

IN THE SUPREME COURT OF INDIA

Civil Original Jurisdiction

Writ Petition (Civil) 738 of 2016

In the matter of:

Dr Ashwani Kumar

Union of India & Anr.

① Promise

② Excuse

③ CDC amendments not an alteration  
select Committee / Home Ministry stand / NHRC

④ ~~Republic of India~~ Act on Torture <sup>...Petitioner</sup>

Versus

⑤ All states in favour. not unions. Pabani-  
way water - less Art-253  
...Respondents

⑥ where says the sum

Paper Book

⑦ Executive Act.

(for index please see inside)

Documents filed by the Amicus Curiae (Mr Colin Gonsalves, Sr. Adv.)

① 2008: being processed — (2)

② Pledge: 2011: — 6, 8, 9

③ UPR(11): 2012: 11, 18 →.

④ Report of working group: 2012: 30, 35, 38, (43),

⑤ UPR(3): 2017: 68, 75, 77,

⑥ Global <sup>Trend</sup> ~~Trend~~: — (90)

⑦ Case law — (91)

✓ • Despite constitution / statutes torture growing — (91) →

✓ • Fallen on deaf ears — (92)

Art 253: Parliament has the exclusive right - to make law  
to implement a treaty

Art 51: State shall foster respect  
for treaty

1984: Unanimously Adopted.  
Oct 1997: Signed by India.

Dated 09.02.2017

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## General Assembly

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HUMAN RIGHTS COUNCIL  
Eighth session  
Agenda item 6

### UNIVERSAL PERIODIC REVIEW

Report of the Working Group on the Universal Periodic Review

**India**

<sup>2</sup>  
Addendum

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

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

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

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

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

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



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



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

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United Nations

A/65/758



## General Assembly

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Agenda item 112 (c)

**Elections to fill vacancies in subsidiary organs and  
other elections: election of fifteen members of the  
Human Rights Council**

### **Note verbale dated 16 February 2011 from the Permanent Mission of India to the United Nations addressed to the President of the General Assembly**

The Permanent Mission of India to the United Nations presents its compliments to the Office of the President of General Assembly and has the honour to recall that India has presented its candidature to the Human Rights Council for the term 2011-2014, for which the elections will be held in New York in May 2011.

The Permanent Mission of India would like to inform that India's candidature to the Human Rights Council has already been endorsed by the Asian Group and has the honour to transmit an aide-memoire containing the voluntary pledges and commitments of India (see annex), in accordance with resolution 60/251 of the General Assembly.



**Annex to the note verbale dated 16 February 2011 from the Permanent Mission of India to the United Nations addressed to the President of the General Assembly**

**Voluntary pledges and commitments by India**

1. India is seeking election to the Human Rights Council for the term 2011-2014 at elections to be held by the United Nations General Assembly in New York in May 2011.

2. India has a long and consistent tradition of promoting and protecting human rights. It was privileged to be in the forefront of the struggle against apartheid even before its independence. India's commitment to promoting and protecting human rights flows from the realization that in a truly pluralistic society, the growth and well-being of citizens can only be guaranteed through a culture of promotion and protection of human rights.

3. The Indian Constitution enshrines India's commitment to human rights by guaranteeing to its citizens fundamental civil and political rights, as also the State's obligations to economic, social and cultural rights through special provisions for their progressive realization and enforcement. In keeping with this commitment, India has taken several important initiatives in recent years that are particularly aimed at human development and empowerment. India has, for instance, recently decided to become party to International Labour Organization (ILO) Convention 182 on the worst forms of child labour. In 2010, the Government introduced in Parliament the Protection of Women Against Sexual Harassment at Workplace Bill covering both organized and unorganized sectors. In 2009, the Right to Education Act was enacted, which introduced, for the first time since the country's independence, a new fundamental right in the Constitution. This Act, which has already come into effect, secures the right of children to free and compulsory education in a neighbourhood school. In 2008, a Constitution amendment bill was introduced in Parliament to reserve for women nearly one third of seats in the Lower House of Parliament and the state legislative assemblies for a period of 15 years. The Upper House of Parliament passed this bill in 2010. This followed an earlier important initiative for the empowerment of women, which reserved one third of all seats for women in urban and local self-government, and brought over one million women at the grassroots level into political decision-making. During 2008, a historic forest rights legislation came into force that recognizes and confers rights on traditional forest-dwelling communities. In 2007, the National Commission for the Protection of Child Rights was established, in keeping with the commitment that had been made by India. The mandate of the Commission is to ensure that all legislative and administrative measures are in consonance with the child rights perspective as enshrined in the Constitution of India and the Convention on the Rights of the Child. In 2006, the landmark National Rural Employment Guarantee programme was launched to enhance the livelihood security for the poor. The programme legally guarantees 100 days of wage employment every year to adult members of rural households who volunteer to do unskilled manual work. During the same year, as a mark of India's commitment to eliminate child labour, a ban on employment of children under 14 years as domestic help or at eateries came into force in the country. In 2005, the Protection of Women from Domestic Violence Act was enacted by the Indian Parliament. The Act provides immediate and emergency

relief to women in situations of domestic violence. During the same year, the historic Right to Information Act was enacted and came into force.

4. In addition, the independent and impartial Indian judiciary has, over the years, delivered far-reaching pronouncements on the protection and promotion of human rights. One of the significant measures taken by the Supreme Court of India is the concept of public interest litigation, by which the Supreme Court can be moved by any individual or group of persons invoking the question of public importance. Another example is the Supreme Court's far-reaching judgment in the *Vishakha v. State of Rajasthan (1997)* case, in which the Court ruled that the provisions of international human rights instruments to which India is a Party may be read into the fundamental rights guaranteed in the Indian Constitution, even in the absence of relevant enabling domestic legislation. The Supreme Court has also recognized the justiciability of some economic and social rights as an extension of the right to life. Separately, the National Human Rights Commission — a powerful, independent body that is accredited as an A-status institution by the International Coordinating Committee of National Human Rights Institutions — monitors human rights developments in India and shares its experience and expertise with its counterparts in other countries. Further, the free and independent media in India plays a crucial role in promoting respect for, and monitoring of, human rights. The civil society in India is among the most vibrant anywhere the world.

5. India has been a consistent supporter of the United Nations human rights system, and commitment to the promotion and protection of human rights is ingrained in its domestic and foreign policies. India actively participated in the drafting and adoption of the Universal Declaration of Human Rights in 1948, during which Dr. Hansa Mehta, a Gandhian social worker who had led the Indian delegation, made important contributions. Ever since, India has been a keen participant in deliberations on human rights in international forums and in the development of widely accepted international norms. India is Party to most core international human rights instruments and served two consecutive terms, during 2006-2007 and 2007-2010, as an active and constructive member of the Human Rights Council. India was one of the first countries to be reviewed under the universal periodic review (UPR) mechanism of the Human Rights Council in April 2008. In keeping with its traditional commitment to human rights and values, India actively participated in all sessions, in a constructive and inclusive manner, with a view to enhancing the effectiveness of the Council in promoting and protecting human rights the world over. Our approach was guided by our firm belief that the objectives of the Council can be best pursued only through dialogue and cooperation. India is a democratic, multi-ethnic, multireligious, multilingual and multicultural country that has consistently demonstrated in practice its commitment to human rights and fundamental freedoms, and whose presence on the Human Rights Council would continue to bring a perspective of pluralism, moderation and balance to straddle any divide or difference in the Council.

6. Against this backdrop, India voluntarily makes the following pledges and commitments:

- (i) India shall continue to uphold the highest standards in the promotion and protection of human rights;
- (ii) India shall continue to strive for the full realization of civil, political, economic, social and cultural rights, including the right to development;

(iii) India shall continue to work for worldwide promotion and protection of human rights based on the principles of cooperation and genuine dialogue;

(iv) India shall continue to cooperate with other United Nations Member States, especially developing countries, least developed countries and small island States, upon request, in their implementation of human rights obligations through capacity-building by way of technical cooperation, human rights dialogues and exchange of experts;

(v) India shall continue to strive to make the Human Rights Council a strong, effective and efficient body, capable of promoting and protecting human rights and fundamental freedoms for all;

(vi) India shall 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;

(vii) India shall continue to support the Office of the United Nations High Commissioner for Human Rights, including through regular voluntary contributions;

(viii) India shall consider extending a Standing Invitation to Special Procedures of the Human Rights Council;

(ix) India shall continue to cooperate with Special Procedures and participate constructively in reviewing and strengthening the system of Special Procedures and other expert mechanisms of the Council;

(x) India remains committed to implementing the recommendations that enjoyed its support during the first cycle of the UPR, as also to participating in the second cycle of the UPR in an open and constructive manner;

(xi) India remains committed to ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, to which it is a signatory;

(xii) India remains committed to ratifying the International Convention for the Protection of All Persons from Enforced Disappearances, to which it is a signatory;

(xiii) India shall continue to cooperate with United Nations human rights treaty bodies and contribute constructively towards the reform of the United Nations human rights treaty bodies system;

(xiv) India shall continue to abide by its national mechanisms and procedures to promote and protect the human rights and fundamental freedoms of all its citizens;

(xv) India shall maintain the independence, autonomy as well as genuine powers of investigation of national human rights bodies, including its National Human Rights Commission, National Commission for Women, National Commission for Protection of Child Rights, National Commission for Minorities, National Commission for Scheduled Castes and Scheduled Tribes and National Commission for Backward Classes, as mandated by the Indian Constitution and national legislations;

(xvi) India shall continue to promote the social, economic and political empowerment of women in India by affirmative actions, gender-mainstreaming in national planning, gender-budgeting and formation of women self-help groups.

India shall continue to work towards elimination of discrimination and violence against women through legislative measures as well as effective implementation of existing policies;

(xvii) India shall continue to support domestic and international processes that seek to advance women's rights, gender equality and the rights of the child;

(xviii) India shall continue to foster a culture of transparency, openness and accountability in the functioning of the Government, as enacted in its Right to Information Act;

(xix) India shall continue to foster genuine participation and effective involvement of the civil society in the promotion and protection of human rights.



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## General Assembly

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### Human Rights Council

Working Group on the Universal Periodic Review

Thirteenth session

Geneva, 21 May–4 June 2012

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

**India**

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## I. Introduction

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

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

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

## II. Methodology

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

5. The process has been broad and inclusive involving concerned Ministries and Departments of the Government of India, including Ministry of External Affairs, Ministry of Home Affairs, Ministry of Social Justice and Empowerment, Ministry of Minority Affairs, Ministry of Defence, Ministry of Consumer Affairs, Food and Public Distribution, Ministry of Health and Family Welfare, Ministry of Housing and Urban Poverty Alleviation, Ministry of Human Resource Development, Ministry of Labour and Employment, Ministry of Law and Justice, Ministry of Panchayati Raj, Ministry of Rural Development, Ministry of Statistics and Programme Implementation, Ministry of Tribal Affairs, and Ministry of Women and Child Development (MWCD). Planning Commission has also been consulted.

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

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

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

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

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

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

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

- The Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006 rests forest rights and occupation with forest dwelling tribals and other forest dwellers.
- In 2005, the landmark Mahatma Gandhi National Rural Employment Guarantee Act was passed and the programme launched in 2006 to confer livelihood right on the poor.
- The Protection of Women from Domestic Violence Act 2005 came into force in 2006.
- During 2005, the historic Right to Information Act (RTI) was enacted.

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

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

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

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

### **Transparency and good governance**

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

#### **1. Right to Information Act**

16. To increase transparency in the functioning of Government and accountability in public life, and expanding the ambit of Article 19(1)(a) on the Freedom of Speech and Expression, the Government brought forward the historic Right to Information Act, 2005. The Act has a wide reach, covering the Central and State Governments, Panchayati Raj Institutions, local bodies, as well as recipients of Government grants. It has given citizens access to information.

## 2. Citizens' Charters

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

## 3. E-Governance

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

## IV. Civil and political rights

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

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

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

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

### B. Recent developments/issues

22. India has borne the brunt of terrorist activities over the last three decades from across the border. Insurgency in some parts has added another dimension. Terrorists and insurgents have taken advantage of our open and democratic society to perpetrate violence and killings with deleterious effect on the population and on their enjoyment of human rights. For e.g. the 26/11/2008 and 11/7/2006 terrorist attacks in Mumbai claimed several hundred lives and injured many more. Combatting these challenges has been a major priority since the threat they pose are existential. However, we are enthused by those insurgent groups and individuals, who have renounced violence and come forward to pursue the path of dialogue with the Government.

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

committed to meet these threats with compassion, people-oriented development and resolve.

### C. Armed/security forces and human rights

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

25. This Act is considered necessary to deal with serious terrorist and insurgency/militancy situation arising in certain parts of the country and uphold the duty of the state to protect and secure its citizens. It provides necessary powers, legal support and protection to the Armed Forces for carrying out proactive operation against the terrorists in a highly hostile environment. An analysis of the ground realities shows that the violence levels and the fighting ability of terrorists have reduced over the years. Nevertheless, they still possess sophisticated weapons and modern communication equipment and the terrorist infrastructure across the borders is still active. The terrorists continue to intimidate the public. In such a challenging environment, where the very lives of its citizens and the unity and integrity of India is at stake, as long as deployment of armed forces is required to maintain peace and normalcy, AFSPA powers are required. However, it is pertinent to point out that the extension of declaration of "disturbed areas" is a subject matter of periodic review in consultation with the State Government and security agencies.

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

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

### D. Death penalty

28. In India, the death penalty is awarded in the 'rarest of rare' cases. The Supreme Court has restricted the use of death penalty only where the crime committed is so heinous as to 'shock the conscience of society'. Indian law provides for all requisite procedural safeguards. Juvenile offenders cannot be sentenced to death under any circumstances and there are specific provisions for pregnant women. Death sentences in India must also be confirmed by a superior court. The President of India in all cases, and the Governors of States under their respective jurisdictions, have the power to grant pardons, reprieves,



respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence. For instance, 13 mercy petitions were decided between 1.11.2009 and 23.11.2012 of which 10 were commuted to life imprisonment and 3 rejected. The last death sentence in India was carried out in 2004.

#### **E. Torture**

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

#### **F. Detention and enforced disappearances**

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

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

#### **G. Access to justice and legal aid**

32. In order to ensure greater access to justice for the cross-section of the population, India has taken important strides in this direction. The National Legal Services Authority (NALSA) was constituted in 1987 under the Legal Services Authorities Act, 1987 to provide free legal services to the weaker sections of the society and to organize Lok Adalats for amicable settlement of disputes. In every State, State Legal Services Authority and District Legal Services Authority have been constituted to give effect to the policies and directions of the NALSA. Until March 31, 2009, about 9.7 million people have benefited through legal aid in which about 1.4 million persons belonging to Scheduled Castes and 464,000 persons of Scheduled Tribe communities were beneficiaries. More than 1 million people were women and about 235,000 people in custody were also benefitted. About

Recommendation	Position	Full list of themes	Assessment/comments on level of implementation
<b>Right or area: 2.1. Acceptance of international norms</b>			
138.1. Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the International Convention for the Protection of All Persons from Enforced Disappearance and the Statute of the International Criminal Court ( <u>Spain</u> ); <b>Source of position:</b> A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1 - Para. page 3 <b>Comments:</b> A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)	Supported/ Noted	2.1 Acceptance of international norms 12.5 Prohibition of torture and cruel, inhuman or degrading treatment 13.2 Enforced disappearances 20.3 International humanitarian law <b>Affected persons:</b> - disappeared persons - general	



Recommendation	Position	Full list of themes	Assessment/comments on level of implementation
<p>138.5. Continue efforts to accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as its optional protocol, and the International for the Protection of All Persons from Enforced Disappearances; and ratify ILO Conventions No. 169 and no. 189 (Iraq);</p> <p><u>Source of position:</u> A/HRC/21/10 - Para. 138 &amp; A/HRC/21/10/Add.1 - Para. page 3</p> <p><u>Comments:</u> A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)</p>	<p><b>Supported/Noted</b></p>	<p>2.1 Acceptance of international norms</p> <p>12.5 Prohibition of torture and cruel, inhuman or degrading treatment</p> <p>13.2 Enforced disappearances</p> <p>33 Indigenous peoples</p> <p>23.1 Right to work</p> <p>23.2 Right to just and favourable conditions of work</p> <p><b>Affected persons:</b></p> <ul style="list-style-type: none"><li>- disappeared persons</li><li>- general</li><li>- migrant workers</li></ul>	
<p>138.10. Accede to the ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; ratify the Statute of the International Criminal Court and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the ILO Convention No. 189 concerning Decent Work for Domestic Workers (Uruguay);</p> <p><u>Source of position:</u> A/HRC/21/10 - Para. 138</p>	<p><b>Noted</b></p>	<p>2.1 Acceptance of international norms</p> <p>12.5 Prohibition of torture and cruel, inhuman or degrading treatment</p> <p>5.2 Institutions &amp; policies - General</p> <p>30.3 Children: protection against exploitation</p> <p>20.3 International humanitarian law</p> <p>16 Right to an effective remedy, impunity</p> <p>34 Migrants</p> <p>23.1 Right to work</p> <p>23.2 Right to just and favourable conditions of work</p> <p><b>Affected persons:</b></p> <ul style="list-style-type: none"><li>- general</li><li>- children</li><li>- migrant workers</li></ul>	

Recommendation	Position	Full list of themes	Assessment/comments on level of implementation
138.13. Ratify the International Convention for the Protection of All Persons from Enforced Disappearances, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the Rome Statute of the International Criminal Court (Austria); <b>Source of position:</b> A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1 - Para. page 3 <b>Comments:</b> A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)	Supported/ Noted	2.1 Acceptance of international norms 12.5 Prohibition of torture and cruel, inhuman or degrading treatment 13.2 Enforced disappearances 16 Right to an effective remedy, impunity 20.3 International humanitarian law <b>Affected persons:</b> - disappeared persons - general	
138.14. Ratify the Rome Statute of the International Criminal Court, including its Agreement on Privileges and Immunities (Slovakia ); <b>Source of position:</b> A/HRC/21/10 - Para. 138	Noted	2.1 Acceptance of international norms 16 Right to an effective remedy, impunity 20.3 International humanitarian law <b>Affected persons:</b> - general	

