

Right to Adequate Housing

SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES

The Human Rights Council, under the Universal Periodic Review (UPR), examined India's human rights record in 2008 (UPR I) and 2012 (UPR II). In both UPR I and II, only one recommendation was made to India on housing. However, several recommendations relate to reducing poverty and inequality, eliminating discrimination, promoting gender equality, and improving living conditions, which encompass the human right to adequate housing.

NATIONAL LEGAL FRAMEWORK

Thirty-one per cent of India's population (377 million people) lives in urban areas while 69 per cent (833 million) is rural. India has the world's largest number of people (632 million) living in multidimensional poverty. Since 'housing' is considered a state subject in India, most laws related to it are dealt with by state governments. The central government, however, regularly introduces policies and schemes related to different dimensions of housing. Principal among them is the Pradhan Mantri Awas Yojana (PMAY/Housing for All-2022), which aims to construct 20 million houses in urban and 30 million houses in rural

areas by 2022. The Atal Mission for Renewal and Urban Transformation (AMRUT) and the Smart Cities Mission (SCM) include affordable housing components, though they are not as clearly defined. The Real Estate (Regulation and Development) Act 2016 aims to protect the rights of buyers and establish regulatory frameworks for builders/real estate companies, while the National Urban Livelihoods Mission – Scheme of Shelters for Urban Homeless (NULM-SUH) contains standards for shelters and facilities for the homeless across India.

CHALLENGES

ISSUES AND IMPACTS

Failure to uphold housing as a human right

The lack of a human rights approach to housing exacerbates the housing crisis. Though several housing policies exist, they do not focus on the progressive realization of the human right to adequate housing. This creates contradictions between state priorities and often results in violators enjoying impunity, especially in cases of eviction.

Lack of public, low-cost/social housing and neoliberal economic policies

In 2012, the national urban housing shortage was 18.78 million houses; 95 per cent for economically weaker sections (EWS) and low-income groups (LIG). This is projected to increase to 34 million units by 2022. Census 2011 reported that 13.75 million households (65–70 million people) lived in underserved, low-quality housing in settlements referred to as 'slums.' The macroeconomic framework promotes commercial development of housing for the rich, often at the expense of investment in housing for EWS/LIG. The recent focus on 'affordable housing' in the Union Budget 2017–18 and increase in allocations for PMAY are welcomed; however, these measures are not sufficient to ensure adequate housing for the homeless and EWS/LIG.

Real estate speculation

Rampant speculation has made housing unaffordable for the majority. Families unable to afford a house could reach 38 million by 2030. Census 2011 recorded 11.09 million vacant houses in urban areas, purchased mostly for speculative purposes. The Real Estate Act 2016 is a positive development but there is no guarantee that its implementation will also control speculation.

Lack of security of tenure and laws regulating the same

Most low-income households do not enjoy security of tenure over housing/land even though they may have lived in a settlement for decades. This increases their vulnerability to eviction and often precludes adequate investment in housing. State rent control laws could be diluted through the Draft Model Tenancy Act. The government is drafting a National Urban Rental Housing Policy; its focus should be on social rental housing for EWS/LIG.

Over-reliance on the market/private sector

Government housing schemes largely rely on the private sector to deliver. While the commitment to provide 'housing for all' is commendable, it is estimated that 90 per cent of funds for the scheme would need to be generated from the private sector. India has allocated Rs 480 billion (USD 7.5 billion) for the Smart Cities Mission, which aims to develop 100 'smart cities' by 2020. States have to generate half the funds from public-private partnerships (PPP). An analysis of the 60 shortlisted Smart City Proposals reveals a lack of priority for EWS/LIG housing. In some cities, SCM is promoting evictions.

Growing homelessness

India has the world's largest number of homeless persons. Census 2011 recorded 1.77 million homeless persons; about 0.94 million in urban areas and 0.83 million in rural areas. Independent experts, however, estimate the homeless population to be over three million. Though court interventions have resulted in some positive developments, homeless shelters in most cities are still insufficient, inadequate, and do not meet NULM-SUH standards. Homeless women and girls live in extreme insecurity and suffer the worst kinds of violence. Anti-begging/anti-vagrancy laws operational across India criminalize the homeless and poor. Schemes to address rural homelessness are absent. Though 18 million poor agricultural labourer families lack a house site, they are not counted as homeless.

Forced evictions, generally without due process or adherence to human rights standards

Government and private forces, often in collusion, demolish low-income settlements and evict residents under the garb of 'urban renewal', 'resettlement', and 'slum-free city' schemes. The large majority of evictions are not carried out for a genuine 'public purpose.' Data compiled by Housing and Land Rights Network, Delhi reveals that in 2015 and 2016, over 160,000 people in urban areas were evicted from their homes in urban India. These evictions have resulted in the loss of livelihoods, education, housing, health, security, access to basic services and income.

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CHALLENGES

Project-induced displacement from dams, ports, roads, power, irrigation, and mining projects

Failed resettlement

High frequency of disasters, and the absence of a human rights approach to disaster management

India has the world's highest number of people displaced from ostensible 'development' projects – over 70 million since its independence (1947). The Standing Committee on Rural Development (2011-12) reported that, "Only a third of displaced persons of planned development have been resettled."

In most cases of eviction and displacement, the government does not provide rehabilitation to affected persons on grounds that they are 'ineligible.' Many states have a 'cut-off' date before which the individual/family should have been living in the city in order to be considered 'eligible' for resettlement. For the small minority considered 'eligible,' the government provides alternative plots or flats, generally in undeveloped locales on city peripheries. Residents of most resettlement sites report tenure insecurity; inadequate housing; absence of basic services; lack of safety for women and children; and loss of education, livelihoods, income, and health.

Between 2008 and 2014, India recorded the third largest number of people displaced from natural disasters in the world (30 million). Though large amounts of funds are announced for relief, in most cases the compensation paid is insufficient and/or late. Disasters are sometimes used to forcefully relocate the poor to city outskirts, as in the case of tsunami and flood-affected families in Chennai. The Madras High Court has ordered the eviction of 55,000 "encroachments" (houses of EWS) along Adyar River, Cooum River, and Buckingham Canal in Chennai, as part of Tamil Nadu's disaster management plan.

ISSUES AND IMPACTS

RECOMMENDATIONS

Promulgate and implement a national law on the human right to adequate housing, which includes commitments to ending homelessness and forced evictions and ensures security of tenure.

Revise macroeconomic policies to prevent privatization of basic services. Restrict foreign investment and PPP in housing. Regulate market forces to prevent evictions, segregation, and speculation. Implement the Real Estate (Regulation and Development) Act 2016, within a human rights framework.

Adequately define 'affordable housing' based on income, and ensure that budgetary allocations are monitored to ensure that the most disadvantaged/needy persons and groups are able to access adequate housing. PMAY targets cannot be met unless demolition of EWS/LIG homes stops.

Address structural causes of homelessness. Create adequate shelters, short-stay homes, and recovery facilities for the homeless, especially women, children, older persons, and chemical-dependent persons, based on NULM-SUH. Allocate houses to homeless persons with mental illness/persons with mental illness at risk of homelessness.

Repeal all anti-begging/anti-vagrancy laws. Organize consultations on, finalize, and pass the Persons in Destitution (Protection, Care and Rehabilitation) Model Bill 2016.

Amend laws/policies to address housing and other needs of persons with disabilities. Ensure that the Building Bye-laws 2016 protect their rights.

Ensure that 'smart cities' do not promote evictions, segregation, and forced relocation.

Ensure the free and prior informed consent of affected persons before any redevelopment, upgrading, land acquisition or relocation project is finalized.

Implement UN standards and guidelines on housing, resettlement, evictions, and internal displacement, and recommendations of Special Procedures and treaty bodies.

Implement court orders that uphold the right to housing.

Develop better coordination between government ministries working on urban and rural housing and with national human rights institutions (NHRIs) (UPR II 138.58). NHRIs should independently investigate violations and take action towards reparation.

Collect disaggregated data (UPR II 138.71) on housing ownership, evictions, and displacement, especially with regard to gender.

Ratify the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights (UPR II 138.18).

(Also see, Report of the Special Rapporteur on adequate housing, Mission to India, A/HRC/34/51/Add.1, January 2017)

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Land Rights

SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

The Human Rights Council, under the Universal Periodic Review (UPR), examined India's human rights record in 2008 (UPR I) and 2012 (UPR II). Neither UPR I nor UPR II made any recommendation on land. Several recommendations on reducing poverty and inequality, eliminating discrimination, promoting gender equality, and improving living conditions, however, relate to the right to land.

NATIONAL LEGAL FRAMEWORK

About 69 per cent of India's population is rural (Census 2011), and largely depends on land and other natural resources for its livelihood and survival. A majority of the rural poor, however, lack access to and/or secure legal rights to land. Since land is a 'state' subject in India, most laws related to land, including tenancy and revenue, are passed at the state level. The two major national laws are the Scheduled Tribes and

Other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 (Forest Rights Act) and the Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (LARR) Act 2013. The provisions of the LARR Act, however, are being diluted as states are passing their own, weaker versions of the law.

CHALLENGES

Absence of land and agrarian reform

India is marked by extreme inequality in land ownership. Only seven percent of the population holds 47 percent of the land, while 93 percent of the population has access to only 53 percent of the land. India has the largest number of landless persons (over 500 million) in the world. Fifty-six percent of rural households (101.4 million) do not own any land while 30 per cent (53.7 million) households consist of landless labourers who face the worst deprivation. Eighteen million rural families are completely landless – lacking even a house site. Another estimated 60 million families use land but do not have secure rights to it. Despite the existence of land reform legislation, most states have failed to redistribute land to the landless poor.

Census of India 2011 reports that 56.4 per cent of the workforce or 263 million people are engaged in agriculture; over 50 per cent are agricultural labourers. Seventy-five per cent of farmers are marginal farmers owning between 1-2 hectares of land. The failure to implement human rights-based agrarian reform has resulted in an acute agrarian crisis with high rates of poverty and indebtedness among small farmers and agricultural labourers; this has resulted in an alarming number of farmer suicides (over 300,000 since 1995).

Land alienation resulting from infrastructure, mining, power, and coal projects, and Special Economic Zones (SEZ)

India has the world's highest number of people displaced from ostensible 'development' projects – over 70 million since its independence (1947).

A 2014 report by the Comptroller and Auditor General of India reveals discrepancies in the functioning of SEZ, especially regarding land acquisition and use. Of 392 notified SEZ, only 152 were operational, while fourteen per cent of the land was diverted for commercial purposes.

Large dams have resulted in widespread displacement and submergence of land across India. For instance, the Mapihel Dam in Manipur recently resulted in loss of homes and farmland, creating a humanitarian crisis of food insecurity and impoverishment.

Discrimination and impeded access to land for marginalized groups

Scheduled Castes (SC)/Dalits, including women, often face discrimination and violence while trying to access land. They own the lowest percentage of land in rural India (9.23 per cent); the average area owned per SC household is 0.27 hectares. The share of rural land owned by Scheduled Tribes (ST) is 13.06 per cent, while the average area of land owned per ST household is 0.65 hectares. Scheduled Tribes have suffered disproportionately from forced land acquisition and displacement. Land has been acquired in tribal areas for projects including mining, industrialization, and other non-agricultural purposes. The Fifth and Sixth Schedules of the Constitution protect tribal lands, but are violated. Declarations of 'Reserve/Protected Forest' have rendered forest-dwelling Particularly Vulnerable Tribal Groups landless. About 89 per cent of denotified tribes and 98 per cent of nomadic and semi-nomadic communities do not own land.

Informal nature of tenancy

'Informal' tenants are unable to easily access credit or government programmes and services. A large percentage of small farm 'owners' do not have secure legal rights to land.

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CHALLENGES

Lack of awareness among officials

Slow rate of resolution of land disputes

Lack of clarity in the law

High fees

Non-implementation of the Forest Rights Act 2006

Many revenue officials lack specific knowledge about land legislation and land records, and are thus unable to adequately implement and enforce pro-poor land laws and policies.

Land disputes are common and cases take a long time to be solved. This creates a backlog in courts, costs resources, and creates tenure insecurity for those involved in arbitration.

Land laws in most states are overly numerous and confusing. This makes implementation weak and fraught with obstacles.

Registration and stamp fees for land transactions, and for adding women's names to land records are high. This precludes many people from registering land/including women's names.

This is a major challenge for tribals and other forest dwellers. The Act was expected to rectify historical injustice with regard to tribals and other forest dwellers, but statistics show that ten years since its passage, violations continue. Of 42,99,778 claims for individual forest rights and 1,14,144 claims for community forest rights filed across the country, only 16,73,544 claims of individual and 41,367 claims of community forest rights were admitted.

ISSUES AND IMPACTS

RECOMMENDATIONS

Implement the Draft National Land Reforms Policy 2013, in order to provide guidelines for land reform action at the national and state levels. Re-establish the government task force on land reform. On the basis of the draft policy, promulgate a National Land Reform Act, ensuring land to the landless, especially women, SC, ST, bonded labourers, and nomadic, semi-nomadic, and denotified tribes.

Implement the LARR Act 2013, and take measures to prevent dilution of its progressive provisions by states.

Promulgate a National Right to Homestead Act, based on the Draft National Right to Homestead Right Bill 2013, to provide landless rural families with land for housing and livelihoods.

Collect disaggregated data (as called for by UPR II recommendation 138.71) on land ownership and tenancy, especially with regard to gender.

Create land reform and land law reform commissions at the state levels to make recommendations on implementing land reform and on simplifying and updating land legislation.

Ensure national and state-level implementation of the land purchase mechanism under Pradhan Mantri Awas Yojana – Gramin (earlier Indira Awas Yojana).

Ensure community participation and transparency in all land record updating work, and integrate a community-led land problems inventory under the Digital India Land Records Modernisation Programme.

Ensure adequate implementation of the Forest Rights Act, including for community rights, with incremental resources and time-bound targets.

Create Women's Support Centres (such as the models piloted in Odisha), which identify single women and connect them to land allocation programmes and other government schemes.

Provide education and training on land laws, policies, and people's rights through State Rural Livelihood Missions.

Provide training on land laws and land records to all revenue officials.

Integrate a community paralegal programme focused on land issues within the various State Legal Services Authorities.

Reduce registration and stamp fees for land transactions in order to encourage formalization of such transactions and promote increased access to land.

Protect women's rights to land/property/inheritance. Ensure that all redistributed/state distributed land is in the names of the women of the household. Create incentives for men to add women's names to land records; for example, by not charging any registration and stamp fees when adding women's names.

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Right to Food

SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

Among the two recommendations on the right to food during the 2012 UPR, India accepted recommendation no: 136 (Saudi Arabia) calling on the country to introduce a strategy to promote food security. India also accepted in revised form recommendation no: 168 made by Iran to continue efforts and undertake measures to adopt the bill on food security and strengthen the Public Distribution System (PDS).

India has taken several policy measures to address the issue of food safety for poor people. India enacted the National Food Security Act in September, 2013 bringing under one umbrella several existing and new entitlements aimed at providing food security. National Rural Employment Guarantee Act (NREGA) of 2005 guarantees 100 days of unskilled work for people in rural areas. India operates Public Distribution System (PDS), the largest distribution network of commodities in the country which facilitates the distribution of food grains to a large number of poor people through a network of Fair Price Shops (FPS) at a subsidized price on a recurring basis. Despite relatively high rates of economic growth India has failed to reduce hunger and under nutrition. Experts claim that despite abundant production of grains and vegetables, entrenched corruption and inefficiency in the distribution chain prevents the benefits from reaching the poor. The result is that India tops the world hunger list with 194.6 million (over 15 per cent of the country's population) of undernourished people.

NATIONAL LEGAL FRAMEWORK

The Constitution of India provides for explicit as well as implicit provisions for realizing the right to food. Article 47 (explicit provision) calls on the State to raise the level of nutrition and the standard of living and to improve public health. The Supreme Court of India has recognized that Article 21, which guarantees the fundamental right to life to all persons, implicitly contains within it the right to live with human dignity, and this includes the right to adequate food and nutrition.

National Food Security Act 2013

On 12th September 2013, the Indian Parliament enacted the National Food Security Act (NFSA) which addresses the problems of hunger and malnutrition. The Act introduced several new and existing entitlements on food security and considered women as head of the household for the purpose of distribution of BPL cards- a landmark step towards gender parity. The new law has created a broad framework of legal entitlements for 67 percent of the Indian population. Priority households are entitled to 5 kgs of food grains per person per month, and 2.43 crore 'Antyodaya' households to 35 kgs per household per month. The combined coverage of Priority and Antyodaya households (called eligible households) extend up to 75% of the rural population and up to 50% of the urban population.

The Right to Food Case

A public interest litigation (PIL) was initiated by the People's Union for

Civil Liberties (PUCL) in 2001 before the Supreme Court of India which is known as the "right to food case". The petition was aimed at seeking legal enforcement of the right to food following the occurrence of starvation deaths in the State of Rajasthan while at the same time there was a national surplus of food grains, which was left to be unused instead of being distributed to the people. Initially, the case was brought against the Government of India, the Food Corporation of India (FCI), and six state governments, in the specific context of inadequate drought relief. Subsequently, the case was extended to the larger issue of chronic hunger, with all states and union territories as respondents. It was argued in the petition that the right to food is an implication of the fundamental "right to life" enshrined in Article 21 of the Indian Constitution.

Regular hearings on this case has been held since April, 2001. Although the Court is yet to announce its final judgement on the matter, it has issued over 150 interim orders that have treated the right to food as a justiciable human right. The Interim orders have led to new and better-implemented government programmes which include mid-day meals for school children, integrated child development services, food entitlements in childcare centres, subsidized food for a number of specific vulnerable groups and changes to the subsidies directed at all persons below the official poverty line.

CHALLENGES

Hunger and malnourishment due to non-inclusive growth. Higher economic growth has not been fully translated into higher food consumption.

Limitations of National Food Security Act 2013.

Corruption, inefficiency and discrimination in distribution of food grains under Public Distribution System (PDS).

ISSUES AND IMPACTS

According to the Global Hunger Index 2016, India ranks 97 out of the world's 118 countries and even further behind some of its neighbouring South Asian countries. India's health indicators are not reflective of the economic strength of the country. Lancet India's Health Report says about 50 per cent of all childhood deaths are attributed to malnutrition. India has the world's highest number of malnourished and hungry children, 51% of women are anaemic from age group 15-49 years and 44% of the children under five are underweight.

The new law has created a broad framework of legal entitlements for 67 percent of the Indian population. The term priority household remains the bone of contention as the Indian Planning Commission (now the Niti Aayog) has not yet reached to a reflective definition of poverty and identification has been left to the discretion of the state governments. An expert group set up in 2009 to advise the Ministry of Rural Development estimated that about 61% of the eligible population was excluded from the Below Poverty Level (BPL) list. Various Committees have been established with different estimates of the poor. Whenever targeted benefits are provided to certain sections of the population, significant inclusion and exclusion errors have taken place in the past. So far, NFSA has been implemented only in 33 states and union territories, still some states are seeking extension.

The Committee headed by Supreme Court Justice D P Wadhwa in its report on August 2007 reported that the whole system of procurement and distribution of food grains under Public Distribution System (PDS) is built on corruption and its benefits to the poor are low. The system lacks transparency, accountability, monitoring and enforcing. The report observes "Bogus cards are in abundance. Immediate measures are required to reduce the diversion of food grains". Moreover, the shift from universal to targeted applicability in 1997 —providing subsidised food only to Below Poverty Line (BPL) cardholders—excludes genuinely poor households through targeting errors. The TDPS suffers from large leakages of food grains during transportation to and from the

CHALLENGES

Agrarian crisis and spate of farmer's suicides.

ration shops into the open markets. In an attempt to curtail and dismantle the PDS system, the Shantha Kumar High Level Committee appointed by the government of India openly recommended in 2015 that the coverage of the NFSA be reduced from 67% to 40% of India's population and recommended to introduce cash transfers in the place of PDS.

Agrarian crisis and farmer's suicide is a growing social emergency in India. It is estimated that more than a quarter of a million Indian farmers have committed suicide in the last 16 years— possibly the largest wave of recorded suicides in human history. A great number of those affected are cash crop farmers, and cotton farmers in particular. Statistics compiled by the Indian government reveal that 241,679 farmers in India committed suicide between 1995 and 2009. Maharashtra state - with 60,000 farmer suicides - tops the list. A staggering 3,228 farmers committed suicide in Maharashtra in 2015, the highest since 2001, according to data tabled in the Rajya Sabha on March 4, 2016 – that is almost nine farmers every day.

ISSUES AND IMPACTS

RECOMMENDATIONS

Expand ambit of National Food Security Act (NFSA) by focusing on individual empowerment to feed oneself and family in dignity and focus beyond welfare schemes; promote access to natural resources; support production and utilisation of coarse grains grown by local communities for the PDS.

Include nutrition in all PDS and promote local procurement of all food grains from small and marginal farmers in order to ensure culturally acceptable food, reduce food wastage in transportation and empower local communities.

Ensure conformity of the NFSA 2013 with India's human rights obligations and Supreme Court orders and constitutional provisions.

Expand ICDS centres to counter malnourishment and provide child care as per Court's orders including converting existing centres into crèches and appointing a second worker.

Increase in the quantity of food grains instead of restricting to 5 family members, knowing the fact that the majority of Indian households are large.

New entry should not be frozen as it denies the right to food to a child born after the census till the next census, for 10 years which is the most crucial time for child's mental and physical growth and needs adequate attention and nutrition

A complete balanced diet should include proteins, carbohydrates, vitamins and fats which go beyond wheat, rice and include edible oils and pulses as well.

The Act must be sensitive to the migrants and the NFSA does not include migrants as a beneficiary, violating the Article 21 of the Indian constitution.

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Right to Health

SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES

During its second UPR in 2012, India received 19 recommendations pertaining to public health and sexual reproductive health rights. Recommendations called for an increase in budgetary allocation; improvement in the level of public health services in the country; the need to establish measures at the national and state level to remove obstacles in terms of access by the population to pain palliative medicines and the need to provide every possible support and assistance to the national project for rural health to increase the standard of nutrition and improve public health.

India did not accept recommendations 149 and 159, made in its UPR II, to increase the budget allocated to health from 1 percent of the GDP to 2 percent. India's public health budget has stagnated at 1.2% in the last few years despite the government's own draft health policy suggesting that this figure should be at least 2.5%. Low investment in the Public Health care system has forced a vast percentage of population to seek private health care. A National Sample Survey Report, 2004 points out that 40% of hospitalized people are forced to borrow money or sell assets to cover expenses. The low investment in public health is pushing many people below poverty lines as more than 70% of medical expenses are borne through 'out-of-pocket' expenses in India. The draft National Health Policy 2015 has not been finalized. Indian health professionals suspect that the draft national health policy may encourage more privatisation and dilute primary health care service provisions.

CHALLENGES

ISSUES AND IMPACTS

Inadequate Health Budget for Public Health

There has been a steady deterioration of access to determinants of health: food water and a safe environment, leaving the poor and vulnerable to bear the brunt of the adverse health outcomes. Despite having 30% of the world's poorest people, out-of-pocket expenditure on health in India continues to be one of the highest in the world. As per NFHS III, the pattern of health care expenditure in India shows that more than 70% of expenditure is from out of pocket by households. According to NSSO Health and Morbidity Survey data analysis in 2014, about 23.66 per cent rural households faced catastrophic health care expenditures.

Highly Privatised Health Care System, access to Health

De-emphasizing of provisioning of service through the public health system as a key role of the government and a tangible shift towards privatization of healthcare is a failure of India's obligation to protect the Right to Health. Privatization of healthcare and medical education has led to focusing on more profitable secondary and tertiary medical care services and has resulted in complete neglect of primary healthcare services. Private hospitals that received land at highly concessional rates on condition of providing beds to the poor have failed to comply. Absence of identity documents showing permanent addresses has denied care to migrants and homeless people. Shortage of healthcare workers, and services particularly in rural areas continue to have its negative impacts.

Food & Nutrition insecurity, with double burden of Under nutrition & "mal" nutrition with junk

India is ranked 97 out of 116 in the Global Hunger Index. Malnutrition and stunting in children, adolescents and women, including anaemia, continues as a serious challenge. The National Nutrition Policy 1993 remains unimplemented. Coordination between Women & Child Development, Health Ministry, Consumer Affairs and Agriculture Ministry to ensure Nutrition Security is grossly inadequate. Maternity Entitlements under National Food Security Act 2013 continue to remain unimplemented. Aggressive marketing and spiralling growth of junk food, and unhealthy processed food is beginning to impact children's health, with growth of Non-Communicable Diseases in Urban and Rural areas. The Relationship of Under-nutrition to increased vulnerability to infections and child mortality is well documented.

Communicable Diseases and emerging antimicrobial resistance (AMR)

Communicable diseases like TB, HIV, HCV and malaria continue to be a leading cause of morbidity and mortality even as non-communicable diseases (diabetes, hypertension, cancers, chronic Respiratory Diseases etc.) in urban and rural areas are showing an increase.

The Gaps in RNTCP non-prescribing of Standard Treatment Guidelines and Rational Use of Anti TB drugs have resulted in emergence of MDR & XDR TB. Evidence of increased vulnerability of the undernourished people to TB highlights the need of ensuring additional nutrition, besides rational medicines and diagnostic facilities for early diagnosis of TB & MDR TB. Majority of the Hepatitis C infected do not have access to testing and treatment services. Despite stated free treatment for HIV, stock out of ARV drugs and CD4 testing kits, with restricted access to 2nd line treatment and no access to 3rd line continue.

