

Asian Centre for Human Rights

P.O. Box 9627, Janakpuri, New Delhi-110058, India

Tel: +91-11-25620583; 25503624;

Fax: +91-11-25620583

Email: suhaschakma@hotmail.com

The Status of Children in India



**An alternate report to the United Nations Committee on
the Rights of the Child on India's first periodic report
(CRC/C/93/Add.5)**

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I. Introduction

The United Nations Committee on the Rights of the Child during its Working Group session on 6-10 October 2003 will conduct a preliminary examination of the first periodic report (CRC/C/93/Add.5) of the government of India on the implementation of the United Nations Convention on the Rights of the Child (CRC). The Committee will seek further information for consideration of the first periodic report in January 2004.

India submitted its Initial Report on the implementation of the CRC in 1997. The Committee on the Rights of the Child (CRC Committee) considered it January 2000 and made specific recommendations (Concluding Observations) to the government of India for implementation of the Convention.

The first periodic report submitted in 2001 ignores many critical Concluding Observations of the CRC Committee. It is entirely uninformative about the actual status of the children in India. It also provides little information especially about the civil and political rights of children and the status of children who require special measures of protection. In its 500 pages report, the government of India repeats the aims and objectives of the constitutional safeguards, specific laws or programmes. The size of a report does not necessarily reflect the substance. The first periodic report of the government of India is a classic example.

The submission of about 500 pages report by the government of India is not only an attempt to impress upon the CRC Committee but also an attempt to escape scrutiny. After all, scrutinising about 500 pages report of the government of India and various alternate reports of NGOs is a daunting task by itself for the Committee members.

This failure to provide accurate information about the actual status of children should be construed as the lack of meaningful cooperation from the government of India with the Committee on the Rights of the Child.

The lack of meaningful cooperation from the government of India raises ethical questions about the role of UNICEF pursuant to the Article 45 of the Convention on the Rights of the Child. UNICEF reportedly funded the writing of the first periodic report of the government of India. While such funding by UNICEF is not specific to India, UNICEF does fund, including hiring of professionals, to write the periodic reports of many governments all over the world. If UNICEF does not provide its own report to the CRC Committee, especially areas falling within the scope of its mandate, serious ethical questions could be raised as to whether UNICEF is fulfilling its obligation under Article 45 of the Convention.

This alternate report seeks to assist the CRC Committee by providing information about the actual status of the children in India. The case studies cited in the report are not exhaustive. They are indicative of the patterns of violations of children's rights in India.

Asian Centre for Human Rights (ACHR) hopes that this report would help the Committee on the Rights of the Child to identify the critical issues to seek further updated information from the government of India during the pre-sessional hearing for effective examination of the periodic report in January 2004.

ACHR hopes to update this report prior to the final hearing in January 2004.

Suhas Chakma
Director

II. Executive Summary

Concerned about the sizes of the periodic reports submitted by the governments, the Committee on the Rights of the Child in its 30th session in May 2002 recommended the State parties “to submit periodic reports that are concise, analytical and focusing on key implementation issues, and the length of which will not exceed 120 regular size pages”.¹ That the government of India fails to provide information about the actual status of the children in a size of 500 pages report is disturbing. As this alternate report shows, it has more to do with the government’s refusal to publicly acknowledge the problems of the children in India and attempt to mislead the CRC Committee about the real situation of children in India.

Juvenile Justice

The adoption of the Juvenile Justice (Care and Protection) Act of 2000 is one of the concrete measures taken by the government of India since the consideration of initial report by the Committee on the Rights of the Child in January 2000. The government of India flaunts the enactment of the Act.

However, the implementation the Juvenile Justice (Care and Protection) Act of 2000 remains *problematique*. A large number of State governments such as Punjab, Haryana, Jammu and Kashmir, Assam etc are yet to set up the Juvenile Courts, Juvenile Boards or Juvenile Homes. In a reply to the Rajya Sabha² on 3 December 2001, Minister for Social Welfare stated that there are no juvenile detainees in Jammu and Kashmir and Manipur! In reality, the Jammu and Kashmir State government is yet to take any measure to implement the Juvenile Justice Act of 1986, let alone replace it with Juvenile Justice (Care and Protection Act), 2000. The Jammu and Kashmir State Assembly extended Juvenile Justice Act, 1986 in the State by abolishing the Children Act of 1970 in the year 1997. However, as of August 2003, the government of Jammu and Kashmir has not taken any initiative to implement the Juvenile Justice Act, 1986. The Juvenile detainees are being kept in District Jail of Jammu along with harden criminals.³

The enactment of any legislation therefore does not guarantee its enforcement.

Non-Discrimination

In its first periodic report, the government of India makes generic reference to various constitutional provisions and legislations including the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 to combat caste discrimination in India. Untouchability was abolished under Article 17 of the constitution of India. Yet, caste discrimination is alive and kicking. Dalit children at an early age face caste

¹ . <http://www.unhchr.ch/html/menu2/6/crc/doc/recommend.htm#4>

² . Rajya Sabha is the upper house of Indian Parliament.

³ . The Kashmir Times, Jammu, 11 August 2003

discrimination. As of 2 February 2003, only 10 States⁴ out of 28 States and 7 Union Territories have established Special Courts under the SCs/STs (Prevention of Atrocities) Act, 1989. The remaining States and Union Territories have notified the existing Courts of Sessions as Special Courts for the trial of offences under the Act. The courts in India are already over-burdened with 3.5 million and 40 thousand cases at the High Courts level in 2002 according to the report of the Parliamentary Standing Committee on Home Affairs.⁵ The designation of the Court of Sessions as Special Courts further adds to judicial delay in India. This is despite the fact that the crimes against the Scheduled Castes and Scheduled Tribes have been increasing exponentially. According to government statistics provided to the parliament on 20 February 2003, 34,799 cases were registered in 1999, 36,971 cases were registered in 2000 and 39,157 were registered in 2001 under the SC/STs Prevention of Atrocities Act, 1989.⁶

The conviction rate remains extremely low. Out of the 31,011 cases tried under the Prevention of Atrocities Act in 1998, only a paltry 1,677 instances or 5.4% resulted in a conviction and 29,334 ended in acquittal. Compare to this, under the Indian Penal Code, 39.4% of cases ended in a conviction in 1999 and 41.8% in 2000.⁷

Right to life

On violation of the right to life, the government of India only refers to female infanticide. It remains silent on extrajudicial executions and custodial death of children. According to the Annual Report 2002-03 of India's Home Ministry, 14 out of 28 States are afflicted by internal armed conflicts. The security forces and the armed opposition groups have been responsible for violation of the right to life of large number of children. In specific reply in the parliament on 16 July 2002, Minister of State for Home Affairs Shri Ch. Vidyasagar Rao stated that no separate data is maintained for children killed in custody.⁸

Name and nationality

Tens of thousand people are deprived the right to nationality in India. These include Chakmas and Hajongs of Arunachal Pradesh, Mohajirs in Andhra Pradesh, Punjabi refugees in Jammu and Kashmir and Pakistani refugees in Rajasthan.

The Chakma and Hajong children of Arunachal Pradesh are denied the right to nationality due to non-implementation of the judgements of the Supreme Court (CWP

⁴ . The states which have set up Special Courts are Andhra Pradesh, Bihar, Chhatisgarh, Gujarat, Karnataka, Madhya Pradesh, Rajasthan, Tamil Nadu, Uttar Pradesh and Uttranchal

⁵ . Suhas Chakma, Wrong Prescriptions, The Central Chronicle, Bhopal, 4 September 2003.

⁶ . Statement is answer to part (a), (b) and (d) of the Lok Sabha Unstarred Question No. 595 for 20.02.2003 regarding `Crimes against Scheduled Castes and Scheduled Tribes` .

⁷ . <http://www.hrdc.net/sahrdc/hrfeatures/HRF83.htm>

⁸ . UNSTARRED QUESTION NO 316 TO BE ANSWERED ON 16.07.2002

720 of 1995) and Delhi High Court (CPR no. 886 of 2000). When judgements of the Supreme Court and High Court cannot guarantee the rights of nationality, generic reference to various laws by the government of India appears to be a mere academic exercise.

Freedom of thought, conscience and religion

While adults of different religions wage riots, children are often caught in the crossfire, raped, tortured and murdered because of their religion. Children are also made the subjects of religious indoctrination so that they grow up to believe in, and disseminate, the ideologies of fundamentalist religious-political groupings. These ideologies are more often than not extreme in nature, with the result that young adults develop simplistic, unbalanced, and often fanatical ideas about society. The Dalits are prohibited from entering many temples. Christians have been specifically targeted.

In the name of Freedom of Religion Acts, State governments interfere with religious freedom. The punishment under these Acts is to be doubled if the offence had been committed in respect of a minor, a woman or a person belonging to the Scheduled Caste or Scheduled Tribe community. While the Freedom of Religion Acts in Orissa, Madhya Pradesh, Arunachal Pradesh and Tamilnadu require intimation to be given to District Magistrate with respect to conversion after conclusion of the ceremony to convert, the Gujarat Freedom of Religion Act requires prior permission to be taken before conversion. The National Commission for Minorities stated that the prior permission requirement violates "the fundamental rights of individuals" under Article 25 of the Indian Constitution.⁹ In practice, the Freedom of Religious Act applies while converting to Christianity and Islam and not to Hinduism, Buddhism, Jainism or Sikhism.

Freedom of association and assembly

While the right to freedom of association and peaceful assembly is generally exercised in India, the police sometimes deny the right to freedom of association. The police do not exercise necessary restraints while dealing with students' demonstrators. Tibetan students are often cane-charged when they attempt to exercise the right to freedom of association and assembly by organising demonstrations during the visit of the Chinese government delegates.

Freedom from torture

The Annual Reports of the National Human Rights Commission are indicative of endemic torture in India. The NHRC's Annual Reports are illustrative of the use of torture in the administration of criminal justice system. According to NHRC's Annual Reports, it received complaints of 34 custodial deaths (in police custody and judicial custody) in 1993-94; 162 custodial deaths/custodial rapes in 1994-95, 444 custodial deaths in 1995-96, 888 custodial deaths in 1996-97, 1012 custodial deaths in 1997-98,

⁹ . The Hindu, New Delhi, 5 April 2003.

1297 custodial deaths in 1998-99, 1,093 in 1999-2000 and 1037 in 2000-2001.¹⁰ Therefore, the description of torture of children in India in one paragraph, exactly in 194 words is scandalous by any yardstick and an affront to the Concluding Observations of the Committee on the Rights of the Child (paras 38-41) made in January 2000. Torture of children especially in armed conflict situations is rampant.

Despite rampant corporal punishment in schools, government's periodic report makes no reference to the issue.

Access to appropriate information

The children in India are being denied appropriate information after the government undertook the exercise to re-write the history textbooks. The NCERT textbooks such as Modern Indian History and Contemporary World History for Class XII students contain serious factual errors. Social Studies textbook for Class 9th standards under the Gujarat State Board of School Textbook identifies Muslims and Christians as "foreigners". The Scheduled Castes and Scheduled Tribes are identified as ignorant, illiterate and followers of blind faith. This is contrary to universal affirmation that "all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin, racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust".

Right to education

Shockingly, of the 900 million illiterates in the world, almost one-third belong to India. In other words, Indians constitute the largest number of uneducated people in the world. According to the 14th report of the Parliamentary Committee on Empowerment of Women of the Lok Sabha, lower house of Indian parliament of 5 August 2003 an estimated 60 million children are still out of schools, of which, 35 million were girls. The population of children in the age group 6-14 is 192 million. Of these 157 million children are enrolled in schools and the number of out of school children in the age group 6-14 is 35 million of which 25 million are girls.¹¹

The government fails to acknowledge discrimination as one of the main obstacles to access to education of the Dalit and indigenous children. Children of lower castes are exposed to discrimination at an early age. In schools, they are forced to sit apart from the higher caste children; that is, if they are allowed entry into a school in the first place. They remain segregated during lunch, if provided, and drink from separate containers.

