consequently, the case was expanded to include issues of chronic hunger and under-nutrition and all the states were added into the list of petitions. In its response, the Central Government stated that it had nine nutrition-related schemes⁴¹ to deal with the situation the Court started to review the implementation of these schemes. The Supreme Court began issuing orders instructing the Central and state governments to implement nutrition-related schemes in letter and spirit, effectively turning the benefits under these schemes into legal entitlements. Over the past decade, the focus of the case has shifted from one scheme to another.⁴²

Starvation Deaths

In a 2002 order, the Supreme Court stated that “*it is the duty of each States/Union Territories to prevent deaths due to starvation or malnutrition. If the Commissioner reports and it is established to the satisfaction of the Court that starvation death has taken place, the Court may be justified in presuming that its orders have not been implemented and the Chief Secretaries... may be held responsible for the same.*”⁴³ On 10 May 2011, the Supreme Court directed the Central Government to release five million tonnes of foodgrains immediately for distribution in 150 most poverty-stricken districts to ensure that no starvation death takes place.⁴⁴ Nevertheless, starvation deaths are still regularly reported in India, though officials refrain from acknowledging their occurrence.⁴⁵

“... what concerns me and what must concern all enlightened citizens, is that 42% of our children are still underweight. This is an unacceptable high occurrence.”

*Dr. Manmohan Singh,
Prime Minister of India*

39 *People's Union for Civil Liberties v. Union of India*, Supreme Court, Writ Petition (Civil) No.196 of 2001 (India); Also see: Planning Commission affidavit to the Supreme Court on 20.09.2011.

40 *PUCL v. Union of India and Others*, Writ Petition (Civil) 196 of 2001.

41 These were: Integrated Child Development Services, Mid-Day Meal Scheme, Public Distribution System, Annapoorna, Antyodaya Anna Yojana, National Family Benefit Scheme, National Maternity Benefit Scheme and National Old Age Pensions Scheme. Sampoorna Grameen Rozgar Yojana (SGRY) was also in the initial list, but this programme was phased out after the MNREGA came into force.

42 Reetika Khera (forthcoming).

43 Supreme Court Order, October 29, 2002 – Right to Food Campaign, *Supreme Court on the Right to Food: A Tool for Action*, October 2005.

44 The Hindu, *Release 5 million tonnes of foodgrains: Supreme Court*, May 14, 2011, available at: <http://www.hindu.com/2011/05/15/stories/2011051555310800.htm>

45 The Indian Express, *Left Union claims starvation deaths in tea gardens*, January 14, 2012, available at: <http://www.indianexpress.com/news/left-union-claims-starvation-deaths-in-tea-gardens/899666/>; India Real Time, *Starving in India: A fight for life in Bihar*, April 10, 2012, available at: <http://blogs.wsj.com/indiarealtime/2012/04/10/starving-in-india-a-fight-for-life-in-bihar/>

CASE STUDY

Starvation Deaths of Tea Labourers in Assam

In Bhuvan Valley Tea Estate – a privately owned tea garden in the district of Cachar in the North-East Indian state of Assam – 14 people died allegedly due to starvation, malnutrition and lack of medical care within a five-month period, according to the findings of an investigating team of the Barak Human Rights Protection Committee (BHRPC).

The first series of deaths occurred after the closure of the tea garden in October 2011, when the tea garden was abruptly closed and the workers were abandoned by the state and the estate management. The dismal situation of the workers continued even after the reopening of the garden in February 2012, and a few new deaths were reported. Actions and inaction of both the estate management and the government drove about 3,000 labourers and their families to the verge of starvation. The management closed the tea garden without paying wages due for nine weeks, dues from provident fund and other benefits and without providing any alternative livelihood options.

Numerous plantation labourers were interviewed by the BHRC. Some of them were employed as permanent workers and paid wages as low as INR 50 (USD 0.95) per day, while the rest were engaged as casual workers and paid even lower wages at INR 41 (USD 0.78). The wages of the labourers remained pending for long under various pretexts, including that the estate was suffering loss but would recover very soon. It is also alleged that the estate management did not provide any housing facilities for the labourers and their families. The management wanted workers to search for alternative livelihoods and overlook their dues. However, the workers demanded their dues, stopped working, and the estate closed down. The workers approached the administration several times and the Deputy Commissioner of Cachar district assured them that the issue would be resolved.

Labourers and their families living in the garden have been deprived of a number of union and state welfare schemes, leading to an overall dismal situation in the tea garden.

(1) Nutrition and health

There are only about seven *anganwadi* centres⁴⁶ in the whole estate where more than 3,000 people are living. The centres are run under the *Integrated Child Development Services* (ICDS) intended to provide nutrition and health care for children, adolescents, gestating and lactating mothers. According to the local inhabitants, even these few centres are not properly functioning, with workers and helpers of *anganwadi* centres coming only once or twice a month.

A health centre run under the *National Rural Health Mission* of the Government of India is in place but is not functioning properly according to the inhabitants, who claim it is run by an unqualified practitioner and the medicines are not made available to the patients. Moreover, the district authority is said to have sanctioned INR 1,500,000 (USD 28,300) for primary health care, but there is no sign of its utilisation. There is an ambulance, but the driver demands INR 400 (USD 7.5) fare from each patient, which is unaffordable for them.

(2) Housing and food

There are a few houses constructed under *Indira Awas Yojna* (IAY) – a central government rural housing programme – in the tea garden area. People, however, claimed that most of the installed money for the construction of these houses is granted to the labourers who are connected with the management and the labour union,

⁴⁶ Anganwadi centres come under the Integrated Child Development Scheme. The main objective of this programme is to cater to the needs of the development of children in the age group of 3-6 years. Pre-school education aims at ensuring holistic development of the children and to provide learning environment to children, which is conducive for promotion of social, emotional, cognitive and aesthetic development of the child. – National Portal of India, available at: <http://india.gov.in/citizen/health/health.php?id=62>

which is affiliated with the ruling party of the state. The poorer are thus completely deprived from IAY benefits. Additionally, the government-run *Public Distribution System* (PDS) is conspicuously absent in the area.

(3) MGNREGA

Work done on the digging of a canal was reportedly claimed under the *Mahatma Gandhi National Rural Employment Guarantee Act, 2005* (MGNREGA). Nevertheless, people stated that this is the only work done under MGNREGA in the tea garden area, which provided only few workdays to a small number of labourers.

When the garden re-opened in February 2012, the labourers joined work as they were left with no other option. Only three out of nine weeks' wages, which were long overdue at the time of closure of the estate, were paid to the workers. The labourers borrowed money or bought food items on credit during the four months where they had no access to income. They had to repay those loans and thus were not in a position to procure food sufficiently. Neither the garden owners nor the administration provided them with any food items. The investigating team of BHRPC was told that some medicines were brought to the health centre in the tea garden but nothing so far has been distributed among the sick people. The team met 42 sick people in three divisions out of the total 10 but the number of people that need immediate medical care in all the districts of the tea garden is much higher.

The Government of Assam is still denying the occurrence of starvation deaths in the tea garden, even though it admitted the occurrence of deaths and the prevalence of hunger. The official position is that these were natural deaths caused by diseases and old age thereby ignoring the underlying causes.

Source (summary): Barak Human Rights Protection Committee (BHRPC), Tea labourers die of starvation due to exploitation of garden management and government apathy in Assam and Deaths continue unabated in Assam tea garden, available at: <http://bhrpc.wordpress.com/2012/02/01/hungeralert1/> ; <http://bhrpc.wordpress.com/2012/03/10/hungeralert4/>

Public Distribution System (PDS)

India's PDS is the world's largest food subsidy programme. It is a major scheme meant to ensure availability of selected essential commodities at affordable subsidised 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. 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 Ministry of Consumer Affairs, Food and Public Distribution, admitted that more than 67,000 tonnes of grains were rotting in the godowns of the Food Corporation of India (FCI).⁴⁷ Shockingly, in a country where an estimated 231 million people go hungry every day,⁴⁸ official data reveal that the amount of food grains wasted in FCI godowns across the country has gone up many fold over the last two years.

47 Hindustan Times, *Rotting grain more than Government claimed*, September 7, 2010, available at: <http://www.hindustantimes.com/News-Feed/India/Rotting-grain-more-than-Govt-claimed/Article1-596981.aspx>. Also see: Hindustan Times, *Not a grain of truth*, September 8, 2010, available at: <http://www.hindustantimes.com/News-Feed/ColumnsSamarHalarnkar/Not-a-grain-of-truth/Article1-597806.aspx>

48 The Times of India, *Criminal waste of food grain in Punjab?*, May 4, 2012, available at: <http://www.timesnow.tv/Criminal-waste-of-food-grain-in-Punjab/articleshow/4401414.cms>

While being a progressive scheme, the shift from universal applicability of the PDS to a targeted one since 1997 – providing subsidised food only to BPL card holders – has led to the exclusion of genuinely poor households. 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 September, 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 0.61) in urban areas will be considered ‘above poverty line’, at 2004-05 prices.

Providing subsidised food only to BPL cardholders excludes many genuinely poor households through targeting errors.⁴⁹ *“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”.*⁵⁰ In fact, in 2004-05, 50% of poor rural households did not have a BPL card, while 18% of households in the richest quintile had one.⁵¹ Other problems of implementation include: losses during transportation, poor storage, rotting grains and illegal sale.

In a series of recent protest by civil society organisations, the issue of corruption and malpractices in PDS was raised. Most of the states in India have similar problems regarding the PDS, some of which are as follows:⁵²

- Many people are excluded from the PDS and other food security schemes, because they do not have a BPL card.
- PDS rations are insufficient to guarantee food security.
- Anganwadi services are very poor.
- MNREGA wages are not paid on time, and even work is often not provided.
- Old-age pensions are very meagre, and not paid on time.
- The provisions of the FRA 2006, are not being implemented.

The biggest problem across the country is the exclusion of many people from the PDS and other food-related schemes that are restricted to BPL households. There is a huge demand for scrapping the BPL system and ensuring food for all.

The proposal to introduce a ‘cash transfer’ programme in place of the PDS cannot solve the problem of incorrect identification of the poor, and will not benefit the already targeted poor since they would be receiving a fixed sum when prices of essential items, including food, are rising. The availability, efficiency and accessibility of banks or post office systems, especially for people living in remote areas of the

49 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

50 M. Swaminathan, 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>

51 International Household Survey Network, *India: 2005-National Sample Survey Round 61*, 2004-2005; Jean Dreze & Reetika Khera, The BPL Census and a Possible Alternative, Economic and Political Weekly, Vol XLV No 9, February 27, 2010.

52 Right to Food Campaign, *Rozi Roti Adhikar Yatra: Loud Clamour for Food Security Across the Country*, available at: http://www.righttofoodindia.org/data/right_to_food_act_data/events/state_yatra_october_2012/October_2012_press_note_world_food_day_rffc_16_october_2012.pdf

country; the irregular payments and corruption; the high rates of illiteracy; the lack of decision-making power over the household income by women who are the main providers of food; as well as the adverse impact on agricultural production owing to the lack of demand for subsidised grains, are some of a plethora of impediments, that render the plan of cash transfers not a sensible scheme to achieve food security. A 2011 survey has shown that people rejected the introduction of cash transfers in states where the PDS is functional, whereas many respondents were more open to the idea in states with a dysfunctional PDS. *“Overall, more than two-thirds of the respondents expressed a clear preference for food over cash; less than one-fifth were in favour of cash over food”*.⁵³

In a recent sit in protest at Jantar Mantar hundreds of people from 15 states rejected outrightly the latest proposal to reduce the entitlements and the coverage of eligible families irrespective of their incidence of poverty and the distribution of rural and urban areas. In such case, the country would have 33% of the population excluded from the PDS.

Activists also stated that *“the Centre’s alternative proposal has whittled down the grievance redress mechanism and removed all new food-related schemes suggested in the Bill, such as community kitchens for the urban poor, destitute feeding centres and free meals for people living in starvation”*.⁵⁴

The state of Tamil Nadu, while adopting a universal approach, *“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 APL⁵⁵ allocation at the APL price), it is incurring an additional subsidy to maintain a universal system with rice at specially subsidised low price”*.⁵⁶ Contrary to a common belief that the PDS is irreparably dysfunctional, a recent survey - has shown that in states where authorities have taken measures and initiatives, such as expanded coverage, reduced prices, computerisation of stock management, etc, the PDS was significantly functional. The system in Himachal Pradesh is also universal with all households having the same access to commodities and quantities, although APL households pay higher prices than the BPL households. Andhra Pradesh and Chhattisgarh have adopted a quasi-universal approach with nearly 80% of the population having access to PDS commodities.⁵⁷ These inclusive, successful systems of PDS should be emulated across the country.

53 Reetika Khera, *Revival of the Public Distribution System: Evidence and Explanations*, Economic and Political Weekly, Vol XLVI No 44 & 45, November 5, 2011.

54 Gargi Parsai, *Right to Food Campaign agitates for a comprehensive food security bill*, available at: <http://www.thehindu.com/news/national/article3832615.ece>

55 APL stands for 'above poverty line'.

56 M. Swaminathan, *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>

57 Reetika Khera, *Revival of the Public Distribution System: Evidence and Explanations*, Economic and Political Weekly, Vol XLVI No 44 & 45, November 5, 2011.

National Food Security Bill

The *National Food Security Bill* (NFSB), 2011, is a very important step towards the elimination of hunger and under-nutrition in India. Its positive features include the recognition of women as heads of the household for the distribution of BPL cards and the statutory recognition of *Mid-Day Meals* and ICDS. However, the Bill also has shortcomings, as it fails to universalise the PDS and rather opts for a targeted approach. In addition, the current overwhelming focus of the NFSB on the PDS is not adequate. In order to make the right to food a reality, access to productive resources like land, water and forests should also be addressed and incorporated in the ambit of the Bill. The NFSB should include provisions to implement the state's obligation to facilitate access to resources for people to feed themselves, along with the state obligation to provide food if people cannot access such resources. In order to ensure food security, the NFSB has to be in conformity with India's human rights obligations and in compliance with orders of the Supreme Court.

On 12 March, 2012, several eminent development economists wrote an open letter to Prime Minister Manmohan Singh welcoming the tabling of the NFSB but also pointing out to its serious shortcomings. The experts suggested a simpler and more effective framework for the PDS that would require only minor amendments to the Bill.⁵⁸ Their suggestions are detailed in the following case study.

CASE STUDY

Simplifying the National Food Security Bill

In its current form (Plan A), the *National Food Security Bill* (NFSB) is impractical and divisive. It rests on an artificial division of the population into three groups ('priority', 'general' and 'excluded'), without any clarity as to how these groups are to be identified. All recent attempts to devise a sound methodology to identify priority households have failed. The Socio-Economic and Caste Census (SECC) is unlikely to perform much better than earlier BPL censuses in this respect. Exclusion errors are likely to be large, and the entire process is very divisive. Also, Plan A lacks simplicity and transparency, elements that are essential for the success of this Bill.

Proposed Solution: The proposed solution (Plan B) is essentially a simplification of the Bill, as follows: (a) use 'exclusion criteria' only; (b) merge the general and priority groups ('aam log'); (c) give every 'aam' household a 'national assured minimum entitlement' (NAME) of 25 kg per month at INR 3/2/1 (USD 0.06/0.04/0.02) per kg for rice/wheat/millet;⁵⁹ (d) retain and strengthen the *Antyodaya Anna Yojana* scheme⁶⁰ as it is.

Advantages of this Solution: It is eminently feasible and relatively easy to implement; it provides a sound and durable framework; poor households would be well protected from exclusion errors; entitlements would be simple and transparent; the solution would avoid the divisive effects of 'targeting' and will end the poverty line controversy; and finally the Antyodaya households would be protected from any possible loss of entitlements.

Clarifications: (a) The NAME is a national minimum guaranteed by the Central Government under NFSB. It does not prevent state governments from providing more, e.g. by giving more than 25 kg to aam households,

58 The Hindu, *A simple proposal on food security*, March 12, 2012, available at: <http://www.thehindu.com/opinion/op-ed/article2985212.ece>

59 If entitlements are in per-capita terms, the NAME would be "5 kg per person" instead of "25 kg per household". If food entitlements are replaced with cash transfers under Section 18(2)(h) of the Bill, the NAME would be (at least) the monetary equivalent of these food entitlements at local prices.

60 The scheme is aimed to target the poorest of the poor in rural and urban areas, who are issued special yellow ration cards.

or by giving something to excluded households; (b) In principle, the NAME need not be the same everywhere, e.g. it could be different in rural and urban areas, or higher in the poorer districts; (c) The *Antyodaya Anna Yojana* programme would be retained and strengthened, either under the NFSB, or simply as a 'scheme'. The SECC's 'automatic inclusion' households (e.g. released bonded labourers) could be automatically added to the Antyodaya list.

Resource Requirements: If 25% of rural households and 50% of urban households are excluded (as in Plan A), the annual resource requirements (including the required provision for the Antyodaya programme) are as follows:

	Grain Requirements (Million tonnes)	Food Subsidy (INR Billion)
Plan A	52.4	779.27 (USD 14.5)
Plan B	51.5	815.24 (USD 15.1)

The Main Hurdle: BPL households are currently entitled to 35 kg per month; hence to those households that actually obtain 35 kg plan B would appear detrimental, compared with their current entitlements. However, only some states are actually granting 35 kg per month to BPL households. Many states have already reduced BPL entitlements to expand the coverage of the PDS, to 25 kg per month or less. Consequently, BPL households in these states would benefit from Plan B. Even a BPL household currently obtaining the official quota of 35 kg per month at the official 'central issue prices' would get roughly the same subsidy under Plan B – as the reduction of price would compensate for the reduction of quantity. This applies, for instance, in UP and Maharashtra.

There is still a possible issue in a few states where BPL households receive 35 kg, and where the issue price has been reduced (by state governments) substantially below the 'central issue prices'. The main examples are Chhattisgarh and Jharkhand. However, these states will accumulate large PDS subsidies if the Central Government reduces issue prices to Rs 3/2/1 (USD 0.06/0.04/0.02) for rice/wheat/millets. These saved subsidies could be used by the concerned states to protect the entitlements of households currently receiving 35 kg. Alternatively, a provisional 'supplement' of 10 kg per BPL household could be provided by the Central Government to all states that currently provide 35 kg to BPL households, for a limited period of time. This would be effortless, considering the government's large excess stocks at the moment.⁶¹

Source: Summary of attachment note published at The Hindu, March 12, 2012, drafted by: Dilip Abreu (Princeton University); Pulapre Balakrishnan (Director, Centre for Development Studies, Thiruvananthapuram); Abhijit Banerjee (Massachusetts Institute of Technology); Sangeeta Bansal (Jawaharlal Nehru University); Pranab Bardhan (University of California, Berkeley); V. Bhaskar (University College, London); Ashwini Deshpande (Delhi School of Economics); Bina Agarwal (Director, Institute of Economic Growth); Mahendra Dev (Director, Indira Gandhi Institute of Development Research); Jean Drèze (Allahabad University); Bhaskar Dutta (Warwick University); Maitreesh Ghatak (London School of Economics); Deepti Goel (Delhi School of Economics); Ashima Goyal (Indira Gandhi Institute of Development Research); Himanshu (Jawaharlal Nehru University); Rajshri Jayaraman (European School of Management and Technology, Berlin); K.P. Kannan (former Director, Centre for Development Studies, Thiruvananthapuram); Anirban Kar (Delhi School of Economics); Reetika Khera (Indian Institute of Technology, Delhi); Ashok Kotwal (University of British Columbia); Srijit Mishra (Indira Gandhi Institute of Development Research); Dilip Mookherjee (Boston University); K. Nagaraj (Asian College of Journalism); R. Nagaraj (Indira Gandhi Institute of Development Research); Sudha Narayanan (Indira Gandhi Institute of Development Research); Pulin Nayak (Delhi School of Economics); Rohini Pande (Harvard University); Kirit Parikh (Chairman, Integrated Research and Action for Development); Bharat Ramaswamy (Indian Statistical Institute); Debraj Ray (New York University); Atul Sarma (former Vice-Chancellor, Rajiv Gandhi University); Abhijit Sen (Member, Planning Commission); K. Sundaram (Delhi School of Economics); Jeemol Unni (Director, Institute of Rural Management, Anand); Sujata Visaria (Hong Kong University of Science and Technology); Vijay Vyas (Member, Economic Advisory Council to the Prime Minister).

⁶¹ Food grain stocks stood at 54 million tonnes on March 1, 2012 (the highest-ever level for that date, just before the rabi harvest). They are expected to rise to 74 million tonnes by June 1, 2012.

One of the major shortcomings of the proposed Bill is its exclusionary outlook. It aims to cover only 67% of the total population. The Bill in its present form has been criticised not only by the opposition parties but some of the major allies also, of the present Government. Reeling under severe pressure, the Government has agreed to amend the present Bill to avoid rural-urban divide.⁶²

Food security in India requires that the government expands its focus beyond welfare schemes and secures access to and protection of natural resources, promotes land reforms and supports production and utilisation of coarse grains grown by local communities for the PDS, which would cut transportation costs and support small and marginal farmers. Food grains should be locally grown in order to support local agriculture and allow proceeds of subsidised foods to flow directly into local communities. According to the UN Special Rapporteur on the right to food: “*There is overwhelming agreement that achieving food security in developing countries requires increasing support to enhance the productive capacity of and economic opportunities for, small-scale farmers*”.⁶³

CASE STUDY

Special Economic Zone (SEZ) in Madurai district, Tamil Nadu Violates the Right to Food of Peasant Families

With the help of the Madurai district administration, State Industries Promotion Corporation of Tamil Nadu Ltd. (SIPCOT) identified around 1,478.71 acres of land in Sivarakottai, Karisalkalampatti and Swamimallampatti (three villages in Thirumangalam Taluk, Madurai district) as suitable to establish a Special Economic Zone (SEZ). Representatives of SIPCOT declared the identified land as dry and concluded that the region fulfils the basic criteria for industrial promotion, namely climate, geography, infrastructure and cheap manpower. After the completion of the acquisition process, the land will be handed over to manufacturing or business establishments as per the provisions of the *Special Economic Zone Act, 2005*. Since 2008, the affected peasants have been opposing the establishment of the SEZ and have formed the *Madurai Mavatta Vivasayi Nala Sangam*, a farmers’ struggle committee.

The plots of land under acquisition are under the ownership and cultivation of small-scale farmers, around 1,950 families, who have no other source of livelihood and income other than the small land-holding and animal husbandry. Food security standards are remarkably high among the villagers who are totally dependent on agriculture and animal husbandry for their livelihoods, owing to the water management systems and integrated farming that has been practiced over centuries. The agricultural land is rain fed, fertile and surrounded by 15 water bodies intended for underground water recharging and cattle needs. Most of the families have owned the land for three generations, growing 18 varieties of crops as well as medicinal herbs throughout the year. Farmers own small percentages of the land, they are completely dependent on the yield and some of them manage to sell parts of their crops to wholesale dealers. The income generated through these means is sufficient for the families. A survey conducted by Foodfirst Information and Action Network (FIAN) shows that 95% of the families (1,870 out of 1,950) involved in agriculture are consuming only food produced by themselves, while 85% of the families are marketing their own agricultural products. Women are actively engaged in agricultural work, and even though most of them do not receive any cash payment, they have access to the harvest for family

62 Iftikhar Gilani, Govt. finally tweaks food security bill, Daily News and Analysis, August 15, 2012, available at: http://www.dnaindia.com/india/report_govt-finally-tweaks-food-security-bill_1728111

63 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

consumption. Considering that they have only farming skills, entering into another occupation is not an option for them. The acquisition of land poses a direct threat to the livelihood and subsistence of farmers, and thereby violates their right to food.

According to the *Special Economic Zone Act, 2005* the acquisition of land requires environmental clearance in accordance with pollution control laws. Lands, which are totally excluded from acquisition, include agricultural lands under active and traditional cultivation. Only waste land can be acquired for the establishment of a SEZ. Thus, this excludes agricultural lands or lands which could be converted for agricultural purposes, catchment areas of water bodies, forest and grazing lands. In spite of these provisions, the government of Tamil Nadu passed an order under Section 3 of the *Tamil Nadu Acquisition of Land for Industrial Purposes Act, 1997* (Act 10/99) (GO MS 58 dated 12 June, 2009) to acquire the land, with no transparency regarding the type of industries that are planned to be established.

Source: FIAN India

Farmers' Suicides

Since 2001, the country has witnessed an alarming number of farmer suicides with a baseline of 15,000 each year⁶⁴ primarily due to indebtedness and agrarian distress. Hunger among the producers of food is a reality in a country that ranks second worldwide in farm production. Liberalised trade,⁶⁵ patenting of agricultural products, and the introduction of Genetically Modified Organisms (GMOs), especially under the draft *Biotechnology Regulatory Authority of India Bill, 2011*,⁶⁶ could further aggravate India's food crisis.⁶⁷

CASE STUDY

Farmers' Suicides

Alleged to be the largest wave of recorded suicides in human history, the number of Indian farmers that have committed suicide in the last 16 years is estimated to be more than a quarter of a million.

With a figure of at least 14,027 in 2011, according to the NCRB, the total number of farmer suicides has touched 270,940 since 1995.⁶⁸ While these figures are striking on their own, they do not portray the actual number of farmer suicides taking place. For instance, women are often not included in farmer suicides statistics since most of them lack land titles – a common prerequisite for being recognised as a farmer in official statistics and programmes.

64 National Crime Records Bureau, *Accidental Deaths and Suicides in India 2010*, available at: <http://ncrb.nic.in/CD-ADSI2009/ADSI2009-full-report.pdf>

65 *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.

66 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/>.

67 See: Concluding Observations of the UN Committee on Economic Social and Cultural Rights, 2008, E/C.12/IND/CO/5, para, 29, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/436/08/PDF/G0843608.pdf?OpenElement>.

68 P. Sainath, *Farm suicides rise in Maharashtra, State still leads the list*, Opinion Column, The Hindu, July 3, 2012, available at: <http://www.thehindu.com/opinion/columns/sainath/article3595351.ece>

The magnitude of farmer suicides and the affected families is a result of India's longstanding agrarian crisis. Over the past two decades, economic reforms and the opening of agriculture to global markets have increased costs, while reducing yields and profits leading to great financial and emotional distress. Thus, smallholder farmers are often trapped in a cycle of debt, taking on more loans and buying more inputs, which in turn can lead to greater debt. It has been said that *"indebtedness is the major and proximate cause of farmer suicides in India. Many farmers, ironically, take their lives by ingesting the very pesticide they went into debt to purchase"*.⁶⁹

The loan waiver scheme of the Union Budget 2008 saw a decrease of just 436 suicides (16,196)⁷⁰ compared to 2007 (16,632 suicides)⁷¹ based on the NCRB data. Thus, there were no major changes in the trend of suicides considering that there is still a very high number of suicides within a fast decreasing agrarian population.⁷² The waiver was a welcome step, but it was flawed, as it dealt only with bank credit without addressing the moneylender debt. Consequently, only farmers with access to institutional credit could benefit, although many tenant and poor farmers continue to get loans primarily from moneylenders.⁷³ The scheme also excluded farmers holding more than five acres of land, while it made no distinction between dry and irrigated holdings.⁷⁴



Prashanth Vishwanathan/Bloomberg/ActionAid

Drought in Madhya Pradesh.

The Big Five 'suicide belt' States – Maharashtra, Andhra Pradesh, Karnataka, Madhya Pradesh and Chhattisgarh – account for two-thirds of all farmer suicides. Maharashtra remains the state with the highest number of such suicides for the last ten years and, it shows a rise in numbers yet again, logging 3,337 against 3,141 farmers' suicides the previous year (and 2,872 in 2009).⁷⁵ There are firm allegations that the committees that have operated in Vidarbha's crisis districts have been dismissing most of the suicides as 'non-genuine' for the last four years.⁷⁶ Farmer suicides in the Vidarbha region of Maharashtra have been unique not only in terms of numbers but also for the reason that some of those committing suicides, have addressed suicide notes to the Prime Minister, the Chief Minister or the Finance Minister, speaking of debt, soaring cultivation costs, high cost of living, volatile prices and regressive policies that have impinged on thousands of farmers in the last decade.⁷⁷

Professor K. Nagaraj, who has conducted an in depth study on the farmers suicide phenomenon in India, claims that the highest numbers of farmer suicides become visible in regions of high commercialisation of agriculture

69 Center for Human Rights and Global Justice, *Every Thirty Minutes: Farmer Suicides, Human Rights, and the Agrarian Crisis in India*, NYU School of Law, 2011.

70 National Crime Records Bureau 2008, available at: <http://ncrb.nic.in/ADSI2008/table-2.6.pdf>

71 National Crime Records Bureau 2007, available at: <http://ncrb.nic.in/adsi/data/ADSI2007/Table-2.11.pdf>

72 Census of India 2011, available at: http://censusindia.gov.in/2011-prov-results/paper2/data_files/India/Rural_Urban_2011.pdf

73 P. Sainath, *Farm Suicides: A 12 year Saga*, The Hindu, May 5, 2010, available at: <http://www.thehindu.com/opinion/columns/sainath/article94324.ece>

74 P. Sainath, *Men of Letters, Unmoved readers*, The Hindu, May 5, 2010, available at: <http://www.thehindu.com/opinion/columns/sainath/article422651.ece>

75 P. Sainath, *Farm suicides rise in Maharashtra, State still leads the list*, Opinion Column, The Hindu, July 3, 2012, available at: <http://www.thehindu.com/opinion/columns/sainath/article3595351.ece>. See also, National Crime Records Bureau 2009, available at: <http://ncrb.nic.in/CD-ADSI2009/ADSI2009-full-report.pdf>

76 P. Sainath, *Of luxury cars and lowly tractors*, The Hindu, December 27, 2010, available at: <http://www.thehindu.com/opinion/columns/sainath/article995828.ece>

77 P. Sainath, *Of luxury cars and lowly tractors*, The Hindu, December 27, 2010, available at: <http://www.thehindu.com/opinion/columns/sainath/article995828.ece>

and very high peasant debt, with cash crop farmers appearing far more vulnerable to suicide than those engaged in food crop production. “*The predatory commercialisation of the countryside; a massive decline in investment in agriculture; the withdrawal of bank credit at a time of soaring input prices; the crash in farm incomes combined with an explosion of cultivation costs; the shifting of millions from food crop to cash crop cultivation with all its risks; the corporate hijack of every major sector of agriculture including, and especially seed; growing water stress and moves towards privatisation of that resource. The government was trying to beat the crisis — leaving in place all its causes — with a one-off waiver*”.⁷⁸ Behind the striking farmer suicide figures lie individual tragedies, the effects of which haunt the families of the deceased – families inherit the debt, children drop out of school to earn an income, while surviving family members may themselves commit suicide out of utter desperation.⁷⁹

Number	Recommendation	Status
RIGHT TO FOOD		
UPR 2		
136	Introduce a strategy to promote food security.	Accepted
148	Provide every possible support and assistance to the national project for rural health to raise the standard of nutrition and improve public health and to strengthen the relationship between health and indicators such as sanitation and personal hygiene.	Accepted
168	Carry on efforts <u>with respect to</u> environmental and health policies, and continue <u>efforts and undertake measures to</u> adopt the bill on food security and strengthen the Public Distribution System (PDS).	Accepted in revised form
142	Continue efforts to eradicate poverty and to better living conditions as well as increase job opportunities.	Accepted
144	Continue to advance the progress already underway on poverty eradication and improve the enjoyment of the most basic human rights of its people, especially women and children.	Accepted
137	Continue to implement plans Accepted in the area of housing and rehabilitation, particularly the plan launched in 2011 aimed at preventing the construction of new slums	Not accepted

Right to Health

The Health sector has got a total outlay of INR 34,488 billion in the budget estimates for 2012-13, which is 13.24% more than the budget estimates of INR 30,456 billion for the 2011-12 fiscal.⁸⁰ After years of stagnation, total Health Expenditure from the Centre, as a share of total Union Budget, rose nominally to 2.31% for 2012-13 from 2.15% in 2011-12.⁸¹ Despite a number of public health care schemes for poor and rural families, and the extensive Indian Public Health Standards (IPHS), the country's health-care infrastructure is sub-standard and inadequate, with insufficient doctors, paramedical workers and hospital beds. There are six doctors and nine hospital

78 P. Sainath, *Farm Suicides: A 12 year Saga*, The Hindu, May 5, 2010, available at: <http://www.thehindu.com/opinion/columns/sainath/article94324.ece>

79 P. Sainath, *Farm Suicides: A 12 year Saga*, The Hindu, May 5, 2010, available at: <http://www.thehindu.com/opinion/columns/sainath/article94324.ece>

80 The Economic Times, *Budget 2012: Health sector gets 34,488 crore, up by 13.24 per cent*, March 16, 2012, available at: http://articles.economicstimes.indiatimes.com/2012-03-16/news/31201457_1_budget-estimates-plan-outlay-railway-budget

81 India Ahead: Budget 2012, *Union Budget 2012: Measly spending on major social sectors*, Zee News, March 17, 2012, available at: http://zeenews.india.com/business/budget-2012/measly-spending-on-major-social-sectors_44038.html

beds per 10,000 people.⁸² With a shortage of 3.6 million beds, 1.9 million doctors and 3.7 million nurses, the vision of achieving a doctor population ratio of 1:1000 is still farfetched.⁸³ Only 15% of the population has health insurance, making quality health care in private hospitals inaccessible for a vast majority of the population. The government has announced that the health insurance scheme – *Rashtriya Swasthya Bima Yojana* (RSBY) – will be expanded by the end of the Twelfth Five-Year Plan in order to cover around 70 million families.⁸⁴ Even this scheme has seen problems in implementation. In late 2012, private health facilities throughout India were implicated in a massive hysterectomy removal scheme, in which doctors performed unnecessary hysterectomies on poor women for the RSBY reimbursement.

Access to Health Services

The *National Rural Health Mission* (NRHM) was launched to improve availability and access to quality health care for the rural poor.⁸⁵ While it is an ambitious central government programme, the benefits are not reaching the poorest of the poor. The recent announcement in the Budget 2012 to introduce a National Urban Health Mission is a positive step towards providing health care to the urban poor in the course of the Twelfth Five-Year Plan.⁸⁶ The success of this mission would depend on adequate budgetary allocations, a clear plan of action incorporating a human rights approach, and a monitoring mechanism to ensure that targets are met.

Growing privatisation of health care⁸⁷ in India has resulted in gross disparities in service distribution between rich and poor, and rural and urban areas. Moreover, an increase in service tax from 10% to 12% will result in an additional financial burden to be borne by the end-recipient.⁸⁸ According to a 2011 Supreme Court order, private hospitals are supposed to provide free treatment and hospitalisation to the poor.⁸⁹ The right to the highest attainable standard of health remains unfulfilled for most of India's population, as the health care system has collapsed in several parts of the country. For example, at least 83 children died in West Bengal between June and November 2011, due to lack of basic health care facilities in state-run hospitals.⁹⁰ A total of 585 children died due to encephalitis in eastern Uttar Pradesh in 2011,

82 World Health Organization, *World Health Statistics 2011*, available at: <http://www.who.int/whosis/whostat/2011/en/index.html>

83 Health- The Enterprise of Health care, *No Promise for Health Sector*, March 16, 2012, available at: <http://ehealth.eletsonline.com/2012/03/no-promise-for-health-sector/>

84 The Hindu, *NRHM to be National Health Mission Soon*, March 13, 2012, available at: <http://www.thehindu.com/news/national/article2988618.ece?homepage=true>

85 Ministry of Health & Family Welfare, *National Rural Health Mission (2005-2012), Mission Document*, available at: http://mohfw.nic.in/NRHM/Documents/Mission_Document.pdf

86 The Hindu, *NRHM to be National Health Mission soon*, March 13, 2012, available at: <http://www.thehindu.com/news/national/article2988618.ece?homepage=true>

87 See: Concluding Observations of the UN Committee on Economic Social and Cultural Rights, 2008, E/C.12/IND/CO/5, para, 38, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/436/08/PDF/G0843608.pdf?OpenElement>

88 Health- The Enterprise of Health care, *No Promise for Health Sector*, March 16, 2012, available at: <http://ehealth.eletsonline.com/2012/03/no-promise-for-health-sector/>

89 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>

90 The Hindustan Times, *9 more children die in Bengal*, November 10, 2011, available at: <http://www.hindustantimes.com/India-news/Kolkata/9-more-children-die-in-Bengal/Article1-767243.aspx>

according to official data as of November 2011.⁹¹ Since January 2012, over 500 children have died as a result of poor sanitation and upkeep at GB Pant Hospital in Srinagar, Kashmir. An ongoing public interest litigation (PIL), *Dr. Rouf Mohidin Malik & Anr. v. State of Jammu and Kashmir*⁹² has resulted in investigations and immediate changes at the government hospital.

Most persons with disabilities are denied health insurance, and many of them have been denied medical treatment in hospitals. Due to infrastructural barriers, lack of adequate human resources, lack of modern equipments and lack of communication, persons with disabilities fail to avail appropriate medical services.

Access to Affordable Medicines

The growing neglect of primary health centres and the inability to establish 'compulsory licensing', particularly for essential and life saving drugs, is disturbing. In compulsory licensing, under the World Trade Organization's (WTO) Trade Related Intellectual Property Rights Agreement (TRIPS), the government allows a generic firm to produce a patented product without the consent of the patent owner⁹³ on the following grounds: (a) that the reasonable requirements of the public with respect to the patented invention have not been satisfied; (b) that the patented invention is not available to the public at a reasonably affordable price; or (c) that the patented invention is not worked in the territory of India.⁹⁴

The TRIPS Agreement states that compulsory licenses are a legally recognised means to overcome barriers in accessing affordable medicines. In March 2012, the Indian Patent Office has issued the first-ever compulsory license in India to a generic drug manufacturer.⁹⁵ This initiative ends pharmaceutical company Bayer's monopoly on the drug *Sorafenib Tosylate* in India, which is used to treat kidney and liver cancer. This groundbreaking move will help improve the availability of affordable life saving medicine by ensuring that a generic version produced locally is available at a fraction of the current price (i.e. 97% price reduction). Additionally, in October 2012, the Supreme Court ordered the government to develop a Drug Price Control Order (DPCO) to ensure fair prices on essential medicines.⁹⁶

91 Zee News, *Encephalitis death toll rises to 585 in UP*, November 23, 2011, available at: http://zeenews.india.com/news/uttar-pradesh/encephalitis-death-toll-rises-to-585-inup_743357.html

92 *Dr. Rouf Mohidin Malik & Anr. v. State of Jammu and Kashmir & Ors.*, PIL No. 4/2012, High Court of Srinagar.

93 The Economic Times, *Natco Pharma files India's first compulsory license plea*, August 2, 2011, available at: http://articles.economictimes.indiatimes.com/2011-08-02/news/29842834_1_compulsory-licence-sorafenib-tosylate-natco-pharma

94 Chapter XVI, Section 84 *Indian Patents Act 1970* (amended in 2005), available at: <http://nbaindia.org/uploaded/Biodiversityindia/Legal/14.%20The%20Patents%20Act,%201970.pdf>

95 The Hindu Business Line, *India's first compulsory licence granted to Natco for Bayer's cancer drug*, March 12, 2012, available at: <http://www.thehindubusinessline.com/companies/article2988464.ece>

96 *All India Drug Action Network (AIDAN) v. Union of India & Ors.*, W.P. Civil, 423/2003, Supreme Court of India.

Child Mortality

India's share of child deaths in the world is more than 20%, with approximately 1.83 million children dying before their fifth birthday.⁹⁷ As per the 2011 census, the mortality rate of children under five in 2009 was 64 per 1000 live births.⁹⁸ Causes of death include respiratory diseases, waterborne diseases such as diarrhoea, respiratory diseases, malaria and parasitic infections, which account for nearly half of deaths in children under five years of age.⁹⁹ The 2009 estimates, of child mortality show under-five mortality at 60 per 1000 for males compared to 69 per 1000 for females.¹⁰⁰ Deaths at birth or in the first day or week still account for the largest share of child deaths in the country. Lack of timely attention and needed skills at birth remains a major cause of this persisting mortality.

Through the ICDS Scheme, the Community Anganwadi Centers provide children with nutrition supplements, immunisations, health checkups, referral services, and pre-school education.¹⁰¹ Additionally, all women between 15 and 45 years of age receive nutrition supplements and health education under ICDS. In the ongoing Right to Food Case, *PUCL v. Union of India & Others*.¹⁰² (W.P. (C) 196/2001), the Supreme Court has issued numerous orders underlining meaningful implementation of the ICDS programme. For example, in 2004 the Court held that BPL status is not a requirement for accessing the entitlements under ICDS.¹⁰³

Reproductive Rights and Maternal Mortality

Reproductive rights, as internationally recognised, are also not yet explicitly guaranteed in India. While some domestic legislative protections have been put in place, reproductive rights are legally encompassed within the Fundamental Right to Life guaranteed by the Constitution, and in right to health legislation. In High Courts throughout the country, various reproductive rights have been upheld. The High Court of Delhi was the first high court in the world to recognise the right to survive pregnancy and childbirth as a fundamental right.¹⁰⁴ Indicators of progress in reproductive health



Sanjit Das/ActionAid

97 UNICEF, *The Situation of Children in India, 2011*, available at: http://www.unicef.org/sitan/files/SitAn_India_May_2011.pdf

98 Government of India, *Census 2011: Maternal & Child Mortality and Total Fertility Rates*, available at: http://censusindia.gov.in/vital_statistics/SRS_Bulletins/MMR_release_070711.pdf

99 UNICEF, *The Situation of Children in India, 2011*, available at: http://www.unicef.org/sitan/files/SitAn_India_May_2011.pdf

100 Census of India, 2011, available at: http://www.censusindia.gov.in/vital_statistics/SRS_Bulletins/MMR_release_070711.pdf

101 Ministry of Women and Child Development, *Integrated Child Development Services Scheme (ICDS)*, Government of India (1975).

102 *PUCL v. Union of India & Ors.*, W.P. Civil 196/2001, Supreme Court of India.

103 See Supreme Court Judgment in *People's Union for Civil Liberties (PUCL) v. Union of India & Ors*, Writ Petition (C) 196/2011 (7 October 2004); See also: Supreme Court Commissioners, available at: <http://www.sccommissioners.org/>

104 *Laxmi Mandal v. Deen Dayal Hari Nagar Hospital*, W.P. No. 8853/2008 of 2010, High Court of Delhi.

include a low or lowered Maternal Mortality Ratio (MMR), decreased instances of child marriage, low child birth rates, access to contraception, general access to reproductive health education, better nutrition, hygienic living conditions and lower levels of poverty overall. Within India, these indicators and various other indicative statistics vary widely with some states revealing dramatically low overall reproductive health indicators in comparison with the rest of the country. In every state, members of marginalised communities experience the worst manifestations of reproductive rights violations. For example, while individuals belonging to Scheduled Castes make up approximately 16% of the country's total population, they represent approximately 25% of all maternal deaths.¹⁰⁵

In the first half of 2012, scandals involving mass hysterectomies and unethical and illegal sterilisation camps made headlines. HIV/AIDS positive, Dalit, and the BPL women have been evicted from hospitals while in labour. Child marriage continues to limit opportunities for millions of Indian women and girls, and four state governments have completely banned sexual health education for adolescents. Despite increased awareness, government schemes, and international pressure, women in India continue to face immense obstacles in accessing/exercising their reproductive rights.¹⁰⁶

Maternal mortality remains a crucial problem despite its relative reduction. The nation-wide MMR has significantly decreased in recent decades, dropping from 570 of 100,000 in 1990 to 230 of 100,000 as of 2008.¹⁰⁷ As per 2011 Census, the MMR for the total population accounted for 212 per 100,000 live births. But India needs to hasten the pace of the NRHM to achieve the target of reducing MMR by 109 under the Millennium Development Goals (MDG). However, statistics vary widely from state to state. For example, Kerala boasts a much lower MMR than the rest of the country at 81, while Assam's MMR is up to 390. The highest state-wise MMRs in the country include: Assam (390), Uttar Pradesh (359), and Rajasthan (318). The lowest state-wise MMRs include: Kerala (81), Tamil Nadu (97), and Maharashtra (104).¹⁰⁸ India has pledged to meet its MDG to reduce the MMR to 109 by 2015. As of 2012, only three Indian states, Tamil Nadu, Kerala, and Maharashtra, have succeeded.

The vast majority of maternal deaths are wholly preventable. Maternal health experts have determined that three delays result in maternal death: i) an initial delay in obtaining antenatal health care; ii) a delay in reaching care; and iii) a delay in receiving care at the facility.

Limited access to adequate health care makes these delays inevitable for marginalised women in India. Initially, a woman may not have antenatal care where there is a failure to recognise complications, where women's health is not a priority, where women do not have the freedom or opportunity to seek out care, and where

¹⁰⁵ Human Rights Law Network, *Discrimination Against Vulnerable Groups and People*, available at: <http://www.hrln.org/hrln/training-and-development/about-ccri/437.html>.

¹⁰⁶ *Claiming Dignity: Reproductive Rights and the Law*, 2nd Edition, Human Rights Law Network, 2012.

¹⁰⁷ WHO, *World Health Statistics 2011*, available at: <http://www.who.int/whosis/whostat/2011/en/index.html>

¹⁰⁸ National Health Profile 2009, *Demographic Indicators*, available at: <http://cbhidghs.nic.in/writereaddata/linkimages/6%20Demographic%20Indicators9490761835.pdf>.

healthcare is nonexistent or unavailable. When any childbirth emergency occurs, poor infrastructure, unavailable or costly transportation, and constant referrals prolong medical emergencies that contribute to maternal mortality. Finally, when a woman does reach a medical facility, inadequate staff, including specialists, facilities, supplies, and hygiene contribute to maternal deaths. In some cases, discrimination based on HIV status, religion, caste, or socio-economic status results in a complete denial of care and results in maternal mortality.¹⁰⁹

A variety of national programmes have been implemented in an effort to reduce maternal mortality and improve overall maternal health. The *National Maternity Benefit Scheme* (NMBS) provides payments of INR 500 (approximately USD 9.5), per pregnancy, for pre-natal and ante-natal care, to women belonging to poor households.¹¹⁰ The payments are limited to the first two live births per woman.¹¹¹ Although the Union of India has claimed that newer schemes including *Janani Suraksha Yojana* (JSY) subsume NMBS, on 20 November 2007, the Supreme Court held that “[t]he Union of India and all the State Governments...shall: i) continue with the NMBS, and ii) ensure that all BPL pregnant women get cash assistance 8-12 weeks prior to delivery.”¹¹² The Court has also held that all BPL women have a right to INR 500 per birth regardless of the mother’s age or number of children.

Under the National Rural Health Mission, the JSY scheme aims to increase institutional deliveries among poor families through an integrated cash-assistance and pre-natal and ante-natal care system.¹¹³ The Indian Government national report for UPR II states that “*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*.”¹¹⁴ However, women who have not been registered by an Accredited Social Health Activist (ASHA) or other link worker have been denied the benefits of the programme, as illustrated by *Jaitun v. Maternity Home*, where one woman was forced to give birth outside a hospital, while hospital staff looked on, because of her failure to register under the JSY programme.¹¹⁵ Moreover, hospitals, Community Health Centres, and Public Health Centres are not equipped to handle the rising wave of delivering women. In some hospitals, where there is no doctor posted, the cleaning staff performs deliveries. Hospitals habitually refer women at the point of giving birth to other facilities, resulting in additional travel time, high risk to the mother and enormous personal expenses for poor families. As the

109 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*, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G10/128/66/PDF/G1012866.pdf?OpenElement>

110 Planning Commission, *National Maternity Benefit Scheme*, available at: http://planningcommission.nic.in/reports/sereport/ser/maker/mak_cht5c.pdf.

111 Ibid

112 See Supreme Court Judgment in *People’s Union for Civil Liberties (PUCL) v. Union of India & Ors*, Writ Petition (C) 196/2011 (11 November 2007). See also *Response to Application of Ministry of Health and Family Welfare of India (IA No.92) for directions regarding implementation of Janani Suraksha Yojna* (5 April 2010); <http://www.sccommisioners.org/>

113 *JananiSurakshaYojana Guidelines*, available at:<http://india.gov.in/allimpfrms/alldocs/2384.pdf>.

114 *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: India*, A/HRC/WG.6/13/IND/1, UN General Assembly, March 8, 2012, para 56.

115 Human Rights Law Network, *Preventable maternal death is a human rights violation – Delhi High Court announces and orders compensation*, available at: <http://www.hrln.org/hrln/reproductive-rights/pils-a-cases/566-preventable-maternal-death-is-a-human-rights-violation-delhi-high-court-announces-and-orders-compensation-.html>.

Special Rapporteur on the right to health, Paul Hunt observed, pushing women into inadequate institutions robs them of their basic human dignity, puts their health at risk, and amounts to a grave injustice.¹¹⁶

A new scheme, the *Janani Shishu Suraksha Karyakram* (JSSK) scheme pledges to provide all women who deliver in government hospitals with free medical care, diagnostic services, blood supplies, medicines, food, and travel.¹¹⁷ Under this heavily subsidised system, all delivery services including normal delivery and Caesarean-Section (C-Section) surgeries will be totally free for all women. Additional care services are available to the mother for 42 days following the birth and for the newborn for 30 days following delivery. Given the current culture of corruption and massive out-of-pocket expenditures families face during delivery, many health activists are doubtful about the effective implementation of this scheme.¹¹⁸

Litigation has proved to be a useful tool in encouraging implementation of government schemes and respect for fundamental rights. In *Laxmi Mandal v. Deen Dayal Hari Nagar Hospital* (2010),¹¹⁹ the rights of a woman living below the poverty line to have a safe, medically assisted delivery, were addressed by the High Court of Delhi. The woman, Shanti Devi, had been denied medical treatment in four different hospitals throughout Delhi, despite carrying a 32-week old foetus. The hospitals refused to treat her because she was unable to pay the medical fees. The Court immediately ordered that she be admitted to the hospital for treatment. Although she later died from complications, the Delhi High Court ultimately ordered the state to pay compensation to her family, called her death 'preventable' and found the hospitals' actions to be violative of her rights to life and health.¹²⁰ Less than two months after the historic judgment in *Laxmi Mandal*, the *Hindustan Times* reported the death of a homeless woman in Delhi, who died on a busy city street four days after giving birth to a baby girl. In September 2010, following media and public criticism of the government, the Chief Justice of the Delhi High Court took *suo moto* cognizance of the case. In its judgment, the Court conclusively established the State's constitutional duty to protect the life of a mother and child, a pivotal development in reproductive rights law.¹²¹ The High Court also ordered the state to build shelters where pregnant women would have access to food, drinking water, and medical attention. Litigation has also addressed factors contributing to maternal mortality. For instance, the high Court in Nagaland, recently ruled that the State had to increase its malaria prevention programmes in order to respect the fundamental rights of pregnant women who are more susceptible to infection and death.¹²²

116 Paul Hunt, *Report of the Special Rapporteur on the right of everyone to the enjoyment of the highest attainable standard of health*, UN Doc. A/HRC/14/20/Add.2, April 15, 2010, p. 13, para 51.

117 *Guidelines for Janani-Shishu Suraksha Karyakram (JSSK)*, National Rural Health Mission, Ministry of Health and Family Welfare, Government of India (2011).

118 *Claiming Dignity: Reproductive Rights and the Law*, 2nd Edition, Human Rights Law Network, 2012.

119 W.P. No. 8853/2008, High Court of Delhi, 2010.

120 Human Rights Law Network, *Preventable maternal death is a human rights violation – Delhi High Court announces and orders compensation*, available at: <http://www.hrln.org/hrln/reproductive-rights/pils-a-cases/566-preventable-maternal-death-is-a-human-rights-violation-delhi-high-court-announces-and-orders-compensation-.html>.

121 *Court on its Own Motion v. Union of India*, W.P. No. 5913 of 2010.

122 Final judgment, *CYSA v. State of Nagaland & Ors.*, W.P. Civil 62K/2008, Guhawati High Court, Kohima Bench, Nagaland, 2012.

In another significant judgment in *Suchita Srivastava v. Chandigarh Administration*,¹²³ where a mentally disabled woman “refused to give her consent for the termination of pregnancy, the Supreme Court held that a women’s right to personal liberty includes the right to make reproductive choices and that the state must respect her choice”.¹²⁴

CASE STUDY

Right to Survive Pregnancy: Sandesh Bansal v. Union of India

In 2012, the High Court of Madhya Pradesh passed a landmark judgment in *Sandesh Bansal v. Union of India*, recognizing a woman’s right to survive pregnancy and childbirth as a fundamental right protected under Article 21 of the Indian Constitution. Filed by Sandesh Bansal, a health activist and member of Jan Adhikaar Manch, the case sought accountability for the government’s failure to respect, protect, and fulfill the rights of pregnant women.

Relying upon extensive government research and reports, the Court documented the widespread failure of the government to implement the *National Rural Health Mission* (NRHM); noting dilapidated facility conditions, non-availability of skilled personnel, essential medicines, and access to timely and consistent maternal health services. The Court further rejected the government’s claim that financial constraints served as a barrier to full implementation, noting that over INR 1,710,000,000 (around USD 32,465,000) remained unspent at the end of 2009.

The Court held: “... we observe from the material on record that there is shortage not only of the infrastructure but also of the manpower also which has adversely affected the effective implementation of the [National Rural Health Mission] which in turn is costing the life of mothers in the course of mothering. It be remembered that the inability of a woman to survive pregnancy and childbirth violates her fundamental rights as guaranteed under Article 21 of the Constitution of India. And it is the primary duty of the government to ensure that every woman survives pregnancy and child birth, for that, the State of Madhya Pradesh is under obligation to secure their life.”

In recognition of the fundamental nature of these rights, the Court ordered immediate implementation of the NRHM, with a focus on strengthening infrastructure as well as providing access to timely maternal health services, skilled personnel, effective referral and grievance redressal mechanisms.

Madhya Pradesh is India’s third most populous state and, as noted by the Court, “afflicted with the worst indicators in India,” such as high rates of illiteracy, mortality, morbidity and people living below the poverty line. Poor socio-economic conditions persist despite the enactment of NRHM, a public health scheme funded by the Central Government to address India’s shockingly high maternal and infant mortality.

Source: Human Rights Law Network

To fully exercise their reproductive rights, women must have access to a wide range of contraceptives, information about those options, and the medical care necessary to effectively exercise their choices. Although the Indian Government has pushed contraceptive use as part of a wider population control policy, only 56% of married women ages 15-49 currently employ any form of contraception.

¹²³ AIR 2010 SC 235.

¹²⁴ National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: India, A/HRC/WG.6/13/IND/1, UN General Assembly, March 8, 2012, para103.

Inadequate access to contraception increases the need for medical termination of pregnancy (MTP). Data shows that 80% of women who obtain abortions in India do not use contraception. Although the *Medical Termination of Pregnancy Act, 1979*, legalised abortion up to the 20th week of pregnancy, about 20,000 Indian women die every year as a result of unsafe abortion. Although the NRHM mandates PHCs to provide abortion services, fewer than 20% of all PHCs have the capacity to conduct the procedure. Injury and death from unsafe abortion results when doctors, nurses, or traditional practitioners perform MTPs in an environment that does not meet Indian Public Health Standards. In other cases, questions of patient confidentiality and inadequate access to quality services drive women to obtain clandestine abortions.

Like other reproductive rights issues, unsafe abortions primarily impact poor and marginalised women. The 2008 Annual Survey from the Ministry of Health and Family Welfare found that married wealthy women obtain MTPs from private facilities, whereas *“the women admitted to public hospitals with complications from illegal septic abortions are largely illiterates and from poorer segments of the population”*.

Reproductive Rights and Coercive Population Policy

Although the total fertility rate (TFR), or the average number of children born to a woman who survives to the end of her reproductive cycle, has declined in India, the government, NGOs, and policy makers have remained adamant on slowing India's population growth through controlling fertility.

Today, female sterilisation remains the most widely used form of contraception in India. The prevalence of female sterilisation is highest among women from 'backward classes'. After a Supreme Court ruling in *Ramakant Rai & U.P. and Bihar Health watch v. Union of India*, the Government of India developed extensive guidelines for sterilisation in 2006.¹²⁵ Despite the guidelines and an official push away from establishing sterilisation minimums, state governments and public health workers continue to promote sterilisation to the exclusion of alternative methods of contraception. In disregard of accepted notions of free consent, both field workers who recruit women for sterilisation and women who agree to be sterilised receive cash incentive payments.

Fact-findings and news reports have confirmed that health workers clearly flaunt government guidelines. For example, in Bundi District, Rajasthan, an NGO found that out of 749 sterilised women, only 12% were provided pre-surgery counseling regarding alternate forms of contraception. Similarly, 42% of the women said that they were not provided information regarding the permanent nature of sterilisation. Every single woman reported that, *“consent forms were not read out or explained to them before signature or thumb impression which is essential for informed consent.”* Nineteen women (2.55%) got pregnant after their sterilisations – a failure rate far above the international standard of 0.5%. As the pending Supreme Court case,

¹²⁵ For more details see: *Human Rights Law Network*, available at: http://www.hrln.org/beta/index.php?option=com_content&view=article&id=226:-refugee-rights-initiative&catid=81:the-initiative-&Itemid=79

Devika Biswas v. Union of India & Others demonstrates, the facts from Bundi District reveal the dangerous underbelly of 'family planning' throughout India.

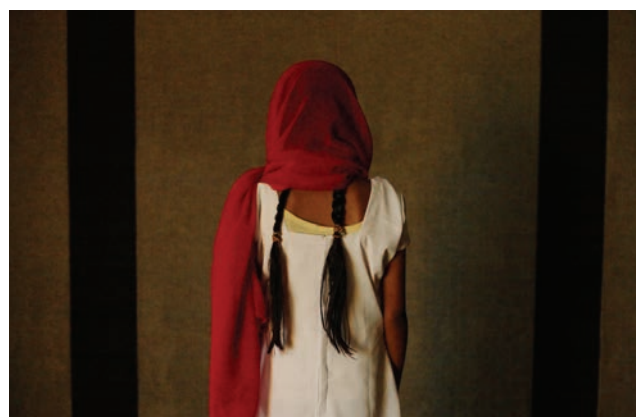
In sharp contrast to India's current policy, the law conceptualises family planning through a human rights lens and situates contraceptive choice in the context of expanding women's options, autonomy, and control over their fertility.

HIV/ AIDS

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 for all affected individuals. The Indian Government's national report for UPR II claims that "*the number of newly detected HIV positive cases has dropped by over 50% in the last decade.*"¹²⁶

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 that violates privacy rights, while the national *Prevention of Parent to Child Transmission Programme* has implemented routine testing of pregnant women in antenatal clinics, in violation of the principle of prior informed consent. HIV positive women also face discrimination in delivery rooms. The pending Supreme Court litigation *Shanno Shagufta Kahn v. State of Madhya Pradesh & Others.*, seeks justice for an HIV positive woman who had no choice but to deliver her baby on the side of road after the hospital refused to treat her.¹²⁷

Despite commitment at the domestic and international levels, the government has still not passed the *HIV/AIDS Bill*. The Bill, which is premised in the rights based approach, prohibits discrimination against persons living with HIV in the public as well as private sectors. It also provides for informed consent and confidentiality of HIV status; free of cost access to comprehensive HIV related treatment including antiretroviral drugs, diagnostics and nutritional supplements.¹²⁸



Srikanth Kolar/ActionAid

Orphan and vulnerable child living with HIV/AIDS

¹²⁶ National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: India, A/HRC/WG.6/13/IND/1, UN General Assembly, March 8, 2012, para 55.

¹²⁷ *Shanno Shagufta Kahn v. State of Madhya Pradesh & Ors.*, SLP 5468/2012, Supreme Court of India.

¹²⁸ Lawyers Collective, *The HIV/AIDS Bill 2007*, available at: <http://www.lawyerscollective.org/hiv-and-law/draft-law.html>

CASE STUDY

Right of access to affordable medicines and treatment without discrimination on the ground of HIV/AIDS: *Sahara House v. UOI*, W.P. (C) 585 of 1998

In 1998 and 1999, PILs were filed in the Supreme Court on the issue of discrimination against people living with HIV (PLHIV) in health care. Later the scope of the PIL was expanded to cover issues of accessibility, affordability and quality with respect to diagnostics and treatment for HIV.

In 2008, the Supreme Court passed orders on anti-discrimination stating: "*All Doctors, nurses and hospital staff, whether in the public sector or private sector shall treat PLHIV in a professional and humane manner, treating them always with dignity and care. No Doctor or nurse shall refuse to treat a PLHIV on account of his/her positive status. In treating a PLHIV, there shall be no discrimination or stigma whatsoever.*"

The Supreme Court passed further orders on access to treatment, directing the Union of India to:

- Rapidly scale up number of Anti-Retroviral Therapy (ART) centres, increase the number of CD4 machines, and ensure adequate infrastructure in ART centres.
- Ensure universal access to first line ART and provide free treatment for opportunistic infections;
- Ensure availability of universal precautions and post exposure prophylaxis for health care providers in public hospitals

In 2010, in a major breakthrough, the Supreme Court passed further orders directing universal access to second line ART in a phased manner, which was earlier available to certain categories of PLHIV only.

Source: Lawyers Collective, Sahara House v. UOI, available at: <http://www.lawyerscollective.org/hiv-and-law/current-cases.html>

Clinical Trials

An RTI application to the Director General of Health Services has revealed that between 2008 and 2010, nearly 1,600 people have died during clinical trials of drugs by multinational pharmaceutical companies.¹²⁹ As per the records of the office of the Director General of Health Services, compensation was paid only in 22 out of 668 cases that occurred in 2010.¹³⁰ The Human Papillomavirus vaccine 'demonstration projects' conducted on young tribal girls living in a hostel, with complete disregard to informed consent, were suspended by the Central Government in 2010, following the deaths of seven girls and pressure from civil society groups.¹³¹ In Indore, persons with mental disabilities were inducted into clinical trials without their consent.¹³²

The legal framework in India is presently very weak and inadequate on issues of ethics and human rights in clinical trials. Following the Indore incident, a PIL on illegal clinical trials has been filed in the Supreme Court upon which the Court has issued notice to the Union of India and the Ministry of Health.¹³³

¹²⁹ Figures revealed by a Right to Information (RTI) application.

¹³⁰ Records of the Directorate General of Health Services – 2010.

¹³¹ See: The Hindu, *A Shockingly Unethical Trial*, May 15, 2011, available at: <http://www.thehindu.com/opinion/editorial/article2021657.ece>

¹³² See: *Mental Health Care Act, 1987*; Also see: Times of India, *233 mentally ill patients subjected to drug trials*, available at: <http://timesofindia.indiatimes.com/city/indore/233-mentally-ill-patients-subjected-to-drug-trials/article-show/11175169.cms?prtpage=1>

¹³³ See: Economic Times, *PIL alleges illegal drug trials in India, SC notice to Centre*, Feb 6, 2012, available at: http://articles.economictimes.indiatimes.com/2012-02-06/news/31030964_1_drug-trials-sc-notice-pil

Number	Recommendation	Status
RIGHT TO HEALTH		
UPR 2		
135	Allocate more resources in sectors that provide basic services such as health, education and employment opportunities.	Accepted
146	Continue efforts aimed at improving the level of public health in the country to attain better results in the area of health and access to health.	Accepted
148	Provide every possible support and assistance to the national project for rural health to raise the standard of nutrition and improve public health and to strengthen the relationship between health and indicators such as sanitation and personal hygiene.	Accepted
155	Intensify its efforts to sensitize and train medical professionals on the criminal nature of pre-natal sex selection with a view to ensuring stringent enforcement of the legal prohibition of such practice.	Accepted
156	Take effective measures to fully implement National Rural Health Mission (NRHM).	Accepted
157	Continue to strengthen/develop programmes and initiatives geared towards guaranteeing the rights to health and education.	Accepted
158	Redouble its efforts in the field of education and health.	Accepted
168	Carry on efforts <u>with respect to</u> environmental and health policies, and continue <u>efforts and undertake measures to adopt the bill on food security and strengthen the Public Distribution System (PDS).</u>	Accepted in revised form
54	Establishment and implementation of a National Human Rights Plan which cover access to education and health, including aspects of sexual and reproductive health, as well as, concrete measures to eliminate violence against women.	Not accepted
147	Establish measures at the national and state level to remove obstacles in terms of access by the population to pain palliative medicines.	Not accepted
149	Meet the stated commitment from the Common Minimum Program of 2004 to dedicate 3 percent of India's GDP to health and 6 percent to education	Not accepted
159	Increase the budget allocated to health from 1 percent of the GDP to 2 percent.	Not accepted
Sexual and Reproductive Health		
UPR 2		
150	Take further practical steps to reduce the high level of maternal and child mortality, inter alia, through better access to maternal health services.	Accepted
151	Further efforts towards addressing the challenge of maternal and child mortality.	Accepted
152	Strengthen its efforts to improve maternal health and act to effectively balance the skewed sex-ratio among children, including by combating female foeticide.	Accepted
153	Take further measures to ensure that all women without any discrimination have access to adequate obstetric delivery services and sexual and reproductive health services, including safe abortion and gender-sensitive comprehensive contraceptive services.	Accepted
155	Intensify its efforts to sensitize and train medical professionals on the criminal nature of prenatal sex selection with a view to ensuring stringent enforcement of the legal prohibition of such practice.	Accepted
54	Establishment and implementation of a National Human Rights Plan which cover access to education and health, including aspects of sexual and reproductive health, as well as, concrete measures to eliminate violence against women.	Not accepted
154	Contribute to further reduction of maternal mortality through the establishment of an independent organ to accelerate programmes and projects in this area.	Not accepted

Right to Water and Sanitation

In 2010, while referring to the right to an adequate standard of living as stipulated in Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR), the UN General Assembly and the Human Rights Council explicitly recognised the human right to water and sanitation. Right to water and sanitation has also been endorsed by other international human rights treaties. In November 2002, the ICESCR adopted General Comment No. 15 on the right to water. Article 11 states that "[t]he human right to water is indispensable for leading a life in human dignity. It is a prerequisite for the realisation of other human rights". Comment No. 15 also defined the right to water as the right of everyone to sufficient, safe, acceptable and physically accessible and affordable water for personal and domestic uses.¹³⁴

Though provision of water and sanitation is claimed to be a priority in India, the situation with regard to access to clean drinking water and sanitation across the country is still dismal. The Indian Government in its UPR II national report stated that the *Total Sanitation Campaign* - a flagship programme for providing sanitation facilities in rural areas - "has been able to accelerate the sanitation coverage from a mere 22% as per 2001 census to approximately 68% in December 2010".¹³⁵

However, India still has the largest number of people in the world who defecate in the open – 625 million – which represents 51% of India's population (67% in rural areas and 14% in urban areas).¹³⁶ Quoting the 2011 census data, Union Minister for Rural Development, Jairam Ramesh, acknowledged that 60% of rural households still do not have access to proper toilet facilities¹³⁷ and called for urgent measures for what he named "another distressing national shame".¹³⁸ According to UNICEF, "the combined effects of inadequate sanitation, unsafe water supply and poor personal hygiene are responsible for 88% of childhood deaths from diarrhoea." 21% of communicable diseases in India are related to unsafe water.¹³⁹ More than 20% of Scheduled Caste persons do not have access to safe drinking water and the vast majority of them depend on the goodwill of dominant castes for access to water from public wells. The recently developed draft *National Water Policy, 2012* lacks a human rights approach and focuses more on water as an economic good. Furthermore, it favours privatisation of water while calling for the government to withdraw from its role as service provider. This is a dangerous trend. It is important that the draft Policy recognises, protects and fulfills the right to water as a human right of all, and a common good and takes the requisite steps to prevent privatisation in order to ensure affordability and access to clean and potable water for all.

¹³⁴ United Nations, *The human right to water and sanitation*, available at: http://www.un.org/waterforlifedecade/human_right_to_water.shtml. For more details see: Resolution A/RES/64/292. United Nations General Assembly, July 2010, and General Comment No. 15. The right to water. UN Committee on Economic, Social and Cultural Rights, November 2010.

