

NHRC, India Submission to the UN Human Rights Council for Third Universal Periodic Review of India

Introduction

An independent and active judiciary, a free media and a strong, watchful civil society are the sentinels guarding the human rights challenges in India which is a constitutional democracy. India is also a federal country with 29 States which have designated power under the Constitution. The way they perform either contributes or diminishes the protection of human rights.

2. For purposes of monitoring the implementation of UPR II recommendations, NHRC, India adopted a process, which is at Annexure – I.

Status of Implementation of Recommendations in UPR II

3. Given below is the NHRC assessment on the progress made by the Government on the recommendations it accepted at the UPR II as per A/HRC/21/10/Add.1 dated 17.09.2012 :

CIVIL AND POLITICAL RIGHTS

Recommendation : 21

4. The Bill introduced in Parliament in 2010 to enable CAT ratification has lapsed with the dissolution of 15th Lok Sabha in May 2014. A mendacious view prevails in the Government that existing provisions with slight amendment in the IPC are sufficient to deal with torture. Delay in bringing out the changes in the law as a pre-requisite for ratification of CAT is disquieting as five years have passed without any significant change.

Recommendations : 39 & 40

5. "Human rights" is taught as part of the basic course for Constables, Sub-Inspectors and Deputy Superintendents of Police in

different States along with in-service training on "human rights" of 2-3 days duration. Sometimes, "gender" and "child rights" training is interspersed ranging from 2-5 days.

6. Training is uneven across States and needs assessment from the human rights perspective. The training modules need to include the new forms of human rights apart from civil and political rights. It remains low priority among Police Departments and other law enforcement officers.

Recommendation : 4

7. The legal system continues to be dysfunctional with slow disposal of cases and inordinate delay in giving finality to both criminal and civil litigation. While paucity of Judges/Magistrates has often been put forth as a prime reason behind the slow moving system, the polity and judiciary also seem to have no appetite for reforms in court processes and appointment procedures of Judges and business process re-engineering of an archaic system created during the colonial rule.

8. Functioning of legal aid authorities at all levels need to improve to reach the poor/marginalized who suffer long periods of incarceration as undertrials due to inadequate and free but less than quality legal assistance in a ponderously slow legal system.

ECONOMIC, SOCIAL AND CULTURAL RIGHTS

Women/Sexual and Reproductive Health & Rights

Recommendations : 64 & 67

9. Generally tardy in implementation otherwise, recently emphasis has increased on RCH programme under the NRHM. There are still close to 46,500 maternal deaths each year due to causes related to pregnancy, child birth and post-partum period. 8% of maternal deaths are attributed to unsafe abortions.

Recommendations : 16 & 26

10. Progress achieved in recent period is due to programmes like JSY, JSSK, Dial 102 Emergency Ambulance Services, nutrition coverage for pregnant and lactating mothers and reduction in anemia through iron and folic acid and vitamin tablets though the pace of decline is not uniform across States. The MMR remains high at 167 for the country as a whole during 2011-2013 as against MDG target of 109 by 2015.

11. IMR has come down to 39 per 1,000 live births in 2014 as against 50 in 2009 but it remains high for States like MP, Assam, Odisha and UP. In 2014, U5MR for the country was 45 against 49 in 2013. This may be viewed against the MDG-4 target of 42 deaths by 2015.

Recommendation : 60

12. "Prohibition of Interference with the Freedom of Matrimonial Alliances Bill" to prevent honour killings was supported by several States. However, Government has not proceeded further, even with this anodyne Bill which steers clear of suggesting amendments to IPC for defining honour killings and proposing appropriate punishment. The Bill also does not propose amendment to the Special Marriage Act to remove the 30-day waiting period for registering a marriage. India does not have a law on compulsory registration of marriages. Hence, child marriage and forced marriage goes on with impunity.

Recommendations : 63 & 65

13. 2011 Census indicates CSR at 914 girls against 927 recorded in 2001 Census. The overall rural CSR has also fallen steeply from 934 in 2001 to 919 in 2011, whereas urban CSR has decreased from 906 in 2001 to 902 in 2011 Census indicating girl child being more at risk than ever before.