Recommendation	Position	Full list of themes	Assessment/comments on level of implementation
<p>138.18. Sign the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol and ratify the International Convention for the Protection of All Persons from Enforced Disappearance (Portugal);</p> <p>Source of position: A/HRC/21/10 - Para. 138 &amp; A/HRC/21/10/Add.1 - Para. page 3</p> <p>Comments: A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India: and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)</p>	Supported/ Noted	<p>2.1 Acceptance of international norms</p> <p>21 Economic, social &amp; cultural rights - general measures of implementation</p> <p>16 Right to an effective remedy, impunity</p> <p>12.5 Prohibition of torture and cruel, inhuman or degrading treatment</p> <p>5.2 Institutions &amp; policies - General</p> <p>13.2 Enforced disappearances</p> <p>Affected persons:</p> <ul style="list-style-type: none"><li>- disappeared persons</li><li>- general</li></ul>	
<p>138.24. Ratify, in the shortest time, the International Convention for the Protection of All Persons from Enforced Disappearance as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and adopt related internal legislation (France);</p> <p>Source of position: A/HRC/21/10 - Para. 138</p>	Noted	<p>2.1 Acceptance of international norms</p> <p>12.5 Prohibition of torture and cruel, inhuman or degrading treatment</p> <p>13.2 Enforced disappearances</p> <p>5.1 Constitutional and legislative framework</p> <p>Affected persons:</p> <ul style="list-style-type: none"><li>- disappeared persons</li><li>- general</li></ul>	
<p>138.26. Ratification of ILO Conventions Nos. 138 concerning Minimum Age for Admission to Employment; 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; 169 concerning Indigenous and Tribal Peoples in Independent Countries; 155 concerning Occupational Safety and Health and the Working Environment and 170 concerning Safety in the use of Chemicals at Work (Ghana);</p> <p>Source of position: A/HRC/21/10 - Para. 138</p>	Noted	<p>2.1 Acceptance of international norms</p> <p>30.3 Children: protection against exploitation</p> <p>33 Indigenous peoples</p> <p>23.1 Right to work</p> <p>23.2 Right to just and favourable conditions of work</p> <p>Affected persons:</p> <ul style="list-style-type: none"><li>- general</li><li>- children</li><li>- indigenous</li></ul>	

Thematic list of recommendations

Recommendation	Position	Full list of themes	Assessment/comments on level of implementation
138.28. Ratify Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the ILO Conventions no. 138 and 182 concerning child labour ( <u>Sweden</u> ); Source of position: A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1 - Para. page 3 Comments: A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India, and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)	Supported/ Noted	2.1 Acceptance of international norms 12.5 Prohibition of torture and cruel, inhuman or degrading treatment 30.3 Children: protection against exploitation Affected persons: - children	
<b>Right or area: 12.4. Death penalty</b>			
138.95. Maintain de facto moratorium on executions and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights with a view to definitive abolishment of the death penalty ( France ); Source of position: A/HRC/21/10 - Para. 138	Noted	12.4 Death penalty 2.1 Acceptance of international norms 5.2 Institutions & policies - General Affected persons: - general	
<b>Right or area: 2.1. Acceptance of international norms</b>			
138.101. Consider adhering to the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty ( Portugal ); Source of position: A/HRC/21/10 - Para. 138	Noted	2.1 Acceptance of international norms 12.4 Death penalty 5.1 Constitutional and legislative framework Affected persons: - general	

Recommendation	Position	Full list of themes	Assessment/comments on level of implementation
<b>Right or area: 2.1. Acceptance of international norms</b>			
<p>138.3. Expedite the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, and adopt robust domestic legislation to this effect (<u>United Kingdom of Great Britain and Northern Ireland</u>);</p> <p><b>Source of position:</b> A/HRC/21/10 - Para. 138 &amp; A/HRC/21/10/Add.1 - Para. page 3</p> <p><b>Comments:</b> A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)</p>	Supported/ Noted	<p>2.1 Acceptance of international norms</p> <p>12.5 Prohibition of torture and cruel, inhuman or degrading treatment</p> <p>Affected persons: - general</p>	
<p>138.4. Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and end impunity for security forces <u>accused of committing human rights violations</u> (<u>United States of America</u>);</p> <p><b>Source of position:</b> A/HRC/21/10 - Para. 138 &amp; A/HRC/21/10/Add.1 - Para. page 3</p> <p><b>Comments:</b> A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)</p>	Supported/ Noted	<p>2.1 Acceptance of international norms</p> <p>12.5 Prohibition of torture and cruel, inhuman or degrading treatment</p> <p>16 Right to an effective remedy, impunity</p> <p>Affected persons: - general</p>	



Recommendation	Position	Full list of themes	Assessment/comments on level of implementation
<p>138.6. Accelerate its domestic procedure for ratification including the adoption of the Prevention against Torture Bill by its Parliament (<u>Republic of Korea</u>);</p> <p><u>Source of position:</u> A/HRC/21/10 - Para. 138 &amp; A/HRC/21/10/Add.1 - Para. page 3</p> <p><u>Comments:</u> A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)</p>	Supported	<p>2.1 Acceptance of international norms</p> <p>12.5 Prohibition of torture and cruel, inhuman or degrading treatment</p> <p>5.1 Constitutional and legislative framework</p> <p>Affected persons:</p> <p>- general</p>	
<p>138.7. Ratify promptly the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (<u>Italy</u>);</p> <p><u>Source of position:</u> A/HRC/21/10 - Para. 138 &amp; A/HRC/21/10/Add.1 - Para. page 3</p> <p><u>Comments:</u> A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)</p>	Supported	<p>2.1 Acceptance of international norms</p> <p>12.5 Prohibition of torture and cruel, inhuman or degrading treatment</p> <p>Affected persons:</p> <p>- general</p>	

Recommendation	Position	Full list of themes	Assessment/comments on level of implementation
<p>138.8. Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as soon as possible ( Maldives );</p> <p>Source of position: A/HRC/21/10 - Para. 138</p> <p>Comments: A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)</p>	Supported	2.1 Acceptance of international norms 12.5 Prohibition of torture and cruel, inhuman or degrading treatment Affected persons: - general	
<p>138.12. Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and ensure that the instrument of ratification is fully consistent with the Convention ( Australia );</p> <p>Source of position: A/HRC/21/10 - Para. 138 &amp; A/HRC/21/10/Add.1 - Para. page 3</p> <p>Comments: A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)</p>	Supported/ Noted	2.1 Acceptance of international norms 12.5 Prohibition of torture and cruel, inhuman or degrading treatment Affected persons: - general	



Recommendation	Position	Full list of themes	Assessment/comments on level of implementation
138.15. Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment ( Botswana ); Source of position: A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1 - Para. page 3 Comments: A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)	Supported	2.1 Acceptance of international norms 12.5 Prohibition of torture and cruel, inhuman or degrading treatment Affected persons: - general	
138.16. Ratify the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, as well as its Optional Protocol ( Brazil ); Source of position: A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1 - Para. page 3 Comments: A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)	Supported/ Noted	2.1 Acceptance of international norms 12.5 Prohibition of torture and cruel, inhuman or degrading treatment 5.2 Institutions & policies - General Affected persons: - general	

Recommendation	Position	Full list of themes	Assessment/comments on level of implementation
<p>138.17. Expedite ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol (Czech Republic);</p> <p>Source of position: A/HRC/21/10 - Para. 138 &amp; A/HRC/21/10/Add.1 - Para. page 3</p> <p>Comments: A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)</p>	Supported/Noted	<p>2.1 Acceptance of international norms</p> <p>12.5 Prohibition of torture and cruel, inhuman or degrading treatment</p> <p>5.2 Institutions &amp; policies - General</p> <p>Affected persons: - general</p>	
<p>138.29. Accelerate the ratification process of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Indonesia);</p> <p>Source of position: A/HRC/21/10 - Para. 138 &amp; A/HRC/21/10/Add.1 - Para. page 3</p> <p>Comments: A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)</p>	Supported	<p>2.1 Acceptance of international norms</p> <p>12.5 Prohibition of torture and cruel, inhuman or degrading treatment</p> <p>Affected persons: - general</p>	
<b>Right or area: 5.1. Constitutional &amp; legislative framework</b>			

Recommendation	Position	Full list of themes	Assessment/comments on level of implementation
138.32. Conform its national legislation to international norms on the prevention of torture, to speed up the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and receive the Special Rapporteur on Torture ( Switzerland ); Source of position: A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1 - Para. page 3 Comments: A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)	Supported/ Noted	5.1 Constitutional and legislative framework 12.5 Prohibition of torture and cruel, inhuman or degrading treatment 2.1 Acceptance of international norms 3.2 Cooperation with special procedures 5.2 Institutions & policies - General Affected persons: - general	
138.33. Take the necessary measures to ensure that the existing national legislation against torture and cruel and inhuman and degrading treatment incorporates all relevant international standards in this area ( Costa Rica ); Source of position: A/HRC/21/10 - Para. 138	Noted	5.1 Constitutional and legislative framework 12.5 Prohibition of torture and cruel, inhuman or degrading treatment 2.1 Acceptance of international norms 5.2 Institutions & policies - General Affected persons: - general	
138.34. Prioritise the review and implementation of the Prevention Against Torture Bill, ensuring that it complies with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment ( Maldives ); Source of position: A/HRC/21/10 - Para. 138	Noted	5.1 Constitutional and legislative framework 12.5 Prohibition of torture and cruel, inhuman or degrading treatment 2.1 Acceptance of international norms 5.2 Institutions & policies - General Affected persons: - general	

Recommendation	Position	Full list of themes	Assessment/comments on level of implementation
138.36. Consider introducing a new bill to the Parliament, taking into full consideration of the suggestions of the Select Committee, and take further actions towards the ratification of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Timor-Leste); Source of position: A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1 - Para. page 3 Comments: A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)	Supported/ Noted	5.1 Constitutional and legislative framework 12.5 Prohibition of torture and cruel, inhuman or degrading treatment 2.1 Acceptance of international norms Affected persons: - general	
<b>Right or area: 12.5. Prohibition of torture and cruel, inhuman or degrading treatment</b>			
138.119. Guarantee effective access to justice in cases of human rights violations committed by security forces personnel with regard to the use of torture ( Spain ); Source of position: A/HRC/21/10 - Para. 138	Noted	12.5 Prohibition of torture and cruel, inhuman or degrading treatment 15.1 Administration of justice & fair trial 5.3 Political framework & good governance Affected persons: - general	
<b>Right or area: 12.7. Prohibition of slavery, trafficking</b>			
138.107. Accelerate its efforts on combating human trafficking ( Iran ); Source of position: A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1 - Para. page 2	Supported	12.7 Prohibition of slavery, trafficking 5.2 Institutions & policies - General Affected persons: - general	
138.108. Reinforce efforts to protect and rehabilitate the victims of trafficking ( Ukraine ); Source of position: A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1 - Para. page 2	Supported	12.7 Prohibition of slavery, trafficking 5.2 Institutions & policies - General Affected persons: - general	

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United Nations

A/HRC/21/10



## General Assembly

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### Human Rights Council

Twenty-first session

Agenda item 6

Universal Periodic Review

### Report of the Working Group on the Universal Periodic Review\*

India

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\* The annex to the present report is circulated as received.

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## Introduction

1. The Working Group on the Universal Periodic Review (UPR), established in accordance with Human Rights Council resolution 5/1 of 18 June 2007, held its thirteenth session from 21 May to 4 June 2012. The review of India was held at the 8th meeting on 24 May 2012. The delegation of India was headed by Goolam E. Vahanvati, Attorney General of India. At its 13th meeting, held on 30 May 2012, the Working Group adopted the report on India.
2. On 3 May 2012, the Human Rights Council selected the following group of rapporteurs (troika) to facilitate the review of India: Kuwait, Mauritius and Mexico.
3. In accordance with paragraph 15 of the annex to resolution 5/1 and paragraph 5 of the annex to Human Rights Council resolution 16/21 of 25 March 2011, the following documents were issued for the review of India:
  - (a) A national report submitted/written presentation made in accordance with paragraph 15 (a) (A/HRC/WG.6/13/IND/1);
  - (b) A compilation prepared by OHCHR in accordance with paragraph 15 (b) (A/HRC/WG.6/13/IND/2);
  - (c) A summary prepared by OHCHR in accordance with paragraph 15 (c) (A/HRC/WG.6/13/IND/3; and Corr.1).
4. A list of questions prepared in advance by the Czech Republic, Denmark, Germany, Ireland, the Netherlands, Norway, Slovenia, Sweden and the United Kingdom of Great Britain and Northern Ireland was transmitted to India through the troika. These questions are available on the extranet of the UPR.

## I. Summary of the proceedings of the review process

### A. Presentation by the State under review

5. The delegation of India stated that India saw the universal periodic review (UPR) mechanism as one of constructive engagement. The fact that the delegation consisted of experts from various ministries of the Central Government bore testimony to India's commitment to this process.
6. The delegation outlined the methodology used in the preparation of the National Report which included an extensive and inclusive consultation process involving various Ministries of the Government, experts and civil society. The report was posted on the website and made accessible to the general public. Ranbir Singh, Vice-Chancellor of National Law University, Delhi, was given the task of preparing this report with the extensive involvement of various stakeholders.
7. The annexures in the national report highlighted the evolution of fundamental rights in India's Constitution through judicial pronouncements over the years. This reflected a vibrant and evolving Constitution, which placed human rights in the forefront of governance.
8. The delegation highlighted some significant developments in the field of human rights. The Right to Information Act (RTI) had revolutionized the concept of good governance. Several seminal laws brought in a rights-based approach to subjects which were fundamental to human existence, inter alia, work and employment, education and food



security. These included the landmark Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA), the Right to Education Act of 2009 and the National Food Security Bill.

9. Transparency in governance was brought about through the RTI, Citizens Charter and E-governance. The right to approach the Supreme Court for enforcement of fundamental rights was elevated by the Constitution to the status of a fundamental right. Also, enforcement of social, economic and political rights was advanced by the effective use of “public interest litigation”.

10. Terrorism and insurgency posed existential threats. Left-wing extremism and violence was an internal challenge which was being met with resolve coupled with compassion and people-oriented development.

11. The Armed Forces Special Powers Act (AFSPA) 1948 was held to be constitutional by the Supreme Court. Several checks and balances had been introduced with strict guidelines when dealing with terrorists and insurgents, and that violations were dealt with swiftly and transparently. The implementation of this Act remained under constant review.

12. The delegation referred to India’s standing invitation to special procedures of the Council and stated that in 2011 Christoph Heyns, Special Rapporteur on extrajudicial, summary or arbitrary executions, visited India. The Supreme Court and National Human Rights Commission (NHRC) promptly looked into allegations of enforced disappearances. Also, India had been working closely with the United Nations Office on Drugs and Crime to strengthen response against trafficking in persons.

13. For centuries, India had welcomed all religious denominations, minorities and refugees, including the Jewish community which had lived in India for thousands of years without discrimination, and the Zorastrians/Parsis over hundreds of years or, more recently, refugees from Tibet, Sri Lanka, Myanmar and other countries. India’s practices on refugees were far more developed, caring and humane than that provided for in the current international regime.

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

15. India’s efforts in the sphere of social and economic advancement had been significant. Poverty had declined by 9 per cent in a decade. MGNREGA played an extremely crucial role and provided 54 million households with employment in 2010 and 2011. Forty-eight per cent of the employment created was for women. The declining trend in the unemployment rate between the years 2004–05 and 2009–10 was equally visible among Scheduled Castes and Scheduled Tribes and minorities.

16. India was also striving to achieve the Millennium Development Goals. It was on course to meet the universal primary education goals. The infant mortality rate decreased appreciably from 58 per thousand live births in 2005 to 47 in 2010. The maternal mortality rate was down from 254 in 2004 to 212 per 100,000 live births in 2008, though much more needed to be done.

17. The Right to Education Act made primary education a fundamental right and required the State to provide, by law, free and compulsory education to all children of the age of 6 to 14 years. This Act contained several visionary changes, including the requirement that schools must admit a minimum of 25 per cent of children who belong to weaker sections and disadvantaged groups. This was a significant step towards social and cultural integration and elimination of disparities in the country.

18. The success of Government's programmes such as Sarvashiksha Abhiyan has led to high levels of enrolment in schools.
19. Equal emphasis had been placed on children's well-being with enhancement of their food and nutrition through mid-day meals programmes in schools; and also on the availability of teachers and their retention. Civil society had contributed positively in this regard.
20. Rural habitation with access to primary schools had increased from 87 per cent in 2002 to 99 per cent in 2008. Female literacy showed considerable improvement by nearly 50 per cent in the last decade. Marginalized and minority group trends were also converging towards the national average in terms of literacy rate.
21. While the figures of child labour dropped sharply in the last decade, the problem of children who were neither working nor studying continued. In 2007, the National Commission for the Protection of Child Rights was established.
22. With regard to empowerment of women, the delegation stated that over one million of the over 3 million elected local representatives in Panchayats or village-level self-government were women. Gender was being mainstreamed through several initiatives, including gender budgeting in all Government policies and programmes. A National Mission for Empowerment of Women was launched in March 2010.
23. India's programme of affirmative action was unique in scale and dimension. The guarantee of equality in the Constitution was a positive mandate for eradication of inequalities and discrepancies.
24. Several recent steps have been taken to impact positively on the lives of the Scheduled Castes as well as the tribal population. Under the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, as of February 2012, India had settled 2.72 million claims out of the 3.17 million filed, or 86 per cent of the total claims and 1.25 million titles distributed. The Prime Minister's new 15-point programme for the welfare of minorities was being actively pursued. Certain proportion of development projects was being earmarked for minorities' concentration areas.
25. The delegation stated that more than 90 per cent of all households used improved sources of drinking water in 2008–09.
26. The National Food Security Bill was a historic initiative in ensuring food security, as it marked a paradigm shift from welfare to a rights-based approach. People had access to adequate quantity and quality of food at affordable prices, enabling them to live a life of dignity. About two thirds of the population would be entitled to receive subsidized food grains under Targeted Public Distribution System. There was special focus on women, children and other Special Groups.
27. The Public Service Delivery Acts enacted by more than 12 states of India guaranteed specified service standards to the vulnerable sections of the society. "Aadhaar" would give a unique identity to all residents to ensure streamlined and effective access to social and organized infrastructure.
28. The delegation stated that India's establishment of the National Green Tribunal was yet another innovative action widely welcomed internationally.
29. The delegation stated that in 2011, Margaret Sekkagya, Special Rapporteur on the situation of human rights defenders, visited India. It mentioned the Government's active association with civil society and the increasing and important role that civil society and human rights defenders are playing in the area of human rights. The media, civil society and other activists have helped the Government to be vigilant against transgressions. The

National Human Rights Commission strived to strengthen human rights practices and served as the moral compass of the nation.