High Maternal Mortality & Morbidity

The Maternal Mortality Rate, Neo Natal Mortality Rate, Infant Mortality Rate and Under 5 mortality rate have declined but they still remain high in vulnerable populations and girls. Over 44000 preventable maternal deaths occur annually. Poor nutrition of women results in birth of LBW babies and high prevalence of anaemia in women of reproductive age. India ranking 170 out of 185 countries at 48.1 per cent around 20% of Maternal Mortality is recognized as Anaemia related. Quality care from pre pregnancy to post-partum and emergency obstetric care is still not accessible to a significant percentage of women.

Need for Minimum standards & capping of Charges, Regulation of Clinical Establishments

The Clinical Establishment Act 2010 was meant to regulate Private and public Clinical Establishments i.e Hospitals, Clinics, diagnostic Labs etc. setting minimum standards and ceiling prices for charges for various medical procedures to prevent exploitative medical charges. This Act has not been implemented. Lack of regulation of the private actors has driven up healthcare costs, led to inappropriate, irrational and exploitative medical diagnostic tests, medical treatment and procedures with costly catastrophic expenditure on hospitalization.

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CHALLENGES

Mental Health Concerns

Mental Health has suffered from equitable access as only 1% of the health budget is being allocated to mental health by the Centre and the States. There is an absence of a comprehensive approach and Mental Health care providers continue to be inadequately trained. The Mental Health Bill was passed in the Upper House of Parliament in August 2016. If adopted by the Lok Sabha, the Bill would decriminalize suicide attempts and promote community-based approaches.

Pressure for TRIPS PLUS Agendas and prevention of use for Safeguards & Flexibilities.

Indian Patent Act was amended in 2005 in compliance of TRIPS Agreement mandated product patents, extension of patent period, Free Trade Agreements and bilateral pressures on India to dilute public health safeguards in the Patent law also pose a grave threat to access to medicines, medical devices and diagnostics etc. India's new Intellectual Property (IP) policy shifts away the emphasis on using IP to advance public health and interest towards an IP maximalist approach. Bio-piracy of traditional knowledge and traditional resources has been going on undeterred in spite of the presence of Traditional Knowledge Digital Library and Convention of Biodiversity.

Absence of Public Health based Pharmaceutical Policy

There has been no National Drug Policy after 1994. The National Pharmaceutical Pricing Policy 2012 changed the methodology of fixing ceiling pricing from cost based to market based. There are known existing market distortions, information asymmetry, unethical marketing, high medicine prices and unaffordability resulting in denial of medicines and treatment, irrational and over use on the other, resulting in preventable deaths, complications and emergence of Anti-Microbial Resistance.

ISSUES AND IMPACTS

RECOMMENDATIONS

Increase public health budget to more than 2.5% of GDP with substantial investment in primary healthcare recognizing the double burden of Communicable & Non Communicable Diseases.

Recognize and protect the Determinants of Health (Food & nutrition) recognizing the poor nutritional status of the majority of Indians. Ensure production & procurement, promotion, distribution of diverse, health promoting, nutritive food and regulate unhealthy poisons, toxins, chemicals in food and highly processed junk food as these are having negative health impacts.

Ensure that the long overdue National Health Policy is finalized based on principles of Comprehensive Primary Health Care and Universal Health care which recognizes the state's role in providing public health as a social good rather than a commodity for exploitative profiteering, further privatization and financial speculation.

Take steps to formulate a Rational Drug Policy to Complement Comprehensive Health Policy which is long overdue after the last National Drug Policy in 1994.

Amend, enforce and implement existing health legislations, Medical Council of India Act to promote good, need based medical education and ethical medical care practices in India.

Stop Privatisation and corporatisation of public health institutions, public sector vaccine and drug manufacturing units.

Reject TRIPS plus agendas in Trade Agreements which would jeopardize Access to Medicine.

Use TRIPS Flexibilities and Safeguards for ensuring access to costly patented Drugs using compulsory License for Government non-commercial use to meet health needs.

Enactment and enforcement of regulation of corporate and private sector health care to protect patient rights and prevent exploitation by strengthening the unimplemented voluntary Uniform Code of Pharmaceutical Marketing Practices 2015 and making it statutory.

Address as priority the existing discrimination and structural marginalization of vulnerable groups facing multiple vulnerabilities (dalits, tribals, NT, disabled, poor, rural, urban slums dwellers, women, children specially girl child, adolescents, elderly, single people, disabled widows, homeless) in Health care services.

Ensure implementation of policies, programmes with adequate financial allocation and institutional arrangements to address occupational health concerns of those suffering from silicosis, involved in mining, sewage work, manual scavengers, working in hazardous industries with no labour laws and health rights and ensure safety.

Operationalize Comprehensive Mental Health policies and programmes with appropriate budgets and trained personnel and institutions, to provide mental Health Care and protect the rights of Mentally ill.

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Right to Water and Sanitation

SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

During India's II UPR cycle in 2012, there were 4 recommendations made to India related to the right to Water and Sanitation. India accepted 3 recommendations (Recommendation No- 76, 139, 148) but did not accept Recommendation No- 138 which asked India to ensure that every household enjoys the right to safe drinking water and sanitation.

India has lagged in achieving the Millennium Development Goal 7 to improve access to adequate sanitation to eliminate the massive open defecation problem. However, the Government of India has shown its commitments in parts to achieve Goal 6 of the Sustainable Development Goals which looks at water and sanitation more holistically taking into account water-use efficiency, water related ecosystems, water resource management apart from adequate and equitable access to safe water, sanitation and hygiene. India through its flagship programme, Swachh Bharat Abhiyan (Clean India Campaign) launched in 2014, is dedicated to make the country open defecation free and to paying special attention to the needs of women and girls and those in vulnerable situations. It has entrusted NITI Aayog as the nodal agency to look into the implementation of SDGs in India.

Government of India is also a signatory to the declaration of South Asian Conference on Sanitation (SACOSAN) V & VI held in 2013 in Nepal and 2015 in Bangladesh respectively.

NATIONAL LEGAL FRAMEWORK

In India, right to water is not enshrined as a fundamental right in the Constitution but has been recognized under Article 21 of the Constitution, the right to life, thus establishing that all human beings are entitled to equal and non-discriminatory supply of a sufficient amount of water. However, key water related policies and laws do not mention water as 'a human right' but as 'a basic need'.

Draft National Water Policy, 2012

The draft policy seeks to address issues such as the scarcity of water, inequities in its distribution and the lack of a unified perspective in planning, management and use of water resources. There is a mention of the Water framework law that that will enable the establishment of river basin authorities with appropriate powers to plan, manage and regulate water resources at the river basin level. While the draft policy clearly mentions that water needs to be managed as a community resource held by the state under public trust doctrine to ensure equitable and sustainable development for all, on the contrary it underlines the need to treat water as an "economic good". The policy is also flexible towards allocating water for industrial use even at the cost of agriculture.

Swachh Bharat Mission, 2014

The Swachh Bharat Mission (SBM), a signature programme of the present regime was launched in October 2014 with its core intent to achieve universal sanitation coverage and open defecation free by 2019. The mission for rural areas is being coordinated by the Ministry of Drinking Water and Sanitation, and the same for urban areas are coordinated by Ministry of Urban Development.

The ground reality reveals that the SBM has largely focused on constructing toilets in large scale and has neglected the interlinkages between access to water, its availability, sustainability, security and management, waste management, maintenance, social and gender inequalities. Water availability has been largely ignored indicating the inherent flaws of the mission.

In 2015, the Swachhta Guidelines and Kayakalp awards for public health care facilities were announced under SBM, communicating the Government's interest in improving WASH to improve health, especially in institutional settings.

National Rural Drinking Water Programme

In 2013, new guidelines were framed under the National Rural Drinking Water Programme for improving its implementation. India has met the

target for halving the number of households without drinking water supply in rural areas.

However, the Budget 2016-17 yet again neglected its rural drinking water component with the allocation of Rs. 5000 crore for the National Rural Drinking Water Programme being only a marginal improvement over the previous year's allocation of Rs 4373 crores.

There is a plan called "Har Ghar Nal" by Government of India, to provide piped drinking water for all households. However, the aims are such ambitious that it aims to have 70 percent coverage by the end of 2017, wherein the current coverage is limited to 17 percent as per the government data. Moreover, the actual mandate for provision of drinking water lies with the State governments in the Indian federal system, wherein the centre is expected to support through finance and other resources.

Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013

This law prohibits the employment of persons as manual scavengers, the manual cleaning of sewers and septic tanks without protective equipment, and the construction of insanitary latrines. Despite having a legislation to eliminate manual scavenging and to rehabilitate them with dignity, India has fallen short in its implementation. There is a lack of emphasis on faecal sludge and seepage management in the city sanitation plans. There is also an urgent need of vision around the rural sanitation program wherein toilets are built in large number without any emptying solutions.

The Model Groundwater Bill, 2016

The Union Ministry of Water Resources has put up a Model Bill for Conservation, Protection and Regulation of Groundwater. It seeks to make groundwater a common pool resource, reduce its pollution and degradation, and protect ecosystems and their biological diversity. It has been circulated to states by the Central Government, and has been adopted by 15 states so far.

Other Significant Initiatives

Atal Mission for Rejuvenation and Urban Transformation (AMRUT), Smart city, Swachh Bharat Swachh Vidyalaya (SBSV), National Mission for Clean Ganga (NMCG) and National River Conservation Plan and the most recent Swachh Swasth Sarvatra (SSS) programme are some other major initiatives aimed at water and sanitation development in India. AMRUT reportedly denies free water provisioning for the poor and pushes for water privatization through Public Private Partnerships.

CHALLENGES

ISSUES AND IMPACTS

Gender based Violence

In May 2014, the media reported an incident of rape and hanging of two teenage girls from a disadvantaged caste in Uttar Pradesh, India, while on their way to defecate in the open. Women living in urban slums of Delhi reported specific incidents of girls under 10 being raped while on their way to use a public toilet in a 2011 study. Women without toilets at home are clearly vulnerable to sexual violence when travelling to and from public facilities or open fields, risks can be reduced at the very least when women and girls have access to toilets closer to their home.

Caste-based Discrimination

In India, more than 20% Dalits still do not have access to safe drinking water and 48.4% of Dalit villages are denied access to water source.

The practice of manual scavenging is also continuing despite having a law on Prohibition of Employment as Manual Scavengers and Their Rehabilitation Act, 2013. The government needs to effectively work towards prohibition of manual scavenging.

Access to safe water

India has the world's largest number of people without access to safe water. About 7.6 crore people, which is 5% of India's total population, are deprived of safe water and the country registers around 1.4 lakh child deaths annually due to diarrhoea, a mainly water-borne disease.

Access to Sanitation

India is the worst country in the world for numbers of urban dwellers without safe, private toilets (157 million) and for open defecation (41 million). The problem is so big that the daily waste produced on the streets of India's towns and cities is enough to fill eight Olympic-sized swimming pools, or 16 jumbo jets, with poo, every day.

Water Privatization

There is hardly any regulation for water extracting industries especially with the packaged drinking water and beverages markets. The community ownership of water resource is also getting threatened.

RECOMMENDATIONS

Implement Indian Court Judgements recognising water and sanitation as legally enforceable human rights. This would also be in line with the fact that India is a signatory to the commitments made in the UNGA 2010 resolution and SACOSAN V declaration to recognize water and sanitation as human rights.

The new 2030 SDG Agenda has a dedicated Goal (SDG) 6 on water and sanitation with clear linkages with other Goals. Adequate and appropriate provisioning of resources need to be made to ensure realisation of Goal 6 of the SDGs.

India must prepare a comprehensive policy on water clearly articulating the life cycle use of water as a public good rather than an economic good. The draft Water Policy 2012 pending in the Ministry of Water Resources must be revised and a new policy must be put in place immediately with due public discussion.

Adequate budget provisioning along with clear channel of its utilization needs to be ensured to completely eradicate manual scavenging and ensure that disposal and management of human waste is carried out in strict conformity to the principles of protecting human rights, health and environmental sustainability.

Everyone living in urban areas, including including informal settlements, to be provided with a toilet to ensure the protection of public health.

Emphasize the need for non-coercive and non-punitive behaviour change and communication approaches for promotion of toilet construction and use. Hygiene as a key goal also needs to be established. Concerns around quality of construction and prevention of contamination need to be recognised and addressed.

Effective coordination is necessary from all actors in the sanitation chain including governments, city planners, NGOs, the private sector, informal service providers and citizens.

Sanitation workers to be given the respect they deserve with stable employment, safety and decent pay. Without them healthy communities and cities are impossible.

There is a vital need for an integrated approach towards urban planning that prioritises provision of basic services like clean water, safe sanitation and sustainable faecal sludge management by ensuring people's participation.

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Right to Education

SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

During India's II UPR cycle in 2012, more than 10 recommendations were made to India related to the right to education. India was advised to (recommendation No 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. India accepted some of the recommendations but refused to accept recommendation 149 which asked India to meet the stated commitment from the Common Minimum Program of 2004 to dedicate 6 percent of India's GDP to education.

The Indian Parliament enacted the historic Right to Education Act (RTE) in August of 2009 which provides a legal guarantee by the Government of India for a justiciable right to free and compulsory education for children between the ages of 6-14 years of age. A critical appraisal of the functioning of the Right to Education reveals that even after 6 years, for most children, this right remains a distant dream as millions of children are still out of school and high number of drop-outs including the quality of education remains a major concern. Children from Dalit, tribal, and Muslim communities in government schools still face discrimination. There is a rise in the number of fee charging profit-oriented schools that do not provide quality education. This is a direct consequence of India's decreased GDP spent on education (3.3%) as against a global average of (4.9%).

As a party to the Millennium Development Goals (MDGs) adopted by the United Nations in 2000, India was committed, inter alia, to achieving universal primary education, in terms of both enrolment and completion of primary schooling for all girls and boys, by 2015. It was also committed to eliminating gender disparity in primary and secondary education, "preferably by 2005, and at all levels by 2015." Unfortunately, these goals remained unrealised.

NATIONAL LEGAL FRAMEWORK

In 1950, India made a Constitutional commitment to provide free and compulsory education to all children up to the age of 14, by adding this provision in article 45 of the directive principles of state policy. In 1976, by a constitutional amendment (Forty-second Amendment Act), education became the joint responsibility of the Central and state government. By virtue of this amendment Act, education became a Concurrent Subject (as known in legal terminology), which enabled the Central Government to legislate in such fields as, for example, school education. In December 2002, Parliament passed the 86th Constitutional Amendment inserting a new article, 21A after Article 21 of the Constitution, making Education a fundamental Right.

Right to Education Act 2009 (RTE) Though the right to education was inserted in Constitution, it took successive governments another six years to bring the Right of Children to Free and Compulsory Education Bill, 2008, which was passed by Indian Parliament in 2009. The Act known as Right of Children to Free and Compulsory Education Act (RTE) provides a legal guarantee by the Government of India for a justiciable right to free and compulsory education for children between the ages of 6-14 years of age. This Act came into force in 2010. Both the Central and State governments are responsible for the implementation of this legislation.

Sarva Shiksha Abhiyan (SSA) The Sarva Shiksha Abhiyan (Education for All Movement) is a flagship programme of the Government of India, initiated in 2000-01 to universalise elementary education in a time bound manner. The Sarva Shiksha Abhiyan programme along with the no detention policy, has resulted in a significant enhancement both in the Gross Enrolment Ratio (to over 95%) as well as in the enrolment of girls. According to Annual Status of Education Report, 2014, India achieved close to 96 per cent or above enrolment ratio in elementary schools and almost every habitation now has a government primary school.

Mid-Day Meal Scheme In 2002, the Supreme Court directed all the state governments to implement the Mid-Day Meal Scheme by providing every child in Government and Government aided lower primary schools with a cooked Mid-Day Meal with minimum 300 calories and 8-12 grams of proteins and adequate quantities of micronutrients. According to government audit report the actual implementation of the scheme suffers from various shortcomings such as over-reporting of enrolment figures, cases of leakages, financial indiscipline, poor quality of meals and inadequate monitoring.

CHALLENGES

Discrimination

Despite India's Right to Education law banning discrimination in schools, wide spread discrimination faced by children with disabilities, children affected by HIV/AIDS, children of nomadic, semi-nomadic and de-notified tribes, children from LGBTQ, Dalit, tribal, and Muslim communities in government schools. Marginalised households with high incidence of poverty are particularly vulnerable to educational exclusion due to impacts of poverty.

Out of School Children

While enrolment figures indeed greatly increased (97%), drop-out rates continue to remain high. According to Census 2011 there are 444 million children (37%) in India under the age of 18 years. At elementary level, only 6 out of 10 children enrolled in Grade I reach Grade VIII, 47% children drop out by the time they reach Grade X. Dropout rates for SC/ST and girl students are generally higher. In 2014-15, the retention rate at primary level was 83.7% and was as low as 67.4% at the elementary level.

Compliance with RTE Norms

Right to Education Forum Stocktaking Report for 2016, suggests that across the country, less than 10% schools comply with all the RTE norms. The National and State Commissions for Protection of Child Rights (SCPCR) are responsible for monitoring the situation but only 29 States/UTs have constituted systems for monitoring RTE. Despite such efforts, children can be seen working at roadside restaurants, in homes, at construction sites and in shops. Census 2011 data shows that there are still 4.35 million children employed as child labour.

Education Outcomes

Annual Status of Education Report (ASER) 2014 by the NGO, Pratham found that nearly half of the grade V students were not able to read at grade II level; and nearly same proportion of grade V students did not have the basic arithmetic skills, which they should have learned by the end of grade II. Only a fourth of all children in standard III could read a standard II text fluently, a drop of more than 5% over five years. Teacher absenteeism, estimated at over 25% every day, has been identified as one of the reasons for the poor quality of student learning outcomes.

ISSUES AND IMPACTS

CHALLENGES

Public Private Partnership

The Indian government proposed Public Private Partnership (PPP) as an important strategy in the Eleventh Five Year Plan (2007-2012) to invite private sector and also proposed the setting up of 6,000 new model schools under the PPP model in secondary education, affiliated to the Central Board of Secondary Education. Enrolment in private unaided elementary and secondary schools is around 33% each; and 39% at higher secondary level. Currently, approximately 51% of the secondary schools and 58% of the higher secondary schools are privately managed.

Resource Allocation

The first National Policy on Education (NPE) formulated in 1968 on the recommendations of Kothari Commission emphasized the need to raise the outlay on education to six percent of the GDP by 1992, and 'uniformly exceed this figure thereafter'. The total public expenditure for education, at less than 3.5 per cent of GDP is way below the 6 per cent commitment in subsequent National Education Policies. Accountability Initiative notes that in FY 2014-15, Rs 54,925 crore was approved under SSA, a drop of 22 per cent from FY 2012-13.

Failure to implement 25% quota for children from weaker sections of society

RTE Act provided a 25 per cent reservation for poor and marginalised children in private unaided schools. The Stocktaking Report (2014) notes that 25 states have notified norms for admission under this provision and 16 states have implemented 25 per cent reservations in 2013-14. On April 12, 2012 the Supreme Court directed every school, including privately-run ones, to give immediately free education to students from socially and economically backward classes from class-I till they reach the age of 14 years. In some states like Uttar Pradesh only 2000 seats were filled against 6,00,000 seats in the state. Even in the capital city, 32.87% of the allocated seats were vacant till 2015.

ISSUES AND IMPACTS

RECOMMENDATIONS

The outlay on education should be raised to a minimum level of 6% of GDP with immediate effect.

Expand the scope of Fundamental Right to Free and Compulsory Education Act from 0-18 years ensuring equitable quality, inclusion and non-discrimination.

Address major issues relating to teacher shortages, absenteeism, recruitment and transfers, teacher grievances, and professional development of teachers in a comprehensive and effective manner.

Ensure appropriate infrastructure including separate toilet facilities for adolescent girls for gender parity.

Taking the SDG Goal 4 ahead, guarantee and promote access to tertiary education, skill development and lifelong education.

Track and eliminate educational inequalities at all levels across children and communities of dalits, tribals, persons with disabilities, LGBTQI, children in conflict areas and religious or traditional minorities.

All forms of privatizations including the Public Private Partnership or franchise to corporate bodies that leads to profiteering, commoditization and weakening the public education system should be dropped.

Evolve a National policy on human rights education in line with World Programme of Human Rights Education promoting cultural diversity and age-appropriate comprehensive sexuality education in curriculum.

India should ratify the UNESCO Convention on Elimination of Discrimination in Education and promote common school system.

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Impact of Trade and Investment Agreements

SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

During its II UPR cycle in 2012, India received several recommendations on economic, social and cultural rights related to food security, public health care system, livelihood sources and poverty eradication but it did not receive any recommendation specifically addressing the potentially detrimental impacts of free trade and investment agreements on the protection and promotion of human rights. Emerging trade regime under FTA regime has been termed as biased by Indian civil society groups and their criticism has centered on the critical social areas affected by the business interests such as right to life, food security, labour and work standards and public health care system. These concerns are within the context of articles contained in the United Nations Human Rights Council's resolution, dated 16 June 2011. This resolution calls on that States to ensure that trade and investment agreements do not constrain their ability to meet their human rights obligations (Guiding Principle 9).

INDIA'S TRADE AND INVESTMENT AGREEMENTS

India's engagement in trade and investment agreements has gone up rapidly since 1990s. In addition to its engagement with multilateral institutions like World Trade Organisation (WTO), India has signed a number of bilateral and regional free trade and investment agreements (FTAs) which include liberalization of trade in goods & services, of investment and in addition several non-trade issues such as intellectual property rights (IPRs), government procurement, competition policy, and so on. These agreements operate at multiple levels and make impacts on human rights, especially those of economically or socially weaker sections who bear a disproportionate cost of such agreements. Such agreements also result in the loss of governments' policy space to regulate and implement the welfare measures.

India's Trade Agreements: India signed WTO Agreement in 1995 including 15 other bilateral trade agreements and is currently negotiating 15 more, bringing the total to 30. These include agreements with Sri Lanka, South Asian Free Trade Agreement (SAFTA), Singapore, ASEAN, South Korea, Malaysia and Japan. While the early FTAs were in goods-only but India's recent FTAs are more comprehensive, often referred as Comprehensive Economic Partnership Agreements (CEPA), or Comprehensive Economic Cooperation Agreements (CECA) or Bilateral Trade & Investment Agreements (BTIA). These include goods plus services, investment, IPRs, with standards of liberalization set beyond commitments at the WTO (WTO-plus).

North-South FTAs: Till recently India had signed FTA mainly with partners in developing countries but soon after a shift in trade policy, it started to

negotiate and sign agreements with developed countries, known as North-South FTAs. Japan is the one partner country so far while India is also negotiating with the European Union (EU), EFTA, Canada, New Zealand, and Australia.

Mega FTAs: India has also joined negotiations on a mega FTA called the Regional Comprehensive Economic Partnership (RCEP) which also includes the ASEAN bloc of 12 countries, along with China, Japan, South Korea, New Zealand and Australia. This agreement attempts to emulate its more famous but now likely demised predecessor, the Trans-Pacific Partnership (TPP) signed (but not ratified by all) between USA and some of the Asia Pacific countries including 6 RCEP members.

Investment Agreements: India has also signed 83 Bilateral Investment Treaties (BITs) that offer foreign investors strong protection and rights, much above the domestic investors. Most of these include an expansive definition of "investment" and the famous investor-state-dispute-settlement (ISDS) clause that allows foreign investors to sue the government in secret international arbitration cases for any "expropriation" of their (even expected) profits. This covers decisions made by state governments, the legislature and the judiciary and can even include changes in policy regulation such as on environment, public health, taxes, natural resource use, rights of specific constituencies and human rights in general. India is currently trying to renegotiate its BITs based on a new model text that puts in some safeguards and has not automatically renewed 56 of its 83 BITs.

CHALLENGES

The Right to Livelihood: Goods Trade Provision: Reduction of import duty, restriction on export measures.

While under WTO, India is allowed to retain import duties up to 113.5% on agricultural products and 34.5% on non-agricultural products but it reduced average duties to 32.7% and 10.1% in agriculture and non-agriculture respectively. India has agreed to cut duties to zero under signed FTAs on 60% to nearly 80% (ASEAN) of its products and is known to be negotiating coverage of 85-95% products to the EU. In RCEP it is expected to open 80% or more of its products to duty free imports from partners, while it may try to offer a bit less to China. An increasing trade deficit in goods shows a threat to its industrialization and job creation. A challenge to agricultural livelihoods is also evident from India's import duty reductions in agricultural products under the WTO, ASEAN-FTA, Malaysia-FTA.

India's engagement in global value chains (GVCs), supposedly promoted through its trade agreements, has encouraged lax labour laws in SEZs and export oriented industries such as garments, with increased informalisation, casualisation, gender-based wage disparity, volatility of employments and worsening conditions of work. Weaker and unorganized workers, for example, women, have borne the brunt of such production systems. Recent FTA partners such as the EU is insisting on removal of export restrictions (including quotas and export taxes) on raw material such as minerals and raw products. This will prevent domestic value addition and job creation, by threatening the access to raw material.

The Right to Food : Goods, Investment, Services, IPRs Provisions: Import duty cuts (Goods), Export Measures (Goods), subsidies (Agreement on Agriculture, WTO), standards (Sanitary and Phyto Sanitary Measures) protection of FDI in

India's commitment in its agriculture sector under the WTO is expected to limit and reduce import duties based on set formulae to some maximum level. This will affect policy flexibility to develop key agricultural products and protect farmers' livelihoods. Recently, India faces pressure to open up its agriculture sector (reducing or eliminating duties) under the FTAs with EU, New Zealand and Australia. This will not only threaten domestic production of food but will prevent long term value addition in the agriculture sector. Projections for the EU-India FTA shows huge gains in absolute value and market share for the EU, while India gains marginal value but no increase in EU market share. Being a food-insecure country India can only ensure food security and the RTF if it ensures sufficient domestic production from its 8.2 million farmers.