¹³⁵ *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: India*, A/HRC/WG.6/13/IND/1, UN General Assembly, March 8, 2012, para 6

¹³⁶ WHO/UNICEF Joint Monitoring Programme for Water Supply and Sanitation, 2010 statistics, available at: www.wssinfo.org/data-estimates/table

¹³⁷ See: Indian Express, *Rural India will banish open defecation in 10 yrs: Ramesh*, available at: www.indianexpress.com/news/rural-india-will-banish-open-defecation-in-10/934406/

¹³⁸ The Hindu, *Jairam urges Manmohan to give highest priority to sanitation*, January 17, 2012, available at: www.thehindu.com/todays-paper/tp-national/article2806719.ece

¹³⁹ World Bank, *India's Water Economy, Bracing for a Turbulent Future*, 2005, available at: <http://www.worldbank.org.in/WBSITE/EXTERNAL/COUNTRIES/SOUTHASIAEXT/INDIAEXTN/0,,contentMDK:20674796~pagePK:141137~piPK:141127~theSitePK:295584,00.html>.





Woman carrying drinking water in
Sundarban, West Bengal.

Number	Recommendation	Status
RIGHT TO WATER AND SANITATION		
UPR 2		
76	Continue working on the welfare of children and women.	Accepted
139	Further accelerate the sanitation coverage and the access to safe and sustainable drinking water in rural areas.	Accepted
148	Provide every possible support and assistance to the national project for rural health to raise the standard of nutrition and improve public health and to strengthen the relationship between health and indicators such as sanitation and personal hygiene.	Accepted
138	Ensure that every household enjoys the right to safe drinking water and sanitation.	Not accepted

Impact of Trade and Investment Agreements

India is negotiating several proposed Free Trade Agreements (FTAs) and investment agreements. These include with the European Union; Japan; European Free Trade Association (EFTA); New Zealand; Malaysia; Gulf Cooperation Council; BIMSTEC (Bangladesh, Myanmar, Sri Lanka, Thailand, Bhutan and Nepal); Mauritius; Southern Africa Customs Union (SACU: South Africa, Botswana, Lesotho, Namibia). FTAs already signed but under negotiation for expansion are with Sri Lanka (1998), Thailand (2003), South Asian Free Trade Area (SAFTA) (2004) and Association of South East Asian Nations (ASEAN) (2009). In addition, FTAs under consideration and/or at various stages of development include with 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.

These agreements include not only trade in goods but also investment, government procurement, intellectual property and competition policy. They could potentially violate human rights to food, health, water, work/livelihood,¹⁴⁰ housing, land, and development,¹⁴¹ especially of vulnerable groups.

FTAs create legally binding obligations on the government, severely affecting livelihoods related to agriculture, fisheries and manufacturing. In addition, FTAs' demands in trade, services, investment and intellectual property rights impact the ability to access affordable healthcare as well as water and sanitation.

¹⁴⁰ The Hindu, *FTA will hurt livelihoods in India, Europe: civil society*, December 10, 2010, available at: <http://www.thehindu.com/news/national/article942068.ece>

¹⁴¹ Ibid

CASE STUDY**Free Trade Agreement with the EU threatens the Right to Adequate Food and Work/Livelihood**

The Government of India is currently negotiating a bilateral Free Trade Agreement (FTA) with the European Union (EU), which is aimed at liberalising substantially all trade between the two trading blocs. Beyond trade in goods, the FTA entails liberalisation of services, investment, public procurement, and intellectual property rights among other areas. In these negotiations, the European Commission (EC) insists on the principle of 'reciprocity' and seeks to avoid asymmetries in the level of commitments between the two parties, despite the great imbalances between the EU and India regarding economic development, wealth, poverty and hunger. A Right to Food Impact Assessment (RFIA)¹⁴² finds that the EU-India FTA may lead to further violations of the right to food in India.

Apart from being the world's largest producer and consumer of milk, India is home to the largest number of small livestock keepers worldwide. Around 14.08 million Indian farmers are currently involved in dairy production, most of whom are small scale, marginal or landless farmers. Dairy farming provides employment opportunities for around 75 million women and 15 million men, and accounts for a third of gross income of rural households.¹⁴³ Farmers' access to markets, income, and their right to food would be threatened if tariffs for EU Skimmed Milk Powder (SMP) are cut from 60% to zero as market opening in India for milk was always followed by steep increases in imports from the EU.

With 35 to 37 million people working in the sector, retail is the second largest source of employment and livelihood in India after agriculture. For the estimated 10 million street vendors, retail is often the last resort for earning a livelihood. If multi-brand retail is opened to EU retailers such as Carrefour, Metro and Tesco, as envisaged by the EU, many of these street vendors would lose their jobs within a relatively short period and be exposed to more poverty and hunger.

Poultry supplements the livelihood of around 50% of Indian landless and marginal farmers at the bottom end of small-holder spectrum. A cut in tariffs from currently 100% to almost zero for poultry meat, as envisaged by the EU, would impede market access and food security of many small-scale farmers. The Annual Report of the Department for Animal Husbandry, Dairying and Fisheries (2011) highlights the importance of the poultry sector for the nutritional security of the rural poor, which could be threatened by the internationally highly competitive EU.

Land distribution in India is highly unequal. Almost 80% of the agricultural population owns only about 17% of the total agriculture land, making them near-landless workers. Small and marginal farmers with an average land holding of less than 2 hectares constitute 83% of farmers, own only 41.14% of the total agricultural land. The prohibition of direct and indirect expropriation without compensation makes it very expensive for Indian states to acquire land that is currently used by EU companies, and poses a significant obstacle to future land reforms that are essential for the realisation of the right to food. While the Constitution of India does not prescribe compensation to large land holders in the framework of land reform, the EU-India FTA will. Thus, EU investors will benefit from a higher degree of protection than domestic investors and they may challenge new land reform laws that threaten their projects. India is also obliged to provide 'fair and equitable treatment', and thus meet the 'legitimate expectations' of EU investors, protect their investment and secure their rights to resources required for the investment project, such as land and water. Moreover, under the investor-State dispute settlement, companies can sue the Indian government for violations of the FTA provisions on investment, and thereby circumvent local and national courts. In summary, increased investment protection through the FTA,

¹⁴² Conducted by MISEREOR, Heinrich Böll Foundation, Anthra, Third World Network and Glropolis.

¹⁴³ Government of India 2007: *The Report of the Working Group on Animal Husbandry and Dairying*, 11th Five-Year Plan. 2007-2012.

especially regarding indirect expropriation, 'fair and equitable treatment' and the investor-State dispute settlement, may become an obstacle to reforms of land that is used by European investors.

Before signing the FTA, both the EU and India must conduct a comprehensive human rights impact assessment (HRIA) following the guiding principles of the UN Special Rapporteur on the right to food, and undertake a meaningful consultation of all stakeholders, particularly the most vulnerable. Both the EU and India have a clear obligation under international law¹⁴⁴ to respect, protect and fulfill all economic, social, cultural, civil and political human rights in all areas, including trade policy. Under the Lisbon Treaty, the EU State Members must not ratify any agreement that impedes another state's ability to uphold its human rights obligations, while the Treaty on European Union defines 'respect for human rights' as one of the core values 'on which the Union is founded' (Article 2).

Source (summary): MISEREOR, Heinrich Böll Foundation, Third World Network, Anthra and Glopolis 2011: Right to Food Impact Assessment of the EU-India Trade Agreement; Aachen, Berlin, Penang, Secunderabad and Prague.

India has often been called the 'pharmacy of the world', as it produces a large number of high-quality, affordable generic medicines. Due to competition stemming from Indian generics, the price of first-line antiretroviral (ARVs) drugs dropped from more than USD 10,000 per person per year in 2000 to around USD 150 per person per year.¹⁴⁵ The reduction in price has helped facilitate the massive expansion of HIV treatment worldwide: more than 80% of the HIV medicines, used to treat 6.6 million people in developing countries come from Indian producers, and 90% of pediatric HIV medicines are produced in India. *Doctors Without Borders/Médecins Sans Frontières* (MSF) and other treatment providers also rely on Indian generic medicines to treat other diseases and conditions.¹⁴⁶

However, some FTAs greatly restrict the capability of Indian companies to continue producing generic medicines. As a consequence of the FTAs, patent holding multinational drug companies would hold monopolies over a drug variety, barring Indian drug companies to produce the generic variety of the drug. The FTAs as well as acquisition and mergers by multinational corporations of several major Indian generic medicine producers thus become a cause of concern, as they make the drugs available at much higher prices, thereby making the use of existing TRIPS flexibilities more difficult and restricting access to low cost, high quality, generic medicines.

144 The human right to adequate food forms part of Article 25 of the General Declaration of Human Rights of 1948 and Article 11 of the International Covenant on Economic, Social and Cultural Rights (ICESCR) of the United Nations (UN). All EU Member States and India have ratified this Covenant, in addition to the International Covenant on Civil and Political Rights, and hence obliged themselves to realise the right to adequate food in all policy areas, including trade policy. – MISEREOR, Heinrich Böll Foundation, Third World Network, Anthra and Glopolis 2011: *Right to Food Impact Assessment of the EU-India Trade Agreement*; Aachen, Berlin, Penang, Secunderabad and Prague.

145 *Médecins Sans Frontières, Briefing Documents: Background on the EU- India FTA*, February 9, 2012, available at: <http://www.doctorswithoutborders.org/publications/article.cfm?id=5757&cat=briefing-documents>

146 Ibid

Right to Work and Labour Rights

India's economic policies are steadily eroding human rights, working conditions and living standards for the majority of the labour force, 92-93% of which belongs to the unorganised/informal sector,¹⁴⁷ including migrant labour. Construction workers, including women and children, form the majority of those who are worst exploited. Three specific laws that apply to them but lack implementation are: *Building and Other Construction Workers Act, 1996*; *Contract Labour (Regulation and Abolition) Act, 1970*; and *Interstate Migrant Workmen Act, 1979*.

Major challenges for the realisation of labour rights in India 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 mechanism, which includes compensation for injury, health, maternity and retirement benefits; and (iii) difficulty to unionise, resulting from the hostility and failure of the state to respect freedom of association. Several progressive labour laws,¹⁴⁸ including on minimum wages and child labour exist but are not implemented properly.

Mahatma Gandhi National Rural Employment Guarantee Act, 2005

The *Mahatma Gandhi National Rural Employment Guarantee Act, 2005* (MNREGA), which guarantees 100 days of work (unskilled manual work) to every rural household, is a very progressive law. Seven years after its enactment, it has become a household name, and is one of the better known and understood laws in India. The Indian Government national report for UPR II states: “*more than 54 million households were provided employment in 2010-11 [through MNREGA], marking a significant jump in coverage.*” The report further adds that the Indian Government “*is conscious of the difficulties in implementation of this ambitious scheme across India and is constantly reviewing it to address shortfalls*”.

Some major challenges that restrict MNREGA from achieving its full potential include corruption, inadequate implementation and non-payment of minimum wages to MNREGA workers (for more details see the following case study). The issue of minimum wages was adjudicated by the Karnataka High Court, which passed a direction to the Central Government to pay MNREGA workers in Karnataka according to the minimum wages fixed by the state (present daily wage rates stand at INR 155 – approximately USD 3 – as compared to MNREGA daily wages which



Tom Pietrasik/ActionAid

Local residents employed in digging a pond as part of MNREGA.

147 457 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.

148 *Trade Unions Act, 1926*; *Payment of Wages Act, 1936*; *Employees' State Insurance Act, 1948*; *Minimum Wages Act, 1948*; *Employees' Provident Funds and Miscellaneous Provisions Act, 1952*; *Maternity Benefit Act, 1961*; *Payment of Bonus Act, 1965*; and *Payment of Gratuity Act, 1972*.

fall way below INR 100 – USD 1.9).¹⁴⁹ This order was challenged by the Central Government in the Supreme Court, despite an earlier ruling stating that denial of minimum wages to workers tantamount to forced labor.¹⁵⁰ In January 2012, the Supreme Court endorsed the Karnataka High Court order and ordered the Indian Government to pay MNREGA workers in Karnataka as per the directions of the Karnataka High Court, with effect from the date on which the order was passed.¹⁵¹

CASE STUDY

MNREGA – Achievements and Challenges

MNREGA guarantees 100 days of wage-employment to any rural household, whose adult members volunteer to do unskilled manual work. The Act embodies a host of commendable features, which are as follows: (a) work is provided as a matter of legal right, when demanded; (b) there is a minimum share of one-third employment for women; (c) work is provided within 5 km of residence; (d) at least half of the MNREGA funds are to be spent by elected local councils; (e) village assemblies select and prioritise MNREGA projects; (f) there are strict norms for transparency and accountability (e.g. MNREGA documents are in public domain); (g) workers are entitled to basic worksite facilities including childcare; and (h) workers are to be employed for creation of productive assets such as approach roads, water-harvesting structures, contour trenches, and various works on private land (e.g. leveling and construction of wells).

Despite its many positive aspects, the realisation of MNREGA's main objective of enhancing livelihood security of people in rural areas still remains challenged by some impediments:

Low Levels of Awareness: The providence of manual work under MNREGA is contingent upon such work being demanded by well-informed workers, to whom payment of minimum wages within 15 days becomes due. However, surveys on MNREGA reveal that awareness about the scheme among workers is very low, facilitating denial of their rights under the scheme, for example, denial of minimum wages.¹⁵² Also, during one such survey, 71% of respondents stated to have passively waited for work to come their way, and were not even aware of the possibility of application for work under MNREGA.¹⁵³

Corruption: To prevent corruption, some transparency safeguards have been built into the Act, for instance, the muster rolls are to be kept at the worksite, read out at the time of wage payment, employment and wage details are to be entered into the labourer's 'job-cards' and the mandatory payment of wages through banks and post-offices was introduced in 2008. Contractors are banned. However, since these safeguards too are to be executed by machinery that tends to be corrupt, they are incomplete without an independent system of grievance redressal.

Delay in Wage Payment: The Act guarantees payment of wages within 15 days of work being done. However, serious delays in payment of wages have been recorded all over the country. This has forced labourers to resort to lower-paid labour and 'distress migration.'

Source: Reetika Khera (Ed), The Battle for Employment Guarantee, 2011, New Delhi, Oxford University Press.

149 The Economic Times, *NREGA: Wages are often denied or delayed, with corruption rife*, April 21, 2012, available at: http://articles.economictimes.indiatimes.com/2012-04-21/news/31378994_1_minimum-wages-nrega-hundred-days.

150 Ibid.

151 Down To Earth, *Supreme Court order triggers NREGS wage debate*, January 25, 2012, available at : <http://www.downtoearth.org.in/content/centre-fix-over-court-ruling-minimum-wage-nregs-workers>.

152 Jean Dreze and Reetika Khera, *The Battle for Employment Guarantee*, In Reetika Khera (Ed.), *The Battle for Employment Guarantee*, p 49, New Delhi, Oxford University Press.

153 Survey conducted in May-June 2008 in sample districts of six states of North India (Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Rajasthan, and Uttar Pradesh).

The Unorganised Sector

The unorganised sector constitutes around 92-93% of the total workforce in India. The phenomenon of informalisation of the labour force has been spreading to the formal sector since the 1980s and the number of unorganised workers is on the increase. According to the National Commission Enterprises in the Unorganised Sector (NCEUS), although employment has increased by 8.5 million between 1999-2000 and 2004-05, the increase in the organised sector over the same period has been informal in nature, characterised by casual employment with no social security.¹⁵⁴

Lack of social security remains one of the most serious problems affecting the unorganised sector, despite the enactment of *Unorganised Workers' Social Security Act, 2008* (UWSS Act). The Act fails to provide 423 million unorganised workers – contributing to 60% of India's national income – their right to social security as it does not provide any specific comprehensive scheme of social security. Rather, it gives a compilation of already existing welfare schemes in its schedule. These schemes remain ill conceived, subject to arbitrary changes and applicable only to BPL workers, thus excluding many unorganised workers from the purview of the Act.¹⁵⁵ The National Advisory Council (NAC), chaired by United Progressive Alliance (UPA) chairperson Sonia Gandhi, recently wrote to the Indian Government pointing to its failure to formulate a proper social security package for the informal sector since the adoption of the UWSS Act.¹⁵⁶ *"The centre has not formulated a minimum social security package for all workers in the unorganised sector since three years of the passage of the Act in 2008"*.¹⁵⁷ Except for the *National Health Insurance Scheme* – which itself has a number of shortcomings – very little has been done to extend other social security benefits to the unorganised sector.

In the construction industry, a cess is collected from contractors before construction work begins¹⁵⁸ and millions of Indian rupees have already been accumulated in many states under this system.¹⁵⁹ Yet in the majority of states, welfare boards are either not constituted or they are dysfunctional.¹⁶⁰ Legally eligible

Adivasi migrant workers



Taylor/ActionAid

¹⁵⁴ National Commission for Enterprises in the Unorganised Sector (NCEUS), *Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector*, 2007, p.4.

¹⁵⁵ See: Social Security Now, *SSN Memorandum Demands Amendment to Social Security Act*, available at: www.socialsecuritynow.org/SSNOW%20WEBSITE/Memorandum-Final_Rawat.pdf

¹⁵⁶ A summary of recommendations made by the National Advisory Council (NAC) on extending social security to unorganised workers can be found at: nac.nic.in/pdf/summary_recommen.pdf

¹⁵⁷ The Pioneer, *Why no social security for unorganised workers, NAC asks government*, April 30, 2012, available at: <http://dailypioneer.com/home/online-channel/business-a-finance/61645-why-no-social-security-for-unorganised-workers-nac-asks-government.html>

¹⁵⁸ Section 3 of the Building and other Construction Workers' Welfare Cess Act, 1996.

¹⁵⁹ The Union Labour & Employment Minister, Mallikarjun Kharge mentioned in an interview that in Karnataka alone, the construction workers' welfare cess had accumulated to INR 1,065 crore in four years, but the state had spent only INR 20.95 million, which is the state of affairs in most states. Interview is available at: <http://business.outlookindia.com/article.aspx?278812>

¹⁶⁰ *National Campaign Committee, C.L. v. Union Of India & Ors.*, Contempt Petition No. 42 & 43, decided on March 15, 2011.

and entitled workers in the fast expanding construction industry are thus excluded from statutory benefits.

Workers in the informal sector are denied decent wages, are subjected to hire and fire policies, and are bereft of social welfare measures. Highly disadvantaged workers among the unprotected workers, such as seasonal migrant labourers, child labourers and bonded labourers, are vulnerable to exploitation due to extreme poverty, low social status coupled with low bargaining power. The dismal conditions of work, the long working hours and the meagre wages remain invisible due to the lack of 'designated place of work'.¹⁶¹

The unorganised sector constitutes around 92-93% of the total workforce in India.

All workers are entitled to 'freedom of association' since trade union law enables registration of trade unions¹⁶² for all wage workers. Yet, workers refrain from forming trade unions as those who join unions may be victimised as no law compels the recognition of trade unions, and hence workers' right to collective bargaining. There is a considerable weakening of unionisation/bargaining capacity of workers through firing, redesignation, relocation, freezes in allowances and benefits, as well as voluntary suspension of trade union rights for a specific period.

Many workers work under inhuman and undignified conditions deprived of their minimum statutory rights, such as minimum wages or overtime for more than eight hours of work. The ground reality reflects an unprecedented exclusion of more than 393 million¹⁶³ workers in the informal sector.

CASE STUDY

Exploitative and Unhealthy Conditions in the Mines of Rajasthan

More than 95% of mining activities in Rajasthan fall in the domain of the unorganised sector. Silicosis and tuberculosis are two respiratory diseases commonly found among mineworkers and they are both potentially life threatening. In the stone mines of Western Rajasthan that provide essential support to livelihood generation, the co-existence of the two diseases, known as silico-tuberculosis, is prevalent. More than half of the workers affected belong to Scheduled Castes (SCs). Poverty, lack of opportunity for alternative employment options, poor working conditions, malnutrition, lack of awareness and training, as well as lack of government monitoring and legal provisions perpetuate the occurrence of the disease.¹⁶⁴

Female workers are usually paid far less than male workers. Out of the total miners in Rajasthan, 37% are women and most of them are *Dalits* and tribals. These women mineworkers are underpaid, malnourished, exploited and often harassed physically. The factors behind women's entry into the mining industry are mainly attributed to poverty and the need for additional household income. Displacement and loss of land have adversely affected their lives and livelihoods, economic and social status, health and security.¹⁶⁵

Source: GRAVIS

161 Jeemol Unni, *Size, Contribution and Characteristics of Informal Employment in India*, The Gujarat Institute of Development Research, Ahmedabad, India.

162 Section 8 of the *Trade Unions Act*, 1926.

163 National Commission for Enterprises in the Unorganised Sector (NCEUS), *Report on Conditions of Work and Promotion of Livelihoods in the Unorganised Sector*, 2007.

164 GRAVIS, *Silico-Tuberculosis: Burdening Lives of Miners – A research study on prevalence and prevention of silico-tuberculosis in stone mines*, 2010.

165 GRAVIS, *Women Miners in Rajasthan, India: A reflection on their life, challenges and future*, 2010.

Caste Discrimination in Employment¹⁶⁶

Men and women workers from the Scheduled Caste groups constitute the largest section of the unorganised work force in India. They also form the largest section as landless agricultural workers in the agricultural sector. In 2007, the *National Commission for Enterprises in Unorganised Sector* assessed that the bulk of agricultural workers (90.7%) and rural workers (64.5%) were paid less than the national minimum wage of INR 66 (USD 1.25) a day. Many such socio-economic conditions call for safeguarding the right to social security of all those categories of workers, including SCs, who face systematic discrimination both in the public and private sectors. In the name of downsizing and optimizing by the Government of India, employment rate is on the decline. According to the report of the *Working Group on the Welfare and Empowerment of SCs and STs*, over 113,450 job opportunities were lost by SCs in Central Government in a period of ten years. A decline of 10.07% job opportunities was noticeable. This is in addition to the loss of opportunities in various state government employment sectors.

Disabled Persons and Discrimination in Employment¹⁶⁷

Another constituency which faces severe discrimination in the field of employment are persons with disabilities. Article 16 of the Constitution of India guarantees equality of opportunity in employment, but does not mention persons with disabilities as a protected group. The national laws are highly inadequate for protecting the rights of persons with disabilities in employment. While India has ratified the *UN Convention on the Rights of Persons with Disabilities* (CRPD), it remains largely unimplemented. As a result, persons with disabilities are one of the least employed groups in the country.

The *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995*, mandates 3% reservation in government and public sector jobs, but it has never been fully complied with. Moreover, employment is restricted only to certain 'identified' posts, which is discriminatory, and there is no concept of reasonable accommodation for persons with disabilities. Further, the classification is arbitrary and the reservation is restricted to people with locomotor, hearing and visual impairments; thus persons with other disabilities like intellectual, psychosocial and multiple impairments, are not even considered employable by the laws of the country.

Similarly, there is rampant discrimination in the private sector, where there is neither a reservation system nor an anti-discrimination law to prevent discrimination against persons with disabilities. About 98% of persons with disabilities registered under the MNREGA have not been given a job. In the year 2011-12, 999,211 persons with

There is rampant discrimination in the private sector, where there is neither a reservation system nor an anti-discrimination law to prevent discrimination against persons with disabilities.

¹⁶⁶ Source: *Joint Stakeholders report on Caste Based Discrimination in India*, 13th Session of the Universal Periodic Review of the UN Human Rights Council – India (21st May - 1st June 2012), submitted by National Coalition for Strengthening PoA Act, Initiation of National Campaign on Dalit Human Rights (NCDHR).

¹⁶⁷ Source: *Universal Periodic Review – India: Key Issues of 120 Million Persons with Disabilities in India*, submitted by National Disability Network.

disabilities were registered and only 16,436 were given work under the scheme.¹⁶⁸ There is hardly any functional support system from the government for assistive technologies, interpreters, attendants, accessible transport, and rehabilitation, to enable persons with disabilities to take up training and employment on an equal basis with others. There is no system to cover disability costs, while social security/unemployment allowances are meagre or nonexistent in many parts of the country.

Bonded Labour

Despite the *Bonded Labour Abolition Act, 1976*, it is estimated that there are still 40 million ‘bonded labourers’ in India. Dalit labourers constitute a majority of them.¹⁶⁹ Dalit children from migrant and bonded families naturally fall into the trap of bondage. *Dalits* comprise the majority of agricultural, bonded and child labourers in India, with many surviving on less than USD 1 a day. In September 2011, the NHRC reported 1,300 cases of human rights violations pertaining to bonded labour, while over 40% of the 2,800 bonded labour cases reported to the Commission are yet to be solved. The practice exists in multiple non-agricultural industries, such as the *Devadasi* practice of bonded sex workers, and in small-scale industries like firecrackers, textiles, leather goods manufacturing, brick and tile kilns, and granite extraction industries.¹⁷⁰ In addition, the NHRC has also received “reports of bonded labour being used to execute defence projects” in conflict areas.¹⁷¹

Number	Recommendation	Status
RIGHT TO WORK AND LABOUR RIGHTS (see also: Child Labour in Part III B)		
UPR 1		
7	Consider signature and ratification of ILO Conventions No. 138 and 182.	Accepted
UPR 2		
51	Continue its efforts to further spread in the country the model of rural growth in the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA).	Accepted
78	Continue to promote the right to equal opportunity for work and at work.	Accepted
129	Continue efforts and actions in the promotion of social security and labour policy.	Accepted
10	Accede to the ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; ratify the Statute of the International Criminal Court and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Protocol, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the ILO Convention No. 189 concerning Decent Work for Domestic Workers.	Not accepted
Trafficking (see also: Trafficking in Women and Children in Part III B)		
UPR 2		
107	Accelerate efforts on combating human trafficking.	Accepted
108	Reinforce efforts to protect and rehabilitate the victims of trafficking.	Accepted
111	Implement monitoring mechanisms to stop people trafficking.	Accepted

¹⁶⁸ Status Report for XII Plan by Ministry of Social Justice and Empowerment, Government of India (2011).

¹⁶⁹ Indian Institute of Dalit Studies (IIDS), *Dalit Children in Rural India: Related to Exclusion and Deprivation*, Working Paper Series, Volume III, Number 5, 2009, available at: <http://dalitstudies.org.in/wp/0905.pdf>

¹⁷⁰ Written statement submitted by the Asian Legal Resource Centre, available at: <http://www.scoop.co.nz/stories/WO1008/S00517/india-bonded-labour-in-india.htm>

¹⁷¹ NHRC, *India Submission to the UN Human Rights Council for India's Second Universal Periodic Review*, available at: <http://nhrc.nic.in/Reports/UPR-Final%20Report.pdf> For more details see Annex E.

Right to Education

In a significant development, the Right to Education (RTE) was made a fundamental enforceable legal right for children under Article 21A of the Constitution by the *Eighty-Sixth Constitutional Amendment Act, 2002*. India thus became one of the few countries in the world where the right to education is a fundamental right. The *Right of Children to Free and Compulsory Education Act, 2009* (RTE Act) guarantees the right to free and compulsory education to every child between 6 and 14.¹⁷² It doesn't encompass children between 0 to 6 years old, however, in a welcome gesture the Indian Government is contemplating to extend the present RTE Act to cover children below 6 years.¹⁷³

The RTE Act, although progressive, is not accompanied either by a well laid-out implementation mechanism of the law or by a financial memorandum. Therefore, its implementation remains a challenge because of inadequate financial allocations and lack of effective enforcement mechanisms. While the Act does have provisions stating that the local authority may take up a complaint, it ignores the fact that this very local authority is also an implementing functionary. This could give rise to conflict of interest in certain instances, which would inhibit the proper enforcement of the right to education. In order to ensure a more efficient implementation of the RTE Act, states are required to frame their own set of rules. To date, only 17 states have prepared drafts of their state rules on the Act but are yet to notify them.¹⁷⁴



Liba Taylor/ActionAid

Situation on the Ground

Surveys have found the following impediments in the realisation of the right to education, especially in rural areas: (i) one-third of all primary and upper primary schools face acute shortage of classrooms and do not comply with the RTE requirement of one teacher one classroom ratio; (ii) about half of primary and upper primary schools face shortage of teachers; (iii) 25% of schools lack office cum store; 48% of schools lack playgrounds; 50% of schools do not have a boundary wall or fence; (iv) 37% of schools do not have a library; (v) mid-day meals are not served in 17% of schools, while 19% of schools lack a kitchen shed for mid-day meals; (vi) 5.9% of girls in the age group of 11-14 years are out of school compared to 4-9% boys across India.¹⁷⁵

¹⁷² The constitutional amendment and the RTE Act came into force on April 2010.

¹⁷³ Vishwas Kothari, *Board to study draft for RTE in pre-school, secondary education*, The Times of India, 30 Oct. 2012, available at: http://articles.timesofindia.indiatimes.com/2012-10-30/news/34816331_1_secondary-education-education-minister-compulsory-education

¹⁷⁴ HAQ: Centre for Child Rights, 13th Session of the Universal Periodic Review Working Group of the UN Human Rights Council – India (21st May - 1st June 2012), November 28, 2011.

¹⁷⁵ Pratham, *The Annual Status of Education Report (Rural), 2010*, available at: http://www.pratham.org/asr08/ASER_2010_Report.pdf.

In October 2011, the Supreme Court ruled that the denial of the basic right to water and toilet facilities in schools violates the right to free and compulsory education provided under the RTE Act.¹⁷⁶ It directed all schools across the country to have toilet facilities and offer drinking facilities within a short timeline. However, according to a recent study, only 75% of schools have toilets, with merely 60% of schools having girls' toilets. Even when toilets are available, half of them are not usable, thus forming a major deterrent for girls to attend schools.¹⁷⁷

Public-private partnerships are another grey area, with many private schools having challenged the RTE requirement for every private school to reserve 25% of admissions for students from disadvantaged and economically weaker groups. However, in April 2012, the Supreme Court upheld such requirement under the RTE Act and directed all schools, including those privately-run (except minority and unaided institutions) to admit at least 25% students from socially and economically backward families from the 2012-13 academic year onwards.¹⁷⁸ Several schools had been holding separate shifts for students from poor families after the regular school timings. However, according to the requirements of the RTE Act, 25% of every classroom has to be composed of students from socially and economically disadvantaged families.

India is one of the few countries in the world where the Right to Education is a fundamental right.

Monitoring Mechanisms

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 implementation of the RTE Act. However, it has been found that the appointment of many Chairpersons and Members of the National and State Commissions is often not open and transparent as suggested by the 'Paris Principles' for NHRIs. Additionally, 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 meager infrastructure at its disposal.

Corporal Punishment

Corporal punishment is still widely practised in Indian schools. Some of the forms of punishment include electric shocks, threatening, tying to chairs, slapping and beating with a cane. A recent study conducted by NCPCR¹⁷⁹ has revealed that three out of five school children, falling in the age group of 3-5 years are beaten with a cane as a form of corporal punishment in schools. The study disturbingly reveals that 99% of school children have received some form of corporal punishment.

¹⁷⁶ The Hindu, *All Govt. schools must have toilets by November-end*, October 19, 2011, available at: <http://www.thehindu.com/todays-paper/tp-national/article2550270.ece>

¹⁷⁷ UCAN India, *Lack of toilets keeps girls away from school*, April 26, 2012, available at: www.ucanindia.in/news/lack-of-toilets-keeps-girls-away-from-school/17644/daily

¹⁷⁸ The Times of India, *New norms for schools as SC backs right to education*, April 13, 2012, available at: <http://m.timesofindia.com/PDATOI/articleshow/12642231.cms>

¹⁷⁹ NCPCR, *Eliminating Corporal Punishment in Schools*, 2010, available at: <http://www.ncpcr.gov.in/Guidelines/Eliminating%20Corporal%20Punishment%20in%20Schools.pdf>

Children at schools are still subjected to corporal punishment despite the Ministry of Women and Child Development (MWCD) in 2010 had issued a new set of guidelines that bans physical punishment of students. NCPDR also issued similar guidelines to curb down the menace of corporal punishment. First violation of the ban will invite up to one year in jail, or a fine of INR 50,000 or both. For subsequent violations, imprisonment could be extended to 3 years with an additional fine of INR 25,000. The ban would hold the heads of schools responsible if he or she fails to prevent corporal punishment. Teachers found guilty could be denied promotion, and even increments. It is also planned to set up a child rights cell in all schools where children can lodge their complaint.¹⁸⁰ Keeping in mind the continued violence against children in school, in a recent move, the MWCD has proposed imprisonment of up to seven years for perpetrators of corporal punishment. In a cabinet note, prepared to amend the *Juvenile Justice Act, 2000* the ministry has sought to include a new section on corporal punishment, which defines such punishment commensurate with the provisions of the Indian Penal Code (IPC) for "hurt" and "grievous hurt" offences.¹⁸¹

Discrimination against SC Children

SC children are frequently treated in a humiliating and degrading manner in schools and in public places, at times accompanied by severe corporal punishment. Even in government sponsored schemes like the *Mid-day Meal Scheme*, under which every child in every government and government-assisted primary school should be provided with a prepared mid-day meal each day of school for a minimum of 200 days,¹⁸² segregation is practiced in seating arrangements and in eating mid-day meals.

SC children are made to clean school toilets and carry their footwear in their hands (at times on their heads) while crossing dominant caste areas in villages. In a village in Tamil Nadu, when a Dalit student was murdered on 9 September, 2011 by dominant castes, 23 Dalit children were compelled to take their transfer certificates from the school because the dominant caste children objected to their presence in the school. Some of these factors have significantly contributed to higher dropout rates among Dalit children who face a hostile environment especially at school.

One of the primary reasons for the increasing dropout rate of SC children from primary schools is due to discrimination being practiced against them in schools, which affects enrolment and retention rates. Dropout rate of SC children is 50% before class eight.¹⁸³ The difference in dropout rates between SC youth and all Indian youth has actually grown from 4.39% in 1989 to 16.21% in 2008.¹⁸⁴ Moreover,

180 NDTV Correspondent, *Indian government bans corporal punishment in schools*, July 20, 2010, available at: <http://www.ndtv.com/article/india/indian-government-bans-corporal-punishment-in-schools-38661>

181 Ritika Chopra, *Cabinet note proposes changes in law for jail up to 7 years for corporal punishment*, India Today (online), available at: <http://indiatoday.intoday.in/story/cabinet-note-corporal-punishment-jail-law-changes/1/216662.html>

182 Supreme Court order, *People's Union for Civil Liberties v. Union of India and Others*, Writ Petition (Civil) No 196 of 2001.

183 Planning Commission, *Eleventh Five-Year Plan 2007-12, Vol. II - Social Sector: Education*, 2008, available at: http://planningcommission.nic.in/plans/planrel/fiveyr/11th/11_v2/11th_vol2.pdf

184 IDSIN, 2010: *Dalit Children in India – Victims of Caste Discrimination*, Briefing Note by Navsarjan Trust (www.navsarjan.org), Center for Human Rights and Global Justice (www.chrgj.org) and International Dalit Solidarity Network (www.idsin.org).

the literacy levels are lowest among SC girls at 24.4%, compared to the national average of 42.8% for the general female population. For example, in the Mushahar SC community,¹⁸⁵ barely 9% of women are literate.¹⁸⁶

Caste bias also manifests itself in higher educational institutions, where there have been reports of teachers ignoring SC students and unjustly failing them in exams; social exclusion and physical abuse; and the unwillingness of university administrations to assist SC students and support them. Between 2008-11, 18 SC students of higher educational institutions committed suicide across India. This number only represents official statistics without counting all the SC students whose families did not protest against the incessant discrimination that eventually led to their suicide.¹⁸⁷

CASE STUDY

Exclusion of Dalit Children

Exclusion by Teachers

- a. Segregated seating arrangements in classrooms, with SC children made to sit separately and typically at the back of the classroom.
- b. Undue harshness in reprimanding SC children, especially in relation to upper caste children. For instance, in scolding children for coming late to school, in resolving fights between children, in condoning name-calling by upper caste children.
- c. Not giving time and attention to SC children in the classroom, such as not checking their homework or class work, not answering their queries, even rebuking them for asking questions in class.
- d. Excluding SC children from public functions in the school. These include non-participation in the morning assembly or other public events such as on Republic Day or Independence Day.
- e. Making derogatory remarks about SC children – their supposed inability to keep up with academic work.
- f. Denying SC children the use of school facilities, including water sources. Keeping water segregated; even preventing SC children from using school taps or containers used to store drinking water.
- g. Asking SC children to do menial tasks in school, including cleaning the school premises and even the toilets.

Exclusion by peer group

- a. Calling SC children by caste names.
- b. Not including SC children in games and play activities in the classroom or in break-time when children go out to play; SC children often return to their own neighbourhoods to play with non-enrolled SC children.
- c. Not sitting with SC children in the classroom.

¹⁸⁵ The Musahar community falling under the category of Scheduled Castes in Northern India, is socially and economically one of the most marginalised communities in India.

¹⁸⁶ Economic, Social and Cultural Rights, Girls' right to education, Report submitted by the Special Rapporteur on the right to education, Mr. V. Muñoz Villalobos, 2006, E/CN.4/2006/45, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G06/106/70/PDF/G0610670.pdf?OpenElement>

¹⁸⁷ K.P.Girija, *The Death of Merit: Manish Kumar*, 2011: On Suicides, Caste and Higher Education, documentary available at: <http://thedeathofmeritinindia.wordpress.com/2011/04/26/84/>

Exclusion by the system

- a. Incentives and schemes meant for SC children not being implemented in full.
- b. Lack of acknowledgement of SC role models in the curriculum or by teachers.
- c. Reinforcing caste characteristics in syllabi and textbooks.
- d. Lack of sensitisation of teachers in teacher education and training.
- e. Insufficient recruitment of SC teachers.

Source: Report of the Committee on Implementation of RTE and revamp of SSA 2010, (available at: <http://www.ssa.nic.in/>)

Discrimination against Disabled Children

Disabled children also face difficulties at various levels in schools that are not disabled friendly. Promises of 'inclusion' in education remain a lip service in the absence of infrastructure and support. For example, only 47.5% of schools have ramps for access. Only 1.38% disabled children have been reported by the District Information System for Education 2008-09, while a striking 70% of children with disabilities have still not been identified, even though the 'education for all programme' – *Sarva Shiksha Abhiyan* (SSA) – has been in place for more than 10 years now.¹⁸⁸ Around 28 States have appointed 12,629 resource teachers for 2,694,000 children with disabilities in schools,¹⁸⁹ which translates into only one resource teacher for 213 children. Deaf and blind children are not able to access educational services either in special schools or schemes like SSA due to lack of trained personnel, accessible formats of books and assistive devices.

Government Schemes on Education

The *Sarva Shiksha Abhiyan* (SSA), the government's flagship programme aimed at universal primary and elementary education, while positive, has not yet achieved targets like universal primary education (five years of schooling) by 2007 and universal elementary education (eight years of schooling) by 2010. Although promoting education for all, the programme is not designed to provide equal education for all. Much-advertised programmes, such as the *Education Guarantee Scheme*, promote parallel systems of education in which less qualified, under paid and local Para Teachers are replacing trained professional teachers.



Tom Pietrasik/ActionAid

¹⁸⁸ Ministry of Women and Child Development, *Integrated Child Development Services (ICDS)*, available at: <http://wcd.nic.in/icds.htm>.

¹⁸⁹ Ministry of Human Resource Development (HRD), *Annual Report 2010-11*, Page 294.

The MDM scheme and the *National Programme of Nutritional Support* (NPNS) aim at enhancing enrolment, retention and attendance, and simultaneously improving nutritional levels among children. However, despite its good intentions, reports indicate the absence of a proper management structure and inadequate implementation. Additionally, there are serious concerns regarding the quality of food served to the children.

The ICDS is the world's largest early child development programme. It was launched in 1975 with the aim of improving the health and well-being of new mothers and children under six by providing health and nutritional education, health services, supplementary food, and pre-school education.¹⁹⁰ Studies have found that despite some unevenness in the quality of services, the ICDS programme has had a positive impact on the survival, growth and development of young children.¹⁹¹ However, its reach has been called into question on numerous occasions and the third National Family Health Survey (NFHS-3), indicates that only 28% of children received any services from an *anganwadi* centre (the network of centres through which the scheme is implemented). Moreover, the ICDS programme has largely by-passed children with disabilities, *Dalits* and other minority groups.

Human Rights Education

As per UPR I Recommendation 13, India stated that it had adopted a national action plan for human rights education (NAP-HRE). However, to date there is no information available to the public on the NAP-HRE. Also, 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. The Indian Government national report for UPR II states: "*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 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*".¹⁹² However, the current human rights component in the curricula is near insignificant. Many school textbooks published by both central and state authorities contain both classist and casteist statements and assumptions, but continue to be in use. Separate lessons on human rights co-existing with such texts would be meaningless.

However, there is also some evidence to suggest that a conscious and thoughtful presentation of principles of equity and equal worth and of the potential for learners to understand and value unity in diversity can have positive effect. It is for the Indian Government to work harder and more sincerely to make these necessary changes in what is taught, and how it is taught.

190 Ministry of Women and Child Development, *Integrated Child Development Services (ICDS)*, available at: <http://wcd.nic.in/icds.htm>.

191 UNICEF, *India: Integrated Child Development Services (ICDS)*, available at: http://www.unicef.org/spanish/early-childhood/files/india_icds.pdf.

192 *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: India*, A/HRC/WG.6/13/IND/1, UN General Assembly, March 8, 2012. para 117.

CASE STUDY

Institute on Human Rights Education – A Flourishing Precedent

The Institute for Human Rights Education (IHRE) was set-up in 1997 in order to spearhead a programme on Human Rights Education (HRE) in schools. The Institute and the programme were conceived as a pilot project to address the lack of a human rights component in curricula in schools. The objective of the programme is to sensitise children and teachers towards human rights, which is aimed at kindling their consciousness of their own rights and the rights of others. This in turn promises to be instrumental in impacting others in the chain of their association. The programme on human rights was first started in a few schools in Tamil Nadu and since 2005, it has expanded to the following states: Odisha, West Bengal, Rajasthan, Tripura, Bihar, Gujarat, Andhra Pradesh, Karnataka, Kerala, Maharashtra, Uttar Pradesh, Assam, Meghalaya, Arunachal Pradesh, Mizoram, Manipur and Nagaland. Currently the programme covers 2,035 schools (of which 1,483 are general schools, 542 are SC/ST welfare schools and 410 are government aided schools) with 2,190 trained teachers reaching out to 171,632 children in 18 states of India.

How it works

The programme begins with a five-day intensive training of teachers. This initial training is followed-up with yearly summer camps and further syllabus. Training of trainers serves to address the entrenched prejudices within the teachers. In some instances, teachers have walked-out of training sessions, owing to disagreements on issues like caste based discrimination. Nonetheless, as suggested by reports from the ground, the trainings under the HRE program have proved to cause a change in attitude and thinking of a considerable number of teachers.

Human rights education is offered by the trained teachers in Classes VI, VII and VIII while using three modules: (a) Introduction to Human Rights; (b) Child Rights; (c) Discrimination. These modules have been translated in many vernacular languages as the program expanded to other Indian states. The translation of each module is entrusted to a group of education, human rights and language experts from respective states. Care is taken in dynamically adapting and rewriting the modules to reflect local human rights contexts. IHRE generally conducts two 45-minute sessions on human rights education per week in each school. This time is taken from the school's regular class timings since HRE is treated as part of the regular class room activity. The programme has enjoyed tremendous support among stakeholders.

Positive Impact

Human Rights Education at the school level also has a trickledown effect as the child shares his knowledge with parents, relatives, friends, and neighbours. The programme has also benefited teachers, which is evident from the change in their approach towards their students. For instance: (a) teachers have abandoned the practice of subjecting their students to corporal punishment, possibly due to the realisation that doing so is a violation of child rights; (b) they have started acting as facilitators of Human Rights Clubs through which they help poor students in their studies and organise human rights programs; (c) teachers have admitted to changes in their family life due to the impact of the HRE program; (d) they have also started assisting victims of human rights violations in their respective areas to approach various forums for justice.

Students under the programme are also getting involved in human rights advocacy in their respective villages. For example: (a) through their parents and friends, they engage in debates on social evils in their locality thus creating awareness among their family, friends, relatives and neighbours; (b) students are able to identify instances of human rights violations; (c) they have shown increased involvement and interest in the HRE programme as well as studies generally; (d) a study on counselling students' father on the advice and guidance of his HRE program teacher has resulted in the stopping of consumption of liquor by his father. The father has also stopped beating-up his children.

A large number of students have come out with striking revelations of change in their perception and behaviour as a result of the HRE program in their schools. A young boy, Murugan, who is from a higher sub-caste than some of his peers narrated his experience as follows: “When HRE was introduced in my school, I wasn’t interested initially, as our HRE teacher used to be very harsh and used to beat us up with a stick. But after attending the HRE training program for teachers, her attitude changed and she declared to us that she would not beat us anymore as she had realised that we all deserved to be treated like human beings. She then started teaching us human rights and my interest was especially aroused by the class on Discrimination. The class helped me realise that we should not discriminate against people on the basis of caste. Before, I would not enter into a lower caste person’s home and I would not allow anyone from a lower caste to enter my home as my grandmother wouldn’t allow it. But after the HRE program, things have changed. I have started mixing with people from all castes. My grandmother still scolds me if I play with Dalit boys or visit their homes. But now, I don’t care. Now I know every person has his right against discrimination.”

Source: Institute of Human Rights Education

Number	Recommendation	Status
RIGHT TO EDUCATION (see also: Right to Non-discrimination in Education in Part III B)		
UPR 1		
13	Strengthen human rights education, specifically in order to address effectively the phenomenon of gender-based and caste-based discrimination.	Accepted
UPR 2		
52	Enhance the coordination of both the central and state governments in an effective manner in order to guarantee the smooth implementation of the 2010 Right of Children to Free and Compulsory Education Act.	Accepted
55	Continue with action to include human rights education in the school curricula.	Accepted
135	Allocate more resources in sectors that provide basic services such as health, education and employment opportunities.	Accepted
157	Continue to strengthen/develop programmes and initiatives geared towards guaranteeing the rights to health and education.	Accepted
158	Redouble its efforts in the field of education and health.	Accepted
160	Further promote children’s right to education.	Accepted
161	Reinforce efforts in provision of free and compulsory primary education.	Accepted
162	Continue implementing a non-discriminatory and inclusive policy and guarantee quality education to all girls and boys in the country.	Accepted
166	Prioritise efforts to ensure that children with disabilities are afforded the same right to education as all children.	Accepted
54	Establishment and implementation of a National Human Rights Plan which cover access to education and health, including aspects of sexual and reproductive health, as well as, concrete measures to eliminate violence against women.	Not accepted
149	Meet the stated commitment from the Common Minimum Program of 2004 to dedicate 3 percent of India’s GDP to health and 6 percent to education	Not accepted
163	Strengthen human rights training aimed at teachers in order to eliminate discriminatory treatment of children of specific castes, as well as appropriately follow-up on the results of the training that has occurred thus far.	Not accepted
164	Ensure universal, compulsory and free education, carrying out on a priority basis measures aimed at eradicating discrimination, particularly discrimination that affects girls, marginal groups and persons with disabilities.	Not accepted
165	Continue its efforts to promote the right to children’s education and ensure the importance of the principles of children’s education in the country.	Not accepted

The Right to Information Act and Corruption

In a significant legislative development, India enacted the *Right to Information (RTI) Act, 2005*. This law has given citizens across India the ability to procure information on issues pertaining to their rights – particularly economic, social and cultural rights – thereby also promoting their access to justice and a culture of transparency and accountability in administration.¹⁹³ The RTI Act has become a successful mechanism for people to engage with public authorities on matters relating to development and legal entitlements. In 2010-11 alone, two-thirds of the public authorities in the Central Government had received 550,000 information requests from citizens around the country.¹⁹⁴ Although collated data is not readily available, it may be conjectured that around 2-5 million information requests to public authorities under 27 state governments may have been made. A large number of citizens have used the RTI Act to seek accountability of public authorities on a range of issues, from evaluated answer scripts of public examinations¹⁹⁵ to procurement decisions in mega-scale development projects.¹⁹⁶

While in initial years the focus of RTI users and activists was on exposing corruption at the village and sub-district level, in recent years RTI has been used to expose big-ticket corruption¹⁹⁷ and diversion of development funds earmarked for vulnerable groups.¹⁹⁸ RTI users have filed information requests questioning public authorities about the poor state of roads in their neighbourhood, diversion of funds for food grains, illegal grant of mining licenses in ecologically sensitive zones, conduct of clinical trials of untested medicines on girl children without informed parental consent, etc. While the information itself may not have been provided in some instances, it has been seen that many public officials were prompted to address the grievance leading to the request for information, and as a result, the proceeding for procuring information had to be disposed off. However, it is also pertinent, that largely, the absence of political will in treating such information requests as symptomatic of the problems of governance, is striking.

A recent global study has rated the Indian RTI Act as one of the strongest of such laws, second only to Serbia.¹⁹⁹ Yet, domestically, its effectiveness is eclipsed by some restrictive rules-regimes adopted by some states that prevent people from seeking

The RTI Act has become a successful mechanism for people to engage with public authorities on matters relating to development and legal entitlements.

193 For more information on the RTI Act and the many challenges in its implementation, see: www.righttoinformation.info

194 Right to Information: Empowering Citizens, Annual Report 2010-11, Central Information Commission, New Delhi, available at: <http://cic.gov.in/AnnualReports/AR-2010-11/AR2010-11E.pdf>

195 The Telegraph, *Scripts under RTI Act: Apex Court*, August 2011 available at: http://www.telegraphindia.com/1110810/jsp/calcutta/story_14360511.jsp

196 The Pioneer, *NBA Issues Legal Notice on State Government*, February 2012, available at: <http://www.dailypioneer.com/state-editions/bhopal/41755-nba-issues-legal-notice-on-state-government.html>

197 The Times of India, *We used the RTI Act to Expose Several Housing Frauds*, February 2011, available at: http://articles.timesofindia.indiatimes.com/2011-02-25/edit-page/28633690_1_rti-queries-rti-act-adarsh; The Daily News Analysis, *Evidence Shows Manmohan Singh Failed to Avoid 2G Scam*, September 2011, available at: http://www.dnaindia.com/india/report_evidence-shows-manmohan-singh-fails-to-avoid-2g-scam_1591213

198 The Times of India, *Delhi Govt. Diverted Rs. 670 crore of SC Funds for CWG Projects*, August 2010, available at: http://articles.timesofindia.indiatimes.com/2010-08-27/india/28278765_1_cwg-projects-commonwealth-games-projects-funds

199 India scored 130 out of a maximum of 150 points for incorporation of best practice principles of transparency. See: Centre for Law and Democracy, *Global Right to Information Rating Report*, 2011, available at: <http://www.rti-rating.org/countrydata.html>

information on more than one topic and that too within a limit of 150 words.²⁰⁰ The Central Government's attempts to impose similar restrictions were rebuffed by a strong civil society campaign in 2010. However, to curb the transparency regime established by the RTI Act, in 2006 an amendment was proposed to keep file notings out of the ambit of the RTI Act. In the latest cabinet meeting on RTI Act in October 2012, the Indian Government withdrew such proposals, paving ways to get public access of all file notings except those that fall under national security, privacy and protection of commercial interests. Also, the selection process for appointments to public authorities will also come under public purview now.²⁰¹

The proposed bar on disclosure of information relating to technology holders, will ensure that even corruption-related information will not be disclosed. In the wake of scams such as Bofors and the recent TetraPak scam, there is a rising voice to bring Defence Expenditures under RTI Act, however, astonishingly all the political parties vehemently oppose the demand of bringing political parties under its ambit.²⁰²

Following the receipt of information provided by a RTI application, civil society actors make use of this information on their fieldwork and update it according to their succeeding findings. The government could have employed the civil society measures involving use of RTI for receiving updated information, and employing that for corrective measures. There have been instances where civil society actors, who obtained information through RTI, cross-verified documentary claims at the grassroots level through social audits, for example in case of the implementation of the *MNREGA, 2005*. The defalcation in spending of funds meant for rural development under the scheme, was publicised through public hearings and corrective action was sought from the administration.²⁰³ However a typically slow-moving bureaucracy and a non-committal political establishment failed to capitalise on this public feedback to take swift and resolute corrective action.

Despite its popular appeal, state and Central governments have done little to provide the necessary infrastructural support for the successful implementation of the RTI Act. There is no budgetary allocation for promoting transparency in most of the states. The State Information Commissions – adjudicators in access disputes – remain understaffed and under-resourced and are financed in large measure by the Central Government. This has resulted in long delays in the resolution of access disputes.²⁰⁴ Regrettably, the appointment of Information Commissioners is often based on political considerations rather than objective criteria linked to a proven track record of supporting transparency and accountability.²⁰⁵

200 Governance Now, *Activists Decry Maharashtra Move to Amend RTI Act*, April 2012, available at: <http://governancenow.com/gov-next/rti/activists-decry-maharashtra-move-amend-rti-act>

201 Zee News Bureau, *Cabinet decides against RTI dilution, withdraws amendments*, November 01, 2012, available at: http://zeenews.india.com/news/nation/cabinet-decides-against-rti-dilution-withdraws-amendments_808676.htm

202 The Indian Express, *Why not bring defence expenditure under RTI: BJP*, November 5, 2012, available at: <http://www.indianexpress.com/news/why-not-bring-defence-expenditure-under-rti-bjp/1026899/>

203 Aiyar, Yamini and Samji, Salimah (2009) *Transparency and Accountability in NREGA: A Case Study of Andhra Pradesh*, AI Working Paper No. 1, Accountability Initiative, New Delhi.

204 The Times of India, *Central Information Commissioner Feels Right to Information Dying in Maharashtra*, March 2012, available at: http://articles.timesofindia.indiatimes.com/2012-03-25/mumbai/31236292_1_high-pendency-information-commissioners-rti-act

205 Tehelka, *Andhra Pradesh Governor Rejects four names suggested for Posts of Information Commissioners*, April 2012, available at: http://www.tehelka.com/story_main51.asp?filename=Ws220212RTI.asp

Further, the government's indifference towards raising awareness about RTI also prevents people from exercising their rights under the Act. This is one of the major reasons why only few women could seek information under the RTI Act.²⁰⁶ A government-sponsored study in 2009 also found that fewer *Dalits* and tribals/*adivasis* used the RTI Act compared to persons belonging to upper castes.²⁰⁷ Accounts from around the country also indicate that Dalit and *adivasi* requestors are more likely to be attacked, intimidated or harassed for seeking information under the Act (see sections on Human Rights Defenders in Part III).²⁰⁸ In the absence of credible and effective police and judicial reforms, the law enforcement machinery, more often than not, fails to protect RTI activists and their families. The proposed legislation to protect whistleblowers and to redress public grievances about maladministration and poor delivery of services by government departments is likely to add to the institutional mechanisms for tackling corruption. However it appears that political consensus on these measures is difficult to achieve in the near future, given the current divisive nature of the debate around them.

Number	Recommendation	Status
RIGHT TO INFORMATION ACT AND CORRUPTION		
UPR 2		
127	Ensure a safe working environment for journalists. (Deleted portion: and take proactive measures to address the issue of impunity, such as swift and independent investigations.)	Accepted in revised form
62	Strengthen the process for ensuring independent and timely investigation mechanisms to address and eliminate corruption; and provide for and facilitate increased accountability and transparency in this process.	Not accepted
117	Continue to carry out policies aimed at improving its judicial system, reforming the law enforcement bodies and reducing the level of crime and corruption.	Not accepted
126	Ensure that measures limiting freedom of expression on the internet is based on clearly defined criteria in accordance with international human rights standard.	Not accepted

206 Alasdair Roberts, *A Great and Revolutionary Law? The First Four Years of India's Right to Information Act*, Public Administration Review, 2010, Vol. 70, No. 6, page 8, available at: http://papers.ssrn.com/sol3/papers.cfm?abstract_id=1527858

207 *Understanding the Key Issues and Constraints in Implementing the RTI Act, 2009*, Price Waterhouse Coopers, 2009, Chapter 3, page 38, available at: <http://rti.gov.in/rticorner/studybypwc.htm>

208 India Today, *Rajasthan: RTI Activist attacked with Axes*, March 2011, available at: <http://indiatoday.intoday.in/story/rti-activist-attacked-for-seeking-public-work-in-panchayat/1/131638.html>

II



MILITARISATION AND SECURITY – LAWS AND APPARATUS



Despite a clear decrease in insurgency related violence, the state's response to these political issues has remained mainly militaristic, accompanied by draconian security laws that lead to widespread human rights violations.

Militarisation and Security – Laws and Apparatus

Due to historical and political reasons, parts of India including the Northeast (Nagaland, Manipur, Assam, Meghalaya, Arunachal Pradesh) and Jammu and Kashmir (J&K) have witnessed insurgency for many years. The Government of India has responded to these situations with increased militarisation.

For the last two years, the Ministry of Home Affairs' Annual Reports have consistently pointed towards the reduction in the levels of violence in conflict areas. The 2011-12, Annual Report stated that the Internal Security situation in the country in 2011 showed distinct signs of improvement over the previous years.²⁰⁹ 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*”. Also, recent estimates by the Intelligence Bureau and a census conducted by the J&K police declare that only 119-200 militants are still operative in Kashmir, which is the lowest in the past two decades.²¹⁰ The report also added that the situation in the Northeast has improved with reduction in the levels of violence and casualties.²¹¹

209 Ministry of Home Affairs' Annual Report (2011-2012), *Internal Security*, Government of India, p. 6.

210 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/>

211 Ministry of Home Affairs' Annual Report (2009-10), available at: [http://mha.nic.in/pdfs/AR\(E\)0910.pdf](http://mha.nic.in/pdfs/AR(E)0910.pdf).

According to the report the incidents of terrorist violence have declined from 708 in 2008, 499 in 2009 and 488 in 2010 to 340 in 2011. The loss of the lives of the security forces has considerably declined from 75 in 2008, 79 in 2009 and 69 in 2010 to 33 in 2011. The Indian Government claims that the number of civilians deaths (though the figure may be contested²¹²) has also declined from 91 in 2008, 71 in 2009 and 47 in 2010 to 31 in 2011. Incidences of terrorism have shown some relief and the number of terrorists killed has shown a declining trend from 239 in 2009 and 232 in 2010 to 100 in 2011. In the North-Eastern States as well, the number of incidents of terrorist violence has come down from 1297 in 2009 to 627 in 2011. The number of civilians killed has also come down from 264 in 2009 to only 70 in 2011.²¹³

A ceasefire has been 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. Similarly, according to the Ministry of Home Affairs' Annual Report (2010-11): (a) there has been a perceptible 30% decrease in the number of terrorist incidents and 34% and 52% decrease in civilian and security forces' fatalities respectively compared to the year 2010 in J&K; and (b) the security situation in the Northeast has shown improvement in 2011 as compared to 2010 in terms of violence and casualties of civilians and security forces.²¹⁴ The 2011 report also reveals that conflict related casualties have reduced in states experiencing 'left-wing extremism'.²¹⁵

Despite this clear decrease in insurgency related violence, the state's response to continues to be primarily militaristic, accompanied by draconian security laws that lead to widespread human rights violations. While violations of international humanitarian law facilitated by these laws are common in these areas, the International Committee of the Red Cross (ICRC), has not been granted access to visit detention centres in any of these states except to a very limited extent in J&K.²¹⁶

Central India (Chhattisgarh, Andhra Pradesh, Jharkhand, Odisha and West Bengal) is home to impoverished communities of indigenous peoples (*adivasis*). With the government adopting economic policies that promote corporate acquisition and privatisation of land, mineral and other natural resources – primarily affecting the already marginalised *adivasis* – strong resistance movements, both popular protests as well as Maoist ('Naxalite') insurgencies, have grown. Jairam Ramesh, the Minister of State for Rural Development, while recognizing the economic undercurrents of the Maoist insurgency has stated: *"The long-festerling socio-economic concerns of the weaker sections of society must be addressed meaningfully if the influence of Naxal groups is to be countered effectively."* Instead, the state has launched a major armed offensive, codenamed 'Operation Greenhunt' against the Maoists in central India, with Dantewada in Chhattisgarh as its epicenter. The Supreme

"The long-festerling socio-economic concerns of the weaker sections of society must be addressed meaningfully if the influence of Naxal groups is to be countered effectively."

Jairam Ramesh, Minister for Rural Development

212 Civil society groups and international organisations claim that the number of civilian deaths due to insurgency may be much more than the official figure.

213 Ministry of Home Affairs' Annual Report (2011-2012), *Internal Security*, Government of India, p. 6.

214 Ministry of Home Affairs' Annual Report (2010-2011), paras 2.7.2 & 2.8.1, pages 7 & 19, available at: [http://mha.nic.in/pdfs/AR\(E\)1112.pdf](http://mha.nic.in/pdfs/AR(E)1112.pdf)

215 Ministry of Home Affairs' Annual Report (2010-2011), *State-Wise Left Wing Extremist Violence from 2008-2010*, available at: [http://mha.nic.in/pdfs/AR\(E\)1112.pdf](http://mha.nic.in/pdfs/AR(E)1112.pdf)

216 The State of Human Rights in India: Asian Centre for Human Rights Joint Submission on Behalf of the People's Forum for UPR II.

Court strongly condemned the state-sponsored counter-insurgency militia *Salwa Judum* – spearheaded by ‘Special Police Officers’ (SPOs) – as unconstitutional, and directed the disbandment of SPOs in Chhattisgarh.²¹⁷ Grave human rights abuses have been inflicted on the population by these SPOs, security forces and even by the ‘Naxalites’. Violating the spirit of the Court’s order, SPOs have been reabsorbed into the Chhattisgarh Auxiliary Armed Force through the *Chhattisgarh Auxiliary Armed Police Act, 2011*.²¹⁸

Special Security Laws

In all the above stated conflict areas, several special security laws operate,²¹⁹ which violate national and international human rights guarantees. These laws provide extensive powers of arrest, detention without trial and power to ‘shoot to kill’ on suspicion, to security forces and exempt them from prosecution in absence of executive sanction, spawning a culture of impunity. This militaristic approach and the on the Indian Governmenting conflicts contradict The Indian Government’s position at the UN, that “*India does not face either international or non-international armed conflict*.”²²⁰

In J&K and the Northeast, a state of exception exists through the presence of the *Disturbed Areas Act, 1976* (DAA) and the *Armed Forces Special Powers Act, 1958* (AFSPA)²²¹. Once an area is declared ‘disturbed’, the armed forces in such areas are granted extraordinary powers to use lethal force on mere suspicion and immunity from prosecution. In November 2011, the Attorney General in his legal opinion to the Central Government stated that the Governor of the State, is the final authority for declaration and revoking of the DAA and AFSPA, leaving the reasonableness or otherwise of the declaration of ‘disturbed areas’ outside the purview of judicial review.²²²

AFSPA, which provides sweeping powers and immunity to the armed forces, has since its imposition more than half a century ago legitimised a series of gross human rights violations in the Northeast and J&K, where it is in operation. Fundamental rights such as the right to life, the right to a fair trial, the right to remedy and reparation, the right against torture, the right against arbitrary detention, freedom of expression, freedom of movement and freedom of association and to peacefully assemble and protest as well as a series of economic, social and cultural rights have



Joe Athialy/Flickr

217 *Nandini Sundar & Ors. v State of Chhattisgarh*, Supreme Court, Writ Petition (C) No.250 of 2007, July 2011, Para 75.

218 Sec 11(3), *Chhattisgarh Auxillary Armed Police Act, 2011*.

219 These would 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.

220 India’s 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: http://wcd.nic.in/crc3n4/crc3n4_2r.pdf

221 See Annex I

222 The Hindustan Times, *AFSPA: Law says Gov, not CM, has the last word*, New Delhi, November 23, 2011

been systematically violated in the areas where AFSPA is in operation. This law has therefore come under severe criticism both domestically and internationally, with many voices calling for its repeal.

At the national level, government appointed committees and groups such as the Justice Jeevan Reddy Committee; the Administrative Reform Commission and the Working Group on Confidence-Building Measures in J&K have called for its repeal.²²³ Many civil society groups have also been calling for its repeal for a very long time.²²⁴ Ms. Irom Chanu Sharmila, a Manipuri activist and poet, has been on an indefinite hunger strike since 2000 demanding the repeal of AFSPA.²²⁵

At the international level, a large number of UN treaty bodies (Human Rights Committee²²⁶, CEDAW²²⁷, CERD²²⁸ and CESCR²²⁹) and UN Special Rapporteurs have criticised AFSPA for contravening international human rights law and have called for its review or repeal. In 2007, CEDAW reiterated its concerns as expressed in 2000 regarding the review of AFSPA and requested India *“to provide information on the steps being taken to abolish or reform the Armed Forces Special Powers Act and to ensure that investigation and prosecution of acts of violence against women by the military in disturbed areas and during detention or arrest is not impeded”*. CERD recommended the repeal of AFSPA asking India to *“replace it ‘by a more humane Act’, in accordance with the recommendations contained in the 2005 report of the Review Committee set up by the Ministry of Home Affairs”*. The Special Rapporteur on the situation of human rights defenders²³⁰ and the Special Rapporteur on extrajudicial, summary or arbitrary executions (SR EJE) both recommended the repeal of AFSPA following their official visits to India. The SR EJE unequivocally stated that AFSPA: *“has become a symbol of excessive state power (...) A law such as AFSPA has no role to play in a democracy and should be scrapped”*.²³¹

“AFSPA has become a symbol of excessive state power (...) A law such as this has no role to play in a democracy and should be scrapped.”

Christof Heyns, UN Special Rapporteur on extrajudicial executions

223 The ‘Jeevan Reddy Committee’ and the Administrative Reform Commission, available at: <http://www.hindu.com/nic/afa/afa-part-iv.pdf>; Praveen Swami, *Bit of Consensus*, Frontline, Vol 24(9), May 5-18, 2007, available at: <http://flonnet.com/fl2409/stories/20070518002902500.htm>

224 In addition to civil society groups from India, prominent international NGOs like Amnesty International and Human Rights Watch have repeatedly called for the repeal of AFSPA. See: Amnesty International, Public Statement: *Parliamentarians must repeal the Armed Forces (Special Powers) Act*, December 10, 2009, available at: <http://www.amnesty.org/en/library/asset/ASA20/022/2009/en/014577cc-00bc-40c7-9177-8571efc0950a/asa200222009en.html> and Human Rights Watch, India: Repeal Armed Forces Special Powers Act, August 18, 2008, available at: <http://www.hrw.org/news/2008/08/17/india-repeal-armed-forces-special-powers-act> In Also see: Human Rights Watch, Getting Away with Murder: 50 Years of Armed Forces Special Powers Act, August 2008, available at: <http://www.wgcr.org/pdf/HRW%20Report%20on%20AFSPA.pdf>

225 For all these eleven years, Irom Sharmila has been repeatedly arrested for ‘attempting to commit suicide’ and kept in custody in a hospital ward, where she is being forcibly fed through a nasal tube. See: The Hindu, *Irom Sharmila arrested again*, March 13, 2012, available at: <http://www.thehindu.com/news/states/other-states/article2991682.ece>

226 Concluding observations of the Human Rights Committee: India, 08/04/1997. CCPR/C/79/Add.81, para 18, available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.79.Add.81.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.81.En?OpenDocument)

227 Concluding comments of the Committee on the Elimination of Discrimination against Women: India, Thirty-seventh session, January 15 - February 2, 2007, available at: <http://daccess-dds.ny.un.org/doc/UNDOC/GEN/N07/243/98/PDF/N0724398.pdf?OpenElement>

228 Concluding observations of the Committee on the Elimination of Racial Discrimination: India, Seventieth Session, 19 February – 9 March 2007, para 12, available at: https://docs.google.com/viewer?a=v&q=cache:XG7qgei82cYJ:www2.ohchr.org/english/bodies/cerd/docs/cerd.c.ind.co.19.doc+&hl=en&gl=in&pid=bl&srcid=ADGEESHUs6pHCw3R-yIqWbqqFQ0SBRBniZML4i0-J_z8rbwt4kLW_dMJNYQO2XHf55DJVA3eSlogLC27Mm0qv2xv8O9Cku-T6936yOfW88Khlhph91R64gXoWy17nVjaMXQGkvtL6lO&sig=AHIEtbTwlvqoSHUa9ZVPQBIllZUJhZ16_rQ&pli=1

229 Concluding Observations of the Committee on Economic, Social and Cultural Rights, Fortieth Session: India, 28 April – 16 May 2008, available at: <http://www.unhcr.org/refworld/publisher/CESCR/CONCLOSATIONS/IND,48b/bdac42,0.html>

230 Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, Mission to India (10-21 January 2011), para 145, available at: <http://www.ohchr.org/Documents/Issues/Defenders/A-HRC-19-55-Add1.pdf>

231 Press Statement, Special Rapporteur on extrajudicial, summary or arbitrary executions: Country Mission to India, March 2012, available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12029&LangID=E>. See Annex J.