14. PCPNDT Act, 1994 is in operation to pre-empt sex selective abortions but it suffers from extremely poor implementation with only a few convictions in court of law. Government has initiated the *Beti*

Bachao Beti Padao campaign to arrest this trend which appears to be yielding positive dividends.

Women/Other Issues

Recommendations : 11, 51 & 46

15. Government has initiated several steps to integrate gender perspective in various policies/programmes being implemented by its agencies. The approval procedure of Government schemes requires mandatory information pertaining to mainstreaming of gender perspective. Gender budgeting is an important component in this direction. Much more is required in terms of definite targeting across different sectors and geographies which stubbornly buck the trend of improvement.

16. Budgetary allocation from Central Government to schemes like ICDS has recently been reformatted with higher responsibility on the State Governments. This may have repercussions on MCH and nutrition services with the States showing reluctance to provide for their part.

17. While amendment to the SC & ST (PoA) Act, 1989 was made in 2015, insufficient efforts were made to review the legislations – ITPA, 1956; DPA, 1961; ERA, 1976; and PWDV, 2005, resulting in non-fructification of amendment process. NCRB data shows that despite a strong law in place, 47,064 crimes against SCs and 11,451 crimes against STs were committed in 2014.

Recommendation : 52

18. RTE, 2009 is being implemented in 25 out of 29 States guaranteeing education of children between 6-14 years till Class 8. Affirmative action in education has resulted in delayed marriages with accompanying dividends. However, women labour participation rates do not seem to show strong reversal.

19. The Reservation Bill for Women in Parliament continues to linger though several States have brought in reservation for women in Panchayats and State Legislative Assemblies.

Recommendations : 35, 49, 58 & 66

20. The Criminal Law (Amendment) Act, 2013 was enacted redefining rape and incorporating additional provisions on violence against women along with stringent punishments. Yet, VAW has not shown strong trends of abatement as NCRB statistics shows 3,37,922 crimes against women including 36,735 cases of rape in 2014. The POCSO, 2012; and SHWW, 2013 have been enacted. While legal regime stands strengthened, allegations of sexual offences against minors have not shown signs of abatement. The JJA, 2015 has also been amended. However, an allegedly retrograde provision has been added which enables adjudication of cases related to children between 16-18 years to courts.

21. Communal violence witnessed a 17% rise in 2015, with 751 incidents recorded across the country as against 644 in 2014. 'Prevention of Communal Violence (Access to Justice and Reparations) Bill, 2013' is yet to become a law.

Recommendation : 29

22. Appropriate mechanisms in terms of policies, acts and programmes for different categories of vulnerable groups are in place and monitoring responsibility is carried out by the Ministries. Ombudsman function is discharged by respective Commissions meant for Women, Minorities, Scheduled Castes, Scheduled Tribes and Children both at the national and state level.

Recommendations : 5, 17, 28 & 42

23. Government's initiatives towards promoting gender equality include, enhanced maternity leave benefits for working women from 12 weeks to 26 weeks through amendment of the MBA, 1961 and allowing enhanced entry of women in Armed Forces. Gender sensitization

programmes among Police and law enforcement agencies is being emphasized.

Child Labour

Recommendation : 13

24. While NCLP project is continuing across 270 endemic districts in 20 States, rehabilitation of released children from labour is highly unsatisfactory. Many children after being released, return back to work for want of livelihood avenues to their households.

Protection of Children

Recommendation : 18

25. While the NCPCR and respective State Commissions exist as also the ICPS including Childline services is being implemented, a large number of children continue to lead lives on streets and without families, devoid of dignity and adequate scope for development.

Recommendation : 3 & 37

26. Incidence of child marriage continues, inspite of the PCMA, 2006 being in place due to ineffective implementation and traditional customs and practices. There is no survey to arrive at the base line to make a meaningful impact in eliminating child marriage.

27. Opportunities for consultations on child rights issues have increased due to initiatives taken by Government as well as concerned human rights institutions.

Children – Right to Education

Recommendations : 25, 31, 34, 44 & 57

28. RTE guarantees education to children in the age group of 6-14 years. Gaps persist in basic infrastructure in schools. Learning

outcomes in both government and private schools also indicate a dismal picture as per the ASER conducted by an NGO.