CHALLENGES

land non-agricultural investment), liberalising government procurement of food under PDS (GP) (if India opens up GP)

Right to Health:

Intellectual Property Rights (IPRs), Services, others
 Provisions: Data exclusivity, patent term extension, patent linkage, enforcement measures (IPR) Services Mode 3 or commercial presence (investment)

ISSUES AND IMPACTS

Indian export potentials are blocked off by high non-tariff (standards) and technical barriers through the SPSM agreement of the WTO. Whereas developed countries like the USA, EU, New Zealand, Australia, and Japan have heavily subsidized their agricultural producers mainly the big agribusiness companies. India's subsidies given through the administered price support of the PDS are being challenged by the developed countries. Despite India attempt to defend essential subsidies for public food programmes, very onerous conditionalities might bring challenges at the WTO. The EU is also asking India to eliminate restrictions on export measures in the WTO and in the FTA. This could mean India has to eliminate export restrictions on food items in years of shortage which could threaten food security and RTF at home.

The TRIPS agreement under the WTO has already made patenting of medicines mandatory in India. This is beginning to raise prices and threatening the existence of the generic medicine industry. The generic medicine industry had developed from a flexible and friendly patent regime in India. The New Patents Act 2005 has changed this.

However the Doha Declaration on Public Health still offered TRIPS-flexibilities to protect public health in developing countries. Now the FTAs are being used by negotiating partners such as EU, EFTA, Japan, Australia (in RCEP) to push for high IPR standards through provisions such as Data Exclusivity, patent term extension, patent linkage, and strict enforcement measures that will force smaller medicine producers to unnecessarily repeat and bear the cost for clinical trials, and pay for patent monopolies for longer years. Though India has so far refused to agree to TRIPS-plus measures in its FTAs, it is under severe pressure to agree to the same in some of the FTAs mentioned here. In addition, increased FDI through services trade liberalisation (for example in diagnostics and hospitals) is leading to a severe threat to access to healthcare and treatment; by raising user fee levels, shrinking of access from rural areas (by crowding out public investment), promoting unnecessary and expensive treatment options (e.g. stents).

RECOMMENDATIONS

Conduct ex-ante and ex-post Human Rights Impact assessment of trade & investment agreements by independent commission with participation of civil society experts.

Ensure provisions agreed to are in compliance with recommendations of the HR Impact Assessment and do not violate key Human Rights.

India must not include agricultural products under FTAs where the partner country gives high domestic subsidies on agriculture such as the EU.

Introduce parliamentary oversight.

Conduct consultations with state governments and affected constituencies.

Make public negotiating texts and HR Impact Assessments.

Retain policy (economic, social and environmental) flexibility in trade and investment agreements, especially public policy objectives.

Build process for evaluation of impacts (by independent multi-stakeholder bodies) and to assess & disburse compensation to affected constituencies.

The government should enforce HRs on behalf of affected constituencies, including assisting in judicial processes and using FTA dispute settlement mechanisms on violators including foreign investors and foreign corporations that use trade agreements to do so.

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Militarisation and Armed Conflict

SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

During its second UPR in 2012, India received 3 recommendations related to either repeal of the Armed Forces Special Powers Act (AFSPA) or the adoption of negotiated amendments to address the accountability of security personnel. At least 7 recommendations were made addressing the issues such as training programmes on human rights for its law enforcement officials as well as judicial and legal officials, access to justice in cases of human rights violations committed by security forces personnel and an independent committee to receive claims against the police referred to by the Special Rapporteur on Human Rights Defenders. India did not accept any of these recommendations.

India's claim that all human rights violations are redressed stands sharply refuted by the report of the National Human Rights Commission (NHRC) which in its report to UPR2 stated that AFSPA remains in force in Jammu & Kashmir (J&K) and the North-Eastern States, conferring an impunity that often leads to the violation of human rights. The Indian government's response stressed that most complaints of army and paramilitary abuses were found to be untrue and that the Act had been upheld by the Supreme Court of India (SC). India's response failed to acknowledge that it is in breach of its international human rights obligations.

NATIONAL LEGAL FRAMEWORK

AFSPA, 1958 (North East India), AFSPA, 1990 (Jammu & Kashmir): The law is operational in government designated 'disturbed areas'. It grants extraordinary powers to the armed forces in such areas such as allows them to fire upon anyone on suspicion; arrest without warrant; search and seize any premises or property on reasonable suspicion. In addition to this, the security forces enjoy legal immunity from prosecution. This Act is currently operating in the states of Assam, Meghalaya, Arunachal Pradesh, Mizoram, Nagaland, Manipur and J&K.

Unlawful Activities Prevention Act, 1967: The Act defines terrorism in a vague manner, including under its ambit damage to property and "disruption of supplies or services essential to community" thus infringing on the fundamental right of citizens to demonstrate. Other provisions include the power to detain an accused for 180 days without filing charges anyone including up to 90 days in police custody.

The National Security Act, 1980 and Chhattisgarh Special Public Security Act, 2005: these Acts provide for "preventive detention" of Indians as well as foreigners. The definition of 'unlawful activity', includes committing an act, uttering words, writing or making visual representations that may 'create risk or danger' for public order, peace and public tranquillity or create an impediment in the administration of law.

J&K Public Safety Act 1978: The Act empowers the State Government to detain anybody for two years without trial under the pretext of maintaining public order, and after an amendment in 1990; the State of J&K is now further empowered to keep the detainees in the jails outside the State.

Maharashtra Control of Organised Crime Act 1999: this Act departs from basic fair trial principles and allows the state to intercept wire, electronic or oral communication; makes confessions made to senior police officials admissible in evidence and can be read against the co-accused too. There is also no provision of an anticipatory bail for 6 months to the accused

Indian Penal Code, 1860 (S.124 A): This provision under the IPC has seen an increase in its misuse to crush and curb all voices of dissent or criticism of the government. It is used to specifically target political dissenters, who consequently suffer incarceration, face criminal prosecution, harassment and at times even conviction.

Code of Criminal Procedure, 1973 (S. 197): The requirement of prior sanction of the state for criminal prosecution of a public servant has largely become a ruse to obstruct and delay prosecution, and becomes a legal shield against accountability.

CHALLENGES

There has been Increased militarisation in Jammu and Kashmir after the unrest that followed the killing of Burhan Wani in July, 2016. There has been use of excessive and disproportionate force by the police. Pellet guns have been used in Kashmir to control protests by civilians which have led to more than 11,000 people being wounded including around 450 being injured by pellet injuries. From July to November, 2016, the state government ordered the shutdown of mobile communication and internet services for long periods in the Kashmir valley in order to maintain law and order. Further, in October, 2016, a local newspaper 'Kashmir Reader' was ordered by the State Government to stop publication. India, in August 2016, rejected UNHRC's request to visit Kashmir to investigate alleged human rights violations by Indian security forces.

In March 2016, the report by the Editors Guild of India revealed that in Chhattisgarh since July 2015, four journalists have been arrested on politically motivated charges and many journalists have been forced to leave Chhattisgarh due to intimidation by the police and vigilante groups. Tribal leader Soni Sori was attacked by some unknown assailants in South Chhattisgarh in February 2016 and the Jagdalpur Legal Aid Group (JagLAG) (women lawyers providing free legal assistance to tribal pre-trial detainees, in five districts of Chhattisgarh) were accused of being part of Maoist armed groups and were forced to leave. Similar attacks have taken place on other human rights defenders working in Chhattisgarh such as Bela Bhatia.

ISSUES AND IMPACTS

In October, 2015, and January 2016, several tribal women and girls from remote villages of Bijapur, Sukma and Dantewada Districts in Chhattisgarh, reported accounts of being raped and sexually assaulted by police and paramilitary troops deployed in anti-Maoist operation. An FIR was registered in these cases in November, 2015 and January 2016 against the security forces, but none of the perpetrators have been arrested.

In December, 2015, the NHRC took suo moto cognizance of the assault and sexual violence perpetrated by the security forces. In March 2016, the NHRC sent a team to conduct spot investigation and its inquiry report found that 16 women prima facie victims of rape, sexual and physical assault by police personnel. However, the Inquiry Report of the NHRC has not yet been made available to the public.

In a 2011 judgment of the SC reported as Nandini Sundar & Ors. Vs. State of Chhattisgarh (2011) 7 SCC 547, the Court ruled that the former members of vigilante groups like Salwa Judum must be disarmed and not allowed to take part in any combat operations against Maoists. Since last two years, despite the Court's clear injunction against the use of local youth and surrendered Maoists in counter insurgency, the state continued to arm and use local youth under the name of the 'Armed Auxiliary Force' and the District reserve guards (DRG's). In 2016, many attacks and harassment of human rights defenders have been carried out by these vigilante groups such as Samajik Ekta Manch and AGNI who are supported by the local police during such incidences.

CHALLENGES

CEDAW Committee Report (2014) recommended the repeal or amendment to AFSPA in accordance with the Justice Verma Committee Report; removal of prior sanction for prosecution of armed forces and police in cases of sexual violence against women; and to confer power on NHRC to inquire into complaints against armed forces. J. Verma Committee Report addressing sexual violence against women in conflict areas like Kashmir, North-East, Chhattisgarh, Odisha and Andhra Pradesh stated “impunity for systematic sexual violence in the process of internal security duties is being legitimized by AFSPA, which is in force in large parts of our country.”

ISSUES AND IMPACTS

The Report of the Special Rapporteur on extrajudicial, summary or arbitrary executions, Christof Heyns stated that, in reference to around 2,700 unmarked graves containing over 2,943 bodies of victims of extrajudicial executions from 1990 to 2009 in J&K, the Government expressed its intention to conduct investigations into unmarked graves. However, this has not yet transpired. The report recommended appointment of Commission of Inquiry in areas affected by extrajudicial executions and removal of legal barriers for the criminal prosecution of members of armed forces.

RECOMMENDATIONS

Repeal AFSPA and other security laws.

Amend the continuance of AFSPA and related legal protocols in accordance with recommendation of Justice Verma Committee Report.

Make provisions to ensure that 'disturbed areas' under AFSPA are regularly reviewed till AFSPA is amended/repealed every six months.

Remove requirement of sanction for prosecution of armed forces and Central Armed Police Forces and grant permission to enable prosecution in all pending cases involving human rights violations.

Amend the Army Act, and similar provisions in all laws governing the Central Armed Police Forces, to guarantee that cases of human rights violations of civilians are not tried in military courts.

Ensure that all allegations of human rights violations are promptly and independently investigated, and that perpetrators are prosecuted in civilian courts, and victims and their families receive reparations.

Investigate all allegations of excessive and lethal use of force, and prosecute and punish the perpetrators in uniform.

Ensure that sexual violence perpetrated by armed forces is brought under purview of criminal law.

Setting up of special commissioners who are either judicially or legislatively appointed for women's safety and security in all areas of conflict in the country.

Confer power on NHRC to investigate cases against armed forces personnel, especially violence against women.

Provide systematic training on women's rights to the Armed forces and other military personnel.

Appoint Commission of Inquiry in areas affected by extrajudicial executions.

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Torture and Enforced Disappearances

SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

Torture

In its second Universal Periodic Review in 2012, out of 20 recommendations on torture, India accepted only one recommendation no: 15 in which Botswana called for the ratification of the Convention against Torture. The other 19 recommendations, made by several countries, were rejected even though most of them were asking the government to ratify and merely expedite ratification of the optional protocols of the Convention against Torture and to bring a new Prevention of Torture Bill after considering the recommendations made by the select committee. During the 1st UPR cycle in 2008 India accepted the recommendation no: 15 made by Switzerland to receive as soon as possible the Special Rapporteur on the question of torture whose request has been pending before the Indian Government for the last 20 years. First request was made in 1993, followed by reminders but there were no responses from the government. India failed to enact the Prevention of Torture Bill 2010 to enable ratification of the UNCAT. The Bill was referred it to Select Committee of Rajya Sabha (Upper House) for its recommendations in May 2010 which are currently being examined by the Government.

Enforced Disappearances:

India received 8 recommendations on the issue of enforced disappearances in its second Universal Periodic Review in 2012. India rejected all the recommendations. Although India accepted the recommendation no: 12 in its 1st UPR cycle in 2008 made by Nigeria advising it to ratify the Convention on Enforced Disappearances. India signed the International Convention for the Protection of All Persons from Enforced Disappearance (CED) in 2007, but has yet to ratify it. National Human Rights Commission of India (NHRC) in its UPR-II submission had stated that there is no evidence that the Government of India intends to ratify the Convention on Enforced Disappearance. It further stated that 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 and 338 in 2011. These numbers are not comprehensive but significant enough to underline the need for the Government to act.

NATIONAL LEGAL FRAMEWORK

In India, neither Constitution nor statutory law contains an express definition of torture. However, different provisions in law provide police power for use of force only in certain circumstances. India continues to have several draconian security laws that are supposedly aimed at stopping terrorism but are used effectively by state agents to abuse human rights. These laws include the Terrorist and Disruptive Activities (Prevention) Act (TADA), Prevention of Terrorism Act (POTA), the Disturbed Areas Act (DAA), and the Armed Forces Special Powers Act (AFSPA), the Assam Preventive Detention Act, National Security Act, and the Armed Forces (Jammu and Kashmir) Special Powers Act (1990).

These laws have the most deplorable effects on the human rights and they have further institutionalized torture.

The provisions contained both in the Code of Criminal Procedure, 1973 and in special security laws have led to de jure or de facto impunity from prosecution to perpetrators. Sec. 197 of the Criminal Procedure Code provides for the need of prior sanction to try security forces. Special laws, such as the Armed Forces (Special Powers) Act, 1958 contain similar provisions barring prosecution without prior government sanction in respect of anything done or purported to be done in exercise of the powers conferred by this Act.

CHALLENGES

Torture

The Prevention of Torture Bill, 2010 (PTB) was referred to a Parliamentary Select Committee of the Upper House in August 2010. Considering representations from human rights groups, the Committee substantially revised PTB, which now partially complies with CAT. Since then there have been no efforts taken to enact this law.

Laws governing India's armed forces allow human rights violations by security personnel to be tried in military not civilian courts, further entrenching impunity. In 2010 three civilians were extra judicially executed by Indian soldiers in Macchil, Kashmir and later falsely identified as militants. In 2013, a court martial found six army personnel guilty and recommended life imprisonment. However, the court martial proceedings were not disclosed to the public. The report of the high-level inquiry commission which was constituted by the State government was never made public.

ISSUES AND IMPACTS

The National Crime Records Bureau (NCRB) reported 97 cases of custodial deaths during 2015 from every state of India, the highest reported from Maharashtra is 19. The 2014 National Crime Records Bureau statistics state that Chhattisgarh was among the States with the highest number of complaints (3,105) against the police for human rights abuses. However, the report states that the institution of judicial or magisterial inquiries has been only in 924 cases.

A report of the High-Level Panel on Socio-Economic, Health and Educational status of Tribal Communities in India, Ministry of Tribal Affairs in May 2014 suggests that in Chhattisgarh, a large number of tribals have been languishing in jails for long years without their trial concluding. In reply to an RTI application, the court registers for all cases disposed of between 2005 and 2012 revealed that average rate of acquittal over these years was 95.7 percent.

In Chhattisgarh (2015-16), there have been multiple cases of rape, sexual violence of adivasi women and encounter deaths by security forces in the name of counter insurgency operations. In Sukma district of Chhattisgarh, a minor tribal girl –Madkam Hidme, was killed under questionable circumstances in June, 2016. The Police claimed that she was a Maoist killed in an encounter. The fact-finding team reported that Hidme was brutally raped and then pumped with bullets.

CHALLENGES

Permission to prosecute police and paramilitary personnel are rarely granted by the government. An RTI application was filed to know the number of instances where the government has granted sanction for prosecution of security forces operating in J&K between 1989 - 2011. The response to the RTI revealed that out of the 44 applications made during this period, sanction was granted to none of them.

Enforced Disappearances

According to the Association of Parents of Disappeared Persons (APDP), there have been about 8,000 cases of enforced disappearances in the Kashmir valley and 7000 mass graves have been discovered. In a 2006 report, Human Rights Watch documented many instances of enforced disappearances as well as extra judicial killings. The presence of 2,700 mass unmarked graves in Kashmir was confirmed by the J&K State Human Rights Commission in 2011. However, no inquiry or investigation has been initiated.

The Government of India has failed to conduct any impartial investigation into the case of discovery of mass graves in Tombisana High school in Imphal, Manipur in December 2014. In its Annual Report, the Working Group on Enforced and Involuntary Disappearances said that it had not received a response from the government of India to a letter asking to stop constructions on a mass grave site in Manipur.

ISSUES AND IMPACTS

In a case of extrajudicial killings in 2015, 20 alleged red sanders smugglers were gunned down by the Andhra Pradesh state police in the Seshachalam forest. An SIT was formed to investigate the encounter killings, which submitted a closure report citing "lack of evidence". It has been called a case of illegal arrest, arbitrary detention, custodial torture and extra-judicial killing.

As part of counter-insurgency operation Punjab between 1984 and 1995, security forces allegedly killed thousands of Sikhs characterized by systematic and widespread human rights abuses, extrajudicial executions, and "disappearances." In 1995, human rights activist Jaswant Singh Khalsa uncovered municipal records demonstrating that police officers had secretly cremated thousands of bodies in three crematoria in the district of Amritsar—then one of 13 districts in Punjab.

Seeking a detailed investigation into 1,528 documented cases of alleged extrajudicial executions and enforced disappearances, a case was filed in 2012 by the Extrajudicial Execution Victim Families' Association, Manipur, and Human Rights Alert in the Supreme Court of India. Human rights activists allege that these are just the recorded cases and that instances of people simply disappearing have gone unreported over the years.

RECOMMENDATIONS

Ratify the Convention against Torture

Ratify the Convention against Enforced Disappearances.

Ratify the Optional Protocol to Convention against Torture;

Invite the Special Rapporteur on Torture as soon as possible;

Enact Prevention of Torture Bill taking into full consideration the recommendations/ suggestions made by the select committee and adopt a robust domestic legislation.

Repeal the AFSPA and Other Security Laws

Amend the continuance of AFSPA and related legal protocols in accordance with recommendation of Justice Verma Committee Report;

Make provisions to ensure that 'disturbed areas' under AFSPA are regularly reviewed till AFSPA is amended/repealed every six months;

Remove requirement of sanction for prosecution of security personnel and grant permission to enable prosecution in all pending cases involving human rights violations;

Amend the Army Act, and similar provisions in all laws governing the Central Armed Police Forces, to guarantee that cases of human rights violations of civilians are not tried in military courts;

Ensure that all allegations of human rights violations are promptly and independently investigated, and that perpetrators are prosecuted in civilian courts, and victims and their families receive reparations;

Ensure that sexual violence perpetrated by armed forces is brought under purview of criminal law;

Confer power on NHRC to investigate cases against armed forces personnel, especially violence against women;

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FACTSHEET - UPR 2017 - INDIA

3rd CYCLE UNIVERSAL PERIODIC REVIEW



ACCESS TO JUSTICE

SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

During the second UPR cycle India received recommendations concerning access to justice in the legal, police, and prison systems. The recommendations addressed: judicial backlog, inadequate legal aid services for the indigent, impunity of security forces, alternatives to pre-trial detention, enforced disappearance, torture, and barriers to access justice for vulnerable groups. Though India accepted most of the recommendations and took incremental steps towards improvement there remains a need to achieve progress towards better access to justice.

CHALLENGES

ISSUES AND IMPACTS

Judicial Backlog & Court Understaffing

The understaffing of the court system has created an insurmountable judicial backlog for the current court staff. In the higher judiciary including the Supreme Court, there were 425 vacant posts out of 1,049 sanctioned posts as of December, 2015. Understaffing is also characteristic of District and Subordinate Courts where there are 4,501 vacant posts out of 20,620 as of December 2015. The resulting judicial backlog accounts for 39,34,286 of pending higher judiciary cases and 2,71,00,951 of pending subordinate cases.

Accepted by India In UPR 2

A recommendation made by **Thailand** to “promote equal access to justice for all, including by reducing backlog and delays in the administration of cases in court” *A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1*

Police & Prison Reform

Re Police: Legislative competence for both police and prisons lies with each Indian state. At the Centre police and prison systems continue to function under the Police Act of 1861 and the Prison Act of 1894 respectively. Over the years, and most recently in 2015, the Centre has created model legislation for police. Close to two years later, the draft remains with the Home Ministry.

In 2006, the Supreme Court, laid down 6 binding directives which when implemented holistically would have considerably improved police operational responsibility, management and accountability. Neither the Centre nor any state has fully complied with the Court's directives even though 17 states have enacted new Police Acts since 2006.

Re prisons: Following a Supreme Court order asking governments to incorporate new rules the 2003 Model Prison Manual was revised in 2016. The Court will review the extent of compliance with its directions in May 2017. Despite progressive advisories from the Centre to improve the supervision of prisons, less than 1% of all prisons had appointed fully constituted and working Boards of Visitors as required by law.

Inadequate Legal Aid Services for the Indigent

Despite the guarantee of free and effective legal representation for the indigent, women, and those in custody, structural barriers prevent timely legal aid reaching those that need it the most. Legal aid is not available at police stations, only three percent of the legal aid beneficiaries are persons in custody; application procedures are long drawn and convoluted; panel lawyers are in short supply and delay in appointments ensures that in toto the mechanism does not work to ensure fair trial standards of legal representation are met. The Probation of Offenders Act 1958, offers alternates to custody for first time and petty offenders. At present no national data is published on its use.

Accepted by India In UPR II

A recommendation made by Thailand “to provide more legal aids to the poor and marginalized, as well as increasing the use of alternative measures to pre-trial detention” *A/HRC/21/10 - Para. 138.122 & A/HRC/21/10/Add.*

Prison Conditions

According to data from 2015: Approximately 67% of the total prison population comprised of people in pre-trial detention. Scheduled castes make up 21% of all prisoners; 1584 prison deaths were reported; the national occupancy rate averaged 114.4%; 3599 under-trials (or 1.3%) were detained for more than 5 years.

Witness Protection

India lacks legal mechanisms and programs for witness protection despite guidelines from the Indian Supreme Court and the ruling in the 2003 case of the NHRC vs. The State of Gujarat. There is an urgent need to develop a program as there are over 560 witnesses that were granted central paramilitary protection by the Supreme Court before, during, and after the trial, following the application by Citizens for Justice and Peace (CJP).

Human Rights Violations by the Police

Violations of law and human rights continue to typify police behaviour despite a range of safeguards. Custodial torture, unlawful arrests, suspicious deaths in custody, and extrajudicial killings, abuse of power and excess use of force are frequently reported, and verified to the National Human Rights Commission. Between 2013 and 2015, 308 custodial deaths were reported across India and criminal charges were filed against 51 policemen. Prosecution of police officers remains elusive both due to legal obstacles that require prior permission to prosecute, delays in the legal process and response from authorities and the tendency to shield establishment reputation.

FACTSHEET - UPR 2017 - INDIA

3rd CYCLE UNIVERSAL PERIODIC REVIEW



CHALLENGES

Access to Justice for Vulnerable Groups

Noted by India in UPR II

Recommendations made by **United States of America and Spain** to “end impunity for security forces accused of committing human rights violations” and “guarantee effective access to justice in cases of human rights violations committed by security forces personnel with regard to the use of torture respectively” **A/HRC/21/10-Para. 138.119 & Para. 138.4**

Accepted by India in UPR II

A recommendation made by **Spain, Sweden, Switzerland, Timor-Leste, the UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, and the Republic of Korea** to “finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment” **A/HRC/21/10-Para. 138.115 & A/HRC/21/10/Add.**

It is frequently reported that accessing justice is particularly problematic for vulnerable groups including: women, scheduled castes, scheduled tribes, LGBTQ and gender non-conforming people, IDPs, the homeless, religious and ethnic minorities, non-citizens, refugees, people living near the Bangladesh border, and those caught in conflict areas.

In areas affected by conflict, there are frequent complaints of enforced disappearances at the hands of agents of the state. Registration of complaints is itself difficult and allegations are voiced that complaints are not registered. Enforced disappearance is not specifically criminalized in the Indian legal system, and, in Kashmir for instance any lodged complaints fall under the Section 364 or 365 abduction clauses of the Ranbir Penal Code. Most people living near the border with Bangladesh are subject to policing by paramilitaries, and lack adequate access to normal civilian protections.

Women face barriers when registering police complaints. In 2015, only 6% of the police in India were women. The absence of policewomen required by law to register sexual offences complaints leads to delays that are often fatal to just outcomes. There are serious allegations of sexual assault on women during police operations particularly in conflict areas.