Although, 83rd Amendment of the Constitution of India recognises the right to education as a fundamental right, the Chakma and Hajong children of Arunachal Pradesh have been denied right to education. The State government in an order in 1994 (vide No.

¹⁰ . Refer to the NHRC Annual Reports.

¹¹ . The Parliamentary Committee on Empowerment of Women of the Lok Sabha, lower house of Indian parliament (2003-2004) in its 14th report of 5 August 2003

CS/HOME/94 dated 21 November 1994) withdrew all the 49 pre-primary schools (Anganwadis) solely because of their ethnic origin. Both the NHRC and the Central government have failed to direct the State government of Arunachal Pradesh to restore the school facilities.

Anti-terror laws and juvenile justice

Many children have been arrested and detained as alleged terrorists under the Prevention of Terrorism Act, 2002, often for the alleged offences committed by their parents or merely being present at the wrong place. Although, the Madras High Court ruled in the G Prabakan case that children should be tried under the Juvenile Justice (Care and Protection) Act, a large number of children have been arrested as alleged terrorists.

Children in armed conflict situations

Despite 14 out of 28 States being afflicted by internal armed conflicts according to the Annual Report 2002-03 of the Home Ministry of Government of India in its periodic report remains silent on the issue as if there are no armed conflicts in India. Children in armed conflict situations face serious problems including risks to the security of their lives. The law enforcement personnel subject them to arrest, detention, torture, rape, disappearances, extrajudicial executions etc. The armed opposition groups and government-sponsored vigilantes are also responsible for serious abuses against children. However, the government of India provides impunity under Section 197 of the Criminal Procedure Code and Section 6 of the Armed Forces Special Powers Act, 1958. Under section 19 of the Human Rights Protection Act, 1993, the armed forces are treated as "beyond the reach of the law" and kept out of the purview of the National Human Rights Commission. The difference between the law enforcement personnel and the armed opposition groups has become blurred.

Refugee children

"Refugees" and "foreigners" are not synonymous. Yet, the government of India in its periodic report uses "refugees" and "foreigners" as synonymous terms. There is no word called "refugees" in Indian law. The grant of refugee status is an adhoc decision taken after considering the political exigencies. While the Sri Lankan Tamils have been granted refugee status, about 80,000 Chins from Burma have been denied refugee status by the government of India, having destroyed their camps at Saiha, Mizoram in 1995. Over 5,000 Myanmarese asylum seekers were refouled by 19 August 2003 after the State government of Mizoram abdicated the responsibility for dealing with crimes to Young Mizo Association.

The condition of the refugees under the care of UNHCR is worse. There is no transparency in the decision making of UNHCR on the grant of refugee status. The UNHCR never provides the justification in writing as to grounds for rejection of asylum to the concerned applicants. UNHCR acts as judge and jury on its decisions. Its appeal

mechanisms are neither transparent nor meet the standards of due process of law. In addition, UNHCR provides absolutely inadequate subsistence allowance and promotes sexist policy by making wives automatically dependants of their husbands. UNHCR encourages illegal work by the refugees by promoting vocational training programmes in the absence of lack of work permit for the refugees. UNHCR also provides inadequate educational and medical facilities for refugees and children.

IDP children

Although, there are over 500,000 conflict-induced Internally Displaced Persons, in its first periodic report the government of India only refers to the displaced Kashmir pandits. Majority of the internally displaced persons are indigenous peoples. A large number of IDPs are children. While the Kashmiri pandits are provided “cash relief of Rs.600/- per head per month subject to a maximum of Rs. 2400/- per month per family plus dry ration @ 9 kgs of rice and 2 kgs of flour per person and one kg of sugar per family per month”, the Reang IDPs are provided Rs 2.67 i.e. Rs 80 per adult per month and Rs 1.33 i.e. Rs 40 per child per month. While the assistance given to the Kashmiri pandits is insufficient by itself, there could not be a better example of such glaring discrimination against indigenous IDPs.

Indigenous children

While children as individuals enjoy many of the rights provided under the United Nations Convention on the Rights of the Child, the enjoyment of such rights by the indigenous and minority children depends on the status of these groups as a whole in the society and in the country. The condition of indigenous children cannot be seen in abstract but should be viewed in the context of the status of the community.

Many indigenous groups are still identified as criminal tribes. Their children are stigmatized.

According to government of India’s Ministry of Tribal Affairs “Since independence, tribal displaced by development projects or industries have not been rehabilitated to date. Research shows that the number of displaced tribal till 1990 is about 85.39 lakhs (55.16% of total displaced) of whom 64.23% are yet to be rehabilitated. Although accurate figures of displacement vary it is clear that majority of those displaced have not been rehabilitated. The indigenous peoples who constitute about 8.1 percent of the total population of the country according to the 1991 census constitute 55.16% of total displaced people.¹²

About 10 million indigenous peoples and their children are on the verge of eviction in the name of conservation of forest pursuant to the order of 5 May 2002 of the Ministry of Environment and Forest.

¹². <http://tribal.nic.in/index1.html>

While thousands of displaced families are still awaiting land-for-land rehabilitation at 95 meters height of the Narmada dam, on 14 May 2003 the Narmada Control Authority authorized an increase in height of the Narmada dam from 95 meters to 100 meters. Thousands of indigenous peoples and their children from more than 100 thickly populated villages in the State of Madhya Pradesh and 33 villages in Maharashtra will be uprooted if the dam height is raised to 100 metres.

Minority children

Riots such as the one in Gujarat has particularly brutal effects on children. They are forced to develop within contexts of seemingly permanent psychosocial trauma or what some psychologists refer to as the "normal abnormality" of violence. Situations that once seemed unimaginable - the burning of one's home, the massacre of one's own family members, the murder of one's parents or siblings – become part of life and have devastating effects on children.

Yet, justice eludes the minority children of Gujarat riot. All the accused in the infamous Best Bakery case of Gujarat riot were acquitted by the lower court after the witnesses turned hostile due to threat and intimidation. The victims in the Best Bakery case included 4 children. While the NHRC's writ petition to the Supreme Court and the interim order of the Supreme Court order is welcome, the hostile attitude of the State government and the ruling Bharatiya Janata Party, which termed the NHRC as "anti-Hindu" for its intervention in the Best Bakery case, needs to be borne in mind.

Conclusion and recommendations

The submission of about 500 pages report by the government of India is not only an attempt to impress upon the CRC Committee but also an attempt to escape scrutiny. After all, scrutinising about 500 pages report of the government of India and various alternate reports of NGOs is a daunting task by itself for the Committee members.

The Committee on the Rights of the Child in order to facilitate constructive dialogue should request the government of India to provide the following information:

- a list measures taken by each state government for implementation of the Juvenile Justice (Care and Protection) Act of 2000 including the number of juvenile courts, juvenile boards and homes in respective States;
- a list of the measures being taken by the Ministry of Human Resources Development to ensure that Juvenile Justice Act, 2000 is extended to the Jammu and Kashmir;

- a list of the States which have set up Special Courts under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the number of courts in respective States;
- a list of the measures being taken to ensure that Special Courts are set up instead of the designating courts of sessions as Special Courts;
- statistics about the rate of conviction under the SCs/STs Prevention of Atrocities Act in the Special Courts or designated courts of sessions;
- information about the violation of right to life other than female infanticide;
- information on the denial of right to nationality to the Chakma and Hajong children of Arunachal Pradesh and implementation of the Supreme Court judgement (NHRC Vs State of Arunachal Pradesh) and Delhi High Court judgments;
- information about the number of children tortured in India;
- information about the ratification of the Convention Against Torture and its Optional Protocol;
- measures being taken to ban corporal punishment in schools;
- measures being taken to correct the factual errors and biases against minorities in the school text books and propagation of doctrine of superiority through school text books;
- measures being taken to improve access of the Dalit children to education;
- measures being taken to restore the school facilities for the Chakmas and Hajongs students of Arunachal Pradesh;
- number of juvenile arrested under the anti-terror laws and measures being taken to ensure that the Prevention of Terrorism Act complies with the Convention on the Rights of the Child;
- information about the status of the children caught in armed conflict situations including the number of children killed by the armed forces, armed opposition groups and vigilante groups and measures being taken to ensure ratification of the Optional Protocols to the CRC;

- information about the condition of the refugee children under the protection of the government of India;
- information about the condition of the refugee children under the care of the United Nations High Commissioner for Refugees including the right to work of the adult refugees;
- information about the deportation of the Chin refugees by the Young Mizo Association;
- information about the scale of humanitarian assistance provided to Kashmiri IDPs and other IDPs in various States of India;
- measures being taken to address the problems of the so-called criminal tribes of India;
- measures being taken to address the problems of the displaced indigenous peoples and their children including measures being taken to protect their cultural rights and identity;
- information about the number of children effected due to displacement due to increase in the height of the Narmada dam; and
- measures being taken for rehabilitation of the Gujarat riots and addressing the trauma of the children

III. UNICEF's role in preparation of the periodic reports: Ethical questions

Article 45 of the Convention on the Rights of the Child (CRC) provides:

“In order to foster the effective implementation of the Convention and to encourage international co-operation in the field covered by the Convention:

- (a) The specialized agencies, the United Nations Children's Fund, and other United Nations organs shall be entitled to be represented at the consideration of the implementation of such provisions of the present Convention as fall within the scope of their mandate. The Committee may invite the specialized agencies, the United Nations Children's Fund and other competent bodies as it may consider appropriate to provide expert advice on the implementation of the Convention in areas falling within the scope of their respective mandates. The Committee may invite the specialized agencies, the United Nations Children's Fund, and other United Nations organs to submit reports on the implementation of the Convention in areas falling within the scope of their activities;
- (b) The Committee shall transmit, as it may consider appropriate, to the specialized agencies, the United Nations Children's Fund and other competent bodies, any reports from States Parties that contain a request, or indicate a need, for technical advice or assistance, along with the Committee's observations and suggestions, if any, on these requests or indications;”

The voluminous first periodic report of the government of India has reportedly been written with the financial support of the UNICEF. While this practice is not India specific, UNICEF provides financial support to hire professional to write the periodic reports with the consent of the government.

If one were to go by the first periodic report of the government of India, it would not be an understatement to assert that India is a model State on the rights of the child. It provides no information on torture of children. The violation of the right to life in India is restricted to female infanticide. Despite Union Home Ministry providing information about internal armed conflicts in 14 out of 28 states,¹³ there is not a single reference to armed conflicts. The internal armed conflicts in India appear passé –the government of India's first periodic only refers to armed conflict in Punjab that ended almost a decade ago!

¹³ . <http://www.mha.nic.in/annual-2002-2003/ch-3.pdf>

The uninformative report of the government of India puts the Committee on the Rights of the Child in a disadvantageous position to make appropriate recommendations for improvement of the rights of the child. After all, if the Committee is to be presented only with successful stories, the CRC Committee members may not be in a position to comprehend the real problems of the children in the country to make appropriate recommendations.

Are the commitments of the governments so skin deep that without UNICEF assistance, the periodic reports of the State parties will not be submitted to the CRC Committee? Rather than hiring professionals to assist the governments to write their periodic reports, UNICEF should submit reports on the implementation of the Convention in areas falling within the scope of their activities. The experiences of other treaty bodies should guide the engagement between UNICEF and the CRC Committee.