While upholding the constitutional validity of AFSPA in *Naga People's Movement of Human Rights (NPMHR) v. Union of India*, the Supreme Court laid down strict guidelines, which are to be followed by the armed forces while acting under AFSPA.²³² However, not only are the NPMHR guidelines derogated from by the armed forces, but even the Supreme Court in its judgement in *Masooda Parveen v. Union of India*,²³³ has tacitly approved digression from the guidelines in certain situations. In addition to the NPMHR guidelines, the army headquarters also enumerates up with a list of 'dos and donts' from time to time, which armed forces acting under AFSPA, or in aid of civilian authority are expected to adhere to. However, even those instructions are routinely derogated from. The Supreme Court while referring to such 'dos and donts', stated: "*serious note should be taken of violation of these instructions and the persons found responsible for such violation should be suitably punished under the Army Act, 1950*".²³⁴ However, there are no visible instances of personnel being punished for violation of these instructions.

The Prime Minister and the Union Home Minister have expressed the need for re-examining AFSPA, while the Chief Minister of J&K has been asking for its withdrawal from some parts of the state.²³⁵ The Union Home Minister recently revealed that the Cabinet Committee on Security under his Ministry is considering three amendments to AFSPA, which will be announced after the Committee has taken a decision.²³⁶ However, any amendment to AFSPA that seeks to moderate the power exercised by the armed forces or even its partial withdrawal is vehemently opposed by the army and the Ministry of Defence.²³⁷

In October 2012, a Bench of Justices Aftab Alam and Ranjana P. Desai of the Supreme Court issued notices to the Centre and Manipur government on a PIL seeking withdrawal of *Armed Forces (Special Power) Act* from the state on the ground that it allowed military to use lethal force in brazen violation of human rights resulting in death of hundreds of innocent people.²³⁸

Notwithstanding the strong criticisms and debates around AFSPA, the Indian Government stated in its national report for UPR II, that "*as long as deployment of armed forces is required to maintain peace and normalcy, AFSPA powers are required*".²³⁹

²³² *NPMHR v. Union of India*, Writ Petition (Crl.) No. 550 of 1982, November 27, 1997, Supreme Court In India.

²³³ *Masooda Parveen v. Union of India*, Writ Petition (Civil) 275 of 1999, Judgement dated 2 May 2007, Supreme Court. For more information, see: South Asia Human Rights Documentation Centre, *Masooda Parveen: Judicial Review of India's Special Security Laws Goes from Bad to Worse*, HRF/168/07, July 7, 2007, available at: <http://www.hrdc.net/sahrdc/hrfeatures/HRF168.htm>

²³⁴ *NPMHR v. Union of India*, Writ Petition (Crl.) No. 550 of 1982, November 27, 1997, Supreme Court.

²³⁵ Siddharth Vardarajan, A modest proposal on AFSPA, September 5, 2010, available at: <http://www.thehindu.com/opinion/columns/siddharth-varadarajan/article615837.ece>

²³⁶ The Hindu, *Chidambaram flags three amendments proposed to Armed Forces Act*, March 31, 2012, available at: <http://www.thehindu.com/news/national/article3266233.ece>

²³⁷ See for example, India Today, *Army opposed Omar's demand for AFSPA revocation from Jammu and Kashmir*, April 16, 2012, available at: <http://indiatoday.intoday.in/story/army-opposes-omars-demand-for-afspa-revocation/1/184730.html>. See also: Siddharth Vardarajan, A modest proposal on AFSPA, September 5, 2010, available at: <http://www.thehindu.com/opinion/columns/siddharth-varadarajan/article615837.ece>

²³⁸ Dhananjay Mahapatra, *SC notice to Centre on withdrawal of AFSPA from Manipur*, October 20, 2012, available at: <http://timesofindia.indiatimes.com/india/SC-notice-to-Centre-on-withdrawal-of-AFSPA-from-Manipur/article-show/16884800.cms>

²³⁹ *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: India*, A/HRC/WG.6/13/IND/1, UN General Assembly, March 8, 2012, para 25.

Number	Recommendation	Status
ARMED FORCES (SPECIAL POWERS) ACT AND OTHER SPECIAL SECURITY LAWS		
UPR 2		
35	Review the law on the special powers of the armed forces to align it with its obligations under the International Convention on Civil and Political Rights.	Not accepted
44	Repeal the Armed Forces Special Powers Act or adopt the negotiated amendments to it that would address the accountability of security personnel, the regulation concerning detentions as well as victims' right to appeal in accordance to international standards.	Not accepted
45	Carry out an annual review of the 1958 Armed Forces Special Powers Act aiming to gradually reduce its geographic scope.	Not accepted

Custodial Torture

Custodial torture and violence remain an entrenched and routine law-enforcement and investigating practice across India (also see: section on Custodial Torture in Part III). However, the practice of torture is even more widespread and condoned in conflict areas, where it is routinely and violently used, leading to physical and mental disability or impotence. 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. A communication of the ICRC with US officials confirmed the widespread use of torture in Kashmir.²⁴⁰

CASE STUDY

Torture Cases from Conflict Areas

Manipur:²⁴¹ On the night of 11 August 2010, Naorem Modhu Singh (26 years), son of Mangoljao, died due to alleged torture in the custody of the combined team of 12th Madras Regiment and Manipur Police Cammandos at Khoijumantabi village under Kumbi police station in Bishnupur district of Manipur. He and his cousin were picked-up from his residence by the combined team on suspicion of links with a banned militant group. On 12 August 2010, the personnel of 12th Madras Regiment handed over his dead body to the Kumbi police station. In its report to the police, the 12th Madras Regiment claimed that the deceased had collapsed while in their custody and that he was taken to an army hospital where doctors declared him brought dead. However, the family members of the deceased allege that Naorem Modhu Singh was tortured to death in custody, which is supported by the facts and circumstances of the case.

Assam:²⁴² On 6 March 2009, Asian Centre for Human Rights (ACHR) filed a complaint in the National Human Rights Commission (NHRC) alleging that personnel belonging to 871st Field Regiment of the Indian Army, picked up Bhadrakanta Baruah, son of late Yogaram Baruah on the night of 31 January 2009 and tortured him in their custody at the Maibela base Army camp in Sivsagar district of Assam on suspicion of having links with the banned United Liberation Front of Asom (ULFA). In his reply to the NHRC, the Superintendent of Police of Sivsagar informed that immediately after the army handed over Bhadrakanta Baruah and Ghana

²⁴⁰ See: The Guardian, *WikiLeaks cables: India accused of systematic use of torture in Kashmir*, December 16, 2010, available at: <http://www.guardian.co.uk/world/2010/dec/16/wikileaks-cables-indian-torture-kashmir>

²⁴¹ See: Asian Center for Human Rights, *Torture in India, 2011; Torture in India, 2010*; Also see: Human Rights Watch, *India: Prosecute Security Forces for Torture*, January 31, 2012.

²⁴² Ibid.

Neog to the police, they were medically examined and the doctor opined that both of them had “*received simple injuries caused by blunt object.*” Detailed investigation by the police did not reveal any link of the victims with ULFA and they were released on the same day. Both victims were farmers. The Ministry of Defence denied that the victims were tortured and claimed that they have confessed to having provided shelter to the ULFA. In its order delivered on 4 March, 2010, the NHRC rejected this claim of the Ministry of Defence and directed them to pay compensation of INR 50,000 (USD 950) to each of the victims.

Indo-Bangladesh Border: Border Security Force (BSF) soldiers have often been accused of torture and extrajudicial killings near India’s border with Bangladesh. Recently, eight soldiers belonging to the BSF’s 150th Battalion were found brutally beating up a Bangladeshi national, later identified as Habibur Rahman, on a video reportedly filmed by one of them.²⁴³ The victim is alleged to have been attempting to smuggle cattle from Bangladesh to India as a part of a group. The video shows the victim being pushed to the ground, with initially his hands and feet being tied with a rope. A soldier is seen putting his foot on his chest, while attempting to tie his hands together. While abusing, jeeringly laughing and making a conscious effort to film the victim, they are seen stripping him naked. They then make him stand up and slide a bamboo stick across his arms tied behind his back, with a portion of his *lungi*, which they had torn into two. They are then seen violently beating him all over his bare body using bamboo sticks, with full force. One of the soldiers is then seen sitting on his back and holding his legs together for the other one to hit him with a stick on the soles of his feet. The victim can be heard to be in seething pain and pleading to be spared. Instead of handing the victim to the police, the BSF soldiers not only illegally detained the victim, but also tortured him as described above. Reportedly, they then left him to make his way back into Bangladesh. A local organisation released the video to local news channels, after which BSF suspended the soldiers and ordered an inquiry. However, despite clear evidence of abuse, no criminal charges have been filed against any soldiers to date.

Kashmir: There has been a phenomenon of detention and torture of youth as young as 10 years old, particularly after the protests of 2008 and 2010 in Kashmir. Sameer Khan (name changed), one such youth was detained by the armed forces when he was in his late teens.²⁴⁴ According to his account, he was thrown into a dark room, where he was beaten with gun butts, causing his nose and head to bleed. While still in pain, an hour later, the security personnel tortured his genitals by administering electric shocks, using cigarette butts and inserting a copper wire into his penis. After his release, he had to be put on medication for the injuries as well as for displaying signs of depression. Khan said: “*I recovered after almost a year... but I still get nightmares about it almost every week.*”

Another torture survivor, Danish Malik (name changed), now 23 years old, was detained for 3 months and 10 days prior to being produced before the court. Malik described his deplorable treatment during his detention as follows: “*They had rollers, and other implements to administer electric shocks. They hung me upside down naked, with my hands tied at the back. I was sweating and had passed out. When they finally asked me to put my clothes back on, but I couldn’t even lift my hand. There was a small window in the lock-up to which I was shifted, which they kept shut at all times. I could see only very little light coming into the lock-up through cracks in the window. I was only let out of the lock-up only to wash my face every morning. I had to urinate in the lock-up and sleep with rats.*”²⁴⁵

243 The video is available at: www.youtube.com/watch?v=CPDXmhZHP_8

244 Dilnaz Boga, *Horrific Brutality in Kashmir*, Asia Sentinel, April 28, 2011, available at: http://www.asiasentinel.com/index.php?option=com_content&task=view&id=3156&Itemid=404

245 Ibid

Number	Recommendation	Status
TORTURE (see also in Part III A)		
UPR 1		
1	Expedite ratification of the Convention against Torture and its Optional Protocol.	Accepted
15	Receive as soon as possible the Special Rapporteur on the question of torture.	Accepted
UPR 2		
15	Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.	Accepted
1	Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the International Convention for the Protection of All Persons from Enforced Disappearance and the Statute of the International Criminal Court.	Not accepted
3	Expedite the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, and adopt robust domestic legislation to this effect.	Not accepted
4	Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and end impunity for security forces accused of committing human rights violations.	Not accepted
5	Continue efforts to accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as its optional protocol, and the International for the Protection of All Persons from Enforced Disappearances; and ratify ILO Conventions No. 169 and no. 189.	Not accepted
7	Ratify promptly the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and relevant protocol.	Not accepted
8	Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment as soon as possible.	Not accepted
10	Accede to the ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; ratify the Statute of the International Criminal Court and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the ILO Convention No. 189 concerning Decent Work for Domestic Workers.	Not accepted
12	Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and ensure that the instrument of ratification is fully consistent with the Convention.	Not accepted
16	Ratify the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment, as well as its Optional Protocol .	Not accepted
17	Expedite ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol.	Not accepted
18	Sign the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol and ratify the International Convention for the Protection of All Persons from Enforced Disappearance.	Not accepted
24	Ratify, in the shortest time, the International Convention for the Protection of All Persons from Enforced Disappearance as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and adopt related internal legislation.	Not accepted
28	Ratify Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the ILO Conventions no. 138 and 182 concerning child labour.	Not accepted
29	Accelerate the ratification process of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	Not accepted
32	Conform its national legislation to international norms on the prevention of torture, to speed up the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and receive the Special Rapporteur on Torture.	Not accepted

33	Take the necessary measures to ensure that the existing national legislation against torture and cruel and inhumane and degrading treatment incorporates the highest international standards in this area.	Not accepted
Prevention against Torture Bill		
UPR 2		
6	Accelerate its domestic procedure for ratification including the adoption of the Prevention against Torture Bill by its Parliament.	Not accepted
34	Prioritise the review and implementation of the Prevention Against Torture Bill, ensuring that it complies with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	Not accepted
36	Consider introducing a new bill to the Parliament, taking into full consideration of the suggestions of the Select Committee, and take further actions towards the ratification of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	Not accepted

Enforced Disappearances

The *UN Convention for the Protection of all Persons from Enforced Disappearances* (CED) defines ‘enforced disappearance’ as: “the arrest, detention, abduction or any other form of deprivation of liberty by agents of the State or by persons or groups of persons acting with the authorization, support or acquiescence of the State, followed by a refusal to acknowledge the deprivation of liberty or by concealment of the fate or whereabouts of the disappeared person, which place such a person outside the protection of the law”.²⁴⁶ Enforced disappearances²⁴⁷ and extrajudicial killings remain widespread in conflict areas,²⁴⁸ reinforced by extraordinary powers of arrest, detention and immunity available to the security forces. The NHRC received 341 complaints of disappearance in 2010 and 338 by November 2011 and highlighted that these numbers were not comprehensive.²⁴⁹ As per UPR I Recommendation 12 and India’s 2011 pledge,²⁵⁰ The Indian Government committed to ratify CED, stating that ratification was ‘underway’. Further, The Indian Government mentioned in its UPR II national report that it was “actively considering its ratification”.²⁵¹ However, there are still no visible steps towards the process of ratification.

Mother whose son is amongst the thousands of people who have ‘disappeared’ in J&K.



Showkat Shafi/ Al Jazeera

²⁴⁶ Article 2.

²⁴⁷ 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/>

²⁴⁸ *National Crime Records Bureau Report (2010)*, page 567, available at: <http://ncrb.nic.in/>

²⁴⁹ NHRC, *India Submission to the UN Human Rights Council for India’s Second Universal Periodic Review*, available at: <http://nhrc.nic.in/Reports/UPR-Final%20Report.pdf>

²⁵⁰ UPR I Recommendation 12: Ratify the Convention on Enforced Disappearances; India’s 2011 Pledge: “India remains committed to ratifying the Convention on Enforced Disappearances.”

²⁵¹ *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: India*, A/HRC/WG.6/13/IND/1, UN General Assembly, March 8, 2012, para 30.

In Kashmir, justice evades well-known cases of extra-judicial killings²⁵² and enforced disappearance.²⁵³ For instance: Javed, son of the chairperson of the *Association of Parents of Disappeared Persons* Parveena Ahanger, was 16 years old when he was picked up by soldiers in 1990 and has been missing since. Police investigation and judicial enquiry accused three army officers for the disappearance, following which the sanction was sought for prosecution from the Union Home Ministry in 1997. The sanction was denied by the Central Government on the ground of 'improper investigation'.

In 2010, a People's Tribunal established the presence of 2,700 mass unmarked graves in Kashmir.²⁵⁴ The finding was confirmed by the J&K State Human Rights Commission in 2011.²⁵⁵ The Commission took *suo moto* cognizance of the matter and ordered the state government to conduct an investigation for ascertaining the identity of the buried (see case study below).

CASE STUDY

Mass Graves in Kashmir

The International People's Tribunal on Human Rights and Justice in Kashmir (IPTK) documented and established the presence of 2,700 mass unmarked graves in three districts in north Kashmir in 2009. The investigations conducted by the IPTK also revealed the presence of multiple cadavers in some graves. Following widespread condemnation by international human rights organisations, the J&K State Human Rights Commission (JKSHRC) conducted a *suo moto* investigation on the unmarked graves and confirmed their presence. Its investigation team visited 38 sites in the three districts and found 2,730 bodies in various unmarked graves. The Commission recommended: (a) investigation of identities of the dead bodies by employing forensic techniques; (b) local police stations to cooperate in investigations; (c) prosecution of perpetrators in due course; and (d) constitution of an independent body which will be empowered to intervene in all questions of dead bodies/ mass unmarked graves/disappeared persons, including on questions of implementation of the Commission's recommendations.

The IPTK report claims on the basis of "*community, collective testimony and archival evidence*" that in many instances, the bodies are those of victims of 'fake encounters' carried out by the armed forces. The J&K police then helped them carry dead bodies to the graves that locals were asked to prepare. The issue of mass/unmarked graves has also been discussed in the J&K State Legislative Assembly. Atta Mohammad, 68 years old, a gravedigger in Chehal Bimyar, Baramulla district, in his testimony to the IPTK stated to have buried 203 bodies between 2002 and 2006. The bodies were delivered to him by the police, primarily after dark: "*I have been terrorised by this task that was forced upon me. My nights are tormented and I cannot sleep, the bodies and graves appear and reappear in my dreams. My heart is weak from this labour. I have tried to remember all this... the sound of the earth as I covered the graves... bodies and faces that were mutilated... mothers who would never find their sons. My memory is an obligation. My memory is my contribution. I am tired, I am so very tired.*"

Source: The International People's Tribunal on Human Rights and Justice in Kashmir, Buried Evidence: Unknown, Unmarked and Mass Graves in Indian-Administered Kashmir, 2009

252 See: Kashmir Observer, *Machil Killings Exhumed*, May 2010, available at: http://www.kashmirobserver.net/index.php?option=com_content&view=article&id=4689:machil-killing-victims-exhumed-three-held-so-far&catid=15:top-news&Itemid=2.

253 See: Umar Baba, Tehelka Magazine, *Screams from the Valley*, Vol 7, Issue 52, January 01, 2011, available at: http://www.tehelka.com/story_main48.asp?filename=Ne010111SCREAMS_FROM.asp

254 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>.

255 *Re – Suomoto regarding nameless/ unmarked graves v. State of J &K and Ors*, SHRC/13/2008.

Number	Recommendation	Status
ENFORCED DISAPPEARANCES		
UPR 1		
12	Ratify the Convention on Enforced Disappearances.	Accepted
UPR 2		
1	Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the International Convention for the Protection of All Persons from Enforced Disappearance and the Statute of the International Criminal Court.	Not accepted
5	Continue efforts to accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as its optional protocol, and the International for the Protection of All Persons from Enforced Disappearances; and ratify ILO Conventions No. 169 and No.189.	Not accepted
9	Ratify the International Convention for the Protection of All Persons from Enforced Disappearance and recognize the competence of its Committee, in accordance with articles 31 and 32.	Not accepted
11	Consider the possibility of ratifying the International Convention for the Protection of All Persons from Enforced Disappearance.	Not accepted
13	Ratify the International Convention for the Protection of All Persons from Enforced Disappearances, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the Rome Statute of the International Criminal Court.	Not accepted
18	Sign the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol and ratify the International Convention for the Protection of All Persons from Enforced Disappearance.	Not accepted
20	Evaluate the possibility of ratifying the International Convention for the Protection of All Persons from Enforced Disappearance.	Not accepted
24	Ratify, in the shortest time, the International Convention for the Protection of All Persons from Enforced Disappearance as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and adopt related internal legislation.	Not accepted

Extrajudicial Killings

The *National Crime Records Bureau* (NCRB) 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.²⁵⁶ The data reflected in the NCRB report, however, does not reflect the actual number of extrajudicial executions, as the executions by the armed forces and the army are excluded from this enumeration.

In Chhattisgarh, the police, the paramilitary and *Salwa Judum* have all been responsible for extrajudicial killings. Government forces have been reported to extrajudicially execute persons suspected of being Naxalites and labeling the extrajudicial executions as ‘encounter killings’ or ‘encounters’ thereby falsely implying that the deaths had occurred during armed skirmishes with the alleged Naxalites.²⁵⁷ *Salwa Judum* forces have been accused of extrajudicial killings during

²⁵⁶ National Crime Records Bureau, Ministry of Home Affairs, Prison Statistics 2010, page 563, available at: http://ncrb.nic.in/PSI_2010/Full/PSI-2010.pdf

²⁵⁷ Human Rights Watch, *Being Neutral is Our Biggest Crime: Government, Vigilante, and Naxalite Abuses in India's Chhattisgarh State*, 2008, page 7, available at: <http://www.hrw.org/sites/default/files/reports/india0708webwcover.pdf>.

raids and evacuation of villages while looking for Naxalite supporters and also during reprisal attacks on villagers who have been forcibly evacuated by them. In addition, Naxalites have been accused of killing villagers whom they believed were *Salwa Judum* supporters or their family members, in addition to those who either refuse to cooperate with them or who they suspect to be police informers.²⁵⁸

Likewise, in Manipur, 789 extrajudicial executions were documented between 2007 and 2010.²⁵⁹ In January 2010, the NHRC had directed the state government of Manipur to open 111 cases of fake encounters, however no further action has been taken so far.²⁶⁰ Most reports of encounters in Manipur are increasingly being attributed to the state police officials, more particularly, a special unit believed to be a part of the state police department, known as 'Manipur Police Commandos' (CDOs). Officially, however, there are no such special units in the Manipur police organisational hierarchy or structure. The official website of the Manipur police department²⁶¹ gives no narrative or numerical information regarding any such unit or branch acknowledged widely as Manipur Police Commandos.²⁶² It has been also alleged that the CDOs have committed many summary or arbitrary executions for the mere motivation of robbery. Cash, mobile phones and jewellery believed to have been on the person of deceased victims has been found missing, while they have failed to report such items in their official seizure reports.

The Assam Police claimed on its website to have killed 129 persons in encounters between January and July 2010.²⁶³ In West Bengal, the Border Security Force (BSF) has been responsible for extra-judicial killings at the Indo-Bangladesh border.²⁶⁴ Numbers of alleged killings by the BSF are as follows: 23 killings in 2008, 20 in 2009, 12 in 2010 and 9 in 2011. Because of the near-absent effective accountability mechanisms for abuses carried out BSF troops, even the most serious abuses committed by those deployed at the border go unpunished.²⁶⁵

The growing incidence of 'fake encounters' in many parts of the country is a worrying phenomenon. According to the SR EJE: *"when this occurs, suspected criminals or those labeled as terrorists or insurgents (...) are shot dead by the police and a scene of a shootout is staged. Those killed are then portrayed as the aggressors who had first opened fire and the police escape legal sanction"*.²⁶⁶

258 Human Rights Watch, *Being Neutral is Our Biggest Crime: Government, Vigilante, and Naxalite Abuses in India's Chhattisgarh State*, 2008, page 7, available at: <http://www.hrw.org/sites/default/files/reports/india0708webwcover.pdf>.

259 Fact-finding report by Human Rights Alert

260 National Human Rights Commission, N° 22/14/2004-2005- DB- II/F, available at http://www.achrweb.org/ncpt/compensations/R_K_Sanjoba.pdf

261 Official Website of Manipur Police, available at: <http://manipurpolice.org/>

262 Civil Society Coalition on Human Rights in Manipur and UN memorandum to the Special Rapporteur on extrajudicial, summary or arbitrary executions during his official mission to India, March 29, 2012.

263 Assam Police Statistics, available at: <http://assampolice.com/archives/press/archpress.php>

264 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>.

265 Human Rights Watch, MASUM, Odhikar report, *Trigger Happy: Excessive Use of Force by Indian Troops at the Bangladesh Border*, 2010, page 3, available at: <http://www.hrw.org/reports/2010/12/09/trigger-happy-0>

266 Press Statement, Special Rapporteur on extrajudicial, summary or arbitrary executions: Country Mission to India. March 2012, available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12029&LangID=E>

Further, enquiries ordered into such cases have mostly been by Executive Magistrates and rarely by Judicial Magistrates.²⁶⁷ This is in violation of guidelines laid down by the NHRC on dealing with encounter deaths, which are scarcely followed.²⁶⁸ In *Andhra Pradesh Civil Liberties Committee v. The Government of Andhra Pradesh & Ors*, the issue of legal action against perpetrators of extrajudicial executions has been discussed. In the instant case, the court ruled 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 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 Andhra Pradesh Police Association appealed against this judgment to the Supreme Court, where the matter is now pending decision.²⁶⁹ Regrettably, however, the Supreme Court has granted a stay order against the judgment.

The impunity of ‘men in uniform’, in cases of ‘encounter killings’ is also ensured by other ways. For instance, as pointed out by the SR EJE, the police officers who register an FIR in such cases name the deceased victim as the accused and close the case file, thereby exonerating the perpetrators from investigation and prosecution.²⁷⁰

More recently, in a judgment in the *Pathribal Encounter* case,²⁷¹ the Supreme Court has reinforced the immunity available to the armed forces under AFSPA. The CBI had filed charges in a local criminal court for prosecution of eight army officers alleged to have killed five civilians in a fake encounter in Pathribal, J&K. The Supreme Court in its judgment has given an option to the army authorities to choose between criminal proceedings or a court martial against the accused army officials. It also held that in the event the army chooses for a criminal proceeding, the CBI will have to apply for grant of sanction under Section 7 of the *Armed Forces (Jammu and Kashmir) Special Powers Act (JKAJFSPA), 1990*.

According to the language of Section 7, for acts done in exercise of the powers conferred on the armed forces under the Act, i.e during performance of their official duty, there can be no prosecution, suit or legal proceeding against them in absence of sanction from the Central Government. To seek sanction for an encounter, which has been established by the CBI in its investigation is a major set-back, as by implication, it means that the encounter in question is being perceived as an act “*done in the discharge of official duty*” by the court. Civil society organisations and legal experts believe that the judgment would reinforce immunity from prosecution in other such cases of extrajudicial killings.²⁷²

The growing incidence of ‘fake encounters’ in many parts of the country is a worrying phenomenon.

267 Explanation: An Executive Magistrate is an officer of the executive branch of the government, who is divested with limited judicial powers through some provisions of the CrPC (Sec 107-110, Sec 133,144,145,147 and related provisions).

268 See: National Human Rights Commission, *Revised Guidelines to be followed in dealing with deaths occurring in encounter deaths*, available at : <http://nhrc.nic.in/Documents/RevisedGuidelinesDealingInEncounterDeaths.pdf>

269 See: *Andhra Pradesh Civil Liberties Committee v. The Government of Andhra Pradesh & Ors*, A.P High Court, W.P.No. 15419/2006.

270 Press Statement, Special Rapporteur on extrajudicial, summary or arbitrary executions: Country Mission to India. March 2012, available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12029&LangID=E>

271 *General Officer Commanding v. CBI & Anr*, Criminal Appeal No.55 of 2006, Supreme Court, Judgment dated May 1, 2012.

272 See: Hindustan Times, *SC direction in Pathribal incident: Families guarded, human rights activists unhappy*, May 1, 2012, available at: <http://www.hindustantimes.com/India-news/Srinagar/SC-direction-in-Pathribal-incident-Families-guarded-human-rights-activist-unhappy/Article1-848981.aspx>; Also See: Amnesty International, India: Pathribal ruling a setback for justice in Jammu and Kashmir, May 1, 2012, available at: <http://www.amnesty.org/en/for-media/press-releases/india-pathribal-ruling-setback-justice-jammu-and-kashmir-2012-05-01>

Conflict Widows

Conflict violence and extrajudicial killings have led to the presence of a considerable number of widows in conflict areas, many of who are denied any assistance by the state. While the widows of those killed by alleged terrorists or Maoists are provided rehabilitation under the *Central Scheme for Assistance to Civilian Victims/Family of Victims of Terrorist, Communal and Naxal Violence*, the widows of alleged terrorists killed by the security forces are not provided any assistance.²⁷³ As of 2007, there were at least 27,000 conflict widows in J&K,²⁷⁴ 15,000 in Manipur,²⁷⁵ and over 1,000 in Assam.²⁷⁶

CASE STUDY

A Widow from the Northeast

Renu Takhellambam (29 years old), who is a resident of Manipur and mother to a four and a half year old son is a widow, whose husband was extra judicially executed. On 6 April 2007, her husband Thangkhenmung Hangzo (Mung), had left their house for the market on his scooter in order to buy a roll of film for the Good Friday church service, scheduled for later that day. On his way to the shop, he also picked up two of his friends, Bobo and Paka, on his scooter for a ride. This was at a time when the Chief Minister was travelling out of Imphal and a Parliamentarian was visiting the city. As a result, the security arrangements had been beefed-up.

They were asked to stop by six commandos of the Imphal West Police, who had been following them. The commandoes started shooting at them with blanks first, which attracted a crowd of about fifty people to the spot, including journalists who were covering the parliamentarian's visit. The growing crowd was held at a distance by the soldiers with loose shells and rifle butts. The soldiers shot at the man sitting last on the scooter from behind. All the three fell down from the scooter as the crowd watched. The Commanding Officer Krishnatombi – who was locally dreaded, and had also received medals commending his counter-insurgency work – together with his men, trained his weapons at Mung and his other friend and made them take-off and put-on their shirts several times and hop like a frog and dragged them by their ears. Krishnatombi then shot Mungu in the forehead and one of his men shot Mungu's friend in the mouth.

The police report claimed that the three were “driving around suspiciously” and were “attempting to throw a grenade” at the police. None of the fifty odd witnesses confirm this version. The families of the three victims, including Renu, alongwith some local women's organisations formed a Joint Action Committee (JAC). The JAC documented witness accounts and filed a joint case on behalf of the three victim families. The case is pending judgement in the court. Renu sees hope in winning this case, which she thinks will set an important precedent. She said: “We were lucky, as most widows” whose husbands are extra-judicially killed “have a terrible time trying to find anyone who can testify” in their husband's cases. In July 2009, Renu was elected chair of an organisation – the *Extrajudicial Execution Victims Families Manipur* – which she had founded with other widows. About forty widows and mothers of men who were killed in extrajudicial executions meet regularly and aspire to stop violence and restore the rule of law in Manipur.

Source: Frank van Lierde, We, Widows of the Gun, 2011, Manipuri NGO Governance (WinG), Gun Victims Survivors Association, Human Rights Alert, Extrajudicial Execution Victim Families Manipur and CORDAID.

273 Ministry of External Affairs, *Annual Report 2008-09*, available at: [http://www.mha.nic.in/pdfs/AR\(E\)0809.pdf](http://www.mha.nic.in/pdfs/AR(E)0809.pdf), page 8

274 The Hindustan Times, *Survey on orphans and widows in Kashmir*, April 28, 2010, available at: <http://www.hindustantimes.com/India-news/JAndK/Survey-on-orphans-and-widows-in-Kashmir/Article1-536651.aspx>

275 The Telegraph, *Manipur 'gun widows' call for end to violence*, June 18, 2011, available at: http://www.telegraphindia.com/1110618/jsp/northeast/story_14126459.jsp

276 Statement of Tarun Gothe Indian Government, Chief Minister of Assam, available at: <http://news.webindia123.com/news/articles/India/20070419/640792.html>

Arbitrary Arrest and Detention

In conflict zones, arbitrary arrest and detention is largely carried out through the use of special laws like AFSPA and the *Unlawful Activities (Prevention) Act* (UAPA), 1967 as amended in 2008 and preventive detention laws like the *Chhattisgarh Special Public Security Act* (CSPSA), 2005;²⁷⁷ the *J&K Public Safety Act* (PSA), 1978,²⁷⁸ the *Prevention of Seditious Meetings Act*, 1911 and the *National Security Act* (NSA), 1980. Under CSPSA, there is a seven-year punishment for not only what it lists as ‘unlawful’ but also for the ‘abetment’ or ‘planning’ of those activities.²⁷⁹ Likewise, a person booked under PSA can be detained for up to two years²⁸⁰, with the possibility of reinstating those charges on expiry of the said period.²⁸¹ Mainly referring to PSA, the *UN Working Group on Arbitrary Detentions* stated that the use of preventive detention laws by the Indian government should conform to international standards and obligations of the Indian Government. The Working Group also stated that India should consider bringing domestic law in line with International law.²⁸²

CASE STUDY

The Chhattisgarh Special Public Security Act, 2005: Criminalising Dissent and Association

The *Chhattisgarh Special Public Security Bill* was introduced in the Chhattisgarh Legislative Assembly in December 2005 and was passed virtually without any debate since the entire opposition had staged a walkout that day on some other issue. The draft Bill itself was widely criticised by human rights groups nationally and internationally and representations were submitted to the President of India in this regard. Assent was, however, given to the Bill and the *Chhattisgarh Public Security Act* (CSPSA) came into force in March 2006.

The definition of ‘unlawful activity’ laid down in Section 2(e) of the Act is unacceptably vague and so broad as to be highly amenable to gross abuse and arbitrary or unreasonable action by the state police and administration. For instance, the definition includes “*committing an act by words spoken or written or by signs or by visible representation or otherwise, which constitutes a danger or menace to public order, peace and tranquility, which interferes or tends to interfere with maintenance of public order, which interferes or tends to interfere with the administration of law or its established institutions and personnel and of encouraging or preaching disobedience to established law and its institutions*”. Such activities may be considered unlawful even if they do not have any overt connection with organisations declared as unlawful, with any terrorist activity, armed activity or even violent activity. Thus even protests or dissent carried out peacefully and constitutionally by a political party, trade union, peoples’ movement

A doctor whose prescription was found with a Naxalite, a lawyer who was taking-up the cases of Naxalites, a cloth merchant who sold them olive green cloth, or the tailors who stitched their uniforms, have also been implicated in cases under the Act.

277 Sec 8(4), CSPSA, Detailed analysis of CSPSA by Peoples Union for Democratic Rights, available at: http://cpjc.files.wordpress.com/2007/07/memo_on_chhattisgarh_bill.pdf.

278 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>.

279 Sec 8(4), CSPSA., Detailed analysis of the act by PUDR available on http://cpjc.files.wordpress.com/2007/07/memo_on_chhattisgarh_bill.pdf

280 Sec. 18, J&K Public Safety Act, 1978.

281 In 2011, the J&K Cabinet has approved certain amendments to the PSA.

282 The UN Working Group on Arbitrary Detentions Opinion no.45/2008 (India) adopted on November 26, 2008, Human Rights Council Thirteenth Session, March 2, 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>

or NGOs could be penalised under this Act. To this extent, the definition of 'unlawful activity' under this Act is grossly at variance with the definition of 'unlawful activity' under the *Unlawful Activities (Prevention) Act, 1967*, which is a central Act applicable all over India.

In criminal law '*mensrea*' or the ingredient of intention is considered essential to fix criminal liability, whereas in this Act, the acts of 'managing', 'assisting' or 'promoting' the activities of an unlawful organisation, are made offences in the absence of any criminal intent. This explains why many villagers have been foisted with offences under the Act for 'giving food' or 'showing the way' to Naxalites or for 'participating in any meeting of the Naxalites'. A doctor whose prescription was found with a Naxalite, a lawyer who was taking up the cases of Naxalites, a cloth merchant who sold them olive green cloth, or the tailors who stitched uniforms have also been implicated in cases under the Act whether or not they were aware that they were assisting the member(s) of an unlawful organisation, and whether or not they were doing so of their own free will and volition. Even the left wing editor of a registered political magazine, and a media person, have been charged under the Act. The possibility of abuse of this Act in the districts of southern Chhattisgarh such as Kanker, Bastar and Dantewada, where civil wars like situations exist, is very high, leading to the incarceration and criminal prosecution of ordinary citizens and non-combatants.

Several of the offences defined as 'unlawful activities' under the Act are also included as offences in various chapters the Indian Penal Code dealing with offences against public tranquility, public authority and public justice, without specifying any special conditions for attracting greater liability. Equality before law guaranteed under the Indian Constitution also includes the equal applicability of all laws. In other words, it would not be constitutional for two persons committing the same offence to be prosecuted under different laws so as to make the act of one a graver offence than that of the other. The Sections on Penalties (Section 8) in the Act defines altogether new offences, and again the language is so impermissibly vague that the same act could attract 2, 3, 5 or 7 years of imprisonment, making the Act open to abuse and arbitrary action.

In 2009, as per the information granted under the Right to Information Act to the Chhattisgarh People's Union for Civil Liberties (PUCL), 52 persons were imprisoned under the Act, 67 were absconding and there were a large number of 'unknown offenders'. However these figures promise to have increased manifold, as the intensification of the conflict in southern Chhattisgarh has resulted in a large number of arrests in the past three years, mostly of indigent *adivasis*, who are languishing in jail without proper recourse to legal remedy.

Since April 2006, the CPI (Maoist) and several of its front organisations, namely *Dandakaranya Adivasi Kisan Majdoor Sangh* (Dandakaranya Peasant Workers Organisation), *Krantikari Adivasi Mahila Sangh* (Revolutionary Tribal Womens Organisation), *Krantikari Adivasi Balak Sangh* (Revolutionary Tribal Children's Organisation), *Krantikari Kisan Committee* (Revolutionary Peasants Committee), *Mahila Mukti Manch*" (Womens Liberation Platform) have been notified as unlawful organisations under the CSPSA. The Advisory Board, which can judicially review such notifications, was only constituted in May 2007. Besides, Section 6 the Act prohibits any person to appear through a lawyer and only the registered post bearer of the organisation may appear to seek judicial review. In practice, it is virtually impossible that any representative of the said organisations can approach the Advisory Board, hence the said Notification has been mechanically extended from year to year.

The national PUCL and the Chhattisgarh PUCL have challenged the constitutionality of CSPSA through a writ petition filed in April 2009.²⁸³ The petition is presently pending decision in the High Court of Chhattisgarh.

Source: People's Union for Civil Liberties, Chhattisgarh

283 Writ Petition No. 2163/2009, filed on April 6, 2009

As of 2010, 147 persons were reported to have been detained under CSPSA.²⁸⁴ Besides, a large number of *adivasis* have been arbitrarily arrested, including under CSPSA, in central India and are languishing in jail.²⁸⁵ Similarly, there have been numerous arrests under PSA following the large-scale 2008 and 2010 protests in Kashmir. The 2010 protests were primarily in reaction to a series of teenager killings by the paramilitary and the police. Minors and their aides suspected of stone – throwing include those arrested and tortured under PSA. The J&K Juvenile Justice Act, 1997 puts the age of minority at below 16, which contravenes both national²⁸⁶ and international law.²⁸⁷ This in turn results in the trial and detention of minors charged under PSA, in adult courts and detention centres. Data provided by the J&K Home Department in response to an opposition legislator's question in the Legislative Assembly in March, 2010, revealed that 334 persons were booked under PSA in J&K between January and February 2010 alone. Moreover, estimates place administrative detentions in Kashmir over the past two decades between 8,000 and 20,000.²⁸⁸

CASE STUDY

Arrest and Detention of Minors

The J&K state government has been arresting juveniles under the *Public Safety Act, 1978* (PSA) since the insurgency began in the 1990s. However, it was since the summer protests between June 2010 and September 2010 that juvenile arrests became rampant. For instance: Sheikh Akram, a 15 year old, son of Sheikh Zulfikar of Jogilanker Rainawari, Kashmir was arrested on 17 June, 2010, during the funeral procession of another teenager who had been killed by the paramilitary while out playing. Akram was charged with stone-throwing and conspiring against the State. He was granted interim bail of seven days by Principal District and Sessions Court, which was subsequently extended. However, in order to prolong his detention, on 3 July 2010, the District Magistrate of Srinagar booked him under PSA and sent him to Kote Bhalwal jail in Jammu. Even in 2011, when there were no street protests, hundreds of boys were detained on the pretext of being stone pelters and suffered torture, intimidation and harassment at the hands of the police and paramilitary. Some juveniles are regularly being summoned to police stations without any explanation. To date, significant numbers of minors continue to be arrested under PSA.

In addition to PSA, minors are also booked under the Ranbir Penal Code. For Instance: (a) In October 2011, Sajad and Zubair were detained in police custody on charges of sedition, arson and attempt to murder. They have been booked under section 152 of Ranbir Penal Code for waging war against the state, section 307 for attempt to murder and section 336 for arson; (b) Fayaz Ahmad Bhat, son of Ghulam Hassan Bhat, resident of Goori-pora, Palpora, Ganderbal, Srinagar was arrested and charged with murder and acquisition or possession, or of manufacture or sale of prohibited arms or prohibited ammunition in 1995, when he was only nine years old. His lawyers repeatedly claim that his was a case of mistaken identity and that he was a minor at the time of

284 RTI application filed by People's Union for Civil Liberties (PUCL), Chhattisgarh unit.

285 An RTI application filed by *Chhattisgarh Mukti Morcha* revealed the presence of 2,499 detainees in Chhattisgarh (including Kanker and Jagdalpur districts). Most of these detainees are *adivasis*.

286 India's *Juvenile Justice (Care and Protection) Act*, 2000 sets majority at 18.

287 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>.

288 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>.





Girls being trained as Special Police Officers (SPOs) in Chhattisgarh.

the alleged offence. He spent close to three years in the Central Jail of Srinagar, before finally being transferred to a Juvenile Home in Jammu in 2009. Ever since the denial of his bail application in May 2009; he had not been produced before the court even once, as of 3 July 2010. He is now 25 years old; (c) In May 2011, Murtaza Manzoor, aged 17 years, was released from jail after the High Court intervened and found his imprisonment to be unlawful. He was locked up for more than three months under the PSA; (d) Mushtaq Ahmad Sheikh, aged 14 years, was detained under the PSA on 9 April 2010. He was granted bail after eight days, but was re-arrested on 21 April 2010. He was finally released on 10 February 2011.

Sources: Asian Centre for Human Rights, Juveniles of Jammu and Kashmir: Unequal Before the Law and Denied Justice in Custody, New Delhi, November 2011 and Jammu and Kashmir Coalition of Civil Societies, Human Rights Review - Jammu and Kashmir, 2011.

Number	Recommendation	Status
ARBITRARY ARREST AND DETENTION		
UPR 2		
169	Continue its efforts to achieve balance between its counterterrorism strategies and the need to forestall the spread of xenophobia.	Not accepted

Excessive Powers Enjoyed by the Armed Forces and Police

As discussed above, AFSPA gives extraordinary powers to the armed forces and empowers them to 'shoot to kill', arrest, demolish structures, and conduct warrant-less searches, on mere suspicion. Additionally, measures are being taken to further enhance powers of the armed forces. For instance, a new law, the *Border Security Force (Amendment) Bill, 2011*, seeks to widen the scope for deployment of BSF for counter-insurgency and 'anti-Naxal' operations with additional powers of 'search, seizure and arrest'. At present, such operations require state police personnel, who have the power of 'search, seizure and arrest' to accompany BSF personnel. BSF are already under severe criticism for committing torture and killings on the Indo-Bangladesh border (see case study on Torture Cases).²⁸⁹

Another worrying trend is that the police is being increasingly militarised in conflict areas and given charge of counter-insurgency operations. 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." Also, paramilitary forces are being intensely trained by the army for operations in central India. About 54,543 hectares of forest land is being used as an army training camp in Narainpur, where training is being imparted in jungle warfare.²⁹⁰ The establishment of the camp on forest land is being opposed

Another worrying trend is that the police is being increasingly militarised in conflict areas and given charges of counter-insurgency operations.

²⁸⁹ 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>

²⁹⁰ As per PUCL Chhattisgarh. For further details see: Telegraph India, *Army Unit in Maoist Hotbed*, April 14, 2011, available at: http://www.telegraphindia.com/1110414/jsp/frontpage/story_13853082.jsp

and protested by local human rights groups. Another such camp, known as the 'Counter-Insurgency and Jungle Warfare School' exists in Vairengte, Mizoram since 1970.²⁹¹

Disproportionate Use of Force

Disproportionate force is routinely used to suppress protest and civilians are routinely killed through the use of firearms by law enforcement officials. The *UN Code of Conduct for Law Enforcement Officials, 1979* and the *UN Basic Principles on the Use of Force and Firearms by Law Enforcement Officials, 1990*, are hardly ever respected in conflict areas. A total of 740 civilians were killed in police firing from 2008 to 2010, including 239 persons in 2010, 184 persons in 2009, and 317 persons in 2008.²⁹² In 2011, the number of civilians killed was 109, a decline from the 2010 level, whereas, number civilians injured remained as high as 328.²⁹³

In the Northeast, public hearings challenging mega projects have been disrupted and protesters have been tortured and beaten. Peaceful *dharnas* (*sit-in protest*), rallies and sit-in protests against human rights violations are routinely disrupted and dispersed in Manipur using beatings, tear-gas and blank firing by the police. Peaceful protests by *safai karamcharis*²⁹⁴ and *anganwadi*²⁹⁵ teachers were met with disproportionate force and tear gas shelling by the Special Task Force and armed forces in Chhattisgarh. In Kashmir, the use of lethal force against unarmed protestors waist-above is widespread. In 2010, J&K police and armed forces killed 110 unarmed protestors while 800 people, including media personnel, were injured.²⁹⁶ Fortunately, as per government sources, no one killed and only 12 were injured in J&K in 2011.²⁹⁷ The Divisional Commissioner Kashmir confirmed that 110 protestors were killed during incidents spreading through only a few months.²⁹⁸ The use of supposedly 'non-lethal' weapons like 'tear gas shells', 'pellet guns', 'rubber bullets', 'mock bombs' and custodial torture have caused serious injuries, physical and mental disability and even death. For example in Kashmir, Wamiq Farooq (13 years) was killed by a tear gas shell fired by police, while he was out playing.²⁹⁹ 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



Iadhu Chandra

291 Army Establishments, Counter Insurgency and Jungle Warfare School, available at: <http://indianarmy.nic.in/Site/FormTemplate/frmTemp1PLargeTC1C.aspx?MnId=RQIDAvod5m1Hgme1gycgXg==&ParentID=aisMjYhWXV9GKTq0nBoJew==>

292 National Crime Records Bureau, Crime in India 2010; 2009; 2008 respectively, Chapter 14.

293 National Crime Records Bureau, Crime in India 2011, Chapter 14.

294 *Safai karamcharis* are workers involved in public cleaning work.

295 *Anganwadi* teachers are those working in ICDS centres.

296 *Four Months the Kashmir Valley Will Never Forget: A Fact Finding Report* available at: <http://kafila.org/2011/03/26/four-months-the-kashmir-valley-will-never-forget-a-fact-finding-report/>

297 National Crime Records Bureau, Crime in India 2011, Chapter 14.

298 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#>

299 Greater Kashmir, *Wamiq Farooq's 1st Anniversary*, January 30, 2011, available at: <http://www.greaterkashmir.com/news/2011/Jan/31/wamiq-farooq-1st-anniversary-36.asp>

impaired and the lower half of his body is completely paralysed.³⁰⁰ Psychological disorders, like the 'Post-Traumatic Stress Disorder', have been reported in conflict areas.³⁰¹

Sexual Violence

Sexual assault by security forces is widespread. However, cases of rape are highly under-reported given the stigma attached to it. As a result, rape in conflict areas rarely gets investigated or punished. In some cases, circumstantial evidence strongly indicates the involvement of armed forces, but investigations are thwarted to facilitate their exoneration. For instance, the investigation in the 2010 rape and murder case of a sister-in-law duo in Shopian (Kashmir), lacks credibility and appears more like a cover up.³⁰² Likewise, in West Bengal's Sunamukhi village, six women were raped and tortured by the police in 2010 with one beaten to death.³⁰³ In Chhattisgarh, six women raped by members of *Salwa Judum* still await justice from the court, while many other complaints of sexual violence in central India are yet to be probed. In Assam's Kokrajhar district, a deaf and dumb woman, Deobary Basumatary, was raped by the paramilitary in 2011 in front of her husband (see case study below).³⁰⁴ The NHRC went on to state: "*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.*"³⁰⁵

CASE STUDY

Gang Rape of a Disabled Woman in Assam

On 10 September, 2011, a group of soldiers from the *Sashastra Seema Bal* (SSB) – one of India's Central Armed Police Forces – deployed along the Indo-Bhutan border allegedly gang raped Deobari Basumatary (35), a deaf and dumb Bodo woman at No.1 Sonapur village under Bismuri police outpost in Kokrajhar district of Assam. Deobari's husband, Amal Basumantary, submitted a written complaint at Bismuri out-post to the effect that on the previous night in between 11pm to 12 midnight, 4 suspected SSB *Jawans* (Soldiers) of Saralpara camp raped his wife. He stated that a group of 4 SSB *Jawans* had forcefully entered his hut, which is isolated from his neighbours. The group of *Jawans* kicked the couple to wake them up and asked Amal to accept a bottle of wine which he categorically refused. They asked him to take out all the household metallic tools, put them behind the kitchen hut and then they forcefully striped Deobari and gang raped her in front of him inside the hut. Amal tried to protect his wife but he was violently kicked, beaten up and forced to flee from the spot. In search for help, Amal reached Balen Basumatary's hut, which was 300 meters away and alerted him about the incident. On their way to Amal's hut, they saw the SSB *Jawans* in full uniforms moving towards their main camp along the

300 Greater Kashmir, *Son paralysed by tear gas shell, poor family finds the Indian Governmentng hard*, February 26, 2011, available at: <http://www.greaterkashmir.com/news/2011/Feb/27/son-paralyzed-by-tear-gas-shell-poor-family-finds-the-Indian-Governmentng-hard-40.asp>

301 See for example: 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.

302 Independent Women's Initiative for Justice, *Shopian: Manufacturing a Suitable Story, A Case Watch*, 2009, available at: <http://kafilabackup.files.wordpress.com/2009/12/iwij-report-shopian-10-dec-2009.pdf>

303 IBN Live, *WB villagers say state forces raped them*, July 12, 2012, available at: <http://ibnlive.in.com/news/rapetorture-by-state-forces-in-naxal-heartland/126538-37-64.html>

304 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>

305 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/>

Indo-Bhutan border and discovered Deobari outside the hut, struggling to move towards home. She was fully naked, with scar marks and injuries in her body including private parts.

On 11 September, the villagers along with the village headman took the couple to report the incident to the Bismuri Police outpost, which is about 37 km from the victims' village, and filed an FIR about the incident with the help of volunteers/members of All Bodo Student's Union, *All Bodo Women Welfare Federation*, *Boro Somaj* and many other social workers of the *Boro Indigenous Peoples* of Kokrajhar. According to Deobari and her husband's interpretation, following the first phase of gang rape, the perpetrators forcefully dragged Deobari to a nearby place about a quarter mile beside a link road, and repeatedly gang raped her in two different spots. According to Deobari, she was forced by the soldiers to take their genitals into her mouth, she was double penetrated repeatedly, and she was left at the spot in a semi-conscious state. According to Amal, the perpetrators also forcefully dragged Sombari Basumatary, his wife's elder sister, out of her hut that was located in the same courtyard with the same intention but she managed to free herself and hide.

A delegation team of *Borosa Foundation for Peace, Democracy and Human Rights* that visited the village to investigate the case, was informed by witnesses that 2 SSB *Jawans* went back to the crime scene the next morning of 11 September, in order to disfigure the foot prints that they left behind the previous night. The visiting team was also informed that the government doctor assigned to conduct the medical examination of the rape victim was unfriendly and non-cooperative. According to the doctor's medical examination report the injury is "*simple injury caused by a blunt object which was more than 12 hours old*." His report stated that the victim gave the history of sexual intercourse by 2 men and that no marks of violence were seen.

Rape cases by the security forces in the district is a frequent phenomenon. On 31 December 2003, five elderly Bodo women had been gang raped by security personnel at Ultapani, however, no action has been taken. On, 20 April 2011, Manek Goyary (38) was also reportedly gang raped in Tharaibari of Choraikolaby by six 15 Dogra regiment, stationed at Adabri. An FIR (119/11) was lodged in this matter and a complaint was sent to the NHRC for necessary action. No action has been taken against the perpetrators as yet.

Sources: Times of Assam, Human rights group condemns gang rapes by security forces, victims to visit President of India, September 20, 2011 (available at: <http://www.timesofassam.com/headlines/human-rights-group-condemns-gang-rapes-by-security-forces-victims-to-visit-president-of-india>).

The denial of effective and speedy justice to survivors of rape by armed forces is exemplified by the following two instances: In J&K, more than 30 women and girls from the same village, Kunan Poshpora, were reportedly raped by armed forces in the same night during a search operation in 1991, with the eldest survivor reported to have been 80 years old at the time of the incident.³⁰⁶ Some estimates indicate that the number of rapes could have been as high as 100.³⁰⁷ After many years of the actual incident and seven years after institution of the case (2004) at the J&K State Human Rights Commission, the Commission finally passed an order in 2011.³⁰⁸ The order acknowledges that the then Director Prosecution has severely botched investigations to exonerate the involved armed forces and orders his prosecution, together with ordering compensation to the victims, but passes no direction for prosecution against the soldiers involved.

306 Asia Watch & Physicians for Human Rights, *Rape in Kashmir: A Crime of War*, Vol 5, Issue 9, page 7, available at: <http://www.hrw.org/sites/default/files/reports/INDIA935.PDF>; Also See: Majid Maqbool, *The Kunan Poshpora Tragedy: Two decades of inaction*, February 23, 2011, available at: <http://www.kashmirdispatch.com/others/23022031-the-kunan-poshpota-tragedy-two-decades-of-inaction.htm>

307 See: Asia Watch, *Kashmir Under Siege: Human Rights India*, 1991, page 88, available at: <http://books.google.co.in/books?id=jrGwSsSchRUC&printsec=frontcover#v=onepage&q&f=false>.

308 See: J&K State Human Rights Commission, Complaints regarding Kunan Poshpora atrocities lodged by victims and inhabitants of the village v. J&K State and Others, SHRC 404/ 2004, Judgment dated 02-04-2011.

In August 2010, the Guwahati High Court allowed the state government to reopen the case of the rape and murder of Thangjam Manorama from Manipur. 34 year old Manorama, alleged to be a militant, was brutally raped and murdered on July 11, 2004, allegedly by the soldiers of 17 Assam Rifles. Enraged by the impunity with which sexual violence was inflicted on women by the armed forces, the *Meira Paibi* (Manipuri mothers) staged a powerful protest, in front of the Assam Rifles headquarters, using their naked bodies to shame the army.³⁰⁹ The Guwahati High Court directed the state to act upon an inquiry report prepared by Justice C. Upendra Singh detailing the facts and circumstances leading to Manorama's killing. The state government did not comply with the order, as a result of which Manorama's family filed a petition in the Guwahati High Court for initiating a fresh probe into her killing by the Central Bureau of Investigation (CBI). However, the Central Government and the Commandant of 17 Assam Rifles filed a Special Leave Petition in the Supreme Court challenging the Guwahati High Court's ruling.³¹⁰ Justice therefore continues to remain elusive for Manorama's killing and rape.



Protest by Manipuri mothers in front of the Assam Rifles headquarters

Number	Recommendation	Status
SEXUAL VIOLENCE (see also: Violence against Women in Part III B)		
UPR 2		
79	Continue legal efforts in the protection of women as well as children's rights as well as improve measures to prevent violence against women and girls, and members of religious minorities.	Accepted
106	Take the necessary legislative, civil and criminal measures to provide the appropriate protection to women, and children that are victims of sexual abuse.	Accepted

Legal Immunity and Lack of Accountability

Special security laws³¹¹ and Section 197 of the CrPC 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 by virtue of these laws (for more details about Section 197, see section on Immunity and Lack of Accountability in Part III). In practice, such sanction is often delayed or not granted at all, leading to a culture of impunity for human rights abuses.

309 Tehelka, 'Why I screamed, rape us, take our flesh', Vol 5, Issue 21, May 31, 2008, available at: http://www.tehelka.com/story_main39.asp?filename=Ne310508rape_us_our_flesh.asp

310 The Times of India, *Manorama murder case reaches Supreme Court*, July 11, 2011, available at: http://articles.timesofindia.indiatimes.com/2011-07-11/guwahati/29760275_1_manorama-devi-c-upendra-singh-thangjam

311 These would 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.

Recent official data confirms that sanction is almost never granted for violations committed by the armed forces. In response to an 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.³¹² Thus in effect, not a single unequivocal sanction has been granted in all the 50 cases. Moreover, the NHRC does not have regular investigative powers over offences committed by armed forces, further exacerbating their lack of accountability.³¹³

Number	Recommendation	Status
LEGAL IMMUNITY		
Rome Statute of the International Criminal Court (see also in Part IV)		
UPR 2		
1	Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the International Convention for the Protection of All Persons from Enforced Disappearance and the Statute of the International Criminal Court.	Not accepted
10	Accede to the ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; ratify the Statute of the International Criminal Court and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the ILO Convention No. 189 concerning Decent Work for Domestic Workers.	Not accepted
13	Ratify the International Convention for the Protection of All Persons from Enforced Disappearances, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the Rome Statute of the International Criminal Court.	Not accepted
14	Ratify the Rome Statute of the International Criminal Court, including its Agreement on Privileges and Immunities.	Not accepted
Impunity and Human Rights Violations by Security Forces and Police		
UPR 2		
59	Intensify efforts in providing capacity-building and training programmes on human rights for its law enforcement officials as well as judicial and legal officials in the rural areas.	Accepted
60	Improve training on human rights on addressing law enforcement especially by police officers.	Accepted
127	Ensure a safe working environment for journalists. (Deleted portion: and take proactive measures to address the issue of impunity, such as swift and independent investigations.)	Accepted in revised form
4	Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and end impunity for security forces accused of committing human rights violations.	Not accepted
44	Repeal the Armed Forces Special Powers Act or adopt the negotiated amendments to it that would address the accountability of security personnel, the regulation concerning detentions as well as victims’ right to appeal in accordance to international standards.	Not accepted
119	Guarantee effective access to justice in cases of human rights violations committed by security forces personnel with regard to the use of torture.	Not accepted

312 Information submitted by J&K Home Department under J&K RTI Act, 2009, under RTI Application dated 5 August 2011, filed by Jammu and Kashmir Coalition of Civil Societies (JKCCS), File No. Home/RTI/39/2011/463.

313 *The Protection of Human Rights Act, 1993*, Sec 19, available at: <http://nhrc.nic.in/Publications/HRAActEng.pdf>; Also see: Concluding Observations of the Human Rights Committee, India”, 4th August 1997, CCPR/C/79/Add.81, para 22, available at: [http://www.unhchr/tbs/doc.nsf/\(Symbol\)/CCPR.C.79.Add.81.En?OpenDocument](http://www.unhchr/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.81.En?OpenDocument).

Number	Recommendation	Status
120	Implement effective judiciary proceedings making possible the bringing to justice security forces personnel who have committed human rights violations.	Not accepted
121	Solve remaining cases of human rights violations and create an independent committee to receive claims against the police that were referred to by the Special Rapporteur on Human Rights Defenders.	Not accepted

Militarism and Denial of Economic, Social and Cultural Rights

Militarisation has also led to the denial of Economic, Social and Cultural Rights with the security apparatus increasingly used to implement the government's 'development' agenda. In the Northeast, development sites such as dams are patrolled 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 the construction of the dam (see details in the following case study). There is evidence that public hearings are being controlled through cash payments and heavy militarisation. This phenomenon is particularly acute in Arunachal Pradesh, although it has been seen in many parts of the Northeast region, where mega-infrastructure projects are being implemented. Recently, in a national meeting of Chief Ministers on internal security, the Chief Minister of Manipur, Okram Ibobi Singh, requested the Ministry of Home Affairs to sanction a contingent of four Indian Reserve Battalions to provide security for the proposed Tipaimukh Hydro Electricity Project and the Loktak downstream Hydro Electricity Project.³¹⁴

CASE STUDY

Illegal Use of Force by Security and Police Forces against Protesters at Mapithel Dam

Northeast India is considered to be the country's 'future powerhouse' with at least 168 large hydroelectric projects set to acutely alter the riverscape and large dams emerging as a primary cause of conflict in the region. A serious challenge posed with the launch of developmental projects in the area is the non-recognition of indigenous peoples' rights to control and manage their own land and resources; define their development priorities and needs; be consulted and provide free and prior informed consent before such projects reach the state of implementation. The use of military and security cover for large-scale infrastructure construction has become a norm in the region.

The Mapithel Dam is one of the unsustainable, detrimental development projects that have been introduced in Manipur. Its construction has been approved by the Planning Commission of India in 1980 and was conceived to create additional irrigation potential, augment potable water supply and generate hydroelectric power. The construction of the dam began in 1990, allegedly without prior consultation or the free, prior and informed consent of the affected tribal communities who are entirely dependent for their livelihood and sustenance on the lands that

The initiation of the construction of the Mapithel dam came with a massive influx of security forces in the area, with approximately 1000-1500 security personnel of the Assam Rifles, the Border Security Force and the Indian Reserve Battalion stationed in and around the periphery of the dam site.

³¹⁴ Seven Sisters Post, *Ibobi demands Govt to improve Manipur's Connectivity*, April 17, 2012, available at: <http://sevensisterspost.com/?p=5654#>

will be submerged. The construction of the dam will adversely impact 17 tribal villages, out of which 6 will be entirely submerged, and around 10,000 indigenous people will either be displaced or lose their primary source of livelihood.

As soon as the construction of the dam was initiated, a Rehabilitation and Resettlement (R&R) package was prepared by the government, without any prior consultation with the communities affected. An outbreak of widespread protests against the package and the construction of the dam resulted in the signing of a Memorandum of Agreed Terms and Conditions in 1993 between some of the affected villages and the government, however, the government of Manipur unilaterally modified the terms of the agreement. In 1998, another R&R programme was formulated with significant inconsistencies, excluding from its ambit many of the downstream inhabitants affected by the dam.

On 3 November 2008, a group of approximately 500 women marched towards the dam site in order to submit a memorandum to the government officers, set out their grievances, and to demand the review of the R&R plan but security and police forces stopped them from proceeding. When the women's group insisted on meeting with the officers to submit the relevant memorandum, security forces used violence to disband the protest. Afraid of the brutality that was launched against them, the women (some of whom carried babies on their back) fled to protect themselves, but even as they were dispersing, security forces chased, violently beat them with batons and fired tear-gas into their midst. During the incident, 45 women were injured. Some of the protestors were so brutally beaten that they were either hospitalised or carried home by other protesters on their backs. Even though they pleaded the police to help them take the injured to the hospital (a one and a half hour journey by car), their pleas were rejected categorically. One woman was severely injured on the temple by a tear gas canister. Lungmila Elizabeth was in a critical condition, surviving through artificial life-support, she underwent two surgeries and was left paralysed. Audiovisual recordings show the policeman intentionally aiming the shots at the protesters. It is worth noting that the use of tear gas and other crowd-controlling weapons is governed by carefully formulated rules and regulations that mandate police forces to use these weapons only when absolutely necessary.

The initiation of the construction of the Mapithel dam came with a massive influx of security forces in the area, with approximately 1,000-1,500 security personnel of the Assam Rifles, the Border Security Force and the Indian Reserve Battalion stationed in and around the periphery of the dam site. Three check-posts were set around the dam site while checkpoints were arbitrarily established by the security forces in all the roads leading to the dam site. According to villagers' claims, a curfew was enforced by the security forces, preventing them from venturing out from their houses after 5pm. Villagers were forced to pass through the dam's checkpoints since their paddy fields are located around the dam site. In cases where they have to work later than 5 pm, especially during the harvest season, they have to provide a letter from their Village Secretary, with details such as purpose for the lateness and number of individuals in the group. In case that they pass a checkpoint the same number of individuals are required to return, otherwise the whole group is subjected to questioning regarding the whereabouts of the missing person. The roads of some villages to Imphal have been blocked interrupting the bus transportation and forcing many to walk long distances to reach their villages.

There are allegations of incidents in which villagers were arbitrarily picked up and interrogated by the security forces or were severely beaten and had to be hospitalised. Some of these documented incidents include the beating of Mr. M. H. Silas, 60 years old at the time of the reporting, and Mr. K. A. S. Ramshim, 64 years, by *19 Assam Rifles* on 14 April 2004. In December 1995, Mr. K. S. Enoch was arrested, arbitrarily detained, interrogated and tortured by para-military forces of the 19 Assam Rifles with the accusation of being part of an underground group.

A more recent incident of abuse perpetrated by security forces is the arrest and detention of 4 Mapithel Dam Affected Ching-Tam Organization (MDACTO) members by a contingent of the Manipur Police Commandos who were released only after they renounced their membership to MDACTO.

In 2009, the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, called the attention of the Indian Government regarding the construction of the Mapithel dam, its relevant effects on the indigenous population in the area, as well as the illegal use of force against the protestors. In its response, the Indian Government reiterated its position on the definition of the word 'indigenous' by stating

that the Indian Government regards the entire population of India as indigenous. It characterised the communication of the Special Rapporteur as incomplete and misleading picture of the actual situation. On the issue of illegal use of force against protestors on 3 November 2008, the Indian Government maintained that “*the police were left with no alternative but to resort to a mild baton charge after the protestors tried to enter the project area forcibly, and started pelting stones and pushing women constables at the site*”.³¹⁵

Source: Naga People's Movement for Human Rights, Report of the Fact-finding Team on Mapithel Dam, 19th November 2008.

Occupation of Public Infrastructure and Private Land by Armed Forces

Occupation of hospitals and schools by the army and paramilitary is common in conflict areas. The Supreme Court has acknowledged the practice and ordered security forces to vacate schools (see the following case study). However the orders have not been complied with fully.³¹⁶

Similarly 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.³¹⁷ About 40,000 personnel from the other forces are posted in Bastar, and have started military training camps, which has caused displacement.³¹⁸ In Kashmir, agricultural land, particularly in border districts, is occupied by armed forces for camps or temporary shelters, denying farmers access to their lands and seriously affecting their livelihood.

CASE STUDY

Occupation of Schools by Security Forces³¹⁹

The occupation of schools and hostels for school children by security forces has been a widespread phenomenon in conflict areas. Attracted by their *pucca* (brick and cement) constructions, locations, and, electrical and sanitation facilities, armed forces tend to occupy the premises of schools and hostels for use as barracks, stores and bases thereby precluding students from their right to education. Some school premises are partly occupied by security forces, endangering lives of teachers and students alike, apart from exposing students to abuse. In some cases, security forces have beaten-up school children for protesting their presence in schools.

For instance, school children at Rajkiya Middle School in Sheikhpura, Bihar, clashed with soldiers of Bihar Military Police (BMP), stationed at the west-wing of their school after the students objected to the occupation

315 Report by the Special Rapporteur on the situation of human rights and fundamental freedoms of indigenous people, James Anaya, 2009, A/HRC/12/34/Add.1, para 171, available at: <http://www2.ohchr.org/english/bodies/hrcouncil/docs/12session/A-HRC-12-34-Add1.pdf>

316 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.

317 As studied by the People's Union for Civil Liberties, Chhattisgarh

318 Ibid.

319 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.

of their classrooms and the playing of raunchy songs during school time. The People's Union for Civil Liberties (PUCL) conducted a fact-finding on the incident. The fact-finding report revealed that the personnel regularly gamble, play lewd songs and pass indecent remarks on the girl students, apart from using the already inadequate facilities of the school, including toilets and the tube-well. On the day in question, one student, Ritesh Kumar, of class VI, got into an argument with the policemen while drinking water at the common tube-well. The BMP personnel took him to one of the classrooms and beat him up while bolting the door from inside. On hearing his cries, other students broke the door open and ransacked the rooms of the BMP personnel. The children also blocked the nearby highway in protest, while demanding the removal of the BMP personnel from their school. Ritesh shared with the PUCL fact-finding team that 7 to 8 BMP personnel had beaten him with sticks and gun butts. They also found one of the girl's faces still swollen and red from the police beating.

The Public Interest Litigation of *Nandini Sundar & Ors v. State of Chhattisgarh* drew attention to the practice of occupation of schools, educational institutions and hostels by armed forces in Chhattisgarh. Recognizing the problematic nature of this practice, the Supreme Court has repeatedly ordered vacation of such premises by the armed forces, in the said case. However, the process of vacation of the forces has been slow and inadequate. Moreover, as per order dated 18 November 2011, the Supreme Court granted a period of two months to the state of Chhattisgarh for the security forces to completely vacate the said premises, after which the Court stated “*that no further extension should be prayed for*”. However this has yet to be fully implemented by the State of Chhattisgarh.

The occupation of schools in Jharkhand was brought-up in *Shashi Bhusan Pathak v. State of Jharkhand and others*.³²⁰ On 21 November, 2008, the court ordered in the instant case, that all occupied schools be vacated by the second week of January 2009. It took over two years for this order to be partially honoured by the state. As per order dated 18 October 2011, the court accepted the contention of the state that majority of the schools had been vacated. Similarly, in *Paschim Medinipur Bhumi Kalyan Samiti v. State of West Bengal*,³²¹ it had been alleged that 22 government-run schools were under occupation of security forces. The Calcutta High Court's order of vacating the schools in this case was complied with.