Trafficking

Recommendations : 6, 7 & 8

29. Criminal Law (Amendment) Act, 2013 was brought into force wherein Section 370 and 370A IPC covers trafficking.

30. However, trafficking, both within the country and across the borders continues. ATUs established by States have been less than effective in preventing such activities. Rehabilitation activities as well as counseling and other services like legal aid are inadequate. Govt has been implementing *Ujwala* scheme for prevention, rescue and rehabilitation of trafficking victims with the help of NGOs.

31. ITPA too needs to be repealed by Government.

Vulnerable Groups

Recommendation : 12

32. Allocation of resources by Central Government for subjects touching economic/social rights assigned constitutionally for States has gone up by almost ten times during the period 1999-2000 to 2012-13 signifying serious efforts to accelerate social development. However, deprivation levels among vulnerable groups still remain high.

Freedom of Religion

Recommendation : 32

33. Freedom of religion to everyone is guaranteed by the Constitution of India. However, there is need for the federal and State Governments to be more vigilant in view of some of the recent happenings in a few States.

Social Welfare Programmes

Recommendations : 1, 10, 20, 22, 24, 41, 47 & 56

34. Efforts have been made towards poverty alleviation and incidence of poverty for the country has declined from 37.2% in 2004-05 to 21.9% in 2011-12. Though sharp decline in rural poverty has been witnessed, further work needs to be continued. Poverty alleviation programmes like MGNREGS, NSAP, NRLM, and NRuM require further improvement.

35. A comprehensive ICPS is being implemented across the country but problem areas persist among children homes, street children, out of school children, requiring urgent attention.

36. Agrarian crises in many parts of the country and inadequacy of Government safety net have driven poor farmers into debt traps resulting in large number of suicides.

Health, Education & Employment

Recommendations : 9, 23, 33, 45, 54 & 62

37. In India, total healthcare expenditure as a proportion of GDP is 4.7% as against 9.94% for the world. Out of this, Government share is 30% which converts to 1.4% of GDP. On an average, large percentage of family healthcare expenditure is met out-of-pocket as against global experience of pooling arrangement like insurance and State provided healthcare. Health emergencies often push families into poverty.

38. While RTE has come into vogue, with higher budgetary outlays, positive impacts are yet to be assessed.

39. Allocation to MGNREGS has been almost static compared to the previous couple of years. NRLM for reducing poverty by enabling poor households to access self-employment opportunities was allocated an amount of 4,000 crore rupees in 2014-2015 which was same in previous year.

Recommendation : 48

40. SBA, a national cleanliness mission, is in place to address this area. Government has taken initiatives to accelerate sanitation coverage and access to safe and sustainable drinking water in rural areas. However, large number of habitations/households does not have access to safe quality drinking water sources and also suffer from problems of arsenic and fluoride contamination. Open defecation is still rampant especially in rural areas. Large projects in the pipeline, when implemented, will still leave huge areas with quality problems.

Food Security

Recommendations : 36 & 53

41. Significant progress has been achieved towards implementation of the NFSA, 2013 in the States. 34 States/UTs have implemented the Act in various measures. Efforts have also been made towards strengthening of the public distribution system in accordance with the provisions of the Act. However, identification of beneficiaries is a problem area as States use different methodologies leading to confusion. Net result is continued food insecurity in some tribal pockets.

Right to Work & Labour

Recommendation : 30

42. The entire country is covered except for municipal areas by MGNREGS, a wage employment programme. Richer States like TN and AP tend to have better absorptive capacity and these get more funds than poorer States like Bihar. The average number of days for which the households have been provided employment has been 50 days against maximum 100 days. Many studies also point to weaknesses like delays in wage payment and non-payment of unemployment allowance.

Recommendation : 38

43. While Government has been taking initiatives to promote social security through schemes like PMSBY, PMJJBY, APY and RSBY, there

is need to do much more as 93% of the workforce is in unorganized sector, without social security and safety net. The UWSSA, 2008, is in place, needs to be implemented more effectively by the States.

44. The implementation of the BLSA, 1976 is weak. More effective implementation is also needed for legislations like IMWA, 1979 and MWA, 1948.

Recommendation : 59

45. Women, especially from vulnerable sections, continue to be discriminated both in terms of work and wages as are persons with disabilities despite legal and constitutional provisions.