The functioning of other UN treaty bodies such as Human Rights Committee, CERD Committee, CEDAW Committee and Committee on Economic, Social and Cultural Rights should guide the engagement between the UNICEF and the Committee on the Rights of the Child. Apart from the Office of the High Commissioner for Human Rights (OHCHR), these treaty bodies do not have agencies such as UNICEF to support the governments to hire professionals to write the periodic reports. Yet, these treaty bodies have been effectively monitoring the periodic reports of the State parties. The question that arises as to whether the commitments of the State parties to the CRC are so skin deep that without UNICEF assistance, the periodic reports of the State parties will not be submitted.

All governments deal in jargon in their periodic reports. However, hiring of professionals to write the periodic reports increases the use of jargon exponentially. In the first periodic report of the government of India, some of the NGO activities are cited as if the government implemented them. It is another matter that government uses repressive measures to suppress the grumble of discontent of the NGOs working with children caught in armed conflict situations.

Ultimately, the question boils down to whether government's own report or a UNICEF funded sophisticated report is a better way to engage in dialogue with the CRC Committee.

Asian Centre for Human Rights (ACHR) considers a report prepared by hired consultants – who also have the expertise to use popular jargons without highlighting the actual status of the children - does not facilitate effective dialogue with the government. Nor does it increase effectiveness of the CRC Committee or advance the rights of the child. The funding by UNICEF for writing of the alternate reports by the NGOs is unlikely to be useful either.

Therefore, the CRC Committee should discourage UNICEF to fund writing of the periodic reports of the governments. If the governments are committed to the promotion and protection of the rights of the child, they will submit the periodic reports. While in exceptional cases, UNICEF can fund writing of the periodic report, it is wrong to presume that governments such as India does not have the resources to fund writing of a periodic report. The CRC Committee should invite UNICEF to submit reports on the implementation of the Convention in areas falling within the scope of their activities. In addition, the CRC Committee should develop General Comment on Article 45 to ensure that even if UNICEF funds the writing of the periodic reports under exceptional circumstances, true situation of children are properly reflected.

UNICEF primarily remains a service-providing agency akin to the humanitarian organisations which providing assistance in non-controversial but important areas such as the realisation of access to highest attainable standards of health, right to education, right to food etc. After 14 years of adoption of the CRC, UNICEF is yet to develop ways to address many of the civil and political rights issues - juvenile justice, torture, extrajudicial execution, rape and the status of children requiring special measures of protection. UNICEF does address some of these these problems especially in the States, which are in crisis such as Afghanistan, Iraq, Liberia etc. However, it is yet to develop methodologies to address such problems in countries like India. It remains a challenge for UNICEF.

IV. General Principles

Article 2: Non-Discrimination

In its periodic report, the government of India refers to various legislations prohibiting discrimination in India. While the government of India has enacted constitutional safeguards and special laws to combat the crimes against Scheduled Castes and Scheduled Tribes, implementation of these laws remains a *problematique* area.

According to statistics presented to the parliament on 20 February 2003, atrocities against the scheduled castes and scheduled tribes have been increasing exponentially. 34799 cases were registered in 1999, 36,971 cases were registered in 2000 and 39,157 were registered in 2001 under SCs/STs Prevention of Atrocities Act.

The government of India states that “several trends such as urbanization, positive discrimination, growing literacy and economic growth have been whittling down caste barriers, especially in urban areas”.¹⁴ It is actually skin deep. The advertisements in the matrimonial columns of the daily newspapers – which give preference to castes – provide testimonies to prevailing caste consciousness in the Indian psyche. In addition, the majority of the populations of India live in rural areas where caste discrimination is alive and kicking.

Out of 28 States and 7 Union Territories only 10 States have established Special Courts under SCs/STs (Prevention of Atrocities Act), 1989. The remaining States and Union Territories of have notified the existing Courts of Sessions as Special Courts.

The caste system is the most visible and degrading form of discrimination in India. People of higher castes discriminate against people of lower castes. Within the circle of caste discrimination, comes discrimination based on economic means; people of lower castes have been confined to certain jobs at the bottom of the socio-economic ladder.

In a letter to the Prime Minister of India in August 2003, National Human Rights Commission requested to instruct the concerned agencies to immediately end the manual scavenging practice within a specific time frame. NHRC Chairman Justice (Retd) A.S. Anand stated, “Despite your assurances that the need to end the practice of manual scavenging was included as part of the 15-point initiative on 15 August 2002, it is a sad commentary that the inhuman practice still continues in several states..... The practice of

¹⁴ . Page 55 of the periodic report, CRC/C/93/Add.5.

manual scavenging is an affront to human dignity and a major social evil which needs to be eliminated.”¹⁵

While Dalits are considered as “untouchable” - too “polluted” to be touched by the upper castes - the rape of Dalit women and girls, who represent the honour of the community - by the upper caste Hindus is a commonplace. In their daily lives, untouchability results widespread discrimination. The Dalit women and girls are paraded naked in villages. If a Dalit touches pots and pans, upper caste Hindus sprinkle 'holy water' around to purify all that has been touched by the Dalit. In some villages, Dalits are not allowed to wear shoes; if they wear shoes, they will be forced to take them off when coming into the presence of a dominant caste person. In rural areas, Dalits are not allowed to cycle through the dominant caste area of the village.

In most places, Dalits live mainly in separate villages. Dalits are not allowed to enter many Hindu temples, for fear of polluting the temples. Dalits have been chased out, abused and beaten up for daring to as much as set foot inside a temple, even though it is a temple for their religion.¹⁶

The ineffectiveness of the SCs and STs (Prevention of Atrocities) Act, 1989

In its first periodic report, the government refers to enactment of SCs and STs (Prevention of Atrocities) Act, 1989, “to provide for special courts for the trial of such offences and for the relief and rehabilitation of the victims of such offences and for matters connected therewith or incidental thereto”.

The Minister of State for Home Affairs, Mr I D Swami informed the parliament on 23 April 2002 that over 28,000 incidents of crimes, including murder and rape, were committed against Scheduled Castes and Scheduled Tribes across India during 2001. Mr Swami further informed that while 24,792 cases were reported against Scheduled Castes, as many as 3,691 crimes were committed against Scheduled Tribes. The maximum numbers of 4,892 cases against Scheduled Castes were reported from Rajasthan; and Madhya Pradesh topped the list in atrocities against Scheduled Tribes with 1643 cases. The statistics pertaining to calendar year 2001 show that the States of Uttar Pradesh (7356 cases), Madhya Pradesh (4336 cases), Rajasthan (1996 cases), Gujarat (1760 cases), Andhra Pradesh (1288 cases) and Orissa (1125 cases), collectively accounted for 82.39% of total number of 21,678 cases charge sheeted in the courts in the country.¹⁷

Caste offences & convictions

The government of India states the courts disposed of respectively 12,864 cases in 1999, 11,237 cases in 2000 and 16,203 cases in 2001 under the SCs/STs (Prevention of Atrocities Act, 1989). What is the rate of conviction in these disposed off cases?

¹⁵ . The Asian Age, New Delhi, 25 August 2003

¹⁶ . www.dalits.org

¹⁷ . The Deccan Herald, Bangalore, 24 April 2002

Number of cases registered by Police, Charge sheeted in the Courts and cases disposed off by Courts under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 during the year 1999¹⁸

S.No	States/UTs	No. of cases registered by Police including brought forward.	No. of cases charge sheeted in the courts including brought forward.	Number of cases disposed off by the Court including brought forward
01	02	03	04	05
1.	Andhra Pradesh	920	518	2081
2.	Arunachal Pradesh	0	0	0
3.	Assam	0	0	2
4.	Bihar	1875	880	484
5.	Chattisgarh	-	-	-
6.	Goa	2	1	0
7.	Gujarat	2118	1643	367
8.	Haryana	41	17	16
9.	Himachal Pradesh	15	5	3
10.	Jharkhand	-	-	-
11.	Karnataka	1934	1020	483
12.	Kerala	NA	NA	NA
13.	Madhya Pradesh	4533	3642	3188
14.	Maharashtra	1117	827	255
15.	Manipur	NA	0	0
16.	Meghalaya	0	0	0
17.	Mizoram	0	0	0
18.	Nagaland	0	0	0
19.	Orissa	2233	911	198
20.	Punjab	24	13	1
21.	Rajasthan	10559	3921	2595
22.	Sikkim	0	0	0
23.	Tamil Nadu	1605	700	554
24.	Tripura	0	0	0
25.	Uttranchal	-	-	-
26.	Uttar Pradesh	7735	5464	2633

¹⁸ . Statement is answer to part (a), (b) and (d) of the Lok Sabha Unstarred Question No. 595 for 20.02.2003 regarding `Crimes against Scheduled Castes and Scheduled Tribes`.

27.	West Bengal	62	17	0
28.	A. & N. Islands	1	0	0
29.	Chandigarh	0	0	0
30.	D & N Haveli	1	1	0
31.	Daman & Diu	1	1	1
32.	Delhi	20	5	3
33.	Lakshadweep	0	0	0
34.	Pondicherry	3	1	0
	Total	34799	19,587	12,864

Number of cases registered by Police, Charge sheeted in the Courts and cases disposed off by Courts under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 during the year 2000 ¹⁹

S.No	States/UTs	No. of cases registered by Police including brought forward.	No. of cases charge sheeted in the courts including brought forward.	Number of cases disposed off by the Court including brought forward
01	02	03	04	05
1.	Andhra Pradesh	2866	1429	977
2.	Arunachal Pradesh	0	0	0
3.	Assam	0	0	0
4.	Bihar	1396	288	942
5.	Chattisgarh	933	761	104
6.	Goa	1	1	1
7.	Gujarat	2098	1261	0
8.	Haryana	60	27	15
9.	Himachal Pradesh	14	11	9
10.	Jharkhand	41	1	NA
11.	Karnataka	1819	884	510
12.	Kerala	1025	322	163
13.	Madhya Pradesh	4621	3516	1282
14.	Maharashtra	950	700	849
15.	Manipur	0	0	0
16.	Meghalaya	0	0	0
17.	Mizoram	0	0	0
18.	Nagaland	0	0	0

¹⁹ . ibid.

19. Orissa	2464	1118	251
20. Punjab	41	14	1
21. Rajasthan	7692	3057	2402
22. Sikkim	0	0	1
23. Tamil Nadu	1253	505	192
24. Tripura	0	0	0
25. Uttranchal	131	90	399
26. Uttar Pradesh	9476	5609	3125
27. West Bengal	59	0	0
28. A. & N. Islands	2	1	1
29. Chandigarh	1	0	0
30. D & N Haveli	1	1	0
31. Daman & Diu	1	0	1
32. Delhi	19	10	12
33. Lakshadweep	1	0	0
34. Pondicherry	6	2	0
Total	36,971	19,608	11,237

Number of cases registered by Police, charge sheeted in the Courts and cases disposed off by Courts under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 during the year 2001²⁰

S.No	States/UTs	No. of cases registered by Police including brought forward.	No. of cases charge sheeted in the courts including brought forward.	Number of cases disposed off by the Court including brought forward
01	02	03	04	05
1.	Andhra Pradesh	2574	1288	817
2.	Arunachal Pradesh	0	0	0
3.	Assam	0	0	0
4.	Bihar	1802	180	385
5.	Chattisgarh	1053	915	690
6.	Goa	1	0	1
7.	Gujarat	1945	1760	575

²⁰ . ibid.