ISSUES AND IMPACTS

RECOMMENDATIONS

- **Immediately address the shortage of personnel in criminal justice institutions.**
- **Ensure compliance with the National Legal Services Authority guidelines for prompt legal services to persons in police and judicial custody.**
- **Establish legal aid clinics in every prison with trained lawyers and paralegals.**
- **Institutionalise a regular reporting and monitoring processes in the legal aid machinery to ensure accountability and transparency.**
- **Ensure that Boards of Visitors are constituted in all jails across states in compliance with the 2011 MHA advisory.**
- **Review and withdraw all undue restrictions on access to prisons in the 2015 MHA advisory.**
- **Fully comply with the amended UN Standard Minimum Rules for the Treatment of Prisoners, 2015.**
- **Initiate a widespread public consultation process on the draft of model Police and Prisons Acts by releasing the drafts into the public domain and providing adequate time for both public and expert consultation.**
- **Acknowledge and increase accountability and redress for all victims of custodial violence or other human rights violations by the police.**
- **Review the pace and quality of states' compliance with the Supreme Court's 2006 directives on police reform and call for full compliance.**
- **Implement witness protection in conjunction with the relevant actors involved in criminal justice.**

Death Penalty

SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES

During the second Universal Periodic Review in May 2012 at the UN Human Rights Council, India received 11 recommendations (made by Ireland, Slovakia, Spain, Chile, France, Belgium, Italy, Switzerland, Argentina, Norway and Portugal) regarding death penalty. The Council recommended that India establish an official moratorium on executions and move towards abolishing the death penalty. The Council also recommended that India commute all death sentences into life imprisonment terms 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. However, India did not accept any recommendations regarding the death penalty, or abide by any international moratorium or resolution that requires it to eradicate death penalty from its legal order.

India is party to the International Covenant on Civil and Political Rights (ICCPR) that require a progression towards abolition of Death Penalty. Article 6 contains guarantees regarding the right to life, and contains important safeguards to be followed by signatories who retain the death penalty. In 2014, India, along with 37 other countries, voted against a UN General Assembly resolution calling for moratorium on death penalty.

NATIONAL LEGAL FRAMEWORK

Capital Punishment has been part of Indian law since the colonial era, officially 1860. At independence, India retained several laws put in place by the British colonial government (the Code of Criminal Procedure, 1898 ('Cr.P.C.1898'), and the Indian Penal Code, 1860 ('IPC') prescribing death penalty as punishment for a number of crimes. Article 21 of the Constitution of India allows the state to deprive any person of the right to life. Section 53 of the Indian Penal Code (IPC) also lists "death" as one of the forms of punishment that may be imposed for an offense.

The 1973 Code of Criminal Procedure states that those sentenced to death should be hung until dead. (Previous methods have included being crushed by an elephant, impaling and being shot from a cannon.)" In 1982, the Supreme Court of India, in *Bachan Singh vs. State of Punjab* (AIR 1982 S.C 1325) upheld the constitutionality of the death penalty under Section 302 of Indian Penal Code (IPC) which prescribes the death penalty as punishment for murder. The court prescribed that the penalty be accorded only in the "rarest of rare cases." Notwithstanding the "rarest of rare" doctrine which was intended to restrict the use of the death penalty, a large number of convicts are routinely awarded death penalty in India. The Indian Law Commission argued against retaining death penalty even for rarest of rare crimes as it is a "regressive step" and in no way acts as deterrent on serious crimes like rape.

In the case of *Mithu v. State of Punjab*, the Court determined that the mandatory sentence of death enacted in Section 303 of the IPC is unconstitutional in India. While later legislation for drug and atrocity offenses prescribes the mandatory death penalty, and the Supreme Court has not expressly struck down the language in such legislation as unconstitutional. In fact the first expansion of death penalty also came by way of mandatory death penalty for terrorists offences under the Terrorist and Disruptive Activities (Prevention) Act, 1985. While TADA 1985 – dangerously – gave way to a national TADA 1987, the legislature

took away the mandatory death penalty, replacing it with death sentence as an alternative punishment.

The Arms Act amended in 1988 provided a mandatory death sentence for any person who used prohibited arms resulting in the death of other person. The Narcotic Drugs and Psychotropic Substances Act was amended in 1989 to include the death penalty for specific second convictions as per the recommendations made by Cabinet sub-committee. Even after TADA's eventual expiry in 1995, the subsequent The Prevention of Terrorism Act, (POTA) 2001 and the latest anti-terror legislation, the amended Unlawful Activities (Prevention) Act 2004 (UAPA) continued with an alternative death sentence. The Anti-Hijacking Bill, 2014 introduced in Indian Parliament expanded the scope of the definition of hijacking and prescribed capital punishment for all offences committed under the Act related to hijacking to all offenders including hijackers, conspirators and abductors and all persons involved directly or indirectly in hijacking get similar punishment.

The scope of the death penalty has been expanded and reinforced in enactments following the brutal gang rape and murder of a 23-year old woman in December 2012. For example, the Criminal Law (Amendment) Act passed in 2013, introduced several new provisions into the IPC, including Section 376A, which allowed for the death penalty to be imposed in cases where rape led to the death of the victim, or left her in a persistent vegetative state; and 376E which allowed for the imposition of the death penalty for certain repeat offenders. These amendments were passed in the wake of the recommendations of the Verma Committee formed by the government to study legislative reforms. However, the Verma Committee recommended enhancing the maximum sentence for rape to "the remainder of natural life," but rejected the death penalty as a possible punishment.

CHALLENGES

Breaking self-imposed moratorium on executions

By hanging the sole-surviving gunman of 2008 Mumbai attacks Mohammad Ajmal Amir Qasab on November 21, 2012 India broke its eight-year unofficial moratorium on death penalty. Prior to this hanging, the last execution in India had taken place in 2004, when Mr. Dhananjay Chatterjee was executed by hanging in Kolkata in 1990. On February 8, 2013 Muhammad Afzal, convicted of plotting the 2001 attack on India's Parliament was hanged to death. The last execution to take place in India was the July 30, 2015 hanging of Yakub Memon, convicted of financing the 1993 Mumbai bombings.

Annual Rate of Conviction & Executions

Figures on death penalty provided by the Supreme Court of India to the Death Penalty Litigation Clinic, National Law University, Delhi, indicate that between 2000- 2015, trial courts imposed the death sentence on 1790 persons. Of these, 1512 cases were decided by the High Courts. The remaining are either still pending, or their judgments have not been located. In 62.8% of these 1512 cases, the appellate courts commuted the sentence. In all, the death sentence was confirmed only in 4.3% of the cases. The Supreme Court's data thus shows that trial courts erroneously impose the death penalty in 95.7% cases.

ISSUES AND IMPACTS

CHALLENGES

Death Sentence and Miscarriage of Justice

There is increasing concern about the incorrect application of capital punishment law. In August 2012, the miscarriage of justice has prompted 14 retired judges of Supreme Court and High Courts across the country to appeal to the President of India, pointing out that the Supreme Court had wrongly awarded death sentence to 15 people. They described the execution of two prisoners in 1996 and 1997 following flawed judgments as “the gravest known miscarriage of justice in the history of crime and punishment in independent India”

Role of Supreme Court in Commuting Death Sentence into Life Imprisonment

In February 2014, the Supreme Court of India emphasized the importance of the clemency process for capital inmates and converted the death penalty to life sentence in the case of Bhullar, Perarivalan, Murugan and Santhan and 4 others involved in Veerappan case citing inordinate delay in executing the death sentence. The judgment said, “we are of the cogent view that undue, inordinate and unreasonable delay in execution of death sentence does certainly attribute to torture which indeed is in violation of Article 21 (Right to life and liberty) and thereby entails as the ground for commutation of sentence.

Law Commission of India and Its Recommendations

The Law Commission of India in its 262nd report on the issue of 'Death Penalty' in India in 2015 felt that “time has come for India to move towards abolition of the death penalty,” and recommended that “the death penalty be abolished for all crimes other than terrorism related offences and waging war”.

ISSUES AND IMPACTS

RECOMMENDATIONS

India should accept the recommendation that it sign and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty.

Executions of capital punishment should be immediately suspended and drastic deliberation, review and public discussion on capital punishment should be carried out.

India should abolish all provisions in legislation which provide for mandatory death sentences.

India should immediately commute all death sentences to prison terms.

India should endorse the UN call for a worldwide official moratorium on the use of the death penalty and vote in favour of any subsequent UN General Assembly resolutions that call for a moratorium on executions.

India should “progressively restrict the use of the death penalty and reduce the number of offences for which it may be imposed” as called by UN General Assembly resolution (UNGA) in 2007.

India should ensure that anyone who faces the death penalty has an effective right to competent state appointed legal counsel of the defendant's choice during the entire legal process, including appeals and mercy petitions.

India should develop legal mechanism to ensure that mercy petitions are considered within a reasonable time period to avoid inordinate, undue, and unreasonable delay as proposed by the Indian Supreme Court.

India should strictly implement the guidelines issued by the Indian Supreme Court regarding prisoner's rights to legal aid to prepare legal challenges to the clemency process and to be informed of the result of their mercy petition in writing.

Ensure that after mercy petitions are rejected by the President, the prisoner and the petitioners are supposed to be informed of the decision. Such policies ensure that the prisoner and relatives are able to utilize judicial remedies to further stay or commute a pending execution.

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Human Rights Defenders, Freedom of Association, Assembly and Expression

SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

During the 2nd UPR cycle in 2012, India received four recommendations (127, 43, 67 and 68) on the protection of Human Rights Defenders (HRDs) and one (126) on limiting the freedom of expression on the internet. India accepted in revised form the recommendation from Austria advising to ensure a safe working environment for journalists. India did not accept recommendations made by Czech Republic, Spain and Norway to enact a law on the protection of human rights defenders and implement the recommendations made by the Special Rapporteur on the rights of human right defenders following her visit in 2011. India also did not accept the recommendation made by Sweden to ensure that measures limiting freedom of expression on the internet are based on clearly defined criteria in accordance with international human rights standards. In the last 4 years, however, the human rights situation in India has rapidly deteriorated. HRDs, journalists and civil society groups have come under direct assault due to the state's onslaught. Regressive laws like sedition laws, criminal defamation laws and restrictive Foreign Contributions Regulations Act 2010 (FCRA) regulations are being used by the Indian government to criminalise dissent and curtail Freedom of Speech and Association.

NATIONAL LEGAL FRAMEWORK

Article 19 of Indian Constitution guarantees freedom of speech and expression which implies that the citizens are free to express their views, beliefs, and convictions freely, through writing, printing, pictures or any other manner including the devices of electronic, broadcasting, and press. The constitutional provision also provides the right to assemble peacefully and without arms. It guarantees to citizens the right to form associations, and unions. There exists no legal frame work for the protection of human rights defenders (HRDs). Only domestic mechanism available is the Focal Point on HRDs at the National Human Rights Commission.

There are, however, many Indian laws, which are used to subvert freedom of expression and association in India. Section 144 of the Code of Criminal Procedure prevents peaceful public gatherings, restrict protests and stifle people's movements. Section 124-A of the Indian Penal Code forms the Sedition Law which was made by the British raj in 1870, as a method of repressing the dissenters. Section 499 & Section 500 of the Indian Penal Code define defamation and provide for up to two years in prison and a fine. The government has used FCRA to target civil society organisations. In December 2016, the FCRA of 20,000 Indian NGOs was cancelled.

CHALLENGES

ISSUES AND IMPACTS

Freedom of Association

The government has used restrictive legislation and policies to target civil society organisations, suspended the operations of some and cancelled the registration of others. The Indian authorities have on several occasions frozen the bank accounts of organisations thereby preventing them from accessing funding to carry out their operations using Foreign Contributions Regulations Act 2010 (FCRA).

The Ministry of Home Affairs (MHA) first suspended and later cancelled the FCRA registration of the human rights organisation, Lawyers Collective. On June, 2016 FCRA of Sabrang Trust and Greenpeace India were also cancelled. In similar vein, FCRA of 25 NGOs was not renewed as on 31st October, 2016 which included human rights organisations such as Indian Social Action Forum and Centre for Promotion of Social Concerns (known through its program unit People's Watch).

In 2015, MHA instituted an order to freeze the bank accounts of Greenpeace India to prevent the organisation from receiving funds from abroad and accused Greenpeace of engaging in activities that were against India's economic interests. In April 2015, the US-based Ford Foundation was included on an official "watch list" by the MHA. The implications were that funds from the Ford Foundation could not be released to beneficiaries in India without the approval of the Ministry of Home Affairs (MHA).

Human Rights Defenders

HRDs have been subjected to judicial persecution, intimidation, harassment, assault and have been the victims of smear campaigns to discredit them and the work they do. In 2016, WHRD Soni Sori was attacked and her assailants threatened her that they will attack again if she continued working on the cases of extrajudicial killings by police. In the case of Jagdalpur Legal Aid Group, a group of young women lawyers providing pro-bono legal aid, were barred from practice and evicted from Jagdalpur, Chhattisgarh in 2016. In January 2015, the Indian authorities prevented WHRD Priya Pillai, the International Campaigner for Greenpeace, from travelling to the UK to speak to MPs about the impact of a coal mines in Madhya Pradesh. In September 2014, HRD Dr. SP Udaykumar, who leads the anti-nuclear movement in Kudankulam, was barred at the Delhi Airport to visit Nepal to attend a consultation on human rights violation which was also to be attended by the UNSR on Freedom of Assembly and of Association. On 14 September 2016, HRD Mr. Khurram Parvez, a Kashmiri activist, was barred at the Delhi Airport from attending the UN Human Rights Council and later arrested on his return to Srinagar.

A disturbing new trend witnessed is the targeting of HRDs making use of Right to Information Act (RTI). RTI activist Jawahar Lal Tiwary was kidnapped and his mutilated body was discovered four days later. Since March 2013, WHRD Teesta Setalvad has been subjected to judicial persecution, harassment and intimidation for her human rights activities. In April 2016, HRD Lama Lobsang Gyatso, General Secretary of the Save Mon Region Federation, was arrested for allegedly opposing the construction of a 7000 MW hydro power project in Tawang, Arunachal Pradesh,

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CHALLENGES

Freedom of Expression and Attack on Journalists

In policy and practice, the Indian authorities continue to use restrictive legislation including those which criminalise sedition and defamation to prosecute journalists and media agencies. Journalists have been assassinated, physically attacked, intimidated and harassed in their line of duty.

There are growing instances of Indian authorities blocking access to mobile Internet services during social or political unrest. The Information and Technology Act (2000) is used to target online activism. Section 69 A of the Act empowers the central government to impose blackouts on a website or censor it for the "sovereignty and integrity of India," "security and defence," and "public order." In March 2016, police arrested journalist Prabhat Singh who reports on human rights issues, including extrajudicial killings after he posted messages on 'Whatsapp' in which he was critical of the police and requested that a law be passed to protect journalists in the Bastar region of Chhattisgarh. In May 2016, unidentified gunmen killed journalist Rajdev Ranjan in Bihar. He was targeted for his critical reporting. In February 2015, journalist and social activist Malini Subraminam was evicted from Jagdalpur, Chhattisgarh, in similar manner to Jagdalpur Legal Aid Group.

Freedom of Peaceful Assembly

The Indian authorities have forcefully dispersed peaceful protests calling for government action against injustices. The Indian government uses several measures to restrict right to freedom of assembly and of association. Section 144 of the Code of Criminal Procedure is routinely used to prevent peaceful public gatherings, aimed at restricting protests and to stifle people's movements. In April 2015, peaceful protests organised by the Kanhar Bandh Virodhi Sangharsh Samiti (KBVSS) and the All India Union of Forest Working People (AIUFWP) were forcefully dispersed by security forces at the site of the construction of Kanhar dam in Uttar Pradesh. The authorities have used excessive force including pellet guns during protests, especially in conflict-affected areas such as Jammu and Kashmir leaving 70 dead and several with eye and other injuries including blindness.

ISSUES AND IMPACTS

RECOMMENDATIONS

Repeal or comprehensively amend the FCRA, in line with the legal analysis of UN special rapporteur on freedom of association and assembly, particularly sections that restrict the ability of civil society organisations to receive funds from foreign sources.

Refrain from acts leading to the closure of CSOs and instead promote a meaningful political dialogue that allows and embraces diverging views, including those of human rights defenders, civil society organisations, journalists, political activists and others.

Enact a strong law, in compliance with international standards, for the protection of human rights defenders and enable them to continue their legitimate peaceful work.

The NHRC should ensure that its focal point on HRDS should be a member of the commission as recommended by the UN SR on human rights defenders in her report in 2012. A fast-track procedure for complaints from defenders should be developed.

All human rights defenders detained for exercising their right to fundamental rights to freedom of expression, association, assembly should be unconditionally and immediately released.

Review and amend the IPC particularly sections 499 and 124 (a) to ensure that it is in line with the best practices and international standards in the area of freedom of expression.

Take definite steps to protect journalists and carry out independent investigations in all cases where journalists have been assassinated with a view to bringing the perpetrators to justice.

Unfettered access to online information resources should be allowed by removing restrictions on access to national and international news websites and social media outlets and the websites of civil society organizations.

Best practices on freedom of peaceful assembly should be adopted, as put forward by the UN Special Rapporteur on the right to peaceful assembly and association in his annual report (2012)

Ensure that security forces abide by the United Nations basic principles on the use of force and firearms by law enforcement officials. Force should not be used unless it is strictly unavoidable, and if applied it must be done in accordance with international human rights law.

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Women

SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

India accepted 22 recommendations pertaining to women's rights in the UPR-II, relating to adequate budget allocations, evaluating impact of laws/ schemes in respect of marginalised women; redouble efforts on gender equality and elimination of discrimination; address sexual violence, sex selection, education, reproductive and maternal health.

The implementation of the law reform relating to sexual offences is impeded considerably by budgetary cuts that impact appointment/ training of special mechanisms and support services for victims. Inadequate investments in education, health coupled with growing privatisation has increased vulnerability of women and girls from marginalised population groups. Loss of traditional livelihoods, displacement, and lack of safe migration for rural and unorganised sector women workers has increased vulnerability to exploitation and trafficking.

There is an urgent need to focus on resourcing and implementation of existing laws and programmes, with monitoring their impact on women.

CHALLENGES

ISSUES AND IMPACTS

Anti-discrimination and equal opportunity

With accelerated privatization of essential and basic services, and an ever-expanding private and transnational presence in the market, equal opportunities and non-discriminatory provisions must be made available vis-a-vis the private sector. There is severe under-representation of women, SC, ST and other marginalized people in these employment spaces as well as in legislative bodies.

Institutional framework, resource and budgeting

The Ministry of Women and Child Development (MWCD) allocates nearly 80% of its funds towards child development (ICDS) with less than 20% for women. There was a considerable drop in resources allocation in 2015, and in spite of an incremental increase in 2016, the low budget continues to adversely impact women's programming. Most women's schemes depend on the state government's priorities/ funds, impeding creation of special mechanisms to address violence against women and support services.

The National Commission for Women (NCW) lacks financial or institutional autonomy from the MWCD, impeding its oversight and advisory role. Gender Responsive Budgeting (GRB) allows integration and addressing of gender issues across ministerial domains but in the absence of participation of women's groups in planning, or data collection for impact assessment, this has become an ineffective exercise.

Violence against women and girls

Since 2012, four legislations have been enacted to address violence against women, children and against SC/ST - the Criminal Law Amendment Act, 2013 on sexual offences; Sexual Harassment at the Workplace Act, 2013, Protection of Children from Sexual Offences, 2012 and Schedule Caste Schedule Tribe (Prevention of Atrocities) Amendment Act, 2015.

Even as the law stands strengthened, gaps remain in respect of marital rape and for prosecution of armed forces. Victim centric measures including compensation, medical aid, provision for special educators, interpreters although salutary, are scarcely available. The increase in the legal age for sexual consent from 16 to 18 years obstructs legitimate access of adolescents to health and support services, increasing their vulnerability to moral policing and retribution for transgressing caste, religious, sexual and honour related taboos.

Budgetary cuts and delegating the resource allocation to states, has scaled down the establishment of implementation mechanisms and support services. One-Stop Crisis Centres (OSCC), originally slated for every district, are just 17 OSCC across the country yet; complaints committees to implement the workplace sexual harassment law at the district level and in private enterprises are followed more in the breach.

Conflict

Conflict-induced displacement is a growing concern particularly in the absence of a law protecting rights of Internally Displaced Persons (IDP), and provisions addressing concerns of women, elderly, sick, injured and children. Women in these situations face multiple barriers to accessing health care, education and livelihoods, or legal redress. In most cases, IDPs do not possess identity cards, leaving them out of the purview social security provisions. Women living in camps for prolonged periods are vulnerable to trafficking and unsafe migration. Further, the impunity enjoyed by armed forces in areas under operation of Armed Forces Special Powers Act (AFSPA) remains a serious concern.

Health

India's budgetary allocation for health is less than 1% of GDP, leading to shortages of skilled human resources, an over-reliance on an exploitative private health sector – and debilitating debt, poverty and sickness for millions. Although the National Rural Health Mission focuses on maternal health, reports of maternal deaths point to persistent gaps. Despite the JSSK Scheme seeking to improve access to health care during pregnancy, childbirth, post-partum and infant care phases, access is obstructed or denied, forcing some women to access private services. Availability of safe abortion is compromised by poor access, poor quality and the denial of care. Services like Anti-Retroviral Therapy (ART), supply of condoms, particularly for sex workers and HIV positive women are not adequately and consistently available, with compulsory HIV testing.

Education

The resource allocation to education remains below 6% of GDP, with consistent reduction in proportion to the GDP the last four years. The refusal to adopt Comprehensive Sexuality Education (CSE) disables adolescents and youth from accessing age-appropriate, medically accurate information on sexuality to enable them to make informed decisions about their sexual and reproductive health. Education must be an agent of social transformation in the draft National Education Policy 2016, as it was in NEP 1986. One of the most impactful social-justice initiatives in education led by marginalized women, the Mahila Samakhya has suffered, and in some cases closed down because of denial of central funds.

CHALLENGES

Labour and Livelihood

State policy has increasingly adopted market-based growth models of development, focusing on profits and productivity to the neglect of social justice priorities in respect of women/ marginalised groups. This has led to joblessness and decreasing work participation rates for women especially in the formal sector. Migration due to breakdown of livelihoods, with few options for safe migration, pushes unorganised sector women workers into situations of trafficking and exploitative labour.

Proposed labour reforms focus on skill building for industries without addressing safe migration, regulation of informal and unorganised sector workers, safe work conditions, or social security. Approaches to trafficking conflate sex work with trafficking, which together with criminalisation of soliciting (an aspect of sex work), results in systemic harassment of sex workers (in addition to the social stigma). The frontline women workers of the development programmes are treated as volunteers and not employees, paid poorly with no social or job security.

A Surrogacy Regulation Bill (2016) seeking to ban commercial surrogacy, besides barring foreigners, single people, same-sex couples, live-in partners, and married couples with children from availing surrogacy, risks pushing commercial surrogacy underground to the detriment of poor women surrogates.

ISSUES AND IMPACTS

RECOMMENDATIONS

Pass the long-pending Women's Reservation Bill to ensure women's representation in legislative bodies at the Centre and the States. Women specific schemes must receive sufficient budgetary allocations from the centre, without devolving the responsibility to the discretion of States.

Strengthen and align the National Commission for Women (NCW) with powers and autonomy in line with Paris Principles governing National Institutions for Promotion and Protection of Human Rights, 1993, as recommended by CEDAW.

Ensure frontline workers for social justice programmes guaranteeing security of employment, minimum wages and social security.

Gender Resource Budgeting (GRB) planning must be undertaken in consultation with the civil society groups and this must be evaluated and backed by evidence of gender-disaggregated data for each scheme.

Remove the requirement of prior sanction for prosecuting public servants (including armed forces) and introduce penalty for police inaction in cases of rape in the state of Jammu and Kashmir, to make the law consistent with the penal code applicable to the rest of India.

Marital rape must be fully criminalised, and restore the age of sexual consent in law to 16 years.

One-stop crisis centers must be scaled up to one per district, and these must provide psycho social, medical and legal support to all victims of gender based violence.

The MWCD's scheme, Swadhar Greh must be expanded and similar interventions by States need greater budgetary allocations.

Adopt a National policy on conflict in compliance with CEDAW General Recommendations No 30.

Constitute an empowered National Task Force on Violence Against Women in conflict regions.

Prohibit mandatory testing on sex workers, Men who have sex with Men (MSM), transgender persons for HIV/AIDS.

Laws and policies that restrict access to safe abortion services must be revised.

Assisted Reproductive Technology industry must be regulated to ensure ethical medical practices, including the protection of the rights egg donors, surrogates and those who access Assisted Reproductive Technologies (ARTs).

Institute and resource programmes like the Mahila Samakhya that use education as a medium of empowerment and social justice for the most marginalized women.

Recognise women as primary workers; record invisible unpaid work; skill-building, access to legal rights and support services such as credit, markets, social security, with the necessary resource investments.

Construct positive legislation for protection of women in the informal sector, sex work, special zones and arenas like garment and fisheries industries where women employees are at risk.

Strengthen protective and redress mechanisms for women workers in all sectors, including the law on workplace sexual harassment; and expand social security, crèche, Public Distribution System, Mid-day Meal, access to the Commons.

Maternity benefit schemes must be made unconditional and universally available to all informal sector workers. (The Central Scheme for maternity benefit under the National Food Security Act 2013 must be implemented.

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Sexual Orientation and Gender Identity

SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

In its second Universal Periodic Review, India received 3 recommendations for addressing discrimination based on sexual orientation and gender identity. The United States called for “adequate protections for members of religious minorities, scheduled castes, and adivasi groups ..., and LGBT citizens”. Canada proposed measures be instituted to “address violence and discrimination directed towards persons based on their sexual orientation, especially related to employment”. Argentina advised studying “the possibility of eliminating any criminalization of same sex relations.” India only accepted the recommendation from Argentina.