30. Freedom of religion was guaranteed under article 25 of the Constitution. The problem arose when the act of propagating one's religion transgressed the limits and stopped being voluntary, and instead became coercive or induced. Some states had taken exception to this. These issues could be challenged and the person had every right to approach the courts.

31. The delegation thanked the "troika" countries of Kuwait, Mexico and Mauritius for facilitating the process. It reiterated India's pledge of continued engagement with the United Nations and the Council and that over the years has made several contributions to human rights-related bodies in the United Nations.

32. The delegation stated that India was a huge country and by reason of its area and diversity alone there were bound to be problems. India had the ability to self-correct and redress mechanisms were available. The delegation quoted Mahatma Gandhi who said, "You must not lose faith in humanity. Humanity is an ocean. If a few drops of the ocean were dirty, the ocean does not become dirty", and added that India was indeed a vast ocean. It expressed confidence that India would be able to deliver to every person their full rights and entitlements.

## **B. Interactive dialogue and responses by the State under review**

33. During the interactive dialogue, 80 delegations made statements. Many delegations thanked India for the presentation of its comprehensive national report and expressed appreciation for its engagement with the UPR. Recommendations made during the dialogue are to be found in section II of this report.

34. Slovenia regretted that India had yet to amend the Special Marriage Act to provide for equal rights to property accumulated during marriage, in line with the recommendation made by the Committee on the Elimination of Discrimination against Women (CEDAW). It made recommendations.

35. South Africa commended India for progress achieved in human rights, particularly in ensuring that people in rural areas had access to basic services. It inquired about the strategies and measures to deal with the threat of terrorism. South Africa made recommendations.

36. Spain urged India to continue on the path of democratizing its institutions. It made recommendations.

37. Sri Lanka noted India's achievements in the protection of the rights of women, children, minorities and disadvantaged persons. It praised India for its 11th Five-Year Plan and its rights-based approach to food security. Sri Lanka made a recommendation.

38. Sudan congratulated India for its education law of 2009. It also welcomed the constitutional amendment for women, which has set aside for them one third of the seats in Parliament.

39. Sweden stated that India has not ratified the Convention against Torture (CAT) and International Labour Organization (ILO) conventions No. 138 and 182. It regretted India's measures to limit freedom of expression. Sweden remained concerned by the high rate of maternal mortality in spite of its decline over the past years. Sweden made recommendations.

40. Switzerland stated that early marriages remained a reality despite legislative measures prohibiting such practices. There must be compliance with international standards when maintaining internal security. Switzerland made recommendations.

41. Thailand commended India for taking measures to eliminate discrimination against and to empower marginalized and vulnerable groups. Thailand made recommendations.

42. Timor-Leste noted that the Prevention of Torture Bill had been passed in the Lower House of Parliament. However, the Select Committee of the Upper House identified several shortcomings with the Bill. It highlighted that initiatives had been taken to ensure the protection of women's rights. It made recommendations.

43. Trinidad and Tobago commended India for the National Green Tribunal Act, the Sexual Harassment Bill, 2010, the Right to Education Act, the Scheduled Tribes and other Forest Dwellers Act and the Right to Information Act. It made recommendations.

44. Turkey encouraged India to strengthen the mandate of the national human rights institution and to sign the Second Option Protocol to the International Covenant on Civil and Political Rights (ICCPR). It wished to better understand the implementation of the provisions of the International Covenant on Economic, Social and Cultural Rights (ICESR) on equality and non-discrimination and also requested information on the status of the ratification of CAT.

45. Ukraine requested India to elaborate on measures for persons with special needs, and inquired about the adoption of the Bill on protection of women against sexual harassment in the workplace. It made a recommendation.

46. United Arab Emirates inquired about the measures put in place to confront crimes of trafficking in persons and to what extent were these measures effective. It made a recommendation.

47. The United Kingdom of Great Britain and Northern Ireland inquired about India's response to concerns raised by Special Rapporteurs and treaty bodies over domestic security legislation; noted that India's National Human Rights Commission and civil society had reported a significant numbers of cases torture cases involving police and security authorities; and called on India to continue to safeguard the right of legitimate non-governmental organizations (NGOs) to operate without undue restrictions. It made recommendations.

48. The United States of America raised concern about the stringent application of the Foreign Contribution Regulation Act, which has created significant challenges to the funding of legitimate NGOs, as well as about the widespread impunity. It made recommendations.

49. Uruguay welcomed the progress made for the protection of women; the right to education Act; the rights-based approach to food security; and the reduction of child mortality. It encouraged India to continue its efforts in these areas. Uruguay made recommendations.

50. Uzbekistan noted the positive results achievements in the areas of the protection of women and children's rights as well as the disabled persons. It highlighted the work done for free and compulsory education of children but hoped that more could be done in the area of illiteracy.

51. Venezuela (Bolivarian Republic of) appreciated the progress achieved in the area of socioeconomic development. It commended India for its efforts in transparent management and in strengthening the right to information. Venezuela made recommendations.



52. Viet Nam commended India for its seriousness in implementing the first UPR cycle recommendations. It praised its rapid economic growth, poverty reduction, food security, job creation and improved access to public health and education. Viet Nam made recommendations.

53. Algeria noted India's efforts to improve the protection of workers against exploitation in employment abroad and requested clarification on the contents and policies adopted for this purpose. It made recommendations.

54. Angola paid tribute to India's recent reforms on human rights. It welcomed the signature of CAT, the signature and the ratification of the United Nations Convention against Transnational Organized Crime, as well those measures to ensure increased access to justice. It made a recommendation.

55. Argentina applauded progress achieved in the areas of child protection and in the promotion of free and compulsory education. It made recommendations.

56. Australia noted that, despite India's early ratification of the Convention on the Rights of Persons with Disabilities, disabled children remained the least educated. It expressed regret that India had not ratified CAT and was particularly concerned about the pending Draft Prevention of Torture Bill. It made recommendations.

57. Austria requested to know how India monitored the application of anti-conversion laws in federal states and what measures were taken to ensure that these laws did not infringe on the right to freedom of religion. It made recommendations.

58. Bahrain expressed appreciation for India's programmes on the rights of women and children; the national campaign for empowerment of women and gender equality; and for the measures taken for victims of human trafficking. It made recommendations.

59. Bangladesh congratulated India for the steps taken in the promotion and protection of human rights, and in this regard identified as significant steps the enactment of the Right to Information Act, the Right to Education and the National Food Security Bill.

60. Belarus noted that India had achieved progress in decreasing child mortality and combating human trafficking. It encouraged India to invite the Special Rapporteur on human trafficking. Belarus made a recommendation.

61. Belgium applauded the positive endeavours made by India to promote human rights. It inquired about the specific measures India intended to introduce to improve maternal health and health of children. Belgium made recommendations.

62. Bhutan commended India for its progress in the education sector. It urged India to strengthen efforts in tackling poverty and enhancing access to basic social services.

63. Botswana commended India for the initiatives taken since their first review and in particular the enactment of the Right to Education in line with the Convention on the Rights of the Child (CRC); and ratification of the United Nations Convention against Transnational Organized Crime and its two Protocols. It made recommendations.

64. Brazil welcomed the Right to Education Act and the ruling of the Delhi High Court that the criminalization of homosexuality was a violation of fundamental rights. It welcomed the Protection of Women Against Sexual Harassment at Work Place Bill and India's introduction of a constitutional amendment to ensure women's participation in Parliament. Brazil made recommendations.

65. Canada asked India to provide information as to the status of caste-based discrimination, the reforms under way and progress achieved, particularly with regard to the Christian and Muslim Dalits who were not granted access to affirmative action based on their religion. It noted that India was yet to ratify CAT. It made recommendations.

66. Chad inquired about India's understanding of secularism. Chad made a recommendation.
67. Chile commended the adoption of the National Green Tribunal Act; the Right to Education Act; the policy incorporating a gender perspective and the measures to assist vulnerable castes. It encouraged India to continue its efforts to address discrimination. Chile made recommendations.
68. China appreciated India's efforts to safeguard the rights and interests of women and children, to provide free and compulsory education for children and to reduce its infant and maternal mortality rates. In other areas, China welcomed steps taken protecting employment rights and those of the elderly.
69. Cuba noted India's progress in implementing the recommendations from its first review. It recognized the progress shown in the different areas including rural health. Cuba made recommendations.
70. The Czech Republic expressed regret that ongoing legislative procedures continued to delay India's ratification of CAT. It expressed its appreciation of India's cooperation with international mechanisms. It made recommendations.
71. Ecuador stated that India had made significant changes in human rights in areas which included universal education, empowerment of women, food sovereignty, social inclusion and the fight against discrimination. Ecuador made a recommendation.
72. Egypt expressed interest in India's National Rural Employment Guarantee Act and requested more information. It made recommendations.
73. Finland expressed its appreciation for India's policies and programmes to improve maternal health. However, it raised its concern over maternal deaths due to unsafe abortions. It made recommendations.
74. India stated that the Convention against Torture may only be ratified once the definition of torture was fully reflected in domestic legislation. The Lok Sabha passed the Prevention against Torture Bill in 2010 but the Rajya Sabha referred the Bill to a Select Committee whose report was being examined. Nevertheless, there were sufficient provisions in Indian law prohibiting torture, including the Indian Penal Code. Also, the right to life under article 21 of the Constitution encompassed the right to live with dignity. The provisions in the Constitution and Criminal Procedure Code against self-incrimination, the obligation to produce an arrestee before a magistrate within 24 hours of such arrest and to ensure that the arrestee is informed of the grounds of arrest, provide further safeguards.
75. Freedom of speech and expression was a fundamental right, guaranteed by the Constitution, with accepted restrictions. India's vibrant media bore testimony to this. The Information Technology Act amended in 2011 had no provision to restrict or block Internet contents. Removal of illegal contents, including child pornography, should not be construed as restricting Internet freedom; such restrictions were addressed towards cyber-security, essential for increasing e-commerce and Internet use.
76. The delegation stated that through MGNREGA, over 12 billion person-days of work had been generated with a total expenditure of over US\$ 30 billion, benefitting 54 million families. It also provided a safety net to the 92 per cent of workers who are unorganized, mostly in rural areas.
77. The death penalty was imposed with strong procedural safeguards when life imprisonment appeared inadequate. The President of India and the Governors of the respective states had the power to grant pardons, reprieves, remission or suspension for any offence. Statistics on the death penalty and commutations granted were provided.



78. With regard to the protection of lesbian, gay, bisexual or transsexual (LGBT) persons, the delegation stated that article 15 of the Constitution clearly prohibited discrimination on grounds of religion, race, caste, sex or place of birth. Article 16 provided for equality of opportunity in matters of public employment. The Delhi High Court judgment in 2009 had decriminalized consensual sex between adults of the same sex in private. Transgender persons also had the right to be listed as "other" rather than "male" or "female" on electoral rolls and voter identity cards.

79. The norms of the Right to Education Act and Sarva Shiksha Abhiyaan ensured inclusion of children with disabilities in mainstream education. It made education accessible, ensured physical mapping, educational placement, provision of aids and appliances, training of teachers etc. Of the 3 million children identified, 2.6 million had been enrolled, 20,000 teachers and 24,000 voluntary supporters appointed, 751,000 schools made barrier free.

80. In response to an inquiry about the time frame for passing the Constitutional Amendment Bill reserving one third seats in the Lok Sabha and the State Assemblies for women, the delegation stated that the Rajya Sabha passed the bill in 2010 and it was currently in the Lok Sabha. It was therefore not appropriate for it to comment on the time frame.

81. The adequate and comprehensive legislative provisions existed to protect human rights defenders (HRDs). The highest court of the land could be invoked directly for violation of human rights. NHRC also had several measures focusing on protection of HRDs.

82. With regard to restrictions imposed by the Foreign Contributions Regulation Act, the delegation stated that it welcomed foreign funds for charitable purposes, subject to regulation, to ensure that no money was diverted to terrorist financing or money laundering. This is incumbent on India as a member of the Financial Action Task Force.

83. Regarding the AFSPA, the delegation reiterated that the issue had already been covered in the opening statement.

84. India's federal structure required a bottom-up approach for developing a national plan reflecting a range of views. While the NHRC had been entrusted with this task, it had to be an inclusive process bringing together different strands of policy perspectives. Various ministries had already woven human rights issues into their own action plans.

85. The delegation stated that India recognized the problem of child labour and was committed to progressively eliminating it in a coordinated and sustainable manner. As a result of the approach taken, child labour had declined by 45 per cent in the last five years.

86. The delegation reiterated India's commitment to strengthen implementation of Domestic Violence Act of 2005.

87. Securing equal rights to property acquired during marriage was a complex subject with every religion having its own specific approach to this issue. An amendment to Hindu Marriage Act was before Parliament.

88. The delegation stated that a socio-economic caste census was under way and would take into account multiple dimensions of deprivations for arriving at specific entitlements under Government programmes and schemes.

89. The delegation stated that more than 84 per cent of households had drinking water. According to the Joint Monitoring Programme Report 2012 by WHO and UNICEF, India was on track to achieving its Millennium Development Goal (MDG) target of safe drinking water. To ensure equitable access, specific percentages of the National Rural Drinking Water Programme allocations were earmarked for Scheduled Castes and Tribes

concentrated habitations. The Total Sanitation Campaign of 1999 aimed to ensure sanitation facilities in rural areas to eradicate the practice of open defecation and ensuring clean environment.

90. France inquired about the number of people sentenced to death and the status of their cases. France made recommendations.

91. Germany appreciated India's commitment to implementing the recommendations of the first cycle of the UPR. Germany made recommendations.

92. Ghana urged India to expedite the drawing up of new legislation to replace the Persons with Disabilities Act, 1995, and echoed the concern of the Office of the United Nations High Commissioner for Refugees (UNHCR) about the lack of a national refugee protection framework. Ghana made recommendations.

93. Greece requested further information on the Mahatma Gandhi National Rural Employment Guarantee Act, the Right to Information Act and the Right to Education Act. It made recommendations.

94. The Holy See stated that there were areas of life where implementation of human rights was called for, for example, in reducing the number of people living below the poverty line. The Holy See made recommendations.

95. Honduras expressed concern at the disparity in quality and access to health services between rural and urban areas, as well as over high maternal mortality. Honduras made recommendations.

96. Hungary expressed concerns over child labour and the disparity in enrolment and dropout rates in primary schools. It made recommendations.

97. Indonesia welcomed India's robust legislative and regulatory measures, particularly those aimed at ratifying CAT. It noted with appreciation the enactment of new legislation providing for free and compulsory education. Indonesia made recommendations.

98. The Islamic Republic of Iran praised India's broad consultation process in the preparation of its report and took positive note of the enactment of the National Green Tribunal Act. It made recommendations.

99. Iraq appreciated India's consultative methodology in preparing its national report. It noted the adoption of legislation to protect women from sexual harassment in the workplace, as well as a second law on the national courts. Iraq made recommendations.

100. Ireland stated that only 11 out of 28 states had a State Commissioner for Protection of Child Rights. It considered a comprehensive approach to addressing discrimination in law and in practice. Ireland made recommendations.

101. Italy noted India's human rights challenges which it identified as capital punishment, the functioning of the judiciary, prolonged detentions, potential abuses by police forces, including alleged cases of torture, and sectarian violence against religious minorities. Italy made recommendations.

102. Japan welcomed the adoption of legislation protecting children from sexual offences and the taking into account of treaty-body recommendations when developing anti-discrimination mechanisms. It appreciated steps taken to provide human rights education to teachers, but noted that prejudices against children of specific castes persisted. Japan made recommendations.

103. Kuwait commended the results obtained under India's 11th Action Plan, as well as the adoption of plans to combat poverty and unemployment and to provide free education. Kuwait made recommendations.

104. Kyrgyzstan highlighted and supported India's actions in the protection of children's rights. It requested further information on measures adopted by the Supreme Court to strengthen standards in combating torture. Kyrgyzstan made a recommendation.

105. The Lao People's Democratic Republic commended India's struggle for its social and economic transformation within the framework of a democracy. It noted India's important initiatives to secure human rights at the national, regional and international levels. It made a recommendation.

106. Liechtenstein noted the concern of the Committee on Economic, Social and Cultural Rights (CESCR) at the lack of progress in eliminating traditional practices and provisions of personal-status laws that were harmful and discriminatory to women and girls. Liechtenstein made recommendations.

107. Luxembourg expressed concern at the high maternal mortality rate. It inquired about the steps India intended to take to achieve Millennium Development Goal 5, to end persistent discrimination against women and to combat endemic malnutrition in rural areas. Luxembourg made a recommendation.

108. Malaysia noted that despite insurmountable challenges, India had managed to improve the quality of life of its vast population. It commended India's action on all human rights issues in the United Nations. Malaysia made recommendations.

109. Maldives recognized India's efforts regarding gender equality, and made recommendations.

110. Mauritius recognized the need for India to transform its economy, but invited it to take heed of what Mahatma Gandhi meant when he said that India lives in its villages. It should therefore ensure the participation of local populations in development projects.

111. Mexico noted the progress and efforts made by India to promote and protect human rights. It particularly recognized India's openness to international cooperation through the open and standing invitation to all of the special procedures of the universal system of human rights. Mexico made recommendations.

112. Morocco congratulated India on all the initiatives taken since its first UPR to address different areas of human rights. It made a recommendation.

113. Mozambique stated that India's commitment to human rights was visible in its many achievements and its holistic approach, particularly in the fields of gender equality, the rights of children, the elderly and persons with disabilities, and the rights to health and education.

114. Myanmar noted the adoption of legal measures to protect India's natural resources and environment. Myanmar was keen to learn from India's best practices in poverty eradication and rural development. Myanmar made recommendations.