Despite Supreme Court's directions against occupation of schools in the cases discussed above, media reports of occupation of schools by police near the POSCO site have emerged. The National Commission on Protection of Child Rights (NCPCR) conducted a fact-finding at Badagabapur, Balitutha, and Dinkia near the POSCO site. NCPCR found the Balitutha school occupied by armed police and in its report recommended the vacation of the schools. On 27 July 2011, the NHRC also took *suo-moto* cognizance of the matter and sought reports from the government of Odisha and the Director General of Police.

Conflict Induced Internal Displacement

People and communities, internally displaced due to conflict, face various barriers to accessing and enjoying their rights. For instance, displacement results in disruption of the right to livelihood and may also lead to a severe reduction in access to basic necessities of life including food, clean water, shelter, adequate clothing, health services and sanitation.³²² The Internal Displacement Monitoring Centre (IDMC) reports that many of India's Internal Displaced Persons (IDPs) have insufficient

320 W.P.(PIL) No. 4652 of 2008, High Court of Jharkhand at Ranchi, See: PUCL Bulletin, Vol XXI No. 6, June 2011; Also see: *Nandini Sundar and Ors v. State of Chhattisgarh*.

321 See: W.P. No. 16442(W) of 2009, High Court of Calcutta.

322 Nina M. Birkeland, *Internal displacement: global trends in conflict-induced displacement*, International Review of the Red Cross, Vol 91 No. 875, September 2009, Page 498, available at: <http://www.icrc.org/eng/assets/files/other/irrc-875-birkeland.pdf>

access to these necessities. Those in protracted situations still struggle to access education, housing and livelihoods, and even lack security. In Chhattisgarh, for instance, the tribal IDPs in camps face the risk of attacks by both government forces and *Salwa Judum* on one hand and the Naxalites on the other.³²³

In India, there is no national policy, legislation or other mechanism to respond to the needs of people displaced by armed conflict or generalised violence. The Central Government has generally devolved responsibility for their protection to state governments and district authorities, which are doing precious little to respond to the rights of IDPs. What makes matters worse is that no Ministry or agency at the central level is mandated to ensure the protection of IDPs and monitor their return or local integration.³²⁴

In absence of a specific central government agency charged with monitoring the number of IDPs, official statistics on the exact number of IDPs in India are missing. Civil society estimates of internally displaced persons are region specific, and therefore cannot be helpful in establishing a precise overall number of IDPs living in India. Conservative estimates by IDMC place the number of IDPs displaced by armed conflict and violence in India at around 506,000 as of December 2011.³²⁵ This number includes IDPs living in camps alone, while, it is believed that majority of IDPs in India live outside camps.³²⁶

In Chhattisgarh alone for example, as of 2011 around 30,000 *adivasis* were internally displaced, out of whom, 10,000 lived in camps and 20,000 were dispersed in neighbouring Andhra Pradesh and Orissa.³²⁷ Another 2012 account states that from the Bastar division (Bastar, Kanker, Narayanpur, Bijapur and Dantewada districts), reportedly over 30,000 families have crossed over to the bordering Khammam and Bhadrachalam districts of Andhra Pradesh.³²⁸ There are no official statistics indicating the number of IDPs on the Chhattisgarh-Andhra Pradesh border. However, according to civil society estimates, over 100,000 IDPs have abandoned more than 600 villages in the Bastar division over the last few years.³²⁹ Pertinently, the Supreme Court had ordered the petitioners in the *Nandini Sundar* 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.³³⁰

Conflict induced displacement results in disruption of the right to livelihood and may also lead to a severe reduction in access to basic necessities of life including food, clean water, shelter, adequate clothing, health services and sanitation.

323 Internal Displacement Monitoring Centre, *Global Overview-2011: Internal Displacement in South and South-East Asia- India*, page 86, available at: [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/0E27234251BE6E48C12579E400369AA9/\\$file/global-overview-asia-2011.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/0E27234251BE6E48C12579E400369AA9/$file/global-overview-asia-2011.pdf)

324 Internal Displacement Monitoring Centre, *Global Overview-2011: Internal Displacement in South and South-East Asia- India*, page 86, available at: [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/0E27234251BE6E48C12579E400369AA9/\\$file/global-overview-asia-2011.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/0E27234251BE6E48C12579E400369AA9/$file/global-overview-asia-2011.pdf)

325 Internal Displacement Monitoring Centre, *India: IDP Population Figures*, 9 February 2012, available at: [http://www.internaldisplacement.org/idmc/website/countries.nsf/\(httpEnvelopes\)/90E174CA3D9CF14CC1257790002402F2?OpenDocument#22.2.1](http://www.internaldisplacement.org/idmc/website/countries.nsf/(httpEnvelopes)/90E174CA3D9CF14CC1257790002402F2?OpenDocument#22.2.1)

326 Internal Displacement Monitoring Centre, *Global Overview-2011: Internal Displacement in South and South-East Asia- India*, page 86, available at: [http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/0E27234251BE6E48C12579E400369AA9/\\$file/global-overview-asia-2011.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/0E27234251BE6E48C12579E400369AA9/$file/global-overview-asia-2011.pdf)

327 Amnesty International, India, *Amnesty International Report-2011*, available at: <http://www.amnesty.org/en/region/india/report-2011>

328 Medha Chaturvedi, *Chhattisgarh's Wandering Tribes: Problems of IDPs on the Chhattisgarh-AP border*, Mainstream Weekly, Vol L, No. 16, April 7, 2012, available at: <http://www.mainstreamweekly.net/article3371.html>

329 Ibid

330 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 majority of those evicted from their homes and lands from conflict have been living in a state of displacement for years, as they have not been able to find a durable alternative, be it sustainable return, local integration, or settlement elsewhere in India.³³¹


³³¹ United Nations Office for the Coordination of Humanitarian Affairs (UNOCHA) Guiding Principles on Internal Displacement, 1998, available at: <http://www.ifrc.org/Docs/idrl/I266EN.pdf>; United Nations General Assembly (UN GA), Framework on Durable Solutions for Internally Displaced Persons, December 29, 2009, available at: http://www2.ohchr.org/english/issues/idp/docs/A.HRC.13.21.Add.4_framework.pdf

III



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ACCESS TO JUSTICE



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Access to Justice

India has an array of laws for the protection for vulnerable groups. However the many structural and practice dysfunctions of the judicial system and the *de jure* and *de facto* impunities seriously undermine the ordinary person's ability to access justice. Though there is ample evidence of the deteriorating ability of the system to deliver justice, there is a deep resistance to change. The inability to ensure just, swift and affordable remedies poses a real challenge to the rule of law and protection of fundamental rights.

A. Barriers to Access to Justice

Regressive Laws

The *Police Act, 1861*³³² and the *Prisons Act, 1894* are two of the oldest remaining statutes in force. Since independence, there have been many well grounded recommendations, both from within and outside the government, on repealing these colonial laws and replacing them with legislation in harmony with the current democratic and constitutional framework. However, to date, these laws remain in place.

Several other regressive legislations deviate from the letter and spirit of the Constitution and international human rights law, such as the *Land Acquisition Act 1894*; the *Bombay Prevention of Begging Act, 1956*, the offence of sedition in the

³³² Policing being a state subject, several states have their own Police Acts which are dated later than 1861. But essentially all these laws are modeled on the 1861 Act.

Indian Penal Code (IPC)³³³ and the *Mental Health Act, 1987*.³³⁴ Unfortunately, India is one of the few countries in the world whose Constitution allows for preventive detention without safeguards.³³⁵ This in itself is a major setback to personal liberty.

Number	Recommendation	Status
REGRESSIVE LAWS		
UPR 2		
32	Conform its national legislation to international norms on the prevention of torture, to speed up the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and receive the Special Rapporteur on Torture.	Not accepted
33	Take the necessary measures to ensure that the existing national legislation against torture and cruel and inhumane and degrading treatment incorporates the highest international standards in this area.	Not accepted
41	Enact comprehensive reforms to address sexual violence and all acts of violence against women, including “honour” crimes, child marriage, female feticide and female infanticide, and to remedy limitations in the definition of rape and the medico forensic procedures Accepted for rape cases.	Not accepted
113	Amend the Child Labour Act to ban child labour, and to sign and ratify ILO Conventions 138 concerning Minimum Age for Admission to Employment and 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour and elaborate a timeline for the ratification of these instruments.	Not accepted
115	Extend the minimum age to 18 years for any form of labour that prevents children from accessing a full education.	Not accepted
128	Align its national regulations with the ILO Conventions 138 concerning Minimum Age for Admission to Employment and 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour and elaborate a timeline for the ratification of these instruments.	Not accepted

Violations by the Police and Resistance to Reform

Despite a range of safeguards, police practice is typified by routine violations of law and human rights. A majority of complaints brought before the National Human Rights Commission (NHRC) between 2008-09 involve police violations.³³⁶ In its 2011 stakeholders’ report for India’s UPR, the NHRC stated that “35% of the complaints coming to it annually, are against the police, and 9% of the complaints in 2010-11 were on inaction by officials or their abuse of power”.³³⁷ 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, arbitrary arrests and non-registration of cases, which is particularly acute in cases of women reporting domestic violence or rape. Procedural safeguards are routinely violated. For instance, the mandatory requirement to produce arrested persons before a

³³³ Including Section 124 A of the Indian Penal Code (IPC).

³³⁴ The Act allows arrest without warrant of persons with disabilities.

³³⁵ Specifically, Article 22, of the Constitution expressly allows an individual to be detained without charge or trial for up to three months and denies detainees him or her the rights to legal representation, cross-examination, timely or periodic review, access to the courts or compensation for unlawful arrest or detention.

³³⁶ See: National Human Rights Commission, Annual Report 2008-2009, page 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.

³³⁷ NHRC, *India Submission to the UN Human Rights Council for India’s Second Universal Periodic Review*, available at: <http://nhrc.nic.in/Reports/UPR-Final%20Report.pdf>

magistrate within 24 hours and guidelines and legal provisions on arrest are routinely derogated from. Socially and economically disadvantaged sections are most vulnerable to police brutality and corruption.³³⁸

All States and Union Territories have their separate police force and are governed by state-specific police laws, which are closely modelled on the colonial *Police Act, 1861*. There has been a small inroad in changing police legislation following a 2006 Supreme Court judgment which directed central and state governments to implement specific directives on police reform³³⁹ (see the following case study). In order to accomplish this, the Court recommended that state governments implement the directives through government orders or notification or pass new Police Acts to ensure incorporation of the Court's directives into legislation and provide an opportunity to modernise police legislation in its entirety at both the state and the Central levels. Less than twenty states have taken measures to implement the Court's directives, while not a single state has complied in full. The quality of this partial compliance does great disservice to the letter and spirit of the Court's directives. Of these semi or partial compliant states, a total of 15 states have passed new Police Acts since the *Prakash Singh* judgment. Alarming, the new Police Acts being passed by states are proving to be more retrogressive than the *Police Act, 1861* that they replace. They give statutory sanction to the ills that plague policing; they give the executive greater and unfettered control over the police; they claw back established legal safeguards in some circumstances; and they dilute existing oversight mechanisms. But more dangerously, states are using these Acts to enhance police powers without any safeguards. These are worrying trends and in no way contribute to enhance the democratic policing that is desperately needed. To date, only seven states and three union territories have functional Police Complaints Authorities and even those are not free from problems. Seven states have outrightly refused to establish these bodies.³⁴⁰ In effect, the opportunity for police reform is proving counterproductive and bringing-in even worse precedents.

CASE STUDY

Elusive Police Reform

Since independence, despite several fulsome and well-grounded recommendations to reform the police, no significant changes have been made to transform the organisation or culture of policing.³⁴¹ The 1861 Act is still on the statute books. Accountability of the police remains marginal and immensely difficult for citizens to access and enforce in India. There is visible resistance to all efforts to strengthen the oversight regime.

338 See: Concluding Observations of the Committee on the Elimination of Racial Discrimination: India, 2007, CERD/C/IND/CO/19, para 14 and para 26.

339 *Prakash Singh and Others v. Union of India and Others* (2006) 8 SCC 1

340 Commonwealth Human Rights Initiative, *Complaints Authorities: Police Accountability in Action*, 2009, available at: http://www.humanrightsinitiative.org/publications/police/complaints_authorities_police_accountability_in_action.pdf

341 The most comprehensive recommendations for systemic reform of the police in India are contained in eight reports produced by the National Police Commission (NPC) from 1979-81. The NPC was an autonomous Commission constituted to recommend systemic changes to the organisation and functioning of the police, following police excesses committed during the Emergency. The NPC also drafted a Model Police Bill to replace the 1861 Police Act. None of these recommendations have been implemented to date, and at the central level, the Police Act of 1861 remains in force. Find the full reports of the NPC at: <http://bprd.nic.in/index3.asp?sslid=407&subsublinkid=134&lang=1>.

Recent history confirms the reluctance to bring about systemic reform and, consequently, stronger accountability. In 1996, two retired police chiefs, Prakash Singh and NK Singh, filed a PIL in the Supreme Court asking the Court to direct governments to implement the National Police Commission (NPC) recommendations. After ten years of litigation, in 2006, in what is popularly referred to as the *Prakash Singh* case³⁴², the Supreme Court ordered that reform must take place. The Court laid down directives which, if holistically applied, were designed to kick start the process of reform. These directives pulled together the various strands of improvement generated since 1979. They make up a scheme, which is designed to correct the common ills that create poor police performance and unaccountable law enforcement today.

The directives can be broadly divided into two categories: those seeking to achieve functional responsibility for the police and those seeking to enhance police accountability. Six years later, despite monitoring by the Supreme Court, no state or union territory (including the capital territory of Delhi which comes directly under the Home Ministry) has fully implemented the seven directives. A few have implemented some directives partially, but others have resisted all attempts to create beneficial change. The greatest resistance to change concerns directions that aim to delink police from illegitimate political interference and go toward increasing police accountability.

The Court also advised the passing of new Police Acts to ensure the incorporation of the Court's directives into legislation and provide an opportunity to modernise police legislation in its entirety, at both the state level and the Centre. To date, 13 of 28 Indian states have passed new Police legislation. The Acts do great injustice to the Court's directives. The very problems the directives sought to address are now being given statutory sanction. Certain discernible trends emerge across the new Police Acts, which clearly point to the executive seeking unilateral control over the police, and the total dilution of independent oversight over the police. Illustratively, state governments are using Police Acts to: (a) create special security zones wherein police are afforded absolute power without any checks; (b) legalise direct appointment of state police chiefs by the executive, doing away with checks and balances ordered by the Court in the form of objective selection criteria and an independent selection panel; and (c) subvert the independence of new police complaints bodies³⁴³ through direct appointments with no independent selection process leading to excessive politicisation, absence of independent investigators, little support for enforcement of their findings, and in extreme cases of defiance to the Court's orders, the inclusion of serving police personnel on these bodies.

To date only seven states, and three Union Territories, have functional Police Complaints Authorities. Even these operational Authorities are ridden with flaws. Their composition and membership does not ensure any independence, their powers are diluted and they remain starved of funds. The remaining states have Complaints Authorities only on paper or have chosen to ignore the Court's directive. This deplorable track record reveals the strong resistance to reform. Even more alarming is the manipulation of the Court's directives in implementation to empower the executive's stranglehold over the police and diminish independent oversight.

Source: Commonwealth Human Rights Initiative

342 *Prakash Singh and Others v. Union of India and Others* (2006), 8 SCC 1

343 Called 'Police Complaints Authorities', these bodies have the mandate to inquire into the most serious complaints against the police – namely death, torture, and rape in police custody. The seriousness of the complaints falling under this mandate demands fair and impartial conduct of inquiries, and independence from the police. Yet, in one state, serving police officers are members of the Complaints Authority, entirely defeating any semblance of independence. The Authorities are mired in excessive delay, and have proved ineffective at strengthening police accountability.

Number	Recommendation	Status
VIOLATIONS BY THE POLICE AND RESISTANCE TO REFORM		
UPR 2		
59	Intensify efforts in providing capacity-building and training programmes on human rights for its law enforcement officials as well as judicial and legal officials in the rural areas.	Accepted
60	Improve training on human rights on addressing law enforcement especially by police officers.	Accepted
62	Strengthen the process for ensuring independent and timely investigation mechanisms to address and eliminate corruption; and provide for and facilitate increased accountability and transparency in this process.	Not accepted
121	Solve remaining cases of human rights violations and create an independent committee to receive claims against the police that were referred to by the Special Rapporteur on Human Rights Defenders.	Not accepted

Judiciary: Vacancies and Judicial Delay

More than 31% posts of judges in various high courts and the Supreme Court were lying vacant as of 1 August, 2011.³⁴⁴ Amongst the high courts the largest number of vacancies was in Allahabad High Court, where 98 out of the sanctioned 160 posts (more than 61%) had not been filled.³⁴⁵

Analysts have pointed out that shortage of judges is also because of the present collegium system in which convoluted struggle between the executive and the judiciary delay the filling up the vacancies for months. Therefore, it is not uncommon, without exception, for higher courts to run understaffed. At the lower courts level problem is much worse where we have the maximum backlog of cases.³⁴⁶

The Law Commission of India recommended in 1987, a ratio of 50 judges per million persons.³⁴⁷ In 2010, over 20 years later, the ratio was still only approximately 17 judges per million.³⁴⁸ The shortage has resulted in longer delays while the petitioner, accused and victim, are finding remedies harder to come by. In 2010, there were more than 32 million cases pending before Indian courts, an increase of more than 830,000 over the previous year.³⁴⁹ According to government statistics, nearly 16 million persons (including those from previous years) were awaiting trials for crimes under the IPC in various criminal courts during 2010.³⁵⁰ Pendency of cases has worsened markedly over the past decade. Arrears have increased by 148% in the Supreme Court, 53% in high courts and 36% in subordinate courts.³⁵¹

³⁴⁴ The Times of India, *31% of judges' posts in SC, HCs lying vacant*, August 8, 2011, available at: http://articles.timesofindia.indiatimes.com/2011-08-08/india/29863790_1_vacancies-high-courts-judges

³⁴⁵ Ibid

³⁴⁶ The Economic Times, *Acute shortage of judges at all levels ails our judicial system*, ET Bureau, September 7, 2011, available at: http://articles.economictimes.indiatimes.com/2011-09-07/news/30122977_1_collegium-system-judges-lower-courts

³⁴⁷ Law Commission of India, *One Hundred Twentieth Report on Manpower Power Planning in Judiciary: A Blueprint*, July 1987, available at: http://lawcommissionofindia.nic.in/old_reports/rpt120.pdf.

³⁴⁸ Bar and Bench, *Pending Litigations 2010: 32,225,535 pending cases; 30% Vacancies in High Courts: Government increases Judicial infrastructure budget by four times*, June 3, 2011, available at: <http://barandbench.com/brief/2/1518/pending-litigations-2010-32225535-pending-cases-30-vacancies-in-high-courtsgovernment-increases-judicial-infrastructure-budget-by-four-times->

³⁴⁹ Exact numbers: 32,225,535 in 2010 and 31,392,453 in 2009 - *Ibid*.

³⁵⁰ Exact number: 15,885,237 - National Crime Records Bureau, *Arrests and Trials 2010*, available at: <http://ncrb.nic.in/CII2010/cii-2010/Chapter%2012.pdf>.

³⁵¹ PRS Legislative Research, *Vital Stats: Pendency of Cases in Indian Courts*, July 6, 2011, available at: <http://www.prsindia.org/administrator/uploads/general/1310014291~~Vital%20Stats%20-%20Pendency%20of%20Cases%20in%20Indian%20Courts%2004Jul11%20v5%20-%20Revised.pdf>.

In March 2012, while replying to the plethora of questions on judicial delivery, pendency of cases and strengths of judges etc raised by a Rajya Sabha member Mr. Parimal Nathwani, the Union Minister of Law and Justice acknowledged the huge backlog vacancies of Judges in the Supreme and High Courts. The number of posts of judges vacant in country's high courts was 270 against sanctioned posts of 895. He further stated that around four million cases were pending in high courts and above 21 million cases were languishing in subordinate courts for years, notwithstanding majority of them were filled in less than five years.

A National Mission for Justice Delivery and Legal Reforms has been set up with an objective to pursue certain strategic initiatives. Fast track courts disposed 3.3 million cases over a period of eleven years from 2000-01 to 2010-11. The *Gram Nyayalaya Act (Village Courts), 2008* has been enacted for establishing *Gram Nyayalayas* at the grass-root level for providing justice to citizens at their door-steps. There was however no proposal to set up the National Commission on Justice, the minister informed.³⁵² No effective solutions have been put in place to stem the decline, while experiments with 'fast track courts' have failed.

A glaring example of delayed justice is the court verdict in the Bhopal Gas Tragedy case – the world's worst industrial disaster – which killed over 15,000 people. In 2010, at the end of a 26-year legal battle, the verdict failed to provide any relief to affected families. Due to this lackluster situation speedy and fair disposal of court litigations remain a far cry.

Number	Recommendation	Status
JUDICIARY: VACANCIES AND JUDICIAL DELAY		
UPR 2		
122	Further promote equal access to justice for all, including by reducing backlog and delays in the administration of cases in court, providing more legal aids to the poor and marginalized. <u>(Deleted portion: as well as increasing the use of alternative measures for pre-trial detention).</u>	Accepted in revised form
40	Strengthen protection of children's rights, including the ratification of the Convention on the Rights of the Child, by improving mechanisms and resources for the implementation of existing legislation, and by demonstrating higher conviction rates for crimes against children such as sexual exploitation, child labour, child forced-labour and child trafficking.	Not accepted
47	Take adequate measures to guarantee and monitor the effective implementation of the Prevention of Atrocities Act, providing legal means for an increased protection of vulnerable groups like the Dalit, including the access to legal remedies for affected persons.	Not accepted
73	Monitor and verify the effectiveness of, and steadily implement, measures such as quota programmes in the areas of education and employment, special police and special courts for effective implementation of the Protection of Civil Rights Act and the Scheduled Caste and Scheduled Tribes Act, and the work of the National Commission for Scheduled Castes.	Not accepted
117	Continue to carry out policies aimed at improving its judicial system, reforming the law enforcement bodies and reducing the level of crime and corruption.	Not accepted
118	Prevent and pursue through the judicial process, all violent acts against religious and tribal minorities, Dalits and other castes.	Not accepted

³⁵² Desh Gujrat, *Shortage of 276 judges in HC and SC, over 2.5 crore court cases pending in India:Minister replies Shri Parimal Nathwani in Rajya Sabha*, News Report, Ahmedabad, March 20, 2012, available at: <http://deshgujarat.com/2012/03/20/shortage-of-276-judges-in-hc-and-sc-over-2-5-crore-court-cases-pending-in-india-minister-replies-shri-parimal-nathwani-in-rajya-sabha/>

Excessive Pre-trial Detention (under trials)

Among various types of prisoners, undertrial prisoners form a major share of prison inmates in India. Around 65% of the total number of prisoners is pre-trial detainees³⁵³ with period of pretrial detention varying from three months to over five years.³⁵⁴ Courts are lax in releasing undertrials on bail. Statutory safeguards³⁵⁵ have been introduced to check prolonged detention periods. These would help in reducing time spent in pre-trial detention if consistently implemented by the courts. However, both the executive and the judiciary have failed in discharging its oversight functions.

Excessive pre-trial detention is one of the most important factors responsible for over-crowding of prisons in the country. Though India's incarceration rate is lower than most other countries, its pre-trial prison population is one of the highest in the world.³⁵⁶ Instances of people accused of minor offences languishing in prisons awaiting trial for periods more than what is prescribed as the maximum sentence for such offences, are common. Most of these prisoners are poor and unable to hire the services of a lawyer or render sureties or bonds. In 1979, in *Hussainara Khatoon v. Home Secretary, State of Bihar*,³⁵⁷ the Supreme Court, while adjudicating on undertrials, who were detained for periods much longer than what they would have undergone in case of their conviction, held: “even under our Constitution, though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of Article 21” (right to life and personal liberty). Thereafter, in the *Common Cause v. Union of India* judgments,³⁵⁸ the Supreme Court laid down detailed guidelines for release of undertrials. Despite these Supreme Court pronouncements, excessive detention of undertrials remains a serious concern.

65.1% of the total number of prisoners in India are pre-trial detainees with period of pretrial detention varying from three months to over five years.

Number	Recommendation	Status
EXCESSIVE PRE-TRIAL DETENTION AND PRISONS		
UPR 2		
122	Further promote equal access to justice for all , including by reducing backlog and delays in the administration of cases in court, providing more legal aids to the poor and marginalized. (Deleted portion: as well as increasing the use of alternative measures for pre-trial detention)	Accepted in revised form

353 National Crime Records Bureau, Ministry of Home Affairs, *Prison Statistics India 2011*, page 111, available at: <http://ncrb.nic.in/PSI-2011/CHAPTER-6.pdf>

354 422 undertrials were detained in jails for 5 years or more - National Crime Records Bureau, *Period of Detention of Undertrial Prisoners 2009*, available at: <http://ncrb.nic.in/PSI2009/CHAPTER-6.pdf>.

355 Code of Criminal Procedure: Sections 167, 436, 436A and 437 allow an accused to be released on bail in cases of delay in commencement or finalisation of trial.

356 International Centre for Prison Studies, *Entire World – Pre-trial detainees/remand prisoners (percentage of the prison population)*, available at: http://www.prisonstudies.org/info/worldbrief/wpb_stats.php?area=all&category=wb_pretrial.

357 AIR 1979 SC 1360, available at: <http://www.indiankanoon.org/doc/1007347/>

358 4 SCC 33 and (1996) 6 SCC 775. An analysis of the directions issued by the Supreme Court in these cases is available at: <http://goo.gl/ZDVPE>

Prisons

Conditions in Prisons

Indian prisons do not meet international standards as laid down in the *International Covenant on Civil and Political Rights, 1966*, the *UN Standard Minimum Rules for the Treatment of Prisoners, 1955*, and the *UN Directive on Basic Principles for the Treatment of Prisoners, 1990*. Overcrowding, though marginally declined from the previous year stood at 112.1% in 2011, remains as one of the major problems that plague Indian prisons.³⁵⁹ For instance, in Chattisgarh, highest among the states, overcrowding stands at a staggering 237%.³⁶⁰ Several prisons are over a hundred years old and many barracks remain closed because they are unsuitable for habitation, making the actual space available significantly less than that suggested by the government, compounding the overcrowding.

Combined with overcrowding is the issue of inadequate staff strength, which goes way below requirements. The current prison staff to inmate ratio stands at 9:1.³⁶¹ Overcrowding brings with it a denial of health rights, poor sanitation and high prevalence of disease. The living conditions in most prisons, especially sub-jails are appalling, as even basic requirements are not met. Unhygienic conditions arise out of inadequate water supply and supply of essentials like phenol, and lack of proper ventilation.³⁶² The NHRC and the National Commission for Women (NCW) have come out with frequent reports on prison conditions³⁶³ and found health and living conditions deplorable.

Prisoners are required by law to be medically examined at the time of admission. However, prisoners are rarely examined due to an acute shortage of doctors. Therefore, marks of violence meted out to the prisoner by the police, communicable diseases (such as tuberculosis) and chronic conditions that deteriorate with incarceration, are often not detected until they become acute. Mental illness is frequently undetected or not adequately treated. There are very few studies on monitoring of the patterns of illness in custodial institutions and therefore no institutional remedies are applied. The recently reported case of a mentally ill prisoner held without trial and released after 18 years of imprisonment is indicative of how acute the problem is.³⁶⁴ While general prisoners face these problems, recent reports of facilities and favoured treatment provided to so-called “VIP prisoners” credibly demonstrate the pattern of favouritism and corruption within prisons that allows every facility to be purchased for a price.

The NHRC and the National Commission for Women have made frequent reports on prison conditions and found health and living conditions deplorable.

359 National Crime Records Bureau, Ministry of Home Affairs, *Prison Statistics 2011*, page 16, available at: <http://ncrb.nic.in/PSI-2011/CHAPTER-2.pdf>

360 Ibid.

361 National Crime Records Bureau, Ministry of Home Affairs, *Prison Statistics 2011*, page (iv), available at: <http://ncrb.nic.in/PSI-2011/Full/PSI-2011.pdf>

362 See: CHRI, *Maharashtra's Abandoned Prisons: A Study of Sub-Jails*, 2010, available at: http://www.humanright-sinitiative.org/publications/prisons/maharashtra's_abandoned_prisons_a_study_of_sub-jails.pdf

363 See for example: National Human Rights Commission, *Minutes and Recommendations of the National Seminar on 'Prison Reform'*, New Delhi, April 15, 2011, available at: <http://nhrc.nic.in/Documents/Minutes%20&%20Reco%20Prison%20Reform.pdf>.

364 The Times of India, *Mentally ill man walks free after 18 years in Jaipur jail*, February 18, 2011, available at: http://articles.timesofindia.indiatimes.com/2011-02-18/india/28614800_1_solitary-confinement-prison-jaipur

Monitoring Mechanisms

Prisons have built-in statutory oversight mechanisms. Besides those internal to the administration, prisons must have boards of visitors, which include lay visitors known as ‘non-official visitors’. Additionally, district judges and magistrates have the power to periodically monitor prisons. The visits are to monitor conditions of detention, record any complaints of prisoners as well as review overstay. The NHRC has an important role to play in the monitoring of prisons as it has the power to visit any jail or detention centre to study the living conditions of the inmates and make recommendations.³⁶⁵ Between 2001 and 2011, the NHRC has made several visits to prisons across the country and submitted 53 reports with recommendations to several state governments and the Centre. However, not much has been put into action and a majority of the recommendations remain on paper.

Periodic Review Committees are another important oversight mechanism mandated to ensure that prisoners awaiting trial do not overstay or remain behind bars except for the barest minimum duration. These Committees are headed by the District Judge, and include the officer-in-charge of prisons and representatives of the District Magistrate, the Superintendent of Police and the Probation Department. Such committees have been set up in a number of states. However, in most states they remain defunct. For example, in Rajasthan, committee meetings are not convened periodically, there is lack of coordination between committee members, cases that come up for review are picked up randomly, and there is little adherence to rules laid down by these Committees.³⁶⁶

The visiting system is also defunct in most states. Illustratively, in Rajasthan lay visitors were not appointed since 2009 and in 2011 only 150 were appointed leaving out 30 prisons. Appointed visitors almost universally have close affiliation to the ruling party, no initial training or orientation and there is nothing to indicate the quality of their recommendations or any follow-up action.

Children of Prisoners

Children of prisoners consist of two categories – those who live with their mothers within the jail premises, and those who are living outside in the community. According to NCRB Prison Statistics 2011, there were 1,729 children staying with their mother in different jails in the country at the end of 2011.³⁶⁷

These children are forced to grow-up in conditions of deprivation and criminality without proper nutrition, inadequate medical care and little opportunity for education. Such children are forced to live in the jails along with other adult criminals and suspects in a seriously adverse situation. While there is some information on children

³⁶⁵ Section 12(c) *Protection of Human Rights Act, 1993*.

³⁶⁶ The Commonwealth Human Rights Initiative (CHRI) has recently done a study on the prison visitors, which is yet to be published.

³⁶⁷ National Crime Records Bureau, Ministry of Home Affairs, *Prison Statistics 2011*, Table 3.24, page 71, available at: <http://ncrb.nic.in/PSI-2011/Full/PSI-2011.pdf>

living with their mothers inside the prisons, there is almost no information regarding children of prisoners who are living in the community.³⁶⁸

Though prisons are rough with the problems discussed above, states fail to fully utilise funds allocated to them for prisons. According to Prison Statistics 2009, only 2 out of 28 states of India were able to fully utilise the funds allocated to them.³⁶⁹

Custodial Torture

Custodial torture and violence remain an entrenched and routine law-enforcement strategy and investigating practice across India. A study conducted in 47 districts for more than two years concluded that an average 1.8 million people are victims of police torture and violence in India every year.³⁷⁰ Police practices include assault, physical abuse, custodial rape, threats, psychological humiliation, as well as deprivation of food, water, sleep and medical attention.³⁷¹ Most torture cases go unreported because victims fear reprisals. They are also not confident that the judicial system can or will punish 'men in uniform'.

From 2001 to 2010, the NHRC reported a total of 14,231 cases of deaths in police and prison custody (i.e. 1,504 and 12,727 respectively), which represents an average of 4.3 deaths every day.³⁷² Many of these deaths are a result of torture. These figures represent only a fraction of the actual number of deaths in custody as they reflect only the cases registered before the NHRC.

CASE STUDY

Soni Sori's Case³⁷³

Soni Sori is a 35 year old *adivasi* school teacher and warden of a government-run school for tribal children in Dantewada, Chhattisgarh – one of the few operational schools in the area. Soni is the aunt of Lingaram Kodopi's, a journalist, who was arrested on 9 September 2011, on charges of being a go-between for the payment of a bribe by the *Essar Group* to the Maoists. The police alleged Soni's involvement in the same case, and also charged her in several other cases including alleging that she was a Maoist supporter and an intermediary. She continues to be jailed in Chhattisgarh from where she has sent letters detailing the consistent torture that has been meted out. She is stripped and searched every time she is taken to Court. The NCW has refused to take cognizance. Women's rights groups in Delhi have been lobbying for a fact-finding mission which has also been overlooked. Evidence, however, points to the fact that both Soni and Lingaram Kodopi have been falsely implicated.

In October 2009, Lingaram Kodopi had resisted an attempt by the Chhattisgarh police to forcibly recruit him as a Special Police Officer to fight the Maoists. On refusal, he was arbitrarily detained for 40 days in a police station and released after a *habeas corpus* petition was filed in the court. In April 2010, at a public hearing in Delhi,

368 Submission to the Committee on the Rights of the Child For the Day of General Discussion on "Children of Imprisoned Parents", September 30, 2011 at Palais des Nations in Geneva, Switzerland. Submission by HAQ: Centre for Child Rights India.

369 National Crime Records Bureau, *Prison Statistics of India*, 2009.

370 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.

371 Ibid.

372 National Human Rights Commission Annual Reports, 2001-2010, In: Asian Centre for Human Rights, *Torture in India, 2011*, page1, available at: www.achrweb.org/reports/india/torture2011.pdf

373 For detailed explanations on many aspects of the Soni Sori case, see the series of articles published in Tehelka, available at: www.tehelka.com/story_main52.asp?filename=Ws030412spLanding.asp

he had detailed violations committed by the security forces against *adivasis* in Chhattisgarh, following which the state police announced that he was the prime suspect in a Maoist attack on a local Congress party leader's residence. Lingaram Kodopi had also highlighted the killing of three *adivasis* by the Central Reserve Police Force and the state police during a confrontation in three villages – Tadmetla, Timapuram and Morpalli.

Soni Sori had also been critical of atrocities committed by security forces and the Maoists. She was arrested in Delhi on 4 October, 2011 after she had exposed significant evidence of being framed by the Chhattisgarh Police in multiple cases. Fearing for her safety while in custody, Soni Sori had pleaded before the Additional Chief Metropolitan Magistrate, District Court, Saket as well as the Delhi High Court that she be held in custody in Delhi and had sought to face trial outside the state of Chhattisgarh. However, in October 2011, Soni Sori was remanded to the custody of the Chhattisgarh Police by the Additional Chief Metropolitan Magistrate, Saket District Court, Delhi, albeit with directions that the 'due process' be observed and that a report be filed outlining the steps taken to keep her safe.

As Soni Sori was remanded to Chhattisgarh, she was victim of custodial torture and sexual violence. On 10 October 2011, she was supposed to be produced before the Court of the Magistrate in Dantewada. However, Soni Sori – who had been in perfect health when she was remanded to the custody of the Chhattisgarh Police in Delhi – was in such terrible physical pain that she could not even stand up or step out of the police van and reach the courtroom. The police claimed “*she slipped in the bathroom and had hurt her head.*”

In subsequent statements, Soni Sori described how she was tortured. She stated that she was pulled out of her cell at the Dantewada Police Station on the night of 8-9 October 2011 and taken to S.P. Ankit Garg's room, where on his orders, three men stripped her, gave her electric shocks and inserted stones into her private parts, making her lose consciousness. The next morning, she had severe pain all over her body, especially her neck, spine and lower abdomen. A few months later, SP Ankit Garg, far from being questioned for his role in the Soni Sori case, was awarded the ‘*Police Medal for Gallantry*’ by the government for his role in a counterinsurgency operation in 2010.

The Supreme Court³⁷⁴ called for an independent medical examination of Soni Sori. The medical report stated that stones were found inserted deep inside Soni Sori's vagina and rectum and the MRI scan revealed annular tears on her spine. In May 2012, the Supreme Court directed a new medical examination to ascertain the charges of torture. The report is due by July 2012. The arrest, torture and framing of Soni Sori has been widely criticised by civil society nationally and internationally.³⁷⁵

In another incident, Punjab police allegedly tortured Kulvir Singh Barapind after his 20 September, 2012, arrest on charges of waging war on the state, possession of explosives, and sedition. His lawyer told Human Rights Watch that Barapind had complained to the magistrate that the police “applied electric shocks to his ears, beat him, and humiliated him.” The United States had extradited Barapind to India on 17 June, 2006, on murder charges after obtaining assurances from India that he would not be tortured. A court in India subsequently acquitted Barapind of all charges and released him in April 2008.³⁷⁶

Also, in June 2012 a court in Denmark stopped the extradition of Danish national Niels Holck, known as Kim Davy in India, who was sought by India for smuggling weapons to a militant group in West Bengal in 1995. The Danish government had accepted India's request for extradition in 2010, but Danish courts eventually ruled that Holck said that he was at risk of torture and mistreatment in India.³⁷⁷

374 *Soni Sori & Another v State of Chhattisgarh*, Writ Petition (CRL) No. 206 of 2011.

375 See, for example, the open letter sent by 200 organisations and individuals from India to the Chief Justice of India and other Supreme Court judges. Hardnews, *Soni Sori Case: An open letter to the SC judges*, available at: <http://www.hardnewsmedia.com/2012/01/4295>

376 Human Rights Watch, *India: Punjab Case Shows Need for Anti-Torture Law*, September 27, 2012, available at: <http://www.hrw.org/news/2012/09/27/india-punjab-case-shows-need-anti-torture-law>

377 Human Rights Watch, *India: Punjab Case Shows Need for Anti-Torture Law*, September 27, 2012, available at: <http://www.hrw.org/news/2012/09/27/india-punjab-case-shows-need-anti-torture-law>

Despite torture being endemic in the country, India does not yet have a domestic law to address the issue and has not yet ratified the *UN Convention against Torture, 1984* (CAT). As per Recommendation 1 of UPR I and its 2011 pledge, the Indian Government committed to expedite ratification of CAT. In India, ratification is to be preceded by the enactment of a domestic law. The *Prevention of Torture Bill, 2010* (PTB) was drafted by the government and passed by the Lower House of Parliament (*Lok Sabha*) in May 2010 without any public consultation and debate in Parliament. Human rights groups held that the Bill did not conform to CAT and launched a campaign to align the draft with CAT. Consequently, in August 2010, the Upper House (*Rajya Sabha*) referred the PTB to a Parliamentary Select Committee. Considering representations from human rights experts, the Committee substantially revised the PTB, which now more closely complies with CAT. However, the revised Bill has been pending before the Ministry of Home Affairs for approval of the amendments, since December 2010. The Government of India national report for UPR II states that the recommendations of the Select Committee are currently “*under examination by the Government*”, with no further details as to its position on the recommendations and the time frame for the adoption of the new law. During India’s UPR II in May 2012, however, several countries recommended that India enact legislation specifically prohibiting torture and ratify the Convention against Torture.

The revised PTB addresses many of the pitfalls of the initial PTB and brings India closer to fulfilling its obligations under CAT and the *International Covenant on Civil and Political Rights* (ICCPR). However, the revised PTB still has a number of shortcomings that should be addressed urgently.³⁷⁸ The definition of torture under the new Bill is an improvement from the earlier version. However, it is still problematic in some aspects, including its narrower definition of ‘cruel, inhuman or degrading treatment’ and its failure to criminalise the same. This should be rectified, especially in light of the recent decision of the Supreme Court in *Prithipal Singh etc v. State of Punjab & Anr.* highlighting the obligation of the state to prohibit torture, and ‘cruel, inhuman and degrading treatment’.³⁷⁹ Other shortcomings of the revised PTB include: (a) the imposition of the death penalty as a punishment for cases of torture causing death; (b) the absence of provisions for prevention of torture; (c) the non-exclusion of evidence obtained by torture; and (d) the presence of a two-year statute of limitation from the date the offence was committed. In order to fulfill its UPR I and UPR II obligations, the Indian Government should table the revised PTB before Parliament at the earliest, after addressing its shortcomings.



T Saldanha

³⁷⁸ For a detailed analysis on the revised PTB, see: International Commission of Jurists, *A legal analysis of the revised Prevention of Torture Bill currently before India's Parliament*, available at: http://documents.icj.org/INDIA_ICJ_legal_opinion_Prevention_Torture.pdf

³⁷⁹ *Prithipal Singh Etc v. State of Punjab & Anr.*, Supreme Court, Criminal Appeal No. 528 of 2009, Criminal Appellate Jurisdiction, November 4, 2011, para 7. See: International Commission of Jurists (ICJ), *Submission of the ICJ for the 2012 UPR of India*, November 2011. Extracts from the Supreme Court decision: “[In view of] the provision 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 and ill-treatment, as well the human rights defenders 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.”

Number	Recommendation	Status
TORTURE (see also: TORTURE in Part II)		
UPR 1		
1	Expedite ratification of the Convention against Torture and its Optional Protocol.	Accepted
15	Receive as soon as possible the Special Rapporteur on the question of torture.	Accepted
UPR 2		
15	Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.	Accepted
1	Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the International Convention for the Protection of All Persons from Enforced Disappearance and the Statute of the International Criminal Court.	Not accepted
3	Expedite the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, and adopt robust domestic legislation to this effect.	Not accepted
4	Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and end impunity for security forces accused of committing human rights violations.	Not accepted
5	Continue efforts to accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as its optional protocol, and the International for the Protection of All Persons from Enforced Disappearances; and ratify ILO Conventions No. 169 and no. 189.	Not accepted
7	Ratify promptly the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and relevant protocol.	Not accepted
8	Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment as soon as possible.	Not accepted
10	Accede to the ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; ratify the Statute of the International Criminal Court and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the ILO Convention No. 189 concerning Decent Work for Domestic Workers.	Not accepted
12	Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and ensure that the instrument of ratification is fully consistent with the Convention.	Not accepted
16	Ratify the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment, as well as its Optional Protocol .	Not accepted
17	Expedite ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol.	Not accepted
18	Sign the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol and ratify the International Convention for the Protection of All Persons from Enforced Disappearance.	Not accepted
24	Ratify, in the shortest time, the International Convention for the Protection of All Persons from Enforced Disappearance as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and adopt related internal legislation.	Not accepted
28	Ratify Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the ILO Conventions no. 138 and 182 concerning child labour.	Not accepted
29	Accelerate the ratification process of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	Not accepted
32	Conform its national legislation to international norms on the prevention of torture, to speed up the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and receive the Special Rapporteur on Torture.	Not accepted

Number	Recommendation	Status
33	Take the necessary measures to ensure that the existing national legislation against torture and cruel and inhumane and degrading treatment incorporates the highest international standards in this area.	Not accepted
Prevention against Torture Bill		
UPR 2		
6	Accelerate its domestic procedure for ratification including the adoption of the Prevention against Torture Bill by its Parliament.	Not accepted
34	Prioritise the review and implementation of the Prevention Against Torture Bill, ensuring that it complies with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	Not accepted
36	Consider introducing a new bill to the Parliament, taking into full consideration of the suggestions of the Select Committee, and take further actions towards the ratification of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	Not accepted

Immunity and Lack of Accountability

The lack of accountability of civil servants and members of the armed forces leads to continued human rights violations. Statutory provisions granting immunity are among the key factors for this lack of accountability. Sanction to prosecute a public official is required under certain provisions of law, two of which are significant: Section 197 of the *Criminal Procedure Code, 1973* (CrPC) and Section 19 of the *Prevention of Corruption Act, 1988* (PCA).

Section 197 CrPC says that whenever a judge or magistrate or a public servant is accused of any offence alleged to have been committed by him “*while acting or purporting to act in the discharge of his official duty*”, no court shall take cognizance of that offence without sanction from the concerned government. Sanction would be needed from the central or state government, depending on whether he was employed in connection with the affairs of the Union or a state at the time of the alleged commission of the offence. The Section further debars the court from taking cognizance of any offence alleged to have been committed by a member of the armed forces of the Union while acting or purporting to act in the discharge of his official duty without sanction of the central government. If AFSPA is applicable to any disturbed area, it fortifies the immunity given to members of the armed forces against any criminal prosecution (also see section on Legal Immunity in Part III).

Section 19 of the PCA states that no court shall take cognizance of an offence punishable under sections 7, 10, 11, 13 and 15 of the PCA alleged to have been committed by a public servant, except with the previous sanction of the concerned government. Sanction for prosecution is, however, not required under the PCA once the public servant has ceased to be employed in the post, which the public servant is alleged to have abused or misused for corrupt motives, and is no longer serving in connection with the affairs of the Union or a state. While sanction is contemplated in Section 197 CrPC in respect to offences committed “*while acting or purporting to act in discharge of duties*”, offences specified in Section 19 of the PCA - like giving or taking bribe - have been held by the Court to have no connection with the discharge of official duties.

In February 2012, the Supreme Court put a four-month time limit for sanctions required under the PCA.³⁸⁰ If the competent authority fails to take a decision within four months, the sanction for prosecution will be deemed to have been granted. There is an urgent need for such a time limit with regard to other crimes by public servants, particularly offences against the human body, to restrict the abuse of the power of sanction for prosecution by the government.

Courts have had numerous opportunities to demarcate the nature and scope of the protection accorded by Section 197 CrPC. A majority of the cases relate to corruption charges against public servants under the PCA. The issue of sanction has also arisen in cases connected with offences by the police, army or other armed forces. The Court has devised tests to determine the application of Section 197 CrPC. The broad principle underlying these was articulated by the Supreme Court in *S.B. Saha v. M.S. Kochar*³⁸¹: “The words ‘any offence alleged to have been committed by him while acting or purporting to act in the discharge of his official duty’ ... in Section 197(1) of the Code, are capable of a narrow as well as a wide interpretation. The right approach to the import of these words lies between two extremes.”³⁸²

Number	Recommendation	Status
IMMUNITY AND LACK OF ACCOUNTABILITY		
UPR 2		
127	Ensure a safe working environment for journalists. (Deleted portion: and take proactive measures to address the issue of impunity, such as swift and independent investigations.)	Accepted in revised form
4	Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and end impunity for security forces accused of committing human rights violations.	Not accepted
48	Adopt the Prevention of Communal and Targeted Violence Bill addressing issues such as accountability of civil servants, standards of compensation for victims and elements of command responsibilities.	Not accepted
119	Guarantee effective access to justice in cases of human rights violations committed by security forces personnel with regard to the use of torture.	Not accepted
121	Solve remaining cases of human rights violations and create an independent committee to receive claims against the police that were referred to by the Special Rapporteur on Human Rights Defenders.	Not accepted

Inadequate Legal Aid and Assistance

The right to free legal aid is recognised under Articles 21 guaranteeing the ‘right to life’ and 39A of the Constitution. The *Legal Services Authorities Act, 1987*, gave a statutory base to the fundamental right to legal aid guaranteed under Article 21 of the Constitution. Right to legal aid is also provided for under Section 304 of the

³⁸⁰ *Centre for Public Interest Litigation & Others v. The Union of India and Others*, Civil Appeal No. 10660 of 2010, Supreme Court, February 2, 2012.

³⁸¹ 1979 (4) SCC 177

³⁸² The Court has also held that section 197 has to be construed narrowly and in a restricted manner if the public servant has engaged or indulged in criminal activities. For instance, if a police officer uses force in discharge of his duties, then sanction would be necessary for prosecution. But if the same officer commits an act, which is an offence, in course of his service, though not in discharge of his duty, the bar under section 197 CrPC would not be attracted.

CrPC, which provides that if the accused does not have sufficient means to engage a lawyer, the court must provide one for the defense of the accused at the expense of the state.

Referring to National and State Legal Services Authorities, the Government of India national report for UPR II states: *“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 Tribes communities were beneficiaries. (...) About 725,000 Lok Adalats have been held throughout the country in which more than 2.68 million cases have been settled.”*³⁸³ The situation on the ground, however, is grimmer. There remains a serious lack of awareness amongst litigants on free legal aid services, which often don’t reach the neediest. According to a study conducted 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 SLSA.³⁸⁴ In addition, legal aid rarely reaches persons with physical, mental and multiple disabilities living in custodial institutions like mental asylums, ‘beggars’ homes and other state institutions for women and children. Moreover, 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.

Other key issues related to the functioning of the State Legal Services Authority are as follows:

- Acute underutilisation of funds – For example, 87.33% underutilisation in Madhya Pradesh, 53.87% in Jharkhand, 44.8% in Uttar Pradesh and 35.16% in the state of Odisha (for more details, see case study below);³⁸⁵
- Lack of implementation structure with the judiciary being given the responsibility to implement the Act – The judges hold this as an additional charge over and above their existing work;
- Lack of experienced lawyers; and
- Lack of monitoring mechanisms.

CASE STUDY

Under-utilisation of Funds Allotted for Legal Aid Services

A RTI application was with the National Legal Service Authority (NALSA) regarding the following aspects of the State Legal Services Authorities (SLSA) as well as NALSA (all the information is regarding aspects that are covered under the pro-active disclosure clause of the RTI): (a) minutes of meetings held; (b) number of *lok adalats* held; (c) number of beneficiaries; (d) allocation and expenditure of the various grants received; (e) other activities; (e) copies of annual reports submitted by SLSA.

³⁸³ National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: India, A/HRC/WG.6/13/IND/1, UN General Assembly, March 8, 2012, para 32.

³⁸⁴ Unpublished Study conducted by Centre for Social Justice, 2010- 2011.

³⁸⁵ Data obtained in response to an RTI application regarding the utilisation of funds for the year 2009-2010.

NALSA, under the *Legal Services Authorities Act, 1987* (LSAA), is expected to be the nodal body for guiding and supervising the SLSAs. It is expected for it to have the annual reports of all the SLSAs. NALSA, instead of furnishing information itself, transferred the query to respective SLSAs for providing the information. None of the states were able to provide adequate responses to the questions asked. Neither minutes of the mandatory meeting to be held as per the Act nor any annual reports were submitted. None of the States were able to submit details regarding: (a) activities other than *lok adalats* or awareness camps; (b) number of people who were provided legal aid; and (c) classification of beneficiaries.

S. No.	States	Monetary Allocation	Expenditure	Percentage of Under Utilisation
1	Uttar Pradesh	State – INR 37,112,000	State – INR 32,419,466	Total: 44.88%
		NALSA – INR 21,706,000	NALSA – NIL	
		Total – INR 58,818,000	Total – INR 32,419,466	
2	Odisha	State – INR 1,887,131	State – INR 1,620,297	SLSA: 14.14%
		NALSA – INR 4,500,000	NALSA – INR 2,917,767	NALSA: 35.16%
		NREGS* – INR 1,500,000	NREGS – INR 94,437	NREGS: 93.7%
		Micro legal literacy – INR 1,440,000	Micro legal literacy – INR 764,382	Micro legal literacy: 46.92 %
3	Jharkhand	State – INR 6,000,000	State – INR 3,056,447	SLSA: 49.06%
		NALSA – INR 6,470,055	NALSA – INR 2,984,624	NALSA: 53.87%
4	Madhya Pradesh	State – INR 14,280,000	General – INR 5,937,264	SLSA: 58.42 %
		NALSA – INR 6,060,000	NALSA & NREGS – INR 768,000	NALSA: 87.33 %
		NREGS – INR 768,000		
		Micro legal literacy – INR 960,000	Micro legal literacy – INR 960,000	Micro legal literacy –

* National Rural Employment Guarantee Scheme

The above data reveals under utilisation of funds in four SLSAs, which suggests under performance of the legal services authorities. This is an area of concern since the need for SLSA's to function properly is very high. Under-performance results in the vulnerable groups remaining deprived of their right to justice. There is a need to have a computerised information management system that helps not just in ensuring accountability and transparency, but also in improving the quality of services.

Source: Centre for Social Justice

Number	Recommendation	Status
INADEQUATE LEGAL AID AND ASSISTANCE		
UPR 2		
122	Further promote equal access to justice for all, including by reducing backlog and delays in the administration of cases in court, providing more legal aids to the poor and marginalized. <u>(Deleted portion portion: as well as increasing the use of alternative measures for pre-trial detention)</u>	Accepted in revised form
47	Take adequate measures to guarantee and monitor the effective implementation of the Prevention of Atrocities Act, providing legal means for an increased protection of vulnerable groups like the Dalit, including the access to legal remedies for affected persons.	Not accepted

Lack of Witness Protection Programme

To date, India lacks a law or even a scheme for witness protection,³⁸⁶ except for a few provisions of the *Indian Evidence Act, 1872*. This fact was acknowledged by the Supreme Court in the case *NHRC v. State of Gujarat* (2003), where it said that “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”. To fill this gap, the Delhi High Court has developed principles of witness protection,³⁸⁷ however, none of them encompasses 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 – and cases against police officials for acts of custodial death and violence. The 198th Report (2006) of the Law Commission of India had recommended the adoption of a separate legislation for witness protection.³⁸⁸ It is important for India to adopt statutes on witness identity protection (seeking to protect the identity of victim-witnesses) and witness protection programs (aimed at the physical relocation and protection of witnesses).

Death Penalty

The UN General Assembly has repeatedly called on all retentionist States, most recently in December 2010, to “progressively restrict the use of the death penalty and to reduce the number of offences for which it may be imposed”, and to “establish a moratorium on executions with a view to abolishing the death penalty”.³⁸⁹ The continuation of awarding death penalty and the introduction of death penalty for death by torture under the PTB, contravenes these prescriptions.

³⁸⁶ See: Supreme Court, *NHRC v. State of Gujarat* (2003). 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).

³⁸⁷ *Neelam Katara v. Union of India*, Cri. W.P 247 of 2002, Judgment dated October 14, 2003, Delhi High Court

³⁸⁸ See: Law Commission of India, *198th report on witness identity protection and witness protection programmes*, 2006, available at: <http://lawcommissionofindia.nic.in/reports/rep198.pdf>

³⁸⁹ General Assembly Resolution 65/206, UN Doc A/Res/65/206 (2010). See also: General Assembly Resolution 62/149, UN Doc A/Res/62/149 (2008); General Assembly Resolution 63/168, UN Doc A/Res/63/168 (2009); Universal Declaration of Human Rights, article 3, adopted under General Assembly Resolution 217A (III); CRC, article 37(a); and ICCPR Article 6.

In the case of *Bachan Singh v. State of Punjab*, the Supreme Court laid down the policy of awarding capital punishment only in the “rarest of rare cases”.³⁹⁰ However, statistics show that there has been an increase, of late, in the number of death sentences awarded by the courts³⁹¹ with around 100 cases per year.³⁹² In addition, the number of offences punishable by death has also increased. The then President of India, Pratibha Patil, rejected the mercy petitions of Devinder Pal Singh Bhullar of Punjab, and Mahendra Nath Das of Assam in May 2011 and of Murugan, Santhan and Perarivalan in August 2011. On 10 August, 2011, the Ministry of Home Affairs (MHA) also advised the President to reject the mercy petition of Afzal Guru.³⁹³ In a top secret operation 25-year-old Mohammed Ajmal Amir Kasab, the lone surviving gunman of the 26/11 Mumbai terror attacks, was hanged in Pune’s Yerwada Central Jail on 21 November, 2012.³⁹⁴

The rationale of death sentence is also challenged by the wrongful sentencing of individuals as a result of the wrong appreciation of law in their cases. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions (SR EJE) after concluding his India mission in 2012 stated: “*It is a matter of concern that the death penalty may be imposed for a (seemingly growing) number of crimes that cannot be regarded as ‘the most serious crimes’ referred to in Article 6 of the ICCPR as internationally understood, namely crimes involving intentional killing*”.³⁹⁵ The Supreme Court’s awarding of a death sentence *per incuriam*,³⁹⁶ has led to many other people being wrongly sentenced to death. In 2009, the Supreme Court admitted in the case of *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra*,³⁹⁷ that it had sentenced a prisoner to death *per incuriam* in an earlier judgement awarded in *Ravji alias Ram Chandra v. State of Rajasthan*.³⁹⁸ The court further admitted that this judgement - which as a result of being *per incuriam* would not have been legally binding as a precedent - was cited in seven other cases by the Supreme Court itself, leading to the sentencing of 14 other prisoners to death.³⁹⁹ In *Dilip Premnarayan Tiwari v. State of Maharashtra*,⁴⁰⁰ the Supreme Court

390 See: (1980) 2 SCC 684.

391 See for example: CNN-IBN, *Hang those guilty in dowry death cases*: SC, June 1, 2009, available at: <http://ibnlive.in.com/news/hang-those-guilty-in-dowry-death-cases-sc/93882-3.html>; Indian Express, *Award death penalty for honour killings*: SC, May 9, 2011, available at: <http://www.indianexpress.com/news/award-death-penalty-for-honour-killings-sc/787987/>; The Times of India, *10 get death for honour killing*, June 9, 2011, available at: http://articles.timesofindia.indiatimes.com/2011-06-09/india/29638189_1_death-sentence-honour-penalty

392 Christof Heyns, *United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Press Statement*, Country Mission to India, 19-30 March 2012, available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12029&LangID=E>. See: Annex J.

393 The Economic Times, *Rajiv Gandhi assassination: President rejects mercy petition of killers*, August 11, 2011, available at: http://articles.economictimes.indiatimes.com/2011-08-11/news/29876186_1_mercy-petition-hara-kanta-das-mahendra-nath-das

394 Amruta Byatnal and Shoumojit Banerjee, *Kasab hangs, justice for 26/11 still elusive*, The Hindu, November 21, 2012, available at: <http://www.thehindu.com/news/states/other-states/ajmal-kasab-hanged/article4118491.ece>

395 Christof Heyns, *United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions, Press Statement*, Country Mission to India, 19-30 March 2012, available at: <http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=12029&LangID=E>. See: Annex J.

396 Literally meaning “*through lack of care*”, it refers to a decision of a court that is wrongly decided, because the judge was misinformed or ignorant of the law. A judgment *per incuriam* is not binding and has no authority under the principle of stare decisis (legal principle whereby judges are bound to follow precedents laid down by earlier judgments).

397 See: (2009) 6 SCC 498.

398 See: AIR 1996 SC 787.

399 See: *Shivaji alias Dadya Shankar Alhat v. The State of Maharashtra*, AIR 2009 SC 56; *Mohan Anna Chavan v. State of Maharashtra*, (2008) 11 SCC 113; *Bantu v. The State of U.P.*, (2008) 11 SCC 113; *Surja Ram v. State of Rajasthan*, 1997 Cri LJ 51; *Dayanidhi Bisoi v. State of Orissa*, 2003 Cri LJ 3697; *State of U.P. v. Sattan alias Satyendra and Ors.*, (2009) 4 SCC 736; *Ankush Maruti Shinde and Ors v. State of Maharashtra* (2009) 6 SCC 667.

400 See: (2010) 1 SCC 775

reaffirmed that the earlier judgement in *Ravji's* case was rendered *per incuriam*. As per information available, *Ravji* was executed on 4 May, 1996 and Surja Ram, who was sentenced to death as a result of the *Ravji* case, was executed on 7 April, 1997. The other 13 prisoners wrongly sentenced to death are still languishing in jail waiting decision on their mercy petitions which have been lying pending with the Governor/ President of India for many years. The case of *Ravji* has also been invoked as a precedent by various High Courts leading to people being sentenced to death.

Further, there is a disturbing trend of high incidence of poor persons represented by legal aid lawyers being wrongly sentenced to death. For instance, 10 of the prisoners wrongly sentenced to death on the basis of the erroneous judgement in *Ravji's* case were too poor to afford legal representation and were represented by legal aid lawyers. Legal aid lawyers are paid as little as INR 2,000 (USD 40) in Mumbai to defend the accused in the Sessions Court or to argue a death sentence confirmation case in the High Court. The fee paid to legal aid lawyers in other states is even lower. Only Delhi has recently revised its legal aid rates to INR 12,000 (USD 240) for a murder trial. It is also in public knowledge that Afzal Guru accused in the Parliament attack case was sentenced to death after the legal fraternity resolved not to provide legal counsel and the court did not permit him counsel of choice.

Number	Recommendation	Status
DEATH PENALTY		
UPR 2		
91	Establish a moratorium on executions with a view to abolishing the death penalty.	Not accepted
92	Abolish capital punishment and commute existing death sentences to life imprisonments terms.	Not accepted
93	Respect the de facto moratorium on the death penalty which had been in place since 2004.	Not accepted
94	Consider abolishing the death penalty or establishing a moratorium.	Not accepted
95	Maintain de facto moratorium on executions and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights with a view to definitive abolishment of the death penalty.	Not accepted
96	Introduce as quickly as possible a de jure moratorium on executions.	Not accepted
97	Adopt a de jure moratorium on capital punishment with a view to abolishing the death penalty.	Not accepted
98	Establish an official moratorium against the death penalty and take the necessary measures in view of its abolition.	Not accepted
99	Study the possibility of repealing the death penalty from its legal regime.	Not accepted
100	Make the de facto moratorium into a permanent one with a view to abolishing the death penalty.	Not accepted
101	Consider adhering to the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.	Not accepted

B. Discrimination in Access to Justice

Number	Recommendation	Status
DISCRIMINATION (in general)		
UPR 1		
3	Continue energizing existing mechanisms to enhance the addressing of human rights challenges.	Accepted
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.	Accepted
UPR 2		
75	Put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including women, girls and children, as well as the Scheduled Castes and Scheduled Tribes and Minorities are well achieved.	Accepted
53	Enact comprehensive anti-discrimination legislation and ensure that there are adequate means of redress.	Not accepted
54	Establishment and implementation of a National Human Rights Plan which cover access to education and health, including aspects of sexual and reproductive health, as well as, concrete measures to eliminate violence against women.	Not accepted
65	Implement Treaty Body recommendations and develop a National Action Plan to eliminate all forms of discrimination.	Not accepted
71	Continue its efforts to eliminate discrimination against and empower marginalized and vulnerable groups particularly by ensuring effective implementation of relevant laws and measures through proper and active coordination among line ministries, national and state governments; by extending disaggregated data to caste, gender, religion, status and region; and by increasing sensitization and reducing discriminatory attitudes among law enforcement officers through human rights education and training.	Not accepted
72	Ensure that laws are fully and consistently enforced to provide adequate protections for members of religious minorities, scheduled castes, and adivasi groups, as well as, women, trafficking victims, and LGBT citizens.	Not accepted

Women

Discrimination against women is systemic in India, embedded in socio-cultural norms and laws that structure the family, community, workplace and the state policies. Son preference, which is entrenched in society, continues to lead to sex selection as well as many other forms of discrimination against women and girls. The *Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994*, and other measures have failed to curb the phenomenon. According to the provisional census of 2011, the sex ratio (the number of females per 1,000 males) for the 0-6 age group plummeted to 914 from 927 in the 2001 census. Haryana reported the worst sex ratio of 830 females in the country in the 0-6 age group.⁴⁰¹

⁴⁰¹ *The State of Human Rights in India: Asian Centre for Human Rights Joint Submission on Behalf of the People's Forum for UPR II, November 2011.*

Women and Family Laws

Family laws are codified with reference to religion and custom rather than constitutional rights.⁴⁰² Despite piece-meal legal reforms, women have unequal succession, inheritance, adoption, guardianship rights, and no right to matrimonial property (assets accumulated during the period of marriage). The state justifies this inequality as being essential to respect for minorities and for cultural diversity. As per UPR I Recommendation 17, India was requested to withdraw its reservations to Article 5 and 16 of CEDAW, undertake modification of customs that subordinate women, and review its refusal to interfere in religion-based family law. The Indian Government should reform religion-based family laws (Uniform Civil Code) to bring parity between spouses in divorce, matrimonial property, guardianship, and succession. 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.⁴⁰³

Discrimination against women is systemic in India, embedded in socio-cultural norms and laws that structure the family, community, workplace and the state policies.

Violence against Women

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. There were at least 213,585 cases of crimes against women including 22,172 rape cases, 29,795 cases of kidnapping and abduction, 8,391 cases of dowry deaths in 2010.⁴⁰⁴ Women are also targeted on account of their caste, sexuality, disability, and other status. Sexual violence against *Dalit* women is a systematic,⁴⁰⁵ way of enforcing status quo of the *Dalits* in the social order, and to reinforce the right of the upper caste to control and exploit the sexuality of *Dalit* women. The NCRB reported a total of 1,557 and 772 rape cases of SC and ST women respectively in 2011 with a disclaimer that number of Victims may be more than the cases reported in some states/UTs/cities. There are cases of kidnapping and abduction of SCs, with Uttar Pradesh alone accounting nearly 58.8% of the 616 cases for 2011. Notably, there is no disaggregated data collected on atrocities against *Dalit* women.⁴⁰⁶



McKay Savage

Stigma, systemic persecution, and violence against lesbians, transgenders, and women with disability occur with impunity with little or no legal redress. The targeting of middle-aged and elderly single women in tribal as well as non tribal

402 See: Concluding Observations of the Human Rights Committee: India, 1997, CCPR/C/79/Add. 81, para 17, available at: [http://www.unhcr.ch/tbs/doc.nsf/\(Symbol\)/CCPR.C.79.Add.81.En?OpenDocument](http://www.unhcr.ch/tbs/doc.nsf/(Symbol)/CCPR.C.79.Add.81.En?OpenDocument)

403 See: Concluding Comments to India from the Committee on the Elimination of Discrimination against Women (CEDAW), CEDAW/C/IND/CO/3, 2007, para 55.

404 National Crime Records Bureau, Crime in India, 2010

405 National Crime Records Bureau; Also see: Concluding Observations of the Elimination of Discrimination against Women: India, 2007, CEDAW/C/IND/CO/3, para 29

406 National Crime Records Bureau, *Crime Report 2011*, Chapter 7, available at: <http://ncrb.nic.in/index.htm>

communities as witches, leading to social stigma, displacement, economic boycott, torture and murder must be addressed through effective implementation of penal laws; and notably, measures that support, compensate and restore the victim that are currently not envisaged in policy frameworks.⁴⁰⁷ 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.⁴⁰⁸ It impacts the most marginalised women, and the official crime records, although under-reported, show prevalence in 13 states in India.⁴⁰⁹

The *Protection of Women from Domestic Violence Act, 2005* (PWDV Act) provides for protection orders to women victims of domestic violence through a mechanism of 'Protection Officers' and support services. Under the Act, domestic violence is widely defined and 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 as well as sisters, widows or mothers in the shared household. According to the fifth monitoring and evaluation report carried out by Lawyers Collective in 2012, even as this law has helped establish the normative principle that domestic violence is unacceptable. It has largely failed in its ambitious mandate. The Protection Officers, who are the key functionaries tasked with helping the victim access justice and support services, are either not appointed at all, and where they are, they are insufficiently qualified, lack resources to properly carry-out their duties. Often, the duties of a Protection Officer are assigned as an additional job to existing state functionaries. Generally, the police still consider acts of violence as a private family matter and do not provide accurate information and support to the victim, underlining their lack of orientation on the PWDV Act. Lack of support services and shelter for the victim are significant barriers to women's recovery from domestic violence.

Additionally, the lack of financial resources and poor budgetary allocations for implementation of this Act has weakened its effectiveness.⁴¹⁰ According to a budgeting exercise conducted by the Centre for Budget and Governance Accountability, as many as 19 states did not have a separate budget for the implementation of the PWDV Act, including states like Bihar, Rajasthan and Jharkhand that have reported a high incidence of domestic violence. The states where a separate budget for PWDV Act exists, the amount is too little to serve the goals of the Act, and sometimes not even utilised.