Some of the general recommendations that India accepted have implications for protecting LGBTI persons from discrimination. These include the recommendation from Vietnam calling for “providing more resources for enjoyment of economic and social life for vulnerable groups like women, children ... and minorities” and the one from Norway recommending fully integrating a “gender perspective” in the follow up of UPR-II.

In its report for the UPR-II, India noted (para 37): “Homosexual intercourse was a criminal offence until 2009 under Section 377 of the Indian Penal Code, 1860. The law was struck down by the Delhi High Court in 2009, in the matter of Naz Foundation v. Govt. of NCT of Delhi as a violation of fundamental rights in the case of consensual adults.” Yet, in an appeal by conservative groups against this landmark judgment, the government abdicated its duty to defend the fundamental rights of the sexual minorities, leaving this onerous task entirely to civil society. While reversing the Delhi High Court decision, the Supreme Court in 2013, noted that it was the Parliament's job to de-criminalise homosexuality. Instead of the government, it was civil society that filed a curative petition against the re-criminalisation of homosexuality in Supreme Court. This has been admitted and is currently pending.

In 2014, the Supreme Court in the case of NALSA v UOI upheld the Constitutional rights of transgender persons, recognizing the right to self-determination of gender identity and recommending affirmative action through reservations. Regrettably, the government's proposed draft transgender rights Bill (2016) has been widely critiqued for rolling back the rights elaborated by the Supreme Court in the NALSA decision. Attempts at legislative amendments to decriminalize consensual same sex behaviour have also failed in the Parliament.

On two occasions in 2016, India chose to abstain from voting in the UN HRC. The first time was on a resolution for protection against violence and discrimination based on sexual orientation and gender identity, including through the appointment of an Independent Expert to undertake the same. The second was on the amendment proposed by the Africa Group to push back this resolution. Considering India's international and Constitutional obligations, as well as its acknowledgment of peer-nations' recommendations, the government must frame policies and measures in consultation with the civil society to de-criminalise homosexuality, affirm equality and protection against discrimination to LGBTI in all fields of life.

NATIONAL LEGAL FRAMEWORK

The British colonial Government Enacted Section 377 of the Indian Penal Code, based on Victorian morality, to criminalize homosexual behaviour. The section states: Whoever voluntarily has carnal intercourse against the order of nature with any man, woman or animal, shall be punished with imprisonment for life, or with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine. Explanation: Penetration is sufficient to constitute the carnal intercourse necessary to the offence described in this section.

This archaic law denies basic human rights to sexual minorities. Section

377 IPC, criminalizes consensual sexual acts of adults in private, is violative of Articles 21, 14 and 15 of the Constitution which include the rights to equality, non-discrimination, privacy, bodily autonomy, and health. State and non-state actors have also used this provision to persecute and harass LGBT persons, including through extortion and blackmail. Several other vague and over broad laws have also been used to criminalize or harass LGBT persons in India, including nuisance laws, state police acts, laws that criminalize begging, and laws that regulate sex work.

CHALLENGES

De-criminalise homosexuality and ensure legal protection from sexual assault to all persons

Rights of Trans and Intersex persons

Equality, non-discrimination and related provisions

ISSUES AND IMPACTS

In 2013, the Indian Supreme Court reversed the ruling of the Delhi High Court de-criminalising adult consensual same sex relations in the Naz Foundation case (2009). On appeal, in Suresh Kumar Koushal, the Supreme Court upheld the constitutionality of section 377 which criminalises homosexuality, stating that it was the prerogative of the legislature to consider deleting the provision. The civil society organisations that opposed the appeal have filed a curative petition which was admitted by the Supreme Court in February 2016. The curative petition notes an alarming increase in the use of Section 377 following re-criminalisation, with 1347 complaints recorded by the National Crime Records Bureau in 2015. Attempts to introduce a bill in Parliament to de-criminalise homosexuality in 2015 and 2016 were defeated.

Comprehensive law reforms related to sexual offences were introduced by the Criminal Law Amendment, 2013. The reforms expand the definition of rape to include all forms of non- consensual penetrative sex. Yet, legal redress is limited to women in disregard of the Verma Committee's recommendations on which the amendments are based, that define rape be gender neutral qua the victim but gender specific qua the male perpetrator.

In the NALSA vs. Union of India case (2014), the Supreme Court recognized the right to self-determine gender, stipulating protection and welfare by state, including through affirmative action (as part of constitutionally recognized Other Backward Classes). While few States have formulated policies and schemes for trans-persons, the central government proposed Transgender Persons Protection of Rights Bill, 2016, contradicts the Supreme Court judgment. It denies self-determination of gender identity, instead pathologizing it; it fails to prescribe affirmative action measures to reverse historic discrimination, stigma and exploitation, even as it criminalizes traditional support systems and lifestyles associated with the lived realities of transgender people. The Bill confuses and conflates transgender identity with intersex-identity. The bill needs to elaborate separately legal protection for intersex persons' to address specific concerns of the intersex community. The Bill proposes rehabilitation instead of rights protection as a framework and has been widely critiqued and rejected by the community.

CHALLENGES

Equality, non-discrimination and related provisions

LGBTI persons face discrimination in both public and private domains. While section 377 explicitly serves as a tool of persecution, LGBTI persons are also targeted by laws relating to beggary, public nuisance, solicitation and sex work. LGBT people are forced to leave home, education, because stigma, bullying and punitive responses for not complying with dominant social norms. This impacts support systems available to them, as well as employment and livelihood options. While all trans persons are stigmatized and lack adequate support systems to protect them against attacks from their natal families and community, the situation is far worse when this status combines with being poor, SC/ST, disabled or because regional location. An affirmation of non-discrimination in law, backed by institutional changes in health care, education and employment are necessary aspects of eliminating discrimination on grounds of sexual orientation and gender identity.

ISSUES AND IMPACTS

RECOMMENDATIONS

Repeal Section 377 of the Indian Penal Code and other discriminatory legislations that criminalize same-sexual acts between consenting adults.

Enact a comprehensive gender inclusive sexual assault legislation that protects all men, women, transgender persons and others irrespective of their sexual orientation. Legal redress for sexual assault must be available to women, men and trans persons irrespective of sexual orientation or gender identity.

Withdraw the Transgender Persons (Protection of Rights) Bill 2016, and engage in meaningful and substantial public consultation with members of the transgender community, and ensure that any transgender rights legislation is fully consistent with international human rights law.

Draft a law for the protection of the rights of transgender with full community consultation, in compliance with the NALSA judgment and global best practices.

Ensure that police officers refrain from detaining and harassing persons based on their real or perceived sexual orientation or gender identity; and that police officers who abuse or harass persons based on their sexual orientation or gender identity are investigated and subject to disciplinary action or to prosecution,

Recognise the self-determination of transgender identity without reference to medical certification or sex reassignment surgery.

Take measures to address violence and discrimination directed towards persons based on their sexual orientation or gender identity by state and by non-state actors, including by passing an anti-discrimination law where sexual orientation and gender identity are prohibited grounds.

Ensure re-orientation of medical practitioners, mental health professionals and service providers, to notions of 'normal' and 'natural' in relation to sexuality, gender and the body.

Internationally accepted norms must apply with the aim to end surgical and medical intervention in intersex infants and children, and access to safe and secure sex reassignment surgeries must be made available to adults who seek it.

Protect against discrimination on multiple grounds including gender identity and sexual orientation with respect to health care, education, housing, employment and access to public spaces.

Promote a comprehensive sex-education program as part of the school curricula that addresses the heterosexist bias in education and fosters a liberal outlook about matters of sexuality, including orientation and sexual identity.

Affirmative action and allocation of more resources for social security of transgender persons, especially in areas of healthcare, education, employment and housing.

Take measures to safeguard the rights to freedom of expression, association and peaceful assembly for all LGBT people.

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Children

SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES

During the second Universal Periodic Review in May 2012 at the UN Human Rights Council, India received 21 recommendations regarding child labour, sexual violence against children, corporal punishment, child trafficking, child marriage and right to education. The Council recommended that India establish meaningful improvements for the mentioned concerns.

India is home to the world's largest number of children with nearly 36.68% of its estimated 1.27 billion population under the age of 18. After accepting several recommendations during UPR 2 on the welfare of children and its 2011 pledge, the status and condition of children in India have not seen any meaningful improvement. Since UPR 2, GOI has adopted a new National Policy for Children 2013; enacted new laws on child sexual abuse, child labour and juvenile justice and a National Plan of Action for Children (NPAC). The NPAC 2016 lists 10 laws, 13 policies and 28 schemes and programmes for children. But still there remain significant gaps between the political, legal commitments and the outcomes for children and their lives. Moreover, in the prevailing economic scenario in India and in particular trends such as globalisation, liberalisation and the gender, caste and religious attitudes adversely add to children's vulnerability and affect any action that may be taken for them.

CHALLENGES

ISSUES AND IMPACTS

Birth Registration	Despite the Registration of Births and Deaths Act, 1969, India has failed to universalise birth registration. Although, in 2012, the level of birth registrations reached 84.4% (rising from 82.0% in 2010) the level of performance is disparate across states/ provinces with some states showing very good progress, while others remain behind.
Falling Sex Ratio	The child sex ratio (0-6 years) has decreased although the overall sex ratio of the country has increased. India has one of the highest sex selective abortions (foeticide) incidents in the world. Moreover, while low sex ratio in the 0-6 years draws attention from GOI and civil society, the low adolescent sex ratio receives none (it is 915 girls to 1000 boys in the 7-14 years; 881 in the 15-18 years). Where are all the girls disappearing?
Child Labour	India enacted the Child Labour (Prohibition and Regulation) Amendment Act, 2016, that prohibits child labour up to the age of 14 years and in hazardous labour for 'adolescents' between the ages of 15-19. However, by introducing provision that allows children to work in family enterprises, and reducing the number of prohibited occupations for children in 15-18 years, it continues to endanger children. The Government has not withdrawn its reservation on Article 32 of the UN Convention on the Rights of the Child.
Sexual Violence and Crimes Against Children	India enacted legislation on the Protection of Children from Sexual Offences (POSCO) Act, 2012 to address all forms of sexual offences against children, irrespective of gender, in November 2012. Eighteen States/ UTs have designated Special Children's Courts to try offences against children. There is a significant rise of 5.3% in all crimes against children in 2015 as compared to 2014 India. There has been a 67.5% increase in reported sexual crimes against children. This rise in all crimes, especially those related to sexual offences between 2014 to 2015 may be attributed in part to increased reporting. However, high pendency of cases; lack of "child-friendly" infrastructures; absence of special educators for disabled child victims and lack of clarity in the law regarding compensation for male victims, impact the children's right to justice.
Child Trafficking	There were 4 recommendations made on trafficking, 3 of which were generally on trafficking and one specifically on child trafficking. The inclusion of Section 370 in the Indian Penal Code has expanded the definition of human trafficking- which is also applicable to children. The amendments to the Immoral Traffic (Prevention) Act, 1956, is still pending. The Juvenile Justice (Care and Protection of Children) Act 2015, prohibits sale and procurement of all children up to the age of 18. The Indian Ministry of Home Affairs (MHA) has set up anti-human trafficking units (AHTU) across districts. Most of the AHTUs, however, remain non-functional due to lack of adequate funding and lack of dedicated and trained staffs.
Child Marriage	The current law on child marriage continues to be confusing, leaving the courts to give differing interpretations of the law, which often violates the rights of children. According to the 2016 report by India Spend, 80% of children, the majority of whom were girls were illiterate and were married before 10 years of age. The data from the National Crime Records Bureau recorded a significant rise from 60 in 2010 to 293 cases in 2015- and these are only reported and recorded cases. Most child marriages remain unreported. Census 2011 data showed that 30.2% of all married women were married before they had turned 18.
Juvenile Justice	With the inclusion of waiver to the adult system for 16-18 year olds who have committed serious offences in the amended Juvenile Justice (Care and Protection) Act 2016, the standards have now been lowered. Moreover, in conflict areas, like Jammu & Kashmir, or Naxalite affected areas such as Jharkhand and Chhattisgarh, children are detained under the Public Safety Act, which violates the Juvenile Justice Act, the UNCRC and The Beijing Rules. The only flagship umbrella scheme related to administer Juvenile Justice, Integrated Child Protection Scheme (ICPS), has been heavily under-resourced over the years.
Child Health	There is very little information on children's health across ages as the government's data on children's health is restricted to under the age of 6. Adolescent health concerns need proper data and intervention, beyond reproductive and sexual health concerns and is under resourced. Over the years, access to health care decreasing, especially in the wake of increasing privatisation.

CHALLENGES

Children in Mining Areas

The Government has no systematic data on the number of children who are living near, or are engaged in mining activities. Although, the current child labour law prohibits such children's activities, the Mines and Minerals (Development and Regulation) Amendment Act 2016, allows children of 16 to be apprentices and trainees, which results in negative health and education status.

Children Affected and Infected with HIV/AIDS

HIV affected children below 15 account for 6.54% of the total HIV affected population. The Prevention of Parent to Child Transmission of HIV/AIDS programme is offering services to only 18% of children suffering from HIV.

Commissions for Protection of Child Rights (N)CPCR and SCPCRs

The NCPDR is under the Ministry of Women and Child Development (MWCD) in the centre and SCPCRs are under corresponding departments in the states. This is against the Paris Principles, and severely hampers the Indian independent human rights institution's autonomy. Moreover, the appointment of the commissioners and advisors at the centre and the states remains arbitrary, highly political and violates the Paris Principles.

Child Budgeting

It is significant that Govt of India is one of the few countries in the world that has adopted children's budgeting and has a separate expenditure statement for children at the national level. But children's budgeting needs to be adopted throughout the country. The share of children in the 2015-16 and 2016-17 has been less than 4% of the National Budget, which is inadequate.

ISSUES AND IMPACTS

RECOMMENDATIONS

Strengthen the existing mechanism to ensure that 100% of birth registrations take place in India

Establish the executing state mechanisms and provide adequate resources and infrastructure to implement the Juvenile Justice – Care & Protection of Children Act 2015

The current Juvenile Justice Act must be reviewed and brought in line with the principles of the Constitution of India, UNCRC and General Comment No 1087 issued by the UN Committee on the Rights of the Child.

Address the gaps in the new child labour law; update data collection mechanisms on child labour; update the list of “Hazardous occupations and processes” on regular intervals and based on the evolving global market trends and lift reservation on Article 32 UNCRC.

Introduce specific guidelines for protection and support for the victims and their families; strengthen the existing child protection mechanisms to minimise the crimes against children; improve victim compensation procedures.

Take measures to ensure coordination between state police agencies, anti-human trafficking units (AHTUs) and other agencies tasked with child care. The work of AHTU's must be legislatively and administratively streamlined and post investigation and prosecution, compensation and rehabilitation (including medical, treatment, education, vocational training etc.) should be ensured.

Implement the law on Pre-Conception and Pre-Natal Diagnostic Techniques (PCPNDT) Act, 1994 and enhance budgetary allocation for all the schemes / Programmes related to girl child survival.

Establish appropriate child protection mechanisms in all the mining areas with a special focus on comprehensive needs of children affected in such areas.

The Ministry of Health and Family Welfare or Ministry of Women and Child Development must give special attention towards treatment of children affected by HIV/AIDS.

Amend the current legislation on child marriage to remove the discriminatory definition of child for boys and girls to define as child all persons up to 18 years, irrespective of gender and make child marriage illegal.

Develop adequate guidelines for monitoring and evaluation and such other tools for the Prohibition of Child Marriage Act (PCMA).

The National Commission for Protection of Child Rights (NCPDR) must be restructured to become an independent entity. The NCPDR must be given the same status as the National Human Rights Commission (NHRC).

Ensure that the states / provinces introduce a separate budget statement for children to recognise children's budgeting across the country. Following the adoption of General Comment 19 (GC 19) of the CRC, Government of India should examine its budget allocations and expenditure and bring in standards that use GC 19 as a guideline.

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Discrimination based on work and descent (Rights of Dalits)

SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES

The Human Rights Council, under the Universal Periodic Review (UPR), examined India's human rights record in 2008 (UPR I) and 2012 (UPR II). In UPR I India received 2 recommendations. In the second UPR review in 2012, India received 10 recommendations out of 169 addressed to Dalit rights and/or caste-based rights violations. These recommendations were made by a cross-regional group of states: the Czech Republic, Germany, Ghana, the Holy See, Japan, Norway, Thailand and the United States of America. The Government of India, however, accepted only two recommendations focused on equality of treatment independent of caste and instituting monitoring mechanisms to ensure that objectives of policy initiatives for vulnerable groups are met (Ghana 75 and Holy See 67). In total, 14 states made observations relating to caste in advance of the review that recognized the challenges faced by Dalit communities.

NATIONAL LEGAL FRAMEWORK

The 2011 census recorded nearly 20.14 crore people belonging to various scheduled castes in the country. The total number of Dalits is probably much higher as Muslim and Christian Dalits are not included in these figures. In India, caste-based discrimination and the practice of "untouchability" is prohibited by the Constitution. Article 17 of India's Constitution abolishes untouchability and the Protection of Civil Rights Act, 1976 (PCR Act) and Rules, 1977 make the practice of untouchability a cognizable and non-compoundable offense warranting enhanced terms of imprisonment, prescribes appointment of prosecutors for these offenses and establishes Special Courts and Committees to assist state governments in implementing anti-untouchability measures.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 defines criminal, economic, political and property-related

offenses committed against Scheduled Castes (SCs) and Scheduled Tribes (STs) as atrocities and designates a system to bring atrocity cases under the jurisdiction of Special Courts. In December 2015, the SC and ST (Prevention of Atrocities) Amendment Bill, passed by Parliament, made several critical changes. New activities were added to the list of offences to strengthen it further.

Despite constitutional provision and formal protection by law, for millions of Dalits, or 'untouchables', discriminatory treatment remains endemic and continues to be reinforced by the state and private entities. Reservation policies for "Scheduled Caste/Scheduled Tribes" in education, employment in the public sector and political representation are in force, but effectiveness in implementation is yet to be fully ensured.

CHALLENGES

Non- implementation of protective laws and access to justice for Dalit communities.

Discrimination and Challenges in Employment

Continuation of Manual Scavenging in India is violation of Constitutional rights.

Right to discrimination free Education

ISSUES AND IMPACTS

In 2013, there were 46,114 cases registered under the POA Act. The number increased to 47,064 in 2014. As per National Crime Records Bureau (NCRB) data, a total of 1, 88,991 crimes against SCs were registered under different laws from 2011 to 2014. Overall, the year 2014 witnessed an increase of 19.4% in total crimes committed against SCs over the previous year, while the year 2013 witnessed an increase of 17.1% in total crimes committed against SCs over the previous year. In 2014, the NCRB reported 2233 registered rapes of SC women—an average of 6 rapes per day. Moreover, the number of registered rapes of SC women has risen steadily over the years, from 1089 in 2003 to 2073 in 2013, marking a 47.5% increase over the past decade. For 2014, the conviction rate for rapes of SC women stood at 34.9%, though this has to be understood against the backdrop of the high pendency rate of 81.6% for rape cases.

Majority of Dalits are working as casual wage labourers—51.2% in the case of Dalits and 42.5 per cent in the case of Adivasis during the year 2009–10, with abysmally low and irregular incomes. Of the total rural SC workers, more than 60% are wage labourers and there is significant discrimination in hiring and wage payments. In the most sought after civil services, IAS, IPS and IFS, the proportion of SC officers was below the mandated quotas. Out of 3,251 directly recruited IAS officers, SC officers made up only 13.9% 8. As a part of affirmative action policy enshrined in the Indian Constitution, 15 % and 7.5 % of central government posts are reserved for Dalits and Adivasis respectively. In context of Dalits, only 10.15 % posts were filled in group A, in Group B it was 12.67 %, in Group C it was 16.15 % and in Group D it was 21.26 %. The figures for Adivasis were even lower at 2.89 %, 2.68 %, 5.69 % and 6.48 % for the four groups respectively.

Indian Railways is an institution that uses dry latrines in great numbers and a large number of Dalit individuals are engaged in manual scavenging. Despite 11 million passengers travelling by trains every day, at present there are only nine trains with 436 coaches fitted with bio-toilets, while 4,000 coaches are produced annually which could be fitted with new bio-toilets. The recently passed Prohibition of Employment as Manual Scavengers and their Rehabilitation Act 2013 does not have concrete measures for rehabilitation and a clear plan for implementation.

In 2012, 41 independent monitoring institutions submitted reports to the Ministry of Human Resource Development detailing instances of discrimination and untouchability during the midday meals in 186 schools across the states of Rajasthan, Madhya Pradesh, Orissa, Uttar Pradesh and Gujarat. SC children were routinely segregated from other children while eating. Additionally many children or their parents often refuse food cooked by SC cooks. There are also cases where Dalit students are served from a distance, and several students bought their own plates for fear of utensils being touched by Dalit classmates.

CHALLENGES

Public Policy and Budget

In 2016-17, the allocations for SC under the Union Budget 2016 is only 7.6% when the due amount under SCST budget should be 16.8% which should amount to Rs.91,301 crore and 8.6% under TSP which should amount to Rs.47,300 Crore. Thus denying a total of Rs. 75,764 crore.

Right to Freedom of Opinion and Expression

Between 2011 and 2013, Maharashtra authorities arrested six members of Kabir Kala Manch, a Pune-based cultural group of singers, poets, and artists, under the Unlawful Activities (Prevention) Act, (UAPA) claiming they were secretly members of the banned Communist Party of India (Maoist), also known as Naxalites. The six were largely consisting of Dalit youth, uses music, poetry, and street plays to raise awareness about issues such as the oppression of Dalits and tribal groups, social inequality, corruption, and Hindu-Muslim relations.

Dalits are vulnerable to the natural and human-made disasters.

A Report from Tamil Nadu on disasters reveals that Dalits are still waiting for the justice in response. The report also reveals how Dalits have been treated during the floods and process of Rescue, Relief and Post Disaster Care. The narratives of villagers also show how children, women, elderly, especially those who have lost their houses, are struggling without basic facilities and living in depression.

ISSUES AND IMPACTS

RECOMMENDATIONS

The Indian government should take appropriate measures to Annihilate Caste system and Untouchability Practices to uphold the constitutional values through special campaigns and awareness to the citizens of India and in particular issue orders to remove caste identity from schools, institutions, trade unions and associations, which are named after the castes.

A dialogue with the national and state governments, relevant UN bodies, the private sector, local authorities, human rights institutions, CSOs and academic institutions needs to be promoted and sustained with a view to identify, promote and exchange views on best practices related to access to safe drinking water, health & sanitation, employment and adequate housing and inclusion of Dalits in disaster response and rehabilitation processes.

Adequate measures to enact 'Anti-Discrimination' and equal opportunity legislations covering governance, social processes, service delivery and budgetary allocations which prohibit discrimination in capital market, labour hiring, work place, private enterprises, etc.

Reservation measures must be extended to Dalits of all faiths, especially to Dalit Christians and Muslims, who are presently excluded from the reservation benefits owing to religion-based discrimination. Constitution (Scheduled Castes) Order 1950, Paragraph 3's religious ban ought to be removed/ deleted or amended by Union of India for the extension of Scheduled Castes privileges to Christians and Muslims of Scheduled Castes Origin.

The unorganized Workers Social Security Bill should be adopted without any further delay. Equal attention should be given to Dalit women domestic workers. The recent ILO Convention on domestic workers and rules, 2011 should be given due consideration for subsequent ratification.

Effective and serious implementation of recommendations given by the Treaty Bodies and Special Rapporteurs with regard to Caste Based Discrimination with proper and active co-ordination of line ministries and National and State institutions, involving NGOs/ CSOs.

On a priority basis, design, develop and implement a National Action Plan to eliminate all forms of discrimination, applying where necessary the Durban Review Conference Outcome (2009). This Plan should integrate Human Rights Education and Training at all levels.

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Tribals

SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES

During the 2nd Universal Periodic Review (UPR), India received 11 recommendations. These recommendations were made by a cross-regional group of states: the Czech Republic, Germany, Ghana, the Holy See, Japan, Norway, Thailand and the United States of America. The Government of India, however, accepted only two recommendations. The Holy See called for a focus on promoting the rights of women in their choice of marriage and their equality of treatment independent of caste and tribe. Ghana called for the formation of 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 sections such as Schedules Tribes are well achieved.

India supported the UN Declaration on the Rights of Indigenous Peoples (Declaration). The Declaration forbids forcibly displacing indigenous peoples and upholds their right to possess and use their land. It further recognizes indigenous peoples' spiritual relationship with land, plants, and animals, as well as communities' dependence on the environs for food, medicinal purposes, and other daily needs. However, at the ground level, tribals in India are still deprived of land and land-based resources and face systematic discrimination and exclusion from political and economic power. The indigenous people believe that the implementation of a human rights-based approach to development should take into account issues of equality and sustainability, and endorse the fundamental concept of development to take place with full respect to the community's culture and identity.

NATIONAL LEGAL FRAMEWORK

The tribal people in India are often called Adivasis and the government recognizes them as Scheduled Tribes (STs). According to the 2011 census, the Scheduled Tribe population in India was 104.5 million, accounting for 8.63 percent of the total population. In the fifth and sixth Schedule of Indian constitution, there are provisions for protecting the Scheduled Areas and especially Tribal communities against all sorts of exploitative elements including the state itself. The Fifth Schedule provides for special laws to be made for the administration of the

Scheduled Areas by the Governor of the State concerned and for exercise of executive power of the Union in giving direction to the States for the said purpose. Besides, the Article 275(1) of the Constitution in its proviso provides for flow of grants-in-aid out of the Consolidated Fund of India to the States having the Scheduled Areas for promoting the welfare of STs. The Constitution also provides for constitution of the National Commission for STs.