8. Haryana	85	54	11
9. Himachal Pradesh	20	7	12
10. Jharkhand	349	176	NA
11. Karnataka	1851	643	433
12. Kerala	909	290	132
13. Madhya Pradesh	5332	4336	2700
14. Maharashtra	972	755	1151
15. Manipur	0	0	0
16. Meghalaya	0	0	0
17. Mizoram	0	0	0
18. Nagaland	0	0	0
19. Orissa	2329	1125	254
20. Punjab	75	14	3
21. Rajasthan	6391	1966	1968
22. Sikkim	0	0	0
23. Tamil Nadu	1192	662	434
24. Tripura	0	0	0
25. Uttranchal	132	78	213
26. Uttar Pradesh	12037	7356	6407
27. West Bengal	69	43	9
28. A. & N. Islands	1	1	2
29. Chandigarh	3	1	0
30. D & N Haveli	5	2	0
31. Daman & Diu	1	1	2
32. Delhi	25	22	2
33. Lakshadweep	0	0	0
34. Pondicherry	4	3	2
Total	39,157	21,678	16,203

Increase of caste violence

The statistics are tip of the iceberg. Most caste offenses in rural areas are not registered. Nonetheless, the statistics provided by the government of India clearly establish that caste violence has been increasing. 34799 cases were registered in 1999, 36,971 cases were registered in 2000 and 39,157 were registered in 2001.

Special Courts under SCs/STs Prevention of Atrocities Act

The Committee on the Rights of the Child after consideration of India's initial report in January 2000 recommended "the full implementation of the 1989 Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, the 1995 Scheduled Castes and

Scheduled Tribes Rules (Prevention of Atrocities) and the 1993 Employment of Manual Scavengers Act.”²¹

However, majority of the States have failed to set up Special Courts under the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989. As of 2 February 2003, exclusive Special Courts have been set up only Andhra Pradesh (12), Bihar (11), Chhatisgarh (07), Gujarat (10), Karnataka (06), Madhya Pradesh (29), Rajasthan (17), Tamil Nadu (04), Uttar Pradesh (40) and Uttranchal (01). The remaining States and Union Territories have notified the existing Courts of Sessions as Special Courts for the trial of offences under the Act. As the courts in India are already over-burdened with 3.5 million and 40 thousand cases at the High Courts level in 2002 according to the report of the Parliamentary Standing Committee on Home Affairs.²², designation of the Court of Sessions as Special Courts helps little and further adds to judicial delay in India.²³

While the statistics provided by the government of India state that the courts disposed of respectively 12,864 cases in 1999, 11,237 cases in 2000 and 16,203 cases in 2001, the conviction rate remains extremely low. Out of the 31,011 cases tried under the Prevention of Atrocities Act in 1998, only a paltry 1,677 instances or 5.4% resulted in a conviction and 29,334 ended in acquittal. Compare to this, under the Indian Penal Code 39.4% of cases ended in a conviction in 1999 and 41.8% in 2000.²⁴

The ineffectiveness of the existing laws primarily due to non-implementation stands exposed. The state government of Maharashtra announced on 16 July 2003 that it would invoke provisions of the Prevention of Terrorism Act (POTA), 2002 to tackle atrocities against Dalits.²⁵ This is despite the existence of the SCs and STs (Prevention of Atrocities) Act, 1989 and the Maharashtra Organised Crimes Prevention Act, 1999. Ultimately, as the governments do not apply the existing laws, they resort to draconian measures, which once again fail to address the crimes.

Dalits are considered as “untouchable”, too 'polluted' to be touched, by the upper castes. But, the rape of Dalit women and girls - who represent the honour of the community - is a commonplace.

Despite consistent and systematic discrimination against the Dalits, in its periodic report (pages 54-64), the government of India fails to make any reference to discrimination faced by children belonging to Scheduled Castes and indigenous peoples. It focuses only on the “girl child”. While the condition of “girl child” in general remains deplorable, Dalit and indigenous/tribal girls face multiple discrimination because of their caste or ethnic origin and religious belief. Therefore, the focus on girl

²¹ . CRC/C/15/Add.115 of 23 February 2000

²² . Suhas Chakma, Wrong Prescriptions, The Central Chronicle, Bhopal, 4 September 2003.

²³ . Statement is answer to part (a), (b) and (d) of the Lok Sabha Unstarred Question No. 595 for 20.02.2003 regarding `Crimes against Scheduled Castes and Scheduled Tribes` .

²⁴ . <http://www.hrdc.net/sahrdc/hrfeatures/HRF83.htm>

²⁵ . The Indian Express, New Delhi, 17 July 2003.

child alone fails to present the actual status of the Dalit and indigenous/tribal girls.

Some of the atrocities against Dalit children are given below:

Case 1: Killing of Dalit children in Bihar

On 9 April 2003, three members of a Dalit family - a pregnant woman and her two children - were gunned down by suspected Ranvir Sena²⁶ men at Jhikatia Tola of Azad Nagar village under Kinjar police station in Arwal district of Bihar. Over a dozen Ranvir Sena activists, all armed with sophisticated weapons, raided the house of Mr Lorik Paswan, an alleged member of the underground Peoples War Group (PWG) activist. Not finding him in the house, the Ranvir Sena activists, in sheer revenge, killed Mr Paswan's pregnant wife, Asha Devi (36 years) and their two children, Master Manoj (9 years) and Ms Leela (8 years).²⁷

Case 2: Burning of a Dalit girl in Madhya Pradesh

Mr R S Tomar, an upper caste Hindu, burnt a Dalit girl to death for daring to file a complaint against his son, Raju. Raju was accused of raping the girl on 27 February 2003 and had been arrested. According to the police, Mr Tomar barged into the house of the 16-year-old girl in village Kachnoda, Madhya Pradesh, doused her with kerosene and set her afire.²⁸

Case 3: Rape of a Dalit girl in Gujarat

On 17 December 2001, a 15-year-old Koli girl was kidnapped at Khambala village near Barwala town, Gujarat by the powerful elements in the village and repeatedly raped her. She was kept in captivity for 15 days. Although four persons were arrested, the police set them set free even before they could be produced before the court. This despite that the girl was taken to the Botad Civil Hospital, the nearest to Barwala where the doctors confirmed that she was raped. She even identified the victims before the police.²⁹

Case 4: Dalit teenager raped in Rajasthan³⁰

On the night of 5 April 2003, when a young Dalit girl stepped out of her home in Jaipur's Guda Vaas village, Rajasthan she was kidnapped by four Brahmin youngsters of her own village. "They forcibly grabbed me and took me away. They threatened me with a knife and stopped me from shouting for help. I was totally scared as they said that if I shout,

²⁶ . Ranvir Sena is an armed opposition group of the upper caste Hindus in Bihar.

²⁷ . TIMES NEWS NETWORK [FRIDAY, APRIL 11, 2003 01:51:51 AM]

²⁸ . The Hindustan Times, New Delhi, 13 March 2003

²⁹ . TIMES NEWS NETWORK, TUESDAY, JANUARY 08, 2002

³⁰ .<http://www.ndtv.com/morenews/showmorestory.asp?slug=Dalit+teenager+raped+in+Rajasthan&id=2432>

they would kill me," narrated the traumatized girl before New Delhi Television (NDTV). She was brutally gang raped.

The rapists finally dumped her outside the village on 8 April 2003. But upper caste Hindus in the village prevented her family from even filing a report by threatening them with a social boycott.

Chottu Lal, one of the girl's relatives told NDTV, "The village elders said we must not file any report. They said if we did so and tried to fight a case, we would not be allowed to stay in the village. They said they would not maintain any relations with us and would not allow even our cattle to drink water from the village sources. They threatened us very badly."

However after pressure from some women's groups, the police have finally registered an FIR. But with the entire village involved in a conspiracy of silence, the police were finding it tough to collect any evidence.

Case 5: Dalit Girl tortured, paraded burnt to death in Uttar Pradesh³¹

Eighteen - year old Guddan, belonging to a backward caste was not only forcibly taken away from her home to a neighboring village by an armed band of lustful Thakurs, the upper caste Hindus, from Gorath village under Sidhari police station, Azamgarh district, Uttar Pradesh, but was also subjected to the worst possible physical humiliation before being burnt alive in broad-daylight on 30 July 2000.

Guddan was alone in her house, when Shyampari Chauhan of the neighboring village barged in with over a dozen armed muscle men. They dragged her out and took her to their village. According to eyewitnesses who could not dare to intervene, Chauhan first got the girl's hair chopped. And as she struggled and screamed to be let off, he and his toughs tore off her clothes and then paraded her naked in full view of everyone. It was reported that Chauhan crossed all limits of barbarism and even ran scissors over her bare breasts.

But the upper caste Thakur's sadistic lust was still not satisfied. So he dragged the helpless Guddan back to her village, where he allegedly poured kerosene oil over her badly bruised body and set her ablaze, perhaps to destroy all evidences of the physical torture. Yet the girl managed to dash upto her doorstep where she fell unconscious.

Her father, who had, by then returned home, rushed to the nearest public telephone booth to call up the Sidhari police station. In a belated response, the cops accompanied the father to the Azamgarh District Hospital where she was admitted. However with more than 80 percent burns, she died shortly thereafter.

³¹ . India Abroad News Service, August 1, 2000 10:00 Hrs (IST)

As the Chauhan's family used all its political and money power, the local superintendent of police described the girl as "characterless" and "having illicit relationship with Chauhan." He told India Abroad News Service, "The girl was at Chauhan's back and call, but on Sunday when he came to call her over to his place, there was some altercation between the two and the girl threatened to get him beaten up; this naturally provoked the Thakur, who returned after a while with his men and took Guddan away to his village in the neighborhood."

Living in abject poverty, Guddan's family earned a living out of dishwashing. Their condition could be gauged from the fact that her father did not even have money to purchase drugs and ointments prescribed by the doctor in the government hospital. Local villagers were stated to have contributed for the girl's last rites.

Article 6: The right to life, survival and development

In its first periodic report (pages 65 to 71), the government of India only refers to female infanticide on the violation of the right to life. The right to life certainly includes survival issues such as shelter, food, safe water and medical care as provided in the first periodic report but the government of India's periodic report fails to refer to extrajudicial executions and custodial death of the children.

Despite 16 out of 28 States being afflicted with internal armed conflicts according to the Annual Report 2002-03 of Indian Home Ministry, "female infanticide" is the only form of violation of the right to life referred to in the first periodic report of India.

Killings legalised

Section 4 (a) of the Armed Forces Special Powers Act, 1958, imposed in North East India and Jammu and Kashmir, empowers any commissioned officer to "fire upon or otherwise use force, even to the causing of death". The security forces and armed opposition groups have killed many children.

India is afflicted by large number of internal armed conflicts. According to the Annual Report of Ministry of Home Affairs of the government of India³², 16 out of 28 states are afflicted by internal armed conflicts. While Assam, Arunachal Pradesh, Jammu and Kashmir, Meghalaya, Manipur, Mizoram, Nagaland and Tripura are afflicted by armed conflicts with various groups seeking autonomy or secession, Andhra Pradesh, Bihar, Chattisgarh, Orissa, West Bengal, Madhya Pradesh, Maharashtra, and parts of Uttar Pradesh are afflicted by left wing Naxalites movement against economic inequity and social injustices.

In specific reply in the parliament on 16 July 2002, Minister of State for Home Affairs Shri Ch. Vidyasagar Rao stated that there is no separate data is maintained for children killed in custody.³³

³² . Please see, <http://www.mha.nic.in/annual-2002-2003/ch-3.pdf>

³³ . UNSTARRED QUESTION NO 316 TO BE ANSWERED ON 16.07.2002

Legalised extrajudicial executions

In 1958, the government of India enacted the Armed Forces Special Powers Act to tackle the Naga insurgency. The draconian Act, which was supposed to have been in the statute book for one year, is still applicable in Jammu and Kashmir and North East India.

Section 4 (a) of the Armed Forces Special Powers Act, 1958 provides that any commissioned officer, warrant officer, non-commissioned officer or any other person of equivalent rank in the Armed Forces is empowered "fire upon or otherwise use force, even to the causing of death against any person who is acting in contravention of any law or order for the time being in force in the disturbed area prohibiting the assembly of more than 5 or more persons or carrying of weapons or of things capable of being used as weapons or of fire arms, ammunition or, explosive substances" if he opines that it is necessary for maintenance of law and order. He may shoot to kill after giving such due warning, as he may consider necessary.