Sexual Violence and the Law

The Union Cabinet recently cleared the proposal for the introduction of the *Criminal Law (Amendment) Bill, 2012* in the Parliament. The bill however is flawed, inadequate and fails to introduce the much needed holistic reforms. There were no consultations with women's groups who have been pressing for law reform, submitting petitions

407 This is a reiteration of CEDAW Concluding Comments to India, CEDAW/C/IND/CO/3, 2007, para 26-27

408 See: 2nd NGO Shadow Report to CEDAW coordinated by NAWO, pages 16-17, available at: <http://www.nawoindia.org/Second-NGO-Shadow-Report-on-CEDAW.asp>

409 The National Crime Records Bureau (NCRB) statistics for the year 2010 recorded 182 murders in 11 states, however, the previous reports recorded the same number in 13 states.

410 Lawyers Collective Women's Rights Initiative, *Staying Alive: Fourth Monitoring and Evaluation Report 2010 on the Protection of Women from Domestic Violence Act, 2005*, page 51.

and recommendations to the earlier version, the *Criminal Law Amendment Bill, 2010*, and versions prior to that. The Bill has fatal infirmities. While it expands the definition of rape, it has introduced a highly problematic gender neutral definition. It seeks to make the perpetrator of sexual assault gender neutral in non-custodial situations, despite no empirical data for this. The women's groups and concerned citizens from across the country have rejected the Bill and petitioned the government to initiate consultations, calling for compressive amendments that address all forms of sexual assault, graded to cover the spectrum of grave to the lesser offences.

Rape investigation still requires medico forensic procedures 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 judgment, 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 proceedings.

Furthermore, there is no reparative justice for sexual violence in peace times or during riots, or conflicts. Although women's bodies are targeted and sexual violence inflicted during sectarian violence – involving targeting of one community by another – the rules of evidence or procedures to redress targeted sexual violence do not accommodate the specific circumstances in which this sexual violence occurs. It is therefore all the more crucial that the *Communal Violence Bill, 2011* under discussion (see section on Religious Minorities) includes reparative justice, victim-witness protection and command and superior responsibility to dismantle the existing impunity for sexual violence in law.⁴¹¹ The Bill should recognise the acute impact of communal and targeted violence on women and children and introduce crimes of sexual violence in the ambit of the IPC.⁴¹²

Violence against women (and men) in the name of 'honour' is a serious concern. Family members or community leaders ostracise and kill young couples, who chose a spouse against social, caste and community norms. Killings are frequently conducted with a collusion of the police with the family and the community⁴¹³ – even during the course of judicial proceedings. The Indian Government stated before the Upper House of Parliament in August 2010 that 560 couples have been threatened for marrying into a different caste since 2005. Out of these, a total of 121 persons were murdered including 48 in Uttar Pradesh, 15 in Delhi, 41 in Haryana and 17 in other states.⁴¹⁴ Most cases of 'honour' killings are registered as murder. The raising of the statutory age of sexual consent to 18 years under the recently enacted *Protection of Children from Sexual Offences Act, 2012*, criminalises consensual sexual activity amongst adolescents and young adults, making them more vulnerable to honor motivated retribution through the misuse of this law.

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.

411 This is a recommendation of CEDAW Concluding Comments to India, CEDAW/C/IND/CO/3, 2007, paras 24, 25, 26.

412 *Civil society groups reject NAC Communal Violence Bill draft, lay down key features for the new Bill* – Statement Issued at National Consultation on CV Bill, April 21, 2012, available at: <http://www.anhadin.net/article157.html>

413 PUDR 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).

414 IBNlive.com, *North Indians disapprove of honour killings: study*, August 15, 2010, available at: <http://ibnlive.in.com/news/north-indians-disapprove-of-honour-killings-study/128892-3.html>

Protection of the right to choice needs to be ensured uniformly across the country and changes are sought in the *Special Marriage Act, 1954* a secular civil marriage law codified without reference to religion, to allow young people fleeing their hometown to marry easily. At present, the statutory requirement of domicile and notice period deters couples from marrying under the civil law. The domicile condition make those who pursue their right to choose their partner ineligible to register in a new town, and the mandatory public notice exposes them to risk of violence, as it alerts community leaders and family members. Moreover, dowry deaths of women continue to be widespread, despite the *Dowry Prohibition Act, 1961*. A total of 24,946 dowry deaths were reported during 2008-10, of which 8,172 cases were reported in 2008, 8,383 cases in 2009, 8,391 in 2010 and 8618 in 2011.⁴¹⁵

Sexual Harassment of Women at Workplace

The Lower House of the Parliament passed the widely criticised *Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Bill, 2010*. The bill that has been passed retains the much critiqued chilling provision that seeks to penalise women for false complaints, defeating the very purpose sought to be achieved by the law. Further the purview of the bill has also been limited to certain sectors, excluding protection to agricultural labourers and women in the armed forces.⁴¹⁶

The Supreme Court, in a recent judgement⁴¹⁷, has also made it mandatory for all the States, Union Territories and the regulatory bodies to put in place legal mechanisms to implement the guidelines laid down in *Vishaka v. State of Rajasthan* which require the employers at the workplace to ensure prevention of sexual harassment of women. It has given the bodies mentioned above the leeway to revise existing laws or enact new laws to protect women from any form of indecency, indignity and disrespect at all places (in their homes as well as outside), prevent all forms of violence – domestic violence, sexual assault, sexual harassment at the workplace, etc; and provide new initiatives for education and advancement of women and girls in all spheres of life.

Human Trafficking

India ranks among the worst countries in tackling human trafficking,⁴¹⁸ impinging on the most disadvantaged socio-economic strata such as Scheduled Tribes, Scheduled Castes, other backward castes, ethnic minorities, tribal communities, undocumented migrant workers, stateless people or refugees. Child trafficking is endemic, with children being trafficked for a number of purposes within and outside India.⁴¹⁹

415 National Crime Records Bureau, Crime In India 2009, 2010 and 2011, available at: <http://ncrb.nic.in/>

416 The Hindu, *Women's groups sceptical about implementation of Bill*, September 4, 2012, available at <http://www.thehindu.com/todays-paper/tp-national/article3856442.ece>

417 *Medha Kotwal Lele and Others v. Union of India* (Writ Petition (Criminal) NOS. 173-177 OF 1999)

418 The Hindu, *India among worst ranked countries in tackling human trafficking*, June 16, 2010, available online at: <http://www.thehindu.com/news/article458420.ece>

419 See: HAQ: Centre for Child Rights, *Still Out of Focus, Status of India's Children 2008*, available at: <http://www.haqcrc.org/publications/status-indias-children-2008>

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 standards⁴²⁰ against trafficking. The *Immoral Traffic (Prevention) Act, 1956* (ITP Act) covers trafficking for prostitution alone, contrary to the Trafficking Protocol, which requires States to address trafficking into all forms of forced labour, slavery and servitude. Police led raid and rescue operations undermine the rights of victims,⁴²¹ who may be prosecuted for soliciting or engaging in sex work in public places even if they are coerced. Offences under the ITP Act 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. 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.⁴²² Relief, rehabilitation and compensation for victims are non-existent. The Indian Government national report for UPR II does not comment on these drawbacks of the ITP Act. Rather, it mentions its several "*significant efforts on the issue of human trafficking*" including the setting up of 104 local anti-trafficking units and increased numbers of convictions of people involved in human trafficking for forced labour.⁴²³

The rescue and rehabilitation of victims have remained unfriendly, despite the provision in the Act. Due to social and economic inequality, victims often find themselves back into the hands of the same or other traffickers. The landmark judgement in the case of *Prajwala v. Union of India*⁴²⁴ filed in the Supreme Court of India deals extensively on the issue of rescue and rehabilitation. The need for information, counselling, medical treatment and rehabilitation of victims is completely overlooked. The petition *Prerna v. Union of India* has questioned the existing system, the failure of implementation of enforcement agency, as well as the inadequate guidelines for rescue, relief, rehabilitation and implementation of various acts.⁴²⁵

The issue of trafficking has been overlooked by the judiciary as well as a result of underreporting of cases by the media. The present law allows criminals to escape with minimum punishment, while the inaction of the police in collecting evidences has rendered the cases weak. Culprits escape and the cases are treated with insensitivity by the machinery. Special courts to deal with cases of trafficking need to be established and judges who deal with the victims of assault need to have special and adequate training. There is a need for a legislation which sets out trafficking as a criminal offence and that covers trafficking, support and empower those who have been trafficked. The right to confidentiality and the right to representation have to be

420 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.

421 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-raids-a-concern-in-pune_700338.html

422 National Network of Sex Workers and Lawyers Collective HIV/AIDS Unit, *Sex Workers Meet Law Makers*, 2011, available at: <http://www.lawyerscollective.org/files/Report%20Sex%20workers%20meet%20Law%20makers.pdf>

423 *National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: India*, A/HRC/WG.6/13/IND/1, UN General Assembly, March 8, 2012, para 36.

424 Human Rights Law Network, *Anti-Trafficking PILs & Cases*, available at: <http://www.hrln.org/hrln/anti-trafficking/pils-a-cases/238-prajwala-v-union-of-india-.html>

425 Human Rights Law Network, *Anti-Trafficking PILs & Cases*, available at: <http://www.hrln.org/hrln/anti-trafficking/pils-a-cases/236-prerana-vs-union-of-india-a-others.html>

legally guaranteed, while measures need to be taken in order to minimise additional trauma, protect witnesses and victims from intimidation, and provide quick delivery of justice to those who have suffered. The number of Special Police Officers in every state who specifically work on the offences under ITP Act needs to be adequate combined with adequate training.

Number	Recommendation	Status
WOMEN		
Gender equality		
UPR 1		
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.	Accepted
13	Strengthen human rights education, specifically in order to address effectively the phenomenon of gender-based and caste-based discrimination.	Accepted
16	Fully integrate a gender perspective in the follow-up process to the UPR.	Accepted
UPR 2		
74	Address the inequities based on rural-urban divide and gender imbalance.	Accepted
75	Put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including women, girls and children, as well as the Scheduled Castes and Scheduled Tribes and Minorities are well achieved.	Accepted
76	Continue working on the welfare of children and women.	Accepted
77	Continue <u>its efforts with regard to education for children</u> and take the necessary measures to <u>allow women to participate on an equal footing with men in all developmental efforts.</u> ⁶	Accepted in revised form
79	Continue legal efforts in the protection of women as well as children's rights as well as improve measures to prevent violence against women and girls, and members of religious minorities.	Accepted
81	Redouble efforts on ensuring gender equality and take measures to prevent gender discrimination.	Accepted
82	Re-examine the budgets and social laws taking into account gender issues.	Accepted
83	Continue incorporating the gender perspective in programmes and development plans with positive measures to the effective promotion and protection of women's rights.	Accepted
84	Continue to promote its many initiatives for the eradication of all forms of discrimination against women.	Accepted
86	Continue following-up on steps taken to eliminate discrimination against women, including through awareness-raising and continuous strengthening of the relevant legal and institutional frameworks.	Accepted
87	Continue to promote the rights of women in their choice of marriage and their equality of treatment independent of caste and tribe or other considerations.	Accepted
130	Provide more resources for the enjoyment of economic and social rights, especially in favour of vulnerable groups like women, children, poor people and minorities.	Accepted
144	Continue to advance the progress already underway on poverty eradication and improve the enjoyment of the most basic human rights of the people, especially women and children.	Accepted
162	Continue implementing a non-discriminatory and inclusive policy and guarantee quality education to all girls and boys in the country.	Accepted

Number	Recommendation	Status
Political Participation of Women		
UPR 2		
80	Improve women empowerment and emancipation, and provide them with a bigger role to play in the society.	Accepted
37	Consider expediting the process to pass the 108th Constitutional Amendment Bill which seeks to reserve a significant portion of seats for women at the Lower House and state legislative assemblies and consider the ratification of the Optional Protocol to Convention on the Elimination of All Forms of Discrimination against Women.	Not accepted
42	Enact those Accepted bills that are aimed at empowering women, including the women's Reservation Bill and the amendments to Panchayati Raj Act.	Not accepted
CEDAW		
UPR 1		
6	Consider signature and ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.	Accepted
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.	Accepted
UPR 2		
2	Intensify efforts towards the MDG 5 by ensuring access to information and counseling on SRHR as set out in the National Population Policy. (Deleted portion: including by withdrawing its reservation to Article 16 in Convention on the Elimination of All Forms of Discrimination Against Women)	Accepted in revised form
19	Ratification of the Optional Protocol to the Convention on the Elimination of Discrimination against Women.	Not accepted
21	Consider signature and ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.	Not accepted
22	Remove reservations to the Article 16(1) of the Convention on Elimination of All Forms of Discrimination against Women.	Not accepted
23	Withdraw its reservations to Convention on the Elimination of All Forms of Discrimination against Women and consider signing and ratifying its Optional Protocol.	Not accepted
37	Consider expediting the process to pass the 108th Constitutional Amendment Bill which seeks to reserve a significant portion of seats for women at the Lower House and state legislative assemblies and consider the ratification of the Optional Protocol to Convention on the Elimination of All Forms of Discrimination against Women.	Not accepted
38	Consider signing and ratifying the Optional Protocol to Convention on the Elimination of All Forms of Discrimination against Women.	Not accepted
Violence against Women		
UPR 2		
79	Continue legal efforts in the protection of women as well as children's rights as well as improve measures to prevent violence against women and girls, and members of religious minorities.	Accepted
106	Take the necessary legislative, civil and criminal measures to provide the appropriate protection to women, and children that are victims of sexual abuse.	Accepted
155	Intensify its efforts to sensitize and train medical professionals on the criminal nature of prenatal sex selection with a view to ensuring stringent enforcement of the legal prohibition of such practice.	Accepted
41	Enact comprehensive reforms to address sexual violence and all acts of violence against women, including "honour" crimes, child marriage, female feticide and female infanticide, and to remedy limitations in the definition of rape and the medico forensic procedures Accepted for rape cases.	Not accepted

54	Establishment and implementation of a National Human Rights Plan which cover access to education and health, including aspects of sexual and reproductive health, as well as, concrete measures to eliminate violence against women.	Not accepted
85	Further strengthen measures to eliminate traditional harmful practices which are discriminatory against women and girls in particular child marriages, dowry related murders and honour killings.	Not accepted
88	Strictly enforce the legal provisions prohibiting harmful and discriminatory practices that violate the rights of women and girls, and that it undertake effective public education measures, including awareness-raising programmes designed to eliminate gender-based prejudices, traditional practices and provisions of personal status laws that are harmful and discriminatory to women and girls.	Not accepted
105	Adopt comprehensive legislation on fighting all forms of sexual harassment in relation to women and children.	Not accepted
Trafficking in Women and Children		
UPR 2		
107	Accelerate efforts on combating human trafficking.	Accepted
108	Reinforce efforts to protect and rehabilitate the victims of trafficking.	Accepted
111	Implement monitoring mechanisms to stop people trafficking.	Accepted
72	Ensure that laws are fully and consistently enforced to provide adequate protections for members of religious minorities, scheduled castes, and adivasi groups, as well as, women, trafficking victims, and LGBT citizens.	Not accepted
109	Continue stepping up efforts in the area of fighting trafficking as well as consider the possibility of inviting the Special Rapporteur on trafficking in persons, especially in women and children, to visit the country.	Not accepted
110	Continue to strengthen its efforts to combat trafficking in persons by providing the necessary budget to establish a larger number of local bodies to combat this scourge.	Not accepted
Family Laws		
UPR 2		
87	Continue to promote the rights of women in their choice of marriage and their equality of treatment independent of caste and tribe or other considerations.	Accepted
31	Amend the Special Marriage Act before its next review.	Not accepted
41	Enact comprehensive reforms to address sexual violence and all acts of violence against women, including "honour" crimes, child marriage, female feticide and female infanticide, and to remedy limitations in the definition of rape and the medico forensic procedures Accepted for rape cases.	Not accepted
85	Further strengthen measures to eliminate traditional harmful practices which are discriminatory against women and girls in particular child marriages, dowry related murders and honour killings.	Not accepted
88	Strictly enforce the legal provisions prohibiting harmful and discriminatory practices that violate the rights of women and girls, and that it undertake effective public education measures, including awareness-raising programmes designed to eliminate gender-based prejudices, traditional practices and provisions of personal status laws that are harmful and discriminatory to women and girls.	Not accepted

Lesbian, Gay, Bisexual, Transgender and Intersex (LGBTI)

Until recently, homosexuality was criminalised by the law and was punishable with a maximum of life sentence, by section 377 of the IPC, leading to multiple levels of stigma, discrimination, and violence, without recourse to the law.⁴²⁶ The threat of criminality routinely exposed the transgender and gay men to abuse, violence, extortion and blackmail. Gays and lesbians are forced to compulsory heterosexuality, through marriage under family-community pressure, stigma and criminal charges for exercising choice, eviction and violence result a high rate of suicide.⁴²⁷ In 2009, homosexuality was de-criminalised by the Delhi High Court,⁴²⁸ a landmark step in addressing the worst form of criminalisation and a laudable achievement in terms of affirmation of the rights to life and non-discrimination to all persons regardless of sexual orientation and gender identity. Stigma and discrimination however continue and are common in the family, in housing, employment and other areas of public sphere. Reports of persecution at the workplace, eviction, harassment and murder continue with impunity (see following case study).

The landmark High Court judgment is under appeal in the Supreme Court, challenged by conservative sections of society who seek its reversal. Despite this threat, the state abdicated its role to defend the judgement at the Supreme Court, relegating defence of human rights of the LGBTI to civil society. However, during the hearings, the Indian Government's stand on the Delhi High Court's judgment has been ambivalent. On 23 February 2012, the Additional Solicitor General, representing the Indian Government, called homosexuality 'immoral' before the Supreme Court.⁴²⁹ Later, on 28 February 2012, the Indian Government stated that it did not find any 'legal error' in the judgment of the Delhi High Court decriminalising homosexuality and 'accepts the correctness of the same'.⁴³⁰ The Supreme Court noted that the Indian Government was making a "*mockery of the system and wasting the court's time*" by adopting contradictory stands on the issue.⁴³¹

426 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. For more details see: 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; People's Union for Civil Liberties (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). Also 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), pages 62-72. See also: Devaki Menon, coordinator of a lesbian support group, Sahayatrika (Kerala), in *India Today*, December 25, 2002

427 Partners for Law in Development, *Rights in Intimate Relationships: Towards an Inclusive and Just Framework of Women's Rights and the Family*, 2010 (New Delhi), pages 62-72. Also see: Devaki Menon, coordinator of a lesbian support group, Sahayatrika (Kerala), in *India Today*, December 25, 2002

428 *Naz Foundation India v. Government of NCT of Delhi and others*, (2009) 160 DLT 277

429 Lawyers Collective, *News from Section 377 Arguments before the Supreme Court*, available at: <http://www.lawyer-collective.org/news/141-news-from-section-377-arguments-before-the-supreme-court.html>

430 Lawyers Collective, *Anti-gay law is offshoot of British Colonialism: Centre to Supreme Court*, available at: <http://www.lawyerscollective.org/news/149-anti-gay-law-is-offshoot-of-british-colonialism-centre-to-supreme-court.html>

431 Lawyers Collective, *News from Section 377 Arguments before the Supreme Court*, available at: <http://www.lawyer-collective.org/news/141-news-from-section-377-arguments-before-the-supreme-court.html>

CASE STUDY

Professor Siras: A Case of Violation of Privacy, Housing, Employment, Defamation and Uninvestigated Death⁴³²

On 9 February 2010, newspapers widely reported the story of Dr. Shrinivas Ramchandra Siras, a 64 year old Reader & Chairman at the Department of Modern Indian Languages in Aligarh Muslim University (AMU) being filmed having consensual sex with another adult male within the confines of his residence. The professor had taught for 22 years at AMU and was on the verge of his retirement.

The day before, a friend (a legal adult) with whom he was having an intimate relationship went to his residence at 6.30 pm. After the arrival of the friend, Dr. Siras sat in the drawing room and chatted for some time and then they went into the bedroom. Without the awareness and permission of Dr. Siras, three people entered his flat with cameras. While intruders permitted the professor's friend to get dressed and leave, they refused to allow him to even wear his clothes. The intruders threatened him, forced him to remain undressed and coerced him into standing in various positions in order to take pictures. They told him that they were from the press and that they were going to publish the pictures. Just as Dr. Siras was pleading with the three persons not to publish the pictures some of the professors from AMU entered his house. Dr. Siras had never called for any help or invited any of the professors to his house that day. The person claiming to be from the press asked Prof. Siras to admit in front of the Proctor that he was having homosexual sex and then they would delete the recording. Dr. Siras apologised and the Proctor told him not to worry and that nothing would happen on the matter.

The next day, the incident was reported in many newspapers and Dr. Siras was shocked when that very day he was served with a suspension notice by AMU and was ordered to vacate his official residence allotted by the University. On 24 February, the University served Dr. Siras with a charge-sheet with the formal charge against him being that he *"has committed act of misconduct in as much as he indulged himself into immoral sexual activity and in contravention of basic moral ethics while residing in Quarter No. 21-C, Medical College, AMU, Aligarh thereby undermined the pious image of the teacher community and as a whole tarnished the image of the University"*. Dr. Islam and Dr. Khan, AMU faculty members and RTI activists, were of the opinion that there was a strong probability of the TV crew being in cahoots with the University administration, as no TV crew would have normally entered the premises of a faculty member without the permission of the University authorities.

The AMU administration committed several violations in this case: breach of Dr. Siras privacy, which is a blatant violation of a constitutional right guaranteed under Art. 21 (right to liberty); breach of the Delhi High Court landmark decision that decriminalised homosexuality⁴³³ among consenting adults;⁴³⁴ violation of his right to employment and housing; and consistent defamation. In March 2010, Dr. Siras went repeatedly to the police station to file a First Information Report (FIR) for the various offences perpetrated against him, including criminal intimidation, assault, trespass and wrongful confinement. However, after repeated efforts the police have refused to file his FIR, thereby, failing to perform their duty of filing an FIR upon the receipt of a complaint which discloses the commission of a cognizable offence.

Despite the trauma and harassment that Prof. Siras was subjected to, he filed a case at the Allahabad High Court and challenged the actions of AMU administration as violations of his civil liberties.⁴³⁵ The Allahabad High Court stayed his suspension and his unlawful removal from his campus residence on 1 April 2010.⁴³⁶ Despite this order, the AMU administration failed to immediately issue an office memo revoking the suspension of Prof.

432 Policing Morality at AMU: An Independent Fact Finding Report, March, 2010

433 Homosexuality was a criminal offence under Section 377 of the Indian Penal Code

434 Naz Foundation v. Government of NCT of Delhi and Others, WP(C) No.7455/2001, July 2, 2009

435 See: Writ Petition No. 17549 of 2010, *Dr. ShrinivasRamchandraSiras v. Aligarh Muslim University*, Lawyers Collective, available at: <http://www.lawyerscollective.org/files/Siras%20Final%20Petition.pdf>

436 See: Order dated 1.4.2010 in Writ Petition No. 17549 of 2010, *Dr. ShrinivasRamchandraSiras v. Aligarh Muslim University*, Lawyers Collective, website, available at: <http://www.lawyerscollective.org/files/Siras%27%20Order.pdf>

Siras. The professor was found dead at his Aligarh residence on 7 April 2010. The post mortem states that the cause of his death was ‘unnatural’. The culpability of the AMU authorities in this incident has not been investigated and no measures have been taken to grant justice. The blatant invasions of Prof. Siras’ privacy, the University’s connivance in the so-called ‘media sting operation’, trespassing, criminal intimidation and subsequent authoritarian action of suspending and evicting him from his AMU residence, raised many concerns about the collective vulnerability of the LGBTI community in India to violations.

Number	Recommendation	Status
LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX		
UPR 2		
89	Study the possibility of eliminating any criminalisation of same sex relations.	Accepted
72	Ensure that laws are fully and consistently enforced to provide adequate protections for members of religious minorities, scheduled castes, and adivasi groups, as well as, women, trafficking victims, and LGBT citizens.	Not accepted
90	Take measures to address violence and discrimination directed towards persons based on their sexual orientation, especially related to employment.	Not accepted

Children

Unable to represent themselves, children fall lowest in what could be referred to as a ‘hierarchy of human rights’. The last two decades have seen some progress in the recognition of children as right-holders, but these changes may be more on paper than on the ground. The establishment of a full-fledged Ministry for Women and Child Development in 2006 is officially claimed as an advance, but the evidence is ambiguous. Children’s rights are addressed through 57 laws and 60 legal provisions in the IPC, the CrPC and the *Indian Evidence Act, 1872*. There are nine policy documents impacting their lives including the *National Policy for Children, 1974* and the *National Plan of Action (NPAC), 2005*. In addition, many goals and targets were set out under Five Year Plans, 73 Central government’s budgeted programmes and schemes for children, operational through nine Ministries, a National Commission for Protection of Child Rights and 12 State Commissions. In child development, the focal Ministry is preoccupied with the below six age group, and neither programming nor monitoring focus adequately on older children. It is mistakenly assumed that children above six years must be in school, and even more mistakenly assumed that children in school are prospering in all respects. It is important to understand that negligence and failure in social development attention are human rights lapses and failures, not just welfare mistakes.

Among areas of concern requiring immediate attention, the lack of a uniform definition of the ‘child’ in policy and law stands out. The *National Policy for Children* is as outdated as 1974, while the NPAC needs to be replaced by a new action plan, as most of its goals were set out to be met by 2010 but with no significant progress reported as yet. The NPAC needs to be supported by state plans. However, only 17

states⁴³⁷ seem to have had some plans of action in place for children and most of these are outdated.

The first and primary human rights challenge children in India face is the right to life – to be born alive, stay alive, be assured of a good quality of survival, with due defence against disease, malnutrition and both physical and social hazards. This right is by no means assured to the majority of children. Its realisation depends on conscious adherence to the principles set out in the Constitution, and echoed in the *National Policy for Children, 1974* (now slated to be superseded by a new policy). To date, national investment in health, nutrition, safe water and sanitation, as well as in basic life-saving and life-guarding services, has fallen far short of need. The result is that infant and early childhood deaths are the largest single chunk of mortality, with the highest toll occurring in the first day. Mortality rates for the first month and first year are also disproportionately high. While the population segment aged up to 18 years constitutes 41% of the Indian population, the GDP share of central budgeting allocated for them has never exceeded 5%.

There is official concern at the steady decline in the female-male sex ratio in the 0-6 age group, and the fall from 927/1000 to 914/1000 from 2001 to 2011 is a cause for alarm. While these decline figures are attributed to female foeticide, data is not clear on infanticide or on the ratio – and its causes – at each year up to the age of five years. National Crime Records Bureau's Crime Report 2011⁴³⁸ shows a decrease in infanticides (37%) from the previous year and an increase in foeticides (19%) but the figures only reflect cases reported or detected.

Child Marriage

The earlier *Child Marriage Restraint Law, 1929*, was replaced with the *Prohibition of Child Marriages Act, 2006*. However, the inadequacy of this Act lies in the fact that if the marriage is not prevented, it can remain legal till the boy (at the age of 21) or the girl (at the age of 18) seeks an annulment. This is most unlikely to happen in a country like India. This effectively defeats the child's right to return to being just a child; it surely violates the right to childhood. Many marriages are not registered, and estimates still indicate that as many as 40% of 'ever-married women' become brides before reaching 18 years.

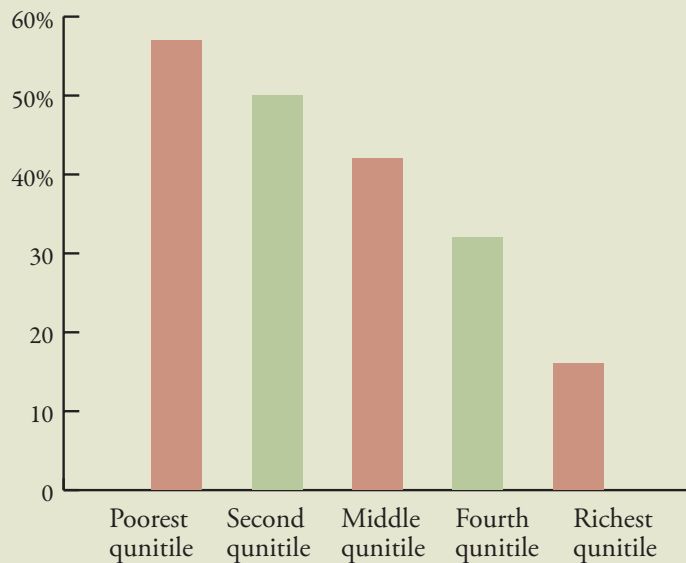
The National Family Health Survey (NFHS) – 3 (2004-05) shows 27.1% of children aged 15-19 years as married. India set itself a goal of achieving 100% registration of births, deaths and marriages in the year 2000 and 2005, with an additional goal of eliminating child marriages by 2010. The goals are yet to be achieved as the law does not have a deterrent effect. Registration of marriages is not compulsory in all states while reports suggest that even where it is, child marriages get registered despite the existence of the law prohibiting it.

437 These states include Assam, Arunachal Pradesh, Bihar, Delhi, Haryana, Himachal Pradesh, Karnataka, Kerala, Maharashtra, Manipur, Meghalaya, Mizoram, Orissa, Punjab, Rajasthan, Tamil Nadu and West Bengal.

438 National Crime Records Bureau, Crime in India 2011

Girls from poorer households are more likely to be married as children than girls from richer households

Percentage of women 20-24 years old who were married or in union before age 18, by household wealth quintile



Note: Estimates by household wealth quintile are based on 75 countries representing 5.1% of the world's population.

Source: MICS, DHS and other national surveys, 1995-2007

Juvenile Justice

The *Juvenile Justice (Care and Protection) Act, 2000* (JJ Act), which was amended in 2006, is the only law in the world based on a preventative approach to juvenile justice. It identifies two sets of children: those 'in need of care and protection' and those 'in conflict with the law'. However, poor implementation of the law, lack of support structures,⁴³⁹ low conviction rates and inadequate resources lead to derailment of justice. In furtherance of the principles of diversion, restorative justice and best interests of the child, the *Juvenile Justice (Care and Protection of Children) Rules, 2007* were framed by the centre, however, states were required to frame their own rules in consonance with the central ruling. The exact status of formulation of *State Juvenile Justice Rules as per Central Model Rules, 2007* is not available, although information gathered from various sources suggests that the states of Delhi, Gujarat, Karnataka, Madhya Pradesh, Maharashtra, Orissa, Rajasthan and West Bengal have notified new rules. Jharkhand, Tamil Nadu and Uttar Pradesh, have adopted the central rules of 2007, Haryana approved new rules on 22 August, 2009 without notifying them, while in Andhra Pradesh draft rules were framed in 2009 but are yet to be notified. Further, despite the proactive orders of the Supreme Court of India⁴⁴⁰ requiring Child Welfare Committees (CWCs)⁴⁴¹ and Juvenile Justice

439 For example, the Juvenile Justice Act requires setting up Juvenile Justice Boards and Child Welfare Committees in all districts.

440 *Sampurna Behura v. Union of India and Others* [WP (Civil) No. 473/2005] and *Bachpan Bachao Andolan v. Union of India* [WP (Civil) No. 51/2006]

441 CWCs are meant to receive children in need of care and protection and to make appropriate orders for their rehabilitation, restoration and reintegration using their powers as a bench of magistrates.

Boards (JJBs)⁴⁴² to be set up in every district under the JJ Act, only 14 states and 4 Union Territories are reported to have established such bodies.

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. According to the response received from Jail No.7, Tihar Jail, New Delhi, 113 children were transferred from the said jail to respective observation homes between October 2010 and August 2011. J&K has only one juvenile home for boys at Ranbir Singh (R.S.) Pura in Jammu. Juvenile girls are sent to police lock-ups or prisons in the absence of a single juvenile home for girls in J&K. Juveniles in Kashmir are detained with adults in prisons and tried as adults due to non-implementation of the *J&K Juvenile Justice Act, 1997*.⁴⁴³

The legal requirement of establishment of *Special Juvenile Police Units* (SJPU) in every district and designation of at least one police officer in every police station as *Juvenile Welfare Officers* (JWOs) is also not fulfilled. There are no JWOs appointed, as the police department employs the entire force for all kind of duties, varying from security for VIP movement to general law and order. Besides, for example, in Chhattisgarh, the government continues to recruit children of the police personnel killed on duty as '*balarakshaks*' (Child Guards) and these children cannot attend schools for at least three days a week.⁴⁴⁴ JWOs also handle other cases in addition to those registered under the JJ Act, therefore it is difficult to be present in the JJB/CWC with the concerned child. JWOs and SJPU members need appropriate training and sensitisation to handle children's cases. Although the law provides for two social workers in the SJPU, they are yet to be appointed in many places.

Crimes against Children

Crimes against children have shown a 120% increase between 1999 and 2009 and 60.5% increase in the last five years.⁴⁴⁵ The ratification of the *UN Convention against Transnational Organised Crime* and its two protocols, especially the *UN Protocol to Prevent, Suppress and Punish Trafficking in Persons, Especially Women and Children* (also referred to as the *Palermo Protocol*), is a positive step. However, India is yet to formulate a comprehensive law on all forms and purposes of child trafficking along the lines defined by the *Palermo Protocol*. As of now, the only law that deals with trafficking for sexual exploitation, in particular, prostitution is the *Immoral Traffic (Prevention) Act, 1956* (ITP Act). However, amendments to this Act have been pending for some years now.

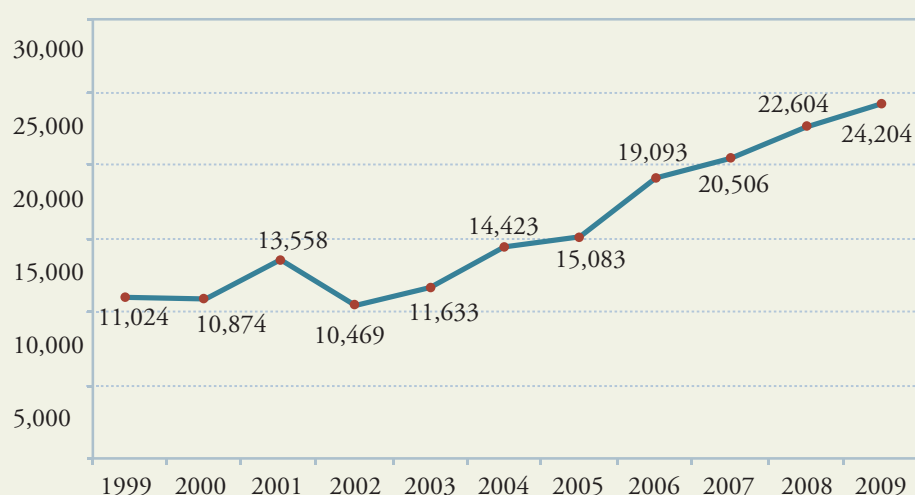
442 Juvenile Justice Boards (JJB) have to deal with all crimes allegedly committed by children, children's right to bail, speedy inquiry and suitable rehabilitation.

443 Asian Centre for Human Rights, *Juveniles of J&K: Unequal before the Law & Denied justice in Custody*, November 16, 2011, available at: <http://www.achrweb.org/reports/india/JJ-J&K-2011.pdf>

444 The Sentinel, *Chhattisgarh's 'child cops' skip school for police duty*, April 6, 2011, available at: <http://www.sentinel-lassam.com/nationalmain.php?sec=2&subsec=3&ppr=1&dtP=2011-04-06>

445 National Crime Records Bureau, *Crime in India 1999-2009*.

Incidence of crime against children



Source: National Crime Records Bureau, *Crime in India 1999-2009*

Table-Crimes against Children in the country and per cent variation in 2011 over 2010					
SNo.	Crime Head	Year			% Variation in 2011 over 2010
		2009	2010	2011	
1.	Murder	1,488	1,408	1,451	3
2.	Infanticide	63	100	63	-37
3.	Rape	5,368	5,484	7,112	30
4.	Kidnapping & Abduction	8,945	10,670	15,284	43
5.	Foeticide	123	111	132	19
6.	Abetment of Suicide	46	56	61	9
7.	Exposure & Abandonment	857	725	700	-3
8.	Procuration of Minor Girls	237	679	862	27
9.	Buying of Girls for Prostitution	32	78	27	-65
10.	Selling of Girls for Prostitution	57	130	113	-13
11.	Other Crimes (including Prohibition of Child Marriage Act 2006)	6,985	7,253	7,293	1
	Total	24,201	26,694	33,098	24

Source: National Crime Records Bureau, *Crime in India 2011*

Child Sexual Abuse⁴⁴⁶

Various studies in India have indicated high prevalence of child sexual abuse. 53.22% of children have reported some form of sexual abuse, amongst which 52.94% were boys and 47.06% were girls. Abuse started at the age of 5 years, with the incidence increasing with age, peaking at 12 to 15 years.⁴⁴⁷

⁴⁴⁶ Source (summary): HAQ: Centre for Child Rights and Terre des Hommes, 20 years of CRC – A Balance Sheet. Volume II.

⁴⁴⁷ Ministry of Women and Child Development, Government of India, *Study on child abuse: India, 2007*.

Sexual abuse is reported under rape and incest by the NCRB but only in the context of girls. The NCRB does not maintain data on sexual abuse of boys, as it is not covered under the IPC, creating serious gaps in data. Sexual abuse of boys is registered under Section 377 of the IPC, which criminalises homosexuality (see section on LGBTI).

A study conducted in 2006 showed that almost 48% of boys and 39% of girls among the respondents had reported sexual abuse,⁴⁴⁸ thwarting the belief that mainly girls are sexually abused. Street boys are not the only victims of sexual abuse. In the past couple of years there have been several reports on incidences of boys being abused under state care, in children's homes. For example, in May 2007 five boys, younger than 10 years old, were allegedly sodomised in a children's home in Delhi.⁴⁴⁹ Sexual abuse of boys and girls in coastal areas and tourist destinations is a serious issue as it is linked to the lucrative tourism industry.⁴⁵⁰ The challenge is equally great in other cases of child sexual abuse as the law is weak, enforcement is poor and there is lack of awareness.

Sexual exploitation in the name of religion is also rampant in parts of the country. The *Devadasi*⁴⁵¹ system remains common in the poorest towns and villages of provinces of the states like Karnataka and Andhra Pradesh.⁴⁵² The *Karnataka Devadasis (Prohibition of Dedication) Act, 1982* and *Rules, 1987* were meant to abolish the system but lack of awareness among the victims and the enforcement authorities impede its implementation. Moreover, rehabilitation programmes are *ad hoc* and insufficient as they do not provide adequate means of livelihood and skill development for victim-survivors.⁴⁵³ The *Devadasi* system is particularly prevalent in 10 districts of northern Karnataka and 14 districts in Andhra Pradesh. The NALSA stated that 250,000 girls had been dedicated as *Devadasis* to temples on the Maharashtra-Karnataka border,⁴⁵⁴ including 16,624 girls from Andhra Pradesh, 22,941 from Karnataka and 2,479 from Maharashtra. The remoteness of many of the villages, and the continuing rise in demand from organised traffickers for young girls, is thwarting efforts to combat the system.⁴⁵⁵

448 TULIR, *Doesn't every child count? Prevalence and dynamics of child sexual abuse disclosed among school the Indian Governmenting children in Chennai*, February 2006, available at: <http://www.tulir.org/images/pdf/Research%20Report1.pdf>

449 Thaindian News, *Five minor boys sodomised in children's home*, May 4, 2007, available at: http://www.thaindian.com/newsportal/uncategorized/minor-boy-sodomised-murdered_100566941.html

450 Nishta Desai, *See the Evil: A study on tourism related paedophilia*, VAK, Goa 2001, 2004.

451 Literally meaning 'female servant of god', *Devadasis* usually belong to the *Dalit* community. Once dedicated, the girl is unable to marry, forced to become a prostitute for upper-caste community members, and eventually auctioned into an urban brothel. – Human Rights Watch, available at: http://www.hrw.org/reports/1999/india/India994-09.htm#P1695_354939

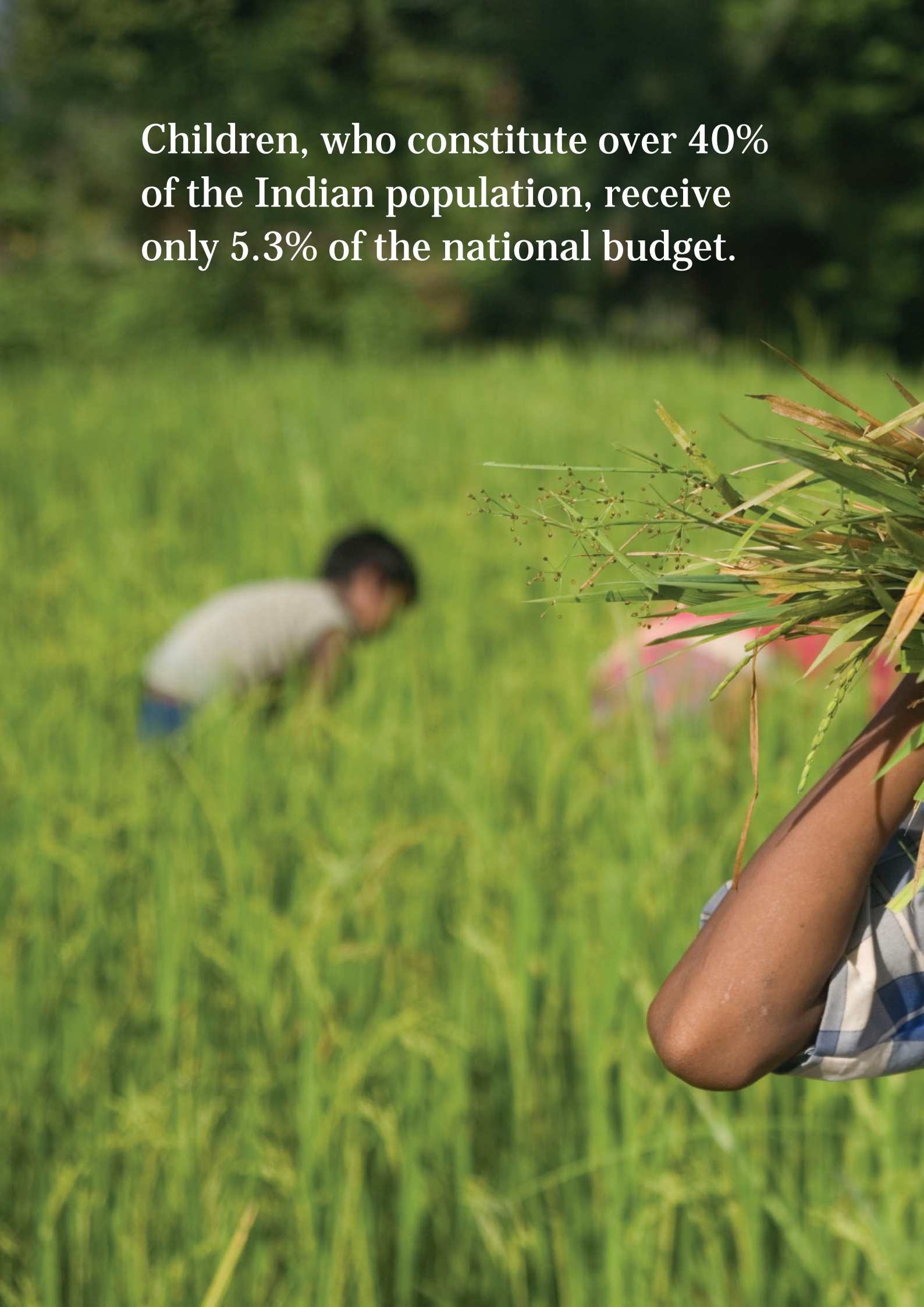
452 The Hindu, *Project Combat, launched to eradicate 'Devdasi system'*, January 30, 2006, available at: <http://www.hindu.com/2006/01/30/stories/2006013020130300.htm>

453 Ibid

454 Ibid

455 The Guardian, *Why India's 'devadasi' girls face a wretched life in the name of religion*, January 22, 2011, available at: www.guardian.co.uk/world/2011/jan/22/india-sex-exploitation-girls-devadasi. See also: The Guardian, *Devadasis are a cursed community*, January 21, 2011, available at: www.guardian.co.uk/lifeandstyle/2011/jan/21/devadasi-india-sex-work-religion

Children, who constitute over 40% of the Indian population, receive only 5.3% of the national budget.





India is presently in the process of adopting a *Protection of Children from Sexual Offences Bill, 2011* that aims to prevent and protect children from sexual assault, sexual harassment and pornography. In its present form, the Bill has many positive features: it is gender-neutral; it treats sexual offences committed by persons in authority or positions of trust as aggravated sexual offences; it considers the physical/mental disability and the long-term after-effects of the injury inflicted; it provides special provisions for preventing pornographic abuse or even possession of such material; and it also places the media, studio and photographic facilities under obligation to report such matters. While there is general appreciation for the new Bill, there are certain concerns regarding its enforceability. The Bill raises the age of consent to 18 years, which may lead to criminal action even in cases of consensual activity amongst young persons. It penalises false reporting but limits it to malicious intent, which may prove to be deterrent in a country where sexual abuse is rarely reported. The Bill does not lay down the procedures for appeal, review and revision and is not backed up with a Financial Memorandum that could ensure adequate investment in the implementation of the law. The Bill was tabled in Parliament for the second time in April 2012 after being amended by a Parliamentary Standing Committee.⁴⁵⁶

Trafficking of Children

Trafficking of children, boys and girls, within and across the country continues in many forms, and for many purposes, such as labour, begging, sexual exploitation, pornography, child marriage, adoption and organ trade. Ostensibly legal means such as 'marriage' or 'adoption' are used for buying and selling of children. Trafficking of girls alone has shown a 31% increase between 1999 and 2009,⁴⁵⁷ while trafficking of boys for sexual purposes is on the rise as well.⁴⁵⁸ Many girls from Nepal and Bangladesh are trafficked into India for sexual exploitation.⁴⁵⁹ Children from Nepal are also trafficked to work in embroidery factories, carpet factories, brick kilns and in quarries.⁴⁶⁰ There are no exact figures for the number of children trafficked each year in India. The number of trafficked persons is difficult to determine as bribery and corruption that surround the practice render an estimate of its magnitude virtually impossible.⁴⁶¹

The traditional belief that poverty is the only cause of trafficking is now being challenged by other factors, such as displacement, conflict and gender discrimination which, coupled with economic insecurity, allow the practice to be continued. Social exclusion based on gender can be seen as a major contributing factor to the risks of being trafficked.⁴⁶² Within India, girls are trafficked from remote and rural areas to big cities and towns to be sold to brothels for prostitution, while boys are trafficked mostly for labour.

⁴⁵⁶ The Hindu, *Even if consensual, sexual contact with girl under 18 will be criminal offence*, April 27, 2012, available at: www.thehindu.com/news/national/article3357650.ece

⁴⁵⁷ Ibid.

⁴⁵⁸ *Still out of Focus, Status of Children 2008*, HAQ: Centre for Child Rights, New Delhi pg. 217

⁴⁵⁹ *Stepping up Child Protection*, Save The Children, pg. 37

⁴⁶⁰ Ibid.

⁴⁶¹ SANLAAP, *Concept note prepared for South Asia Consultation on care and protection of survivors of commercial sexual exploitation and trafficking*, Kolkata, May 2008.

⁴⁶² Ibid.

Some of the initiatives that have been taken at the central level to address trafficking are the *Protocol for Pre-Rescue, Rescue and Post Rescue Operations of Child Victims of Trafficking for Commercial Sexual Exploitation, 2005* of the Ministry of Women and Child Development and the Ministry of Human Resources Development as well as the *Protocol on Prevention Rescue, Repatriation and Rehabilitation of Trafficked and Migrant child Labour, 2008* of the Ministry of Labour and Employment. At the state level, the government of Tamil Nadu through a series of government orders set up various committees and boards at state, district and village level for the prevention of trafficking and combating commercial sexual exploitation of women and children.⁴⁶³

The ITP Act covers sexual exploitation of both girls and boys for commercial purposes and provides enhanced penalties for offences involving children and minors. It prescribes stringent punishment against perpetrators inducing children (below 16 years) and minors (16 to 18 years) in the offences of procuring, inducing or taking such a person for the sake of prostitution. Certain amendments have been proposed to this Act, including raising the age of a child to 18 years, defining 'trafficking', deletion of provisions which criminalise and re-victimise the victims, enhanced punishment for traffickers, pimps, etc., punishment for persons who visit brothels for commercial sexual exploitation, provision for 'in camera' trial to safeguard privacy of victims, and setting up of nodal authorities at the centre and states.⁴⁶⁴ Nevertheless, the law on trafficking remains inadequate, confining itself only to trafficking for prostitution. This is reflected in the recording of the problem. For example, the chapter on human trafficking in NCRB's reports fail to take into account offences under certain provisions in the IPC such as kidnapping, unlawful compulsory labour and habitual dealing in slaves, which if enumerated by age and gender would add to the overall human trafficking figures.

Children's Disappearances

Among other persisting violations of children's rights are disappearances. The Indian Government has stated that in any given year, an average of 44,000 children are reported missing, out of which 11,000 remain untraced.⁴⁶⁵ Reported reasons include trafficking, abduction, kidnapping for beggary, child prostitution, bonded or forced labour in small-scale manufacturing, services and domestic labour. Sale and slavery camouflaged as marriages is increasingly reported. Child sexual abuse and exploitation is rampant with very few cases being reported. There has been a 70.25% increase in cases of rape of children in the country between 1999 and 2009.⁴⁶⁶ A Bill on *Prevention of Sexual Offences against Children* has been drafted by the government that is currently pending finalisation.

⁴⁶³ G.O. no. 73 dated 9 May 2003, G.O. no. 26 dated February 16, 2004

⁴⁶⁴ Ministry of Women and Child Development, Government of India (2008), India Country Report to Prevent and Combat Trafficking and Commercial Sexual Exploitation of Children and Women. World Congress III against Sexual Exploitation of Children and Adolescents (Rio de Janeiro, Brazil, November 2008).

⁴⁶⁵ Third and Fourth Combined Periodic Report on the Convention on the Rights of the Child, Ministry of Women and Child Development, Government of India, 2011, available at: http://wcd.nic.in/crc3n4/crc3n4_1r.pdf

⁴⁶⁶ National Crime Records Bureau, Crime in India 1999-2009.

CASE STUDY

Children go missing: Can it be linked to trafficking?

The *Times of India*, on 4 June, 2008 carried an extensive report on children the Indian Government missing in and around the Delhi-Uttar Pradesh border. The report hints at possibilities of trafficking of children for organs or begging with 46 children the Indian Government missing from Ghaziabad in Uttar Pradesh between April and May 2008, within only a month. An RTI application by Bachpan Bachao Andolan revealed that 60,000 children go missing in the country every year.

One of the Expected Outcomes spelt out by the Ministry in its Working Group Report submitted to the Planning Commission of India for the Eleventh Five Year Plan (2007-12) is - “*Child Tracking system to be in place by the mid-term of the Eleventh Plan for missing children, child labour, children in institutions and alternate care systems and crimes against children to inform planning of services and prevention at district and state levels*”.

Source: HAQ: Centre for Child Rights

Child Labour

India continues to have the highest number of child labourers in the world with more than 12.6 million, who are forced to work in order to survive. These children are working as domestic help, on streets, in factories and farmlands silently suffering abuse.⁴⁶⁷ The Eleventh Five Year Plan (2007-12) has acknowledged that there is ample evidence to suggest that more children are entering the labour force and are being exploited by their employers. Moreover, official data on child labour does not include the number of children working in family businesses or in agriculture in rural areas. *The International Labour Organisation (ILO) Convention 138* is yet to be signed. The current *Child Labour (Prohibition & Regulation) Act, 1986* (CLPR Act) makes a distinction between hazardous and non-hazardous employment, banning employment of children under 14 years of age, only in hazardous sectors. The Act, therefore, directly contradicts the Right to Education Act in as much as, it allows children to work in non-hazardous occupations and processes and, thereby, becomes a vehicle for excluding children from realising their right to education. However, in a significant move, the Indian Government is set to ban all forms of child labour under the age of 14 years, making the employment of children below 14 years a criminal offense. The majority of child labourers are *Dalits* with many surviving on less than 1 USD a day. Moreover, the listing of occupations as ‘hazardous’ and ‘non-hazardous’ leaves many unsafe forms of labour sheltered behind the assumption that they are ‘safe’.

Additionally, as it is, the implementation of the Act is very poor. Based on information available from various Central and State Government websites, even after 25 years since its enactment, only 13 out of 35 states and Union Territories have framed the state rules for implementation of the said law. These include Bihar, Delhi, Goa, Gujarat, Haryana, Karnataka, Madhya Pradesh, Odisha, Punjab, Rajasthan, Tamil

⁴⁶⁷ Save the Children, *No Child is born to work*, 2011, available at: http://support.savethechildren.in/Children-labour/index.php?utm_source=google&utm_medium=cpc&utm_campaign=STC-Child_Labour_%28India%29&gclid=CNfumOSiOLMCFcQc6wodvmAAvg

Nadu, and West Bengal, with rules framed between 1988 and 1997. In recent times, Meghalaya is the only state reported to have drafted the state rules, but is yet to notify them. In August 2012, the Union Cabinet of India approved the *Child & Adolescent Labour (Prohibition) Act* putting a blanket ban on employing anybody below 18 years in hazardous occupation.⁴⁶⁸

In response to UPR I Recommendation 9 on the need for India to review its reservation to article 32 of the *Convention on the Rights of the Child*, the Indian Government admitted the undesirability of child labour but claimed it was unrealistic to entirely ban it. In its third and fourth combined periodic reports to the *UN Committee on the Rights of the Child*, the Indian Government has reiterated its position by stating that the “*time is not ripe*” to withdraw the declaration to the Article, given the socio-economic conditions of India. Although India’s 2008 UPR report speaks of sequential and progressive eradication, this is not borne out by the law, or by enforcement.

Registration of Births

According to the *Registration of Births and Deaths Act, 1969*, it is mandatory for births to be reported and registered, yet nearly 9 million newborn children remain unregistered in the country every year.⁴⁶⁹ Disaggregated data by sex of children is also not currently available. The Indian Government claims that 69% of births are being registered, however, government’s own surveys put the percentage at 41%, with only 27% of households having been able to produce a birth certificate.⁴⁷⁰ The low outreach of birth registration/civil registration services, low awareness about birth registration, as well as the lack of resources invested, implies that millions of children are denied birth certificates, which is a protection tool for children. Given the various age-related entitlements in the country, the birth certificate is an important document to protect children against various child rights violations linked to age and identity. Proof of age is essential to ensure that children can access their rights to education and are prevented from entering into child marriage or child labour as per the different laws passed in the country. Marginalised groups in both rural and urban settings are still denied their right to identity provided by registration and certification of birth.

Budgetary Allocation

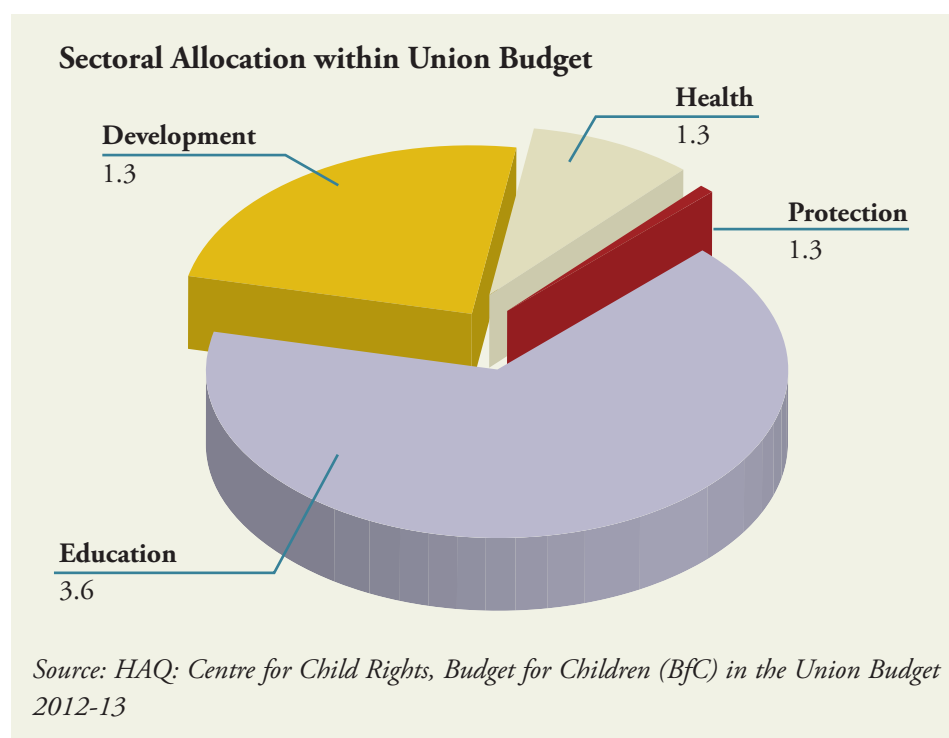
Since 2008-09, a separate budget statement on children has become part of the *Finance Bill* presented in and passed by the Parliament every year. However, the analysis conducted by HAQ: Centre for Child Rights on the Budget for Children (BfC) shows that in the Central Government’s budget, the share of budget allocations for children, has increased marginally from 5.03% to 5.33% between 2011-12 and 2012-13. The share of expenditure on children has decreased from 4.28% to 4.11% between 2007-08 and 2009-10, reflecting under-utilisation of the meagre funds

⁴⁶⁸ Bachpan Bachao Andolan, *India moves to ban all forms of Child Labour*, August 28, 2012, available at: <http://www.bba.org.in/>

⁴⁶⁹ The Week, *India’s Invisible Children*, May 17, 2011.

⁴⁷⁰ Ministry of Women and Child Development, Government of India, *Third and Fourth Combined Periodic Report on the Convention on the Rights of the Child, 2011*, available at: http://wcd.nic.in/crc3n4/crc3n4_1r.pdf

allocated for children's rights. Child protection, indeed, received the lowest share of only 0.04% in 2012-13.⁴⁷¹ A significant proportion of the resources are being raised for education through a cess imposed on public services. The 1966 Kothari Commission recommendation of investment of 6% of GDP on primary education remains unmet. In fact, public spending on overall education was 3.23% of GDP in 2009-10.⁴⁷²



Institutions for Protection of Child Rights

In 2005, the *Commissions for Protection of Child Rights Act, 2005*, was enacted to set up the National Commission for Protection of Child Rights (NCPCR) and the State Commissions for Protection of Child Rights (SCPCR). The first NCPCR was set up in March 2007 to protect, promote and defend child rights in the country. Subsequently, state commissions have been constituted in 12 out of the 35 states and Union Territories,⁴⁷³ namely Assam, Bihar, Chhattisgarh, Delhi, Goa, Karnataka, Madhya Pradesh, Maharashtra, Odisha, Punjab, Rajasthan and Sikkim. The Act and the rules that govern the setting up of the National and State Commissions for Protection of Child Rights do not lay down the rules for selection of members to these bodies, while in 9 out of 12 states where state commissions exist, the commissions were established without formulation of rules meant to govern both the establishment and the functioning of these bodies. Only three states framed the requisite rules prior to setting up of the commissions (Chhattisgarh, Delhi and Odisha). Both the NCPCR and the state commissions lack in infrastructure, staff and resources, and have come into question on the issue of lack of transparency in the selection of the members of these bodies. In states like Madhya Pradesh and Chhattisgarh, the financial powers vest with the secretary-in-charge of the

471 HAQ: Centre for Child Rights, *Mr. Finance Minister, what have you got for me this year?*, available at: http://www.haqcra.org/sites/default/files/BfC%202012-13_5.pdf

472 Centre for Budget and Governance Accountability, *Union Budget 2010-11: Which Way Now? Response to the Union Budget*, Serial No. C 1, Education.

473 National Commission for Protection of Child Rights, available at: <http://www.ncpcr.gov.in/scpcr.htm>

concerned government department, thus undermining the financial independence of these bodies. Salaries offered to the members of these commissions are not in line with the ranks they hold. In Chhattisgarh and Madhya Pradesh, the rules fail to specify the salary and allowances of the Chairperson and members. In Delhi, Goa, Karnataka, Maharashtra, Odisha, Rajasthan and Sikkim, there is no parity in remuneration, whereas Punjab and Assam are yet to frame their state rules. Bihar is the only state where the rules provide for the Chairperson and members to receive a salary equivalent to that of the Chief Secretary and Secretary of the State Government respectively.

Number	Recommendation	Status
CHILDREN		
Violence against Children		
UPR 1		
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.	Accepted
UPR 2		
39	Strengthen legislations to combat sexual offences against minors.	Accepted
75	Put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including women, girls and children, as well as the Scheduled Castes and Scheduled Tribes and Minorities are well achieved.	Accepted
76	Continue working on the welfare of children and women.	Accepted
79	Continue legal efforts in the protection of women as well as children's rights as well as improve measures to prevent violence against women and girls, and members of religious minorities.	Accepted
102	Take effective measures to dissuade child marriage to protect the fundamental rights of the children.	Accepted
103	Take more efforts to prevent children from sexual exploitation and separation from families and give them the opportunity and assistance to grow up in an environment of freedom and dignity.	Accepted
104	Introduce legislation to prohibit corporal punishment of children. (Deleted portion: in all settings)	Accepted in revised form
106	Take the necessary legislative, civil and criminal measures to provide the appropriate protection to women, and children that are victims of sexual abuse.	Accepted
133	Continue measures to increase opportunities for consultations on child rights issues with relevant stakeholders.	Accepted
40	Strengthen protection of children's rights, including the ratification of the Convention on the Rights of the Child, by improving mechanisms and resources for the implementation of existing legislation, and by demonstrating higher conviction rates for crimes against children such as sexual exploitation, child labour, child forced-labour and child trafficking.	Not accepted
61	Set up State and District Commissioners for the Protection of Child Rights in all States and Districts.	Not accepted
105	Adopt comprehensive legislation on fighting all forms of sexual harassment in relation to women and children.	Not accepted
116	Implement the recommendations included in the OHCHR report on street children (A/HRC/19/35).	Not accepted

Number	Recommendation	Status
Child Labour		
UPR 1		
7	Consider signature and ratification of ILO Conventions No. 138 and 182.	Accepted
9	Review the reservation to article 32 of the Convention on the Rights of the Child.	Accepted
UPR 2		
76	Continue working on the welfare of children and women.	Accepted
114	Continue the implementation of the National Child Labour Project (NCLP) aiming at the rehabilitation of child labourers.	Accepted
130	Provide more resources for the enjoyment of economic and social rights, especially in favour of vulnerable groups like women, children, poor people and minorities.	Accepted
140	Continue to strengthen its poverty alleviation strategies, as well as its child protection strategies, particularly against the exploitation of children.	Accepted
144	Continue to advance the progress already underway on poverty eradication and improve the enjoyment of the most basic human rights of the people, especially women and children.	Accepted
10	Accede to the ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; ratify the Statute of the International Criminal Court and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the ILO Convention No. 189 concerning Decent Work for Domestic Workers.	Not accepted
26	Ratification of ILO Conventions Nos. 138 concerning Minimum Age for Admission to Employment; 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; 169 concerning Indigenous and Tribal Peoples in Independent Countries; 155 concerning Occupational Safety and Health and the Working Environment and 170 concerning Safety in the use of Chemicals at Work.	Not accepted
27	Continue to take legislative as well as policy measures to combat child labour and to ratify ILO Conventions 138 concerning Minimum Age for Admission to Employment and 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour and elaborate a timeline for the ratification of these instruments.	Not accepted
28	Ratify Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the ILO Conventions no. 138 and 182 concerning child labour.	Not accepted
46	Effectively implement existing legislation on child labour in line with India's international obligations and strengthen the judicial powers of the National Commission for Protection of Child Rights.	Not accepted
112	Ban all forms of child labour for children from ages 6 to 14 (Ireland) and ratify ILO Conventions No. 138 and no. 182.	Not accepted
113	Amend the Child Labour Act to ban child labour, and to sign and ratify ILO Conventions 138 concerning Minimum Age for Admission to Employment and 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour and elaborate a timeline for the ratification of these instruments.	Not accepted
115	Extend the minimum age to 18 years for any form of labour that prevents children from accessing a full education.	Not accepted
128	Align its national regulations with the ILO Conventions 138 concerning Minimum Age for Admission to Employment and 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour and elaborate a timeline for the ratification of these instruments.	Not accepted

Right to Non-discrimination in Education		
UPR 1		
13	Strengthen human rights education, specifically in order to address effectively the phenomenon of gender-based and caste-based discrimination.	Accepted
UPR 2		
52	Enhance the coordination of both the central and state governments in an effective manner in order to guarantee the smooth implementation of the 2010 Right of Children to Free and Compulsory Education Act.	Accepted
157	Continue to strengthen/develop programmes and initiatives geared towards guaranteeing the rights to health and education.	Accepted
160	Further promote children's right to education.	Accepted
161	Reinforce efforts in provision of free and compulsory primary education.	Accepted
162	Continue implementing a non-discriminatory and inclusive policy and guarantee quality education to all girls and boys in the country.	Accepted
166	Prioritise efforts to ensure that children with disabilities are afforded the same right to education as all children.	Accepted
54	Establishment and implementation of a National Human Rights Plan which cover access to education and health, including aspects of sexual and reproductive health, as well as, concrete measures to eliminate violence against women.	Not accepted
163	Strengthen human rights training aimed at teachers in order to eliminate discriminatory treatment of children of specific castes, as well as appropriately follow-up on the results of the training that has occurred thus far.	Not accepted
164	Ensure universal, compulsory and free education, carrying out on a priority basis measures aimed at eradicating discrimination, particularly discrimination that affects girls, marginal groups and persons with disabilities.	Not accepted
165	Continue its efforts to promote the right to children's education and ensure the importance of the principles of children's education in the country.	Not accepted

Scheduled Castes and Scheduled Tribes

Scheduled Castes

Dalits – officially known as ‘Scheduled Castes’ (SCs) – constitute 16.23% of India’s population. They have historically occupied the lowest status in the Indian society. A central feature of caste discrimination is the concept of ‘untouchability’ based on the notion that certain caste groups are considered ‘impure’ and ‘polluting’ to other caste groups, leading to social ostracism, economic exploitation and denial of human dignity. Article 17 of the Constitution outlaws the practice of ‘untouchability’. However, despite legal and constitutional provisions as well as affirmative action schemes, SCs continue to face many forms of untouchability practices as well as social, economic and institutional deprivations.

The Planning Commission highlighted the fact that nowhere else in the world “*has any particular section [of society] been devoid of basic human rights, dignity of labour and social equality on the basis of classification that finds its root in religious*

writings.”⁴⁷⁴ The Commission added: “Since the caste system attains its sanctity in religious writings, emancipation from the rigid classification has been difficult to achieve. (...) The consequences of these traditional restrictions in the past are to be seen, even today.”⁴⁷⁵

Discrimination against SCs

SCs or *Dalits* face different forms of discrimination in rural and in urban areas. In rural areas, some of the most common practices include: denial of entry into non-*Dalit* houses, prohibition against food sharing, denial of entry into places of worship, denial of access to water facilities and denial of barber services (see details in the following table). *Dalits* are also disenfranchised, beaten, abused and even sometimes killed for voting or contesting elections.⁴⁷⁶ Even in schools, *Dalit* children are stigmatised with instances of children being asked to clean toilets and to eat separately. In urban areas, *Dalits* face persistent forms of discrimination such as denial of: health services, safe drinking water, education and adequate housing. There is still reluctance to rent out houses to *Dalits* merely because of their identity, even if they are economically prosperous and well educated. *Dalits* are known to be paid less, ordered to do the most menial work, and rarely promoted, except in the government jobs reserved for them.

In November 2011, a Justice of the Madras High Court stated that he had been humiliated by fellow judges due to his caste since 2001.⁴⁷⁷ In June 2011, the Chairperson of the National Commission for Scheduled Castes – himself a *Dalit* – was denied entry into a Hindu Temple in Puri, Odisha.⁴⁷⁸ In July 2011, a *Dalit* member of the Legislative Assembly in Odisha, was allegedly not allowed to eat food along with his colleagues at an official meeting.⁴⁷⁹

Government policy of reservations in services broadly envisages representation of *Dalits* in public services in proportion to their population. However, many of the sectors that were traditional domains of the government, are now being taken over by the private sector, where there are no reservations. In practice, more than 75% of *Dalit* workers are still connected with land, with 25% of them working as marginal and small farmers and 50% as landless labourers. In urban areas, *Dalits* work mainly in the unorganised sector. Out of the total *Dalit* population, the number of *Dalits* in services falling in the domain of reservations does not exceed a mere 0.8%.⁴⁸⁰



Tom Pietrasik/ActionAid

A girl from the Mushahar community, socially and economically one of the most marginalised communities in India.