115. Nepal commended India for the legislative and institutional measures for the promotion and protection of human rights. It also stated that initiatives such as the empowerment of women, was encouraging and efforts to ensure transparency and good governance was commendable. Nepal made a recommendation.

116. The Netherlands acknowledged India's continued commitment to improving its human rights record. It thanked India for responding to its advanced questions. Netherlands made recommendations.

117. Nicaragua noted with satisfaction progress made by India in implementing the recommendations from its first review. It Nicaragua made a recommendation.

118. Norway stated that child labour was preventing children from accessing education. It welcomed the de facto moratorium and public debate on capital punishment. Norway made recommendations.

119. Paraguay noted progress made by India in consolidating policies on human rights, including enacting legislation to protect the environment and to guarantee the right to education. It welcomed India's ratification of the United Nations Convention against Transnational Organized Crime and its two Optional Protocols. Paraguay made a recommendation.

120. The Philippines wished to learn about the National Green Tribunal in promoting and protecting the right to a healthy environment, and the Mahatma Gandhi National Rural Employment Guarantee Act as a development strategy to guarantee the right to work.

121. Portugal welcomed the expansion of the list of banned and hazardous processes and occupations of the Child Labour Act. However, further efforts were needed to tackle this violation of children's rights. It welcomed the de facto moratorium on capital punishment. Portugal made recommendations.

122. Qatar noted the achievements to ensure the rule of law. It applauded the initiatives to guarantee the enjoyment of the right to education. It commended India for its economic plan 2007-2012, adopted to bring about comprehensive development. Qatar made recommendations.

123. The Republic of Korea welcomed new and draft legislation in the areas of education and the protection of women in the workplace. It noted with satisfaction India's invitation to the special procedures mandate holders. It was concerned about the delay in ratifying CAT. It made recommendations.

124. The Russian Federation welcomed measures adopted by India to defend and ensure the rights of vulnerable groups. It made a recommendation.

125. Saudi Arabia commended India for its efforts to improve food security and public health and which had resulted in reduced child and maternal mortality, and reduced cases of polio and HIV. It made recommendations.

126. Senegal noted legislation adopted on women and children's rights, education, employment, access to information, the environment and access to justice; and well as action taken by India to ensure civil and political rights and economic, social and cultural rights. Senegal made recommendations.

127. Singapore supported India's commitment to promoting racial and religious tolerance. It congratulated India on sustaining rapid economic growth, thereby lifting millions of people out of poverty and advancing the rights to food, housing, education and health. Singapore made a recommendation.

128. Slovakia welcomed the steps taken by India towards ensuring greater political participation of women, the establishment of a national commission to protect children's rights and the standing invitation to special procedures. Slovakia made recommendations.

129. Costa Rica highlighted progress made in protecting human rights. It made recommendations.

130. India stated, with regard to ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (CEDAW), that effective legal and constitutional framework to address violations of the rights of individuals existed. The Constitution provided for direct access to individuals to the Supreme Court and the High Courts. Other statutory mechanisms also provided adequate redress.



131. On the Communal Violence Bill, the delegation stated that India was a land of diversity covering all major religions, where minorities enjoyed the highest level of protection. Sporadic acts of violence were dealt with swiftly and effectively. Being a matter of federal polity, the Central Government had to take on board views of all Indian states, some of which believed that the existing laws were adequate to address communal violence, as seen from declining incidence.

132. With regard to the prosecution of Armed Forces, it was emphasized that the Army and paramilitary forces maintained continuous vigilance to prevent human rights violations. The Army established the Human Rights Cell even before the NHRC was established.

133. India's practices with regard to refugees was one of tolerance and understanding, and to provide hospitality and protection to those who approach it.

134. The human rights curriculum in schools and modules to create human rights sensitivity and skill were in place among teachers, public officials and law enforcement agencies.

135. The RTI promoted human rights by enabling any citizen to seek any information from public authorities. This information could include any document, notes and even drafts on Government records. It had not only led to effective enforcement and proper governance but was also used for accessing the courts under articles 32 or 226 of the Constitution.

136. India took serious exception to and rejected totally the intervention that stated that the judiciary lacked transparency. The judiciary had taken an incredible role with regard to enforcement of fundamental rights and had never been accused of not being transparent. The delegation acknowledged that there were aspects of delay, but emphasized that efforts were being made to address this issue.

137. The head of the delegation stated that he represented an India built on the solid foundations laid after independence, a new India, which was confident but not over-confident, a country proud of its strengths and at the same time willing to acknowledge and address weaknesses. It was an India which was self-assured but not arrogant, a country which was sensitive and humane without being weak or apologetic, and an India determined to promote and protect the human rights of its people in its secular democratic polity.

## II. Conclusions and/or recommendations\*\*

138. The recommendations formulated during the interactive dialogue and listed below will be examined by India who will provide its responses in due time, but no later than the 21<sup>st</sup> session of the Human Rights Council in September 2012. These responses will be included in the outcome report adopted by the Human Rights Council at its 21<sup>st</sup> session:

- 138.1. **Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the International Convention for the Protection of All Persons from Enforced Disappearance and the Statute of the International Criminal Court (Spain);**

\*\* Conclusions and recommendations have not been edited.

- 138.2. Intensify the efforts working towards the MDG5, including by withdrawing its reservation to Article 16 in Convention on the Elimination of All Forms of Discrimination against Women, and by ensuring access to information and counselling on SRHR as set out in its National Population Policy (Sweden);
- 138.3. Expedite the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, and adopt robust domestic legislation to this effect (United Kingdom of Great Britain and Northern Ireland);
- 138.4. Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and end impunity for security forces accused of committing human rights violations (United States of America);
- 138.5. Continue efforts to accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as its optional protocol, and the International for the Protection of All Persons from Enforced Disappearances; and ratify ILO Conventions No. 169 and no. 189 (Iraq);
- 138.6. Accelerate its domestic procedure for ratification including the adoption of the Prevention against Torture Bill by its Parliament (Republic of Korea);
- 138.7. Ratify promptly the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Italy);<sup>1</sup>
- 138.8. Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment as soon as possible (Maldives);
- 138.9. Ratify the International Convention for the Protection of All Persons from Enforced Disappearance and recognize the competence of its Committee, in accordance with articles 31 and 32 (Uruguay);
- 138.10. Accede to the ILO Convention No. 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; ratify the Statute of the International Criminal Court and the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol, the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, and the ILO Convention No. 189 concerning Decent Work for Domestic Workers (Uruguay);
- 138.11. Consider the possibility of ratifying the International Convention for the Protection of All Persons from Enforced Disappearance (Argentina);
- 138.12. Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and ensure that the instrument of ratification is fully consistent with the Convention (Australia);

<sup>1</sup> The recommendation made during the interactive dialogue was stated as follows: "Italy recommends prompt ratification of the Convention against Torture and relevant protocols."



- 138.13. Ratify the International Convention for the Protection of All Persons from Enforced Disappearances, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the Rome Statute of the International Criminal Court (Austria);
- 138.14. Ratify the Rome Statute of the International Criminal Court, including its Agreement on Privileges and Immunities (Slovakia);
- 138.15. Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Botswana);
- 138.16. Ratify the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, as well as its Optional Protocol (Brazil);
- 138.17. Expedite ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol (Czech Republic);
- 138.18. Sign the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol and ratify the International Convention for the Protection of All Persons from Enforced Disappearance (Portugal);
- 138.19. Ratification of the Optional Protocol to the Convention on the Elimination of Discrimination against Women (Brazil);
- 138.20. Evaluate the possibility of ratifying the International Convention for the Protection of All Persons from Enforced Disappearance (Chile);
- 138.21. Consider signature and ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (Czech Republic);
- 138.22. Remove reservations to the Article 16(1) of the Convention on Elimination of All Forms of Discrimination against Women (Finland);
- 138.23. Withdraw its reservations to Convention on the Elimination of All Forms of Discrimination against Women and consider signing and ratifying its Optional Protocol (Republic of Korea);
- 138.24. Ratify, in the shortest time, the International Convention for the Protection of All Persons from Enforced Disappearance as well as the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and adopt related internal legislation (France);
- 138.25. Consider the recommendation made by UNHCR to ratifying the Conventions relating to refugees and stateless persons (Ghana);
- 138.26. Ratification of ILO Conventions Nos. 138 concerning Minimum Age for Admission to Employment; 182 concerning the Prohibition and Immediate Action for the Elimination of the Worst Forms of Child Labour; 169 concerning Indigenous and Tribal Peoples in Independent Countries; 155 concerning Occupational Safety and Health and the Working Environment and 170 concerning Safety in the use of Chemicals at Work (Ghana);

- 138.27. Continue to take legislative as well as policy measures to combat child labour and to ratify ILO Conventions 138 concerning Minimum Age for Admission to Employment and 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour and elaborate a timeline for the ratification of these instruments (Portugal);
- 138.28. Ratify Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the ILO Conventions no. 138 and 182 concerning child labour (Sweden);
- 138.29. Accelerate the ratification process of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Indonesia);
- 138.30. Consider an early ratification of the third Optional Protocol to the Convention on the Rights of the Child, on a communication procedure (Slovakia);
- 138.31. Amend the Special Marriage Act before its next review (Slovenia);
- 138.32. Conform its national legislation to international norms on the prevention of torture, to speed up the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and receive the Special Rapporteur on Torture (Switzerland);
- 138.33. Take the necessary measures to ensure that the existing national legislation against torture and cruel and inhumane and degrading treatment incorporates the highest international standards in this area (Costa Rica);
- 138.34. Prioritise the review and implementation of the Prevention Against Torture Bill, ensuring that it complies with the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment (Maldives);
- 138.35. Review the law on the special powers of the armed forces to align it with its obligations under the International Convention on Civil and Political Rights (Switzerland);
- 138.36. Consider introducing a new bill to the Parliament, taking into full consideration of the suggestions of the Select Committee, and take further actions towards the ratification of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Timor-Leste);
- 138.37. Consider expediting the process to pass the 108<sup>th</sup> Constitutional Amendment Bill which seeks to reserve a significant portion of seats for women at the Lower House and state legislative assemblies and consider the ratification of the Optional Protocol to Convention on the Elimination of All Forms of Discrimination against Women (Timor-Leste);
- 138.38. Consider signing and ratifying the Optional Protocol to Convention on the Elimination of All Forms of Discrimination against Women (Costa Rica);

- 138.39. Strengthen legislations to combat sexual offences against minors (Algeria);
- 138.40. Strengthen protection of children's rights, including the ratification of the Convention on the Rights of the Child, by improving mechanisms and resources for the implementation of existing legislation, and by demonstrating higher conviction rates for crimes against children such as sexual exploitation, child labour, child forced-labour and child trafficking (Canada);
- 138.41. Enact comprehensive reforms to address sexual violence and all acts of violence against women, including "honour" crimes, child marriage, female feticide and female infanticide, and to remedy limitations in the definition of rape and the medico forensic procedures adopted for rape cases (Canada);
- 138.42. Enact those pending bills that are aimed at empowering women, including the women's Reservation Bill and the amendments to Panchayati Raj Act (Netherlands);
- 138.43. Enact a law on the protection of human rights defenders, with emphasis on those defenders facing greater risks, including those working on minority rights and the rights of scheduled castes and tribes (Czech Republic);
- 138.44. Repeal the Armed Forces Special Powers Act or adopt the negotiated amendments to it that would address the accountability of security personnel, the regulation concerning detentions as well as victims' right to appeal in accordance to international standards (Slovakia);
- 138.45. Carry out an annual review of the 1958 Armed Forces Special Powers Act aiming to gradually reduce its geographic scope (France);
- 138.46. Effectively implement existing legislation on child labour in line with India's international obligations and strengthen the judicial powers of the National Commission for Protection of Child Rights (Germany);
- 138.47. Take adequate measures to guarantee and monitor the effective implementation of the Prevention of Atrocities Act, providing legal means for an increased protection of vulnerable groups like the Dalit, including the access to legal remedies for affected persons (Germany);
- 138.48. Adopt the Prevention of Communal and Targeted Violence Bill addressing issues such as accountability of civil servants, standards of compensation for victims and elements of command responsibilities (Germany);
- 138.49. Reconsider laws and bills on religious conversion in several Indian states in the light of freedom of religion or belief in order to avoid the use of vague or broad terminology and discriminatory provisions (Germany);
- 138.50. Reconsider current local legislation on freedom of religion, that uses vague or broad terminology and discriminatory provisions, and impedes the possibility for conversion of faith for those who wish to do so (Netherlands);

- 138.51. Continue its efforts to further spread in the country the model of rural growth in the Mahatma Gandhi National Rural Employment Guarantee Act (Greece);
- 138.52. 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 (Indonesia);
- 138.53. Enact comprehensive anti-discrimination legislation and ensure that there are adequate means of redress (Ireland);
- 138.54. Establishment and implementation of a National Human Rights Plan which cover access to education and health, including aspects of sexual and reproductive and health, as well as, concrete measures to eliminate violence against women (Spain);
- 138.55. Continue with action to include human rights education in the school curricula (Sri Lanka);
- 138.56. Implement the 2011 recommendations of the International Coordinating Committee of National Institutions for the Promotion and Protection of Human Rights to ensure the high standards and independence of India's National Human Rights Institutions (United Kingdom of Great Britain and Northern Ireland);
- 138.57. Intensify its efforts and measures to consolidate the state of law and its national mechanisms on human rights (Viet Nam);
- 138.58. Further coordination among relevant national authorities and human rights institutions (Egypt);
- 138.59. Intensify efforts in providing capacity building and training programmes on human rights for its law enforcement officials as well as judicial and legal officials in the rural areas (Malaysia);
- 138.60. Improve training on human rights by addressing law enforcement, especially police officers (Iraq);
- 138.61. Set up State and District Commissioners for the Protection of Child Rights in all States and Districts (Ireland);
- 138.62. Strengthen the process for ensuring independent and timely investigation mechanisms to address and eliminate corruption; and provide for and facilitate increased accountability and transparency in this process (United States of America);
- 138.63. Continue including civil society participation in the UPR process (Nicaragua);
- 138.64. A fully integrated gender perspective in the follow up of this UPR (Norway);
- 138.65. Implement Treaty Body recommendations and develop a National Action Plan to eliminate all forms of discrimination (Slovenia);
- 138.66. Continue cooperating with Special Procedures and accept in particular requests for visits from Special Rapporteurs (Belgium);
- 138.67. Adopt the recommendations of the Special Rapporteur on the situation of human rights defenders and the necessary measures to its

- recognition and protection, guaranteeing that the human rights violations are timely, effectively and independently investigated (Spain);
- 138.68. Implement the recommendations made by the Special Rapporteur on the rights of human right defenders following her visit in 2011, with particular emphasis on recommendations that concern defenders of women's and children's rights, defenders of minorities rights, including Dalits and Adivasi, and right to information activists (Norway);
- 138.69. Allow the visit of the Special Rapporteur on torture and other cruel, inhuman or degrading treatment or punishment, whose request had been pending for 18 years, in line with India's standing invitation issued in 2011 to all Special Procedures of the HRC (Hungary);
- 138.70. Continue cooperating with the United Nations and other international organisations and share good experience and practices with other countries in order to overcome the remaining challenges (Lao People's Democratic Republic);
- 138.71. Continue its efforts to eliminate discrimination against and empower marginalized and vulnerable groups particularly by ensuring effective implementation of relevant laws and measures through proper and active coordination among line ministries, national and state governments; by extending disaggregated data to caste, gender, religion, status and region; and by increasing sensitization and reducing discriminatory attitudes among law enforcement officers through human rights education and training (Thailand);
- 138.72. Ensure that laws are fully and consistently enforced to provide adequate protections for members of religious minorities, scheduled castes, and adivasi groups, as well as, women, trafficking victims, and LGBT citizens (United States of America);
- 138.73. Monitor and verify the effectiveness of, and steadily implement, measures such as quota programmes in the areas of education and employment, special police and special courts for effective implementation of the Protection of Civil Rights Act and the Scheduled Caste and Scheduled Tribes Act, and the work of the National Commission for Scheduled Castes (Japan);
- 138.74. Address the inequities based on rural-urban divide and gender imbalance (Botswana);
- 138.75. Put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including women, girls and children, as well as the scheduled castes and scheduled tribes and minorities are well achieved (Ghana);
- 138.76. Continue working on the welfare of children and women (Nepal);
- 138.77. Continue the procedures and measures taken to enable women to be equal partners and participants in development (Qatar);
- 138.78. Continue to promote the right to equal opportunity for, and at, work (Holy See);



- 138.79. Continue its legal efforts in the protection of women and children's rights as well as improve measures to prevent violence against women and girls, and members of religious minorities (Iran);
- 138.80. Improve women empowerment and emancipation, and provide them with a bigger role to play in the society (Kuwait);
- 138.81. Redouble efforts on ensuring gender equality and take measures to prevent gender discrimination (Bahrain);
- 138.82. Review the budgets and social laws taking into account gender issues (Morocco);
- 138.83. Continue incorporating the gender perspective in programmes and development plans with positive measures to the effective promotion and protection of women's' rights (Venezuela (Bolivarian Republic of));
- 138.84. Continue to promote its many initiatives for the eradication of all forms of discrimination against women (Trinidad and Tobago);
- 138.85. Further strengthen measures to eliminate traditional harmful practices which are discriminatory against women and girls in particular child marriages, dowry related murders and honour killings (Chile);
- 138.86. Continue following-up on steps taken to eliminate discrimination against women, including through awareness raising and continuous strengthening of the relevant legal and institutional frameworks (Egypt);
- 138.87. Continue to promote the rights of women in their choice of marriage and their equality of treatment independently of caste and tribe or other considerations (Holy See);
- 138.88. Strictly enforce the legal provisions prohibiting harmful and discriminatory practices that violate the rights of women and girls, and that it undertake effective public education measures, including awareness-raising programmes designed to eliminate gender-based prejudices, traditional practices and provisions of personal status laws that are harmful and discriminatory to women and girls (Liechtenstein);
- 138.89. Study the possibility of eliminating any criminalisation of same sex relations (Argentina);
- 138.90. Take measures to address violence and discrimination directed towards persons based on their sexual orientation, especially related to employment (Canada);
- 138.91. Establish a moratorium on executions with a view to abolishing the death penalty (Ireland);
- 138.92. Abolish capital punishment and commute existing death sentences to life imprisonments terms (Slovakia);
- 138.93. Respect the *de facto* moratorium on the death penalty which had been in place since 2004 (Spain);
- 138.94. Consider abolishing the death penalty or establishing a moratorium (Chile);