These broadly defined provisions of the Armed Forces Special Powers Act give a "license to extrajudicially execute" innocent and suspected persons under the guise of maintaining law and order. It violates every norm of civilized society where it is the primary responsibility of the State to protect the lives of the people living within its geographical boundary.

Article 21 of the Indian constitution provides that "No person shall be deprived of his life or personal liberty except according to procedure established by law". However, Article 21 loses its meaning the moment the State establishes a law which provides a procedure in an Act to deprive a person of his life or personal liberty. The expression "procedure established by law" in the Article 21 has been judicially construed as meaning a procedure which is reasonable, fair and just.

The expression "reasonable, fair and just" is vague and broad unless the Court determines it. However, to empower even the non-commissioned officer to fire upon even causing death seriously derogates the United Nations Principles on the Prevention of Summary Executions adopted by the Economic and Social Council in resolution 1989/65 of 24 May 1989.

While one appreciates the constraints the law enforcement personnel face in abnormal circumstances, the test of any country's commitment for protection and promotion of human rights is reflected under such trying situations. Enactment of broad provisions empowering summary executions is not the way a modern civilized State ought to act, rather the Government should set strict limits to the circumstances in which the firearms could be used to prevent arbitrary killing by the security forces.

Principle 2 of the UN Principles on the Effective Prevention and Investigation of Extrajudicial, Arbitrary and Summary Executions state that "In order to prevent extra-legal, arbitrary and summary executions, Governments should ensure strict control, including a clear chain of command over all officials responsible for the apprehension, arrest, detention, custody and imprisonment as well as those officials authorised by law to use force and firearms".

Moreover, Article 6.1 of the International Covenant on Civil and Political Rights states, "Every human being has the inherent right to life. This right shall be protected by law. No one shall be deprived of his life".

India is a signatory to the ICCPR. But draconian provisions that empower to kill without free and fair trial still continue. In addition, Article 3 of the UN Code of Conduct for Law Enforcement Officials provides that "Law enforcement officials may use force only when strictly necessary and to the extent required for the performance of their duty".

The flagrant violation of right to life is not restricted to armed conflict situations. Across India, police are responsible for violation of the right to life of children.

Case 1: Drunken cops kill boy in Punjab



– On 1 August 2003, an 11-year old boy, Gurmeet Singh alias Kaka was shot dead by a police constable, Ranjit Singh at a tea stall in front of the Netaji Institute of Sports (NIS) in Patiala, Punjab. Two policemen, both Head Constables, Ranjit Singh and Balwinder Singh, were on patrol duty.

According to an FIR registered at the Sadar police station by a witness, Miyan, the Head Constables, Ranjit Singh and Balwinder Singh, were drunk when they came to the shop from a police cabin across the road after it had started raining. The cops asked the boy for glasses and tea. One of the cops, Ranjit Singh, asked Gurmeet to come to him saying, "I will show you how a revolver is fired". According to the FIR, the boy said he was frightened and refused to do the bidding of the cop.

Following this Miyan said Ranjit fired in the air saying, "See it is a fake weapon having only sound". Miyan further said Ranjit again asked the boy to come to him. But when the boy refused to do so, the other cop, Balwinder Singh, caught hold of a hand of the boy and brought him to Ranjit. The witness said that Balwinder then asked his colleague to put the weapon on the chest of the

boy. Ranjit then fired the weapon, which struck the chest of the boy. The police then bundled the boy on their motor cycle and took him to the local government Rajindra hospital. There they claimed that the boy had been hit by an accidental shot from one of their revolvers. Doctors declared the boy brought dead.³⁴

Case 2: Killing of Masood Ahmed Shah

On 16 June 2003, Peer Abdul Qayyum Shah, 50, was returning from the mosque at Wara Kreri, under Baramulla district of Jammu and Kashmir after offering the evening prayers with his 11 year old son, Masood Ahmed Shah. Then, the members of paramilitary forces, the Rashtriya³⁵ Rifles opened fire on them killing Abdul Qayyum and his son, Masood, instantly. The army personnel claimed that they were ambushing alleged militants on a tip off.³⁶

Case 3: Killing of Javid Ahmad Magray

On 30 May 2003, Mr Javid Ahmad Magray, a Class XII student was allegedly dragged from his house at Soiteng locality of Lasjan, Srinagar, Jammu and Kashmir by the army. The security forces allegedly shot him at several times. He was rushed to the Soura Medical Institute where he succumbed to injuries on 1 May 2003. The army claimed that he was killed in a cross-fire.³⁷

Case 4: Killing of Mohammad Ashraf Malik

On 19 May 2003, the army arrested Mohammad Ashraf Malik from his house at Kupwara, Jammu and Kashmir. His mutilated body was handed over to his family next day, on 20 May 2003. A powerful blast was heard in the township, several hours after his (Malik's) arrest. The Army claimed that the blast took place when he was leading the troops to a hide-out for affecting some recoveries. Malik was allegedly killed during interrogation and later his body was blown up to cover up the murder.³⁸

Case 5: Custodial death of Chetan, Punjab

On 5 February 2003, the Additional District and Sessions Judge of Chandigarh, Mr J.P. Mehmi rejected a bail application of Dr Sikandar Lal, his son Vikramjit and his son-in-law Sanjiv Kumar. They were arrested for their involvement in custodial death of Chetan (8 years) who used to work in their house. Chetan was mercilessly beaten to death by cops during illegal police custody in mid January 2003.³⁹

³⁴ . The Tribune, Chandigarh, 2 August 2003.

³⁵ . Rashtriya Rifles means National Rifles.

³⁶ . The Asian Age, New Delhi, 17 June 2003

³⁷ . The Tribune, Chandigarh, 2 May 2003; The Kashmir Times, Jammu, 2 May 2003.

³⁸ . The Tribune, Chandigarh, 22 May 2003

³⁹ . The Tribune, Chandigarh, 6 February 2003

V. Civil and Political Rights

Article 7: Name and Nationality

“There exists the potential for children born of refugee parents to become stateless; that there is no adequate legal mechanism to deal with family reunification; and that although refugee children attend school on a de facto basis, there is no legislation which entitles these children to education” - Committee on the Rights of the Child.⁴⁰

In its first periodic report (pages 81-84), government of India failed to respond to the Concluding Observations about the denial of the right to nationality in India.⁴¹ It makes generic references to the laws dealing with citizenship. This despite that denial of the right to nationality even to the children who were victims of partition of India continues even today.

There is a lack of sensitivity of the government of India with regard to the stateless people. In a specific question in the parliament “whether a number of Hindus and other minorities who fled Pakistan for India during 1965 Indo-Pak conflict are still waiting grant of citizenship, who continue to live in different parts of the country as refugees”, the Minister of State for Home Affairs, Mr Vidya Sagar Rao stated on 18 August 2000, “**Such details are not maintained by the Government of India.**”⁴² Therefore, it is not surprising that the first periodic report fails to acknowledge the denial of the right to nationality to a large number of stateless people in India.

Case 1: The denial of the right to nationality to the Chakma and Hajong children⁴³

In 1964, about 30,000 Chakmas and Hajongs from the Chittagong Hill Tracts of then East Pakistan (now Bangladesh) migrated to India and were settled in Arunachal Pradesh. Until today, the children of these migrants have not been granted the right to nationality. This despite that the Chakmas and Hajongs who are born after the migration of their parents in 1964 are Indian citizens by birth under Section 3(1)(a) of the Indian Citizenship Act, 1955. Section 3(1)(a) of the Indian Citizenship Act, 1955 provides that “except as provided in sub-section (2), every person born in India, - (a) on or after the 26th day of January, 1950 but before the commencement of the Citizenship (Amendment) Act, 1986” is a citizen by birth.

The Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh (CCRCAP), a representative body of the migrants, filed a complaint with the National Human Rights Commission of India on 12 December 1997 against the denial of the right to franchise to these Chakmas and Hajongs who are citizens by birth. The NHRC issued notice to the

⁴⁰ . CRC/C/15/Add.115, 23 February 2000

⁴¹ . The Undivided India is referred to British India consisting of present day India, Bangladesh and Pakistan.

⁴² . Unstarred question no. 2527, to be answered on 16.08.2000

⁴³ . <http://www.aitpn.org/Briefingpapers/II-07-03-Arunachal%20Pradesh.pdf>

State Government of Arunachal Pradesh and Union Government of India on the issue. In their replies to the NHRC, both the Central Government and the State Government of Arunachal Pradesh recognised that “as per the provisions of the Citizenship Act 1955, every person born in India on or after 26 January 1950 and before 1 July 1987 are citizens of India by birth and therefore eligible for electoral rolls.”

However, when the Chakmas and Hajongs who were born after their migration and are citizens under Section 3(1)(a) of Indian Citizenship Act, 1955, went to the Assistant Electoral Registration Officer of Diyun under Changlang District of Arunachal Pradesh, the said officer refused to accept their Form 6 – Application for inclusion of name in electoral rolls.

The CCRCAP subsequently approached the Ministry of Home Affairs (MHA) of the government of India. The MHA informed that the Election Commission had been requested to include all the Indian citizens into the Electoral rolls.

But the Election Commission took no action.

No respect for rule of law

Thousands of Chakma and Hajong children are denied right to nationality in State of Arunachal Pradesh in clear violation of the citizenship laws and judgements of the Supreme Court and Delhi High Court. When judgements of the highest courts cannot guarantee the rights of nationality, generic reference to various laws in the periodic report seems to be a mere academic exercise.

Since no action had been taken to ensure that the Chakma and Hajong voters were enrolled in the voters’ list, the Peoples Union for Civil Liberties and the CCRCAP filed a writ petition (CPR no. 886 of 2000) before the Delhi High Court. In its judgement on 28 September 2000, the Delhi High Court ordered enrollment of all eligible Chakma and Hajong voters into the electoral rolls.

This order, too, was flouted. The Chakma and Hajong applicants were not enrolled on the frivolous grounds such as the polling station in which name is to be included is not mentioned, house number of the applicant is not provided and that there is no proof of citizenship when the applicants are citizens by birth. This despite that establishing a polling station or providing house numbers are the tasks of the government.

Subsequently, the PUCL and CCRCAP filed a contempt petition (CWP 537 of 2001) before the Delhi High Court in March 2001. Although, the Delhi High Court did not withhold the contempt of Court, it directed enrolment of the all-eligible voters.

In December 2002, the applications for inclusion into the electoral rolls in 2002 were rejected on the similar frivolous grounds.

The CCRCAP informed the Election Commission of India about the systematic obstacles being created by the State Election Commission and the state government officials in clear violation of the Delhi High Court judgement. The Election Commission of India, which has gained its reputation of being one of the most credible institutions in India, subsequently ordered Special Revision for the Chakmas and Hajongs of Arunachal Pradesh on 31 March 2003.

After after the order of the Election Commission of India, none of the Chakmas and Hajongs has been enrolled into the electoral rolls on frivolous grounds. At the time of writing of this report, the final outcome of the Special Revision was not announced.

Case 2: Stateless Mohajirs in Hyderabad since 1948

About 130 families Mohajir (refugees) basti⁴⁴ located just behind Mecca Masjid of Hyderabad, Andhra Pradesh have remained stateless since 1948. They migrated to the city in 1948 following riots in Bidar and Gulbarga in Pakistan. Fifty-six years on, the Mohajirs and their children remain stateless. They continue to be slum dwellers without access to proper sanitary facilities and continue to live in semi-pucca houses.