Disabled and Elderly

Recommendations : 55 & 15

46. Implementation of the PWD Act, 1995 has not really been effective as substantial action needs to be taken by States. As a result, accessibility and equal opportunities for PWDs is still a far cry. Recently, Govt has launched a campaign for their accessibility. Nearly half of children with disabilities do not have access to specialized education. Illiteracy is particularly high for children with visual, multiple and mental disabilities. Share of children with disabilities in out of school children is high. Special schools are few and cater to limited number of children. Similarly, elderly face problems of financial security/personal safety, abuse and even abandonment.

47. Implementation of MWPSA, 2007 falls far short of desired effect.

Cooperation with UN System/Special Procedures

Recommendation : 43

48. Government has taken positive steps. However, it needs to ratify the CED. It also should submit India country reports long due to UN Human Rights Committee and ESCR Committee.

Recommendation : 19

49. The country had visits by UN Special Rapporteurs on Extra-judicial Killings, VAW and Right to Adequate Housing during recent years.

Miscellaneous

Recommendation : 2

50. Human rights issues are part of social-sciences syllabi of CBSE. Incorporation of HRE into education system in entirety, i.e., in the State Education Board's curricula requires systematic emphasis. Draft new Education Policy also does not mention about HRE.

Recommendation : 61

51. Press Council of India under the PCA, 1978 is mandated to take immediate action on complaints of violence against journalists. However, incidents of violence against them have been reported.

Recommendation : 50

52. Civil society in India, as on previous occasions, actively participated in present UPR process.

Recommendation : 14

53. Section 377 IPC criminalizes same sex relations. Though the Delhi High Court had decriminalized these relations, it was overturned by the Apex Court. The Apex Court is seized of the matter again.

Recommendation : 27

54. Several human rights institutions have been set-up at National and State level. There is need for better coordination among these institutions and Government on one hand and among human rights institutions on the other.

Conclusion

55. The turmoil in Kashmir is on the spotlight now. It is augmented by trans-border terrorism and Jihadi funding from the neighbouring country. The use of plastic pellets by CAPFs is controversial. NHRC has taken up a case on the matter but withholds its comments now because human rights of both sides are involved, when young crowd pelt stones at the Police personnel.

56. The sporadic instances of violence concerning eating of beef have been reported in different parts of the country. The fringe of the right wing Hindutva Brigade is alleged to be behind these incidents which are few and far between. Though disquieting, it is too early to assess as to be a threat to secular and pluralistic structure of Indian society.

Process Adopted by NHRC, India for Monitoring the Implementation of 67 Recommendations

First and foremost, NHRC, India developed a framework indicating action required on each of the 67 recommendations along with its monitorable outcomes as it felt this would not only provide information about the existing ground realities on a range of issues but also facilitate in providing a road map for improving the gaps therein. The 67 recommendations were grouped under 16 major heads¹. This exercise was initiated in October 2012 and continued in 2012 and 2013 with significant stakeholders who included among others national human rights institutions and civil society organizations. Simultaneously, the NHRC wrote to the respective Ministers of all the relevant Ministries to inform the progress it had made towards implementation of UPR-1 and UPR-2 recommendations.

The framework was completed in February 2014 wherein it identified the specific Union Ministries², 16 in all, on whose part action was required. The NHRC further ensured that the completed framework was forwarded to all these Ministries and other stakeholders besides posting it on its website (www.nhrc.nic.in) for wider dissemination. As response was received from only four Ministries (Minority Affairs, Food & Public Distribution, Justice and Rural Development), NHRC again addressed letters to the

¹ Convention Against Torture, Police, Judiciary, Women/Sexual and Reproductive Health and Rights, Women/Other Issues Concerning, Child Labour, Protection of Children, Children – Right to Education, Trafficking, Vulnerable Groups, Freedom of Religion, Social Welfare Programmes, Right to Work and Labour, Disabled and Elderly, Cooperation with UN System/Special Rapporteurs, and Miscellaneous.