474 Planning Commission, *Schedules Caste Sub Plan – Guidelines for Implementation*, New Delhi 2006, available at: planningcommission.nic.in/sectors/sj/SCSP_TSP%20Guidelines.pdf

475 Ibid.

476 UNHCR, Refworld, *Broken People: Caste Violence Against India's "Untouchables"*, available at: <http://www.unhcr.org/refworld/docid/3ae6a83f0.html>

477 The Times of India, *Judge rubbed his shoes against me, says Justice Karnan*, November 4, 2011.

478 The Daily News and Analysis, *Dalit denied entry in temple: Orissa government steps in to resolve issue*, June 25, 2011, available at: http://www.dnaindia.com/india/report_dalit-denied-entry-in-templeorissa-government-steps-in-to-resolve-issue_1559008

479 IBN News, Orissa: *Dalit MLA faces discrimination*, July 23, 2011, available at: <http://ibnlive.in.com/news/orissa-dalit-mla-faces-discrimination/169542-3.html>

480 Dr Anand Teltumbde, *Globalisation and the Dalits*, available at: <http://www.ambedkar.org/research/GLOBALISATIONANDTHEDALITS.pdf>

Overview of the Forms/Sites of Untouchability Practices in Rural India, by Degree of Prevalence in a Study done in 4,000 villages

More than 50% of villages	45-50% of villages
<ul style="list-style-type: none"> Denied entry into non-<i>Dalit</i> houses Prohibitions against food sharing Denied entry into places of worship Ill-treatment of women by other women 	<ul style="list-style-type: none"> Denied cremation and burial grounds Denied access to water facilities Ban on marriage processions Not allowed to sell milk to cooperatives Denied barber services Denied laundry services Ill-treatment of women by non-SC men
30-40% of villages	25-30% of villages
<ul style="list-style-type: none"> Schools-Separate eating Payment of wages: No contract Denied entry in to village shops Denied work as agricultural labour Cannot sell things in local markets Denied visits by health workers Separate seating in hotels Separate utensils in hotels Discriminatory treatment in Police stations 	<ul style="list-style-type: none"> Separate seating in <i>Panchayats</i> Separate seating in Schools Not employed in house building Denied entry into police stations Denied entry in to PDS shops Forced to stand before upper-caste men
20-25% of villages	15-20% of villages
<ul style="list-style-type: none"> Paid lower wage rates for same work Ban on festival processions on roads Segregated seating in schools Denied entry into private health clinics Separate drinking water in the schools 	<ul style="list-style-type: none"> Cannot wear new/bright cloths Denied access to public roads/passage Denied entry in to PHCs Discriminatory relationship by non-SC teachers towards SC students Discriminatory relationship by non-SC teachers towards SC teachers.
10-15% of villages	Less than 10% of villages
<ul style="list-style-type: none"> Denied entry in to Panchayat offices Schools: SC teacher and non-SC student Separate lines at polling booth Discriminatory treatment in PHCs 	<ul style="list-style-type: none"> Denied access/entry to public transport Cannot use cycles on public roads Denied entry/seating in cinema halls Compulsion to seek blessing in marriages

Source: Ghanshyam Shah, Harsh Mander, Sukhadeo Thorat, Satish Deshpande and Amita Baviskar, *Untouchability in Rural India: A survey conducted in 565 Villages of 11 states*, Sage Publications, 2006.

Manual Scavenging

Despite the *Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993*, more than 770,000 'manual scavengers' in India,⁴⁸¹ 80% of which are *Dalit* women, continue to clean human excrement with their bare hands for little or no wages. This practice exists in the military engineering services, the

⁴⁸¹ Annual Report of the Ministry of Social Justice and Empowerment, 2009, available at: <http://socialjustice.nic.in/ar10eng.php?pageid=3>; Also See: Concluding Observations of the Committee on the Elimination of Racial Discrimination, India, 2007, CERD/C/IND/CO/19, 23, available at: <http://www2.ohchr.org/english/bodies/cerd/cerds70.htm>

army, as well as public sector undertakings and particularly the Indian Railways.⁴⁸² Taking view on these incidences, the Supreme Court pulled the up the government for its callousness in not enacting a law to ban manual scavenging despite repeated assurances. Under the pressure, the Union Cabinet in August 2012, cleared the *Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill, 2012*, which will ensure the elimination of this practice.⁴⁸³ As of now, the highest numbers of manual scavengers are found in Uttar Pradesh (213,975), followed by Madhya Pradesh (81,307), Maharashtra (64,785), Gujarat (64,195), Andhra Pradesh (45,822) and Assam (40,413). As stated by the Indian Government national report for UPR II, so far only 428,000 persons have been assisted under the *National Scheme of Liberation and Rehabilitation of Scavengers* (NSLRS).⁴⁸⁴ For the remaining 342,468 the *Self Employment Scheme for Rehabilitation of Manual Scavenging* (SRMS), was launched in 2007.⁴⁸⁵ However, the scheme had failed in achieving targets. The Ministry of Social Justice & Empowerment tabled the progress report of the scheme on 28 April 2011 during the meeting of the National Advisory Council. The report reveals that only 78,941 persons had received the loan for self employment under the SRMS. The practice of manual scavenging is yet to be routed out of the country. The introduction of the *Prohibition of Employment as Manual Scavengers and their Rehabilitation Bill, 2012* is a welcome step and it is stricter than the 1993 Act.⁴⁸⁶ For the first time, the Census of India 2011 finds data on manual scavenging, though figures are only for insanitary latrines: 794,390 dry latrines across the country where human excreta is cleaned by humans. Of these, 73% is in the rural areas and 27% in urban locations.⁴⁸⁷

Violence against SCs

SCs face persistent discrimination and serious crimes are committed against them ranging from abuse on caste name, murders, rapes, arson, social and economic boycotts, naked parading of SC women, force to drink urine and eat human excreta.⁴⁸⁸ Between 2008 and 2010, more than 115,000 cases of atrocities were committed against them⁴⁸⁹ with an increase of 10.6% in 2009.⁴⁹⁰ In 2011 alone, 33,719 crimes against SCs were reported, an increase of 3.1% from the previous

482 A large number of 'manual scavengers' are still employed in 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. 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. - *Safai Karamchari Andolan & Ors v. Union of India & Ors*, Writ Petition (C) No. 845 of 2011

483 J. Venkatesan, *Cabinet has cleared Bill on manual scavenging, court told*, The Hindu, August 27, 2012, available at: <http://www.thehindu.com/news/national/article3828629.ece>

484 National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21: India, A/HRC/WG.6/13/IND/1, UN General Assembly, 8 March 2012, para 65.

485 Annual Report of the Ministry of Social Justice and Empowerment, 2009, available at: <http://socialjustice.nic.in/ar10eng.php?pageid=3>

486 J. Venkatesan, *Cabinet has cleared Bill on manual scavenging, court told*, The Hindu, Op-ed, August 27, 2012, available at: <http://www.thehindu.com/news/national/article3828629.ece> , Also see: Harsh Mander, *India's great shame*, The Hindu, November 17, 2012, available at: http://www.thehindu.com/opinion/columns/Harsh_Mander/indias-great-shame/article4097808.ece

487 Bezwada Wilson and Bhasha Singh, *Sh*t, caste and the holy dip*, The Hindu, Op-ed, November 21, 2012, available at: <http://www.thehindu.com/opinion/lead/sh-t-caste-and-the-holy-dip/article4116247.ece?homepage=true>

488 Given the large extent of under-reporting atrocities, total 552,351 atrocities committed against SCs and 86,374 atrocities committed against STs during 1995 -2010 (NCRB Reports).

489 This includes 2,208 murders, 5,974 rapes, 15,603 cases of hurt, 1,764 cases of kidnapping and abduction, 687 cases of arson, 572 of other Untouchability practices and 53,174 of other IPC crimes.

490 National Crime Record Bureau, Ministry of Home Affairs, *Prison Statistics, 2008; 2009; 2010*.

year.⁴⁹¹ “As per Crime Statistics of India, every 18 minutes a crime is committed against SCs; every day 27 atrocities against them, (3 rapes, 11 assaults and 13 murders); every week 5 of their homes or possessions burnt and 6 persons kidnapped or abducted”.⁴⁹² In 2007, the Committee on the Elimination of Racial Discrimination (CERD) raised concerns about “reports of arbitrary arrest, torture and extrajudicial killings of members of scheduled castes and scheduled tribes by the police, and about the frequent failure to protect these groups against acts of communal violence”.⁴⁹³

Certain kinds of violence are traditionally reserved for *Dalit* women (see section on Violence against Women), who are also threatened by rape as part of collective violence by higher castes. The UN Special Rapporteur on violence against women noted that *Dalit* women “face targeted violence, even rape and death, from state actors and powerful members of dominant castes who employ these methods to inflict political lessons and crush dissent within the community”.⁴⁹⁴ Similarly, in its 2007 concluding comments, CERD noted its concern about the alarming number of allegations of acts of sexual violence against *Dalit* women, primarily by dominant caste men.⁴⁹⁵

Table: Comparative Incidence of Crime against Scheduled Castes

Sl. No.	Crime-Head	Year					% Variation in 2011 over 2010
		2007	2008	2009	2010	2011	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	
1.	Murder	674	626	624	570	673	18.1
2.	Rape	1,349	1,457	1,346	1,349	1,557	15.4
3.	Kidnapping & Abduction	332	482	512	511	616	20.5
4.	Dacoity	23	51	44	42	36	-14.3
5.	Robbery	86	85	70	75	54	-28.0
6.	Arson	238	225	195	150	169	12.7
7.	Hurt	3,814	4,216	4,410	4,376	4,247	-2.9
8.	Protection of Civil Rights Act	206	248	168	143	67	-53.1
9.	SC/ST (Prevention of Atrocities) Act	9,819	11,602	11,143	10,513	11,342	7.9
10.	Others	13,490	14,623	15,082	14,983	14,948	-0.2
	Total	30,031	33,615	33,594	32,702	33,719	3.1

Source: National Crime Records Bureau, *Crime in India 2011*, page.110

⁴⁹¹ National Crime Record Bureau, *Crime in India 2011*, Ministry of Home Affairs, Chapter 7.

⁴⁹² National Coalition for Strengthening the PoA Act, Initiation of National Campaign on Dalit Human Rights (NCDHR), Joint Stakeholders’ Report on Caste Based Discrimination, November 2011.

⁴⁹³ Concluding Observations of the Committee on the Elimination of Racial Discrimination: India, 2007, CERD/C/IND/CO/19, para 14.

⁴⁹⁴ UN Special Rapporteur on Violence against Women, Ms. Radhika Coomaraswamy, Cultural Practices in the Family that are Violent towards Women, 2002, E/CN.4/2002/83, Para 53.

⁴⁹⁵ Concluding Observations of the Committee on the Elimination of Racial Discrimination: India, 2007, CERD/C/IND/CO/19, para 15.

Scheduled Tribes

In India, 698 ethnic groups are recognised as ‘Scheduled Tribes’ (STs), and are considered to be the country’s indigenous peoples. With an estimated population of 84.3 million, they comprise 8.2% of the total population. There are, however, many more ethnic groups that could qualify for ST status but are not officially recognised. In addition, 75 tribal communities have been identified as ‘primitive tribal groups’ (PTG) in different states. The largest concentrations of indigenous peoples are found in the eight states of North-east India and the so-called ‘central tribal belt’ stretching from Gujarat and Rajasthan to West Bengal. India has several laws and constitutional provisions, which recognise indigenous peoples’ rights to land and self-governance. However, these laws have numerous shortcomings and their implementation is far from satisfactory.

The Indian Government stated position at the UN is that it considered the entire population, including tribal people, at its independence and their successors as indigenous. This would put India in a unique position as the only country in the world populated entirely by indigenous peoples. This position of India is problematic because it amounts to a denial of the existence of distinct indigenous peoples within its territories and is also, in itself, an expression of discrimination to the indigenous peoples of the country.



Sanjit Das/ActionAid

Violations against STs

Despite protective laws and constitutional provisions, the rights of indigenous peoples (tribals/*adivasis*) to self-determination, land, and culture continue to be seriously violated.⁴⁹⁶ They also face: (a) denial of control over their development, based on their values, needs and priorities; (b) political under-representation and lack of access to social and other services; and (c) marginalisation resulting from mega projects exploiting their lands and natural resources, causing large scale evictions and loss of livelihoods. In 2009, a *Minority Rights Group International* report revealed that indigenous or tribal communities are among the poorest in India. They barely enjoy basic socio-economic rights and face entrenched and endemic discrimination.⁴⁹⁷ Crime against STs remains very high. In 2010 it was 5885 whereas in 2011 it recorded as 5756 cases with a slight drop of 2.2%. For more details see the table below.

⁴⁹⁶ See: Concluding Observations of the Committee on the Elimination of Racial Discrimination, India, 2007, CERD/C/IND/CO/19, paras 19, available at: <http://www2.ohchr.org/english/bodies/cerd/cerds70.htm>

⁴⁹⁷ Minority Rights Group International, *State of the World's Minorities and Indigenous Peoples 2010 – India*, available at: <http://www.unhcr.org/refworld/country,,MRGI,,IND,,4c33311631,0.html>

Table: Comparative Incidence of Crime against Scheduled Tribes

Sl. No.	Crime-Head	Year					% Variation in 2011 over 2010
		2007	2008	2009	2010	2011	
(1)	(2)	(3)	(4)	(5)	(6)	(7)	
1.	Murder	140	128	118	142	143	0.7
2.	Rape	627	585	583	654	772	18.0
3.	Kidnapping & Abduction	89	93	83	84	137	63.1
4.	Dacoity	9	14	3	7	7	0.0
5.	Robbery	21	18	24	5	9	80.0
6.	Arson	54	49	29	39	24	-38.5
7.	Hurt	855	873	787	941	803	-14.7
8.	Protection of Civil Rights Act	5	6	2	5	7	40.0
9.	SC/ST (Prevention of Atrocities) Act	1,104	1,022	944	1,169	1,154	-1.3
10.	Others	2,628	2,794	2,853	2,839	2,700	-4.9
	Total	5,532	5,582	5,425	5,885	5,756	-2.2

Source: National Crime Records Bureau, *Crime in India 2011*, page.116

Indigenous peoples are the most affected by large-scale development-induced displacement, with many of their fundamental human rights being grossly violated in the process (see section on Displacement due to Infrastructure and Other Projects in Part I). There is no effective consultation with the communities, or concurrence before such development projects are implemented. There is an unprecedented plunder of natural resources in tribal areas, often without mining licenses as it was revealed by the Lokayukta's report in the District of Bellary, Karnataka.⁴⁹⁸ Many tribals/adivasis are being denied their right to forest resources, despite the existence of the *Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006* aimed at undoing 'historical injustice' and recognising the rights of forest dwellers who have been living in the forests for centuries (see section on the Right to Adequate Housing and Land in Part I).

STs or indigenous peoples cannot participate in public life because of the non-implementation of the *Panchayats (Extension to the Scheduled Areas) Act, 1996* (PES Act). The nine concerned states – Andhra Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Maharashtra, Madhya Pradesh, Odisha and Rajasthan – where the Act is applicable, have not framed the rules to implement the Act to date.⁴⁹⁹ Under the PES Act, the Chairmanship of the *Panchayats* (village councils) will be held by tribals. However, non-indigenous peoples are still being elected as head of the Panchayat in tribal areas.

Indigenous women are particularly vulnerable. On the one hand, they face hardship within their own communities, often ruled by customary patriarchal structures. For example, although indigenous women depend primarily on community lands for survival, the ownership and management of these resources is often controlled

498 See: The Hindu, *Report details Reddys' rule over 'Republic of Bellary'*, July 28, 2011, available at: <http://www.thehindu.com/news/states/karnataka/article2302226.ece>

499 Governance Now, *Implement PESA for a quick cure for Maoism - Centre to states*, June 8, 2010, available at: <http://governancenow.com/news/regular-story/implement-pesa-quick-cure-maoism-centrestates>

solely by men or laws and policies that deny women's participation. On the other hand, since many tribal areas are highly militarised, indigenous women face severe forms of discrimination and violence by army officials.

Issues common to SCs and STs

Legal Framework

SCs and STs have long been targets of entrenched and acute discrimination and violence, requiring a special law to offer them increased protection. The *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act (PoA Act), 1989* seeks to provide such protection, in addition to the safeguards available under the Constitution (Article 21, 17 and 46), the IPC and the *Protection of Civil Rights Act, 1955*. The PoA Act aims at preventing and protecting SC/STs from atrocities committed against them. It provides for special courts for the trial of such offences as well as for the relief and rehabilitation of the victims. However, the implementation of the PoA Act remains weak⁵⁰⁰ and conviction rates alarmingly low. Another concerning issue is the police's refusal to register cases under the Act.⁵⁰¹ Atrocities and cases of discrimination against SC/STs are on the rise. In 2008-10, around 117,000 atrocities were committed against them⁵⁰² with an increase of 10.6% in 2009. As noted by the UN Special Rapporteur on the situation of human rights defenders, impunity for atrocities against *Dalits* remains a chronic problem in India.⁵⁰³

Given some of the shortcomings of the PoA Act, the Ministry of Social Justice has initiated an important process aimed at amending the Act and its rules. The new *Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Rules* have been adopted in December 2011. Among the amendments made to the rules, the relief amount in the case of atrocities against SC/STs has been significantly increased. Amendments to the PoA Act itself are yet to be tabled before Parliament. Among them is an attempt to simplify the process of hearings and strengthen investigation mechanisms.

Diversion of Funds from SCs and STs Sub Plans

The *Tribal Sub Plan (TSP)* and the *Scheduled Caste Sub Plan (SCSP)* were formulated in 1976 and 1978 respectively in order to provide equal opportunities and growth to the most vulnerable sections of the population, namely SCs and STs. According to these plans, budget at the Union and state levels should be allocated for the welfare and development of SCs and STs in proportion to their population

500 See: Concluding Observations of the Committee on Economic, Social and Cultural Rights: India, 2008, E/C.12/IND/CO/5, para 19 & 59, available at: <http://www2.ohchr.org/english/bodies/cescr/cescrs40.htm>

501 Between 1995 and 2010, 638,725 cases of atrocities against SCs/STs have been reported. 67.16% against SCs and 79.83 % against STs have not been registered under the Act.

502 This includes 2,208 murders, 5,974 rapes, 15,603 cases of hurt, 1,764 cases of kidnapping and abduction, 687 cases of arson, 572 of other untouchability practices and 53,174 of other IPC crimes.

503 See: Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, mission to India, 2011, A/HRC/19/55/Add.1.

(i.e. for every INR 100 spent, INR 16 should be spent on SCs and INR 8 on STs). Funds should be used for such schemes as will directly benefit SC/STs individuals, households, *bastis* or localities. However, both formulation and implementation of the SCSP and TSP has been poor and have not achieved their objectives, both at the Union and state levels.

In reality, a large share of the money is either diverted to general schemes hardly benefitting SC/STs or unspent. Massive diversions were discovered in 2010 and 2011, both at the Union and state levels, where funds earmarked for SCs were used for general infrastructure projects. For example, the Delhi government diverted money from the SCSP for building stadia and other infrastructures for the 2010 Commonwealth Games,⁵⁰⁴ while Madhya Pradesh used the funds for large dams and Uttar Pradesh for the construction of engineering and medical colleges. During the financial year 2011-12, only 55.4% of the central government's funds meant for SCs were actually allocated to benefit SCs. 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 the implementation of the Scheduled Caste and Tribal Sub Plans 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 SCs and STs areas and even less percentage of actual beneficiaries.⁵⁰⁵ The budget 2012-13 allocates only 14.7% of the funds for SCSP and TSP, whereas the legitimate allocation should be 24.4%.

According to the Planning Commission, only 17 out of 83 ministries and departments have made budgetary allocations under the Plans. Out of these 23 have pleaded indivisibility, while all the others have neither allocated nor given reasons for non-allocation.⁵⁰⁶ In a letter written to the Prime Minister in December 2011, Ms. Sonia Gandhi, Chairperson of the NAC stated: *"The SCSP/ TSP set apart are not meant to be parked with any ministry, but needs to be allocated to ministries and departments for implementing such schemes which are directly benefiting SC/ST individuals/ households or SC/ST localities. (...) The practice of showing notional outflows by ministries/ departments to account for SCSP/TSP should be discontinued."*⁵⁰⁷

In order to address the shortfalls mentioned above, civil society is calling for a central legislation on SCSP and TSP, which would clearly direct a proportion of the total Plan outlays at the Union and state levels – equivalent to the proportion of SC/STs – to be set apart for the SCSP and TSP. These funds should be deployed only to implement schemes with a clear objective of bridging socio-economic gap between SC/STs and the general population, with particular focus on education, employment, entrepreneurship and access to basic amenities.

⁵⁰⁴ See: Housing and Land Rights Network, available at: www.hic-sarp.org

⁵⁰⁵ Planning Commission, *Research Study on Livelihood Options and Asset Creation in SCSP and TSP Schemes and Impacts among SCs and STs*, November 2007, available at: http://planningcommission.nic.in/reports/sereport/ser/stdy_scp.pdf

⁵⁰⁶ Ibid.

⁵⁰⁷ SC/ST Budget Adhikar Andolan, Memorandum to the Prime Minister of India on the Special Component Plan, May 9, 2012

Number	Recommendation	Status
SCHEDULED CASTES AND SCHEDULED TRIBES		
UPR 1		
5	Maintain disaggregated data on caste and related discrimination.	Accepted
13	Strengthen human rights education, specifically in order to address effectively the phenomenon of gender-based and caste-based discrimination.	Accepted
UPR 2		
75	Put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including women, girls and children, as well as the Scheduled Castes and Scheduled Tribes and Minorities are well achieved.	Accepted
87	Continue to promote the rights of women in their choice of marriage and their equality of treatment independent of caste and tribe or other considerations.	Accepted
5	Continue efforts to accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as its optional protocol, and the International for the Protection of All Persons from Enforced Disappearances; and ratify ILO Conventions No. 169 and no. 189.	Not accepted
26	Ratification of ILO Conventions Nos. 138 concerning Minimum Age for Admission to Employment; 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; 169 concerning Indigenous and Tribal Peoples in Independent Countries; 155 concerning Occupational Safety and Health and the Working Environment and 170 concerning Safety in the use of Chemicals at Work.	Not accepted
47	Take adequate measures to guarantee and monitor the effective implementation of the Prevention of Atrocities Act, providing legal means for an increased protection of vulnerable groups like the Dalit, including the access to legal remedies for affected persons.	Not accepted
72	Ensure that laws are fully and consistently enforced to provide adequate protections for members of religious minorities, scheduled castes, and adivasi groups, as well as, women, trafficking victims, and LGBT citizens.	Not accepted
73	Monitor and verify the effectiveness of, and steadily implement, measures such as quota programmes in the areas of education and employment, special police and special courts for effective implementation of the Protection of Civil Rights Act and the Scheduled Caste and Scheduled Tribes Act, and the work of the National Commission for Scheduled Castes.	Not accepted
118	Prevent and pursue through the judicial process, all violent acts against religious and tribal minorities, Dalits and other castes.	Not accepted
163	Strengthen human rights training aimed at teachers in order to eliminate discriminatory treatment of children of specific castes, as well as appropriately follow-up on the results of the training that has occurred thus far.	Not accepted

Persons with Disabilities

Four Acts are specifically directed towards the protection, welfare, rehabilitation and development of people with disabilities – the *Mental Health Act, 1987*; the *Rehabilitation Council of India Act, 1992* (amended in 2000); the *Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act* (PWD Act), 1995 and the *National Trust for Welfare of Persons with Autism, Cerebral Palsy, Mental Retardation and Multiple Disability Act, 1999*. Despite the existence of national legislation and India's ratification of the *UN Convention on the Rights of Persons with Disabilities* (UNCPRD), all major issues including accessibility, education, employment and health continue to remain neglected. The PWD Act has

brought little improvement in terms of physical accessibility and defines accessibility not as a right but rather as a conditional entitlement where the State is obliged to provide accessibility “*within the limits of its economic capacity and development*”. Also it is applicable only to government owned public buildings and does not apply to privately owned public spaces or services such as banks, educational institutes, hospitals, etc. The present Act is under revision, however, critics point out that even the revised draft does not fully comply with the UNCRPD.⁵⁰⁸

Lack of Accessibility

Lack of accessibility is a major barrier for the full citizenship participation of persons with disabilities. The majority of people with disabilities are confined to their homes because they are unable to access any of the public places, transportation or services. Persons with mobility and communication challenges face difficulties to exercise, not only their socio-economic rights, but also their civil and political rights, as the existing infrastructure for redress (courts, police stations, etc) and voting (polling booths) are inaccessible for persons with disabilities. Moreover, a plethora of civil laws in the country, including the Constitution, deprive persons with ‘unsound’ mind of their rights and legal status. Thus, the right to marry, right to adopt, right to manage property, right to contract and a host of other rights continue to be denied to persons with disabilities.

Violence against Disabled Persons

The instances of torture and abuse of people with mental impairments in various state-run institutions are many, with violence against women being particularly acute. *“There are cases of wrongful or fraudulent confinement, overuse of shock treatment, solitary confinement, sexual exploitation, forced sterilisation, hysterectomies, abortions and denial of treatment. Many Psychiatric Units continue to use direct Electro-Convulsive Therapy (commonly known as shock treatment) on persons with mental impairment”*.⁵⁰⁹

Violence against people with disabilities is also perpetrated by families and communities. There are several cases of house arrest, neglect, teasing, taunting, abuse, chaining and beating.⁵¹⁰ However, since people with disabilities are dependent upon the family and community, they rarely access the justice system for protection. Obtaining state support in filing a complaint against the family is very difficult since the police are not cooperative and filing an FIR becomes very difficult. The poor and homeless are the most vulnerable and experience atrocities on the streets, including police harassment, arrest without warrant, abuse, being taken afar and left to die far away from the city.⁵¹¹

508 Rahul Cherian, *The Disabilities Bill is a mixed bag*, The Hindu, National News, September 23, 2012, available at: <http://www.thehindu.com/news/national/the-disabilities-bill-is-a-mixed-bag/article3927212.ece>

509 National Disability Network, *Key Issues of 120 million Persons with Disabilities in India*, report submitted for UPR II.

510 India Today, *Families chain mentally ill patients*, October 20, 2010, available at: <http://indiatoday.intoday.in/video/families-chain-mentally-ill-members/1/117158.html>

511 *Deccan Herald*, *Scores flee beggars' home after 22 deaths in three days*, August 20, 2010, available at: <http://www.deccanherald.com/content/90110/scores-flee-beggars-home-22.html>

Protection Mechanisms

Where established, state disability commissions have not been effective. There is a lack of proper planning and implementation of disability programs and schemes. Grievance redressal remains within the structures of the State Commissioners and the Chief Commissioner. These bodies remain as quasi-judicial bodies with powers of a civil court and no enforcement mechanisms exist within these structures. Since disability in India remains a state subject, states continue to disregard grievance redressal mechanisms, and it is alarming that 16 years since the enactment of the PWD Act, more than half of India's 22 states are yet to have full-time dedicated Commissioners to address grievances of persons with disabilities.

Exclusion of Disabled Persons

Data on disability is mostly unavailable or inaccurate and hence, resource allocation and facilities are highly inadequate. Most people with disabilities in India do not even have a disability certificate, which is required to claim and procure benefits from the government. Disability is not taken properly into account while counting people the below poverty line. As a result, most people with disabilities are excluded from poverty alleviation measures or schemes. Rights of people with psychosocial disabilities like intellectual disability, autism, cerebral palsy and persons with multiple disabilities and high support needs continue to be ignored. A widespread shift from a charity to a rights-based approach is required.

Number	Recommendation	Status
PERSONS WITH DISABILITIES		
UPR 2		
167	Ensure better protection for persons with disabilities and the elderly.	Accepted
164	Ensure universal, compulsory and free education, carrying out on a priority basis measures aimed at eradicating discrimination, particularly discrimination that affects girls, marginal groups and persons with disabilities.	Not accepted

Religious Minorities

Article 25 of the Constitution guarantees freedom of conscience and the right to freely profess, practice and propagate religion. Right to freedom of conscience ensures that a person is not liable to be questioned or made accountable for his/her religious beliefs, by the state or any other person.⁵¹² The right extends to acts done in pursuance of religious belief;⁵¹³ to follow a particular faith; ceremonies, rituals and observances;⁵¹⁴ and most importantly, to transmit one's religion by the exposition of its tenets. Moreover, Article 26 guarantees the freedom of every

⁵¹² Explained by the Supreme Court in *Sardar Syedna Taher Saifuddin Saheb v. State of Bombay* AIR 1962 SC 872.

⁵¹³ *Commissioner, Hindu Religious Endowments v. Sri Lakshmindra Thirtha Swamiar of Sri Sirur Mutt* AIR 1954 SC 282.

⁵¹⁴ *N. Adithyan v. Travancore Devaswom Board* (2002) 8 SCC 106; *H.H. Srimad Perarulal Ethiraja Ramanuja Jeeyar Swami v. State of Tamil Nadu* AIR 1972 SC 1586

religious denomination to manage its own religious affairs, subject to public order, morality and health. Freedom of religion is also discussed in the IPC – where acts related to promoting enmity between different groups on the ground of religion are punishable offences⁵¹⁵ – and several other domestic laws.⁵¹⁶

Targeted Violence against Religious Minorities

Despite these legal guarantees, religious minorities are targets of mass crimes and acute discrimination. Through systematic mobilisation of hate and divisive politics, communal pogroms against minorities have been masterminded in complete impunity.⁵¹⁷

In the 1984 Delhi mass massacre of over 3,000 Sikhs, following the assassination of Prime Minister Indira Gandhi, there has been a high level of complicity in the non-punishment of perpetrators. Twenty-five years later, people behind the attacks, including senior political leaders and police officers guilty of dereliction of duty remain unpunished. The genocidal carnage in Gujarat in 2002, killing over 2,000 Muslims, is still being prosecuted though several efforts have been made to undermine the justice effort underway.⁵¹⁸ Over 2,000 cases were closed due to insufficient evidence, demonstrating the high levels of prejudice and complicity within the investigating agencies. It was only after a Supreme Court direction in 2009 to reopen these cases and to be investigated by Special Investigation Team (SIT), the special trial court convicted 32 persons, including Naroda BJP MLA and former minister Dr Maya Kodhani and Bajrang Dal leader Babu Bajrangji, for murder and criminal conspiracy.⁵¹⁹ However, much vital evidence was lost and it is unlikely that prosecutions will result in convictions of other culprits on the basis of delayed, partisan and shoddy investigation. Christian minorities are another targeted group. In 2008, mobs torched Christian homes in Kandhamal (Odisha), killing at least 38 people.⁵²⁰ Here again, few have been prosecuted and even less convicted. On a lower scale, attacks against religious minorities take place on a regular basis in various parts of the country. During those attacks, violence against women is particularly acute. Gender-based violence has played a fundamental role as an engine for mobilising hatred and destruction against religious minorities.⁵²¹

⁵¹⁵ Section 153A and Section 504 of the IPC.

⁵¹⁶ The *Unlawful Activities (Prevention) Act*, 1967 (UAP Act); the *Religious Institutions (Prevention of Misuse) Act*, 1988; the *Places of Worship (Special Provisions) Act*, 1991; and the *Representation of the People Act (ROPA)*, 1951.

⁵¹⁷ See: Asma Jahangir, *Report of the Special Rapporteur on Freedom of Religion or Belief: Mission to India, 2009*, A/HRC/10/8/Add.3, para 63, available at: http://reliefweb.int/sites/reliefweb.int/files/reliefweb_pdf/node-301456.pdf

⁵¹⁸ See: *Zakia Ahsan Jafri & Anr v. State of Gujarat & Ors*, Supreme Court, Special Leave Petition No. 1088 of 2009.

⁵¹⁹ Hindustan Times, *On judgement day, Modi's close MLA sent to jail for Gujarat riots*, August 29, 2012, available at: <http://www.hindustantimes.com/India-news/Ahmedabad/On-judgement-day-Modi-s-close-MLA-sent-to-jail-for-Gujarat-riots/Article1-921070.aspx>

⁵²⁰ See: Report of National People's Tribunal on Kandhamal, 2011, New Delhi, available at: <http://orissaconcerns.net/2010/08/kandhamal-interim-report/>

⁵²¹ *Threatened Existence: A Feminist Analysis of the Genocide in Gujarat*: Report by the International Initiative for Justice (IIJ), December 2003; Also see: Tanika Sarkar and Urvashi Butalia (eds.), *Women and the Hindu Right*, New Delhi: Kali for Women, 1995.

CASE STUDY

Kandhamal Violence

Kandhamal is one of the poorest districts of Odisha in Central India. 71% of its land is covered by forests and its population comprises *adivasis* and *Dalits*. The *Dalits* of Kandhamal, otherwise known as the *panas*, constitute 19% of the district population according to the 2001 census report. More than 90% of them are Christians. The *adivasis* of Kandhamal are also known as *Kandhas*. 78% of them live below poverty line.

Throughout India, Christians, Muslims, *adivasis* and *Dalits* have been targets of violent attacks and discrimination by the organizations with a 'Hindutva ideology', collectively referred to as the *Sangh Parivar*. Reports of violence against religious minorities across Odisha date back to as far as two decades, with religious conversions being used as a divisive issue in many such attacks. In one such instance, an Australian Christian missionary, Graham Staines, was burnt alive, along with his two sons (aged 10 and 6) in 1999. Besides, instances of burning, destruction and looting of churches, Christians' houses, convents, vocational centres abound. In addition, the Christian minority community continues to face discrimination, harassment and threats of violence at the hands of the *Sangh Parivar*. What makes matters worse is the immunity accorded to the perpetrators of this violence by the state. In the Graham Staines case for instance, the Commission of Enquiry established by the government held an individual, Dara Singh, personally liable, when all evidence pointed to the involvement of the *Sangh Parivar*, which was exempted from criminal liability.

The violent events of Kandhamal on 24 August, 2008 are located in the context explained above. Violence against Christians in December 2007, in the same district, had set the prelude for these events. The purported trigger to the violence of 2008 was the killing of Swami Lakshmanananda, a Hindu religious leader, and his four disciples at his ashram, on 23 August, 2008. The attackers were suspected to be Maoist insurgents based on the manner of attack and the letter found at the ashram. Quoting police sources, the media announced the next day that Maoist involvement in the killings was suspected. However, the *Sangh Parivar* alleged that "extremist Christian groups" were responsible.

In so called 'reprisal' attacks by organizations associated with the 'Hindutva ideology', 5,000 houses belonging to Christians were destroyed, partially or fully. At least 264 Churches and prayer halls were fully or partially demolished and hundreds of philanthropic institutions such as schools, orphanages, old age homes and NGO establishments were looted and burnt down. Valuables were looted and cattle and crops stolen. Between 75 and 123 people were killed in the violence, although the official figure is a mere 54. Majority of those killed were Christians. Scores of others were injured. In the Kandhamal district alone, approximately 25,000 to 40,000 people were displaced and started living in 25 relief camps. The National Commission for Minorities reported: "there is no doubt that the Christian community and its places of worship were the principal target of attack". Survivor testimonies at the *National People's Tribunal on Kandhamal*, held in August 2010, reveal the gruesome details of brutality meted out to the Christians of Kandhamal in the 2008 attacks. One such survivor, Priyatama Nayak, wife of the deceased Abhimanyu Nayak, described the shockingly brutal killing of her husband:

"The attackers approached my husband heavily armed and started to beat him up with sticks. We were crying, but were helpless. He was taken to a mango tree, kerosene oil was splashed over him and he was set on fire. He somehow didn't burn. Thereafter, they covered him with paper from head to toe, and tried to burn him alive for 2 to 3 hours. All this while, my husband kept praying to God to save him. The rioters jeered at his prayers by saying: 'Yes, your God is coming to save you and help you'. As he fell to the ground, they thought he had died. They then went away shouting slogans like 'Jai Bajrang Bali Ki'. He continued burning with his flesh falling off from his body. He reached home calling out for me. I felt helpless as I cut the hanging flesh from his body... For five days I stayed alone with his dead body, unable to bury him. Dogs ate half of his burnt body. It was only after I promised that I won't file a case, that the Hindus helped me bury my husband's dead body."

The legal machinery's response to this targeted violence has been piecemeal. Firstly, there has been an indordinate delay in lodging of FIRs as the survivors had to, perforce, stay in jungles for many days after fleeing their villages and then had to move to relief camps. Many survivors stated that the police had refused to lodge their FIRs against perpetrators. Even in cases where FIRs were lodged, very few perpetrators were arrested after a delay. The government's appointed Commissions of Inquiry appointed to investigate both the 2008 and 2007 violence do not enjoy victim-survivor confidence, while survivors continue to be threatened by perpetrators to withdraw their complaints. Two fast track courts were also established in Phulbani, where prosecutions are underway. Recently 24 persons were convicted for the violence by one of the fast track courts. Notwithstanding these small number of convictions, statistics as of 2010 underline a pattern of impunity afforded to the perpetrators. Of 3,232 complaints filed with the police, only 832 were registered. The police was complicit in the acts of violence with multiple acts of omission and commission, as highlighted by the report of the National People's Tribunal. Therefore the impartiality of investigations in registered cases is also undermined. The lack of forensic evidence in these cases creates another hurdle in effective prosecution. The victim-survivors at the Tribunal have also revealed that the perpetrators have been convicted of lesser crimes than those they actually committed. The destruction of evidence by mutilation of bodies and removal of debris of burnt and destroyed structures has facilitated this.

The government has announced a compensation package but many households are not enlisted in the official records for compensation. In addition, issues concerning determination, adequacy, conditions for payment, procedural and administrative hurdles plague the disbursement of compensation.

Sources: National People's Tribunal on Kandhamal, Waiting for Justice: A Report, 2011; Vrinda Grover (ed), Kandhamal: The Law Must Change its Course, Multiple Action Research Group, 2010 and UPR Submission on the Freedom of Religion by Pax Romana and six other NGOs.

A major area of concern is the complicity of state and public officials through culpable actions and failure to act.⁵²² Lack of political will to prosecute perpetrators, inadequacy of laws and procedures to deal with mass crimes, lack of impartial investigation and prosecution, lack of sensitivity to survivors' experiences and needs have been among some of the major hurdles in victims' and survivors' access to justice and accountability. While provisions exist in criminal procedural law for payment of compensation to victim-survivors of crimes,⁵²³ there is neither comprehensive legislation nor a well-designed statutory scheme or a policy statement permitting a victim to seek compensation from an offender or the state as a matter of right.⁵²⁴ The *ad hoc* and arbitrary compensation in targeted religion-based crimes has been a token gesture rather than a means of substantial relief or an enforceable right. Legal recognition of rehabilitation for victim-survivors of religion-based crimes is absent, with no uniform criteria set-out for soft loans and grants for housing, education, livelihood and income generation. Restitution, including rebuilding places of habitat, worship and education destroyed during outbreaks of

522 See for example: Human Rights Watch, *We Have no Orders to Save You*, available at: <http://www.hrw.org/reports/2002/india/>

523 Section 357 of CrPC allows a court to direct the accused to pay compensation even in situations where fine is not imposed as part of its sentence. Other provisions include Section 250 (compensation to people accused by complainant without reasonable cause), Section 265A (compensation to victim in plea bargaining), Section 358 (compensation to persons arrested without sufficient grounds) and 359 (costs to complainant). A victim-survivor may also approach a higher court under Section 482 of the Cr. PC to claim compensation, as the said provision vests inherent power in courts in the interests of justice, as laid down by various judgments of the Supreme Court, including *Shri Bodhisattwa Gautam v. Ms. Subhra Chakraborty* AIR 1996 SC 922.

524 K. I. Vibhute, *Justice to Victims: Emerging Trends and Legislative Models in India*, in K.I.Vibhute (ed.), *Criminal Justice*, Lucknow: Eastern Book Co., 2004.

violence, and ensuring conditions conducive to the victims' return to their homes, is also not an enforceable right.

The Prevention of Communal and Targeted Violence Bill

In 2004, the *Common Minimum Programme* adopted by the The Indian Government, promised a comprehensive legislation to protect religious minorities against targeted mass crimes to adequately protect the life, security, and dignity of religious minorities.

However, the *Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005*, introduced in Parliament in December 2005, placed before the Rajya Sabha, was deeply flawed and only further enhanced the powers of the state authorities, who were complicit in the orchestration and perpetration of the targeted crimes. Despite a number of attempts, this promise of the government remains unfulfilled even as it completes its second term in office. The outlines of a new Bill proposed by civil society are that, "*the primary focus of which should be to secure accountability of public servants and to hold them responsible for communal and targeted violence, as well as make provision for providing reparative justice to the victims and survivors of such violence.*"⁵²⁵ Persons holding senior and key positions of political, administrative and civil authority including all public servants, should be held criminally liable for acts of omission or commission, in relation to their duties through the inclusion of the legal principles of 'superior responsibility', 'command responsibility', constructive responsibility and culpable inaction. Principles of just, fair and uniform reparation and compensation should be applicable to all victims and survivors. The Indian Government should draft a Bill along these lines at the earliest, which should then be adopted by Parliament without further delay.

Caste among the Minorities

Dalit Christians and Muslims retain a caste system even after conversion (though it varies somewhat with the caste system among Hindus). However, *Dalits* who convert to Christianity or Islam are denied access to affirmative action benefits and face discrimination on account of both caste and religion. *Dalit* Christians form around 75-80% of the Indian Christian population and in the recent years their places of worship have been often targeted with physical attacks and violence. The rhetoric of 'religious conversion' engineered by the religious fundamentalist forces has been pivotal in fomenting violence against *Dalit* Christians,⁵²⁶ as was evidenced in the Kandhamal violence in 2008.

In 1950, the first Indian Cabinet passed a resolution excluding Muslims, Christians, Sikhs and Buddhists who are *Dalits* from the benefits of affirmative action provided to *Dalits*. Since then, Sikh and Buddhist *Dalits* have been included within policy frameworks for affirmative action, but Christians and Muslim *Dalits* continue to

⁵²⁵ Civil society groups reject NAC Communal Violence Bill draft, lay down key features for the new Bill – Statement Issued at National Consultation on CV Bill, April 21, 2012, available at: <http://www.anhadin.net/article157.html> Ibid.

⁵²⁶ IIDS, *Caste-based discrimination & Atrocities on Dalit Christians and the Need for Reservation*, 2007

remain excluded. A PIL challenging the denial of affirmative action to *Dalit* Christians and Muslims is pending before the Supreme Court.⁵²⁷

Economic and Social Rights of Minorities

In addition to targeted violence, religious minorities in India (mainly Muslims, Christians, Sikhs, Buddhists and Jains) also face severe discrimination.⁵²⁸ They are economically disadvantaged and socially discriminated. Only 6.5% of religious minorities have access to institutional finance, 40% lack health facilities, 35% do not have education facilities and 65.02% live in huts or temporary shelters.⁵²⁹

Religious minorities also face the acute problem of being under-represented at all levels in public and private employment, institutions of governance and the structures of political parties.

In order to better understand the social, economic and educational status of Indian Muslims, the government constituted a seven-member committee in 2005, led by Justice Rajender Sachar, to prepare a report covering these aspects. Popularly known as the *Sachar Committee*, it submitted its report in 2006⁵³⁰ and highlighted the economic, social and educational backwardness of the Muslim community in India. It also confirmed the absence of diversity within the Indian Administrative Service, the Indian Police Service, the Indian Foreign Service, the judiciary and state appointed public prosecutors.⁵³¹ Recognising an overall absence of diversity caused by institutionalised discrimination, a key recommendation of the Sachar Committee was the setting up of a National Data Bank (NDB) and an Autonomous Assessment and Monitoring agency, to continually analyse this primary data and the impact of policy correctives. However, the Indian Government does not seem to have made progress on the setting up of the NDB.

Diversity and Pluralism in Indian Textbooks

The 'othering' of religious minorities is also achieved through the medium of school curricula. Educational material, especially textbooks of Social Studies and History reveal a selective and manipulated rendering of the syllabus, which results in both the exclusion and demonisation of India's religious minorities in general.

527 The Hindu, *Supreme Court to examine quota benefit to Dalit converts*, January 21, 2011, available at: <http://www.thehindu.com/news/national/article1108895.ece>

528 See: Report on the Social, Economic and Educational Status of Indian Muslims (Sachar Committee Report), 2006, available at: http://minorityaffairs.gov.in/sites/upload_files/moma/files/pdfs/sachar_comm.pdf; Also See: Report on the National Commission for Religious and Linguistic Minorities (Ranganath Misra Commission Report), 2007, available at: <http://minorityaffairs.gov.in/nclrm>

529 Sachar Committee Report 2006, available at: http://minorityaffairs.gov.in/sites/upload_files/moma/files/pdfs/sachar_comm.pdf

530 Prime Minister's High Level Committee, *Social, Economic and Educational Status of Muslims in India*, November 2006, available at: http://minorityaffairs.gov.in/sites/upload_files/moma/files/pdfs/sachar_comm.pdf

531 In the 12 states (where the Muslims' population share is 15.4%) the Muslims hold a tiny 5.7% government jobs. In the elite cadre services such as the IAS, IFS and the IPS, the Muslim representation is dismal - that is 2.2%, 1.6% and 3.0% respectively. Participation of Muslim workers in Public Sector Undertakings or with the government is the least among all SRCs (Socio Religious Communities) and does not exceed 5%. Among Muslim male workers, less than 6% are engaged in such work as against more than 10% for all male workers and 13% for all-Hindu male workers. Even the shares of OBC and SC/ST workers in such jobs are significantly higher than that for Muslims (Sachar Committee).

There has been a determined public discourse around this trend since the mid-90s resulting in changes at the level of the Central government after 2004, while some states still continue with sectarian teaching. There is also a pending demand for the establishment of a Statutory National Textbook Council to enable educational material used by aided as well as non-aided schools being put up for public scrutiny.

The ‘Terror’ Discourse

There is a move in a few states to introduce special terror laws. The *Rajasthan Control of Organised Crime Bill, 2006*, and the *Andhra Pradesh Control of Organised Crime Bill, 2006* are pending with the Central government for its approval before they can be introduced in the respective state legislatures. The *Gujarat Control of Organised Crime Bill, 2003*, and the *Uttar Pradesh Control of Organised Crime Bill, 2007*, have been passed by the legislatures of those states and have been reserved by the respective Governors for the President’s consideration under Article 200 of the Indian Constitution. All the four Bills are modelled on the *Maharashtra Control of Organised Crime Act, 1999* (MCOCA) – which has since been extended to Delhi from 2002 – and the *Karnataka Control of Organised Crime Act, 2002*. All the proposed state Bills contain draconian provisions. These are: i) considering certain confessions made to a police officer as admissible evidence; ii) presumption as to the guilt of an accused until he proves himself to be innocent; and iii) stringent bail provisions ensuring a long period of detention of an accused. Since the repeal of the *Prevention of Terrorist Activities Act* (POTA), there exists no central law with such draconian provisions today. While amending the *Unlawful Activities (Prevention) Act, 1967* (UAPA) in 2004, Parliament consciously avoided including in it the draconian provisions of POTA. Thus, the provisions contained in state laws are clearly contrary to Parliament’s intention in repealing POTA and amending the UAPA.

The victims of these laws have undoubtedly been Muslims. Muslims are often targetted following any terror attack. A number of Muslim men have been falsely implicated, illegally detained and tortured in custody for terrorist cases. For instance, seven men were falsely implicated by the police in the 2006 Malegaon bomb blasts (Maharashtra), where investigations later revealed the involvement of groups associated with the ‘Hindutva ideology’.⁵³² Similarly, such groups were found involved in the 2007 Mecca Masjid blast (Hyderabad, Andhra Pradesh), the 2007 Samjhauta Express train bombing (Haryana), the 2007 Ajmer Sharif Dargah blast, and the 2009 Goa blast.⁵³³ However, extremism perpetrated by Hindutva groups is absent from the mainstream terror discourse.

Legislative Curbs on Religious Freedom

Since 1996, a number of laws pertaining to freedom of religion or belief have been amended and new ones adopted both at the central and state levels. A number of

⁵³² The Hindu, *Malegaon blasts accused want dignity back*, November 17, 2011, available at: <http://www.thehindu.com/news/states/other-states/article2633599.ece>

⁵³³ The State of Human Rights in India: Asian Centre for Human Rights Joint Submission on Behalf of the People’s Forum for UPR II.

states have adopted specific laws to govern religious conversion and renunciation. Five states have passed and implemented the so-called *Freedom of Religion Acts* (Odisha, Madhya Pradesh, Chhattisgarh, Gujarat and Himachal Pradesh). Despite their name, these laws in effect put a legislative curb on freedom of religion as they as they set pre-conditions to and penalise the act of religious conversion.

The National Commission for Minorities in its report for 1998-99 noted that “prohibition of conversion from one religion to another by use of force, by allurement or by fraudulent means”, provided for in these state laws, in practice, seems to apply only in case of conversion to Christianity or Islam and not to ‘Suddhikaran’ (the purificatory ritual of reconversion to Hinduism) or ‘Operation Ghar Wapsi’ (Operation Return Home) conducted by the Sangh Parivar leaders. In cases of forced conversions to Hinduism, it has been documented that certain rituals involve torture, cruel and degrading treatment, such as forcible tonsuring of the hair of the head, forcibly making victims eat cow dung and drink cow urine as purification routines.⁵³⁴

The religion-based matrimonial laws in India contain many provisions that adversely impact a person’s exercise of freedom of religion. Under Hindu law, if the husband gets converted to a non-Hindu faith, the wife is entitled to live separately without forfeiting her right of maintenance but if she herself also ceases to be Hindu, she loses her claim to maintenance.⁵³⁵ A Hindu wife will lose her right to maintenance if she converts to Islam and Christianity. Conversion also constitutes a ground for divorce.⁵³⁶

Number	Recommendation	Status
FREEDOM OF RELIGION AND RIGHTS OF RELIGIOUS MINORITIES		
UPR 1		
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.	Accepted
UPR 2		
75	Put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including women, girls and children, as well as the Scheduled Castes and Scheduled Tribes and Minorities are well achieved.	Accepted
79	Continue legal efforts in the protection of women as well as children’s rights as well as improve measures to prevent violence against women and girls, and members of religious minorities.	Accepted
87	Continue to promote the rights of women in their choice of marriage and their equality of treatment independent of caste and tribe or other considerations.	Accepted
125	Strengthen the Federal Government’s efforts to guarantee freedom of religion to everyone in this world’s largest democracy.	Accepted
130	Provide more resources for the enjoyment of economic and social rights, especially in favour of vulnerable groups like women, children, poor people and minorities.	Accepted
43	Enact a law on the protection of human rights defenders, with emphasis on those defenders facing greater risks, including those working on minority rights and the rights of scheduled castes and tribes.	Not accepted

⁵³⁴ *From Kandhamal to Karavali: The Ugly Face of the Sangh Parivar*, A fact-finding report of nine human rights organizations that visited Orissa & Karnataka in Sept. – Oct. 2008, (March 2009).

⁵³⁵ Section 80 of the *Hindu Adoption and Maintenance Act, 1956*

⁵³⁶ Section 4 of the *Dissolution of Muslim Marriages Act, 1937*; Section 13(1)(j) of the *Hindu Marriage Act 1955* and Section 32(j) of the *Parsi Marriage and Divorce Act 1936*

Number	Recommendation	Status
48	Adopt the Prevention of Communal and Targeted Violence Bill addressing issues such as accountability of civil servants, standards of compensation for victims and elements of command responsibilities.	Not accepted
49	Reconsider laws and bills on religious conversion in several Indian states in the light of freedom of religion or belief in order to avoid the use of vague or broad terminology and discriminatory provisions.	Not accepted
50	Reconsider current local legislation on freedom of religion, that uses vague or broad terminology and discriminatory provisions, and impedes the possibility for conversion of faith for those who wish to do so.	Not accepted
72	Ensure that laws are fully and consistently enforced to provide adequate protections for members of religious minorities, scheduled castes, and adivasi groups, as well as, women, trafficking victims, and LGBT citizens.	Not accepted
118	Prevent and pursue through the judicial process, all violent acts against religious and tribal minorities, Dalits and other castes.	Not accepted
123	Take legislative action to ensure every person's right to freely choose one's religion in line with the Indian Constitution and effectively and swiftly prosecute acts of violence against religious minorities.	Not accepted
124	Abolish anti-conversion laws in relation to religion and grant access to justice to victims of religious violence and discrimination.	Not accepted
169	Continue its efforts to achieve balance between its counterterrorism strategies and the need to forestall the spread of xenophobia.	Not accepted

Refugees

India has the highest influx of refugees in the world because of its geographical location, which makes it the most accessible destination for refugees coming from neighbouring countries going through political turmoil. Reportedly, India had about 330,000 refugees in 2010, of which 97,000 were from Sri Lanka and 109,000 from Tibet.⁵³⁷ 31,600 refugees were under the care of the UN High Commissioner for Refugees (UNHCR) in 2011.⁵³⁸ The figure provided by UNHCR of the number of refugees in India in 2011 (184,821)⁵³⁹ is problematic, as it does not encompass all categories of refugees. The Indian Government mainly recognises refugees from Tibet and Sri Lanka, and the Chakmas from Bangladesh.

Despite a high concentration of refugees in India, and a record for *refoulement*, India has not yet ratified the 1951 *UN Convention on the Status of Refugees* and its Protocol, while refugees under the UNHCR mandate are not considered to be 'refugees' under Indian law at all. The government has recognised large-scale refugees from neighbouring countries, however, such recognition has been based on temporary policies. Although, the government recognised that refugees attract limited protection under these *ad hoc* policies, the status of refugees remains vulnerable and depends mainly on political will and administrative discretion.

⁵³⁷ Ministry of Home Affairs, Annual Report, 2010-2011.

⁵³⁸ 2011 UNHCR country operations profile – India, available at: <http://www.unhcr.org/cgi-bin/texis/vtx/page?page=49e4876d6>

⁵³⁹ United Nations High Commissioner for Refugees (UNHCR) 2011, available at: <http://www.unhcr.org/pages/49e45b156.html>

Despite not being party to the 1951 Convention and its 1967 Protocol, there are no instances, so far, of deportation of UN mandate refugee to their country of origin. Notwithstanding the various constraints faced by South Asia, including the lack of available resources and the security concerns that refugees tend to generate, India has, to some extent, conformed to the international standards regarding refugees.⁵⁴⁰ There are several instances where a progressive view has been taken and protection has been extended by courts under the Constitution of India and its obligation under other international instruments dealing with human rights, to which India is a state party.

The lack of equal protection has led to varying treatment of different refugee groups, further complications and failed to address the larger issues of refugees. For example, some groups are granted benefits, including legal residence and the ability to be legally employed, whilst others are criminalised and denied access to basic social resources. This piecemeal and selective approach has led to further complications and failed to address the larger issues of refugees.

Unless the Indian Government signs existing international instruments relating to refugees, the gap in the mechanisms for dealing with refugee protection will remain.⁵⁴¹ To effectively protect the human rights of the refugee population, it is crucial that domestic laws and policies provide a framework that respects the rights and needs of the refugees. The Indian Government must adopt at the earliest the *Refugees and Asylum Seekers (Protection) Bill, 2006*. At the UPR second cycle, during his presentation, the Indian chief representative stated: “India’s practices on refugees were far more developed, caring and humane than that provided for in the current international regime.”

Number	Recommendation	Status
REFUGEES		
UPR 2		
25	Consider the recommendation made by UNHCR to ratifying the Conventions relating to refugees and stateless persons.	Not accepted

Human Rights Defenders

Human rights defenders (HRDs) are key to India’s vibrant civil society; yet, they have faced increased threats, victimisation and harassment in the past few years.⁵⁴² The Special Rapporteur on the situation of human rights defenders (SR HRDs) made an official visit to India in January 2011. In her final report, she highlights the numerous testimonies she heard of female and male human rights defenders, and their families who are threatened, ill-treated, disappeared, arbitrarily arrested and detained,⁵⁴³

⁵⁴⁰ UNHCR Publication, *Refugee and the Law*, 3rd edition.

⁵⁴¹ Ibid.

⁵⁴² See: Concluding Observations of the Committee on Economic, Social and Cultural Rights: India, 2008, E/C.12/IND/CO/5, para 12 & 50.

⁵⁴³ 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

falsely charged with offences raided and files stolen,⁵⁴⁴ and in extreme cases even tortured and killed.⁵⁴⁵ HRDs and their families also face surveillance, such as tapping of phones, surveillance of emails and tracking of activities of human rights defenders on social networking sites.⁵⁴⁶ For example, states have used popular social networking sites, such as Facebook, to identify and to track their activities.⁵⁴⁷

Most of the violations against human rights defenders “are commonly attributed to law enforcement authorities; however, they have reportedly also shown collusion and/or complaisance with abuses committed by private actors”.⁵⁴⁸ Lack, or inadequacy of police training, failure to register and/or investigate violations against defenders and impunity of perpetrators have been widely reported.⁵⁴⁹

The NHRC focal point for protection of HRDs, has received complaints from a range of human rights defenders, including those working on minority rights and the rights of SCs and STs, who have faced harassment and arbitrary detention in several states, as highlighted by the NHRC’s UPR stakeholders’ report.⁵⁵⁰ The NHRC has registered at least 73 cases of violations of the rights of the HRDs between 2010 and 2011.⁵⁵¹

Women human rights defenders are at a particular risk of persecution as they face the same human rights violations as their male counterparts in addition to gender-based violations, such as rape and sexual violence.⁵⁵²

Defenders working on economic, social and cultural rights are particularly vulnerable to violations committed by state agents and/or private actors. They engage in denouncing development projects that threaten the land, natural resources and the livelihoods of communities, bypassing the legal requirements of consultation and rehabilitation.⁵⁵³ One such case of arbitrary arrest is that of Abhay Sahu, the leader of POSCO Pratirodh Sangram Samiti (PPSS) on 25 November 2011 in Odisha.⁵⁵⁴

544 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>

545 See: Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, mission to India, 2011, A/HRC/19/55/Add.1.

546 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>

547 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”. – Frank la Rue, Report of the Special Rapporteur on the promotion and protection of the right to freedom of opinion and expression, May 16, 2011, A/HRC/17/27, para. 54, available at: http://www2.ohchr.org/english/bodies/hrcouncil/docs/17session/A.HRC.17.27_en.pdf

548 Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, mission to India, 2011, A/HRC/19/55/Add.1.

549 Ibid.

550 NHRC, *India Submission to the UN Human Rights Council for India’s Second Universal Periodic Review*, available at: <http://nhrc.nic.in/Reports/UPR-Final%20Report.pdf>

551 Action taken by the NHRC on human rights defender cases up to 30.09.2011, available at : http://www.nhrc.nic.in/Documents/hrd_update_sep_2011.pdf

552 Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, mission to India, 2011, A/HRC/19/55/Add.1.

553 Ibid.

554 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>

As discussed at page 8, the POSCO from South Korea is setting up a steel plant at Paradeep, Odisha, with a total investment of USD 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 4,000 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.

Human rights defenders are often mislabeled among others as ‘Naxalites/Maoists’, ‘militant sympathisers’, or ‘anti-national’.⁵⁵⁵ For instance, human rights defender Arun Ferreira, who works on the rights of tribals, slum dwellers and poor farmers, was first arrested in 2007 on charges, among others, to be a Naxalite and was tortured in prison. He was later acquitted of all eight cases lodged against him in September 2011 and was released from the Nagpur central jail on 27 September 2011. However, he was seized outside the prison gate by a group of men in civil clothes moments after his release, and re-arrested in a fresh case and finally released on bail in January 2012.⁵⁵⁶

Defenders in conflict areas face these problems more acutely; passports are denied and colonial sedition legal provisions are used against them.⁵⁵⁷ For example, the well-known doctor and human rights activist Binayak Sen from the Peoples Union for Civil Liberties (PUCL) was imprisoned for almost two years under the *Unlawful Activities (Prevention) Act, 1967*, the *Chattisgarh Special Public Safety Act, 2005* and sedition provisions of the IPC. He was primarily accused of having Maoist connections. A trial court in Raipur convicted him to life imprisonment in December 2010. He was later released on bail by the Supreme Court several months after his conviction. Journalists who work in conflict areas have reported that authorities exerted pressure on them in order to suppress a certain type of information or the journalists’ work. Six journalists were killed in the last decade in Manipur, and at least ten journalists killed in Jammu and Kashmir since 1990 allegedly by armed forces and by non-state actors.⁵⁵⁸

The SR HRDs stated that she was “*deeply disturbed by the situation of Dalits’ rights activists*” and that “*the range of human rights violations that they face is appalling*”.⁵⁵⁹ Cases of threats of physical assault and murder, as well as insults to *Dalit* human rights defenders in public places by using caste-based abusive language have been reported.⁵⁶⁰ There are also allegations about summary executions, pressure to abandon their work in fear of reprisals from the dominant castes, invasion of their privacy as well as direct and indirect destruction of their property and belongings.⁵⁶¹

555 See: Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, mission to India, 2011, A/HRC/19/55/Add.1.

556 Free Binayak Sen, *Petition: Release human rights defender Arun Ferreira immediately*, available at: www.freebinayaksen.org/?p=2697

557 Section 124 (Sedition) and Section 122 (waging war against the state) of Indian Penal Code, The Prevention of Seditious Meetings Act, 1911.

558 Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, mission to India, 2011, A/HRC/19/55/Add.1.

559 Ibid.

560 Report on Dalit Human Rights Defenders by NCDHR-National Dalit Movement of Justice (NDMJ), submitted to the Special Rapporteur on Situation of Human Rights Defenders, January 15, 2011

561 Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, mission to India, 2011, A/HRC/19/55/Add.1.

Another worrying trend is the targeting of activists seeking implementation of progressive laws/schemes such as the RTI Act and MNREGA.⁵⁶² RTI activists are particularly vulnerable to be targeted for exposing human rights violations and poor governance, including corruption of officials. Since 2010, 12 RTI activists have been murdered (see case study below).⁵⁶³

CASE STUDY

Targeting of RTI activists

The *Right to Information Act, 2005* (RTI Act) was enacted in order to “*promote transparency and accountability in the working of public authority*”. However, activists asking for information under the Act and seeking to achieve that objective have come under serious attacks and threat over the last few years. Since 2010, a considerable number of RTI activists have been murdered; scores have faced serious physical attacks and prosecution under false charges. The RTI Act itself does not provide protection for activists acting under it. When threats to such activists have been brought to the notice of Central and State Information Commissions, their interventions have been ineffective. The police are reported to be not only refusing to lodge the FIRs of RTI activists and not conducting investigations, they also turn out to be perpetrators. The frequency of threats and attacks against RTI activists makes them one of the most vulnerable category of HRDs in India.

Examples of the most common abuses against RTI activists are listed below:

Murder: At least 12 RTI activists were killed between 2010 and September 2011.⁵⁶⁴

- (a) On 2 March 2011, a MNREGA activist, Niyamat Ansari, was beaten to death by unidentified persons after he was dragged out of his house at Jerua village in Latehar district of Jharkhand. Through his RTI applications, he had exposed corruption by contractors in the MNREGA. Based on his complaints three persons, including Block Development Officer Kailash Sahu were arrested for defalcation of funds.⁵⁶⁵
- (b) On 8 December 2011, Mr. Ram Vilas Singh, an elected member of Amhara *panchayat samiti* (sub-district level local self-governing body) of Lakhisarai district, Bihar was shot dead allegedly for demanding information about corruption in the implementation of social development programmes.⁵⁶⁶ The alleged killers had been implicated in an earlier case of murder whose progress Mr. Singh had been pursuing with the police department by making repeated requests for information. The NHRC took *suo moto* cognizance of this case and issued a notice to the Deputy Inspector General of Police (Human Rights) for a report.⁵⁶⁷
- (c) On 25 July 2010, an Uttar Pradesh home guard policeman identified as Babbu Singh was killed allegedly for seeking information about government funds and work done by his village *pradhan* (chief) at Katghar village in Bahraich district of Uttar Pradesh.
- (d) On 20 July 2010, two unidentified assailants shot dead Amit Jethwa, RTI and environment activist, near the Gujarat High Court. Mr. Jethwa, who was the president of Gir Nature Youth Club, had filed several petitions against the Forest Department and also filed a PIL on illegal mining in the Gir forests of Junagadh district.

562 NDTV, *Activist beaten to death for exposing NREGA scam in Jharkhand*, March 3, 2011, available at: <http://www.ndtv.com/article/india/activist-beaten-to-death-for-exposing-nrega-scam-in-jharkhand-89038>

563 See: Asian Centre for Human Rights, *RTI Activists: Sitting Ducks of India*, 2011, available at: <http://www.achrweb.org/ihrrq/issue3-4/India-Sitting-Ducks-2011.pdf>

564 See: Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, mission to India, 2011, A/HRC/19/55/Add.1.

565 See: Asian Centre for Human Rights, *RTI Activists: Sitting Ducks of India*, 2011, available at: <http://www.achrweb.org/ihrrq/issue3-4/India-Sitting-Ducks-2011.pdf>

566 India Today, *RTI Activist Ram Vilas Singh Shot Dead in Bihar*, December 10, 2011, available at: <http://indiatoday.intoday.in/story/rti-activist-shot-dead-in-bihar/1/163664.html>

567 Email alert circulated by Commonwealth Human Rights Initiative, December 2011, available at: http://www.human-rightsinitiative.org/programs/ai/rti/india/national/2011/email_alerts/RTI7.html

Attempts on Lives of Activists: Several RTI activists have been attacked, although many of these attacks go unreported.

- (a) On 26 January 2011, Amarnath Pandey (55 years) was seriously injured after being shot at for trying to expose corruption in Deepnagar locality in Sonbhadra in Uttar Pradesh.
- (b) On 21 August 2011, RTI activist Jaisukh Bambhania (39 years), a resident of the Union Territory of Diu, was attacked with sharp weapons and pipes and acid was thrown on him by unidentified persons alleged to be officials and politicians at Una in Junagadh district of Gujarat. He had sought information in connection with the construction of an alleged illegal restaurant and bogus licenses issued by Road Transport Office to bike vendors.
- (c) On 14 July 2010, RTI activist Ashok Kumar Shinde was beaten up by unidentified persons for seeking information under the RTI Act and filing a PIL against the Public Works Department in Mumbai, Maharashtra.

False Cases and Harassment: Many RTI activists have been harassed and false cases have been instituted against them in order to stifle their voices.

- (a) On 11 April 2011, RTI activist Pawan Sharma, a resident of Shalimar Garden-II in Ghaziabad, Uttar Pradesh, was arrested allegedly on false charges of extortion and criminal intimidation. He had exposed the nexus between builders and officials of the Ghaziabad Development Authority (GDA) to allow illegal construction through the RTI Act. He was later released on bail. However, another FIR was filed and Mr. Sharma was re-arrested on the same charges on 11 July 2011.
- (b) On 9 March 2011, RTI activist Mary Anne Pohshna was arrested by the police in an alleged false case in Meghalaya. She was framed with another activist Agnes Kharshiing in a false criminal case at the behest of police officials. Agnes Kharshiing had filed an RTI application in 2009, seeking information pertaining the jailbreak and subsequent custodial killing of an undertrial, Fullmoon Dhar in June 2009, who was allegedly killed in a fake encounter.

The lack of protection of RTI activists is a critical issue that needs addressing. Amendment of the RTI Act can be a useful step in achieving that. Civil society actors have proposed that any amendment should include provisions for physical protection of the activists under threat, time-bound disposal of their complaints to the police in case of attack or harassment and timely investigation of their complaints by the police.

Source: Asian Centre for Human Rights, RTI Activists: Sitting Ducks of India, 2011.

Other groups which are at particular risk include: *adivasis*, who democratically protest against acquisition of their land and other natural resources and the consequent displacement and dispossession; defenders who promote and defend the rights of LGBTI persons; church workers that defend the rights of marginalised communities; defenders seeking accountability for communal pogroms; as well as defenders engaged in monitoring human rights violations on border areas.