On 14 August 2002, Chief Minister Chandra Babu Naidu visited the area. Chief Minister gave some hope to the Mohajirs. The Hyderabad collector was asked to build pucca houses free of cost without any delay. It was decided to construct the houses under the Valmiki Ambedkar Awas Yojana. Steps were initiated to acquire land from the Minority Welfare Commission and the Wakf Board. As of 23 August 2003, nothing has happened.⁴⁵

The children of these Mohajirs remain Stateless until today.

Case 3: Stateless Punjabi refugees in Jammu and Kashmir since 1947

Over a hundred thousand Punjabi refugees had migrated to the Jammu and Kashmir from neighbouring Sialkot district of Punjab province (now in Pakistan) in 1947 during the partition. Until now, they have not been granted citizenship. These refugees mainly belonging to the Scheduled Caste communities - had settled down in the areas along the border in R.S. Pura and Kathua sectors. As Jammu and Kashmir had its own citizenship, namely permanent resident of the State, only a person having this citizenship was entitled to vote. Hence these refugees had been denied the right to vote until today. They are also not eligible for any government job and cannot buy land. The descendents of these stateless people continue to be denied the right to nationality.⁴⁶ According to surveys done in the border belt, most of the refugees are poor, landless labourers belonging to the

⁴⁴ . Basti means colony.

⁴⁵ . TIMES NEWS NETWORK[THURSDAY, AUGUST 21, 2003 01:14:36 AM]

⁴⁶ . Voting right to refugees a poll issue, By Luv Puri, The Hindu, New Delhi, 8 September 2002

lower socio-economic strata of society. In the elections, the issue of granting status to the Punjabis was incorporated in the manifestos of all the parties.⁴⁷

Case 4: Still the Outsiders: Pakistani refugees in Rajasthan

There are 17,000 Hindus from Pakistan who sought refuge in Indian in 1965 after Indo-Pakistan war. They are scattered in Jodhpur, Barmer, Jaisalmer, Jalore and Pali districts.

In 2001, a Review Committee was formed with six members to be headed by the Additional Chief Secretary (State Home Secretary) R.K. Nair. The other five members of the committee were to be the Rehabilitation Secretary, Revenue Secretary, Divisional Commissioner, Jodhpur, Deputy Secretary – Home (Member Secretary) and a representative of the refugees.

On 24 November 2001, the committee made its first recommendation to the Central Government to accept applications for citizenship after they renounce Pakistani citizenship on a simple affidavit. This would exempt them from paying Rs. 1680 to the Pakistan embassy for renewal and renunciation of the passport.

The refugees are also prohibited from visiting the districts bordering Pakistan. The Committee in its second set of recommendations on 24 February 2002 stated that Pakistani nationals who had resided in India for 5 years should be allowed to visit the border districts. It was endorsed by Chief Minister and stated that the powers to grant citizenship should be given to the District Magistrate.

As of August 2003, these refugees and their children are denied right to nationality.⁴⁸

Article 14: Freedom of thought, conscience and religion

While there is considerable religious freedom in India in comparison to many theocratic states, religious intolerance has been a hallmark of India since its independence. While adults of different religions wage riots, children are often caught in the crossfire, raped, tortured and murdered because of their religion. Children are also made the subjects of religious indoctrination so that they grow up to believe in, and disseminate, the ideologies of fundamentalist religious-political groupings. These ideologies are more often than not extreme in nature, with the result that young adults develop simplistic, unbalanced, and often fanatical ideas about society.

In India, religious fundamentalists have found an easy target in children and young adults. Members of the Sangh Parivar, which includes groups such as the BJP⁴⁹, RSS⁵⁰,

⁴⁷ . The Hindu, New Delhi, 24 March 2003

⁴⁸ . <http://www.digantik.com/Digantik/Roopa%20Uma/site/report-PVS.htm>

⁴⁹ BJP (Bharatiya Janata Party) is a political party currently in power in India.

⁵⁰ RSS (Rashtriya Swayamsevak Sangh) is the ideological head of the Sangh Parivar, which includes the BJP and other Hindu fundamentalist organisations.

VHP⁵¹ and Bajrang Dal⁵², have been the suspected perpetrators of violence against the Christian and Muslim minorities, and are actively promoting their versions of religion and society among schoolchildren. The RSS organises camps for children ostensibly to promote physical fitness and knowledge of the scriptures, but actually attempts to develop in them false and biased notions of history and religion. Hindu youth are being trained in target shooting and methods of breaking down buildings.⁵³ The murder of the Australian missionary Dr. Graham Staines' two sons is another prime example.⁵⁴ The communal riots in Gujarat in 2002 also claimed the lives of dozens of children.

Despite religious conflict and intolerance being a feature of India, the government of India in its periodic report discusses the problem in one page and makes little reference to the problems of religious intolerance encountered in India.

Religious freedom of the children cannot be seen in isolation. It must be seen in the context of the rights being enjoyed by the adults.

Case 1: Freedom of Religion Acts

In its first periodic report, the government of India refers to freedom of religion in India. Over the years, governments have consistently taken measures to restrict religious freedom of the citizens. A series of Freedom of Religion Acts, which in effect restrict freedom of religion, have been enacted in many States of India.

As the interpretation of the terms – propagation, allurement, fraud, force, inducement, fraudulent means - depends on the predilection of District Magistrate and individual judge or bench, the Freedom of Religion Acts in India have the potential to be misused.

Many attempts were made in post independent India to adopt a central level legislation. The attempt failed due to lack of support from political parties.

In 1967, the Orissa Freedom of Religion Act was enacted in 1967 by the Congress government. It was followed by the Madhya Pradesh Dharma Swatantraya Adhiniyam in 1968. Along similar lines, the Arunachal Pradesh Freedom of Religion Act was enacted in 1978. All these legislations prohibit conversion from one religious faith to any other by use of force or inducement or by fraudulent means and for matters connected therewith.

⁵¹ VHP (Vishwa Hindu Parishad) is officially a non-governmental organisation that claims to promote 'Hindu culture. It is part of the Sangh Parivar along with the BJP, RSS and Bajrang Dal. Recently, it has been involved in violence against Christians and Muslims in India.

⁵² Bajrang Dal is the youth, militant wing of the VHP. It too is a part of the Sangh Parivar.

⁵³ Ramakrishna, Venkitesh, "Busy at Karsevakpuram" Frontline, Vol. 17, No. 13; 24 June – 7 July 2000.

⁵⁴ "Australian Missionary and Sons Burnt Alive: Suspicion on Bajrang Dal", Indian Currents, 1 – 7 February 1999.

These Freedom of Religion Acts also provide that the punishment was to be doubled if the offence had been committed in respect of a minor, a woman or a person belonging to the Scheduled Caste or Scheduled Tribe community. Most of these laws are aimed to keep the lower caste Hindus and indigenous peoples, the Adivasis, within the fold of Hinduism.⁵⁵

In 2002, the State government of Tamil Nadu adopted Prohibition of Forcible Conversion of Religion Act 2002 along the lines of the Acts in Orissa, Madhya Pradesh and Arunachal Pradesh.⁵⁶

On 27 March 2003, Gujarat State Assembly adopted the Gujarat Freedom of Religion Act 2003 to prevent religious conversions by "force, allurement or any other fraudulent means". The Act defines "allurement" as any "gift" or gratification in cash or kind or grant of any material benefit, either monetary or otherwise, and "force" as a show of force or a threat of any injury of any kind, including threat of "divine displeasure or social excommunication". While the Freedom of Religion Acts in Orissa, Madhya Pradesh, Arunachal Pradesh and Tamilnadu require intimation to be given to District Magistrate with respect to conversion after conclusion of the ceremony to convert, the Gujarat Freedom of Religion Act requires prior permission to be taken before conversion. The National Commission for Minorities stated that the prior permission requirement violates "the fundamental rights of individuals" under Article 25 of the Indian Constitution.⁵⁷

As the interpretation of the vague terms – propagation, allurement, fraud, force, inducement, fraudulent means, etc. - depends on the predilection of District Magistrate and individual judge or bench, the Freedom of Religion Acts have the potential to be widely misused for harassment and intimidation for interference in the exercise of the freedom of religion by the minorities.

In practice, the Freedom of Religious Act applies while converting to Christianity and Islam and not while converting to Hinduism, Buddhism, Jainism or Sikhism.

Case 2: Dalit girl thrown into well for worshipping

In April 2003, a minor Dalit girl, Laxmi was thrown into a well by residents of Parwasa village under Bidhisa district of Madhya Pradesh for worshipping in a temple. She had a dispute with three men, Kailash, Preetam and Shankar who opposed her offering of prayer at the temple. They threw her into a nearby well. The girl was admitted to a local hospital.⁵⁸

⁵⁵ . Anti-conversion laws, The Hindu, New Delhi, 17 December 2002.

⁵⁶ . <http://www.tn.gov.in/acts-rules/ord9-2002.htm>

⁵⁷ . The Hindu, New Delhi, 5 April 2003.

⁵⁸ . Newstime, Hyderabad, 11 April 2003

Case 3: Prohibition of entry of the Dalits into temple

Basweshwara temple, Hitni, Kolhapur district, Maharashtra

On 13 May 2003, upper caste members pelted stones and blocked roads when the Dalit Mahasang activists were returning after a visit to the Basweshwara temple at Hitni, a village in Kolhapur district of Maharashtra. The upper castes Hindus have prohibited the entry of the Dalits into the temple. As the Dalit Mahasangh activists entered the temple, a violent upper caste mob also set afire the Tehsildar's jeep and two police motorbikes and pelted stones at police on duty. The row began when the Dalit community from Madyal in Kolhapur entered the Somlinga temple in the village on Ambedkar Jayanti.⁵⁹

Baba Bhola Nath, Mandor, Patiala, Punjab

At the shrine of Baba Bhola Nath at Mandor village under Patiala of Punjab, the Dalits are not allowed entry into the temple. If some Dalit wants to pay obeisance, they have to put his offerings on a few loose bricks kept outside the temple. These offerings were earlier given to an old man of the village but are now fed to the dogs.

If some Dalits manage to enter the temple premises to offer obeisance the entire temple is washed with water to "clean" it. This is not all. Dalits are not allowed to bathe in the Sarovar in the temple complex even during Ekadashi festival when thousands of people visit it. They have to make use of a tubewell in a separate enclosure for bathing purposes.⁶⁰

Case 4: Attacks against Christian minorities

The Hindu religious fundamentalist organizations have launched attacks against Christian minorities. The attacks against Christians all have some common features. They typically target isolated groups in states where Christians form a small minority, are preceded by anti-Christian literature, and have been met with tacit support of state powers.