- 138.95. Maintain *de facto* moratorium on executions and ratify the Second Optional Protocol to the International Covenant on Civil and Political Rights with a view to definitive abolishment of the death penalty (France);
- 138.96. Introduce as quickly as possible a *de jure* moratorium on executions (Belgium);
- 138.97. Adopt a *de jure* moratorium on capital punishment with a view to abolishing the death penalty (Italy);
- 138.98. Establish an official moratorium against the death penalty and take the necessary measures in view of its abolition (Switzerland);
- 138.99. Study the possibility of repealing the death penalty from its legal regime (Argentina);
- 138.100. Make the *de facto* moratorium into a permanent one with a view to abolishing the death penalty (Norway);
- 138.101. Consider adhering to the Second Optional Protocol to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty (Portugal);
- 138.102. Take effective measures to dissuade child marriage and to protect the fundamental rights of the children (Switzerland);
- 138.103. Take more efforts to prevent children from sexual exploitation and separation from families, and give them the opportunity and assistance to grow up in an environment of freedom and dignity (Bahrain);
- 138.104. Introduce legislation to prohibit corporal punishment of children in all settings (Liechtenstein);
- 138.105. Adopt comprehensive legislation on fighting all forms of sexual harassment in relation to women and children (Kyrgyzstan);
- 138.106. Take the necessary legislative, civil and criminal measures to provide the appropriate protection to women, and children that are victims of sexual abuse (Mexico);
- 138.107. Accelerate its efforts on combatting human trafficking (Iran);
- 138.108. Reinforce efforts to protect and rehabilitate the victims of trafficking (Ukraine);
- 138.109. Continue stepping up efforts in the area of fighting trafficking as well as consider the possibility of inviting the Special Rapporteur on trafficking in persons, especially in women and children, to visit the country (Belarus);
- 138.110. Continue to strengthen its efforts to combat trafficking in persons by providing the necessary budget to establish a larger number of local bodies to combat this scourge (Paraguay);
- 138.111. Implement monitoring mechanisms to stop people trafficking (Holy See);
- 138.112. Ban all forms of child labour for children from ages 6 to 14 (Ireland) and ratify ILO Conventions No. 138 and no. 182 (Ireland);

- 138.113. Amend the Child Labour Act to ban child labour, and to sign and ratify ILO Conventions 138 concerning Minimum Age for Admission to Employment and 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour and elaborate a timeline for the ratification of these instruments (Norway);
- 138.114. Continue the implementation of the national child labour project aiming at the rehabilitation of child labourers (Angola);
- 138.115. Extend the minimum age to 18 years for any form of labour that prevents children from accessing a full education (Ireland);
- 138.116. Implement the recommendations included in the OHCHR report on street children (A/HRC/19/35) (Hungary);
- 138.117. Continue to carry out policies aimed at improving its judicial system, reforming the law enforcement bodies and reducing the level of crime and corruption (Russian Federation);
- 138.118. Prevent and pursue through the judicial process, all violent acts against religious and tribal minorities, Dalits and other casts (Holy See);
- 138.119. Guarantee effective access to justice in cases of human rights violations committed by security forces personnel with regard to the use of torture (Spain);
- 138.120. Implement effective judiciary proceedings making possible the bringing to justice security forces personnel who have committed human rights violations (France);
- 138.121. Solve remaining cases of human rights violations and create an independent committee to receive claims against the police that were referred to by the Special Rapporteur on Human Rights Defenders (Iraq);
- 138.122. Further promote equal access to justice for all , including by reducing backlog and delays in the administration of cases in court, providing more legal aids to the poor and marginalized, as well as increasing the use of alternative measures to pre-trial detention ( Thailand);
- 138.123. Take legislative action to ensure every person's right to freely choose one's religion in line with the Indian Constitution and effectively and swiftly prosecute acts of violence against religious minorities (Austria);
- 138.124. Abolish anti-conversion laws in relation to religion and grant access to justice to victims of religious violence and discrimination (Italy);
- 138.125. Strengthen the Federal Government's effort to guarantee freedom of religion to everyone in this world largest democracy (Holy See);
- 138.126. Ensure that measures limiting freedom of expression on the internet is based on clearly defined criteria in accordance with international human rights standard (Sweden);
- 138.127. Ensure a safe working environment for journalists and take proactive measures to address the issue of impunity, such as swift and independent investigations (Austria);

- 138.128. Align its national regulations with the ILO Conventions 138 concerning Minimum Age for Admission to Employment and 182 concerning the prohibition and immediate action for the elimination of the worst forms of child labour and elaborate a timeline for the ratification of these instruments (Hungary);
- 138.129. Continue its efforts and actions in promoting social security and labour policy (Iran);
- 138.130. Provide more resources for the enjoyment of economic and social rights, especially in favour of vulnerable groups like women, children, poor people and minorities (Viet Nam);
- 138.131. Take the necessary measures to ensure birth registration on a universal basis, particularly for persons living in extreme poverty, belonging to religious minorities or in remote areas (Mexico);
- 138.132. Ensure timely registration of all births (Holy See);
- 138.133. Continue its measures in order to increase opportunities for consultations on child rights issues with relevant stakeholders (Iran);
- 138.134. Make efforts to eliminate the large gap that exists between the rich and the poor (Chad);
- 138.135. Allocate more resources in sectors that provide basic services such as health, education and employment opportunities (Malaysia);
- 138.136. Introduce a strategy to promote food security (Saudi Arabia);
- 138.137. Continue to implement plans adopted in the area of housing and rehabilitation, particularly the plan launched in 2011 aimed at preventing the construction of new slums (Algeria);
- 138.138. Ensure that every household enjoys the right to safe drinking water and sanitation (Slovenia);
- 138.139. Further accelerate the sanitation coverage and the access to safe and sustainable drinking water in rural areas (Myanmar);
- 138.140. Continue to strengthen its poverty alleviation strategies, as well as its child protection strategies, particularly against the exploitation of children (South Africa);
- 138.141. Continue consolidating its programmes and socio-economic measures essential to achieve poverty reduction and social exclusion to the utmost wellbeing of its people (Venezuela (Bolivarian Republic of));
- 138.142. Continue efforts to eradicate poverty and to better living conditions as well as increase job opportunities (Kuwait);
- 138.143. Further strengthen the efforts in poverty eradication, paying special attention to the rural population (Myanmar);
- 138.144. Continue to advance the progress already underway on poverty eradication and improve the enjoyment of the most basic human rights of its people, especially women and children (Singapore);
- 138.145. Continue encouraging socio economic development and poverty eradication (Cuba);

- 138.146. Continue its efforts aimed at improving the level of public health in the country to attain better results in the area of health and access to health (Saudi Arabia);
- 138.147. Establish measures at the national and state level to remove obstacles in terms of access by the population to pain palliative medicines (Uruguay);
- 138.148. Provide every possible support and assistance to the national project for rural health to increase the standard of nutrition and improve public health and to strengthen the relationship between health and indicators such as sanitation and personal hygiene; (United Arab Emirates);
- 138.149. Meet the stated commitment from the Common Minimum Program of 2004 to dedicate 3 percent of India's GDP to health and 6 percent to education (Slovenia);
- 138.150. Take further practical steps to reduce the high level of maternal and child mortality, inter alia, through better access to maternal health services (Austria);
- 138.151. Further efforts towards addressing the challenge of maternal and child mortality (Egypt);
- 138.152. Strengthen its efforts to improve maternal health and acts to effectively balance the skewed sex-ratio among children, including by combating female foeticide (Norway);
- 138.153. Take further measures to ensure all women without any discrimination access to adequate obstetric delivery services and sexual and reproductive health services, including safe abortion and gender-sensitive comprehensive contraceptive services (Finland);
- 138.154. Contribute to further reduction of maternal mortality through the establishment of an independent organ to accelerate programmes and projects in this area (Honduras);
- 138.155. Intensify its efforts to sensitize and train medical professionals on the criminal nature of prenatal sex selection with a view to ensuring stringent enforcement of the legal prohibition of such practice (Liechtenstein);
- 138.156. Take effective measures to fully implement National Rural Health Missions (Honduras);
- 138.157. Continue to strengthen its programmes and initiatives geared towards guaranteeing the rights to health and education (Cuba);
- 138.158. Redouble its efforts in the field of education and health (Senegal);
- 138.159. Increase the budget allocated to health from 1 percent of the GDP to 2 percent (Luxembourg);
- 138.160. Further promote children's right to education (Greece);
- 138.161. Reinforce its efforts in provision of free and compulsory primary education (Slovakia);

- 138.162. Continue implementing a non-discriminatory and inclusive policy and guarantee quality education to all the girls and boys in its country (Ecuador);
  - 138.163. Strengthen human rights training aimed at teachers in order to eliminate discriminatory treatment of children of specific castes, as well as appropriately follow-up on the results of the training that has occurred thus far (Japan);
  - 138.164. Ensure universal, compulsory and free education, carrying out on a priority basis measures aimed at eradicating discrimination, particularly discrimination that affects girls, marginal groups and persons with disabilities (Mexico);
  - 138.165. Continue its efforts to promote the right to children's education and ensure the importance of the principles of children's education in the country (Qatar);
  - 138.166. Prioritise efforts to ensure that children with disabilities are afforded the same right to education as all children (Australia);
  - 138.167. Ensure better protection for persons with disabilities and the elderly (Senegal);
  - 138.168. Carry on its efforts in environmental and health policies, and continue to enforce its legislative measures on food security (Iran);
  - 138.169. Continue its efforts to achieve balance between its counterterrorism strategies and the need to forestall the spread of xenophobia (Trinidad and Tobago).
139. All conclusions and/or recommendations contained in the present report reflect the position of the submitting State(s) and/or the State under review. They should not be construed as endorsed by the Working Group as a whole.

## Annex

*[English only]*

### Composition of the delegation

The delegation of India was headed by Mr. Goolam E. Vahanvati, Attorney General of India, and composed of the following members:

- Mr. Dilip Sinha, Ambassador / Permanent Representative of India to United Nations, Permanent Mission of India, Geneva;
- Mr. Asoke Kumar Mukerji, Special Secretary, Ministry of External Affairs, New Delhi;
- Mr. Nilanjan Sanyal, Additional Secretary, Ministry of Women and Child Development, New Delhi;
- Dr. Kheya Bhattacharya, Deputy Permanent Representative, Permanent Mission of India, Geneva;
- Professor Ranbir Singh, Vice Chancellor, National Law University, New Delhi;
- Mrs. Rashmi Goel, Joint Secretary, Ministry of Home Affairs, New Delhi;
- Mr. T.S. Tirumurti, Joint Secretary, Ministry of External Affairs, New Delhi;
- Mr. A.K. Sharma, Consul General, Permanent Mission of India, Geneva;
- Mr. S. Suresh Kumar, Joint Secretary, Ministry of Home Affairs, New Delhi;
- Mr. Dinesh Kumar Jain, Joint Secretary, Ministry of Rural Development, New Delhi;
- Mr. Tuhin Kanta Pandey, Joint Secretary, Planning Commission, New Delhi;
- Mr. Sanjeev Kumar, Joint Secretary, Ministry of Social Justice and Empowerment, New Delhi;
- Dr. Neeru Chadha, Joint Secretary, Ministry of External Affairs, New Delhi;
- Mr. Dheeraj Kumar, Director, Ministry of Minority Affairs, New Delhi;
- Mrs. Gloria Gangte, First Secretary, Permanent Mission of India, Geneva;
- Ms. Rohita Mishra, Under Secretary, Ministry of External Affairs, New Delhi;
- Ms. Nabanita Chakrabarti, Second Secretary, Permanent Mission of India, Geneva;
- Mr. Lavanya Kumar, Third Secretary, Permanent Mission of India, Geneva;
- Mr. Eldos Punnose, Attache, Ministry of External Affairs, New Delhi.



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### Human Rights Council

Twenty-first session

Agenda item 6

Universal Periodic Review

### Report of the Working Group on the Universal Periodic Review\*

#### India

#### Addendum

**Views on conclusions and/or recommendations, voluntary commitments and replies presented by the State under review**

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

## List of Recommendations Accepted by the Government of India

### *Recommendations*

Continue to strengthen its poverty alleviation strategies, as well as its child protection strategies, particularly against the exploitation of children.

*(South Africa)*

Continue with action to include human rights education in the school curricula.

*(Sri Lanka)*

Take effective measures to dissuade child marriage to protect the fundamental rights of the children.

*(Switzerland)*

Further promote equal access to justice for all, including by reducing backlog and delays in the administration of cases in court, providing more legal aids to the poor and marginalized.

*(Thailand)*

Continue to promote its many initiatives for the eradication of all forms of discrimination against women.

*(Trinidad and Tobago)*

Reinforce efforts to protect and rehabilitate the victims of trafficking.

*(Ukraine)*

Implement monitoring mechanisms to stop people trafficking.

*(Holy See)*

Accelerate efforts on combating human trafficking.

*(Iran)*

Provide every possible support and assistance to the national project for rural health to raise the standard of nutrition and improve public health and to strengthen the relationship between health and indicators such as sanitation and personal hygiene.

*(United Arab Emirates)*

Continue consolidating programmes and socio-economic measures essential to achieve poverty reduction and social exclusion to the utmost well-being of its people.

*(Venezuela)*

Continue incorporating the gender perspective in programmes and development plans with positive measures to the effective promotion and protection of women's rights.

*(Venezuela)*

Provide more resources for the enjoyment of economic and social rights, especially in favour of vulnerable groups like women, children, poor people and minorities.

*(Viet Nam)*

Continue the implementation of the National Child Labour Project (NCLP) aiming at the rehabilitation of child labourers.

*(Angola)*

*Recommendations*

Study the possibility of eliminating any criminalisation of same sex relations.

*(Argentina)*

Prioritise efforts to ensure that children with disabilities are afforded the same right to education as all children.

*(Australia)*

Take further practical steps to reduce the high level of maternal and child mortality, *inter alia*, through better access to maternal health services.

*(Austria)*

Redouble efforts on ensuring gender equality and take measures to prevent gender discrimination.

*(Bahrain)*

Take more efforts to prevent children from sexual exploitation and separation from families and give them the opportunity and assistance to grow up in an environment of freedom and dignity.

*(Bahrain)*

Continue cooperating with Special Procedures and accept, in particular, requests for visits from Special Rapporteurs.

*(Belgium)*

Address the inequities based on rural-urban divide and gender imbalance.

*(Botswana)*

**Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.**

*(Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)*

Make efforts to eliminate the large gap that exists between the rich and the poor.

*(Chad)*

Continue to strengthen/develop programmes and initiatives geared towards guaranteeing the rights to health and education.

*(Cuba)*

Continue encouraging socio-economic development and poverty eradication.

*(Cuba)*

Continue implementing a non-discriminatory and inclusive policy and guarantee quality education to all girls and boys in the country.

*(Ecuador)*

Further efforts towards addressing the challenge of maternal and child mortality.

*(Egypt)*

Further coordination among relevant national authorities and human rights institutions.

*(Egypt)*

*Recommendations*

Continue following-up on steps taken to eliminate discrimination against women, including through awareness-raising and continuous strengthening of the relevant legal and institutional frameworks.

*(Egypt)*

Put in place appropriate monitoring mechanisms to ensure that the intended objectives of the progressive policy initiatives and measures for the promotion and protection of the welfare and the rights of the vulnerable, including women, girls and children, as well as the Scheduled Castes and Scheduled Tribes and Minorities are well achieved.

*(Ghana)*

Continue its efforts to further spread in the country the model of rural growth in the Mahatma Gandhi National Rural Employment Guarantee Act (MGNREGA).

*(Greece)*

Further promote children's right to education.

*(Greece)*

Strengthen the Federal Government's efforts to guarantee freedom of religion to everyone in this world's largest democracy.

*(Holy See)*

Take effective measures to fully implement National Rural Health Mission (NRHM).

*(Honduras)*

Enhance the coordination of both [the central and state governments] in an effective manner in order to guarantee the smooth implementation of the 2010 Right of Children to Free and Compulsory Education Act.

*(Indonesia)*

Continue legal efforts in the protection of women as well as children's rights as well as improve measures to prevent violence against women and girls, and members of religious minorities.

*(Iran)*

Carry on efforts with respect to environmental and health policies, and continue efforts and undertake measures to adopt the bill on food security and strengthen the Public Distribution System (PDS).

*(Iran)*

Continue measures to increase opportunities for consultations on child rights issues with relevant stakeholders.

*(Iran)*

Continue efforts and actions in the promotion of social security and labour policy.

*(Iran)*

Improve training on human rights on addressing law enforcement especially by police officers.

*(Iraq)*

Intensify efforts in providing capacity-building and training programmes on human rights for its law enforcement officials as well as judicial and legal officials in the rural areas.

*(Malaysia)*

*Recommendations*

Continue efforts to eradicate poverty and better living conditions as well as increase job opportunities.

*(Kuwait)*

Improve women empowerment and emancipation, and provide them with a bigger role to play in the society.

*(Kuwait)*

Continue cooperating with the UN and other International Organisations and share good experiences and practices with other countries in order to overcome the remaining challenges.

*(Lao PDR)*

Introduce legislation to prohibit corporal punishment of children.

*(Liechtenstein)*

Allocate more resources in sectors that provide basic services such as health, education and employment opportunities.

*(Malaysia)*

Re-examine the budgets and social laws taking into account gender issues.

*(Morocco)*

Further strengthen the efforts in poverty eradication, paying special attention to the rural population.

*(Myanmar)*

Further accelerate the sanitation coverage and the access to safe and sustainable drinking water in rural areas.

*(Myanmar)*

Continue working on the welfare of children and women.

*(Nepal)*

Continue including civil society participation in the UPR process.

*(Nicaragua)*

A fully integrated gender perspective in the follow up of this UPR.

*(Norway)*

Continue its efforts with regard to education for children and take the necessary measures to allow women to participate on an equal footing with men in all developmental efforts.

*(Qatar)*

Introduce a strategy to promote food security.

*(Saudi Arabia)*

Redouble its efforts in the field of education and health.