The stringent provisions under the *Foreign Contribution Regulation Act, 2010* (FCRA) threaten the functioning of human rights organizations, especially those differing with the government. Section 12(6) provides for the expiry of the FCRA certificate after 5 years, after which permission to receive foreign funds has to be sought again from the Central Government. Further, the *Foreign Contribution (Regulation) Rules, 2011* adopted for implementation of the FCRA violate the freedom of association

and expression of HRDs. Under Rule III, any voluntary organization can be branded as “*organization to be of a political nature, not being a political party*”, and therefore prevented from receiving foreign grants. The SR HRDs recommended that the FCRA “*be critically reviewed or repealed*”.⁵⁶⁸

Number	Recommendation	Status
HUMAN RIGHTS DEFENDERS		
UPR 2		
127	Ensure a safe working environment for journalists. (Deleted portion: and take proactive measures to address the issue of impunity, such as swift and independent investigations.)	Accepted in revised form
43	Enact a law on the protection of human rights defenders, with emphasis on those defenders facing greater risks, including those working on minority rights and the rights of scheduled castes and tribes.	Not accepted
67	Adopt the recommendations of the Special Rapporteur on the situation of human rights defenders and the necessary measures to its recognition and protection, guaranteeing that the human rights violations are timely, effectively and independently investigated.	Not accepted
68	Implement the recommendations made by the Special Rapporteur on the rights of human right defenders following her visit in 2011, with particular emphasis on recommendations that concern defenders of women’s and children’s rights, defenders of minorities rights, including Dalits and Adivasi, and right to information activists.	Not accepted

⁵⁶⁸ See: Report of the Special Rapporteur on the situation of human rights defenders, Margaret Sekaggya, mission to India, 2011, A/HRC/19/55/Add.1.

IV



MECHANISMS FOR THE PROTECTION OF HUMAN RIGHTS

Mechanisms for the Protection of Human Rights

National Human Rights Institutions

As per UPR I Recommendation 3, the Indian Government accepted to strengthen existing mechanisms for the protection of human rights. India has eight different institutions at the national level mandated to protect rights of various groups.⁵⁶⁹ In addition it has over 180 institutions at the state level charged with protecting and promoting human rights. Although these institutions have great potential, systemic impediments affect the functioning of many. A number of National Human Rights Institutions (NHRIs) have interpreted these statutory provisions as implying that they can not make their annual reports public without the same being first placed before the Parliament. For example, not a single annual report of the National Commission for Scheduled Tribes has been made public since 2004, despite submissions of four reports to the President of India.⁵⁷⁰ According to the NHRC, its Annual Reports for 2008-09 and 2009-10 have been submitted to the government, but as the government has not developed its responses to the recommendations contained in those reports, it has not yet tabled the reports in Parliament.⁵⁷¹

⁵⁶⁹ 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 Scheduled Tribes and National Commission for Minorities, Central Information Commission, and Central Commissioner for Persons with disabilities.

⁵⁷⁰ NCST Reports, National Commission for Scheduled Tribes, available at: <http://ncst.nic.in/index2.asp?slid=490&sublinkid=280&langid=1>

⁵⁷¹ 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, page 15, available at: <http://nhri.ohchr.org/EN/WhoWeAre/News/Lists/News/DispForm.aspx?ID=38&ContentTypeld=0x0104006A3D2D731523E24B9C932DE5D6E5EDFF>

There is no legal obligation to ensure plurality in the composition of members of NHRIs.⁵⁷² Many NHRIs lack representation from women and vulnerable groups. The NHRC, set up under the *Protection of Human Rights Act* (PHR Act), 1993, for instance, has no female member since September 2004. Further, under section 19 of the PHR Act, the NHRC cannot investigate human rights violations by the army and other armed forces. In addition, under Section 36(2) of the PHR Act, the NHRC is barred from inquiring “into any matter after the expiry of one year from the date on which the act constituting violation of human rights is alleged to have been committed”.⁵⁷³

The NHRC stakeholders’ report for India’s UPR, further spells out that the central government has not given the National Commissions “any added powers or greater resources, while the State Human Rights Commissions (SHRCs) are mostly moribund and very few Human Rights Courts have been set up”.⁵⁷⁴ A number of State Commissions are yet to be set up (for example, State Commissions for the Protection of Child Rights have been established in only 12 states) and 7 out of 20 SHRCs lack Chairpersons (Himachal Pradesh, Jammu and Kashmir, Madhya Pradesh, Maharashtra, Manipur, Rajasthan and Tamil Nadu).⁵⁷⁵

The International Coordinating Committee of NHRIs (ICC) and its Sub-Committee on Accreditation examined the NHRC in May 2011. They granted the NHRC an ‘A’ grade status but with a few recommendations to be implemented – three of them before 2013 and two others before the re-accreditation in 2016. These conditions pertain to: (i) composition and pluralism; (ii) the appointment of the Secretary General and the Director of Investigations; (iii) the relationship with civil society; (iv) the NHRC’s complaint handling function; and (v) the NHRC’s Annual Report.⁵⁷⁶

The 1993 World Conference on Human Rights “recommended that each State consider the desirability of drawing up a national action plan identifying steps whereby that State would improve the promotion and protection of human rights.”⁵⁷⁷ This concept is based on the view that “lasting improvements in human rights ultimately depend on the government and people of a particular country deciding to take concrete action to bring about positive change”.⁵⁷⁸

Nearly 20 years later, India is yet to adopt its first National Action Plan for Human Rights (NAP). The NHRC has been tasked with drafting a NAP. In 2008, the Commission stated that the NAP was “under preparation” but there has been no visible output. In its UPR stakeholders’ report, the NHRC pointed out that it had “started to draft

572 Commonwealth Human Rights Initiative (CHRI), A Rapid Study of Information Commissions: Established Under the Right to Information Laws in India, May 2012, available at: www.humanrightsinitiative.org/postoftheday/2012/ICscmpstudy-Delhi-final-May12-VenkatN&AmikarPs.pdf

573 *Protection of Human Rights Act*, 1993 as amended in 2006, available at: www.nhrc.nic.in

574 NHRC, India Submission to the UN Human Rights Council for India’s Second Universal Periodic Review, available at: <http://nhrc.nic.in/Reports/UPR-Final%20Report.pdf>

575 For the full list of State Human Rights Commissions and vacant positions, see: www.nhrc.nic.in

576 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, pages 13-15, available at: <http://nhri.ohchr.org/EN/WhoWeAre/News/Lists/News/DispForm.aspx?ID=38&ContentTypeld=0x0104006A3D2D731523E24B9C932DE5D6E5EDFF>

577 Vienna Declaration and Programme of Action, Part II, paragraph 71.

578 OHCHR, Handbook on National Human Rights Plans of Action, August 29, 2002, available at: www.ohchr.org/Documents/Publications/training10en.pdf

a plan, on which it will consult civil society and other stakeholders".⁵⁷⁹ It is very important for the Indian Government and the NHRC to prioritise the drafting of the NAP through broad-based consultations with civil society across India.

Number	Recommendation	Status
NATIONAL HUMAN RIGHTS INSTITUTIONS		
UPR 1		
3	Continue energizing existing mechanisms to enhance the addressing of human rights challenges.	Accepted
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.	Accepted
UPR 2		
58	Further coordination among relevant national authorities and human rights institutions.	Accepted
56	Implement the 2011 recommendations of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights to ensure the high standards and independence of India's National Human Rights Institutions.	Not accepted
57	Intensify its efforts and measures to consolidate the state of law and its national mechanisms on human rights.	Not accepted

International Human Rights Mechanisms

Reporting to Treaty Bodies

As per UPR I Recommendation 4 and its 2011 pledge, the Indian Government committed to continue its constructive engagement with international human rights bodies. However, one major cause of concern remains the government's delays in reporting to Treaty Bodies, especially to the Human Rights Committee, to which a report has been pending since 2001 (see table below).

Treaty Body	Due Date of Last Report	Latest Report submitted	Due date of next Report
International Covenant on Civil and Political Rights (CCPR)	March 1992	November 1995	December 2001
Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)	August 2002	October 2005	August 2010
International Convention on the Elimination of All Forms of Racial Discrimination (CERD)	January 1998	January 2006	January 2010
International Covenant on Economic, Social and Cultural Rights (CESCR)	June 1991	October 2006	June 2011
Convention on the Rights of Persons with Disabilities (CRPD)	-	-	June 2010
Convention on the Rights of the Child (CRC)	July 2008	August 2011	-
Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict (CRC-OP-AC)	December 2007	August 2011	-
Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography (CRC-OP-SC)	September 2007	August 2011	

⁵⁷⁹ NHRC, India Submission to the UN Human Rights Council for India's Second Universal Periodic Review, available at: <http://nhrc.nic.in/Reports/UPR-Final%20Report.pdf>. See Annexure E.

Ratification of International Treaties

Since UPR I, India has only ratified the *UN Convention Against Corruption, 2003*. It has failed to ratify some major human rights treaties, including: UNCAT, the *UN Convention relating to the Status of Refugees, 1951*; the *International Convention on the Protection of the Rights of Migrant Workers and Members of their Families, 1990*; the *International Convention for the Protection of All Persons from Enforced Disappearance, 2009*; the *Optional Protocol to CEDAW, 1999*; and *Optional Protocols I (1966) & II (1989) of ICCPR, 1966*; the *Rome Statute of the International Criminal Court, 1998*; *ILO Convention No.169, 1989*; *Convention Concerning Indigenous and Tribal Peoples in Independent Countries, 1989*; *Anti-Personnel Landmines Convention, 1997*; *Additional Protocols I & II to the Geneva Conventions, 1949*.⁵⁸⁰

On 23 August, 2011, the Office of the President of India issued a directive stating that “*accession to, or ratification of such Conventions/Treaties, be undertaken only after the relevant domestic laws have been amended, or the enabling legislation has been enacted in cases, where there are no domestic laws on the subject*”.⁵⁸¹ The notice is silent with respect to the treaties already ratified by India on which there are no domestic laws.

Special Procedures

As per UPR I Recommendation 14 and its 2011 pledge, the Indian Government announced in September 2011 that it was extending a standing invitation to Special Procedures, which is a very significant and welcome step. The two last visits by Special Procedures to India were those of the Special Rapporteur on the situation of human rights defenders in January 2011 and that of the Special Rapporteur on extrajudicial, summary or arbitrary executions in March 2012. During both the visits, the Indian Government demonstrated commendable support and openness. In the aftermath of the UPR review, however, at least one scheduled visit, that of the Special Rapporteur on Sale of Children and Child Prostitution, was cancelled with no new date being proposed by the GoI.

⁵⁸⁰ The State of Human Rights in India: Asian Centre for Human Rights Joint Submission on Behalf of the People's Forum for UPR II.

⁵⁸¹ Government of India: Cabinet Secretariat, Rashtrapati Bhawan, No.1/13/2/2010-Cab, 23rd August 2011, available at: http://cabsec.nic.in/showpdf.php?type=circulars_23august_2011&special

Status of Special Procedures Mandate Holders visits to India ⁵⁸²	
Previous Visits	Report
SR on violence against women, its causes and consequences (2000)	E/CN.4/2001/73/Add.2
SR on the right to food (2005)	E/CN.4/2006/44/Add.2
SR on Myanmar to India, Indonesia, Malaysia and Thailand (2006)	A/HRC/4/14
SR right to health (2007)	A/HRC/7/11/Add.4
SR on freedom of religion or belief (2008)	A/HRC/10/8/Add.3
SR on Toxic waste (2010)	A/HRC/15/22/Add.3
SR on human rights defenders (2011)	A/HRC/19/55/Add.1
Special Rapporteur on extrajudicial, summary or arbitrary executions (2012)	Awaited
Forthcoming visits	Date
SR on Violence against Women	From 22 April – 1 May 2013
Visits that have been agreed in principle and/or are under consideration	
SR on sale of children	Dates to be agreed

Special Rapporteurs' requested visits by year of request (R)					
Mandate Holders	1st R	2nd R	3rd R	4th R	5th R
Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment	1993	2007	2010		
Special Rapporteur on extrajudicial, summary or arbitrary executions (visited on 19 – 30 March 2012)	2000	2005	2006	2008	
Special Rapporteur on the sale of children, child prostitution and child pornography	2004	2008	2009		
Working Group on Arbitrary Detention	2004	2005	2006	2007	2009
Working Group on Enforced or Involuntary Disappearances	2005	2011			
Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance	2006	2008			
Special Rapporteur on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context	2008				
Special Rapporteur on the rights of indigenous peoples	2008				
Special Rapporteur on the human right to safe drinking water and sanitation	2009				
Special Rapporteur on trafficking in persons, especially women and children	2010				
Special Rapporteur on the independence of judges and lawyers	2011				

⁵⁸² Last updated on 19 November 2012. For more details see: Country and other visits by Special Procedures Mandate Holders since 1998 F-M, available at: <http://www.ohchr.org/EN/HRBodies/SP/Pages/CountryvisitsF-M.aspx>

Number	Recommendation	Status
INTERNATIONAL HUMAN RIGHTS MECHANISMS		
Universal Periodic Review		
UPR 1		
2	Continue to fully involve the national civil society in the follow-up to the UPR of India, as was done for its preparation.	Accepted
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.	Accepted
16	Fully integrate a gender perspective in the follow-up process to the UPR.	Accepted
UPR 2		
63	Continue including civil society participation in the UPR process.	Accepted
64	A fully integrated gender perspective in the follow up of this UPR.	Accepted
70	Continue cooperating with the UN and other International Organisations and share good experiences and practices with other countries in order to overcome the remaining challenges.	Accepted
Special Procedures		
UPR 1		
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.	Accepted
14	Extend standing invitation to special procedures.	Accepted
15	Receive as soon as possible the Special Rapporteur on the question of torture.	Accepted
UPR 2		
2	Intensify efforts towards the MDG 5 by ensuring access to information and counseling on SRHR as set out in the National Population Policy. (Deleted portion: including by withdrawing its reservation to Article 16 in Convention on the Elimination of All Forms of Discrimination Against Women)	Accepted in revised form
66	Continue cooperating with Special Procedures and accept, in particular, requests for visits from Special Rapporteurs.	Accepted
30	Consider an early ratification of the third Optional Protocol to the Convention on the Rights of the Child, on a communication procedure.	Not accepted
32	Conform its national legislation to international norms on the prevention of torture, to speed up the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and receive the Special Rapporteur on Torture.	Not accepted
69	Allow the visit of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, whose request had been Accepted for 18 years, in line with India's standing invitation issued in 2011 to all Special Procedures of the HRC.	Not accepted
109	Continue stepping up efforts in the area of fighting trafficking as well as consider the possibility of inviting the Special Rapporteur on trafficking in persons, especially in women and children, to visit the country.	Not accepted
121	Solve remaining cases of human rights violations and create an independent committee to receive claims against the police that were referred to by the Special Rapporteur on Human Rights Defenders.	Not accepted

Rome Statute of the International Criminal Court		
UPR 2		
1	Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the International Convention for the Protection of All Persons from Enforced Disappearance and the Statute of the International Criminal Court.	Not accepted
10	Accede to the ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; ratify the Statute of the International Criminal Court and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the ILO Convention No. 189 concerning Decent Work for Domestic Workers.	Not accepted
13	Ratify the International Convention for the Protection of All Persons from Enforced Disappearances, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the Rome Statute of the International Criminal Court.	Not accepted
14	Ratify the Rome Statute of the International Criminal Court, including its Agreement on Privileges and Immunities.	Not accepted

Conclusion

Despite a number of progressive legal and policy initiatives taken by the Indian Government, the continued prevalence of human rights violations across the country poses manifold challenges. The claim of rapid economic development does not hold any value when it fails to include the excluded. Lack of proper implementation of government policies due to the bureaucratic lethargy, inadequate allocation of resources, contradiction between different policies, other development priorities and the so called national and international interests continue to hinder to the full realisation of human rights for India's most vulnerable. The ever-growing trend of atrocities against religious minorities, women, children, SCs & STs, apathy towards the disabled and other disadvantaged people, constitute a scar on the face of Indian democracy. Particularly in 2011, many cases were reported of state atrocities against freedom of expression and association.

This revised and updated report has attempted to highlight the gaps that exist between the recognition of human rights in the country and their implementation. The report has also attempted to illustrate the devastating impact of the ongoing cycle of human rights violations in India. WGHR hopes that the recommendations that have emerged from the second cycle of the UPR will spur the government to take concrete actions to meet its human rights obligations.

Annexes

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

Convenor

Mr. Miloon Kothari | Former Special Rapporteur on adequate housing, UN Human Rights Council

Annex B

Basic facts about the UPR¹

What is the Universal Periodic Review?

The Universal Periodic Review (UPR) is a unique process which involves a periodic review of the human rights records of all 193 UN Member States. The UPR is a significant innovation of the Human Rights Council which is based on equal treatment for all countries. It provides an opportunity for all States to declare what actions they have taken to improve the human rights situations in their countries and to overcome challenges to the enjoyment of human rights. The UPR also includes a sharing of best human rights practices around the globe. Currently, no other mechanism of this kind exists.

How was the UPR established?

How was the UPR established?

The UPR was established when the Human Rights Council was created on 15 March 2006 by the UN General Assembly in resolution 60/251. This mandated the Council to "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". On 18 June 2007, one year after its first meeting, members of the new Council agreed to its institution-building package (A/HRC/RES/5/1) providing a road map guiding the future work of the Council. One of the key elements of this package was the new Universal Periodic Review. The mechanism was further refined during the review process through resolution 16/21 and decision 17/119. These two documents provided the necessary modifications of modalities for the review in the second and subsequent cycles.

What is the goal of the UPR?

The ultimate goal of UPR is the improvement of the human rights situation in every country with significant consequences for people around the globe. The UPR is designed to prompt, support, and expand the promotion and protection of human rights on the ground. To achieve this, the UPR involves assessing States' human rights records and addressing human rights violations wherever they occur. The UPR also aims to provide technical assistance to States and enhance their capacity to deal effectively with human rights challenges and to share best practices in the field of human rights among States and other stakeholders.

When will States have their human rights records reviewed by the UPR?

During the first cycle, all UN Member States have been reviewed, – with 48 States reviewed each year. The second cycle, which officially started in May 2012 with the 13th session of the UPR Working Group, will see 42 States reviewed each year. The reviews take place during the sessions of the UPR Working Group (see below) which meets three times a year. The order of review remains the same as in the first cycle and the number of States reviewed at each session is now 14 instead of 16.²

¹ Information accessed from the official OHCHR website, available at: www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx

² The second and subsequent cycles will last 4.5 years (para. 3, resolution A/HRC/RES/16/21).

Who conducts the review?

The reviews are conducted by the UPR Working Group which consists of the 47 members of the Council; however any UN Member State can take part in the discussion/dialogue with the reviewed States. Each State review is assisted by groups of three States, known as “troikas”, who serve as rapporteurs. The selection of the troikas for each State is done through a drawing of lots following elections for the Council membership in the General Assembly.

What are the reviews based on?

The documents on which the reviews are based are: 1) information provided by the State under review, which can take the form of a “national report”; 2) information contained in the reports of independent human rights experts and groups, known as the Special Procedures, human rights treaty bodies, and other UN entities; 3) information from other stakeholders including national human rights institutions and non-governmental organizations.

How are the reviews conducted?

Reviews take place through an interactive discussion between the State under review and other UN Member States. This takes place during a meeting of the UPR Working Group. During this discussion any UN Member State can pose questions, comments and/or make recommendations to the States under review. The troikas may group issues or questions to be shared with the State under review to ensure that the interactive dialogue takes place in a smooth and orderly manner. The duration of the review was three hours for each country in the Working Group during the first cycle. From the second cycle onwards the time has been extended to three hours and thirty minutes.

Can non-governmental organizations (NGOs) participate in the UPR process?

Yes. NGOs can submit information which can be added to the “other stakeholders” report which is considered during the review. Information they provide can be referred to by any of the States taking part in the interactive discussion during the review at the Working Group meeting. NGOs can attend the UPR Working Group sessions and can make statements at the regular session of the Human Rights Council when the outcome of the State reviews are considered. OHCHR has released “Technical guidelines for the submission of stakeholders”

What human rights obligations are addressed?

The UPR will assess 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 instruments to which the State is party (human rights treaties ratified by the State concerned); (4) voluntary pledges and commitments made by the State (e.g. national human rights policies and/or programmes implemented); and, (5) applicable international humanitarian law.

What is the outcome of the review?

Following the review by the Working Group, a report is prepared by the troika with the involvement of the State under review and assistance from the OHCHR. This report, referred to as the “outcome report”, provides a summary of the actual discussion. It therefore consists of the questions, comments and recommendations made by States to the country under review, as well as the responses by the reviewed State.

How is the review adopted?

During the Working Group session half an hour is allocated to adopt each of the “outcome reports” for the States reviewed that session. These take place no sooner than 48 hours after the country review. The reviewed State has the opportunity to make preliminary comments on the recommendations choosing to either accept or note them. Both accepted and noted recommendations are included in the report. After the report has been adopted, editorial modifications can be made to the report by States on their own statements within the following two weeks. The report then has to be adopted at a plenary session of the Human Rights Council. During the plenary session, the State under review can reply to questions and issues that were not sufficiently addressed during the Working Group and respond to recommendations that were raised by States during the review. Time is also allotted to member and observer States who may wish to express their opinion on the outcome of the review and for NHRIs, NGOs and other stakeholders to make general comments.

What steps are taken as follow up to the review?

The State has the primary responsibility to implement the recommendations contained in the final outcome. The UPR ensures that all countries are accountable for progress or failure in implementing these recommendations. During the second review the State is expected to provide information on what they have been doing to implement the recommendations made during the first review as well as on any developments in the field of human rights. The international community will assist in implementing the recommendations and conclusions regarding capacity-building and technical assistance, in consultation with the country concerned. If necessary, the Council will address cases where States are not co-operating.

What happens if a State is not cooperating with the UPR?

The Human Rights Council will decide on the measures it would need to take in case of persistent non-cooperation by a State with the UPR.

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 4 and 5 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 and the Right to Development
3. Discrimination
4. Militarisation and 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 (LGBTI).

* For full report on the consultation, see: www.wghr.org/pdf/Report%20on%20UPR%20Workshop.pdf

Further details about the regional consultations held:

North-Eastern Consultation

- Place: Shillong (Meghalaya)
- Dates: 28-30 August, 2011
- 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 (11 - 12 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:

- Economic, Social and Cultural Rights and the Right to Development
- Militarisation and Security – Legislation and Apparatus
- Access to Justice

The WGHR stakeholders' report and the present status report reflect the highlights of the main outcomes of the regional and national consultations.

WGHR Assessment of Implementation of UPR I Recommendations

Last updated: 30 November, 2012

S. No.	Recommendation	Response of India in its UPR II Report	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)	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.	The Rajya Sabha Select Committee finalised its recommendations as well as an alternate draft of the Prevention of Torture Bill (PTB) in a report which was presented to the Rajya Sabha in December 2010. To date, more than two years later, the Ministry of Home Affairs has not publicly released any comment on the Committee's draft. As the Bill has been significantly altered in the Committee's draft, it has to be placed before, discussed, and passed by both Houses of Parliament. During UPR II, the Government of India accepted the recommendation to "finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment." This promise cannot be fulfilled unless Indian Government brings a comprehensive Bill in the 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. In addition, there is an urgent need to address the shortcomings that remain, in spite of the Committee's suggested amendments. It is imperative that the Bill is revised with due deliberation that fully takes into account all the remaining gaps to ensure that PTB is in total conformity with CAT.
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);	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.	There were no debriefing sessions or consultations, initiated by the government, with civil society after UPR I in 2008 until early 2012. However, due to concerted civil society efforts, GoI representatives participated actively in a national workshop on the UPR organised by civil society in April 2011. The GoI upheld its commitment of posting its draft report for UPR II on the Ministry of External Affairs (MEA) website in January 2012, inviting comments from civil society. The MEA also held a number of meetings with civil society in New Delhi but very few of the recommendations made at these meetings were incorporated into the government's final UPR II report.	The government should initiate, soon after UPR II hearings, public efforts to hold regional and national broad-based consultations with civil society and independent experts on the implementation of recommendations made at UPR II. In addition, GoI's draft report for UPR III should be made available at the MEA website, for comments well before the deadline for its submission to OHCHR. The NHRC is strongly recommended to continue to consult civil society and submit its own independent reports for India's UPR III.
3.	Continue energizing existing mechanisms to enhance the addressing of human rights challenges (Ghana);	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.	There is no real evidence of the government continuing to 'energise' the various institutions/mechanisms for protection and promotion of human rights. In fact, much remains to be done with regard to India's human rights institutions. For instance, most basically, at present, state-level human rights commissions are established only in 20 states, so there is not even a human rights commission in every state of the country. Of the established commissions, many are short-staffed and/or do not have a Chair. Long-standing grievances of the lack of independence, transparency in appointments, diversity, and inadequate responses of India's human rights institutions have not been addressed to date. The judiciary continues to play its role actively, but the perennial problem of lack of implementation of judicial pronouncements has not been properly tackled.	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. It is strongly recommended that the national and state human rights commissions are made to draft and submit their annual reports on time every year, and central and state governments make it a practice to table and debate the reports in Parliament and state assemblies. Concerted efforts are needed to ensure the executive branch properly implements the orders and judgments of the courts.
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);	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.	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 continued and endemic 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.

S. No.	Recommendation	Response of India in its UPR II Report	Current status	Further measures required
5.	Maintain disaggregated data on caste and related discrimination (Canada, Belgium, Luxembourg);	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.	Some of the key areas where disaggregated data on caste is still 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 collected by the National Crime Records Bureau (NCRB) does not 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 labour, child labour, manual scavenging (no data available at all).	It is strongly recommended that the government monitors through its surveys/ alternative mapping exercises the current practices of caste-based discrimination (CBD) as well as economic and social conditions of communities affected by CBD, disaggregated gender wise.
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. 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.	There is still no move from the government to sign and ratify the CEDAW Optional Protocol.	The CEDAW Optional Protocol (OP) provides mechanisms to enhance state compliance to CEDAW. It is a remedy available where justice remains wanting 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 disturbing the hierarchy of the judicial system, or being parallel to them, or indeed substituting the domestic mechanisms. Indeed, countries with strong and multiple mechanisms of redress, similar to India, have ratified the OP CEDAW for this reason. WGHR fully supports signature and ratification of the OP.
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. 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 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 protect-based 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, 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 Substance Act, 1988 and Child Labour (Prohibition & Regulation) Act.	In August 2012, the Union Cabinet of India approved the Child & Adolescent Labour (Prohibition) Act putting a blanket ban on employment of children under the age of 14 years and on employing anybody below 18 years in hazardous occupation. The National Commission for the Protection of Child Rights is a Commission has very limited judicial powers, restricting it to conduct speedy trials against the offenders.	The Indian Government must ensure proper implementation of the 2012 Act. The government needs to invest in child labour elimination programs, better child tracking systems, inter-departmental coordination and convergence of services, legislative provisions to regulate placement agencies and other relevant measures. There should be better functioning of the Child Welfare Committees, proper rehabilitation of rescued children, and prosecution of the accused employers.
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);	Best Practices are being included in the body of UPR – II for sharing with Human Rights Council.	India's national report for UPR II is a reiteration of existing law, policies and programmes, which do not, in themselves, constitute best practices, unless there is a clear recognition of the obstacles faced in their implementation and evidence that the GoI is moving towards overcoming these.	See <i>current status</i> .
9.	Review the reservation to article 32 of the Convention on the Rights of the Child (the Netherlands);	Response at S.No. 7 above applies to this issue as well.	The government acknowledged child labour is undesirable and in August 2012, approved the Child & Adolescent Labour (Prohibition) Act putting a blanket ban on employment of children under the age of 14 years and on employing anybody below 18 years in hazardous occupation.	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, 2009. Implementation of the Child & Adolescent Labour (Prohibition) Act to corroborate with the provisions under RTE Act needs to be ensured.

S. No.	Recommendation	Response of India in its UPR II Report	Current status	Further measures required
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);	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.	While it is true that the GoI 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 11th Plan (2007-2012) remains obsessed with the 'growth at all costs' approach. The government must consider revisiting the current model of development. The alternative is to achieve growth through social justice which has never been given any serious consideration. Unless a radical rethinking takes place, that places the realisation of human rights as a primary objective of government policies, there is every likelihood that economic and social inequities will grow in the coming years.
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);	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 National Human Rights Commission (NHRC) is in the process of drafting a National Action Plan for Human Rights, 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.	The 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. The NHRC's stakeholders' report for UPR II states that the NHRC 'has started to draft a plan, on which it will consult civil society and other stakeholders'. The GoI report for UPR II as well as its Annexure I containing the action taken report on UPR I Recommendations make no mention of the NAP. There has clearly been no forward movement on the NAP for many years. Regarding the NAP for Children, referred to in India's UPR II report, there is an existing plan dated 2005 which set numerous targets to be achieved by 2010. Most of these targets have not been achieved.	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. A new NAP for Children will also have to be drafted with new targets.
12.	Ratify the Convention on Enforced Disappearances (Nigeria);	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.	Since UPR I, there have been no signs of a process of ratification, including any visible discussions on an enabling legislation, despite large-scale enforced disappearances in the country. The government is also yet to undertake an attempt to codify enforced disappearance as a criminal offence 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.	The government should expedite the process of ratification of the <i>Convention on Enforced Disappearances</i> .
13.	Strengthen human rights education, specifically in order to address effectively the phenomenon of gender-based and caste-based discrimination (Italy);	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.	There is no official proof of a national action plan of action for human rights education being in place. Moreover, 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.	The development of a national policy and action plan for human rights education in schools and colleges is urgently required.
14.	Extend standing invitation to special procedures (Latvia, Switzerland);	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.	WGHR very much welcomes the significant step taken by the GoI to extend a standing invitation to special procedures. It also commends the government's openness and support during the visit of the UN Special Rapporteur (SR) on the situation of human rights defenders in January 2011 and the visit of the SR on extrajudicial, summary or arbitrary executions in March 2012. The visit of the SR on sale of children, child prostitution and child pornography – initially scheduled for April 2012 – has been postponed.	WGHR urges the GoI 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 (5 requests); SR on torture (3); Working Group on enforced or involuntary disappearances (2); SR on racism (2) as well as mandates on economic, social and cultural rights such as the SR on adequate housing. The visit of the SR on sale of children should be rescheduled at the earliest.

S. No.	Recommendation	Response of India in its UPR II Report	Current status	Further measures required
15.	Receive as soon as possible the Special Rapporteur on the question of torture (Switzerland);	Since we have extended a Standing Invitation to the Special Procedures, we will schedule this visit depending on mutual convenience.	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.	Given the fact that custodial torture remains endemic in India, and torture prevention legislation appears to be a standstill, it is crucial for the government to allow the SR on torture to visit India without further delay and demonstrate the same openness that was shown to the SR on human rights defenders and the SR on extrajudicial executions.
16.	Fully integrate a gender perspective in the follow-up process to the UPR (Slovenia);	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.	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.	It is crucial to integrate a gender perspective in the UPR process, so that women's concerns are well represented, and thereby addressed. WGHR strongly recommends that the government prioritises the holding of consultations with civil society organizations, and women's groups in particular, at the earliest.
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);	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 Vitak (RGLPGV) 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.	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.	The issue of equal rights to property accumulated during marriage remains unanswered. Govt must provide clarity on the steps it has taken to ensure that women have an equal share to matrimonial property. The schemes outlined by Govt pertain to assets provided by the state to households, and does not answer the recommendation in question. Likewise, the question of compulsory registration of marriage is not related to joint ownership of matrimonial property. It is important to mention however, that there are divergent views regarding the merits of compulsory registration of marriage, which in the context of India, will adversely impact women whose marital status is unclear. It is of great concern that the government's report links marriage registration to citizens, and not persons – this is inconsistent with the marriage laws that are not limited to citizens alone. It must be mentioned that the CEDAW Committee in 2007, has strongly recommended withdrawal of India's declarations to articles 5 (a) and 16 (1) of CEDAW, and called for the 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. This recommendation needs to be reiterated to allow equality within marriage and family, including in relation to matrimonial property. .
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).	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.	This is a broad recommendation which requires a sustained approach on many levels. India's UPR II report fails to outline such a sustained approach. What is required, in addition to a listing of laws, policies and programmes, is an honest recognition of the tremendous human rights realisation gaps that exist in the country.	The extensive range of measures needed to fulfill this recommendation require a comprehensive 'indivisibility 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 needed to achieve this enormous task are too extensive to be summarized here.

Annex E

NHRC Submission for India's UPR II

NHRC-India Submission to the UN Human Rights Council for India's Second Universal Periodic Review

Introduction

Any assessment of India's human rights record must begin with the acknowledgment that no other country as large and populous or as diverse, ethnically and economically, has had to tackle the challenges of development using only democratic methods. The Indian experiment is so unique that it must be judged by its own benchmarks, which are set by a powerful and activist judiciary, a free media and vigilant civil society, which are guardians of human rights in an open society run by the rule of law. However, while there have been many successes, much remains to be done, including on the eighteen recommendations made at the first UPR to the Government of India. Since the same government remains in power, these lapses are its responsibility.

2. The NHRC has continued to monitor the full range of human rights on the basis of complaints received and on suo motu cognizance. The issues it monitors and the recommendations it makes go well beyond those of the first UPR, which addressed a narrow band of problems. However, since the second UPR will assess the government's performance on those, this paper focuses on them, though placed in the wider perspective, which the UN should not ignore.

3. To prepare for this report, the NHRC has held five regional consultations and a national consultation with NGOs, academics, officials and State Human Rights Commissions (SHRCs), even though its mandate and work involve a continuing dialogue with the Central and State Governments, whose performance on human rights it evaluates, and with civil society, from which the more serious complaints are received. It did so for two reasons: given the diversity of India, to ensure that regional priorities were captured, and to focus on the points on which the UPR will concentrate.

4. Around 350 people took part in these consultations, where the local or specialized knowledge that civil society shared was invaluable. Governmental participation was patchy, nor has the NHRC received from most Ministries the action-taken report on the recommendations of the first UPR which it sought in 2010. The SHRCs contributed almost nothing, confirming that most are still inchoate, and must be strengthened.

Civil and political rights

5. India has a comprehensive framework of laws and the Government remained willing to draft new laws to respond to domestic demands or to meet international obligations. However, the implementation of laws, the weakness of new Bills and the law's delay were areas of concern, among which the NHRC will highlight some:

- An anodyne Prevention of Torture Bill was passed by the Lower House of Parliament. It has been greatly strengthened by a Select Committee of the Upper House, and it would be a travesty if the original Bill is adopted.

- The Armed Forces Special Powers Act remains in force in Jammu & Kashmir and the North-Eastern States, conferring an impunity that often leads to the violation of human rights. This, despite the fact that India's 2011 report on the Optional Protocol to the CRC states that "India does not face either international or non-international armed conflict situations".
- 35% of the complaints to the NHRC annually are against the police. In 2006 the Supreme Court issued seven binding directives to start reform, but little has been done, though the need is urgent.
- 9% of the complaints to the NHRC in 2010-11 were on inaction by officials or their abuse of power, confirming that laws are often not implemented or ignored.
- Custodial justice remained a problem. Jails are overcrowded and unhygienic, disease rampant and treatment poor. 67% of prisoners are under trial, either unable to raise bail or confined far longer than they should be because of the huge backlog of cases.
- There are inordinate delays in the provision of justice. 56,383 cases were pending in the Supreme Court at the end of October 2011. At the end of 2010, 4.2 million cases were pending in High Courts, and almost 28 million in subordinate courts.
- The scheduled castes and scheduled tribes remain particularly vulnerable despite laws to protect them, because of the indifference of public servants.
- The practice of bonded labour continues despite laws that ban it, and is taking new forms. The NHRC has received reports of bonded labour being used to execute defence projects in difficult areas.
- The degrading practice of manual scavenging festers on. Some States are in denial over this. The Indian Railways are the largest users of manual scavengers.
- The focal point set up in the NHRC for the protection of human rights defenders received complaints that several, including those working on minority rights and the rights of the scheduled castes and tribes, faced harassment in several States, including arbitrary detention.

Economic, social and cultural rights

6. Though, as the Government had reported at UPR 1, it has set up ambitious "flagship programmes" to provide these rights, they remain precarious:

- A massive public distribution system has not assured the right to food because malnutrition is endemic. The National Advisory Council has recommended that legal entitlements to subsidized foodgrains be extended to at least 75% of the population. This is not acceptable to the Government, which sets arbitrary ceilings on the numbers who can be declared as being below the poverty line.

- The official estimate that 27.5% of the population was below the poverty line in 2004-05 grossly understates the incidence of poverty. The expert committee set up by the Planning Commission put the figure at 37.2%. Other committees set up by Ministries peg it even higher.
- Over 90% of the workforce is in the unorganized sector, has no access to social security, is particularly vulnerable in the cities, and is therefore driven into permanent debt, often leading to conditions of bonded labour.
- The National Rural Employment Guarantee Scheme guaranteed 100 days of work a year to any rural household that needed it. Government data showed that 56 million households applied, 55 million were given work but on average received half the wages guaranteed. The Scheme has not therefore made enough of an impact, very large sums of money have been siphoned off, and it does not provide long-term employment or build permanent assets.
- Public spending on health continues to be abysmally low, at about 1% of GDP, despite Government's commitment to raise it to 2-3%. The public health system is riddled with problems; vast numbers in the villages get little or no medical care. A performance audit by the Auditor General and an evaluation done for the Planning Commission have both found serious deficiencies in the National Rural Health Mission.
- The current National Family Health Survey reports that "the percentage of children under age five years who are underweight is almost 20 times as high in India as would be expected in a healthy, well-nourished population and is almost twice as high as the average percentage of underweight children in sub-Saharan African countries." A huge programme called the Integrated Child Development Services was set up in 1975, but an evaluation done in 2011 for the Planning Commission found that 60% of the annual budget for supplementary nutrition was being diverted. (A study done for the NHRC confirms this.)

The quality of education, particularly in the villages, is dismal; the infrastructure is appalling, teachers are absent, para-teachers are poorly trained. Learning levels and literacy are both very low.

- The Indira Awas Yojana, set up to provide rural housing, requires that an applicant have a plot of land. Millions of landless are excluded. The scheme does not give enough to build a house, and there is some evidence that those who take the money end up in debt. An evaluation done for the Planning Commission found that there was no quality control, including in seismic zones. Neither is there an insistence that toilets be built. The safety of residents and sanitation remain serious concerns.
- The NHRC, which monitors human rights in 28 representative districts across India, finds in its field visits that none of the flagship programmes function well.

- Rapid growth, the development of infrastructure and the expansion of mining industries, have all led to massive displacements of populations, often without their informed consent. The NHRC's monitoring finds that usually those displaced are given neither adequate relief nor the means of rehabilitation.
- The denial or the abuse of, or the inability to access, their rights hit the most vulnerable the hardest – women, children, the scheduled castes and tribes, and the minorities.

Implementation of Recommendations in UPR 1

7. The NHRC's assessment of how far the Government has responded to the recommendations made in UPR 1, which follows, should be read in the context of these larger failures.

8. On Recommendation 1, the Prevention of Torture Bill, 2010 was weak. If the Act eventually adopted dilutes the revisions made by the Select Committee, it will call into question the Government's commitment to the Convention against Torture.

9. On Recommendation 2, Government has not involved civil society in the follow-up to UPR 1, but some Ministries do consult it in the formulation and implementation of their programmes.

10. On Recommendation 3, to energize "existing mechanisms to enhance the addressing of human rights challenges", the record is uneven because:

- The Central Government has continued to let the National Commissions function independently, but given them no added powers or greater resources;
- the State Human Rights Commissions are mostly moribund;
- very few Human Rights Courts have been set up.

11. On Recommendation 4, the Government has taken a belated step to "encourage enhanced cooperation with human rights bodies" by issuing a standing invitation to Special Procedures mandate-holders, in response to Recommendation 14, so it should not be difficult for it to act on Recommendation 15, which asked it to receive the Special Rapporteur on the question of torture.

12. The Government's decision is welcome, but it still sends delayed reports or none to treaty bodies, and its apathy on Recommendations 2 and 3 (both of which it accepted) reflects a reluctance to engage "relevant stakeholders".

13. On Recommendation 5, the Human Development Report 2011 of the Planning Commission has some disaggregated data, but not on caste and related discrimination, though from its experience the NHRC believes this is essential, not least in key areas such as :

- crimes committed against women and children from the Scheduled Castes and Scheduled Tribes;
 - violence against women other than rape;
 - bonded labour, child labour and manual scavenging;
 - custodial violence, illegal detention and torture.
14. On Recommendation 6, ignoring a request from the NHRC, the Government has taken no steps to sign and ratify the Optional Protocol to CEDAW.
15. On Recommendation 7, which asked the Government to consider signing and ratifying ILO Conventions 138 and 182, it claims that, though it accepts the spirit of the Conventions, it cannot ratify them because socio-economic conditions make it difficult to prohibit the employment of children. This is an argument now even less tenable after the passage of the Right to Education Act in 2009. India now has a law that makes it compulsory for children to be at school till they are 14, and another that lets them work.
16. Despite this absurdity, the Government has not acted on Recommendation 9, which asked it to review its reservation to Article 32 of the CRC. The NHRC has seconded this recommendation but received no response. Child labour therefore flourishes, the right to education will languish.
17. On Recommendation 8, while the NHRC shares with other NHRIs its experience in the promotion and protection of human rights, it is not aware if the Government has any programmes to do so, though it accepted this recommendation.
18. On Recommendation 10, the Government accepts the need for inclusive development, but the implementation of the flagship programmes through which it addresses “economic and social inequities” has not been encouraging. These programmes, which take the poor as targets rather than as agents of change, are well-meant but not well-conceived, have been lavishly funded but have also been looted by the corrupt. The intended beneficiaries get a small proportion of their supposed entitlements.
19. On Recommendation 11, accepted by the Government, there is still no national action plan for human rights. Since the Government has ignored its requests, the NHRC has started to draft a plan, on which it will consult civil society and other stake-holders.
20. On Recommendation 12, there is no evidence that the Government intends to ratify the Convention on Enforced Disappearance. Enforced disappearance is not codified as a criminal offence in domestic law, nor are extant provisions of law used to deter the practice. The NHRC received 341 complaints of disappearance in 2010, 338 so far in 2011; these are by no means comprehensive but still significant numbers, which underline the need for the Government to act.
21. On Recommendation 13, there has been little progress on strengthening human rights education (HRE). Education is primarily the responsibility of the States in India,

and almost none has given this priority. The NHRC works with schools, colleges, universities and NGOs to promote HRE, and has made recommendations to the Second Phase of the World Programme for HRE on the possible target groups and thematic issues for India.

22. On Recommendation 16, which the Government accepted, the NHRC is not aware that it has had a formal follow-up process to the UPR; the question of integrating a gender perspective in it does not therefore arise. This should be corrected after UPR 2. Gender budgeting is, however, now an integral part of the budgetary process.

23. On Recommendation 17, to amend the Special Marriage Act and give equal rights to property accumulated during marriage, there have been no developments.

24. Recommendation 18 asked the Government to continue its efforts “to guarantee a society... well fed, well housed, well cared for and well educated”. The NHRC’s overview of the state of human rights in India will show that these efforts have met with very limited success.

The Naxal movement

25. The spread of this violent left-wing extremist movement is a cautionary tale. It claims to speak for, and recruits from, the adivasis, forest-dwelling tribals who have suffered years of such neglect and exploitation that some of them have been alienated enough to join a movement that calls for the violent overthrow of democracy. Estimates are that 200 out of the 600 districts in India are affected, though the Government puts the figure at around 60 districts; even so this means that perhaps 120 million people are affected. Belatedly, the Government is trying to bring the fruits of development to these areas, but the violent opposition of the Naxals, who destroy even schools and attack officials, means that in the areas they control, human rights have become even more parlous: governance and the rule of law rarely function. The villagers are the victims of Naxal violence, and collateral damage in the counter-insurgency operations. It will be an immense challenge for a democracy to defeat a movement that respects no human rights, through means that safeguard and do not violate the rights of the citizens it must protect.

Annex F

Subject-wise Classification of India's I and II UPR Recommendations

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Annex F

Subject-wise classification of India's I and II UPR recommendations¹

I. ECONOMIC, SOCIAL AND CULTURAL RIGHTS AND RIGHT TO DEVELOPMENT		
Number ²	Recommendation	Status
RIGHT TO DEVELOPMENT (in general)		
UPR 1		
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.	Accepted
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.	Accepted
UPR 2		
75	Put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including women, girls and children, as well as the Scheduled Castes and Scheduled Tribes and Minorities are well achieved.	Accepted
83	Continue incorporating the gender perspective in programmes and development plans with positive measures to the effective promotion and protection of women's rights.	Accepted
145	Continue encouraging socio-economic development and poverty eradication.	Accepted
18	Sign the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol and ratify the International Convention for the Protection of All Persons from Disappearance.	Not accepted
Rural Development		
UPR 2		
51	Continue its efforts to further spread in the country the model of rural growth in the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA).	Accepted
59	Intensify efforts in providing capacity-building and training programmes on human rights for its law enforcement officials as well as judicial and legal officials in the rural areas.	Accepted
74	Address the inequities based on rural-urban divide and gender imbalance.	Accepted
139	Further accelerate the sanitation coverage and the access to safe and sustainable drinking water in rural areas.	Accepted
143	Further strengthen the efforts in poverty eradication, paying special attention to the rural population.	Accepted

¹ Note on how to use this Table:

- Recommendations made during UPR I remain binding on the Indian Government during UPR II, and therefore are marked 'accepted' in the table.
- Recommendations made during UPR II that have been accepted by the Indian Government are marked as 'accepted'.
- The recommendations made during UPR II which the Indian Government has not accepted are marked as 'not accepted'.
- Certain recommendations made during UPR II have been accepted by the Indian Government in a revised form. The revised portions (which have been changed by the Indian Government) are highlighted, and the recommendations are marked as 'accepted in revised form'.

² The number indicated in this column is drawn from the official Human Rights Council documents listing the UPR I recommendations accepted in 2008 (Report of the Working Group on the Universal Periodic Review: India – Addendum, 2008, A/HRC/8/26/Add.1, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G08/161/58/PDF/G0816158.pdf?OpenElement>) and the UPR II recommendations made to India in May 2012 (Report of the Working Group on the Universal Periodic Review: India, 2012, A/HRC/21/10, available at: <http://daccess-dds-ny.un.org/doc/UNDOC/GEN/G12/151/08/PDF/G1215108.pdf?OpenElement>).

Number	Recommendation	Status
148	Provide every possible support and assistance to the national project for rural health to raise the standard of nutrition and improve public health and to strengthen the relationship between health and indicators such as sanitation and personal hygiene.	Accepted
156	Take effective measures to fully implement National Rural Health Mission (NRHM).	Accepted
ERADICATION OF POVERTY		
UPR 1		
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.	Accepted
UPR 2		
83	Continue incorporating the gender perspective in programmes and development plans with positive measures to the effective promotion and protection of women's rights.	Accepted
130	Provide more resources for the enjoyment of economic and social rights, especially in favour of vulnerable groups like women, children, poor people and minorities.	Accepted
134	Make efforts to eliminate the large gap that exists between the rich and the poor.	Accepted
140	Continue to strengthen its poverty alleviation strategies, as well as its child protection strategies, particularly against the exploitation of children.	Accepted
141	Continue consolidating programmes and socio-economic measures essential to achieve poverty reduction and social exclusion to the utmost well-being of its people.	Accepted
142	Continue efforts to eradicate poverty and better living conditions as well as increase job opportunities.	Accepted
143	Further strengthen the efforts in poverty eradication, paying special attention to the rural population.	Accepted
144	Continue to advance the progress already underway on poverty eradication and improve the enjoyment of the most basic human rights of the people, especially women and children.	Accepted
145	Continue encouraging socio-economic development and poverty eradication.	Accepted
RIGHT TO ADEQUATE HOUSING AND LAND		
UPR 1		
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.	Accepted
UPR 2		
130	Provide more resources for the enjoyment of economic and social rights, especially in favour of vulnerable groups like women, children, poor people and minorities.	Accepted
142	Continue efforts to eradicate poverty and to better living conditions as well as increase job opportunities.	Accepted
144	Continue to advance the progress already underway on poverty eradication and improve the enjoyment of the most basic human rights of its people, especially women and children.	Accepted
137	Continue to implement plans Accepted in the area of housing and rehabilitation, particularly the plan launched in 2011 aimed at preventing the construction of new slums	Not accepted
RIGHT TO FOOD		
UPR 2		
136	Introduce a strategy to promote food security.	Accepted
148	Provide every possible support and assistance to the national project for rural health to raise the standard of nutrition and improve public health and to strengthen the relationship between health and indicators such as sanitation and personal hygiene.	Accepted
168	Carry on efforts <u>with respect to</u> environmental and health policies, and continue <u>efforts and undertake measures to</u> adopt the bill on food security and strengthen the Public Distribution System (PDS). ³	Accepted in revised form

3 This recommendation made by Iran was worded as under: "Carry on its efforts in environmental and health policies, and continue to enforce its legislative measures on food security".

Number	Recommendation	Status
RIGHT TO HEALTH		
UPR 2		
135	Allocate more resources in sectors that provide basic services such as health, education and employment opportunities.	Accepted
146	Continue efforts aimed at improving the level of public health in the country to attain better results in the area of health and access to health.	Accepted
148	Provide every possible support and assistance to the national project for rural health to raise the standard of nutrition and improve public health and to strengthen the relationship between health and indicators such as sanitation and personal hygiene.	Accepted
155	Intensify its efforts to sensitize and train medical professionals on the criminal nature of pre-natal sex selection with a view to ensuring stringent enforcement of the legal prohibition of such practice.	Accepted
156	Take effective measures to fully implement National Rural Health Mission (NRHM).	Accepted
157	Continue to strengthen/develop programmes and initiatives geared towards guaranteeing the rights to health and education.	Accepted
158	Redouble its efforts in the field of education and health.	Accepted
168	Carry on efforts <u>with respect to</u> environmental and health policies, and continue <u>efforts and undertake measures to adopt the bill on food security and strengthen the Public Distribution System (PDS)</u> . ⁴	Accepted in revised form
54	Establishment and implementation of a National Human Rights Plan which cover access to education and health, including aspects of sexual and reproductive health, as well as, concrete measures to eliminate violence against women.	Not accepted
147	Establish measures at the national and state level to remove obstacles in terms of access by the population to pain palliative medicines.	Not accepted
149	Meet the stated commitment from the Common Minimum Program of 2004 to dedicate 3 percent of India's GDP to health and 6 percent to education	Not accepted
159	Increase the budget allocated to health from 1 percent of the GDP to 2 percent.	Not accepted
Sexual and Reproductive Health		
UPR 2		
150	Take further practical steps to reduce the high level of maternal and child mortality, inter alia, through better access to maternal health services.	Accepted
151	Further efforts towards addressing the challenge of maternal and child mortality.	Accepted
152	Strengthen its efforts to improve maternal health and act to effectively balance the skewed sex-ratio among children, including by combating female foeticide.	Accepted
153	Take further measures to ensure that all women without any discrimination have access to adequate obstetric delivery services and sexual and reproductive health services, including safe abortion and gender-sensitive comprehensive contraceptive services.	Accepted
155	Intensify its efforts to sensitize and train medical professionals on the criminal nature of prenatal sex selection with a view to ensuring stringent enforcement of the legal prohibition of such practice.	Accepted
54	Establishment and implementation of a National Human Rights Plan which cover access to education and health, including aspects of sexual and reproductive health, as well as, concrete measures to eliminate violence against women.	Not accepted

⁴ See footnote 3.

Number	Recommendation	Status
154	Contribute to further reduction of maternal mortality through the establishment of an independent organ to accelerate programmes and projects in this area.	Not accepted
RIGHT TO WATER AND SANITATION		
UPR 2		
76	Continue working on the welfare of children and women.	Accepted
139	Further accelerate the sanitation coverage and the access to safe and sustainable drinking water in rural areas.	Accepted
148	Provide every possible support and assistance to the national project for rural health to raise the standard of nutrition and improve public health and to strengthen the relationship between health and indicators such as sanitation and personal hygiene.	Accepted
138	Ensure that every household enjoys the right to safe drinking water and sanitation.	Not accepted
RIGHT TO CLEAN ENVIRONMENT		
UPR 2		
168	Carry on efforts <u>with respect to environmental and health policies</u> , and continue <u>efforts and undertake measures to adopt the bill on food security and strengthen the Public Distribution System (PDS)</u> . ⁵	Accepted in revised form
26	Ratification of ILO Conventions Nos. 138 concerning Minimum Age for Admission to Employment; 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; 169 concerning Indigenous and Tribal Peoples in Independent Countries; 155 concerning Occupational Safety and Health and the Working Environment and 170 concerning Safety in the use of Chemicals at Work.	Not accepted
RIGHT TO WORK AND LABOUR RIGHTS (see also: Child Labour in Part III B)		
UPR 1		
7	Consider signature and ratification of ILO Conventions No. 138 and 182.	Accepted
UPR 2		
51	Continue its efforts to further spread in the country the model of rural growth in the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA).	Accepted
78	Continue to promote the right to equal opportunity for work and at work.	Accepted
129	Continue efforts and actions in the promotion of social security and labour policy.	Accepted
10	Accede to the ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; ratify the Statute of the International Criminal Court and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Protocol, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the ILO Convention No. 189 concerning Decent Work for Domestic Workers.	Not accepted
Trafficking (see also: Trafficking in Women and Children in Part III B)		
UPR 2		
107	Accelerate efforts on combating human trafficking.	Accepted
108	Reinforce efforts to protect and rehabilitate the victims of trafficking.	Accepted
111	Implement monitoring mechanisms to stop people trafficking.	Accepted

⁵ See footnote 3.

Number	Recommendation	Status
RIGHT TO EDUCATION (see also: Right to Non-discrimination in Education in Part III B)		
UPR 1		
13	Strengthen human rights education, specifically in order to address effectively the phenomenon of gender-based and caste-based discrimination.	Accepted
UPR 2		
52	Enhance the coordination of both the central and state governments in an effective manner in order to guarantee the smooth implementation of the 2010 Right of Children to Free and Compulsory Education Act.	Accepted
55	Continue with action to include human rights education in the school curricula.	Accepted
135	Allocate more resources in sectors that provide basic services such as health, education and employment opportunities.	Accepted
157	Continue to strengthen/develop programmes and initiatives geared towards guaranteeing the rights to health and education.	Accepted
158	Redouble its efforts in the field of education and health.	Accepted
160	Further promote children's right to education.	Accepted
161	Reinforce efforts in provision of free and compulsory primary education.	Accepted
162	Continue implementing a non-discriminatory and inclusive policy and guarantee quality education to all girls and boys in the country.	Accepted
166	Prioritise efforts to ensure that children with disabilities are afforded the same right to education as all children.	Accepted
54	Establishment and implementation of a National Human Rights Plan which cover access to education and health, including aspects of sexual and reproductive health, as well as, concrete measures to eliminate violence against women.	Not accepted
149	Meet the stated commitment from the Common Minimum Program of 2004 to dedicate 3 percent of India's GDP to health and 6 percent to education	Not accepted
163	Strengthen human rights training aimed at teachers in order to eliminate discriminatory treatment of children of specific castes, as well as appropriately follow-up on the results of the training that has occurred thus far.	Not accepted
164	Ensure universal, compulsory and free education, carrying out on a priority basis measures aimed at eradicating discrimination, particularly discrimination that affects girls, marginal groups and persons with disabilities.	Not accepted
165	Continue its efforts to promote the right to children's education and ensure the importance of the principles of children's education in the country.	Not accepted
BIRTH REGISTRATION		
UPR 2		
131	Take the necessary measures to ensure birth registration on a universal basis, particularly for persons living in extreme poverty, belonging to religious minorities or in remote areas	Not accepted
132	Ensure timely registration of all births	Not accepted
RIGHT TO INFORMATION ACT AND CORRUPTION		
UPR 2		
127	Ensure a safe working environment for journalists. (Deleted portion: and take proactive measures to address the issue of impunity, such as swift and independent investigations.)	Accepted in revised form

Number	Recommendation	Status
62	Strengthen the process for ensuring independent and timely investigation mechanisms to address and eliminate corruption; and provide for and facilitate increased accountability and transparency in this process.	Not accepted
117	Continue to carry out policies aimed at improving its judicial system, reforming the law enforcement bodies and reducing the level of crime and corruption.	Not accepted
126	Ensure that measures limiting freedom of expression on the internet is based on clearly defined criteria in accordance with international human rights standard.	Not accepted

II. MILITARISATION AND SECURITY – LAW AND APPARATUS

Number	Recommendation	Status
ARMED FORCES (SPECIAL POWERS) ACT AND OTHER SPECIAL SECURITY LAWS		
UPR 2		
35	Review the law on the special powers of the armed forces to align it with its obligations under the International Convention on Civil and Political Rights.	Not accepted
44	Repeal the Armed Forces Special Powers Act or adopt the negotiated amendments to it that would address the accountability of security personnel, the regulation concerning detentions as well as victims' right to appeal in accordance to international standards.	Not accepted
45	Carry out an annual review of the 1958 Armed Forces Special Powers Act aiming to gradually reduce its geographic scope.	Not accepted
TORTURE (see also in Part III A)		
UPR 1		
1	Expedite ratification of the Convention against Torture and its Optional Protocol.	Accepted
15	Receive as soon as possible the Special Rapporteur on the question of torture.	Accepted
UPR 2		
15	Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.	Accepted
1	Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the International Convention for the Protection of All Persons from Enforced Disappearance and the Statute of the International Criminal Court.	Not accepted
3	Expedite the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, and adopt robust domestic legislation to this effect.	Not accepted
4	Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and end impunity for security forces accused of committing human rights violations.	Not accepted
5	Continue efforts to accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as its optional protocol, and the International for the Protection of All Persons from Enforced Disappearances; and ratify ILO Conventions No. 169 and no. 189.	Not accepted
7	Ratify promptly the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and relevant protocol.	Not accepted
8	Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment as soon as possible.	Not accepted
10	Accede to the ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; ratify the Statute of the International Criminal Court and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the ILO Convention No. 189 concerning Decent Work for Domestic Workers.	Not accepted

Number	Recommendation	Status
12	Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and ensure that the instrument of ratification is fully consistent with the Convention.	Not accepted
16	Ratify the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment of Punishment, as well as its Optional Protocol .	Not accepted
17	Expedite ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol.	Not accepted
18	Sign the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol and ratify the International Convention for the Protection of All Persons from Enforced Disappearance.	Not accepted
24	Ratify, in the shortest time, the International Convention for the Protection of All Persons from Enforced Disappearance as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and adopt related internal legislation.	Not accepted
28	Ratify Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the ILO Conventions no. 138 and 182 concerning child labour.	Not accepted
29	Accelerate the ratification process of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	Not accepted
32	Conform its national legislation to international norms on the prevention of torture, to speed up the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and receive the Special Rapporteur on Torture.	Not accepted
33	Take the necessary measures to ensure that the existing national legislation against torture and cruel and inhumane and degrading treatment incorporates the highest international standards in this area.	Not accepted
Prevention against Torture Bill		
UPR 2		
6	Accelerate its domestic procedure for ratification including the adoption of the Prevention against Torture Bill by its Parliament.	Not accepted
34	Prioritise the review and implementation of the Prevention Against Torture Bill, ensuring that it complies with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment.	Not accepted
36	Consider introducing a new bill to the Parliament, taking into full consideration of the suggestions of the Select Committee, and take further actions towards the ratification of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	Not accepted
ENFORCED DISAPPEARANCES		
UPR 1		
12	Ratify the Convention on Enforced Disappearances.	Accepted
UPR 2		
1	Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the International Convention for the Protection of All Persons from Enforced Disappearance and the Statute of the International Criminal Court.	Not accepted
5	Continue efforts to accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as its optional protocol, and the International for the Protection of All Persons from Enforced Disappearances; and ratify ILO Conventions No. 169 and no. 189.	Not accepted
9	Ratify the International Convention for the Protection of All Persons from Enforced Disappearance and recognize the competence of its Committee, in accordance with articles 31 and 32.	Not accepted
11	Consider the possibility of ratifying the International Convention for the Protection of All Persons from Enforced Disappearance.	Not accepted
13	Ratify the International Convention for the Protection of All Persons from Enforced Disappearances, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the Rome Statute of the International Criminal Court.	Not accepted

Number	Recommendation	Status
18	Sign the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol and ratify the International Convention for the Protection of All Persons from Enforced Disappearance.	Not accepted
20	Evaluate the possibility of ratifying the International Convention for the Protection of All Persons from Enforced Disappearance.	Not accepted
24	Ratify, in the shortest time, the International Convention for the Protection of All Persons from Enforced Disappearance as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and adopt related internal legislation.	Not accepted
ARBITRARY ARREST AND DETENTION		
UPR 2		
169	Continue its efforts to achieve balance between its counterterrorism strategies and the need to forestall the spread of xenophobia.	Not accepted
SEXUAL VIOLENCE (see also: Violence against Women in Part III B)		
UPR 2		
79	Continue legal efforts in the protection of women as well as children's rights as well as improve measures to prevent violence against women and girls, and members of religious minorities.	Accepted
106	Take the necessary legislative, civil and criminal measures to provide the appropriate protection to women, and children that are victims of sexual abuse.	Accepted
41	Enact comprehensive reforms to address sexual violence and all acts of violence against women, including "honour" crimes, child marriage, female feticide and female infanticide, and to remedy limitations in the definition of rape and the medico forensic procedures Accepted for rape cases.	Not accepted
LEGAL IMMUNITY		
Rome Statute of the International Criminal Court (see also in Part IV)		
UPR 2		
1	Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the International Convention for the Protection of All Persons from Enforced Disappearance and the Statute of the International Criminal Court.	Not accepted
10	Accede to the ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; ratify the Statute of the International Criminal Court and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the ILO Convention No. 189 concerning Decent Work for Domestic Workers.	Not accepted
13	Ratify the International Convention for the Protection of All Persons from Enforced Disappearances, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the Rome Statute of the International Criminal Court.	Not accepted
14	Ratify the Rome Statute of the International Criminal Court, including its Agreement on Privileges and Immunities.	Not accepted
Impunity and Human Rights Violations by Security Forces and Police		
UPR 2		
59	Intensify efforts in providing capacity-building and training programmes on human rights for its law enforcement officials as well as judicial and legal officials in the rural areas.	Accepted
60	Improve training on human rights on addressing law enforcement especially by police officers.	Accepted
127	Ensure a safe working environment for journalists. (Deleted portion: and take proactive measures to address the issue of impunity, such as swift and independent investigations.)	Accepted in revised form
4	Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and end impunity for security forces accused of committing human rights violations.	Not accepted

Number	Recommendation	Status
44	Repeal the Armed Forces Special Powers Act or adopt the negotiated amendments to it that would address the accountability of security personnel, the regulation concerning detentions as well as victims' right to appeal in accordance to international standards.	Not accepted
119	Guarantee effective access to justice in cases of human rights violations committed by security forces personnel with regard to the use of torture.	Not accepted
120	Implement effective judiciary proceedings making possible the bringing to justice security forces personnel who have committed human rights violations.	Not accepted
121	Solve remaining cases of human rights violations and create an independent committee to receive claims against the police that were referred to by the Special Rapporteur on Human Rights Defenders.	Not accepted

III. ACCESS TO JUSTICE

Number	Recommendation	Status
A) BARRIERS TO ACCESS TO JUSTICE		
REGRESSIVE LAWS		
UPR 2		
32	Conform its national legislation to international norms on the prevention of torture, to speed up the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and receive the Special Rapporteur on Torture.	Not accepted
33	Take the necessary measures to ensure that the existing national legislation against torture and cruel and inhumane and degrading treatment incorporates the highest international standards in this area.	Not accepted
41	Enact comprehensive reforms to address sexual violence and all acts of violence against women, including "honour" crimes, child marriage, female feticide and female infanticide, and to remedy limitations in the definition of rape and the medico forensic procedures Accepted for rape cases.	Not accepted
113	Amend the Child Labour Act to ban child labour, and to sign and ratify ILO Conventions 138 concerning Minimum Age for Admission to Employment and 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour and elaborate a timeline for the ratification of these instruments.	Not accepted
115	Extend the minimum age to 18 years for any form of labour that prevents children from accessing a full education.	Not accepted
128	Align its national regulations with the ILO Conventions 138 concerning Minimum Age for Admission to Employment and 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour and elaborate a timeline for the ratification of these instruments.	Not accepted
VIOLATIONS BY THE POLICE AND RESISTANCE TO REFORM		
UPR 2		
59	Intensify efforts in providing capacity-building and training programmes on human rights for its law enforcement officials as well as judicial and legal officials in the rural areas.	Accepted
60	Improve training on human rights on addressing law enforcement especially by police officers.	Accepted
62	Strengthen the process for ensuring independent and timely investigation mechanisms to address and eliminate corruption; and provide for and facilitate increased accountability and transparency in this process.	Not accepted
121	Solve remaining cases of human rights violations and create an independent committee to receive claims against the police that were referred to by the Special Rapporteur on Human Rights Defenders.	Not accepted

Number	Recommendation	Status
JUDICIARY: VACANCIES AND JUDICIAL DELAY		
UPR 2		
122	Further promote equal access to justice for all, including by reducing backlog and delays in the administration of cases in court, providing more legal aids to the poor and marginalized. <u>(Deleted portion: as well as increasing the use of alternative measures for pre-trial detention)</u>	Accepted in revised form
40	Strengthen protection of children's rights, including the ratification of the Convention on the Rights of the Child, by improving mechanisms and resources for the implementation of existing legislation, and by demonstrating higher conviction rates for crimes against children such as sexual exploitation, child labour, child forced-labour and child trafficking.	Not accepted
47	Take adequate measures to guarantee and monitor the effective implementation of the Prevention of Atrocities Act, providing legal means for an increased protection of vulnerable groups like the Dalit, including the access to legal remedies for affected persons.	Not accepted
73	Monitor and verify the effectiveness of, and steadily implement, measures such as quota programmes in the areas of education and employment, special police and special courts for effective implementation of the Protection of Civil Rights Act and the Scheduled Caste and Scheduled Tribes Act, and the work of the National Commission for Scheduled Castes.	Not accepted
117	Continue to carry out policies aimed at improving its judicial system, reforming the law enforcement bodies and reducing the level of crime and corruption.	Not accepted
118	Prevent and pursue through the judicial process, all violent acts against religious and tribal minorities, Dalits and other castes.	Not accepted
EXCESSIVE PRE-TRIAL DETENTION AND PRISONS		
UPR 2		
122	Further promote equal access to justice for all , including by reducing backlog and delays in the administration of cases in court, providing more legal aids to the poor and marginalized. <u>(Deleted portion: as well as increasing the use of alternative measures for pre-trial detention)</u>	Accepted in revised form
TORTURE (see also in Part II)		
UPR 1		
1	Expedite ratification of the Convention against Torture and its Optional Protocol.	Accepted
15	Receive as soon as possible the Special Rapporteur on the question of torture.	Accepted
UPR 2		
15	Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.	Accepted
1	Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the International Convention for the Protection of All Persons from Enforced Disappearance and the Statute of the International Criminal Court.	Not accepted
3	Expedite the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, and adopt robust domestic legislation to this effect.	Not accepted
4	Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and end impunity for security forces accused of committing human rights violations.	Not accepted
5	Continue efforts to accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as its optional protocol, and the International for the Protection of All Persons from Enforced Disappearances; and ratify ILO Conventions No. 169 and no. 189.	Not accepted