⁵⁹ . The Indian Express, New Delhi, 15 May 2003

⁶⁰ . The Tribune, Chandigarh, 23 April 2003

The Minister of State for Home Affairs, Mr I D Swami provided the following statistics about the attacks on Christian minorities in India on 28 August 2001.⁶¹

State	Incidents			Persons Killed			Persons Injured		
	1999	2000	2001	1999	2000	2001	1999	2000	2001
A & N Islands	-	1	-	-	-	-	-	1	-
Andhra Pradesh	2	14	3	1	2	-	-	23	-
Arunachal Pradesh	-	-	-	-	-	-	-	-	-
Assam	2	2	1	-	-	-	-	-	-
Bihar	4	11	1	4	2	-	-	6	-
D & Haveli	-	-	-	-	-	-	-	-	-
Delhi	1	1	-	-	-	-	-	-	-
Goa	-	1	-	-	-	-	-	-	-
Gujarat	31	26	8	-	-	-	10	21	2
Haryana	3	5	-	-	-	-	1	2	-
Himachal Pradesh	-	2	1	-	-	-	-	-	-
Jammu & Kashmir	1	-	-	-	-	-	-	-	-
Jharkahand	-	-	3	-	-	1	-	-	3
Karnataka	1	16	2	-	1	2	-	10	-
Kerala	18	25	12	-	-	-	10	7	25
Madhya Pradesh	9	13	-	-	-	-	-	3	-

⁶¹ . UNSTARRED QUESTION NO 5290 TO BE ANSWERED ON 28.08.2001

Maharashtra	7	6	-	-	-	-	-	-	-
Manipur	-	1	1	-	1	3	-	-	-
Mizoram	-	3	-	1	-	-	-	3	-
Orissa	14	20	16	4	2	-	43	26	9
Pondicherry	1	1	1	-	-	-	-	-	-
Punjab	1	9	3	-	1	-	-	-	-
Rajasthan	3	3	1	-	-	-	-	-	2
Sikkim	-	3	-	-	-	-	-	-	-
Tamil Nadu	14	27	21	3	1	1	25	24	16
Uttar Pradesh	6	24	7	-	2	1	2	6	3
West Bengal	2	2	-	-	-	-	-	-	-
Total	120	216	81	12	13	8	91	132	60

Attacks against Christians violate several sections of the Indian Penal Code (IPC). Many fall within general provisions of the IPC 1860, such as those relating to murder, assault and property damage. Additional protection to minorities is guaranteed in Chapter XV of the IPC that specifies offences relating to religion. The question is how many have been prosecuted for anti-Christian crimes.

Article 15: Freedom of Association and peaceful assembly

While the right to freedom of association and peaceful assembly can generally be exercised in India, the police sometimes deny the right to freedom of association. Most often, police do not exercise necessary restraints and use undue force and torture.

Case 1: School children cane charged

In the state capital of Uttar Pradesh, Lucknow, police cane charged innocent children of St Mary's School on 29 July 2003. The students were demonstrating in Talkatora locality to press their demand for construction of road leading to their school.

About two dozen students, teachers, parents and passers by sustained injuries when their peaceful protest turned violent after police resorted to cane charge without any provocation. The students of St Mary's have been writing to the Urban Development Minister, Lalji Tandon, Mayor Dr SC Rai and authorities for construction of road leading to their school.

When their pleas were left unattended, students, teachers and parents made a human chain and stopped road and rail traffic near their school. The police resorted to cane charge to break the protest.⁶²

Case 2: Police beat Tibetan students in Agra and Delhi

Tibetan activists, many of whom were children of high school and university age, were beaten and arrested for raising slogans and protesting against the visit of former Chinese Prime Minister Li Peng in Agra and Delhi on Sunday 14 January 2001. One girl was pulled by her hair and beaten by police. The students were staging a peaceful black flag demonstration, but police treated them as if they were criminals. According to Mr. Karma Yeshe, the Tibetan Youth congress vice-president, "The Delhi police fired without warning the protestors. The police did not warn, tear gas or cane-charge to disperse the protestors. The police fired right away which was unwarranted." The students who were arrested have not been released as of yet. Tibetan organisations are trying to get these protestors released, but have not been successful. Yeshe goes on to state, "The Delhi police in a state of panic were arresting people with Mongol features...A Nepali driver of the British High Commission was caught because of his looks".⁶³

Article 17: Access to appropriate information

After the Hindu nationalist political party, Bharatiya Janata Party come to power, it started a review of the history textbooks for school children. In January 2002, National Human Rights Commission issued notice to Ministry of Human Resources Development and National Council of Education, Research and Training (NCERT) on the revision of textbooks for children. A complaint was filed alleging that the revision of textbooks for children's education was likely to adversely affect their development and might distort personality and their human development.

The NHRC held that "No doubt formulation of policies is within the domain of government. However, the constitutional philosophy in the Preamble, the fundamental guarantees and the mandate of regulation of policy formulation by the Directive Principle of State Policy has to be respected and when it is alleged that the policy or state action

⁶² . TIMES NEWS NETWORK [TUESDAY, JULY 29, 2003 11:33:02 AM]

⁶³ . Tibetans condemn police firing", Statesman News Service, The Statesman, 16 January 2001; "Police beat up Tibetans in Agra", Statesmen News Service, The Statesman, 16 January 2001; "Protesting Tibetans beaten up, 50 arrested", Pioneer News Service, The Pioneer, 16 January 2001; "Tibetans injured in scuffle", The Hindu, 16 January 2001.

would adversely affect the development of children it becomes a human rights issue requiring examination by the NHRC, in exercise of its statutory functions". The NHRC further held that "Freedom of information is the essence of democracy. Education helps to develop that trait. It must, therefore, be also a medium of exposure to different points of views based on the depiction of established facts." ⁶⁴

Historical errors

Since the Hindu nationalist Bharatiya Janata Party came to power in 1998, it started revision of the history text books. One of the new textbooks released in 2003 is Modern India for Class XII students and contains numerous errors in addition to ideological biases.

On page 246 it states, ' the former Lieutenant Governor of Punjab, General Dyer " is stated to have been shot dead in 1940". [General Dyer had died in 1927 of cerebral hemorrhage]

One of the new textbooks is Modern India for Class XII written by Satish Chandra Mittal who retired as a Professor of History from Kurukshetra University in Punjab. In a pamphlet written some years ago, Prof Mittal expressed his unhappiness with what he called too much emphasis on Hindu-Muslim unity and composite culture in history books.

In his foreword to the new book, NCERT Director has written, "The whole character of history is affected by new techniques, inventions and outlook". A few examples of the new historical 'inventions' are given here to indicate the general quality of this book.

- On page 246, ' the former Lieutenant Governor of Punjab, General Dyer' is stated to have been shot dead in 1940. [General Dyer had died in 1927 of cerebral hemorrhage. The Lieutenant Governor who was shot dead was Michael O'Dwyer.]
- Earlier on the same page [246], it is stated that the formation of the Forward Bloc by Subhas Bose 'invoked sharp reactions from the Gandhiites leading to his resignation from the presidentship of the Congress'. [Subhas Bose formed the Forward Bloc after he had resigned from the Presidentship of the Congress.]
- On page 247, the three senior officers of Indian National Army are stated to have been 'acquitted'. [In fact, all of them had been found guilty but were released.]
- On page 168, the author says, "The Chapekar brothers were caught deceitfully and hanged by two British officials - Rand and Aryst." However, a few pages later [on page 184], the author changes his mind and says, "The Chapekar brothers ... decided to assassinate the two officers [Rand and Ayerst, the latter's

⁶⁴ . The Hindu, New Delhi, 23 January 2003.

- name spelt as Aryst on p.168 and Ayrst on p.184], which they did on the very day." [As this is a book for Class XII and would be the basis for public - CBSE - examination, either of the two statements as answers to an examination question would be deemed to be correct.]
- In page [185], Savarkar is stated to have 'engaged himself in the activities of the Hindu organisations' - the organizations including Hindu Mahasabha remain unnamed. It is nowhere stated in the book that he was a leader of Hindu Mahasabha and presided over its annual session in 1937 [and also subsequently] where he expounded his two-nation theory.
 - On page 185, Jackson is stated to have been assassinated in Aurangabad but on the next page at page 186 in Nasik.
 - The opposition of the Hindu Mahasabha to the Quit India Movement is not mentioned but it is stated that the 'role of the Sikh community was similar to that of the Hindu Mahasabha'.⁶⁵

Another textbook released in the third week of June 2003 is Contemporary World History, also for Class XII students. The authors are two Readers in History from the faculty of NCERT - Mohammed Anwar-ul Haque and Pratyusa K. Mandal - and a Professor of Ancient Indian History - Himansu S. Patnaik - from Utkal University.

This book adds a new dimension to NCERT's new history. Some of it reads like Cold War propaganda stuff of the McCarthyism. Soviet Union [and Communism] are stated to be equally responsible, along with Hitler and Nazi Germany, for the Second World War. [Pages 92, 129, etc.] There was 'universal hatred' for communism which Germany and Japan exploited when they signed that Anti-Comintern Pact. [p.98] Truman Doctrine - of 'containment' of communism - " was necessitated by the Greek situation. After the War, communists of the country started a civil war." [P.170]

NCERT historians write, "Stalin told his secret agents all over the world to steal the US" secrets. The Western countries had many people with communist leanings who viewed the USSR as their true nation. Their treasonable activities helped Stalin get hold of the blueprints for making an Atom Bomb. He then housed his top nuclear scientists in a secret location in remote Kazakhstan and coerced them to develop a bomb." [P.172] [This year (2003) marks the 50th anniversary of the execution of Rosenbergs on the charge of passing atomic secrets to the Soviet Union. The execution had shocked the world and remains a blot on USA's judicial history. The New York Times in an editorial on the 50th anniversary of the execution (19 June 2003) wrote, "The Rosenbergs case still haunts American history, reminding us of the injustice that can be done when a nation gets caught up in hysteria." The NCERT historians are reviving the atmosphere of that hysteria.

⁶⁵ . SAHMAT statement, 30 June 2003

The secret clauses of the Soviet-German Non-Aggression Pact, according to the NCERT historians, provided that Ukraine and Byelorussia would go to USSR. [pp.100-01]. Both these countries had been among the founder republics of USSR in 1922.

Like the other new history books of NCERT, this book abounds in factual errors. The book renders it utterly irrelevant to promoting any understanding of contemporary history. A few examples of the disregard of elementary facts, however, may be in order:

- "In October 1922, he [Mussolini] organised a 'March to Rome' in which hundreds of thousands of 'Black Shirts' took part." [Pp.81-82] In fact, there was no march. This is a myth, which was inspired by fascists.
- The book makes some references to the developments in China from 1911 to 1915 which are all wrong. It says, "...Pu Yi, was installed on the throne and in his name an ambitious General, Yuan Shihkai ruled. ...Yuan dealt with them [warlords] strongly, but himself got ambitious in the process. In 1915, he upstaged the child Emperor and crowned himself king." [p.105] There is no reference to the 1911 Revolution, the overthrow of the Manchu rule and proclamation of the Republic or to Sun Yat-sen who was the leader of the Revolution. Pu Yi gave up the throne in February 1912, Yuan replaced Sun Yat-sen as President in March 1912, Yuan did not crown himself king, he did not abdicate and he died in 1916;
- "In October 1922, he [Mussolini] organised a 'March to Rome' in which hundreds of thousands of 'Black Shirts' took part." [Pp.81-82] In fact, there was no march. This is a myth, which was inspired by fascists. The reference to 'hundreds of thousands' appears to be the historians' original contribution;
- The authors' geographical knowledge is comparable to Professor Hari Om's who had placed Madagascar in the Arabian Sea. There is a section in the book with the caption - South American State Mexico - which says, "The conjunction of Mexico, a South American State, with Latin American countries in the context noted below has warranted the inclusion of Mexico here." [p.117] There is nothing on the so-called 'conjunction' or on the 'context' below or anywhere else but that is unimportant as there are numerous such meaningless statements in the book but Mexico is certainly not a South American State and is equally certainly a Latin American country; "
- In 1974, the Salazar dictatorship was overthrown...." [p.144] Salazar had died in 1970;
- Referring to the 1948 Berlin Blockade - the Soviet authorities in their occupied zone in Germany had stopped all road and rail traffic from the west to Berlin - this book says, " The Soviets sealed all roads, rails and canal links between the West and East Berlin. Thus, western aid could not reach the trapped people in East Berlin." [p.170]

- On page 172, two different dates are mentioned for the setting up of Warsaw Pact - first 1954, then 1955;
- Ngo Dinh Diem [Diem Ngo Dinh in the book] who was brought to Vietnam under French and U.S. patronage in 1954 and became the President of South Vietnam is referred to as a leader of the nationalists.[p.187] There is reference to the Geneva conference and to the war and the responsibility for war is equally apportioned and, therefore, there is no reference to the Geneva Accords which had called for elections in 1956 to establish a unified independent Vietnam and Diem's and U.S.' refusal to do so.⁶⁶

The examples given above are a small sample of the enormity of the distortions of history and disregard for elementary historical facts in which the two books abound. These are being thought as text books for Indian students.