*(Senegal)*

Ensure better protection for persons with disabilities and the elderly.

*(Senegal)*



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*Recommendations*


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Continue to advance the progress already underway on poverty eradication and improve the enjoyment of the most basic human rights of the people, especially women and children.

*(Singapore)*

Reinforce efforts in provision of free and compulsory primary education.

*(Slovakia)*

Take the necessary legislative, civil and criminal measures to provide the appropriate protection to women, and children that are victims of sexual abuse.

*(Mexico)*

Continue to promote the right to equal opportunity for work and at work.

*(Holy See)*

Continue to promote the rights of women in their choice of marriage and their equality of treatment independent of caste and tribe or other considerations.

*(Holy See)*

Ensure a safe working environment for journalists.

*(Austria)*

Continue efforts aimed at improving the level of public health in the country to attain better results in the area of health and access to health.

*(Saudi Arabia)*

Strengthen its efforts to improve maternal health and act to effectively balance the skewed sex-ratio among children, including by combating female foeticide.

*(Norway)*

Take further measures to ensure that all women without any discrimination have access to adequate obstetric delivery services and sexual and reproductive health services, including safe abortion and gender-sensitive comprehensive contraceptive services.

*(Finland)*

Intensify its efforts to sensitize and train medical professionals on the criminal nature of pre-natal sex selection with a view to ensuring stringent enforcement of the legal prohibition of such practice.

*(Liechtenstein)*

Strengthen legislations to combat sexual offences against minors.

*(Algeria)*

Intensify efforts towards the MDG 5 by ensuring access to information and counseling on SRHR as set out in the National Population Policy.

*(Sweden)*

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## OMCT submission – key arguments:

The following gives a number of reasons that may be worth of consideration for the ratification of the UN Convention Against Torture.

### Main line of argument:

The main line of argument is that ratification contributes to better prevention of and protection from torture in India. Thus, we would suggest stressing the special nature of the torture prohibition under international law, the protection and prevention challenges that exist in India and globally, including because of the nature of torture being practiced by the state outside the public scrutiny. Thus, the Torture Convention and its implementing mechanism provide value as a continuous level of review and framework for the prevention of torture. The foreign policy arguments and those related to the aim of universal ratification should be accompanying arguments.

### Specific points:

#### **1) The status of the torture prohibition requires a special mechanism**

The prohibition of torture and cruel, inhuman or degrading treatment is not just 'another right' or legal provision. It enjoys very special status under international law.

It is a norm of customary international law, is contained both in major global and regional human rights treaties, and it is firmly enshrined under international humanitarian law. Torture is also considered as a crime under international law.

The prohibition of torture (and cruel, inhuman or degrading treatment is non-derogable in times of war or internal conflict under international law (see article 4 ICCPR, General Comment on Article 4 of the UN Human Rights Committee).

More than that it is recognized as one of the very few norms considered as a mandatory role that cannot be abrogated (*ius cogens*), similar to slavery.

It is commensurate with the special status under international law of the absolute prohibition of torture, cruel and inhuman or degrading treatment to ratify the Convention Against Torture as a comprehensive blueprint for its implementation.

#### **2) Torture poses challenges to the rule of law requiring special protection**

Torture is typically used in secret and by state organs that operate with an inherent hierarchical system and corps spirit by police, prison or military agents.

For individuals to prove torture, to provide sufficient evidence is often close to impossible. Victims and witnesses will often feel threatened to complain or may feel shame to go public or address the investigative authorities or a national human rights institution for help.

It is an experience across the world that torture cases are a serious challenge and litmus test to any system of the rule of law.

It is only through a comprehensive system of safeguards and guarantees that torture can be prevented, and in case of violation to be effectively repaired. The value of ratification is that states commit to a comprehensive and continuous system to review an effective prevention of torture, and the provision of effective remedies and reparation of violations.

### **3) The prohibition of torture is already part of Indian law but it needs implementation**

The prohibition of torture and cruel, inhuman or degrading treatment is itself already binding on India, both as a result of treaty law (ICCPR, Geneva Conventions), and customary international law. Ratification would thus not entail the recognition of a new right (which may not be the role of the courts). In that sense the court is not interfering into the prerogatives of the executive and legislative.

The main purpose of the Convention was to provide a more detailed framework for the existing legal prohibition, as a sort of a comprehensive blueprint or framework to eradicate torture in law and in practice. It is all about providing the framework that makes the absolute prohibition real.

### **4) The Torture Convention provides a more on legal protection**

The Torture Convention is the universal document on a holistic response to torture seeking the eradication of a practice outlawed for a long time.

Unlike any other treaty it contains a more thorough blueprint of the obligation to prevent torture (see article 2 CAT – containing the concept of preventive safeguards), to criminalize and investigate torture in order to bring those responsible to justice (see article 1, 4 CAT) and to secure the right to remedy, reparation including compensation and access to rehabilitation (see article 13, 14 CAT), as well as a set of additional guarantees such as interrogation standards to be reviewed, training of state officials and the obligation not to send somebody to countries where there is a real risk of torture (see principle of non-refoulement), or not to admit torture evidence into judicial proceedings (article 15). The Convention also provides a more on protection in making torture a distinct crime as opposed to just 'a public order' or 'general bodily injury' provision that fails to capture the gravity of torture. None of these provisions should a priori cause elements foreign to Indian judicial theory and thinking but underline essential safeguards, and to render the response to incidents of torture effective, and to ensure the victims rights to an effective remedy and reparation, including compensation.

### **5) The Torture Convention ratification will open up protection by the judiciary**

The experience around the world is that ratification and incorporation of the Convention opens up for the legal invocation of the Convention domestically before the judiciary.

The extent and level of invocation may depend on the domestic reception of international

human rights system, but irrespective of the system it should open some legal remedies and invocation – at the very least for the interpretation of existing domestic law (see Bangalore Principles on Domestic Application of International Human rights law).

#### **6) The Convention gives guidance to officials**

It gives a 'more' in guidance about what effective prevention and protection and rehabilitation entails. This in our experience is crucial in guiding lawmakers, officials and the security apparatus in implementing the absolute prohibition. Even though torture is outlawed it provides the normative and practical reference to key institutions responsible for custody and the questioning of individuals.

This furthers clarity, avoids ambiguity and is a reference point for practionner's seeking the implementation of the absolute prohibition. The provision of training and interrogation review underline the importance of being a guidance document for those who are in charge of custody situations.

Importantly, in a country governed by the rule of law they provide clarity and make clear what the expectation is, rather than providing an impediment to effective law enforcement practice. The judiciary can use subsequently the Convention to reinforce clarity to law enforcement, penitentiary service and others in case of doubt.

#### **7) Continuous enforcement and reporting process**

With ratifying the Convention a state engages to comply with its obligations. This is an obligation of results. In which way the Convention is domestically incorporated is for the state to decide – yet direct applicability is encouraged (see General Comment on Article 2 CAT) as the most effective way for implementation.

An important part plays the mandatory reporting procedure as a tool to help governments to implement the Convention. The procedure is based on the idea of a regular self-review to adjust implementation challenges, identify more clearly legal changes, such as the criminalization of torture, etc.

As in our experience at the World Organization of Torture, we recognize that ratification and continuous state reporting has impacted positive changes on multiple levels:

Legal changes, such as the criminalization of torture, the introduction of new or more explicit safeguards, such as in custody (lawyer, medical personal);

Major reform processes, such as penitentiary reforms and others, the creation of visiting boards by national human rights bodies or civil society mechanisms;

Better victim or witness protection system, lifting of statutory limitations or an acceptance of medical examinations following the so-called Istanbul Protocol process

The Convention and its reporting process allows a regular review to identify shortcomings,

but is also a document on which civil society can align itself as a legitimate framework, similar to CEDAW for women rights or the new Disability Convention, and it gives important transparency to a governments action against torture.

Importantly it goes to an expert committee and not a political process such as the UPR with distinguished members of the legal community. For example, Justice Baghwati served for more than a decade in the UN Human Rights Committee, the sister structure of the UN Committee Against Torture, thus ensuring that the review and recommendation process is merit based and not subject to political scrutiny.

#### Selective recent examples:

New anti-torture laws: Togo, Ivory Coast, Pakistan (draft), Kenya or Bangladesh; New policy position: US changed its position on the applicability of human rights law in places like Guantanamo Bay; Prison closures: Philippines, Uruguay.

The Convention requires compliance by states with ratification but it does not prescribe the particular technique of reception in domestic law, such as an anti-torture law. While integrating the Convention comprehensively into domestic law can be a good option, many countries accepted the jurisdiction of the Convention and then legislated areas of concern. Often the law making process is targeted to the regular reporting process.

The idea of continuous reporting is precisely to keep the issue under review, develop better safeguards, responding to implementation challenges. It is not based on the idea that compliance is ensured once, but that it needs to be subject to continuous scrutiny. The Committee's recommendations, however, provide crucial information on what effective implementation entails reflected in individual decisions, concluding observations and so-called General Comments. Of particular relevance is in this regard GC on article 2 – the nature of state obligations.

#### **8) Individual petitions and Optional Protocol as further options**

The Convention provides two additional mechanisms with the prospect of increasing considerably the effectiveness of the absolute prohibition of torture. The first being the individual communication procedures in states that have ratified and opted into this procedures through separate declaration.

The second is the idea of national visiting mechanisms with oversight from the Sub-Committee for the Prevention of Torture (SPT), which is a key tool to increase transparency and oversight over custody. As with the complaint procedure, this requires separate ratification from the Convention itself. States have ratifying this additional protocol commit to the creation of such mechanism in the years following ratification.

#### **9) The trend to universal ratification**

Today, only 34 countries are not party to the Convention against Torture. Only seven countries have not ratified in Asia, while of these 2 have expressed their commitment to do



so through signature. Recent ratifications in Asia included Pakistan (reporting in 2017 to the UN Committee Against Torture) and Vietnam. Seven countries have ratified in the last three years, and a global initiative has set the target to achieve universal ratification by 2024; already in January 2017, one country has ratified.

The demonstration of political will is made at an international level and further demonstrates a State's willingness to be considered a leader in international norms and standards. The reason why some countries have not yet ratified/acceded is NOT because they consider that torture is acceptable or even effective, but rather for reasons of resources, awareness and capacity. Over 50% of the non-States parties are small Island developing States in the Caribbean and the Pacific.

There is a global process led by the Convention Against Torture Initiative (CTI) seeking universal ratification by 2024. Anti-torture experts have endorsed the initiative led by the Governments of Denmark, Ghana, Morocco, Chile and Indonesia broadly globally ([www.cti.org](http://www.cti.org)).

#### **10) India's role as leading democracy and commitment to the rule of law**

India is today the only major democracy that has stayed away from the Convention though having been involved pro-actively in its drafting process.

Ratification of India would have positive effects in two dimensions: first for India in terms of rendering legal protections from torture clearer and more effective. Second, in fostering the absolute and universal prohibition of torture as a *ius cogens* norm and encouraging other states to follow its decision.

India would decide – rather than staying as an outsider to the universal human rights system – to stay inside human rights committing countries on torture. The signature to the Convention has raised a political expectation of ratification and a legal obligation not to frustrate the object and purpose of the Convention. After years of awaiting ratification the government should be in a position to confirm its stated commitment.

As a democracy with rule of law traditions, and as country that already accepted the prohibition of torture and cruel, inhuman or degrading treatment it is only logical to adhere to this system of values and laws.

It would have also the effect to boosting universal ratification.

# 3<sup>rd</sup> Universal Periodic Review of India

January 18, 2017

## Third Universal Periodic Review of India

The Universal Periodic Review (UPR) is a process of the Human Rights Council which involves a review of the human rights record of 193 UN Member States once every four years. The review is conducted by the UPR Working Group which consists of the 47 members of the Council. For this process, one of the documents submitted is the national report prepared by the government of the reviewed State. India's reports have been presented to the UNHRC twice- in 2008 and in 2012. In this context, the Government of India is in the process of finalizing the Universal Periodic Report-III, a copy of which is given below. Any comments from the civil society on this Report are requested by either fax to 011-49018426 or email to Dr. Yumnam Arun Kumar, Deputy Secretary (UNES) at [dsune@mea.gov.in](mailto:dsune@mea.gov.in). Comments/views are requested by 23 January, 2017

### Universal Periodic Review III

#### India's National Report

#### Introduction

1. With one-sixth of the global population, India is the world's largest democracy that is home to a multi-ethnic, multi-religious, multi-linguistic population that has lived together for millennia with an ethos of respect for diversity and plurality. Supported by a rights oriented constitutional framework, a secular polity, and independent judiciary, a range of national and state level commissions that monitor compliance with human rights, a free press, and, a vibrant and vocal civil society, India continues its endeavours towards fulfilling its human rights obligations. Recognizing the universality, indivisibility and interrelatedness of all human rights, India places equal emphasis on the civil and political rights and freedoms of its citizens as well as their socio-economic development. Aware that historical factors as well as extant social structures can render certain communities more vulnerable to exclusion, marginalization and human rights violations, India prioritises, through a range of protective and affirmative measures, the attainment of liberty and

development for all. In the spirit of leaving no one behind, India follows the motto of “*Sabka Saath, Sabka Vikas*” (all together and development for all).

#### A. PROCESS FOR THE PREPARATION OF THE REPORT

### I. Approach

2. This national report has been prepared in compliance with the United Nations Human Rights Council Decision 17/119. This report emphasises measures that the State has undertaken for the protection, promotion and fulfilment of such commitments since the previous round of review. Where possible, the report catalogues the targets, achievements, shortfalls and indices for evaluating the effectiveness of State action. At the same time, India asserts that numeric measurement is not the only criteria for assessing its human rights record. For India, as for any other country, the realization of human rights is a work in progress, and this report documents the steps taken by the country towards this goal.
3. As far as possible, this report has been drafted in line with the informal guidance note issued by the OHCHR dated November 8, 2016. Most of the recommendations accepted by India in the previous review pertained to socio-economic rights which are subject to progressive realization through continuing action. Therefore, instead of classifying recommendations as full, partial or not implemented, this report uses the thematic clusters provided in Annex 2 of the guidance note as the framework for the report. Within each thematic cluster, the report first provides an overview of the recommendations accepted by India in the previous round and voluntary pledges made by India, if any. It then explains the advancements in implementing these recommendations/pledges. Further, under the same

thematic heading, the report details any other emerging issue or development that falls within the scope of the theme but was not subject of an accepted recommendation or pledge.

4. The report aims to enable engagement, conversation, and dialogue on how best to proceed towards the shared goal of advancement of human rights, and to this end, highlights the achievements, challenges and constraints present in India's human rights journey.

## II. Methodology

5. India believes in using the UPR national report drafting process as an opportunity to receive feedback on its laws and policies for advancing human rights. For this reason, India followed a broad-based consultative process in drafting the national report. The Government of India requested the National Law University, Delhi (NLU, Delhi) to assist with preparing the initial draft of the report. NLU, Delhi organized a series of national level consultations with civil society representatives, national human rights institutions and commissions, and academicians to aid in the identification of issues, achievements, challenges and constraints relating to advancing human rights in India. Government representatives attended all the consultations. They also attended five regional consultations and one National Consultation which were organized by the National Human Rights Commission (NHRC). A draft of the national report was published online for public comments. In a series of inter-ministerial meetings, the feedback received through this consultative process was relayed back to the relevant Ministries.

### B. IMPLEMENTATION OF ACCEPTED RECOMMENDATIONS AND VOLUNTARY PLEDGES, OTHER DEVELOPMENTS

#### I. Cross Cutting Issues

##### Inclusive Sustainable Development

6. At the second review, India committed to continuing its efforts towards socio-economic development and poverty eradication. It agreed to provide more resources for the enjoyment of economic and social rights, and to make efforts towards ensuring that such rights are

available to all, especially vulnerable groups like women, children, poor people and minorities. Towards this end, the country also agreed to put in place monitoring mechanisms to ensure that the objectives of its progressive policies are achieved. India has also pledged to continue to foster a culture of transparency, openness and accountability in the functioning of the Government, as enacted in the Right to Information Act.

7. India attaches utmost priority to poverty eradication and achieving an inclusive sustainable development. Its policies and priorities are in tune with the 2030 Agenda for Sustainable Development. India played an important part in the inter-governmental negotiations towards the finalisation of the 2030 Agenda that seeks to realise human rights for all and to leave no one behind.
8. India believes that inclusive and equitable development is the key to securing a life of dignity, security, empowerment and freedom for all. For this reason, India has put in place a robust set of socio-economic policies to address the various basic needs of people, including health, education, housing, poverty alleviation, women empowerment, food security, social security measures and the like. Acknowledging the need for sustainable development, and the potential conflict between competitive growth and inclusive growth, India directs its policies towards enabling economic growth consistent with the imperative of ensuring that the benefits of such growth reaches all sections.
9. An example of this commitment is the Stand-Up India Scheme which was launched in 2016 to facilitate bank loans to members of Scheduled Castes, Scheduled Tribes and women entrepreneurs for setting up greenfield enterprises in manufacturing, service or trading sectors.
10. The 2005 Right to Information Act has been a flagship legislation to vastly improve government accountability and transparency. The Government is committed to supporting the users of the Act against harassment and injury. In furtherance of this commitment, the Whistle blowers Protection Act was passed in 2014.
11. To aid efforts towards reducing corruption and increasing accountability, the Lokpal and Lokayuktas Act, 2013 was enacted. The Act establishes ombudsmen for inquiring into allegations of corruption against public functionaries.
12. To prevent leakages due to corruption, and to ensure the targeted delivery of scheme benefits, India has introduced the Aadhaar Unique Identification Number, which provides single window access to a range of information about beneficiaries and helps in identification of beneficiaries through the use of biometric data, with the aim of ensuring that benefits and subsidies reach the right person. To further



institutionalize the project, the Aadhaar (Targeted Delivery of Financial and other Subsidies, Benefits and Services) Act, 2016 was passed by Parliament. As of date, 1.08 billion Aadhaar cards have been issued.

13. A key plank of India's development agenda, as well as of its push towards good governance and the creation of a knowledge society is the "Digital India" programme. Launched on 1st July 2015, the programme has the vision to transform India into a digitally empowered society through increased connectivity, increased access to knowledge, delivery of services, and e-governance through digital means.