CHALLENGES

Forcible acquisition of Tribal Land

The cases of massive alienation of tribals from the natural resources such as land, forests, minerals and water from 5th and 6th Scheduled Areas are ongoing in the name of national development in violation of the protective legislations like Panchayat Extension to Schedule Areas Act (PESA) 1996, and FRA 2006 and The SC and The ST (Prevention of Atrocities) Act 1989. In India's North East alone, more than 200 mega dams are still being pursued without recognizing the human rights, including free, prior and informed consent of indigenous peoples. Similarly, 30 major, 135 medium, and 3000 small dams, were granted approval for construction, including the raising of the height of the Sardar Sarovar Dam in Madhya Pradesh. Dams have already submerged vast tract of indigenous peoples' agriculture land, wetlands and forest. The government data of 1947 - 1990 shows that tribal constituted 55 per cent (8.5 million) of the total displaced population in the country. They have been displaced by various projects such as dams, mines, sanctuaries and industries, all of which have failed to meet the needs of the tribals themselves.

Non-Implementation of Forest Rights Act 2006

Numerous reports and studies point out that over the past ten years, the implementation of the Forest Rights Act has been poor with just 3 percent of community forest resource rights recognized. The empowering provisions of the FRA that call for livelihood security and strengthen forest conservation and governance have been ignored. Policies and programs implemented by the Ministry of Environment, Forests and Climate Change potentially dilute protective legislation (FRA, PESA) and violate the rights of tribals. Notable among these are the Compensatory Afforestation Act (2016), the proposal for leasing of forests to private companies, notification of Village Forest Rules under Indian Forest Act in the states of Maharashtra and Madhya Pradesh, promotion and strengthening of the Joint Forest Management, plantation in land occupied and used by tribals for livelihoods. The most affected communities through these actions are the Particularly Vulnerable Tribal Groups (PVTGs). The diversion of forest lands without the knowledge or consent of Gram Sabhas has been an issue of concern. There are also extreme cases of cancellation of legal titles issued under FRA to allow mining in Chhattisgarh.

State's Control over Forest based Livelihood.

More than 50 million tribal people in India depend on Minor Forest Produce (MFPs) for food, shelter, medicine, cash income and so forth. These resources sustain millions by providing an alternate source of food and income when agriculture ceases to be reliable. The policy environment relating to MFP in India is characterised by the underlying belief that forests are state property and thus all forest products are owned by the state. The state's control even extends to designated forest products growing on private lands and non-forest common lands. In the Indian state of Odisha, the three most economically important NTFP items (i.e. kendu leaf, sal seeds and bamboo) are nationalised and brought by law under the direct control of the state. This is despite legislations like PESA and FRA which clearly defines what is MFP and vest ownership rights as well as powers to the Gram Sabha (Village Assembly) to use and dispose MFPs.

CHALLENGES

Lack of Governor's Accountability in fifth Schedule Areas for ensuring the implementation of constitutional provisions protecting tribal rights

Diversion of earmarked fund of Tribal Sub-Plan (TSP), a strategic policy initiative to secure overall development of the STs.

As required by Paragraph 3 of 5th Schedule, Governors are required to submit a statutory annual report and occasional reports as and when required by the President, on their independent assessment of the state of governance in 5th Schedule areas. However, the above constitutional provision has never been complied with. An analysis of annual reports submitted by the Governors to the Centre in the past years shows that these Reports rarely reflect the necessary objective assessment. None of the reports, for example, had analysed or even touched upon the themes of displacement, land alienation, poor governance, communal discord and insurgency, which are the dominant facts of life in many Scheduled areas. The Governors of schedule areas rarely respond to petitions in cases of land conflicts, acquisition for mineral extraction and police atrocities against tribal communities.

The TSP implementation has not made any reasonable impact in poverty reduction of tribals. The TSP money has been illegally diverted and spent on construction of over-bridge, jail, park, bungalows, etc in non-TSP areas. There are multiple agencies involved in Scheduled Areas managing the TSP funds which lacks accountability and transparency. TSP is in the form of guidelines and norms. They are not justiciable, and hence their rampant violation. However, Maharashtra became the first state in India to decide to directly transfer the tribal sub-plan (TSP) fund (which is 5% of the total tribal budget) to the gram panchayats in the scheduled areas due to intervention from the Maharashtra Governor's office.

ISSUES AND IMPACTS

RECOMMENDATIONS

India should ensure effective implementation of protective legislation, the Panchayat Raj Extension to Schedule Areas Act (PESA) 1996 and Forest Rights Act 2006. India must establish a dedicated institutional mechanism in the nodal ministries with adequate budget and personnel to facilitate implementation of the protective legislations.

India should restore all tribal lands alienated from them by fraudulent means and help them to restore their life of dignity.

Acquisition of land/diversion of forest land must be with the consent of people and Gram Sabha as prescribed in the PESA 1996, Forest Right Act (FRA) 2006, The Right to Fair Compensation and Transparency in Land Acquisition, Rehabilitation and Resettlement (LARR) 2013, the Samata Judgment 1997 and the Supreme Court directions on 18th April, 2013 on the Niyamagiri Hills of Odisha.

The Mines and Minerals (Development and Regulation) Act, 1957, Coal Bearing Areas (Acquisition and Development) Act 1957, Manipur Hydro Power Policy 2012, North East India Hydrocarbon Vision 2030 should be suitably amended to include consent of the gram sabha to be made mandatory for acquisition of land.

To ensure effective implementation of Tribal Sub-Plan (TSP), a strong legislation at the Union and State level needs to be introduced and implemented in Tribal areas focusing on the development rights of Tribals.

Actions taken by the Governor for safeguarding the interests of tribal communities should be clearly mentioned in the annual Governor's Reports submitted to the President. The Governors must be mandated to ensure the timely submission of these reports.

The Government of India should invite public opinion / suggestions on the Draft National Tribal Policy prepared by the Ministry of Tribal Affairs, Government of India in the year 2006 and thereon finalize the policy before its adoption.

The Government of India must ratify ILO Convention No. 169 on Indigenous Peoples.

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Persons with Disabilities

SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

During the second Universal Periodic Review in May 2012 at the UN Human Rights Council, India received two recommendations on the rights of persons with disabilities. India accepted the recommendation by Mexico to ensure better protection for persons with disabilities. Senegal recommended that the state 'ensure (s) universal, compulsory and free education aimed at eradicating discrimination that affects girls, marginal groups and persons with disabilities'. India did not accept this recommendation.

India ratified the UNCRPD in 2007. The convention mandates the signatory governments to harmonise all its relevant domestic laws and policies to eliminate barriers and to comply with the terms of the UNCRPD in order to protect the rights of the person with disabilities. India is bound to modify the four disability-specific domestic legislations i.e. The Mental Health Act 1987, Rehabilitation Council of India Act 1992, Persons with Disability (Equal Opportunities, Protection of Rights and Full Participation) Act 1995 and the National Trust Act 1999.

Article 35 of the UNCRPD mandates nations to submit country reports on its effective implementation. It took India 8 years to submit its first country report on UNCRPD implementation.

NATIONAL LEGAL FRAMEWORK

The Constitution of India ensures for all its citizens equality before the law, non-discrimination, fundamental freedoms and the right to life and liberty (Article 14, 15, 16, 19 and 21 of the Constitution). These Articles do not specifically refer to persons with disabilities but are general in nature. Many Indian laws, mostly stuck in colonial times, discriminate against people with disabilities. There are nearly 2,000 laws which discriminate against disabled persons. As such, these laws reflect outdated notions that persons with disabilities should only be the recipients of services rather than holders of rights.

Rights of Persons with Disabilities Act 2016

The Rights of Persons with Disabilities Act (RPWD) 2016 was passed in December 2016 by the Indian Parliament. This Act replaces the Persons with Disabilities (Equal Opportunity Protection of Rights and Full Participation) Act of 1995. The RPWD Act recognises 21 disabilities as against the 7 recognised by the 1995 Act. Using the UNCRPD definition, the Act defines persons with disabilities as *those with long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others*. The 1995 Act just listed out seven conditions viz. (i) Blindness; (ii) Low vision; (iii) Leprosy-cured; (iv) Hearing impairment; (v) Loco motor disability; (vi) Mental retardation; and (vii) Mental illness, to define disability. Conditions like deaf blindness, autism, thalassemia, sickle cell disease, dwarfism, muscular dystrophy, speech and language disability, specific learning disabilities (like dyslexia, dysgraphia etc), multiple disabilities and acid

attack victims are the other conditions that are now recognised.

This Act provides for social security for persons with disability. It lays down that "appropriate Governments shall within the limit of its economic capacity and development formulate necessary schemes and programmes to safeguard and promote the right of persons with disabilities". It also makes provisions for support for women with disabilities for livelihood and for upbringing of their children, free health care especially in rural areas, provision of aids and appliances, unemployment allowance, care-giver allowance, insurance scheme, free health care etc. For persons with benchmark disabilities (those with 40 per cent and above) it provides for free education between the ages of six and eighteen years; five per cent reservation in all government institutions of higher education; reservation of 4 per cent in employment in government establishments etc.

However, there are several concerns about the Act, with some disability groups and activists claiming that the Act is not fully UNCRPD complaint, especially with regard to legal capacity.

The Mental Health Care Bill 2013

The Mental Health Care Bill 2013, which provides for protection and promotion of rights of persons with mental illness during the delivery of health care in institutions and in the community, was passed unanimously by Upper House (Rajya Sabha) in August 2016. It is yet to be passed by the lower house of Parliament. The Bill seeks to replace the Mental Health Act, 1987.

CHALLENGES

Population figures of the disabled Persons are highly underestimated

Discrimination and human rights abuses faced by the Women with Disabilities

The last Indian census in 2011 reported that just 2.21 percent of the population has some form of disability. On the other hand conservative estimates of the World Bank and World Health Organization suggest that there are about 70-100 million individuals with a disability in India. Disability activists say this count underestimates the actual number. In India, the disability sector in general estimates that 4-5% of the population is disabled. . In India, only 2% of disabled people are self-dependent whereas in China, 80% of disabled people can function independently.

Study conducted by Disability Rights Promotion International (D.R.P.I.) states that women with disabilities in India face triple discrimination of being female, being disabled and being poor. According to a report submitted by Disabled People's International (India) and its partners to CEDAW in September 2013, "Almost 80% of women with disabilities are victims of violence and they are four times more likely than other women to suffer sexual violence." Criminal Law Amendment Act of 2013 has tried to address concerns of sexual violence on women with disabilities. Rights to Persons with Disabilities Act of 2016 also has specific clauses on women with disabilities.

ISSUES AND IMPACTS

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CHALLENGES

Mobility and Accessibility pose huge challenges

The Government launched the "Accessible India Campaign" (Sugamya Bharat Abhiyan), in December 2015 with the objective of targets creation of Physical & Virtual (IT) infrastructure truly accessible and inclusive for the persons with disabilities. This campaign had set an ambitious target of conducting accessibility audit in 26 big cities of at least 50 most important government buildings and in another 22 small cities of at least 25 most important government buildings and converting them into fully accessible buildings by July 2016. No tangible progress is visible months after the deadline expired. Despite the 1995 Act mandating public institutions to have ramps, lifts and facilities to enable free mobility, disabled students still drop out of schools and colleges or are dependent on others for access to classrooms.

Limited Opportunities for Availing Education Facilities

According to a UNESCO and UNICEF report despite India having a right to education law, out of 2.9 million children with disabilities in India, 990,000 children aged six to 14 years are out of schools. Rashtriya Madhyamik Shiksha Abhiyan (National Secondary education Programme) a flagship programme of the MHRD (Union Government) includes components such as Girls hostel, ICT, Vocationalisation of Secondary Education. These components of RMSA have no mention of students with disabilities as a specific target group. Accessibility of the school premises is limited to 55.23% of total number of secondary schools in the country and only 17% of the schools have accessible toilets of the total schools implementing Education for the Disabled at the Secondary Stage (IEDSS).

Low Budgetary Allocation

According to World Bank Report on Education of Disabled population in India, "Overall, the spending share on inclusive education in Sarva Shiksha Abhiyan is low, at only 1 percent nationally." Report by RTE Forum for 2015-16 says over the last five years the Sarva Shiksha Abhiyan budget has declined by 6% from Rs. 23, 873 crore (\$ 4.4 billion) in 2012-13 to Rs. 22,500 (\$3.3 billion) for 2016-17. The UGC under the department of higher education has undergone a 50% slash. It is to be noted that these are the few programmes under the Ministry has specific component for persons with disabilities.

Unequal Employment Opportunities

Employment remains a major concern for persons with disabilities in India. According to a study by ILO, "There are 43 special employment exchanges as at December 2005 under the Ministry of Labor and Employment with large infrastructure. Besides, there are special cells in regular exchanges. These exchanges only focus on government jobs and are disconnected from the market, resulting in a poor placement rate.

The number of jobseekers placed in employment was 3,200 from the live register of 109,632.34 Among the total 661,000 people with disabilities on the live register of all exchanges, 109,929 were registered as part of special exchanges for disabled and 66,612 were registered as part of special cells for disabled of regular exchanges. Only 27% of people with disabilities registered with special exchanges, or the special cells of regular exchanges.

RECOMMENDATIONS

India must expeditiously amend all other disability specific legislations and bring them in compliance with the CRPD.

Abolish discriminatory legal provisions and make constitutional amendments to guarantee to persons with disabilities equal and effective legal protection against discrimination on all grounds.

The Indian government should ensure that the obligations on accessibility of public places, services, transportation, information and justice both in rural and urban areas are implemented in a time bound manner. Suitable Accessibility Standards should be formulated from time to time by adapting prevailing international standards that are suitable to Indian conditions.

The Indian government should collect and maintain comprehensive disability data to plan, formulate and implement development schemes and programmes for the promotion and protection of the rights of persons with disability.

Remove systemic barriers, including legislations and guidelines for job identification, on inclusion of persons with disabilities within Employment sector and provide CRPD friendly guidelines and safety measures within work environments.

The government of India should designate a Focal Point to monitor the implementation of the provisions of CRPD.

India should formulate focussed programme in conflict areas for persons with disabilities for providing rehabilitation, training and employment.

India should make concerted efforts to develop Indian Sign Language and promote it widely.

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Refugees and Asylum Seekers

SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES

During the second Universal Periodic Review in May 2012 at the UN Human Rights Council, India received only one recommendation number 25 (made by Ghana) related to the situation of refugees. It asked India to consider the recommendation made by UNHCR to ratifying the Conventions relating to refugees and stateless persons. India did not accept the recommendation.

India did not sign the 1951 United Nations Refugee Convention on the Status of Refugees, or its 1967 Protocol. India has, however, acceded to several international and regional treaties and conventions that have a direct bearing on refugee rights and protection. These include UDHR 1948; the Genocide Convention, 1948; ICCPR 1966; ICESCR 1966; CERD 1965; CEDAW 1979 and CRC 1989. India also voted in favour of the adoption of the Declaration on Territorial Asylum 1967.

All these Conventions impose legally binding obligations on state parties regarding the rights of peoples under their jurisdiction. Article 12, paragraph 2 of the ICCPR can be specifically applied to refugees which states that "everyone shall be free to leave any country including his own" as well as Article 13 of the above stated Covenant which refers to expulsion of aliens only being permitted after a decision has been reached according to law.

NATIONAL LEGAL FRAMEWORK

According to the June 2016 statistics from the United Nations High Commissioner for Refugees (UNHCR), India has a total of 210,259 people of concern which includes 19,924 from Myanmar, 14,464 from Afghanistan, 688 from Somalia and others 1739. There are religious minorities from neighbouring countries like 110,095 Tibetans and 64,689 Sri Lankans (as of 31 May 2015,) assisted by the Government of India. After 2012 India has witnessed steady influx of Rohingya Muslim refugees belonging to Arakan region of Myanmar who have been expelled from their homeland following the clashes with Rakhine Buddhist population. According to data from the UNHCR, out of 28,000 refugees registered with it in India, around 16,341 registered refugees are from Myanmar (May 2016).

India does not have any domestic law or legal procedure governing the protection of refugees. Although the Indian government claims that its policies conform to international standards, no Indian law refers directly to refugees. India has not signed the 1951 United Nations Refugee Convention on the Status of Refugees, or its 1967 Protocol that stipulates the rights and services host states must provide to refugees. In the absence of a legal framework or a cohesive policy for the refugee communities in India there are inconsistencies in the treatment by the Indian Government to different communities of refugees on its land. The management of Refugees is done through a combination of ad hoc executive policies and judicial pronouncements, often influenced by political considerations rather than any genuine sympathy for the plight of the displaced communities.

India draws no distinction between a "foreigner" and a "refugee". Under Indian law, the term "foreigner" is the only reference to aliens of any kind; this places refugees, immigrants, and tourists in the same broad category. The Passport (Entry of India) Act, 1920, the Passport Act, 1967, the Registration of Foreigners Act, 1939, the Foreigners Act, 1946, and the Foreigners Order, 1948, are consulted by Indian authorities with regard to the entry of refugees and asylum seekers. Article 2 of the 1939 Registration of Foreigners Act defines a foreigner as "a person who is not a citizen of India." These laws apply to all non-citizens equally and, consequently, fail to distinguish the special status of refugees fleeing their countries of origin deserving humanitarian protection. Both the Act and the Order affirmatively give the Indian government the power to restrict movement inside India, to mandate medical examinations, to limit employment opportunities, and to control the opportunity to associate, as well as the ability to refole, or "return," refugees. The Refugee Convention bars these actions.

Eminent Persons' Group under the chairmanship of former Chief Justice of India, P.N. Bhagwati, drafted a model law in 2002 based on international instruments on refugee law, and pushed forward by the National Human Rights Commission of India. This was followed up by a draft Refugee Protection Bill 2006, but it did not find favour in the Legislature. In December 2015, a Private Member's Bill called the Asylum Bill, 2015 was introduced in the Indian Parliament to provide for the establishment of a legal framework to consolidate and harmonise India's refugee policies. The Bill is yet to be taken up for consideration.

CHALLENGES

Ad hoc administrative Policy

Refugees in India can be classified as mandate or non-mandate refugees. Those under the protection of the United Nations High Commissioner for Refugees (UNHCR) are known as mandate refugees. Non-mandate refugees are those who are under the direct protection of the Government of India. Government of India prefers to discuss refugee issues at a bilateral level with the country of origin of the refugees. At present Tibetan and Sri Lankan refugees are directly protected and assisted by the Indian Government. Refugees and asylum-seekers from India's non-neighbouring countries and Myanmar are registered and protected by UNHCR under its mandate. UNHCR is directly involved with groups arriving from other countries and conducts registration and refugee status determination (RSD), mostly for arrivals from Afghanistan and Myanmar.

In July 2016, the government approved several facilities aimed at easing difficulties faced by minority communities — Hindus, Sikhs, Buddhists, Jains, Parsis and Christians — of Afghanistan, Bangladesh and Pakistan staying in India on Long Term Visas. The government decided to exempt Bangladeshis and Pakistanis belonging to minority communities who entered India on or before December 31, 2014, from the relevant provisions of rules and order made under the Passport (Entry into India) Act, 1920 and the Foreigners Act, 1946, in respect of their entry and stay in India without such documents, or after the expiry of those documents.

ISSUES AND IMPACTS

CHALLENGES

Discriminatory and Inequitable Regulations

An examination of India's treatment of Tibetan refugees arriving in the 1960s and 1970s versus Tibetan refugees arriving since the 1980s provides an example of India's discriminatory policies. Although Tibetan refugees who arrived prior to 1980 received adequate assistance from the Indian government, assistance to the Tibetan refugees who arrived after 1980 has declined greatly, forcing them to live in inhumane conditions. In the same manner, heavy restrictions are placed on the Sri Lankan refugees in Tamil Nadu as well as on Afghan refugees.

Refugees and asylum-seekers are subjected to exploitation and forced to suffer discrimination and abuses. They are trafficked, subject to arbitrary arrest and detention, left destitute, and on top of it all, are vilified as "illegal immigrants". Without a protective law, refugees are left in indefinite limbo; forced to be dependent on charity; re-traumatized and desperate; and eventually are forcibly returned to situations of atrocity, torture, and possibly death.

India's ability to refoule – violation of international customary law

India's ability to refoule persons seeking asylum in India violates international customary law on the treatment of refugees. As part of customary international law, the policy of non-refoulement prevents a country from expelling refugees to countries where their lives or liberties would be threatened. In the absence of a uniform national asylum policy, Indian government deals with asylum matters on a case-to-case or nationality-to-nationality basis.

Limitations for Judicial System

The absence of law or policy for refugees in India serves as a limitation on the power of the judiciary, especially the Supreme Court, to formally recognize the human rights of refugees. However, the Supreme Court of India has held in cases that Article 21 of Constitution protects life and personal liberty of all persons. This was stressed by the Supreme Court in National Human Rights Commission v. State of Arunachal Pradesh while addressing the rights of Chakma refugees. In this judgement, the Supreme Court stated that aliens on Indian Territory shall not be deprived of rights protected by the Constitution except according to procedure established by law.

ISSUES AND IMPACTS

RECOMMENDATIONS

India should accede to the 1951 Refugee Convention Relating to the Status of Refugees and its 1967 Protocol.

The Government should adopt a national legal framework along the lines of the 1951 Convention and the Protocol of 1967 to process matters in respect of determination of refugee status, protection from refoulement of individuals seeking asylum and treatment during stay of refugees.

India should develop a mechanism to implement the Refugee and Asylum related law effectively to bring it in conformity with the international community. The law should be enacted in such a way that it not only fills the legal vacuum in the refugee regime but also rationalises the entry of refugees into India.

Ensures that no refugee or asylum seeker shall be expelled or returned to a place where there are reasons to believe his or her life or freedom would be threatened.

India should adopt mechanism to extend facilities for vocational training, health facilities and primary education, in order to enable refugees to exercise the universal rights to fulfil its obligations under the international refugee protection regime.

The Indian government should work with civil society groups to facilitate the process of voluntary repatriation and rehabilitation through education and vocational training.

Develop livelihood strategies to target each of the refugee groups as each refugee community faces different challenges in terms of access to employment, housing and finances as well as in relation to physical safety.

Adopt policies to link refugees with public and private sector initiatives to build their skills and develop a common platform to bring together Indian and refugee women to address gender based violence.

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Religious Minorities

SUMMARY OF KEY ISSUES FROM PREVIOUS UPR CYCLES

During its second Universal Periodic Review in 2012, India received 14 recommendations addressing the issue of freedom of religion and protection of rights of minorities. India accepted 5 recommendations which included recommendation no: 125 by Holy See advising Indian government to strengthen efforts to guarantee freedom of religion to everyone. India did not accept recommendations nos: 48, 49, 50, 123, 124 proposed by Germany, Netherlands, Austria and Italy calling India to adopt the Prevention of Communal and Targeted Violence Bill which addressed issues such as accountability of civil servants, standards of compensation for victims and abolish anti-conversion laws to ensure every person's right to freely choose one's religion in line with the Indian Constitution.

However the UPR II recommendations have seen very poor implementation since 2012. In the first six months of 2015, the Indian Home Ministry reported 330 violent incidents against minorities and 51 deaths, an increase over the 252 incidents and 33 deaths recorded over the same period during the previous year. In the last 4 years India also witnessed several incidents of hate speech, religious intolerance, attacks on churches, mass reconversion campaigns, and violence against religious minorities, by invoking dormant Cow Protection Laws. The Indian government failed to enact the draft legislation Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2013 for preventing targeted violence based on religion and for providing access to justice and reparations to the victims of targeted violence. No attempts were made to revise the "anti-conversion laws" that exist in several Indian States.

NATIONAL LEGAL/POLICY FRAMEWORK

The Right to Cultural Freedom constitutes one of the cornerstones of minority rights under Article 27 of International Covenant on Civil and Political Rights (ICCPR), under which India is accountable to the UN Human Rights Committee. Article 25 of the Indian Constitution guarantees freedom of conscience and right to freely profess, practice and propagate religion. Article 26 guarantees freedom to every religious denomination to manage its religious affairs. Article 29 offers protection to cultural rights of minorities and Article 30 (1) gives right to establish and administer educational institutions. These fundamental rights

cannot be violated by the government. (Article 14 and 21 of Indian Constitution). The Indian government has constituted the National Commission for Minorities, constituted under the National Commission for Minorities Act in 1992 and the National Commission for Minority Educational Institutions Act, 2004 to safeguard the educational rights of the minorities enshrined in Article 30(1) of the Constitution. In January 2017, the Indian Supreme Court ruled that candidates cannot ask for votes in the name of religion during elections.

CHALLENGES

Religious minorities and targeted violence

The figures from the Indian Ministry of Home Affairs in February 2014, reveal a steep 30 per cent rise in incidents of communal violence nationwide. In 2015, there was a further 17% increase in religious violence in India compared to 2014. According to civil society reports, more than 600 incidents of targeted violence against Christians and Muslims took place in India between May 2014 to September 2014

In September 2013, large scale targeted violence mainly against Muslims took place in Muzaffarnagar and Shamli districts of western Uttar Pradesh, in which at least 44 persons were killed, 97 persons injured and 41,829 people displaced.

In 2015, an Indian citizen, Mohammad Akhlaq was lynched to death by a mob in Dadri town in Uttar Pradesh over rumors of storing beef in his home. In 2014, 24 year old Mohsin Shaikh was beaten to death in Pune city after returning from prayer and 14 people from a right wing radical outfit called Hindu Rashtra Sena were arrested for his murder. In March 2016, bodies of two Muslim cattle traders including a minor, were found hanging from a tree in Jharkhand's Latehar district. The National Human Rights Commission of India issued a show cause notice to Jharkhand government in the case.