Number	Recommendation	Status
7	Ratify promptly the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and relevant protocol.	Not accepted
8	Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as soon as possible.	Not accepted
10	Accede to the ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; ratify the Statute of the International Criminal Court and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the ILO Convention No. 189 concerning Decent Work for Domestic Workers.	Not accepted
12	Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and ensure that the instrument of ratification is fully consistent with the Convention.	Not accepted
16	Ratify the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, as well as its Optional Protocol .	Not accepted
17	Expedite ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol.	Not accepted
18	Sign the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol and ratify the International Convention for the Protection of All Persons from Enforced Disappearance.	Not accepted
24	Ratify, in the shortest time, the International Convention for the Protection of All Persons from Enforced Disappearance as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and adopt related internal legislation.	Not accepted
28	Ratify Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the ILO Conventions no. 138 and 182 concerning child labour.	Not accepted
29	Accelerate the ratification process of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	Not accepted
32	Conform its national legislation to international norms on the prevention of torture, to speed up the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and receive the Special Rapporteur on Torture.	Not accepted
33	Take the necessary measures to ensure that the existing national legislation against torture and cruel and inhumane and degrading treatment incorporates the highest international standards in this area.	Not accepted
Prevention against Torture Bill		
UPR 2		
6	Accelerate its domestic procedure for ratification including the adoption of the Prevention against Torture Bill by its Parliament.	Not accepted
34	Prioritise the review and implementation of the Prevention Against Torture Bill, ensuring that it complies with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	Not accepted
36	Consider introducing a new bill to the Parliament, taking into full consideration of the suggestions of the Select Committee, and take further actions towards the ratification of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.	Not accepted
IMMUNITY AND LACK OF ACCOUNTABILITY		
UPR 2		
127	Ensure a safe working environment for journalists. (Deleted portion: and take proactive measures to address the issue of impunity, such as swift and independent investigations.)	Accepted in revised form

Number	Recommendation	Status
4	Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and end impunity for security forces accused of committing human rights violations.	Not accepted
48	Adopt the Prevention of Communal and Targeted Violence Bill addressing issues such as accountability of civil servants, standards of compensation for victims and elements of command responsibilities.	Not accepted
119	Guarantee effective access to justice in cases of human rights violations committed by security forces personnel with regard to the use of torture.	Not accepted
121	Solve remaining cases of human rights violations and create an independent committee to receive claims against the police that were referred to by the Special Rapporteur on Human Rights Defenders.	Not accepted
INADEQUATE LEGAL AID AND ASSISTANCE		
UPR 2		
122	Further promote equal access to justice for all, including by reducing backlog and delays in the administration of cases in court, providing more legal aids to the poor and marginalized. <u>(Deleted portion portion: as well as increasing the use of alternative measures for pre-trial detention)</u>	Accepted in revised form
47	Take adequate measures to guarantee and monitor the effective implementation of the Prevention of Atrocities Act, providing legal means for an increased protection of vulnerable groups like the Dalit, including the access to legal remedies for affected persons.	Not accepted
DEATH PENALTY		
UPR 2		
91	Establish a moratorium on executions with a view to abolishing the death penalty.	Not accepted
92	Abolish capital punishment and commute existing death sentences to life imprisonments terms.	Not accepted
93	Respect the de facto moratorium on the death penalty which had been in place since 2004.	Not accepted
94	Consider abolishing the death penalty or establishing a moratorium.	Not accepted
95	Maintain de facto moratorium on executions and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights with a view to definitive abolishment of the death penalty.	Not accepted
96	Introduce as quickly as possible a de jure moratorium on executions.	Not accepted
97	Adopt a de jure moratorium on capital punishment with a view to abolishing the death penalty.	Not accepted
98	Establish an official moratorium against the death penalty and take the necessary measures in view of its abolition.	Not accepted
99	Study the possibility of repealing the death penalty from its legal regime.	Not accepted
100	Make the de facto moratorium into a permanent one with a view to abolishing the death penalty.	Not accepted
101	Consider adhering to the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.	Not accepted

Number	Recommendation	Status
B) DISCRIMINATION IN ACCESS TO JUSTICE		
DISCRIMINATION (in general)		
UPR 1		
3	Continue energizing existing mechanisms to enhance the addressing of human rights challenges.	Accepted
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.	Accepted
UPR 2		
75	Put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including women, girls and children, as well as the Scheduled Castes and Scheduled Tribes and Minorities are well achieved.	Accepted
53	Enact comprehensive anti-discrimination legislation and ensure that there are adequate means of redress.	Not accepted
54	Establishment and implementation of a National Human Rights Plan which cover access to education and health, including aspects of sexual and reproductive health, as well as, concrete measures to eliminate violence against women.	Not accepted
65	Implement Treaty Body recommendations and develop a National Action Plan to eliminate all forms of discrimination.	Not accepted
71	Continue its efforts to eliminate discrimination against and empower marginalized and vulnerable groups particularly by ensuring effective implementation of relevant laws and measures through proper and active coordination among line ministries, national and state governments; by extending disaggregated data to caste, gender, religion, status and region; and by increasing sensitization and reducing discriminatory attitudes among law enforcement officers through human rights education and training.	Not accepted
72	Ensure that laws are fully and consistently enforced to provide adequate protections for members of religious minorities, scheduled castes, and adivasi groups, as well as, women, trafficking victims, and LGBT citizens.	Not accepted
WOMEN		
Gender equality		
UPR 1		
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.	Accepted
13	Strengthen human rights education, specifically in order to address effectively the phenomenon of gender-based and caste-based discrimination.	Accepted
16	Fully integrate a gender perspective in the follow-up process to the UPR.	Accepted
UPR 2		
74	Address the inequities based on rural-urban divide and gender imbalance.	Accepted
75	Put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including women, girls and children, as well as the Scheduled Castes and Scheduled Tribes and Minorities are well achieved.	Accepted
76	Continue working on the welfare of children and women.	Accepted
77	Continue its efforts with regard to education for children and take the necessary measures to allow women to participate on an equal footing with men in all developmental efforts. ⁶	Accepted in revised form
79	Continue legal efforts in the protection of women as well as children's rights as well as improve measures to prevent violence against women and girls, and members of religious minorities.	Accepted

⁶ The recommendation as originally made by Qatar is worded as under:
 "Continue the procedures and measures taken to enable women to be equal partners and participants in development (Qatar)"

Number	Recommendation	Status
81	Redouble efforts on ensuring gender equality and take measures to prevent gender discrimination.	Accepted
82	Re-examine the budgets and social laws taking into account gender issues.	Accepted
83	Continue incorporating the gender perspective in programmes and development plans with positive measures to the effective promotion and protection of women's rights.	Accepted
84	Continue to promote its many initiatives for the eradication of all forms of discrimination against women.	Accepted
86	Continue following-up on steps taken to eliminate discrimination against women, including through awareness-raising and continuous strengthening of the relevant legal and institutional frameworks.	Accepted
87	Continue to promote the rights of women in their choice of marriage and their equality of treatment independent of caste and tribe or other considerations.	Accepted
130	Provide more resources for the enjoyment of economic and social rights, especially in favour of vulnerable groups like women, children, poor people and minorities.	Accepted
144	Continue to advance the progress already underway on poverty eradication and improve the enjoyment of the most basic human rights of the people, especially women and children.	Accepted
162	Continue implementing a non-discriminatory and inclusive policy and guarantee quality education to all girls and boys in the country.	Accepted
Political Participation of Women		
UPR 2		
80	Improve women empowerment and emancipation, and provide them with a bigger role to play in the society.	Accepted
37	Consider expediting the process to pass the 108th Constitutional Amendment Bill which seeks to reserve a significant portion of seats for women at the Lower House and state legislative assemblies and consider the ratification of the Optional Protocol to Convention on the Elimination of All Forms of Discrimination against Women.	Not accepted
42	Enact those Accepted bills that are aimed at empowering women, including the women's Reservation Bill and the amendments to Panchayati Raj Act.	Not accepted
CEDAW		
UPR 1		
6	Consider signature and ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.	Accepted
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.	Accepted
UPR 2		
2	Intensify efforts towards the MDG 5 by ensuring access to information and counseling on SRHR as set out in the National Population Policy. (Deleted portion: including by withdrawing its reservation to Article 16 in Convention on the Elimination of All Forms of Discrimination Against Women)	Accepted in revised form
19	Ratification of the Optional Protocol to the Convention on the Elimination of Discrimination against Women.	Not accepted
21	Consider signature and ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women.	Not accepted
22	Remove reservations to the Article 16(1) of the Convention on Elimination of All Forms of Discrimination against Women.	Not accepted
23	Withdraw its reservations to Convention on the Elimination of All Forms of Discrimination against Women and consider signing and ratifying its Optional Protocol.	Not accepted

Number	Recommendation	Status
37	Consider expediting the process to pass the 108th Constitutional Amendment Bill which seeks to reserve a significant portion of seats for women at the Lower House and state legislative assemblies and consider the ratification of the Optional Protocol to Convention on the Elimination of All Forms of Discrimination against Women.	Not accepted
38	Consider signing and ratifying the Optional Protocol to Convention on the Elimination of All Forms of Discrimination against Women.	Not accepted
Violence against Women		
UPR 2		
79	Continue legal efforts in the protection of women as well as children's rights as well as improve measures to prevent violence against women and girls, and members of religious minorities.	Accepted
106	Take the necessary legislative, civil and criminal measures to provide the appropriate protection to women, and children that are victims of sexual abuse.	Accepted
155	Intensify its efforts to sensitize and train medical professionals on the criminal nature of prenatal sex selection with a view to ensuring stringent enforcement of the legal prohibition of such practice.	Accepted
41	Enact comprehensive reforms to address sexual violence and all acts of violence against women, including "honour" crimes, child marriage, female feticide and female infanticide, and to remedy limitations in the definition of rape and the medico forensic procedures Accepted for rape cases.	Not accepted
54	Establishment and implementation of a National Human Rights Plan which cover access to education and health, including aspects of sexual and reproductive health, as well as, concrete measures to eliminate violence against women.	Not accepted
85	Further strengthen measures to eliminate traditional harmful practices which are discriminatory against women and girls in particular child marriages, dowry related murders and honour killings.	Not accepted
88	Strictly enforce the legal provisions prohibiting harmful and discriminatory practices that violate the rights of women and girls, and that it undertake effective public education measures, including awareness-raising programmes designed to eliminate gender-based prejudices, traditional practices and provisions of personal status laws that are harmful and discriminatory to women and girls.	Not accepted
105	Adopt comprehensive legislation on fighting all forms of sexual harassment in relation to women and children.	Not accepted
Trafficking in Women and Children (see also: Trafficking in Part I)		
UPR 2		
107	Accelerate efforts on combating human trafficking.	Accepted
108	Reinforce efforts to protect and rehabilitate the victims of trafficking.	Accepted
111	Implement monitoring mechanisms to stop people trafficking.	Accepted
72	Ensure that laws are fully and consistently enforced to provide adequate protections for members of religious minorities, scheduled castes, and adivasi groups, as well as, women, trafficking victims, and LGBT citizens.	Not accepted
109	Continue stepping up efforts in the area of fighting trafficking as well as consider the possibility of inviting the Special Rapporteur on trafficking in persons, especially in women and children, to visit the country.	Not accepted
110	Continue to strengthen its efforts to combat trafficking in persons by providing the necessary budget to establish a larger number of local bodies to combat this scourge.	Not accepted

Number	Recommendation	Status
Family Laws		
UPR 2		
87	Continue to promote the rights of women in their choice of marriage and their equality of treatment independent of caste and tribe or other considerations.	Accepted
31	Amend the Special Marriage Act before its next review.	Not accepted
41	Enact comprehensive reforms to address sexual violence and all acts of violence against women, including “honour” crimes, child marriage, female feticide and female infanticide, and to remedy limitations in the definition of rape and the medico forensic procedures Accepted for rape cases.	Not accepted
85	Further strengthen measures to eliminate traditional harmful practices which are discriminatory against women and girls in particular child marriages, dowry related murders and honour killings.	Not accepted
88	Strictly enforce the legal provisions prohibiting harmful and discriminatory practices that violate the rights of women and girls, and that it undertake effective public education measures, including awareness-raising programmes designed to eliminate gender-based prejudices, traditional practices and provisions of personal status laws that are harmful and discriminatory to women and girls.	Not accepted
LESBIAN, GAY, BISEXUAL, TRANSGENDER AND INTERSEX		
UPR 2		
89	Study the possibility of eliminating any criminalisation of same sex relations.	Accepted
72	Ensure that laws are fully and consistently enforced to provide adequate protections for members of religious minorities, scheduled castes, and adivasi groups, as well as, women, trafficking victims, and LGBT citizens.	Not accepted
90	Take measures to address violence and discrimination directed towards persons based on their sexual orientation, especially related to employment.	Not accepted
CHILDREN		
Violence against Children (see also: Trafficking in Women and Children in Part III B)		
UPR 1		
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.	Accepted
UPR 2		
39	Strengthen legislations to combat sexual offences against minors.	Accepted
75	Put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including women, girls and children, as well as the Scheduled Castes and Schedules Tribes and Minorities are well achieved.	Accepted
76	Continue working on the welfare of children and women.	Accepted
79	Continue legal efforts in the protection of women as well as children’s rights as well as improve measures to prevent violence against women and girls, and members of religious minorities.	Accepted
102	Take effective measures to dissuade child marriage to protect the fundamental rights of the children.	Accepted
103	Take more efforts to prevent children from sexual exploitation and separation from families and give them the opportunity and assistance to grow up in an environment of freedom and dignity.	Accepted
104	Introduce legislation to prohibit corporal punishment of children. (Deleted portion: in all settings)	Accepted in revised form
106	Take the necessary legislative, civil and criminal measures to provide the appropriate protection to women, and children that are victims of sexual abuse.	Accepted
133	Continue measures to increase opportunities for consultations on child rights issues with relevant stakeholders.	Accepted

Number	Recommendation	Status
40	Strengthen protection of children's rights, including the ratification of the Convention on the Rights of the Child, by improving mechanisms and resources for the implementation of existing legislation, and by demonstrating higher conviction rates for crimes against children such as sexual exploitation, child labour, child forced-labour and child trafficking.	Not accepted
61	Set up State and District Commissioners for the Protection of Child Rights in all States and Districts.	Not accepted
105	Adopt comprehensive legislation on fighting all forms of sexual harassment in relation to women and children.	Not accepted
116	Implement the recommendations included in the OHCHR report on street children (A/HRC/19/35).	Not accepted
Child Labour		
UPR 1		
7	Consider signature and ratification of ILO Conventions No. 138 and 182.	Accepted
9	Review the reservation to article 32 of the Convention on the Rights of the Child.	Accepted
UPR 2		
76	Continue working on the welfare of children and women.	Accepted
114	Continue the implementation of the National Child Labour Project (NCLP) aiming at the rehabilitation of child labourers.	Accepted
130	Provide more resources for the enjoyment of economic and social rights, especially in favour of vulnerable groups like women, children, poor people and minorities.	Accepted
140	Continue to strengthen its poverty alleviation strategies, as well as its child protection strategies, particularly against the exploitation of children.	Accepted
144	Continue to advance the progress already underway on poverty eradication and improve the enjoyment of the most basic human rights of the people, especially women and children.	Accepted
10	Accede to the ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; ratify the Statute of the International Criminal Court and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the ILO Convention No. 189 concerning Decent Work for Domestic Workers.	Not accepted
26	Ratification of ILO Conventions Nos. 138 concerning Minimum Age for Admission to Employment; 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; 169 concerning Indigenous and Tribal Peoples in Independent Countries; 155 concerning Occupational Safety and Health and the Working Environment and 170 concerning Safety in the use of Chemicals at Work.	Not accepted
27	Continue to take legislative as well as policy measures to combat child labour and to ratify ILO Conventions 138 concerning Minimum Age for Admission to Employment and 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour and elaborate a timeline for the ratification of these instruments.	Not accepted
28	Ratify Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the ILO Conventions no. 138 and 182 concerning child labour.	Not accepted
46	Effectively implement existing legislation on child labour in line with India's international obligations and strengthen the judicial powers of the National Commission for Protection of Child Rights.	Not accepted
112	Ban all forms of child labour for children from ages 6 to 14 (Ireland) and ratify ILO Conventions No. 138 and no. 182.	Not accepted
113	Amend the Child Labour Act to ban child labour, and to sign and ratify ILO Conventions 138 concerning Minimum Age for Admission to Employment and 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour and elaborate a timeline for the ratification of these instruments.	Not accepted

Number	Recommendation	Status
115	Extend the minimum age to 18 years for any form of labour that prevents children from accessing a full education.	Not accepted
128	Align its national regulations with the ILO Conventions 138 concerning Minimum Age for Admission to Employment and 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour and elaborate a timeline for the ratification of these instruments.	Not accepted
Right to Non-discrimination in Education (see also: RIGHT TO EDUCATION in Part I)		
UPR 1		
13	Strengthen human rights education, specifically in order to address effectively the phenomenon of gender-based and caste-based discrimination.	Accepted
UPR 2		
52	Enhance the coordination of both the central and state governments in an effective manner in order to guarantee the smooth implementation of the 2010 Right of Children to Free and Compulsory Education Act.	Accepted
157	Continue to strengthen/develop programmes and initiatives geared towards guaranteeing the rights to health and education.	Accepted
160	Further promote children's right to education.	Accepted
161	Reinforce efforts in provision of free and compulsory primary education.	Accepted
162	Continue implementing a non-discriminatory and inclusive policy and guarantee quality education to all girls and boys in the country.	Accepted
166	Prioritise efforts to ensure that children with disabilities are afforded the same right to education as all children.	Accepted
54	Establishment and implementation of a National Human Rights Plan which cover access to education and health, including aspects of sexual and reproductive health, as well as, concrete measures to eliminate violence against women.	Not accepted
163	Strengthen human rights training aimed at teachers in order to eliminate discriminatory treatment of children of specific castes, as well as appropriately follow-up on the results of the training that has occurred thus far.	Not accepted
164	Ensure universal, compulsory and free education, carrying out on a priority basis measures aimed at eradicating discrimination, particularly discrimination that affects girls, marginal groups and persons with disabilities.	Not accepted
165	Continue its efforts to promote the right to children's education and ensure the importance of the principles of children's education in the country.	Not accepted
SCHEDULED CASTES AND SCHEDULED TRIBES		
UPR 1		
5	Maintain disaggregated data on caste and related discrimination.	Accepted
13	Strengthen human rights education, specifically in order to address effectively the phenomenon of gender-based and caste-based discrimination.	Accepted
UPR 2		
75	Put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including women, girls and children, as well as the Scheduled Castes and Schedules Tribes and Minorities are well achieved.	Accepted
87	Continue to promote the rights of women in their choice of marriage and their equality of treatment independent of caste and tribe or other considerations.	Accepted
5	Continue efforts to accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as its optional protocol, and the International for the Protection of All Persons from Enforced Disappearances; and ratify ILO Conventions No. 169 and no. 189.	Not accepted

Number	Recommendation	Status
26	Ratification of ILO Conventions Nos. 138 concerning Minimum Age for Admission to Employment; 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; 169 concerning Indigenous and Tribal Peoples in Independent Countries; 155 concerning Occupational Safety and Health and the Working Environment and 170 concerning Safety in the use of Chemicals at Work.	Not accepted
47	Take adequate measures to guarantee and monitor the effective implementation of the Prevention of Atrocities Act, providing legal means for an increased protection of vulnerable groups like the Dalit, including the access to legal remedies for affected persons.	Not accepted
72	Ensure that laws are fully and consistently enforced to provide adequate protections for members of religious minorities, scheduled castes, and adivasi groups, as well as, women, trafficking victims, and LGBT citizens.	Not accepted
73	Monitor and verify the effectiveness of, and steadily implement, measures such as quota programmes in the areas of education and employment, special police and special courts for effective implementation of the Protection of Civil Rights Act and the Scheduled Caste and Scheduled Tribes Act, and the work of the National Commission for Scheduled Castes.	Not accepted
118	Prevent and pursue through the judicial process, all violent acts against religious and tribal minorities, Dalits and other castes.	Not accepted
163	Strengthen human rights training aimed at teachers in order to eliminate discriminatory treatment of children of specific castes, as well as appropriately follow-up on the results of the training that has occurred thus far.	Not accepted
PERSONS WITH DISABILITIES		
UPR 2		
167	Ensure better protection for persons with disabilities and the elderly.	Accepted
164	Ensure universal, compulsory and free education, carrying out on a priority basis measures aimed at eradicating discrimination, particularly discrimination that affects girls, marginal groups and persons with disabilities.	Not accepted
FREEDOM OF RELIGION AND RIGHTS OF RELIGIOUS MINORITIES		
UPR 1		
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.	Accepted
UPR 2		
75	Put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including women, girls and children, as well as the Scheduled Castes and Scheduled Tribes and Minorities are well achieved.	Accepted
79	Continue legal efforts in the protection of women as well as children's rights as well as improve measures to prevent violence against women and girls, and members of religious minorities.	Accepted
87	Continue to promote the rights of women in their choice of marriage and their equality of treatment independent of caste and tribe or other considerations.	Accepted
125	Strengthen the Federal Government's efforts to guarantee freedom of religion to everyone in this world's largest democracy.	Accepted
130	Provide more resources for the enjoyment of economic and social rights, especially in favour of vulnerable groups like women, children, poor people and minorities.	Accepted
43	Enact a law on the protection of human rights defenders, with emphasis on those defenders facing greater risks, including those working on minority rights and the rights of scheduled castes and tribes.	Not accepted

Number	Recommendation	Status
48	Adopt the Prevention of Communal and Targeted Violence Bill addressing issues such as accountability of civil servants, standards of compensation for victims and elements of command responsibilities.	Not accepted
49	Reconsider laws and bills on religious conversion in several Indian states in the light of freedom of religion or belief in order to avoid the use of vague or broad terminology and discriminatory provisions.	Not accepted
50	Reconsider current local legislation on freedom of religion, that uses vague or broad terminology and discriminatory provisions, and impedes the possibility for conversion of faith for those who wish to do so.	Not accepted
72	Ensure that laws are fully and consistently enforced to provide adequate protections for members of religious minorities, scheduled castes, and adivasi groups, as well as, women, trafficking victims, and LGBT citizens.	Not accepted
118	Prevent and pursue through the judicial process, all violent acts against religious and tribal minorities, Dalits and other castes.	Not accepted
123	Take legislative action to ensure every person's right to freely choose one's religion in line with the Indian Constitution and effectively and swiftly prosecute acts of violence against religious minorities.	Not accepted
124	Abolish anti-conversion laws in relation to religion and grant access to justice to victims of religious violence and discrimination.	Not accepted
169	Continue its efforts to achieve balance between its counterterrorism strategies and the need to forestall the spread of xenophobia.	Not accepted
REFUGEES		
UPR 2		
25	Consider the recommendation made by UNHCR to ratifying the Conventions relating to refugees and stateless persons.	Not accepted
HUMAN RIGHTS DEFENDERS		
UPR 2		
127	Ensure a safe working environment for journalists. (Deleted portion: and take proactive measures to address the issue of impunity, such as swift and independent investigations.)	Accepted in revised form
43	Enact a law on the protection of human rights defenders, with emphasis on those defenders facing greater risks, including those working on minority rights and the rights of scheduled castes and tribes.	Not accepted
67	Adopt the recommendations of the Special Rapporteur on the situation of human rights defenders and the necessary measures to its recognition and protection, guaranteeing that the human rights violations are timely, effectively and independently investigated.	Not accepted
68	Implement the recommendations made by the Special Rapporteur on the rights of human right defenders following her visit in 2011, with particular emphasis on recommendations that concern defenders of women's and children's rights, defenders of minorities rights, including Dalits and Adivasi, and right to information activists.	Not accepted

Number	Recommendation	Status
IV. NATIONAL AND INTERNATIONAL MECHANISMS FOR PROTECTION OF HUMAN RIGHTS		
NATIONAL HUMAN RIGHTS INSTITUTIONS		
UPR 1		
3	Continue energizing existing mechanisms to enhance the addressing of human rights challenges.	Accepted
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.	Accepted
UPR 2		
58	Further coordination among relevant national authorities and human rights institutions.	Accepted
56	Implement the 2011 recommendations of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights to ensure the high standards and independence of India's National Human Rights Institutions.	Not accepted
57	Intensify its efforts and measures to consolidate the state of law and its national mechanisms on human rights.	Not accepted
INTERNATIONAL HUMAN RIGHTS MECHANISMS		
Universal Periodic Review		
UPR 1		
2	Continue to fully involve the national civil society in the follow-up to the UPR of India, as was done for its preparation.	Accepted
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.	Accepted
16	Fully integrate a gender perspective in the follow-up process to the UPR.	Accepted
UPR 2		
63	Continue including civil society participation in the UPR process.	Accepted
64	A fully integrated gender perspective in the follow up of this UPR.	Accepted
70	Continue cooperating with the UN and other International Organisations and share good experiences and practices with other countries in order to overcome the remaining challenges.	Accepted
Special Procedures		
UPR 1		
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.	Accepted
14	Extend standing invitation to special procedures.	Accepted
15	Receive as soon as possible the Special Rapporteur on the question of torture.	Accepted
UPR 2		
2	Intensify efforts towards the MDG 5 by ensuring access to information and counseling on SRHR as set out in the National Population Policy. (Deleted portion: including by withdrawing its reservation to Article 16 in Convention on the Elimination of All Forms of Discrimination Against Women)	Accepted in revised form
66	Continue cooperating with Special Procedures and accept, in particular, requests for visits from Special Rapporteurs.	Accepted
30	Consider an early ratification of the third Optional Protocol to the Convention on the Rights of the Child, on a communication procedure.	Not accepted

Number	Recommendation	Status
32	Conform its national legislation to international norms on the prevention of torture, to speed up the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and receive the Special Rapporteur on Torture.	Not accepted
69	Allow the visit of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, whose request had been Accepted for 18 years, in line with India's standing invitation issued in 2011 to all Special Procedures of the HRC.	Not accepted
109	Continue stepping up efforts in the area of fighting trafficking as well as consider the possibility of inviting the Special Rapporteur on trafficking in persons, especially in women and children, to visit the country.	Not accepted
121	Solve remaining cases of human rights violations and create an independent committee to receive claims against the police that were referred to by the Special Rapporteur on Human Rights Defenders.	Not accepted
Rome Statute of the International Criminal Court (see also in Part II)		
UPR 2		
1	Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the International Convention for the Protection of All Persons from Enforced Disappearance and the Statute of the International Criminal Court.	Not accepted
10	Accede to the ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; ratify the Statute of the International Criminal Court and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the ILO Convention No. 189 concerning Decent Work for Domestic Workers.	Not accepted
13	Ratify the International Convention for the Protection of All Persons from Enforced Disappearances, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the Rome Statute of the International Criminal Court.	Not accepted
14	Ratify the Rome Statute of the International Criminal Court, including its Agreement on Privileges and Immunities.	Not accepted

Annex G

India's UPR II Final Outcome

United Nations

A/HRC/21/10/L



General Assembly

Distr.: General
17 September 2012

Original: English

Human Rights Council

Twenty-first session

Agenda item 6

Universal Periodic Review

Report of the Working Group on the Universal Periodic Review*

India

Addendum

Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review

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

List of Recommendations Accepted by the Government of India

Recommendations

Continue to strengthen its poverty alleviation strategies, as well as its child protection strategies, particularly against the exploitation of children.

(South Africa)

Continue with action to include human rights education in the school curricula.

(Sri Lanka)

Take effective measures to dissuade child marriage to protect the fundamental rights of the children.

(Switzerland)

Further promote equal access to justice for all , including by reducing backlog and delays in the administration of cases in court, providing more legal aids to the poor and marginalized.

(Thailand)

Continue to promote its many initiatives for the eradication of all forms of discrimination against women.

(Trinidad and Tobago)

Reinforce efforts to protect and rehabilitate the victims of trafficking.

(Ukraine)

Implement monitoring mechanisms to stop people trafficking.

(Holy See)

Accelerate efforts on combating human trafficking.

(Iran)

Provide every possible support and assistance to the national project for rural health to raise the standard of nutrition and improve public health and to strengthen the relationship between health and indicators such as sanitation and personal hygiene.

(United Arab Emirates)

Continue consolidating programmes and socio-economic measures essential to achieve poverty reduction and social exclusion to the utmost well-being of its people.

(Venezuela)

Continue incorporating the gender perspective in programmes and development plans with positive measures to the effective promotion and protection of women's rights.

(Venezuela)

Provide more resources for the enjoyment of economic and social rights, especially in favour of vulnerable groups like women, children, poor people and minorities.

(Viet Nam)

Continue the implementation of the National Child Labour Project (NCLP) aiming at the rehabilitation of child labourers.

(Angola)

Study the possibility of eliminating any criminalisation of same sex relations.

(Argentina)

Prioritise efforts to ensure that children with disabilities are afforded the same right to education as all children.

(Australia)

Take further practical steps to reduce the high level of maternal and child mortality, *inter alia*, through better access to maternal health services.

(Austria)

Redouble efforts on ensuring gender equality and take measures to prevent gender discrimination.

(Bahrain)

Take more efforts to prevent children from sexual exploitation and separation from families and give them the opportunity and assistance to grow up in an environment of freedom and dignity.

(Bahrain)

Continue cooperating with Special Procedures and accept, in particular, requests for visits from Special Rapporteurs.

(Belgium)

Address the inequities based on rural-urban divide and gender imbalance.

(Botswana)

Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

(Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)

Make efforts to eliminate the large gap that exists between the rich and the poor.

(Chad)

Continue to strengthen/develop programmes and initiatives geared towards guaranteeing the rights to health and education.

(Cuba)

Continue encouraging socio-economic development and poverty eradication.

(Cuba)

Continue implementing a non-discriminatory and inclusive policy and guarantee quality education to all girls and boys in the country.

(Ecuador)

Further efforts towards addressing the challenge of maternal and child mortality.

(Egypt)

Further coordination among relevant national authorities and human rights institutions.

(Egypt)

Recommendations

Continue following-up on steps taken to eliminate discrimination against women, including through awareness-raising and continuous strengthening of the relevant legal and institutional frameworks.

(Egypt)

Put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including women, girls and children, as well as the Scheduled Castes and Schedules Tribes and Minorities are well achieved.

(Ghana)

Continue its efforts to further spread in the country the model of rural growth in the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA).

(Greece)

Further promote children's right to education.

(Greece)

Strengthen the Federal Government's efforts to guarantee freedom of religion to everyone in this world's largest democracy.

(Holy See)

Take effective measures to fully implement National Rural Health Mission (NRHM).

(Honduras)

Enhance the coordination of both [the central and state governments] in an effective manner in order to guarantee the smooth implementation of the 2010 Right of Children to Free and Compulsory Education Act.

(Indonesia)

Continue legal efforts in the protection of women as well as children's rights as well as improve measures to prevent violence against women and girls, and members of religious minorities.

(Iran)

Carry on efforts with respect to environmental and health policies, and continue efforts and undertake measures to adopt the bill on food security and strengthen the Public Distribution System (PDS).

(Iran)

Continue measures to increase opportunities for consultations on child rights issues with relevant stakeholders.

(Iran)

Continue efforts and actions in the promotion of social security and labour policy.

(Iran)

Improve training on human rights on addressing law enforcement especially by police officers.

(Iraq)

Intensify efforts in providing capacity-building and training programmes on human rights for its law enforcement officials as well as judicial and legal officials in the rural areas.

(Malaysia)

Recommendations

Continue efforts to eradicate poverty and better living conditions as well as increase job opportunities.
(Kuwait)

Improve women empowerment and emancipation, and provide them with a bigger role to play in the society.
(Kuwait)

Continue cooperating with the UN and other International Organisations and share good experiences and practices with other countries in order to overcome the remaining challenges.
(Lao PDR)

Introduce legislation to prohibit corporal punishment of children.
(Liechtenstein)

Allocate more resources in sectors that provide basic services such as health, education and employment opportunities.
(Malaysia)

Re-examine the budgets and social laws taking into account gender issues.
(Morocco)

Further strengthen the efforts in poverty eradication, paying special attention to the rural population.
(Myanmar)

Further accelerate the sanitation coverage and the access to safe and sustainable drinking water in rural areas.
(Myanmar)

Continue working on the welfare of children and women.
(Nepal)

Continue including civil society participation in the UPR process.
(Nicaragua)

A fully integrated gender perspective in the follow up of this UPR.
(Norway)

Continue its efforts with regard to education for children and take the necessary measures to allow women to participate on an equal footing with men in all developmental efforts.
(Qatar)

Introduce a strategy to promote food security.
(Saudi Arabia)

Redouble its efforts in the field of education and health.
(Senegal)

Ensure better protection for persons with disabilities and the elderly.
(Senegal)

Recommendations

Continue to advance the progress already underway on poverty eradication and improve the enjoyment of the most basic human rights of the people, especially women and children.

(Singapore)

Reinforce efforts in provision of free and compulsory primary education.

(Slovakia)

Take the necessary legislative, civil and criminal measures to provide the appropriate protection to women, and children that are victims of sexual abuse.

(Mexico)

Continue to promote the right to equal opportunity for work and at work.

(Holy See)

Continue to promote the rights of women in their choice of marriage and their equality of treatment independent of caste and tribe or other considerations.

(Holy See)

Ensure a safe working environment for journalists.

(Austria)

Continue efforts aimed at improving the level of public health in the country to attain better results in the area of health and access to health.

(Saudi Arabia)

Strengthen its efforts to improve maternal health and act to effectively balance the skewed sex-ratio among children, including by combating female foeticide.

(Norway)

Take further measures to ensure that all women without any discrimination have access to adequate obstetric delivery services and sexual and reproductive health services, including safe abortion and gender-sensitive comprehensive contraceptive services.

(Finland)

Intensify its efforts to sensitize and train medical professionals on the criminal nature of pre-natal sex selection with a view to ensuring stringent enforcement of the legal prohibition of such practice.

(Liechtenstein)

Strengthen legislations to combat sexual offences against minors.

(Algeria)

Intensify efforts towards the MDG 5 by ensuring access to information and counseling on SRHR as set out in the National Population Policy.

(Sweden)

WGHR Press Release on India's UPR II Final Outcome

PRESS RELEASE

Comprehensive review of India's human rights record at the UN Human Rights Council: Glaring Omissions, Some Progress

New Delhi, September 21, 2012 - The second inter-governmental peer review of India's human rights record by the United Nations Human Rights Council (HRC) took place in May 2012 in Geneva. This rotational Universal Periodic Review (UPR) takes place every four years, during the course of which member states give recommendations to the state under review, leaving it for the country under review to accept or reject the recommendations offered. On May 24, 2012, India received 169 recommendations, and on Thursday September 20, 2012, the Government appeared before the HRC to respond to these recommendations.

The Government of India response¹ to the 169 recommendations of the UN HRC reflected a pattern of accepting recommendations that were generalized and broadly worded, lacking a targeted course of action directed to tackle discrimination and specific human rights challenges. Not surprisingly then, the recommendations pertaining to specific as well as serious human rights issues were rejected, despite the Council's expressed concern.

The blatant refusal of the Government to adopt any recommendation to review or repeal the Armed Forces (Special Powers) Act, which is a cause of systematic human rights violations, is very disturbing. Despite multiple recommendations that were made by the Special Rapporteur on extra judicial, summary and arbitrary executions who visited India in March this year, and by the Council members during the second UPR, the government has failed to accept any recommendations to curb the impunity of security forces and bring the perpetrators of human rights violations to justice. WGHR is also disappointed by the total absence of any adopted recommendations on the abolition of death penalty, despite the 11 recommendations made by UN member states on the issue.

WGHR welcomes the acceptance of numerous recommendations to ratify the Convention Against Torture (CAT) and hopes this process will be complete within a year. While India has accepted to continue cooperating with the UN Special Procedures, the Government has not accepted to invite the Special Rapporteur on torture, whose visit to India has been pending for the last 18 years.

WGHR is concerned by the poor implementation status combined with a controversial stance of the government in regards to specific recommendations, which although have been accepted at the first UPR in 2008, they have been totally discarded at the second UPR cycle. In point of fact, the recommendation to ratify the Convention for the Protection of all Persons from Enforced Disappearances, which was accepted by the Government in 2008, it was reiterated eight times in the review of May 2012, yet it has been completely rejected by the Government on September 20. Similarly, the accepted 2008

¹ http://www.ohchr.org/Documents/HRBodies/HRCouncil/RegularSession/Session21/A.HRC.21.10.Add.1_en.pdf

Convenor | Miloon Kothari, Former Special Rapporteur on adequate housing, UN Human Rights Council

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Independent Experts | Ms. Vrinda Grover, Lawyer | Dr. Rajkumar, Advisor to human rights organisations | Prof. Babu Mathew, Visiting Professor, National Law University, Delhi

recommendation to sign and ratify the Optional Protocol to the Convention on the Elimination of Discrimination Against Women (CEDAW) was similarly discarded in this second cycle of UPR.

WGHR welcomes the fact that India has broadly accepted recommendations seeking to ensure that gender and child based violence is eliminated, as well as the Government's official pledge to "study the possibility of eliminating any criminalization of same sex relations". WGHR is disturbed, however, at the rejection of recommendations for tackling specific human rights challenges to women's equality, including law reform relating to sexual assault, elimination of traditional harmful practices that are discriminatory to girls and women, and law reform in relation to the family. Of significant concern is the rejection of all recommendations seeking to enhance the implementation of CEDAW – particularly those relating to withdrawal of reservations to Article 16 pertaining to equality in the family, and the ratification of the Optional Protocol to CEDAW. This stance in fact, dilutes its acceptance of the recommendation to "intensify efforts towards the MDG 5". Similarly, the recommendation to "introduce legislation to prohibit corporal punishment of children in all settings" has been manipulated by overlooking the reference to "all settings". Child beating is common in the home, in places of work, in school and in institutions, and it must not be condoned in any setting. WGHR calls for the comprehensive attention to the full recommendations.

Given the systematic denial of economic, social and cultural rights in India, WGHR regrets that there were very few recommendations in this regard by the HRC. While many States commended India on its food security policies, we remain concerned that the Public Distribution System operates on the basis of an unrealistic poverty line and, due to targeting errors, corruption, inefficiency and discrimination poor households in genuine need have been excluded. In this context, we welcome the fact that India has accepted almost all the recommendations pertaining to economic, social and cultural rights. Many of these recommendations, however, are worded in a general manner and India will have to specify goals and targets to meet its commitments. Considering the alarming housing and land rights crisis in the country, WGHR regrets that the Government did not accept the only recommendation on housing for the poor.

WGHR wishes to highlight the recommendation from May 2012 to adopt legal measures in dealing with situations of targeted and communal violence, which has been ignored by the Government. The recent riots in the North eastern state of Assam, which have left 91 people dead and displaced over 400,000 persons into 300 relief camps, require immediate attention, particularly for adequate food, healthcare, drinking water and sanitation. This once again demonstrates the glaring gaps in national standards as well as the lack of institutional responsibility in providing reparations for those affected by internal conflict.

WGHR upholds the statement made by the National Human Rights Commission during the second UPR session: "*law and budget are not the problem in India, implementation is*". India's official commitment to "*continue including civil society participation in the UPR process*", and the statement of the Indian Ambassador in Geneva, Mr. Dilip Sinha, "*we remain open to advice and suggestions*", are very welcome. Miloon Kothari, Convenor of WGHR, welcomed these commitments and stated: "*We urge the government to engage in a genuine dialogue with all stakeholders and adopt an inclusive and participatory process regarding the monitoring of the implementation of the adopted recommendation. This is of particular importance given the fact that no consultations were held between May and September 2012 with the Parliament, independent institutions and civil society. We also encourage the government to conduct a mid-term review of the UPR in 2014, to keep track of the progress made leading to its 3rd UPR.*" ■

Convenor | Miloon Kothari, Former Special Rapporteur on adequate housing, UN Human Rights Council

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Annex I

The Armed Forces (Special Powers) Act, 1954

THE ARMED FORCES (SPECIAL POWERS) ACT, 1958

INTRODUCTION

Violence became the way of life in north-eastern States of India. State administration became incapable to maintain its internal disturbance. Armed Forces (Assam and Manipur) Special Powers Ordinance was promulgated by the President on 22nd May of 1958. In which some special powers have been given to the members of the armed forces in disturbed areas in the State of Assam and Union Territory of Manipur. Later the Ordinance was replaced by the armed Forces Special Powers Bill.

STATEMENT OF OBJECTS AND REASONS

An ordinance entitled the Armed forces (Assam and Manipur) Special Powers Ordinance, 1958, was promulgated by the President on the 22nd May, 1958. Section 3 of the Ordinance powers the Governor of Assam and the Chief Commissioner of Manipur to declare the whole or any part of Assam or the Union territory of Manipur, as the case may be, to be a disturbed area. On such a declaration being made in the Official Gazette, any Commissioned Officer, Warrant Officer, non-commissioned officer or any other person of equivalent rank in the armed forces may exercise, in the disturbed area, the powers conferred by section 4 and 5 of the Ordinance. The Bill seeks to replace the Ordinance -See Gazette of India, 11-8-1958, Pt. II-Sec. 2, Ext. p.714 (No.26).

ACT 28 OF 1958

The Armed Forces (Special Powers) Bill was passed by both the Houses of Parliament and it received the assent of the President on 11th September, 1958. It came on the Statute Book as THE ARMED FORCES (SPECIAL POWERS) ACT, 1958 (28 of 1958).

LIST OF AMENDING ACTS

1. The State of Mizoram Act, 1986 (34 of 1986).
2. The State of Arunachal Pradesh Act, 1986 (69 of 1986).
3. The Armed Forces (Assam and Manipur) Special Powers (Amendment) Act, 1972 (7 of 1972).
4. The Armed Forces Special Powers (Extension to Union Territory of Tripura) Act, 1970.
5. The Repealing and Amending Act, 1960 (58 of 1960).

THE ARMED FORCES (SPECIAL POWERS) ACT, 1958

(28 of 1958)

[11th September, 1958]

An Act to enable certain special powers to be conferred upon members of the armed forces in disturbed areas in the State of *[Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura].

Be it enacted by Parliament in Ninth Year of the republic of India as follows:-

1.Short title and extent - (1) This act may be called **[The armed Forces (Special Powers) Act, 1958].

[(2)] It extends to the whole of the State of *[Arunachal Pradesh, Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura].

2. Definitions: In this Act, unless the context otherwise requires-

- (a) "armed forces" means the military forces and the air forces operating as land forces, and includes other armed forces of the Union so operating;
- (b) 'disturbed area' means an area which is for the time being declared by notification under section 3 to be a disturbed area';
- (c) all other words and expressions used herein, but not defined and defined in the Air Force Act, 1950 (45 of 1950), or the army Act, 1950 (46 of 1950) shall have the meanings respectively to them in those Acts.

3.Powers to declare areas to be disturbed areas - If, in relation to any state or Union Territory to which this act extends, the Governor of that State or the administrator of that Union Territory or the Central Government, in either case, if of the opinion that the whole or any part of such State or Union territory, as the case may be, is in such a disturbed or dangerous condition that the use of armed forces in aid of the civil power is necessary, the Governor of that State or the Administrator of that Union Territory or the Central Government, as the case may be, may by notification in the Official Gazette, declare the whole or such part of such State or Union territory to be a disturbed area].

*Subs. By Act 69 of 1986,sec.43 for "Assam, Manipur, Megahalya, Mizoram, Nagaland and Tripura and the Union territory of Arunachal Pradesh" (w.e.f. 20.2.1987.)

**Subs by Act 7 of 1973, sec. 3 for 'the armed forces (Assam and Manipur) special Powers Act, 1958" (w.e.f 5.4.1972).

***Subs by Act 7 of 1972, sec. 4 (w.e.f 5.4.1972).

*****Subs by Act.69 of 1986,sec. 43 for 'Assam, Manipur, Meghalaya, Mizoram, Nagaland and Tripura and the Union Territory of Arunachal Pradesh'(w.e.f 20.2.1987).

COMMENTS

- (i) The Governor is empowered to declare any area of the State as "disturbed area". It could not be arbitrary on ground of absence of legislative guidelines; *Inderjit Barua v. State of Assam*, AIR 1983 Del. 514.
 - (ii) Section 3 cannot be construed as conferring a power to issue a declaration without any time limit. There should be periodic review of the declaration before the expiry of six months; *Naga People's Movement of Human Rights v. Union of India*, AIR 1998 SC 431.
4. Special Powers of the armed forces - Any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the armed forces may, in a disturbed area,-
- (a) if he is of opinion that it is necessary so to do for the maintenance of public order, after giving such due warning as he may consider necessary, fire upon or otherwise use force, even to the causing of death, against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of five or more persons or the carrying of weapons or of things capable of being used as weapons or of fire-arms, ammunition or explosive substances;
 - (b) if he is of opinion that it is necessary so to do, destroy any arms dump, prepared or fortified position or shelter from which armed attacks are made or are likely to be made or are attempted to be made, or any structure used as a training camp for armed volunteers or utilized as a hide-out by armed gangs or absconders wanted for any offence;
 - (c) arrest, without warrant, any person who has committed a cognizable offence or against whom a reasonable suspicion exists that he has committed or is about to commit a cognizable offence and may use such force as may be necessary to effect the arrest;
 - (d) enter and search without warrant any premises to make any such arrest as aforesaid or to recover any person believed to be wrongfully restrained or confined or any property reasonably suspected to be stolen property or any arms, ammunition or explosive substances believed to be unlawfully kept in such premises, and may for that purpose use such force as may be necessary.

COMMENTS

- (i) Conferment of power on non-commissioned officers like a Havaladar cannot be said to be bad and unjustified : *Inderjit Barua v .State of Assam*, AIR, 1983 Del 514.
- (ii) The armed forces must act in cooperation with the district administration and not as an Independent body. Armed Forces could work in harmony when they deployed in disturbed area: *Luithukia v.Rishang Keishing*, (1988) 2 Gau LR 159.

5.Arrested persons to be made over to the police -Any person arrested and taken into custody under this Act shall be made over to the officer in charge of the nearest police station with the least possible delay, together with a report of the circumstances occasioning the arrest.

In case of arrest of any person, army authority is duty bound to handover to the officer-in-charge of the nearest police station with least possible delay: *Horendi Gogoi v. Union of India*, (1991) Gau CR 3081.

6. Protection to persons acting under Act - No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.

7. Repeal and Saving - [Repealed by Amending and Repealing Act, 1960 (58 of 1960),First Schedule, sec.2 (26.12.1960)].

Annex J

Press Statement by Christof Heyns, UN Special Rapporteur on extrajudicial, summary and arbitrary executions

Press Statement

Country Mission to India

Christof Heyns, United Nations Special Rapporteur on extrajudicial, summary or arbitrary executions

19 – 30 March 2012

At the invitation of the Government of India, I conducted an official visit to this country from 19 to 30 March 2012. I travelled to New Delhi, as well as to five States, namely: Gujarat; Kerala; Jammu and Kashmir, where I had meetings in the cities of Jammu and Srinagar; Assam; and West Bengal.

I am grateful to the Government of India for extending an invitation to my mandate. I am further particularly thankful to the United Nations Resident Coordinator, Mr. Patrice Coeur-Bizot, and his team, for having facilitated the preparation and conduct of my mission.

During this country visit, I had the opportunity to meet with Secretaries from the Ministry of External Affairs, the Ministry of Home Affairs, and the Ministry of Law and Justice, officials from the Ministry of Defence and other Ministries at Union level. At State level, I met the Lieutenant Governor of Delhi, State Chief Secretaries and other Secretaries; Commissioners, Directors General and other relevant officers of the Police; and other senior officials. I also visited the Supreme Court, the National Human Rights Commission and the Assam Human Rights Commission. In addition, I held meetings with the United Nations agencies, as well as a wide range of domestic and international non-governmental organisations, lawyers, witnesses, and victims and their families.

My mission focussed in particular on the right to life in the context of the use of force by the police and the armed forces, and on the possible impact on the right to life of cultural practices.

My provisional conclusions are as follows:

A) General comments

India, often described as the world's largest democracy, has a Constitution that guarantees a wide range of human rights, and is a living document, supported by broad public endorsement and enforced by a strong Supreme Court, whose human rights jurisprudence is respected worldwide. The right to life (article 21 of the Constitution) in particular has been given an extensive interpretation by the courts. There is a robust press, and a vibrant and engaged human rights civil society. India has ratified a number of international human rights instruments, including the International Covenant on Civil and Political Rights.

At the same time India faces many challenges to the realisation of human rights, including movements aimed at separation or greater local autonomy, Maoist or Naxalite, insurgency, organised crime, and communal organisations opposed to secularism, plurality and equality. India accommodates a huge diversity in terms of religion, languages and culture, largely in a remarkably peaceful way. The state structure is federal in nature.

The challenge to protect, promote and respect the right to life is undeniably a real one. It is of concern however that despite constitutional guarantees and a robust human rights jurisprudence,

extrajudicial killings is a matter of serious concern in India. However, it is important to emphasise the solution to these issues largely lies within the system itself.

While data available on extrajudicial executions in India is not easy to obtain, in some parts, particularly in conflict areas where political dialogue has been initiated by the government, or where there has been a concerted shift to move away from such occurrences, the last couple of years appear to have seen a drop in respect of unlawful killings. This momentum – and the general commitment to human rights in the country – should now be captured to obliterate the unacceptable levels of deadly violence that remain, and assume higher moral ground.

While I will make some concrete proposals about changes to be affected, I will also propose a process to be followed to address this issue.

India has not hosted many Human Rights Council special procedures. In 2011 it extended an open invitation to special procedures, and to its credit it admitted, for the first visit under this open invitation, the mandate on extrajudicial, summary and arbitrary executions, a mandate covering an area in which it faces well-documented challenges. This reflects a commendable willingness to engage with the issue of unlawful killings in a constructive manner – giving further credence to the view that there may at the moment be a window of opportunity to take significant and decisive steps forward on this issue.

B) Concerns

I have the following concerns about unlawful killings, both in terms of prevention and accountability:

1) Use of force by State actors

a) Police

There are complaints of use of excessive force by the police against unarmed demonstrators and protestors, with scant adherence to the principles of proportionality and necessity.

Disproportionate use of force during demonstrations has resulted in over 100 deaths, in 2010 in Jammu and Kashmir, while elsewhere, such as in New Delhi, many demonstrations occur without bloodshed. I have been told by the police of a few states that they have recently started using less lethal weapons and other more modern methods of crowd control.

Salutary guidelines laid down by the Supreme Court in the *D.K.Basu* judgment on arrest, detention and interrogation, many of which have been incorporated through amendments in the Code of Criminal Procedure, are not sufficiently complied with.

Significantly, problems concerning excessive and arbitrary use of force by the police are further aggravated by statutory immunities that restrict accountability. Section 197 of the Criminal Procedure Code requires prior sanction from the concerned government before cognizance can be taken of any offence by a public servant for criminal prosecution.

A practice of what is called 'fake encounters' has developed in parts of the country. Where this occurs, suspected criminals or those labelled as terrorists or insurgents, and in some cases people on

whose head there is a prize, are shot dead by the police, and a scene of a shootout is staged. Those killed are then portrayed as the aggressors who had first opened fire and the police escape legal sanction. According to the National Human Rights Commission (NHRC) 2 965 cases of 'encounters' have been reported between 1993 and 2010, though there is possibly under-reporting.

While the use of 'encounters' to eliminate criminals has decreased since the 1990s, it is nevertheless being deployed to target others.

A seminal case from Andhra Pradesh is currently pending before the Supreme Court wherein the High court had held that in situations where deaths occur at the hands of police in cases of alleged returning fire, a first information report (FIR) must be registered, the case investigated and the claim of self-defence by the police proven in a trial before the court.

In a positive development, the Supreme Court and the NHRC have issued guidelines on the Armed Forces (Special Powers) Act and on encounters.

b) Custodial deaths

There have been a large number of cases recorded on deaths that have occurred in police as well as judicial custody, often in the context of torture. I have been assured by Government representatives that the process of passing the legislation on torture as proposed by the Select Committee of the Upper House is well under way, which will allow the ratification of the Convention Against Torture. Needless to say this proposed legislation must be compliant with CAT and must include the mandatory provisions of training of police, prison cadre and other forces as well as orientation of the judiciary.

c) Armed Forces

The Armed Forces are deployed in so-called 'disturbed areas' in the North East and in Jammu and Kashmir.

The Armed Forces (Special Powers) Act (AFSPA) in effect allows the state to override rights in the 'disturbed areas' in a much more intrusive way than would be the case under a state of emergency, since the right to life is in effect suspended, and this is done without the safeguards applicable to states of emergency.

AFSPA – continuously in force since 1958 (different states have their own versions as well) in the North East and since 1990 in Jammu and Kashmir – has become a symbol of excessive state power. I have heard extensive evidence of action taken under this law that resulted in innocent lives being lost, in Jammu and Kashmir and in Assam, where witnesses from neighbouring states also assembled. This law was described to me as 'hated' and a member of a state human rights commission called it 'draconian'.

A law such as AFSPA has no role to play in a democracy and should be scrapped. The repeal of this law will not only bring domestic law more in line with international standards, but also send out a powerful message that instead of a military approach the government is committed to respect for the right to life of all people of the country.

The government-appointed Jeevan Reddy Committee and the Administrative Reform Commission have both called for its repeal; as have political leaders of states where the Act applies. The NHRC told me during our meeting that they are in favour of its repeal and that they have commented in their submission to the 2012 UPR that AFSPA often leads to the violation of human rights. It is therefore difficult to understand how the Supreme Court, which has been so progressive in other areas, also concerning the right to life, could have ruled in 1997 that AFSPA did not violate the Constitution – although they tried, seemingly with little success, to mitigate its impact by issuing guidelines on how it is to be implemented.

AFSPA clearly violates International Law. A number of UN treaty bodies have pronounced it to be in violation of International Law, namely HRC (1997), CEDAW (2007), CERD (2007) and CESCR (2008). My predecessor has also called for its repeal.

The widespread deployment of the military creates an environment in which the exception becomes the rule, and the use of lethal force is seen as the primary response to conflict with a concomitant permissive approach in respect of the use of lethal force. This is also difficult to reconcile in the long run with India's insistence that it is not engaged in armed conflict.

Accountability is circumvented by invoking AFSPA's requirement of obtaining prior sanction from the Central government before any civil prosecutions can be initiated against armed forces personnel. The information received through Right to Information applications, shows that this immunity provision effectively blocks any prosecution of members of the armed forces. The Centre has for example never granted sanction for civil prosecution of a member of the armed forces in Jammu and Kashmir.

d) Death penalty

Indian law continues to provide for the death penalty, and in around 100 cases per year this sentence is imposed. However, once imposed, there seems to be little appetite to execute. The last execution was in 2004, although another execution has just been stayed at the last minute during the writing of this report.

It is a matter of concern that the death penalty may be imposed for a (seemingly growing) number of crimes that cannot be regarded as 'the most serious crimes' referred to in article 6 of the ICCPR as internationally understood, namely crimes involving intentional killing. For example, the death penalty may be imposed for kidnapping for ransom under Sec. 364A IPC and has also been proposed in the Prevention of Torture Bill and for drug-related offences. I intend to follow up on the concerns expressed that the categories of capital crimes are being expanded.

The phrase 'rarest of the rare cases' (taken from *Bachan Singh v State of Punjab*) is often used to describe the Indian approach to the death penalty. However, this may create the wrong impression, since the list of crimes for which this sentence may be imposed is still much wider than the one provided for under international law. Even if the death penalty is not implemented, those who had been sentenced to death remain on death row for extraordinarily long periods, while, as one interlocutor put it, 'they remain hanging there'.

My attention was drawn to the case of *Ravji alias Ram Chandra v. State of Rajasthan* (1996) 2 SCC 175, where the Supreme Court upheld the death sentence and held that circumstances pertaining to the criminal need not be considered, in spite of earlier authority to the contrary. Subsequently, in seven cases, the Supreme Court invoked the precedent of *Ravji Rao's* case to foreclose inquiry into the circumstances pertaining to the prisoner. A total of 14 prisoners were sentenced to death by the Supreme Court on the basis of flawed legal reasoning. Out of these 14 prisoners, two – including Ravji – have been executed.

2) Use of force by non-state actors

a) Terrorists, criminals and others

Deadly violence has been used by Maoists, insurgents, and terrorists. The callous nature in which lives, often of innocent civilians, are taken by these non-state actors needs to be condemned strongly. The state has a right to defend itself against such aggression, provided it abides by the international standards in this regard. The state however cannot adopt unlawful or unconstitutional means or create a vigilante force to counter such violence.

b) Communal violence

I have heard evidence regarding a number of instances where inter-community violence has occurred, resulting in large-scale loss of life. In particular I have met with a large number of people who lost relatives during the Gujarat killings of Muslims in 2002 and the Kandhamal killings of Christians in 2007/8, during which between 1200 – 2500 people and between 50 and 100 people, respectively, were reportedly killed. It is a matter of regret that the Gujarat authorities at the last minute cancelled the meetings we had scheduled during the mission.

In these cases grave allegations of direct state involvement in the killings has been made; moreover in all cases the state has the responsibility to protect citizens against such violence.

The phenomenon of mass and targeted communal violence clearly poses a significant threat to the right to life, also because it sets into motion a cycle of violence that stretches over the years. One of the problems here is that the role of the police and other agencies of the state in these situations could involve bias against minorities. I will further examine this issue.

A number of people have proposed the introduction of the doctrine of some form of 'command responsibility' and 'superior responsibility', in domestic law, to hold culpable persons in positions of political, civil and administrative power and authority, complicit in the communal violence. I will also examine this matter further.

c) Traditional practices affecting women

'Honour' killings occur where a woman is killed by her family or community because she has exercised her right to choose a partner, particularly when the partner belongs to a different community, caste or religion. This crime is reportedly on the ascendance. It is currently dealt with as murder under the Indian Penal Code. There have been suggestions that this be dealt with under a separate piece of legislation so as to highlight the unique nature of such killings.

Dowry deaths occur where a husband or his relatives are dissatisfied by the amount of dowry brought by the wife, and cause her death. Special legal provisions have been enacted to punish this crime in the Indian Evidence Act. The unnatural death of a wife within seven years of marriage, under suspicious circumstances, including burning or other bodily injuries, and where she is known to have been harassed and treated cruelly by her husband or his relatives on account of dowry, creates a presumption that a dowry death has been committed by the husband or his relatives.

The branding of elderly and single women as witches, while largely associated with tribal areas is no longer confined to these regions. Property reasons often underlie these killings.

This is a difficult area for any state to address. While accountability and punishment is important in the context of the above gender-based killings, it is not clear that increasing the punishment, however severe, will lead to prevention. Ensuring certainty of conviction and some form of consequence to establish the norm seems to be more important. This is often difficult for a host of reasons, including the fact that there is general social sanction for the crime, and the police often do not address these killings as crimes. The values at stake are often viewed as more important than life itself. A change in the values themselves is therefore required, a task for which an institution such as the NHRC should be eminently suited.

3) Systemic challenges

a) Justice delayed is justice denied

The complaint is widely raised that the wheels of justice, when they turn, often do so too slowly. Legal proceedings drift for years, while the alleged perpetrators are out on bail and back in the community. The Nanavati Commission of Inquiry in Gujarat has now taken 10 years without any concrete results. This is exacerbated by the symbolic importance of the events that are being investigated, and inevitably the conclusion will be drawn that this is not a matter of priority. Similarly, the Supreme Court in 2006 issued a directive for the establishment of Police Complaints Authorities, but in many cases this has not been done.

b) Perpetrators receive awards

Many of the people I interviewed whose family members had been killed, pointed out that the alleged perpetrators, belonging to the police or the armed forces, have been awarded out of turn promotions, or have in other ways been rewarded.

c) Compensation instead of prosecution

While in some cases of custodial death and death due to excessive use of force compensation is paid by the state, criminal investigation and prosecution against the perpetrators is rarely initiated. Consequently few if any are punished for violating the right to life. This is also a manifestation of a military as opposed to a rights based approach. It blunts the deterrent effect of the law and encourages impunity.

d) Burden on the victim

The burden of initiating civil, criminal or writ proceedings in cases of custodial deaths or 'encounter' killings, for compensation or securing accountability and punishment, is placed on the victim's family. Their marginalised and vulnerable status cripples their ability to secure accountability for the violation of the right to life.

e) *Form over substance*

Standards such as the Supreme Court and NHRC guidelines mentioned above are often not followed in practice. On most occasions, where the alleged accused are men in uniform, belonging to the police or the armed forces, registration of First Information Reports (FIR) is refused, further deterring access to justice. In case of 'encounter' killings, the police lodge the FIR under Sec. 301 IPC, for attempt to murder, naming the deceased as the accused and close the case. Families are also unable to access and secure autopsy reports. Laws and policies are mostly in place, but they are not implemented.

f) *Statutory immunities and good faith clause*

The statutory provisions of requirement of prior sanction, for a Court to take cognizance of offences committed by public servants, including the police and armed forces, while discharging official duty, coupled with the presumption of good faith for acts done, effectively renders them immune from criminal prosecution.

g) *Marginalised groups*

Groups such as the *dalits* and the *adivasis* are particularly vulnerable, also in respect of the right to life. The increased targeting of 'right to information' activists and human rights defenders by land, forest and mining interest groups has also been reported to me.

h) *Witness and victim protection*

The lack of a systematic witness and victim protection system places them at risk, and leads to impunity.

4) *The role of the human rights institutions*

The National Human Rights Commission has a proud record and has a critical role to play in the protection of the right to life, especially with reference to ensuring strict compliance with its Guidelines on Encounter Killings.

The NHRC presently seems, from my interaction with them, to be taking a largely legalistic and deferential approach. During our discussions the approach on a number of points was that there are laws in place to deal with matters, and nothing more is required.

The state human rights institutions inspire little confidence. The Manipur Human Rights Commission was for all practical purposes closed after it challenged abuse of power by the police. A member of another state commission told me the commission was 'subordinate' to the government – there was not even pretence of independence. In West-Bengal, NGOs showed me how the number of cases they refer to the Commission has dropped to zero for 2012, because it serves no purpose.

The fact that lodging a complaint with a state commission blocks access to the NHRC raises the question whether their presence helps or hinders complainants.

C) Conclusions

There is reason for serious concern about extrajudicial executions. The National Human Rights Commission has on occasion said 'extrajudicial executions have become virtually a part of state policy'. The position may have improved in some respects, but has not been resolved, and the legacy of the past is bound to continue into the future.

To a large extent the required structures to decrease extrajudicial executions are already in place. The steps to be taken have also by and large been identified within the system. What is required is a concerted and systematic effort by the state, civil society and all others concerned to eradicate its occurrence. In this process some of the best practices that are already followed in the country should be used as models for reform elsewhere. I have been impressed, for example, by the measures taken in Kerala State to make the police force more responsive to the needs of the public.

Impunity for extrajudicial executions is the central problem. This gives perpetrators a free reign, and leaves victims in a situation where they either are left helpless, or have to retaliate. The obstacles to accountability that are in place – in particular the need for prior sanction of prosecutions – should be removed.

Women and minorities – religious minorities, as well as *dalits* and *adivasis* – as well as human rights defenders, including right to information activists, are especially at risk, and their protection deserves special measures.

Almost everyone interviewed said that the courts, and the Supreme Court in particular, play a central role in the fight against unlawful killings. The same applies to the role of the media. I was also struck by the level of expertise and responsibility in civil society.

It is evident that the killings of people take place in the context of other abuses, such as torture and enforced disappearances. Preventing these other abuses can under some circumstances prevent the taking of life.

It is clear that in general the underlying causes of some of the violence need to be addressed, including the levels of development of those who are currently using force to oppose state policies. Andhra Pradesh was mentioned to me as an example in this regard.

There is a strong need for victims to speak about their experiences. A large number of the almost 200 victims who made presentations to me emphasised the need to know the truth, and to 'clear the names' of their loved ones who had been killed in 'fake encounters'. However, a credible

national process will have far greater legitimacy in this regard than an international one. Some form of – internal – transformative justice is called for. In Jammu and Kashmir the Chief Minister called for a truth and reconciliation commission. It must be underscored that justice for the victims, accountability and punishment of the perpetrators, that is a real end to impunity for extrajudicial executions, enforced disappearances and torture, are essential elements of any such process.

A public commitment to the eradication of the phenomenon of unlawful killings is needed. In this context it could be valuable to highlight to the public and to those in the structures of the State the historical and global role the country has played in promoting non-violence worldwide, including non-violent demonstrations, and the fact that extrajudicial executions is its opposite. A Commission of Inquiry, drawing on some of the outstanding jurists and other figures that the country has produced, can play this role.

There should be a special focus on the areas of the country where specific forms of unlawful killings take place. In some instances some form of transitional justice may be required, to ensure justice to the victims, break the cycle of violence, and to symbolize a new beginning. Specific and targeted attention should be given to the following issues: challenging the general culture of impunity; addressing the practice of ‘fake encounters’, to ensure that it is rooted out; and ensuring that swift and decisive action, with concrete outcomes, is taken when there are mass targeted killings. The Commission has to be required to complete its work within a reasonably short period of time, also to demonstrate that a new approach is being followed. In this respect it will be useful to look at possible lessons to be learned from the recent appointment of a judge to investigate extrajudicial executions in Gujarat, which at this stage appears to be a positive development.

D) Provisional recommendations

- 1) A credible Commission of Inquiry that inspires the confidence of the people, into extrajudicial executions in India should be appointed by the Government which also serves a transitional justice role. The Commission should investigate allegations concerning past violations, propose where relevant measures to deal with those, and work out a plan of action for the future to eradicate practices of extrajudicial executions. The Commission must submit recommendations on legal reform, and the reform of state structures, security apparatus and processes that encourage impunity.

Without waiting for the Commission, the following steps should be taken as a matter of priority:

- 2) Ratification of the following international instruments should take place without further delay: Convention Against Torture; OP-CAT; and the Convention on Enforced Disappearances. Ratification of the following instruments should be considered: The two Optional Protocols to the ICCPR; Optional Protocol to CEDAW; Rome Statute of the International Criminal Court; and the two Optional Protocols to the Geneva Conventions.
- 3) Repeal the Armed Forces (Special Powers) Act, 1958 and the Jammu and Kashmir Armed Forces Special Powers Act, 1990. To tie this to the announcement of the Commission

mentioned above will send a powerful signal about the State's commitment to a new dispensation.

- 4) Repeal the following laws or bring them otherwise into conformity with the applicable international standards, including the Code of Conduct for Law Enforcement Officials, the Basic Principles on the Use of Force and the Basic Principles on Extrajudicial Executions: Jammu and Kashmir Public Safety Act; Jammu and Kashmir Disturbed Areas Act, 2005; Section 197 of the Code of Criminal Procedure Act; provisions of Unlawful Activities Prevention Act, 1967; and the Chhattisgarh Special Public Security Act 2005;
- 5) Enact the Prevention of Torture Bill, along the lines of the amendments proposed by the Select Committee of the Upper House of Parliament (*Rajya Sabha*) ensuring its compliance with CAT.
- 6) There should be regular review and monitoring of the status of implementation of the directives of the Supreme Court and the NHRC guidelines on arrest, custodial violence, encounter killings and custodial death. In particular, the establishment of the independent Police Complaints Authorities by the States should now be made a priority.
- 7) To counter impunity for extrajudicial executions, where the police cause the death of a person in an 'encounter', there must be mandatory registration of FIR under Sec.302 IPC against the police and there must be an independent investigation of the same. Whether the police acted in self-defence or committed culpable homicide is to be decided by the competent court.
- 8) Families of victims should have full and easy access to autopsy reports, death certificates and other relevant documentation to allow them to proceed with their lives.
- 9) The practice of inviting UN special procedures should be continued, especially in areas where international concern has been expressed, such as torture, counter-terrorism measures, and minority rights.
- 10) Increased sensitizations and orientation programmes in respect of gender-based killings, 'honour' killings, dowry deaths and witch killings should be undertaken, both for the police, judiciary and public especially in the areas of the country that most affected.
- 11) An effective witness and victim protection programme should be established.
- 12) The National Human Rights Commission should be given the mandate to investigate the actions of the Armed Forces, and there should not be a year cut-off date on the cases they can consider. The Commission should develop a strategy to enhance its contribution towards protecting the right to life which goes beyond mere references to laws and procedures, and focuses on actual impact. The NHRC should undertake a review of compliance with its guidelines on 'encounter' killings, and whether their guidelines work in practice. They should also issue guidelines on inquests and autopsies. The independence and working of state human rights commissions should be reviewed.
- 13) Place a moratorium on the death penalty in accordance with General Assembly resolution 65/206.

The Working Group on Human Rights in India and the UN (WGHR)

is a national coalition of fourteen human rights organizations and independent experts from India. WGHR works towards the realization of all civil, cultural, economic, political and social rights in India and aims at holding the Indian government accountable for its national and international human rights obligations. At the national level, WGHR seeks to engage with relevant human rights, government, parliamentary, judicial and academic institutions. At the international level, WGHR seeks to facilitate Indian civil society's engagement with the United Nations' human rights instruments and mechanisms.

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