### Climate Change and Environment

14. India is committed to continuing its efforts in relation to its environmental policies. India has articulated its belief in ethical and people centric approach to climate change through the concept of 'Climate Justice'. The Supreme Court of India has also recognized the right to clean environment as part of an individual's right to life guaranteed by the Constitution of India.<sup>1</sup>

15. India has taken a lead to push for strong domestic climate action for a more sustainable development pathway. India is striving to provide access to modern and clean energy sources to all its people.

16. India has prioritized renewable energy technology and has launched an ambitious domestic effort to achieve 40 percent cumulative electric power installed capacity from non-fossil fuel based energy resources by 2030. India plans to install 100 GW solar energy out of a total of 175 GW of renewable energy by 2022.

17. India participated actively in the intergovernmental negotiations under UNFCCC that reached the landmark Paris Agreement on Climate Change in December 2015. India facilitated the entry into force of the Paris Agreement by ratifying it in October 2016, and thereby renewing its commitment to achieve its Nationally Determined Contributions (NDC).

18. In addition to the bold and ambitious domestic action, India pushed for the acceptance of the principles of historical responsibility, equity, and Common But Differentiated Responsibility (CBDR) to defend the interests of the people in developing countries.

19. India played a constructive role at the Kigali meeting in October 2016 to amend the Montreal Protocol to include HFCs in its ambit.

20. Dedicated policies have been launched to sensitize citizens on developing city-forests and to promote climate-smart green cities.<sup>2</sup> India has been enthused by the growth in forest cover from 21.05% in 2011 to 21.34% at present, and will endeavour to increase it further.

21. Water resources conservation is a priority for the Government. Concerned about the continuing pollution of water bodies and depletion of ground water, innovative schemes have been launched to provide better irrigation facilities<sup>iii</sup> and conservation of wetlands,<sup>iv</sup> existing water bodies, and their respective ecosystems.<sup>v</sup> The Model Groundwater Bill, circulated to states by the Central Government, has so far been adopted by 15 states.<sup>vi</sup>
22. India has launched initiatives to ensure cleaner air in its cities.<sup>vii</sup> A National Air Quality Index has also been launched by the Government for citizens' awareness regarding air quality in their vicinity. India remains concerned about the quality of air, and is committed to taking all necessary measures to address this issue. The Supreme Court of India and the National Green Tribunal are also monitoring the issue.
23. In recognition of its commitment to sustainable development, India is working towards moving to cleaner sources of energy for its developmental activities. Continuous efforts are being made to provide affordable and clean energy including through targeted schemes<sup>viii</sup> and separate budgetary allocations.<sup>ix</sup> India has been focusing on renewable energy technology including nuclear energy
24. In compliance with its obligations under the UNFCCC, India launched the Climate Change Action Programme, 2014 which aims to create and strengthen the scientific and analytical capacity for assessment of climate change and provide a framework for implementation of the National & State Action Plans on Climate Change. India has already submitted two national communications to UNFCCC providing details of its compliance with the Convention.
25. Recognizing that implementation of environmental related norms requires improvement, India continues to work towards their effective enforcement.

### Human Rights and Counter-Terrorism

#### **a. Training Security Personnel on Human Rights**

26. India committed to continue and intensify its efforts towards training and orientation of security and other law enforcement officers towards human rights.

27. India remains committed to instilling human rights values in its security personnel. Indian Security forces receive training in human rights as well as in humane methods of security enforcement through programmes developed by the NHRC through training programmes at police academies, army training institutes, and other such agencies.

28. India remains committed to work with other countries to finalise the Comprehensive Convention on International Terrorism.

#### **b. Other Issues**

29. Concerns have been raised with regard to Armed Forces Special Powers Act (AFSPA) however, AFSPA is applied only to disturbed areas where the ordinary law and order machinery is deemed insufficient to deal with exigent circumstances like insurgency. Whether or not AFSPA should be repealed or the provision for sanctions should continue, is a matter of on-going and vibrant political debate in the country. While on the one hand in 2015 one state withdrew the application of AFSPA to that state, in another the judiciary has asked the Government to consider imposing AFSPA in parts of that state.<sup>x</sup> A Government appointed committee recommended that there should be no sanction requirement for prosecutions of security personnel for sexual offences.

30. The Supreme Court of India has upheld the constitutionality of AFSPA and has laid down strict guidelines for exercise of powers under AFSPA.<sup>xi</sup> Recently, the Court held that use of excessive force or retaliatory force by the armed forces of the Union is not permissible in the course of the discharge of their duty under the Act, and that AFSPA does not allow blanket immunity to perpetrators of unjustified deaths or offences.<sup>xii</sup>

31. There is a view that provisions of the Unlawful Activities (Prevention) Act, 1967, which allow the state to detain a person without charge for upto 180 days and limit the power of Courts to grant bail in pending cases, could be misused.<sup>xiii</sup> These provisions have been enacted in order to deal with the exigent threat of terror and insurgency. Recognizing that state response to these threats cannot violate human rights standards, India is committed to invoking these powers only in exceptional circumstances.

## **II. Civil and Political Rights**

### **Right to Life, Liberty and Security of the Person**

### a. Torture

32. India committed to ratify the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment.

33. India remains committed to ratifying the Convention. The Law Commission of India is examining the changes required to domestic law prior to ratification. The Government has requested the Law Commission to examine and give a comprehensive report covering all aspects of criminal law so that comprehensive amendments can be made in Indian Penal Code (IPC), Code of Criminal Procedures (CrPC) and Indian Evidence Act, etc. In the meantime, acts of torture remain punishable under various provisions of the Indian Penal Code.<sup>xiv</sup> The higher judiciary also serves as a bulwark against such violations.

### b. Enforced Disappearances

34. India pledged to ratify the International Convention for the Protection of All Persons from Enforced Disappearances.

35. India is a signatory to the Convention and is concerned with enforced disappearances. To address this issue, India is cooperating with the Working Group on Enforced or Involuntary Disappearances by reporting facts of cases from time to time. To protect against disappearances from police custody, the NHRC has also issued extensive guidelines on arrest to supplement guidelines issued by the Supreme Court in this regard. Through its training programmes, the NHRC continues to educate police and security personnel to prevent such violations.

### c. Right Against Arbitrary Arrest and Detention

36. To strengthen the constitutional guarantee against arbitrary arrest and detention, and in order to limit the abuse of the arrest power, the Supreme Court issued guidelines in 2014 directing police officials not to arrest persons for offences carrying sentences of seven years or less, except in exceptional circumstances, and directed judicial magistrates to ensure compliance with arrest norms.<sup>xv</sup>
37. The National Human Rights Commission (NHRC) regularly monitors complaints of illegal arrest and detention. Between 2012 and 2016, NHRC registered 2361 cases of illegal arrest, of which 1075 were disposed of in this time period. NHRC issued directions in 82 cases and compensation in 22 cases. 5370 cases of unlawful detention were registered by NHRC in this time period, of which 2297 were disposed of. NHRC issued directions in 198 cases and recommended monetary relief in 46 cases. In both instances a bulk of the cases were transferred to State Human Rights Commissions.

#### d. Extra Judicial Killings

38. India remains cognizant of the human rights implications of extra-judicial killings, and has taken measures towards ensuring accountability for such violations. The Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions recognized in his report on India that there has been a general drop in unlawful killings in the last few years. NHRC has in place a robust monitoring mechanism for cases of extrajudicial executions. In 2014, the Supreme Court of India issued extensive guidelines for effective and independent investigation of such deaths, including mandatory registration of first information reports in cases of encounter deaths, magisterial inquiry into the case, investigation either by the Crime Investigation Department or another independent agency, and prohibiting out-of-turn promotions or gallantry awards for police officers involved in such killings until the genuineness of the encounter is determined.<sup>xvi</sup> The judiciary also monitors investigation in specific instances, as for example in the *Extra Judicial Execution Victim Families Association* case, where the Court held that every death caused by armed forces in a disturbed area shall be enquired into by NHRC and CID.<sup>xvii</sup>

#### e. Death Penalty



Recommendation	Position	Full list of themes	Assessment/comments on level of implementation
<b>Right or area: 2.1. Acceptance of international norms</b>			
138.1. Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol; the International Convention for the Protection of All Persons from Enforced Disappearance and the Statute of the International Criminal Court (Spain); <b>Source of position:</b> A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1 - Para. page 3 <b>Comments:</b> A/HRC/21/10/Add.1 states at page 2: List of Recommendations . Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)	Supported/Noted	2.1 Acceptance of international norms 12.5 Prohibition of torture and cruel, inhuman or degrading treatment 13.2 Enforced disappearances 20.3 International humanitarian law <b>Affected persons:</b> - disappeared persons - general	<ul style="list-style-type: none"><li>• The Law Commission of India is examining the changes required to domestic law prior to ratification. The Government has requested the Law Commission to examine and give a comprehensive report covering all aspects of criminal law so that comprehensive amendments can be made in Indian Penal Code (IPC), Code of Criminal Procedures (CrPC) and Evidence Act, etc. Acts of torture remain punishable under various provisions of the Indian Penal Code such as those pertaining to voluntarily causing grievous hurt, or causing grievous hurt to extract a confession, etc.</li></ul>
138.5. Continue efforts to accede to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, as well as its optional protocol, and the International for the Protection of All Persons from Enforced	Supported/Noted	2.1 Acceptance of international norms 12.5 Prohibition of torture and cruel, inhuman or degrading treatment 13.2 Enforced	As mentioned in the point 138.1 above.

Disappearances; and ratify ILO Conventions No. 169 and no. 189 (Iraq); <b>Source of position:</b> A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1 - Para. page 3 <b>Comments:</b> A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Republic, Maldives, Portugal, Republic of Korea)		disappearances 33 Indigenous peoples 23.1 Right to work 23.2 Right to just and favourable conditions of work <b>Affected persons:</b> - disappeared persons - general - migrant workers	
138.13. Ratify the International Convention for the Protection of All Persons from Enforced Disappearances, the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and the Rome Statute of the International Criminal Court (Austria); <b>Source of position:</b> A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1 - Para. page 3 <b>Comments:</b> A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India;	Supported/Noted	2.1 Acceptance of international norms 12.5 Prohibition of torture and cruel, inhuman or degrading treatment 13.2 Enforced disappearances 16 Right to an effective remedy, impunity 20.3 International humanitarian law <b>Affected persons:</b> - disappeared persons - general	As mentioned in the point 138.1 above.

and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)			
138.18. Sign the Optional Protocol to the International Covenant on Economic, Social and Cultural Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and its Optional Protocol and ratify the International Convention for the Protection of All Persons from Enforced Disappearance (Portugal); Source of position: A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1 - Para. page 3 Comments: A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia,	Supported/Noted	2.1 Acceptance of international norms 21 Economic, social & cultural rights - general measures of implementation 16 Right to an effective remedy, impunity 12.5 Prohibition of torture and cruel, inhuman or degrading treatment 5.2 Institutions & policies - General 13.2 Enforced disappearances Affected persons: - disappeared persons - general	As mentioned in the point 138.1 above.

Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)			
138.28. Ratify Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and the ILO Conventions no. 138 and 182 concerning child labour (Sweden); <b>Source of position:</b> A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1 - Para. page 3 <b>Comments:</b> A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)	Supported/Noted	2.1 Acceptance of international norms 12.5 Prohibition of torture and cruel, inhuman or degrading treatment 30.3 Children: protection against exploitation <b>Affected persons:</b> - children	As mentioned in the point 138.1 above.
<b>Right or area: 3.3. Cooperation with other international mechanisms and institutions</b>			
138.70. Continue cooperating with the United Nations and other international organisations and share good experience and practices with other countries in order to overcome the remaining challenges (Lao People's Democratic Republic);	Supported	3.3 Cooperation with other international mechanisms and institutions 3.2 Cooperation with special procedures 3.3 Cooperation with other international mechanisms	

<b>Source of position:</b> A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1 - Para. page 5		and institutions 40 Treaty body follow-up procedures 41 Follow-up to special procedures 42 Follow-up to UPR <b>Affected persons:</b> - general	
<b>Right or area: 3.2. Cooperation with special procedures</b>			
138.66. Continue cooperating with Special Procedures and accept in particular requests for visits from Special Rapporteurs (Belgium); <b>Source of position:</b> A/HRC/21/10 - Para. 138	Supported	3.2 Cooperation with special procedures 41 Follow-up to special procedures <b>Affected persons:</b> - general	<ul style="list-style-type: none"><li>India has in place a standing invitation to Special Rapporteurs to visit the country at a mutual convenient time. Nine Special Rapporteurs have visited India since 200, and a further two are scheduled for 2017-18.</li></ul>
<b>Right or area: 30.3. Children: protection against exploitation</b>			
138.39. Strengthen legislations to combat sexual offences against minors (Algeria ); <b>Source of position:</b> A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1 - Para. page 6	Supported	30.3 Children: protection against exploitation 30.2 Children: family environment and alternative care 30.1 Children: definition; general principles; protection 5.1 Constitutional and legislative framework 12.5 Prohibition of torture and cruel, inhuman or degrading treatment 12.7 Prohibition of slavery, trafficking	<ul style="list-style-type: none"><li>India enacted the Protection of Children from Sexual Offences Act, 2012 to deal with sexual violence against children of all genders. This law provides for stringent punishment, special courts, as well as procedural measures to protect the child during investigation and trial.</li></ul>



<p><b>Source of position:</b> A/HRC/21/10 - Para. 138 &amp; A/HRC/21/10/Add.1 - Para. page 3</p> <p><b>Comments:</b> A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)</p>			
<p>138.4. Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and end impunity for security forces accused of committing human rights violations (United States of America);</p> <p><b>Source of position:</b> A/HRC/21/10 - Para. 138 &amp; A/HRC/21/10/Add.1 - Para. page 3</p> <p><b>Comments:</b> A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain,</p>	Supported/Noted	<p>2.1 Acceptance of international norms</p> <p>12.5 Prohibition of torture and cruel, inhuman or degrading treatment</p> <p>16 Right to an effective remedy, impunity</p> <p><b>Affected persons:</b></p> <p>- general</p>	<p>As mentioned in the point 138.1 above.</p>

Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)			
138.6. Accelerate its domestic procedure for ratification including the adoption of the Prevention against Torture Bill by its Parliament ( Republic of Korea ); <b>Source of position:</b> A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1 - Para. page 3 <b>Comments:</b> A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)	Supported	2.1 Acceptance of international norms 12.5 Prohibition of torture and cruel, inhuman or degrading treatment 5.1 Constitutional and legislative framework <b>Affected persons:</b> - general	As mentioned in the point 138.1 above.
138.7. Ratify promptly the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ( Italy ); <b>Source of position:</b> A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1 - Para. page	Supported	2.1 Acceptance of international norms 12.5 Prohibition of torture and cruel, inhuman or degrading treatment <b>Affected persons:</b>	As mentioned in the point 138.1 above.

3	- general	
<p><b>Comments:</b> A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)</p>		
138.8. Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment of Punishment as soon as possible ( Maldives );	Supported	
<p><b>Source of position:</b> A/HRC/21/10 - Para. 138</p> <p><b>Comments:</b> A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)</p>	2.1 Acceptance of international norms 12.5 Prohibition of torture and cruel, inhuman or degrading treatment <b>Affected persons:</b> - general	As mentioned in the point 138.1 above.

138.12. Ratify the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and ensure that the instrument of ratification is fully consistent with the Convention (Australia); <b>Source of position:</b> A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1 - Para. page 3 <b>Comments:</b> A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)	Supported/Noted	2.1 Acceptance of international norms 12.5 Prohibition of torture and cruel, inhuman or degrading treatment <b>Affected persons:</b> - general	As mentioned in the point 138.1 above.
138.15. Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (Botswana); <b>Source of position:</b> A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1 - Para. page 3 <b>Comments:</b> A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India;	Supported	2.1 Acceptance of international norms 12.5 Prohibition of torture and cruel, inhuman or degrading treatment <b>Affected persons:</b> - general	As mentioned in the point 138.1 above.

and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)			
138.16. Ratify the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, as well as its Optional Protocol ( Brazil); <b>Source of position:</b> A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1 - Para. page 3 <b>Comments:</b> A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)	Supported/Noted	2.1 Acceptance of international norms 12.5 Prohibition of torture and cruel, inhuman or degrading treatment 5.2 Institutions & policies - General <b>Affected persons:</b> - general	As mentioned in the point 138.1 above.
138.17. Expedite ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment	Supported/Noted	2.1 Acceptance of international norms 12.5 Prohibition of torture	As mentioned in the point 138.1 above.



or Punishment and its Optional Protocol ( Czech Republic ); <b>Source of position:</b> A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1 - Para. page 3 <b>Comments:</b> A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)		and cruel, inhuman or degrading treatment 5.2 Institutions & policies - General <b>Affected persons:</b> - general	
138.29. Accelerate the ratification process of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment ( Indonesia ); <b>Source of position:</b> A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1 - Para. page 3 <b>Comments:</b> A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading	Supported	2.1 Acceptance of international norms 12.5 Prohibition of torture and cruel, inhuman or degrading treatment <b>Affected persons:</b> - general	As mentioned in the point 138.1 above.

Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)			
<b>Right or area: 5.1. Constitutional &amp; legislative framework</b>			
138.32. Conform its national legislation to international norms. on the prevention of torture, to speed up the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment and receive the Special Rapporteur on Torture (Switzerland); <b>Source of position:</b> A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1 - Para. page 3 <b>Comments:</b> A/HRC/21/10/Add.1 states at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)	Supported/Noted	5.1 Constitutional and legislative framework 12.5 Prohibition of torture and cruel, inhuman or degrading treatment 2.1 Acceptance of international norms 3.2 Cooperation with special procedures 5.2 Institutions & policies - General <b>Affected persons:</b> - general	As mentioned in the point 138.1 above.
138.36. Consider introducing a new bill	Supported/Noted	5.1 Constitutional and	As mentioned in the point 138.1 above.

to the Parliament, taking into full consideration of the suggestions of the Select Committee, and take further actions towards the ratification of Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (Timor-Leste);		legislative framework 12.5 Prohibition of torture and cruel, inhuman or degrading treatment 2.1 Acceptance of international norms <b>Affected persons:</b> - general	
<b>Source of position:</b> A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1 - Para. page 3 <b>Comments:</b> A/HRC/21/10/Add.1 states: at page 2: List of Recommendations Accepted by the Government of India; and at page 3: Finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment. (Spain, Sweden, Switzerland, Timor-Leste, UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, Republic of Korea)			
<b>Right or area: 12.7. Prohibition of slavery, trafficking</b>			
138.107. Accelerate its efforts on combating human trafficking (Iran); <b>Source of position:</b> A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1 - Para. page 2	Supported	12.7 Prohibition of slavery, trafficking 5.2 Institutions & policies - General <b>Affected persons:</b> - general	<ul style="list-style-type: none"><li>Through §§ 370 an 370A, Indian Penal Code 2013, India now provides stringent punishment for trafficking. These amendments expand the definition of trafficking and related exploitation, in line with India's obligations under the Palermo Protocol.</li><li>The Supreme Court of India is also seized of the matter, and has directed state governments to create standard operating procedures for responding to trafficking, particularly of children.</li><li>India has entered into collaborations with neighbouring countries such as</li></ul>

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Status of ratification and global trend:

- The CAT came into force in 1984.
- India signed it in 1997.
- As of now, 161 countries are state parties to the CAT, meaning they have signed and ratified it. Therefore, a large majority of countries have ratified the CAT globally. India is very much in the minority on this.
- 9 other countries have signed it, but have not yet ratified it, like India. The countries are Angola, Bahamas, Brunei, Comoros, Gambia, Haiti, Palau, and Sudan. And of course India.
- 27 countries have neither signed nor ratified it. These are: Barbados, Bhutan, Cook Islands, North Korea, Dominica, Grenada, Iran, Jamaica, Kiribati, Malaysia, Marshall Islands, Micronesia, Myanmar, Niue, Oman, PNG, St Kitts and Nevis, St Lucia, Samoa, Singapore, Solomon Islands, Suriname, Tonga, Trinidad, Tuvalu, Tanzania, and Zimbabwe.

1. D.K. Basu, Ashok K. Johri vs State Of West Bengal, State Of U.P

18 December, 1996

No violation of any one of the human rights has been the subject of so many Conventions and Declarations as 'torture'- all aiming at total banning of it in all forms, but in spite of the commitments made to eliminate torture, the fact remains that torture is more widespread now than ever before. "Custodial torture" is a naked violation of human dignity and degradation with destroys, to a very large extent, the individual personality. It is a calculated assault on human dignity and whenever human dignity is wounded, civilization takes a step backward-flag of humanity must on each such occasion fly half-mast.

...

"Custodial violence" and abuse of police power is not only peculiar to this country, but it is widespread. It has been the concern of international community because the problem is universal and the challenge is almost global.

....

Custodial violence, including torture and death in the lock ups strikes a blow at the Rule of Law, which demands that the powers of the executive should not only be derived from law but also that the same should be limited by law. Custodial violence is a matter of concern. It is aggravated by the fact that it is committed by persons who are supposed to be the protectors of the citizens. It is committed under the shield of uniform and authority in the four walls of a police station or lock-up, the victim being totally helpless. The protection of an individual from torture and abuse by the police and other law enforcing officers is a matter of deep concern in a free society.

...

However, inspite of the constitutional and statutory provisions aimed at safeguarding the personal liberty and life of a citizen, growing incidence of torture and deaths in police custody has been a disturbing factor. Experience shows that worst violations of human rights take place during the course of investigation, when the police with a view to secure evidence or confession often resorts to third degree methods including torture and adopts techniques of screening arrest by either not recording the arrest or describing the deprivation of liberty merely as a prolonged interrogation. A reading of the morning newspapers almost everyday carrying reports of dehumanising torture, assault, rape and death in custody of police or other governmental agencies is indeed depressing. The increasing incidence of torture and death in custody has assumed such alarming proportions that it is affecting the credibility of the Rule of Law and the administration of criminal justice system. The community rightly feels perturbed. Society's cry for justice becomes louder.

This was also cited in **PUCL v UOI, 18 January 2005**, available at: <https://indiankanoon.org/doc/1731603/>

## 2. Raghbir Singh v. State of Haryana

AIR 1980 SC 1087

We are deeply disturbed by the diabolical recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new peril when the guardians of the law gore human rights to death. The vulnerability of human rights assumes a traumatic, torture-some poignancy (when) the violent violation is perpetrated by the police arm of the State whose function is to protect the citizen and not to commit gruesome of fences against them as has happened in this case. Police lock-up if reports in newspapers have a streak of credence, are becoming more and more awesome cells. This development is disastrous to our human rights awareness and humanist constitutional order.

## 3. Shakila Abdul Gafar Khan vs Vasant Raghunath Dhoble

8 September, 2003

Custodial violence, torture and abuse of police power are not peculiar to this country, but it is widespread. It has been the concern of international community because the problem is universal and the challenge is almost global. The Universal Declaration of Human Rights in 1948 which marked the emergence of a worldwide trend of protection and guarantee of certain basic human rights stipulates in Article 5 that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Despite this pious declaration, the crime continues unabated, though every civilized nation shows its concern and makes efforts for its eradication.

If it is assuming alarming proportions, now a days, all around it is merely on account of the devilish devices adopted by those at the helm of affairs who proclaim from roof tops to be the defenders of democracy and protectors of peoples' rights and yet do not hesitate to condescend behind the screen to let loose their men in uniform to settle personal scores, feigning ignorance of what happens and pretending to be peace loving puritans and saviours of citizens' rights.

....

The diabolic recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new and unwarranted peril because guardians of law destroy the human rights by custodial violence and torture and invariably resulting in death. The vulnerability of human rights assumes a traumatic torture when functionaries of the State whose paramount duty is to protect the citizens and not to commit gruesome offences against them, in reality perpetrate them. The concern which was shown in Raghbir Singh's case (supra) more than two decades back seems to have fallen to deaf ears and the situation does not seem to be showing any noticeable change.

## 4. Munshi Singh Gautam v State of MP

16 November, 2004



Custodial violence, torture and abuse of police power are not peculiar to this country, but it is widespread. It has been the concern of international community because the problem is universal and the challenge is almost global ... The diabolic recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new and unwarranted peril because guardians of law destroy the human rights by custodial violence and torture and invariably resulting in death. The vulnerability of human rights assumes a traumatic torture when functionaries of the State whose paramount duty is to protect the citizens and not to commit gruesome offences against them, in reality perpetrate them.

....

Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach at times of the courts as well because it reinforces the belief in the mind of the police that no harm would come to them if one prisoner dies in the lock-up because there would hardly be any evidence available to the prosecution to directly implicate them with the torture. The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kind of crimes in a civilized society, governed by the rule of law and poses a serious threat to an orderly civilized society. Torture in custody flouts the basic rights of the citizens recognized by the Indian Constitution and is an affront to human dignity. Police excesses and the mal-treatment of detainees/under-trial prisoners or suspects tarnishes the image of any civilised nation and encourages the men in 'Khaki' to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the malady of the very fence eating the crops, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading, towards total decay resulting in anarchy and authoritarianism reminiscent of barbarism. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve, otherwise the common man may tend to gradually lose faith in the efficacy of the system of judiciary itself, which if it happens will be a sad day, for any one to reckon with.

##### **5. State Of Madhya Pradesh vs Shyamsunder Trivedi**

9 May 1995

Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach of the Courts because it reinforces the belief in the mind of the police that no harm would come to them, if an odd prisoner dies in the lock-up, because there would hardly be any evidence available to the prosecution to directly implicate them with the torture. The Courts, must not lose sight of the fact that death in police custody is perhaps one of the worst kind of crime in a civilised society, governed by the rule of law and poses a serious threat to an orderly civilised society. Torture in flouts the basic rights of the citizens recognised by the Indian Constitution and is an affront to human dignity. Police excesses and the mal-treatment of detainees/under trial prisoners or suspects tarnishes the image of any civilised nation and encourages the men

in 'Khaki' to consider themselves to be above the law and sometimes even to become law unto themselves. Unless stern measures are taken to check the malady, the foundations of the criminal justice delivery system would be shaken and the civilization itself would risk the consequence of heading towards perishing. The courts must, therefore, deal with such cases in a realistic manner and with the sensitivity which they deserve otherwise the common man may lose faith in the judiciary itself, which will be a sad day.

In its 4th Report of June 1980, The National Police Commission noticed the prevalence of custodial torture etc. and observed that nothing is so dehumanising as the conduct of police in practising torture of any kind on a person in their custody. The commission noticed with regret that the police image in the estimation of the public has badly suffered on account of the prevalence of this practice in varying degrees over the past several years and noted with concern the inclination of even some of the supervisory ranks in the police hierarchy to countenance this practice in a bid to achieve quick results by short-cut methods.

#### **6. Ramesh Kaushik vs B. L. Vig, Superintendent**

1980 SCR (3) 929

When police and prison torture is escalating in our human rights era, courts owe a duty to society not to ignore such a dangerous reality. "At this time the lack of law and order is especially of prime concern. Our courts must bear their share of blame and shame for this condition".

...

We are conscious that correctional orientation and cautious humanization have changed the attitudes of many jail officials. To blame them is beyond our purpose or power but to protect the caged humans from torture, gross or subtle, beyond what the law permits is our function, indeed, our duty. From this perspective we may rapidly survey the circumstances and mould the reliefs.

#### **7. Sunil Batra vs Delhi Administration**

1979 SCR (1) 392

The province of prison justice, the conceptualization of freedom behind bars and the role of judicial power as constitutional sentinel in a prison setting, are of the gravest moment in a world of escalating torture by the minions of State, and in India, where this virgin area of jurisprudence is becoming painfully relevant.

...

I hold that bar fetters are a barbarity generally and, like whipping, must vanish. Civilised consciousness is hostile to torture within the walled campus. We hold that solitary confinement, cellular segregation and marginally modified editions of the same process are inhuman and irrational. More dangerous are these expedients when imposed by

the untuned and untrained power of a jail superior who has, as part of his professional equipment, no course in human psychology, stressology or physiology, who has to depend on no medical or psychiatric examination, prior to infliction of irons or solitary, who has no obligation to hear the victim before harming him, whose 'reasons' are in English on the history-tickets and therefore unknowable and in the Journal to which the prisoner has no access.

### 8. Dalbir Singh vs State Of U.P & Ors

3 February 2009

6. Custodial violence, torture and abuse of police power are not peculiar to this country, but it is widespread. It has been the concern of international community because the problem is universal and the challenge is almost global. The Universal Declaration of Human Rights in 1948 which marked the emergence of a worldwide trend of protection and guarantee of certain basic human rights stipulates in Article 5 that "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment". Despite this pious declaration, the crime continues unabated, though every civilized nation shows its concern and makes efforts for its eradication.

7. If it is assuming alarming proportions, now a days, all around it is merely on account of the devilish devices adopted by those at the helm of affairs who proclaim from roof tops to be the defenders of democracy and protectors of peoples' rights and yet do not hesitate to condescend behind the screen to let loose their men in uniform to settle personal scores, feigning ignorance of what happens and pretending to be peace loving puritans and saviours of citizens' rights.

...

The dehumanizing torture, assault and death in custody which have assumed alarming proportions raise serious questions about the credibility of rule of law and administration of criminal justice system. The community rightly gets disturbed. The cry for justice becomes louder and warrants immediate remedial measures. This Court has in a large number of cases expressed concern at the atrocities perpetrated by the protectors of law.

...

9. The diabolic recurrence of police torture resulting in a terrible scare in the minds of common citizens that their lives and liberty are under a new and unwarranted peril because guardians of law destroy the human rights by custodial violence and torture and invariably resulting in death. The vulnerability of human rights assumes a traumatic torture when functionaries of the State whose paramount duty is to protect the citizens and not to commit gruesome offences against them, in reality perpetrate them.

...

Tortures in police custody, which of late are on the increase, receive encouragement by this type of an unrealistic approach at times by the courts as well because it reinforces the belief in the mind of the police that no harm would come to them if one prisoner dies in the lock-up because there would hardly be any evidence available to the prosecution to

directly implicate them with the torture. The courts must not lose sight of the fact that death in police custody is perhaps one of the worst kind of crimes in a civilized society, governed by the rule of law and poses a serious threat to an orderly civilized society. Torture in custody flouts the basic rights of the citizens recognized by the Indian Constitution and is an affront to human dignity.

#### 9. Nandini Satpathy vs Dani

1978 SCR (3) 608

We are cognizant of the improved methods and refined processes of the police forces, especially Vigilance wings and Intelligence squads with special training in expert investigation and use of brains as against brawn. This remarkable improvement, in Free India, in police practices has not unfortunately been consistent and torture tactics have not been transported for life from our land as some recent happenings have regrettably revealed

#### 10. Charles Sobraj vs The Suptd., Central Jail, Tihar

1979 SCR (1) 512

Contemporary profusion of prison torture reports makes it necessary to drive home the obvious, to shake prison top brass from the callous complacency of unaccountable autonomy within that walled off world of human held incommunicado. Whenever fundamental rights are flouted or legislative protection ignored, to any prisoner's prejudice, this Court's writ will run, breaking through stone walls and iron bars, to right the wrong and restore the rule of law. Then the parrot-cry of discipline will not deter, of security will not scare of discretion will not dissuade, the judicial process. For if courts 'cave in' when great rights are gouged within the sound-proof, sight-proof precincts of prison houses, where, often, dissenters and minorities are caged, Bastilles will be re-enacted. When law and tyranny begins: and history whispers, iron has never been the answer to the rights of men. Therefore we affirm that imprisonment does not spell farewell to fundamental rights although, by a realistic re-appraisal, courts will refuse to recognise the full panoply of Part III enjoyed by a citizen.

#### 11. Bhagwan Singh Versus State of Punjab

AIR 1982 SC 1325

Torturing a person and using third degree methods are of medieval nature and they are barbaric and contrary to law. The police would be accomplishing behind their closed doors precisely what the demands of our legal order forbid. In Dagdu and others v. State of Maharashtra, [1973] 3 SCC 68 this Court observed as under: "The police with their wide powers are apt to overstep their zeal to detect crimes and are tempted to use the strong arm against those who happen to fall under their secluded jurisdiction. That



tendency and that temptation must in the larger interest of justice be nipped in the bud." It is a pity that some of the police officers, as it has happened in this case, have not shed such methods even in the modern age. They must adopt some scientific methods than resorting to physical torture. If the custodians of law themselves indulge in committing crimes then no member of the society is safe and secure. If police officers who have to provide security and protection to the citizens indulge in such methods they are creating a sense of insecurity in the minds of the citizens. It is more heinous than a game-keeper becoming a poacher.

## 12. Sube Singh v State of Haryana

AIR 206 SC 1117

Unfortunately, police in the country have given room for an impression in the minds of public, that whenever there is a crime, investigation usually means rounding up all persons concerned (say all servants in the event of a theft in the employer's house, or all acquaintances of the deceased, in the event of a murder) and subjecting them to third-degree interrogation in the hope that someone will spill the beans. This impression may not be correct, but instances are not wanting where police have resorted to such a practice. Lack of training in scientific investigative methods, lack of modern equipment, lack of adequate personnel, and lack of a mindset respecting human rights, are generally the reasons for such illegal action. One other main reason is that the public (and men in power) expect results from police in too short a span of time, forgetting that methodical and scientific investigation is a time consuming and lengthy process. Police are branded as inefficient even when there is a short delay in catching the culprits in serious crimes. The expectation of quick results in high-profile or heinous crimes builds enormous pressure on the police to somehow 'catch' the 'offender'. The need to have quick results tempts them to resort to third degree methods. They also tend to arrest "someone" in a hurry on the basis of incomplete investigation, just to ease the pressure. Time has come for an attitudinal change not only in the minds of the police, but also on the part of the public. Difficulties in criminal investigation and the time required for such investigation should be recognized, and police should be allowed to function methodically without interferences or unnecessary pressures. If police are to perform better, the public should support them, government should strengthen and equip them, and men in power should not interfere or belittle them. The three wings of the Government should encourage, insist and ensure thorough scientific investigation under proper legal procedures, followed by prompt and efficient prosecution. Be that as it may.

24. Custodial violence requires to be tackled from two ends, that is, by taking measures that are remedial and preventive. Award of compensation is one of the remedial measures after the event. Effort should be made to remove the very causes, which lead to custodial violence, so as to prevent such occurrences. Following steps, if taken, may prove to be effective preventive measures:

[list of measures is in the judgment]

**13. Sheela Barse vs State Of Maharashtra**

1983 SCR (2) 337

This Court also directed that in the meanwhile Dr. (Miss) A.R. Desai, Director of College of Social Work, Nirmala Niketan, Bombay will visit the Bombay Central Jail and interview women prisoners lodged there including Devamma and Pushpa Paen without any one else being present at the time of interview and ascertain whether they had been subjected to any torture or ill-treatment and submit a report to this Court on or before 30th August, 1982. The State Government and the Inspector General of Prisons were directed to provide all facilities to Dr. Miss A.R. Desai to carry out this assignment entrusted to her. The object of assigning this commission to Dr. Miss A.R. Desai was to ascertain whether allegations of torture and ill-treatment as set out in the letter of the petitioner were, in fact, made by the women prisoners including Devamma and Pushpa Paen to the petitioner and what was the truth in regard to such allegations. Pursuant to the order made by this Court, Dr. Miss A.R. Desai visited Bombay Central prison and after interviewing women prisoners lodged there, made a detailed report to this Court. The Report is a highly interesting and instructive socio-legal document which provides an insight into the problems and difficulties facing women prisoners and we must express our sense of gratitude to Dr. Miss A.R. Desai for the trouble taken by her in submitting such a wonderfully thorough and perceptive report.

...

Imagine the helpless condition of a prisoner who is lodged in a jail who does not know to whom he can turn for help in order to vindicate his innocence or defend his constitutional or legal rights or to protect himself against torture and ill-treatment or oppression and harassment at the hands of his custodians.



## SECTION

IN THE SUPREME COURT OF INDIA

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In

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Civil /~~Criminal Appeal~~ /~~Transfer~~/Writ Petition No. 738 of 20 16

IN THE MATTER OF:

Dr. Ashwini Kumar \_\_\_\_\_ Petitioner's/Appellant's

## Versus

UNION OF INDIA & An Respondent's/ Caveater's

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