An aggressive and sustained campaign to unleash violence on minorities has been carrying on in the name of cow protection. In July 2016, four Dalit youth, were attacked as a 'punishment' for skinning the carcass of a cow in Gujarat's Una town, by 'cow vigilantes' leading to widespread protests by Dalits, including Muslim and Christian Dalits. Media reports have also emerged on training camps providing firearm training to youth by militant rightwing organisations.

Attacks on Christians have been justified using the propaganda about conversion. In March 2016 a group of youth raising slogans attacked and vandalized a Church Situated in Kachana colony in Raipur in Chhattisgarh. In March 2015, a 71-year-old nun was gang raped in West Bengal. Christian missionaries blamed rising religious intolerance for it. In 2014-15 numerous cases of churches being vandalised and pastors assaulted were documented nationwide.

Wilful abdication of responsibility to enact a national legislation to protect minority rights

The Indian government failed to enact the Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2013 which was approved by the Indian Cabinet in December 2013. India wilfully abdicated its responsibility to enact a national legislation in compliance with Article V of the International Convention on the Prevention and Punishment of the Crime of Genocide, 1948. India ratified the Genocide Convention in 1958.

CHALLENGES

Complicity and inaction of police, inadequacy of laws and procedures to and judicial delays hamper access to justice to victims and survivors of targeted violence

Harassment and intimidation of religious minorities by existing and proposed laws

Access to Justice evades survivors of large-scale ethnic violence. The impunity enjoyed by the violent mobs is a big cause for concern. Many victims of violence complain about the lack of police action. Criminal Cases where minorities are survivors are left to collapse. Youth from minority groups, are targeted in cases related to terror. Many or most of them are acquitted after years being incarcerated. No reparation is paid, nor the policemen responsible for wrongful arrest, confinement ever prosecuted.

The anti-conversion laws, passed by some Indian states, violate freedom of religion guaranteed by the Indian Constitution and the UN Declaration on Minorities. These provide opportunities for both local officials and Hindu supremacist organizations to harass and intimidate the minorities. But the same laws do not address forcible conversions to Hinduism such as "Operation Ghar Wapsi" (Operation Return Home) ceremonies conducted by the right wing groups.

Proposed amendments of central laws also threaten the secular and non-discriminatory foundations of the Indian state. The 'Enemy Property (Amendment and Validation) Bill threatens to appropriate properties of Muslims who stayed behind after the vivisection of India. After strong Opposition protests, the proposed amendments have been referred to a Select Committee of Parliament. A bill to amend India's Citizenship laws, to privilege those migrants who are not Muslims; has also been referred to a Parliamentary Committee.

ISSUES AND IMPACTS

RECOMMENDATIONS

The Government of India should take immediate steps to enact the 'Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill 2013' approved by the Indian Cabinet in December 2013.

Urgently revise the "anti-conversion laws" that exist in seven States of India in the light of the principle of rule of law and ensure that the anti-conversion laws comply with international human right law.

Implement existing provisions in the law to prevent hate speech, acts of religious hatred, incitement to religious violence and political exploitation of religion-based distinctions.

The right of an individual to change one's faith should be protected as a fundamental right and the state should effectively protect and promote the safety, dignity and privacy of persons who change their faith voluntarily.

Government should formulate a national policy for dignified reparations for individuals acquitted in terror related cases.

Ensure that anti-terror legislations and anti-cow slaughter laws are not misused to target minorities and vulnerable sections. State should take punitive action against public officials who do so.

The cow vigilantes or any private armed training by right wing groups should be banned.

Establish a comprehensive and adequately resourced victim and witness protection programme at the central and state levels, which is independent of state agencies such as the police.

Hold accountable public and police officials found complicit in shielding criminals involved in intimidating and unleashing violence against the minorities and those who advocate religious hatred.

Indian government should abjure from its moves to de-privilege religious minorities with its planned amendments to the Enemy Property laws and the Citizenship Act.

Create a body within the National Human Rights Commission that monitors the implementation of the recommendations of the UN Special Rapporteur on Freedom of Religion or Beliefs, and the concluding observations of the UN human rights treaty body recommendations related to the protection of the right of religious minorities.

Enact a legislation or policy providing for Equal Opportunity Commission to investigate discriminations, if any, against any Socio-Religious Categories (SRC) by the state or by the private sector.

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Nomadic, Semi-nomadic and De-Notified Tribes (NT-DNTs)

SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

During India's II UPR cycle in 2012, several recommendations were made to India related to protection and promotion of the rights of tribals and Indigenous people. However, the issue of protection and promotion of the rights of Indian De-notified and Nomadic Tribes (DNTs) did not find any explicit reference of any kind during the review process of India's human rights record. The British colonial rulers initiated the Criminal Tribes Act in 1871, referring to around 150 tribes for their so-called "criminal tendencies". What is common to all these NT-DNTs is the fate of being branded as 'born' criminals. The stigma of the criminal label follows them to this day. The Indian Constitution does not recognise the De-notified or Nomadic Tribes. India's Draft National Policy on Tribals does not include De-notified or Nomadic Tribes.

In 1952, the Indian Government withdrew the Criminal Tribes Act of 1871 throughout India and enacted the Habitual Offender's Act. Both the Criminal Tribes Act and the Habitual Offender's Act negate the universally proclaimed principle that "all human beings are born free and equal". The listing of these De-notified and Nomadic Tribes under the Habitual Offender's Act also negates the fundamental principle of the criminal justice system – the presumption of innocence before being proven guilty.

On 9th March 2007, The UN's Committee for the Elimination of Racial Discrimination directed India to repeal the Habitual Offenders Act and to rehabilitate the de-notified tribes. The National Human Rights Commission of India has also issued orders to the state governments to repeal HOA 1959 immediately, however the Act still prevails in most States in India leading to the continued suffering of marginalised communities.

NATIONAL LEGAL FRAMEWORK

The De-notified and Nomadic Tribes are a heterogeneous community that have been classified based on the occupations they follow such as Pastoralists, hunter-gatherer and nomads like the Dhangars, Kuruba and Pardhi communities, Sellers and providers of services and goods like the Ghisadi, stone dressers like the Wadar, transporters and salt traders like the Banjaras, Entertainers (acrobats and jugglers like the Dombaris and Nats, snake charmers and religious performers and astrologers (Joshis the astrologers, Masanjogis- performers of crematorium rituals, Gosavis the sanyasis).

De-Notified Tribes are communities who were 'notified' as being 'born criminal' by the British Government under a series of laws starting with the Criminal Tribes Act (CTA) of 1871. These laws were enacted as crime was considered a 'hereditary profession' and the enactment of the law and its entry into the working of police training as well as in the public arena slapped the brand of being 'born criminals' on the entire population of these communities. After Independence, this Act was repealed in 1952, and the communities were 'de-notified', hence the name. In 1959, the independent government of India replaced the

CTA with the Habitual Offenders Act (HOA). Due to their tainted history as Criminals these tribes again came under State scrutiny and suspicion and became scapegoats for the police. The enactment of the HOA empowered the police to investigate habitual offenders without warrant which resulted in abduction, interrogation, illegal detention, custodial deaths and largely false arrests of de-notified tribes.

The Indian Constitution does not recognise the De-notified or Nomadic Tribes. It confines itself to the Scheduled Castes, the Scheduled Tribes and the Backward Classes. The affirmative action program of the State is based on socio-economic backwardness of the settled communities; it has failed to include specificities of nomadism, stigmatization and criminalization within its ambit. Even though a large number of these Tribes and Communities are in the lists of SCs, STs and BCs/OBCs, but they are deprived of advantages of the government affirmative action programmes. About 16 percent (9 communities) of Nomadic tribes and 3 percent (2 communities) of De-notified communities do not fall into the existing constitutionally designated categories – SC, ST or OBC.

CHALLENGES

Forced marginalization due to criminalization of traditional occupations of NT-DNT

Subjected to systematic abuses due to denial of civil political rights

ISSUES AND IMPACTS

As per the Renke Commission Report, 2008 there are nearly 1500 nomadic and semi-nomadic and 198 De-notified tribes, comprising a population of 150 million NT-DNT people in India. The commission found that their main occupations were acrobatics, puppetry, singing, dancing, acting, snake charming, showing tricks with monkeys or bears, hunting, fortune telling, brewing liquor, begging, making handicrafts, and fishing. Many of these, however, have become criminal offences with the enactment of legislation such as the Wildlife Protection Act, the Prevention of Cruelty to Animals Act, the Environment Protection and Biodiversity Conservation Act, the Drugs and Magic Remedies Prohibition Act, and the Prevention of Beggary Act. Shorn of their traditional sources of livelihood and with nothing else to fall back on, they beg, rag-pick, sell themselves into prostitution, vend traditional craft items on the streets, and push their children into child labour.

The non-recognition of the NT-DNT communities in India has led to denial of citizenship rights, social protection and affirmative development action programs. Human rights situation of NT-DNT is deplorable. They are subjected to atrocities everyday by the police, civic and revenue administration, and the citizens of the country. Media is one of the major enhancers of stigma wrongly attributed to them while reporting crime in their daily columns.

CHALLENGES

Social and economic exclusion based on the study by National commission for Semi-nomadic, Nomadic and De-notified Tribe, (Renke commission, June, 2008) in 11 states

Police atrocities faced by DNT and Nomadic Communities due to the Stigma of being 'Born Criminals'

ISSUES AND IMPACTS

Around 50% of DNT and 61% of Nomadic Communities do not possess Caste Certificates. Around 47.8% DNT and 60% of Nomadic Communities do not possess Birth Certificates. Only 23% DNT and 6% Nomadic communities report possessing BPL cards. Around 76% DNT and 33.7% Nomadic Communities still practice open defecation. 58% of children among DNT and 49% among Nomadic communities are engaged in economic activities, instead of attending schools. About 25% of DNT families and 60% among Nomadic communities do not get wage employment for all seven days. None of them reported getting employment through NREGP/ PMGSY and old age or widow pensions. About one third of families of Nomadic community and one fourth of DNT do not possess any type of ration card. About 89% of DNT and 98 % of Nomadic and semi-Nomadic communities reported that none of the families in the community own land. Majority (81%) of DNT did not know the status of their residential locations. Only 11% of the Nomadic communities and 8% of DNT have habitations on public land. Tents/informal settlements (57%) are the most common type of habitation where communities reside in poor living conditions. They are deprived of basic amenities, such as toilets, water, electricity, etc. Among DNTs, 4.5% said that their traditional occupation had been bonded labour. About 16% of the DNTs and 9% of the Nomadic communities' women reported sexual harassment by other castes. About 37% Nomadic and 23% DNT are affected by Forest Conservation Act. Other Acts affecting the community are Wild Life Protection Act 1972, Habitual Offenders Act, Anti Beggary legislation (Bombay Prevention of Begging Act, 1959 adopted by different States).

About 8% of DNTs and 4% of the Nomadic community families faced police action in one year. It is important to note that 88% of women from Nomadic communities have faced investigation. According to the figures 7.5% of DNTs and 8.9% of the Nomadic community men faced arrests and 26.3% of DNTs and 48.6% of the Nomadic community men faced crime related enquiries. Around 20.8% of DNTs and 2.8% of the Nomadic community women faced Physical harassment. Around 10.5% of DNTs and 0.9% of the Nomadic community women faced verbal abuses. The official estimates have been provided by the Renke Commission but due to the criminal stigma the actual number of cases of police atrocities, illegal detention, harassment, forced labour and sexual violence are much larger and mostly go unreported since the police refuse to register their cases.

RECOMMENDATIONS

The Habitual Offenders' Act, 1952 is similar in spirit to the repealed Criminal Tribes Act of 1871 and should be abolished as a first step towards de-criminalisation of DNTs and prevention of atrocities by police.

Systematic enumeration and classification of DNTs should be done as a first step towards identification of persons belonging to DNT communities.

Amendments should be made to laws have criminalised the traditional professions of the NT-DNTs. These include the Wildlife Protection Act, the Prevention of Cruelty to Animals Act, the Environment Protection and Biodiversity Conservation Act, the Drugs and Magic Remedies Prohibition Act, and the Prevention of Beggary Act.

Formulate a social protection framework which focusses on access to entitlements, land, housing livelihood, education and health of NT-DNT Communities.

Efforts should be made to engage civil and police administration in the implementations of development and welfare programmes for DNTs as a way of understanding their vulnerabilities rather than focusing on their criminality.

Conduct a nation-wide survey of NT-DNT settlements whether temporary or permanent to formulate a suitable shelter programme for houseless NT-DNTs.

Initiate rehabilitation programmes for the community members of the NT-DNTs who are forced into criminal activities and promote alternative viable livelihood options with suitable skill development and training through National Scheduled Castes Finance and Development Corporation and National Backward Classes Finance and Development Corporation.

Take steps to prevent women and girls of these communities falling prey to trafficking, bonded labour and child labour after eviction or displacement from the forests.

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The Elderly

SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

In the II UPR cycle, the only recommendation (no: 167) made to India by Senegal urged the State to ensure better protection for the elderly. The recommendation was accepted by India. India had initiated important policy measures for the rights of elderly such as the 'National Policy On Older Persons (NPOP) in 1999 and 'Maintenance and Welfare of Parents and Senior Citizens Act, 2007'. The new draft National Policy for Senior Citizens (NPSC) of March 2011 is still pending with the India Ministry of Social Justice and Empowerment after the passage of 5 years.

Only a few Indian states have so far announced a matching State Policy on Older Persons (SPOP) based on the NPOP. Adequate implementation of the 'Maintenance and Welfare of Parents and Senior Citizens Act, 2007 has not been achieved. Resources are inadequately allocated and therefore covers little for elderly in schemes like pension facilities. Older people fail to avail social security, access to health and productive resources, work, food and housing. This has gradually led to exclusion, poverty, and discrimination of older people.

Older people are not recognised explicitly under the international human rights laws. Only the International Convention on the Protection of the Rights of All Migrant Workers and Members of their Families mandates against age discrimination. Commitments to the rights of older people exist, such as Madrid International Plan of Action on Ageing (MIPAA) 2002 reaffirmed the commitment of the member states to the promotion and protection of human rights of older people. However, they are not legally binding and therefore only impose a moral obligation on governments to implement them.

NATIONAL LEGAL FRAMEWORK

According to the Census of India 2011 the numbers of elderly were 103 million and in 2015, 108 million. According to the report by the Indian Ministry of Statistics the percentage of citizens over the age of 60 has jumped 35.5 per cent — from 7.6 crores in 2001 to 10.3 crores in 2011. According to a report titled "Situation Analysis of the Elderly in India " by Indian Ministry of Statistics & Programme Implementation, the elderly population accounted for 7.4% of total population in 2001 but less than 20% of elderly women and majority of elderly men were economically independent.

According to Article 41 of the Indian Constitution "The State shall, within the limits of its economic capacity and development, make effective provisions for securing the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement, and in other cases of undeserved want".

The National Policy on Older Persons (NPOP), 1999 envisages State support to ensure financial and food security, health care, shelter and other needs of older persons, protection against abuse and exploitation, and availability of services to improve the quality of their lives.

The National Council of Older Persons was constituted in 1999 to monitor the implementation of the Policy and advise the Government on issues related to senior citizens. The Council is designed to receive suggestions, complaints and grievances from senior citizens but the Council has hardly met since 2011. The Council has been reconstituted in 2012 as National Council of Senior Citizens with wider national impact. There has been a failure of implementation in the National Policy as the inter-Ministerial Council meetings for the National Policy have held only twice in 10 years.

CHALLENGES

Partial implementation of the provisions of National Policy on Older Persons (NPOP)

Non-operational Old Age Pension Schemes

Lack of security for Old Age persons as the promises made in Maintenance and Welfare of Parents and Senior Citizens Act 2007 remains unfulfilled.

Poor Health Care Facilities

ISSUES AND IMPACTS

Even after 17 years of the adoption of the NPOP (1999) only 13 of the 29 Indian states have announced a matching State Policy on Older Persons (SPOP) based on the NPOP. This means, 16 of the 29 states have yet to announce State Policy on Older Persons (SPOP). This same low priority treatment towards the elderly can be seen by the fact that as on date only 8 States have bothered to form a functional 'State Council for Senior Citizens which is a key State level advisory body where all stakeholders concerned with senior citizens issues in the state are nominated for periodic consultation and advise on senior citizen matters. To revise and modify the NPOP 1999, the Government of India formulated a draft National Policy for Senior Citizens (NPSC) in March 2011. However, the draft National Policy is still pending with Indian Ministry of Social Justice and Empowerment.

Indira Gandhi National Old Age Pension Scheme (IGNOAPS) has been operational since 1995. The scheme was to cover the "oldest old" (i.e. above 80 years) and provide additional pension in case of disability, loss of adult children and concomitant responsibility for grandchildren and women. It was provided that scheme would be reviewed every five years. However, in reality no review has taken place thus rendering more than 30 million elderly destitute with no source of income or pension in old age. In addition, there are various other vulnerable groups such as Primitive Tribal Groups (PTGs), socially stigmatized communities such as sex workers, the trans genders, HIV positive people who are left out of this pension scheme.

The Maintenance and Welfare of Parents and Senior Citizens Act was enacted in 2007 for providing more effective provisions for maintenance and welfare of senior citizens. Even after 5 years of the adoption of the Act, in 2012 only 14 out of a total of 29 states and 5 UTs have completed all the necessary steps and formalities to ensure full implementation of the Act. The promise of building one old age home in every district of India provided under Part III Section 19 of the Act remains unfulfilled. Till date not a single old age home has been built.

The Government of India launched the "National Program for Health Care of the Elderly" (NPHCE) during the year 2010-11 for providing dedicated health care facilities to senior citizens (above 60 years of age) at primary, secondary and tertiary health care delivery systems. The objective of the NPHCE is to provide specialized comprehensive health care to the senior citizens at various levels including outreach services. This program was to cover 100 poorest districts by 2013. Till date the coverage is only partial in 100 districts out of the total 622 districts in the country.

CHALLENGES

Skewed Allocation of Resources

The current employment linked pension system is restricted to the employees of organized sector which constitutes only 7 to 8 % of the total work-force. The remaining 93 % of the workforce comes under 'unorganized sector employees'. Estimates suggest that majority of these employees were not covered under any pension scheme. The limited number of unorganized sector employees who get pension after the application of the Below Poverty Line (BPL) criterion, get a meagre sum of maximum Rs. 500/- and that too not in all states. The pension policy for the poor is able to cover only 19.6 million which does not cover the bulk of the poor older persons.

Human Rights Violations faced by Elderly

The elderly persons remain most vulnerable to discriminatory treatment, grievous hurt, murder, and abuse. According to the National Crime Records Bureau's report (2010), 32496 elderly have been murdered and 5836 cases of not amounting to murder and kidnapping have been reported all over India from 2001 to 2010. Help Age India's 'Elder Abuse Study report in 2014' reveals that 1 in 3 older people reported abuse within the family which ranged from physical abuse to verbal abuse.

ISSUES AND IMPACTS

RECOMMENDATIONS

Immediately enact the revised 'National Policy for Senior Citizens (NPSC)' formulated in March 2011.

India should form a Universal Non Contributory Old Age Pension System with a minimum amount of monthly pension not less than 50% of the minimum wage or Rs. 2,000/- per month whichever is higher.

The monthly pension amount be indexed to inflation bi-annually and revised every two to three years in the same manner as is done for salaries / pensions of government officials.

Fully implement the National Program for Health Care of the Elderly (NPCHE) in the 100 poorest districts immediately to protect the lives of 'poorest of the poor'.

Ensure complete utilization of funds for the welfare of Senior Citizens provided under the 'Integrated Program for Older Persons (IPOP) as observed and recommended by the Parliamentary Standing Committee on Social Justice and Empowerment.

Continue and 'increase' the 'numbers coverage' under the Rastriya Swasthya Bima Yojana (RSBY) and change the criterion for coverage of RSBY from 'family coverage' to 'individual' to include the 'senior citizens'.

Ensure 'Free Geriatric Care' at the ground level in every Primary Health Care Center (PHC) and all Government Hospitals and Poly Clinics.

Ensure that the Private Sector Hospitals benefiting from government schemes should be mandated under the new Corporate Social Responsibility (CSR) provisions to provide 'Free Geriatric Care facilities' and 'Free medicines' and at least 'partially subsidized treatment' to poor BPL level elderly persons.

Implement fully all the provisions and welfare commitments of construction of an old age home in every district as mentioned in the Maintenance and Welfare of Parents and Senior Citizens Act 2007 in all the remaining 15 Indian states, as only 14 states have complied with all the responsibilities regarding setting up of Maintenance Tribunals, appointment of staff etc.

Improve the safety and security of the senior citizens at the local police stations and constitute a 'Senior Citizens Cell' in every local police station with 'Community Policing' and coordination meetings between the communities.

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Right to Information

SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

During the Universal Periodic Review Process-II, the Government of India accepted only one recommendation out of the four on the Right to Information Act and Corruption. The recommendation accepted in revised form was to “ensure a safe working environment for journalists”. The Government did not accept the recommendations that called for strengthening the State's response to complaints of corruption based on increased transparency and accountability; strengthening the judicial system and reforming the law enforcement agencies and reducing the level of crime and corruption; and ensuring that measures limiting freedom of expression on the internet are based on clearly defined criteria in accordance with international human rights standard.

Since 2013, at least 17 journalists were reported murdered in the line of duty (Data from World Press Freedom Index & CPJ). There is no comprehensive law for protecting journalists or whistleblowers who expose corruption and wrong doing in government.

Nevertheless, the twin laws guaranteeing people access to information from governments, are being used by citizens frequently to unearth petty and large scale corruption and mismanagement of public funds. The print and electronic media report extensively on these efforts which are realising the primary objectives of the RTI Act, namely, ensuring greater accountability in the working of public authorities and the containment of corruption.

NATIONAL LEGAL FRAMEWORK

In 2005, Parliament enacted the Right to Information Act to give effect to the fundamental rights of citizens to seek and receive information from governments, local authorities, public sector enterprises including banks and non-governmental organisations owned controlled or substantially financed by governments. Jammu and Kashmir enacted a similar law guaranteeing access to information to residents from public authorities under that State Government.

Under these rights to information (RTI) laws, all public authorities have designated officers to receive and dispose information requests from citizens including journalists and internal appellate authorities to resolve disputes relating to refusal of or delayed access to information. Information Commissions have been established in the States and at

the Central level as autonomous authorities to resolve information access disputes between citizens and public authorities. The twin RTI laws require public authorities to place a wealth of information about their activities, budgets and spending and decision-making processes proactively in the public domain in addition to processing formal requests for information from the citizenry.

In addition to the RTI laws, since 2011, the Government is implementing the National Data Sharing and Accessibility Policy (Open Data Policy). Various Central and State-level ministries and departments have uploaded several numerical and statistical datasets generated or collected in the course of their work, on a publicly accessible Open Data Portal.

CHALLENGES

Lack of adequate security for citizens using RTI laws to expose corruption and wrongdoing in government

Lack of transparency of official data regarding attacks on RTI users and journalists

Poor awareness levels about RTI laws amongst the citizenry

Retired bureaucrats appointed in large numbers at the Information Commissions

ISSUES AND IMPACTS

Since 2013, 23 citizens were reported murdered, 51 assaulted and at least 19 others harassed or threatened for using the RTI laws to expose corruption and malgovernance. The Human Rights Commissions (HRCs) at the national and State levels take cognizance of such instances as attacks on human rights defenders and order inquiries into the incidents. However, the poor quality of investigations, often conducted by the local police in which the attacks occurred hamper progress in these cases. The HRCs close these complaint cases soon after the prosecution of the accused begins causing tardiness in the criminal trials which often result in acquittals.

The Constitutional Courts have ruled in favour of maintaining confidentiality of the contact details of the information requestors or legitimising information seeking by groups of citizens acting in solidarity as preventative measures. Information Commissions have ruled in favour of more and more proactive disclosure of information in order to reduce citizens' need for seeking information under the RTI laws formally.

Since 2014, the National Crime Records Bureau of India has begun collecting statistical information about attacks on citizens seeking information under the RTI laws and professional journalists in the line of duty. However, this data is not being placed in the public domain proactively despite civil society demands for transparency.

Despite an average of 5 - 5.5 million information requests per year being submitted by citizens to various public authorities across the country, less than 1% of the total population takes recourse to the RTI laws for obtaining information from the public authorities. Governments have not made adequate efforts to discharge their statutory obligations to develop programmes for spreading awareness about the procedures for seeking information under the twin RTI laws.

In 2013, the Supreme Court of India directed the governments to make special efforts to select eminent citizens with specialisation in the fields of science, technology, management, social service, journalism and mass communication and law and governance, as required by the twin RTI laws. According to recent studies, 90% of the Information Commissions are headed by retired government servants. More than 60% of the members of the Information Commissions are selected from among retired bureaucrats. As a result, penalties are rarely imposed on errant officers for contraventions of the twin RTI laws and public authorities have taken undue advantage.

CHALLENGES

Retrograde amendments to laws for combatting corruption and protecting Whistleblowers and lack of progress in anti-corruption legislation required for India's compliance with the UN Convention Against Corruption

Poor rates of registration of citizens' complaints about corruption in government and fewer convictions of accused public servants

Parliament enacted a law in 2014 to protect Whistleblowers, including journalists if they make complaints of corruption or wrongdoing in government to the authorities specified in that law. However, this law does not protect whistleblowing through the media. Although the Supreme Court recognised whistleblowing through the media if internal mechanisms for considering such complaints fail or are inactive, the Government has not inserted enabling provisions in the whistle-blower protection law.