² Ministries of Home Affairs; Rural Development; Women and Child Development; Human Resource Development; Law & Justice; Health & Family Welfare; Minority Affairs; Labour & Employment; Social Justice and Empowerment; External Affairs; Consumer Affairs, Food & Public Distribution; Drinking Water & Sanitation; Information & Broadcasting; Housing and Urban Poverty Alleviation; Finance; and Tribal Affairs.

concerned Secretary of each of the 16 Ministries including NITI Aayog calling for a meeting in the Commission. These meetings were convened by the Secretary General while some by the Joint Secretary (Training & Research) during the first half of 2015. In these meetings a brief orientation was given about the UPR along with the framework developed by NHRC. This was followed by a discussion on the action taken by their Ministry on the recommendation(s) pertaining to their work. Despite these efforts and reminders, exact information did not come forth from most of the Ministries, a handful of them failed to submit even this.

Thereafter, NHRC held five regional consultations and a national consultation with representatives of the government, human rights institutions including state human rights commissions (SHRCs), civil society, technical institutions, academics and experts from the viewpoint of perceiving actual ground realities across the country given the diversity of India. More than 500 people took part in these consultations and the information shared was valuable. In the first and fourth consultation held in Chandigarh and Mumbai, government participation was limited, whereas in the second and third held in Kolkata and Bengaluru, the participation of civil society was poor. The same was also true for SHRCs, substantiating the fact that nothing much had changed so far as they were concerned since 2012.

Abbreviations

ASER	: Annual Survey of Education Reports
AP	: Andhra Pradesh
APY	: Atal Pension Yojana
ATUs	: Anti-trafficking Units
BLSA	: Bonded Labour System (Abolition) Act, 1976
CAPFs	: Central Armed Police Forces
CAT	: Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment
CBSE	: Central Board of Secondary Education
CED	: Convention on Enforced Disappearance
CSR	: Child Sex Ratio
DPA	: Dowry Prohibition Act, 1961
ERA	: Equal Remuneration Act, 1976
ESCR Committee	: Economic, Social and Cultural Rights Committee
GoI	: Government of India
HRE	: Human Rights Education
ICDS	: Integrated Child Development Services Scheme
ICPS	: Integrated Child Protection Scheme
IMR	: Infant Mortality Rate
IMWA	: Inter-State Migrant Workmen Act, 1979
IPC	: Indian Penal Code
ITPA	: Immoral Traffic (Prevention) Act, 1956

JJA	: Juvenile Justice (Care and Protection of Children) Act, 2015
JSY	: Janani Suraksha Yojana
JSSK	: Janani Shishu Suraksha Karyakram
MBA	: Maternity Benefit Act, 1961
MCH	: Maternal and Child Health
MDG	: Millennium Development Goal
MGNREGS	: Mahatma Gandhi Nation Rural Employment Guarantee Scheme
MMR	: Maternal Mortality Rate
MP	: Madhya Pradesh
MWA	: Minimum Wages Act, 1948
MWPSCA	: Maintenance and Welfare of Parents and Senior Citizens Act, 2007
NCLP	: National Child Labour Project
NCPCR	: National Commission for Protection of Child Rights
NCRB	: National Crime Records Bureau
NFSA	: National Food Security Act, 2013
NRHM	: National Rural Health Mission (now known as National Health Mission)
NRLM	: National Rural Livelihoods Mission (Aajeevika)
NRuM	: National Rurban Mission
NSAP	: National Social Assistance Programme
PCA	: Press Council Act, 1978

PCMA	: Prohibition of Child Marriage Act, 2006
PCPNDT Act	: Pre-Conception and Pre-Natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994
PIL	: Public Interest Litigation
PMSBY	: Pradhan Mantri Suraksha Bima Yojana
PMJJBY	: Pradhan Mantri Jeevan Jyoti Bima Yojana
POCSO	: Protection of Children from Sexual Offences Act, 2012
PWDs	: Persons with Disabilities
PWD Act	: Persons With Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995
PWDV	: Protection of Women from Domestic Violence Act, 2005
RCH	: Reproductive and Child Health
RSBY	: Rashtriya Swasthya Bima Yojana
RTE	: Right of Children to Free and Compulsory Education Act, 2009
SBA	: Swachh Bharat Abhiyan
SC & ST (PoA) Act, 1989	: Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989
SHWW	: Sexual Harassment of Women at Workplace, 2013
TN	: Tamil Nadu
U5MR	: Under Five Mortality Rate
UP	: Uttar Pradesh
UWSSA	: Unorganized Workers' Social Security Act, 2008
UTs	: Union Territories
VAW	: Violence Against Women