In 2015, instead of implementing this law as adopted by Parliament, the Government introduced amendments to remove immunity for all Whistleblowers from prosecution under the Official Secrets Act. Other amendments are aimed at prohibiting whistleblowing on grounds such as national security, foreign relations, trade secrets and other intellectual property rights, ongoing criminal trial, contempt of courts and even privacy of individuals.

The Lokpal and Lokayuktas Act intended to set up adequately empowered corruption investigation agencies has not been implemented since 2013. Bills to prevent bribery of foreign officials; facilitate complaints of corruption or misbehaviour against members of the High Courts and the Supreme Court lapsed after the general elections to Parliament. They have not been revived by the present Government despite being elected to power in 2014. The amendments proposed to the Prevention of Corruption Act, 1988 to make collusive bribery and bribery indulged in by private entities, punishable have languished in Parliament since 2013.

Transparency International ranked India 76th in the corruption perceptions index in 2015, indicating very low level of public confidence in the ability of anti-corruption mechanisms to deal with complaints of graft and punish the corrupt. According to official figures only 19% of the corruption cases registered with the anti-corruption or the vigilance departments end in conviction after trial.

ISSUES AND IMPACTS

RECOMMENDATIONS

Ensure compulsory registration and investigation of instances of attacks on citizens using RTI and journalists who expose corruption and wrongdoing in government under the supervision of autonomous agencies like HRCs, Information Commissions or Vigilance Commissions until the trial is completed and provide adequate compensation to the victims.

Ensure more and more proactive disclosure of information by public authorities and information sought by citizens attacked for using RTI or journalists attacked for exposing corruption under the supervision of Information Commissions.

Ensure the mainstreaming of RTI awareness raising efforts as part of its human rights education and legal empowerment programmes with particular focus on vulnerable and marginalized groups such as women, scheduled castes, scheduled tribes, religious minorities, differently-abled persons, migrant workers and LGBTQ communities.

Ensure that the Supreme Court's directives for selecting eminent citizens with specialisation in diverse fields as provided by the twin RTI laws are strictly complied with.

Withdraw the retrograde amendments to the Whistle-blower Protection Act, insert provisions for whistleblowing through the media and ensure its effective implementation with immediate effect.

Ensure the passage of the anti-corruption laws pending in Parliament such as the Prevention of Corruption (Amendment) Bill and the Criminal Laws (Amendment) Bill (Lokpal and Lokayuktas Act) in a time bound manner after widespread public consultation.

Revive the lapsed Bills relating to the prevention of bribery of foreign officials; for receiving and inquiring into complaints of corruption and misbehaviour of judges of the High Courts and the Supreme Court; and complaints about the poor or non-delivery of public services by government servants.

Ensure adequate funding for infrastructure to investigate and prosecute cases of corruption across the country effectively in order to reduce the levels of corruption.

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Human Rights Education

SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

In the 1st Universal Periodical Review in 2008 India accepted one recommendation no: 13 made by Italy to strengthen human rights education, specifically in order to address effectively the phenomenon of gender-based and caste-based discrimination. During the 2nd Universal Periodical Review in 2012 India accepted recommendation no: 55 expressed by Sri Lanka to “continue with action to include human rights education in the school curricula”. Almost 70 years after the adoption of the Universal Declaration of Human Rights and 12 years after observance of UN Decade of Human Rights Education (1995 – 2005), the prevailing situation of human rights education in India is far from satisfactory. Human Rights is not treated as a separate subject in the school curriculum. India has also not implemented a National Action Plan on Human Rights Education.

NATIONAL LEGAL FRAMEWORK

In 2011, the UN General Assembly adopted the UN Declaration on Human Rights Education and Training with special emphasis on the importance of HRE at the levels of international policy and state action. The Declaration states powerfully the content of HRE as a right in itself: “Everyone has the right to know, seek and receive information about all human rights and fundamental freedoms and should have access to human rights education and training”. The UN Declaration clearly reaffirmed state duties to assure the implementation of HRE.

Article 51A (I) of Indian Constitution 1950, imposes a duty on all citizens to develop scientific temper, humanism and the spirit of inquiry & reform. The Indian state has an obligation to foster respect for international law and treaty obligations. India is a signatory to the UDHR and has ratified both the Civil and Political Rights and the Convention, Economic, Social and Cultural Rights Covenants. India has also ratified CEDAW, CERD and CRC. All these obligations reaffirm HRE as a legal obligation.

The University Grants Commission of India appointed Sikri Committee in 1980 to consider and report on the different ways and means for promoting HRE in India. The committee suggested inculcating values without marks weightage in schools. At college levels it was felt that all disciplines should be including human rights topics at least which are

directly relevant to their disciplines. However, the University Grants Commission (UGC), NCERT, and the Universities took no effective follow-up action on the report. In the year 1997 UGC framed guidelines 'UGC IX Plan Approach for Promotion of HRE in University and Colleges with the objective to promote HRE among teachers and students. The measure came after the UN General Assembly resolution of December 1994 declaring the period 1995-2005 as the UN decade for HRE and finalization of programme of action in October 1995 which was approved by Indian Government.

The National Human Rights Commission in India (NHRC) recommended on July 6, 2007 that a comprehensive human rights education plan should be enacted “as a main subject at all levels from primary to post-graduate”. This recommendation was the outcome of a study by a task force on human rights education created by the NHRC India in 2006. A module for teacher training programme has also been prepared by the taskforce of the NHRC for this purpose. NHRC India has developed other programs such as month-long internship programmes for University students and programmes focused on public servants especially police in collaboration with the Administrative Training Institutes and Police Training Institutions.

CHALLENGES

The Indian education system follows a 'Value and Awareness Model' of human rights which has failed to give HRE a rightful place in school curriculum, teacher training courses, textbooks, supplementary reading materials and education policies.

Children stand face to face with the greatest challenges. All forms of discrimination based on caste, sex, religion, disability and related intolerance are the main barriers to achieve a child's right to development despite India has incorporated right to education.

Government efforts are insufficient to promote human rights education.

ISSUES AND IMPACTS

The Indian education system has followed a 'Value and Awareness Model' of human rights education, wherein, human rights are not taught as a separate subject, instead, various values related to human rights have been integrated in all subjects and in all stages of the school curriculum. Even the National Curriculum Framework (NCF) published in 2005 by the NCERT in India failed in identifying the content of the HRE in schools. NCERT opined that all contemporary concerns and issues cannot be included in the curriculum as separate subjects of study. Although some initiative has been taken by educational organisations like UGC and NHRC for promoting human rights education in India. As a result HRE is part of many university programmes which provide certificate, diploma, postgraduate diploma and even master's programme in human rights.

Although, the Right to Education Act (RTE) 2009 grants compulsory and free elementary education to children, however, as the Committee on the Elimination of Discrimination against Women stated “only 4 per cent of the GDP is spent on education, that girls with disability and minorities still register low enrolment rates, and that the dropout rate among adolescent girls is as high as 64 percent”. Recently amended Child Labour Act 2015 explains this high dropout rates as it has amplified the scope in which children can work in non-hazardous family enterprises and in the audiovisual entertainment industry or sports activities”. Amended Juvenile Justice Act included provisions which say that adolescents from 16 to 18 years can be tried like adults if they committed heinous crimes. In relation to corporal punishments by teachers, a 2009 UNICEF report found that in India 78% of 8-year-olds and 34% of 15-year-olds said they had been physically punished, while 93% of 8-year-olds and 68% of 15-year-olds said they had seen other children being physically punished.

The National Curriculum Framework (NCF) drafted by the National Council of Educational Research and Training (NCERT) in 2005 contains several declarations on the importance of education “as a long-term process of building up peace, tolerance, justice, intercultural understanding and civic responsibility”. This approach of inculcating human rights culture might not be enough given the alarming rate of human rights violations in India. The first document of the New Education Policy drafted by the Ministry of Human Resource Development, states that “curriculum will cover the issues of social justice and legal measures in order to avoid social discrimination.

CHALLENGES

Civil society's efforts in transforming the social realities through grassroots work for human rights education.

Repressive measures used by Indian government to subvert the efforts of civil society to realize human rights education.

It will be ensured that text books promote harmony and do not contain any discriminating issues, events, examples in the context of gender, disability, caste, religion, etc. The participatory approach can ensure active role for civil society in fulfilling the first message.

Civil society groups have made efforts at the grassroots level to build a culture of human rights. At the grassroots level, HRE has often taken the form of popular education or community education to mobilize and expand social movements. Amnesty International Human Rights for Education Programme has conducted several workshops and training sessions during the last years in more than 30 schools in Bangalore as part of its wider program called Human Rights Friendly Schools.

The Institute of Human Rights Education (IHRE) has a National Plan in 15 States in collaboration with different NGOs. At this moment, the program has trained more than 4476 teachers in 3909 schools involving 316832 children.

People's Action For Rural Awakening program has set up 1000 human rights clubs in 525 government schools in the two states of Andhra Pradesh and Telangana with the collaboration of the government educational department. It has also succeeded in getting the AP Government to train 167,000 teachers.

Recent controversial actions taken by the government against NGOs by suspending or cancelling their licenses has hampered the implementation of human rights education programs. NGOs have assiduously tried to implement HRE as a response to the call from the UN. The Indian Government has frozen the bank accounts of several NGOs availing foreign donations and that decision has affected programs such as the one carried out by IHRE.

ISSUES AND IMPACTS

RECOMMENDATIONS

The government of India should immediately take steps to implement human rights education as called for in related articles of treaties that India has signed and ratified.

Assess needs and formulate strategies to further human rights education at all school levels, in vocational training and formal as well as non-formal learning.

The government of India in cooperation with civil society and other stakeholders should develop and implement a National Plan of Action for HRE, as called for in the UN World Programme for Human Rights Education (WPHRE)

India should provide support CSOs providing human rights education resources related to curriculum frameworks, with evidence of such actions before the mid-term review.

Ensure to develop module or course on Human Rights for students in primary and secondary schools, adapted to different ages and with progressive contents so as to promote skills, awareness and human dignity.

Ensure efforts to include HRE mandatory course in teachers' training syllabus.

The Indian government should equip state and local governments to review and improve their educational policies, practices, and outcomes in order to ensure human rights education for every child.

Formulate time bound refresher courses in Human Rights Education to build and strength capability of teachers and continue with the task of adapting text books with human rights contents.

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National Human Rights Institutions

SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

During the 2nd UPR cycle, Government of India received 3 recommendations regarding National Human Rights Institutions and accepted only one of them. The 'principles relating to the status of national institutions' (Paris Principles), endorsed by the World Conference on Human Rights and the UN General Assembly, provide for minimum international standards for the establishment of NHRIs. The International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights (ICC), now known as Global Alliance of NHRIs (GANHRI) promotes the establishment and strengthening of National Institutions in conformity with the Paris Principles and uses the Principles as criteria to determine GANHRI membership. The GANHRI Sub-Committee on Accreditation (SCA) has been delegated the task of assessing institutional compliance with the Paris Principles. The Office of High Commissioner for Human Rights of the United Nations is an observer on the SCA and serves as the Secretariat to the GANHRI and its SCA. National Human Rights Commission of India (NHRC) is a founding member of the GANHRI since 1993.

CHALLENGES

ISSUES AND IMPACTS

Composition and Pluralism

The SCA in 2011 noted that 'the provisions in the Protection of Human Rights Act (Amendment) 2006 (PHRA) dealing with the composition of the NHRC are unduly narrow and restrict the diversity and plurality of the board. The requirement for the appointment for the Chair to be a former Chief Justice of the Supreme Court severely restricts the potential pool of candidates. Similarly, the requirement that the majority of members are recruited from the senior judiciary further restricts diversity and plurality. The SCA is of the view that determining the composition of the NHRC- I's senior membership in this way limits the capacity of the NHRC- I to fulfil effectively all its mandated activities.

The same provisions in PHRA continue to be in place and hence severely restricting diversity and plurality in the composition of the Commission. There have been only 6 women as judges in Supreme Court and no woman as the Chief Justice of India and therefore no woman as the chairperson of the NHRC. At present, there is only one woman judge in the Supreme Court. Therefore, as per the current provisions of the Act, there is little possibility for a woman to be the chairperson of the Commission. There has been no woman member in the Commission since 2004 (11 years, 10 months and 17 days). There has been no Muslim member in the Commission since 1997 (over 19 years). There has never been a Muslim chairperson of the Commission. There has never representation of the Tribal community (8.6% (104 million) of India's population) on the Commission. There has also never been a member of the Commission from India's vibrant civil society. Most recently, and disturbingly, the vice-president of the ruling political party has been appointed as NHRC member.

Appointment of the Secretary General and the Director General Investigation from Central Government

As stated in 2006 and repeated again in 2011 by SCA, 'the SCA is not satisfied that the NHRCI has sufficiently addressed the recommendation it made in 2006. The SCA recommends that the NHRCI advocate to amend the PHRA 2006 to remove the requirement that the Secretary General and Director of Investigations be seconded from the Government, and to provide for an open, merit-based selection process. The SCA also remains concerned about the practice of having police officers and former police officers involved in the investigation of human rights violations, particularly in circumstances where the alleged perpetrators are the police.

The situation continues to be the same and the Secretary General and Director of Investigations continue to be seconded from the Government instead of having an independent merit based appointment. Since 2011, five persons have been appointed as Secretary General for very short terms and all of them were seconded from the Government. The last Director General (Investigation) demitted the office in September 2014 and till date the vacancy has not been filled up.

Relationship with Civil Society

The SCA in its recommendations in 2011 regarding NGO Core Groups had noted that 'these mechanisms are not functioning effectively as a means of engagement and cooperation between the NHRCI and civil society defenders'.

The situations have not changed in terms of relationship with the civil society. The Core group on NGO's was reconstituted in 2011 and thereafter two meetings were conducted respectively in 2012 & 2013. It is important to mention here the Commission does not consider CSOs as partners in conceptualising and implementing initiatives but CSOs are merely the participants in programmes organised by the Commission. Last NGO core group meeting was held in July 2016.

The UN Special Rapporteur on the rights to freedom of peaceful assembly and association in a legal analysis in April, 2016 argued that India's FCRA regulating foreign funding is not in conformity with international law and standards. The Commission is yet to exercise its powers under Section 12 which enables the Commission to review laws like FCRA which affects thousands of organisations.

Complaint Handling Function

The SCA in 2011 stated that, 'on the information available, the SCA is unable to determine the veracity of the allegations raised above, however it is clear that there is at least a perception that there are significant delays, as well as ongoing concerns about the use of former police to investigate complaints, including those against the police. The SCA encourages the NHRCI to address these concerns.

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CHALLENGES

Annual Report

The situation continues to remain the same. There are significant delays and police officers are constantly used to investigate complaints, including those against the police. The complaints regarding the violations of rights of human rights defenders are also handled in the same manner as other complaints sent to the Commission even though there is National Focal Point for Human Rights Defenders at the Commission. In a recent case of torture and extra-judicial killing where the commission intervened, in one of the exemplary interventions, Commission passed landmark orders only to be stayed by a high court. It has been over a year now and the Commission has not been able to vacate that stay.

The SCA in 2011 had highlighted the importance of annual reports that it “serve to highlight key developments in the human rights situation in a country and provide public account, and therefore public scrutiny, of the effectiveness of a NHRI”

There is no progress made with regard to this observation. The last annual report made public by the Commission was for the year 2011-2012 and annual reports by the Commission have not been published for the past four years. Further, NHRC is required to submit its annual report to Central government but this provision is not regularly compliant with.

ISSUES AND IMPACTS

RECOMMENDATIONS

The Appointing Committee of the NHRC should take into consideration the contributions to human rights made by each of the eligible former Chief Justices of the Supreme Court of India who are eligible for appointment as Chairperson of the NHRC and vacancy should be fulfilled through a public announcement and call for applications.

Amend Protection of Human Rights Act 1993 and facilitate appointment of new members who have knowledge and experience in human rights and also providing for adequate representation to women, sexual minorities, third gender, religious minorities, Dalits and tribals.

Guarantee complete independence of NHRC by amending the Protection of Human Rights Act 1993 to enable it to implement its orders/recommendations.

All thematic national commissions should also have their Chairpersons included as 'deemed members' of the NHRC through an amendment to Sec 3(3) of the PHRA and that this change should also be reflected at the state level in State Human Rights Commissions (SHRC).

The Secretary General and Director of Investigations should be appointed following an open, merit-based selection process and should not be seconded from the Government.

The practice of having police officers and former police officers involved in the investigation of human rights violations, particularly in circumstances where the alleged perpetrators are the police, should be immediately withdrawn.

NHRC should publish all pending annual reports immediately and put a system in place to ensure that annual reports are not delayed.

NHRC should ensure that whenever it views that complaints filed before it have to be transferred to the SHRC for disposal, that the SHRC should have a full commission with Chairperson and two Members.

NHRC should make sure that the complainant is never called to the police station or any other office of the respondent directly or indirectly and ridiculed or threatened by the respondent for having approached the NHRC with the complaint.

NHRC should use its powers under Section 12 which enables the NHRC to review laws and undertake a detailed analysis pertaining to the FCRA which affects thousands of organisations. The NHRC should also seriously consider placing its analysis before the Supreme Court of India where FCRA is being challenged by civil society groups.

The Government of India should ensure through its 'parent ministries' that all National Human Rights Institutions in India are encouraged to become members of the Global Alliance of NHRIs and closely adhere to Paris Principles in their respective NHRIs. The goal should be to rapidly build robust, effective, plural, transparent and accountable NHRIs in India.

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Fact Sheet prepared by People's Watch (Member, WGHR), HRDA-India and All India Network of Individuals and NGOs working with National and State Human Rights Institutions (AiNNI) for Working Group on Human Rights in India and the UN (WGHR)

COLLABORATION WITH UN MECHANISM

SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

Among the various recommendations made to India during UPR I in 2008 and UPR II in 2012, India accepted recommendation no: 4 in UPR I made by Ghana to encourage enhanced cooperation with human rights bodies and all relevant stakeholders towards the attainment of internationally recognized human rights goals. India accepted recommendation no: 70 made by Lao People's Democratic Republic during UPR II to cooperate with the UN and other International Organisations and share good experiences and practices with other countries in order to overcome the remaining challenges. While seeking election to the Human Rights Council for the term 2011-2014, India voluntarily made pledges to the UN General Assembly and committed to continue to engage constructively in the deliberations of the Human Rights Council, its subsidiary bodies and mechanisms, including norm setting in the field of human rights. In October 2014 India was re-elected to the UN's main human rights body for the period of 2015-17. After the re-election, India again committed that its focus is to ensure that the "idea behind creating the Human Rights Council is actually implemented in practice."

TREATY BODIES

As per UPR I Recommendation no: 4 and UPR II Recommendation no: 70 and its 2011 pledge, India committed to continue its constructive engagement with international human rights bodies. India has ratified many international human rights instruments. India has, however, not yet ratified several major human rights and humanitarian instruments. India has not ratified the Convention against Torture and its Optional Protocol; the Convention on the Rights of Migrant Workers and their families or the Optional Protocol to the Covenant on Economic, Social and Cultural Rights and the Convention for the Protection of All Persons from Enforced Disappearances. India is not a party to the Geneva Convention, its additional protocols and the Conventions relating to refugees and stateless persons. India has not ratified numerous ILO Conventions on the abolition of child labour; on the rights of indigenous and tribal people in Independent Countries and on the Rights of Domestic Workers. The international legal obligation undertaken by India under the various human rights conventions is not only to respect the prescribed rights and prohibitions, but also "to ensure" that they are enforced on the ground. The Vienna Convention on the Law of Treaties requires signatories to abide by the letter and spirit of the treaty even if not ratified.

SPECIAL PROCEDURES

During UPR I India accepted recommendation no: 14 to extend a standing invitation to special procedures. In UPR II India accepted recommendation no: 66 made by Belgium to continue its cooperation with Special Procedures and accept requests for visits from Special Rapporteurs.

India's National Report for Universal Periodic Review III put on its website for comments of civil society states that India has in place a standing invitation to Special Rapporteurs to visit the country at a mutual convenient time. India has accepted the visits of nine Special Procedures since 2000. The Special Rapporteur on violence against women, Rashida Manjoo visited India from 22 April to 1 May 2013. Since that time a gap of three years followed until the Special Rapporteur on Adequate Housing, Ms. Leilani Farha, visited India in April 2016. As per latest information, already fourteen requests, including five reminders, from the UN seeking permission for its Special Mechanisms are pending with the Indian Ministry of External Affairs. The mandate holders who are consistently sending requests for visits but have not met with a positive response from India are: special rapporteurs on torture; the working group on enforced or involuntary disappearances; extreme poverty and human rights; independence of judges and lawyers and working group on people of African descent.

Several special procedures have received a positive response but their missions to India have not been scheduled. These are the Special Rapporteur on sale of children, child prostitutions and child pornography and the Working group on Arbitrary Detention. There also seven other Special Procedures who have made a first request for mission but have not yet received a response from India.

India accepted the recommendation no 15 in UPR I cycle in 2008 made by Switzerland to receive as soon as possible the Special Rapporteur on the question of torture but did not accept recommendation no: 69 made by Hungary during the II UPR in 2012 which said allow the visit of the Special Rapporteur on Torture, whose request had been in line with India's standing invitation issued in 2011 to all Special Procedures of the HRC. The request of the Special Rapporteur on Torture has been pending before the Government of India for 20 years. The first request was made in 1993, followed by reminders. Custodial torture remains frequent in India. Attempts were made to frame an anti-torture bill but it was not passed in the Indian Parliament. The prohibition against torture is now considered a peremptory norm in international law, meaning all states must prevent and punish all acts of torture, notwithstanding their ratification of the CAT. Contrary to all these facts, the government of India has not responded to the requests nor felt the need to explain their reluctance to accept the visit of the UN Special Rapporteur on Torture.

India's response to communications, an important part of the work of UN Special Rapporteurs, is also unsatisfactory. For example, Mr. Maina Kiai, United Nations Special Rapporteur on the rights to freedom of peaceful assembly and of association in his report (Communications: May 1, 2011 to February 28, 2016) has expressed regret at not having received responses to his communications and reiterated that he views replies to his communications as an essential feature of Government cooperation with his mandate. He considers responses to his communications as an important part of the cooperation of Governments with his mandate and urges the authorities to comply with Human Rights Council resolutions 24/5 (2013), 21/16 (2012) and 15/21 (2010).

India's response to country mission and thematic reports of UN Special Rapporteurs is often hostile and unconstructive often accusing the Rapporteurs of having exceeded their mandates. The response to the report of Rashida Manjoo, the UN Special Rapporteur on violence against women when she presented her report to the Human Rights Council in 2014, was particularly harsh and unhelpful. The United Nations Human

SPECIAL PROCEDURES

Rights Council's (UNHRC) Special Rapporteur on minority issues, Ms. Rita Izsák-Ndiaye presented her report on caste-based discrimination at the UNHRC on 15th March 2016. India objected to the report of the Special Rapporteur on minority issues on 28 January 2016 by saying that the report "was a breach of the SR's mandate". India pointed out that when Izsák-Ndiaye's 'mandate' was extended on March 2015, caste was not covered as per the categories of minorities. The Special Rapporteur pointed out that a "guidance note" of the UN secretary general on racial discrimination and the protection of minorities in March 2013 "explicitly recommended that the UN should focus attention on caste-based discrimination and related practices". The Special Rapporteur further argued from the report that, the SR's report notes that "CASTE DISCRIMINATION AND CASTEISM" directly affect the health of the discriminated, citing an Indian study which "demonstrated stark disparities between Dalit and non-Dalit women in terms of life expectancy and access to prenatal and postnatal care".

REPORTING OBLIGATIONS

India's reporting record with UN Treaty Bodies is dismal. India's reports are overdue for periods ranging from four to over twenty years. The most egregious is the long overdue report to the Human Rights Committee (HRC). India last submitted a report to the HRC in 1995. India last submitted a report to the Committee on the Elimination of Racial Discrimination in 2006; to the Committee on Economic, social and cultural rights in 2008 and to the Committee on the Rights of the Child in 2012 and to the Committee on the Elimination of Discrimination against Women in 2012.

RECOMMENDATIONS

Fulfil India's obligations under all the international human rights treaties that it has ratified, and amend all national laws and regulations that are not in full compliance with these treaties.

India should sign and ratify the remaining human rights treaties and Optional Protocols

The implementation of several the international human rights treaties, that India has ratified, have been made conditional by declarations and reservations. India should, in the interest of respecting the object and purpose of the relevant treaties, withdraw these declarations and reservations.

India should follow the regular reporting deadlines consistent with the spirit of engagement undertaken by it in each of the treaties.

In keeping with the spirit of India's open invitation to the Special Procedures, India should ensure regular visits of SRs to India, including, with priority, mandates that have already made repeated requests, including the SR on torture whose request to visit has been pending since 1993.

Strengthen co-operation with the UN Special Procedures, including the communications procedure.

Fully cooperate and constructively interact with the UN treaty bodies, including timely submission of reports and implementation of concluding observations.

India should ratify all outstanding human rights treaties including the Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment and its Optional Protocol; the Optional Protocol to the Covenant on Economic, Social and Cultural Rights and the International Convention for the Protection of All Persons from Enforced Disappearance, without making any reservation or declarations.

Accede to the Rome Statute of the International Criminal Court without making any declaration amounting to a reservation and implement it effectively into national law.

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