Article 37: The right not to be subjected to torture and other cruel, inhuman or degrading treatment or punishment

The routine toll of mutilated victims, extrajudicial killings, alleged "suicides" in police stations and disappearances across India is clear indication of the level of torture in India. It is a crisis that spans the ideological, political and geographical divisions amongst Indian states. It would not be an understatement to state that torture is a sanctioned practice in the administration of criminal justice in India. Not only is it a commonly used means of extracting confessions, but also often used as a means of extorting money. Torture in India has been variously described - as a cancer, as a sub-culture, - but the bare evidence outstrips each of these metaphors.

Yet, the government of India in its first periodic report asserts, "There are also no widespread incidences of victimisation of children in the country". The first periodic report describes torture in one paragraph, exactly in 194 words to be precise. This is scandalous by any yardstick!

The attitude of the government of India is not surprising. Although, India has signed the UN Convention Against Torture, Inhumane and Degrading Treatment in 1997, there is no sign of ratifying the same. The government of India while ratifying the CAT stated, "The Convention corresponds to the ethos of Indian democracy, rule of law, individual freedom, personal liberty and security enshrined in Indian polity. Signature of the Convention Against Torture by India is an important milestone in the process of India's continued commitment to fundamental and human rights of all persons and directive principles of national policy. Ratification of the Convention is to follow." Though National Human Rights Commission raised the issue of ratification of the CAT on many occasions, it failed to evoke positive response from the government. Even the Committee on the Rights of the Child urged the government of India to ratify the CAT.⁶⁷

⁶⁶ . *ibid.*

⁶⁷ . CRC/C/15/Add.115, 23 February 2000

Despite not being a party to the CAT, India voted against the resolutions at the 58th session of the United Nations Commission on Human Rights in March-April 2002 and at the 2002 substantive session of the Economic and Social Council for adoption of the Optional Protocol to the Convention Against Torture.

Torture, what torture

Torture in India has been variously described - as a cancer, as a sub-culture. The NHRC Annual Reports provide clear testimony. Yet, the first periodic report describes torture in India one paragraph, exactly in 194 words to be precise.

The NHRC's Annual Reports are illustrative of the use of torture in the administration of criminal justice system. According to NHRC's Annual Reports, it received complaints of 34 custodial deaths (in police custody and judicial custody) in 1993-94; 162 custodial deaths/custodial rapes in 1994-95, 444 custodial deaths in 1995-96, 888 custodial deaths in 1996-97, 1012 custodial deaths in 1997-98, 1297 custodial deaths in 1998-99, 1,093 in 1999-2000 and 1037 in 2000-2001.⁶⁸

These custodial deaths are in addition to disappearances, illegal detention, false implication, other police excesses and violation by armed forces (who are out of the purview of the NHRC under section 19 of the Human Rights Protection Act, 1993). Over the past several years, the UN Special Rapporteur on Torture also has consistently drawn attention to the exceptionally high number of cases of alleged torture in India and the failure of the Government of India to prosecute and punish the officials responsible. "Redress by torture victims or their families was reported to be difficult to obtain, as in most cases no decisive action would be taken by the authorities to investigate and bring the perpetrators to justice. In many instances, alleged perpetrators were suspended or transferred, but few police officers were charged and even fewer were convicted for the torture of detainees in police custody."⁶⁹

As the Minister of State for Home Affairs Shri Ch. Vidyasagar Rao in specific reply in the parliament on 16 July 2002 stated that there is no separate data is maintained for children killed in custody.⁷⁰ Since neither the government nor NHRC maintain the record on the death of children killed in custody, it is difficult to give precise figures about the torture and custodial death of children. However, the case studies are indicative of the pattern of torture of children in India.

⁶⁸ . Refer to the NHRC Annual Reports.

⁶⁹ . E/CN.4/1995/34

⁷⁰ . UNSTARRED QUESTION NO 316 TO BE ANSWERED ON 16.07.2002

Case 1: Torture of tribal students in Delhi

On 2 April 2001, two drunken Delhi Policemen mercilessly beat up one Charu Bikash Chakma near Rajghat in New Delhi. They were caught by other students and handed over to the Police. Instead of prosecuting the drunk policemen, Delhi Police personnel from Darya Ganj Police Station attacked the students staying at Ashok Buddha Vihar and subjected 19 students to illegal confinement, torture, inhuman and degrading treatment on the night of 2 April 2001. They were subjected to beating with their own cricket bats and stumps first, at the Buddhist temple at Ashok Buddha Vihar on Old Power House Road, Rajghat (where they reside), again on the lawn of Darya Ganj Police Station, and finally inside the 'transit room' at Darya Ganj Police Station, in addition to being hit with fists. Among the victims, included Mr Joy Chakma, 16 years, Mr Anton Chakma (15 years). Mr Joy Chakma received several blunt injuries and was treated for swelling on his right hand fingers. A Medical Legal Case has been registered for Mr Joy Chakma at the LNJP Hospital in New Delhi.⁷¹

Case 2: Torture and tattooing of a Kashmiri boy, Bashir Ahmed Dar



Seventeen year old Bashir Ahmed Dar, rickshaw-puller on Delhi streets, was allegedly picked up from the Old Delhi Railway Station a few days after the 13th December 2001 attack on Indian Parliament. He alleged that he was lodged first at Delhi Gate station for three months, and moved to Lajpat Nagar police station, and was released in January 2003. He claimed that he pulled the rickshaw again to collect money for the journey home. He was subjected to torture in various places. The police tattooed his arms with Hindu deities.⁷²

Case 3: Torture of Mukesh Kumar, Punjab

The Station House Officer of Phase VIII police station of Chandigarh illegally detained a 10-year-old boy, Mukesh in June 2003. Mr Justice S.S. Grewal of the Punjab and Haryana High Court on 12 June 2003 directed the appointment of a warrant officer to locate the alleged detainee. According to the mother of the victim, Choni Devi of Patna, her son Mukesh Kumar was picked up by the Station House Officer and other police officials from Phase VII Sabzi mandi (vegetable market) where he was selling vegetables. She was later informed by her relatives that Mukesh Kumar was in illegal

⁷¹ . Complaint of Chakma Buddhist Society to the National Human Rights Commission on 4 April 2001

⁷² . Indian Express, New Delhi, 17 April 2003.

custody at Phase VIII police station. The police did not inform the family members about his arrest or detention.⁷³

Case 4: Torture of Rupesh, Punjab

15 year old, Rupesh was working as a servant at a house in Phase VII, SAS Nagar, Chandigarh, Punjab. He was picked up by the police following an allegation leveled against him by his employers that he had stolen a cheque in June 2003. The boy was illegally detained at the Phase-VIII police station of SAS Nagar for four days and was subjected to third-degree torture. The brother of the victim then approached Punjab Human Rights Commission for his release.⁷⁴

Case 5: Torture of children in Jharkhand

Ms Shatuli Devi was sleeping in her hut at Arasadam village under Jaridih police station of Bokaro district of Jharkhand with her two children when the police knocked the door at around 2 am on 6 April 2003. The 22-year-old woman initially refused to answer, but as the banging intensified, she opened the door.

And her nightmare began.

A dozen armed policemen, said to be from Purulia district of West Bengal, barged into Shatuli Devi's little home and started beating her with sticks and the butt of their guns, while demanding information about a person she claimed she hardly knew. But the policemen, not satisfied, continued to beat her till she fainted.

Villagers rushed Shatuli Devi, who was bleeding profusely, to a local nursing home where the doctor had to operate on her. She lost the child.

The police were reportedly searching for one Narain Mahto, an accused in the murder of a landlord, Jagdish Tewary, in Baansgarh under the Jhalda police station of Purulia.

After torturing Shatuli Devi, the police team continued with its operation and raided the huts of Sumitra Devi (wife of Narain Mahto), Lakhu Devi (wife of Raghu Mahto) and thrashed the children — Diwakar (10 years), Prabhakar (9 years), Laxmi Kumari (12 years), Sarita (10 years), Babita (9 years), Runi Kumari (12 years), Suvidha (8 years) and Shakuntala (14 years). Three children were seriously wounded due to the torture.⁷⁵

Case 6: Torture and custodial death of Pradeep Singh

On 22 December 2001, 17 year old Pradeep Singh and his two friends were stopped at a Jamarai police post under the Tarn Taran police district while on his way back from

⁷³ . The Tribune, Chandigarh, 13 June 2003.

⁷⁴ . The Tribune, Chandigarh, 29 June, 2003

⁷⁵ . The Telegraph, Calcutta, 10 April 2003.

Gandiwind where he had gone to visit his widowed mother. The police asked the boys to empty their wallets. Being poor students, they had very little money with them. At this, Assistant Sub-Inspector (ASI), Harbhajan Singh sent two of the boys away and asked Pardeep Singh to stay back.

The police beat up Pradeep Singh and collapsed. Thinking that Pradeep Singh was only pretending, the ASI allegedly took him to his private quarters and kept hitting him. Pardeep Singh died there.

Later the police claimed that the boy had committed suicide by hanging himself.

No action was taken. However the family members of Pardeep Singh, including his widowed mother, Ms Joginder Kaur, continue to live in fear as the ASI roams free. In August 2003, Punjab State Human Rights Commission (PSHRC) directed to submit a report to the commission within six weeks. The PSHRC has also directed the SSP, Tarn Taran, to ensure that no harassment is caused to the complainant and the family members of the deceased.⁷⁶

Article 28: Corporal punishment

Corporal punishment - What is that?

Corporal punishment is rampant in India. From stripping to inhumane torture, students endure various forms of corporal punishment. India makes no reference to corporal punishment.

Article 28 of the Convention on the Rights of the Child urges that States Parties to “take all appropriate measures to ensure that school discipline is administered in a manner consistent with the child's human dignity and in conformity with the present Convention”. Yet, corporal punishment continue be applied across India with legal sanction. Many State Education Board legally permit corporal punishment.

The government of India has failed to ban corporal punishment in schools. Indeed, the government of India's response to the corporal punishment is similar to its response on torture by law enforcement personnel – it does not exist and therefore, it makes no reference to corporal punishment issue.

Case 1: Suicide of Ramu Abhinav

On 12 June 2003, Ramu Abhinav, 16-year-old tenth class student of Velammal Matriculation Higher Secondary School in Chennai, Tamilnadu committed suicide. He was allegedly driven to the extreme step by the corporal punishment inflicted on him by his mathematics teacher, Kannappan. The victim left behind a suicide note scribbled on a

⁷⁶ . The Tribune, Chandigarh, 16 August 2003

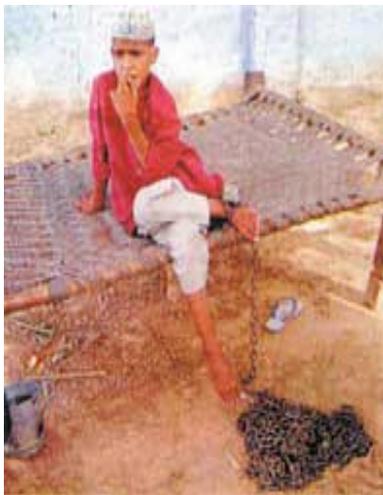
handkerchief saying he was committing suicide as he hated going to the school. Teacher Kannappan allegedly beat up Abhinav as he had missed the special classes on his birthday two days earlier and scored poor marks in the class test in mathematics. The Tamil Nadu Government's Rule 51 of the State education rules permits corporal punishment in extreme cases.⁷⁷

Case 2: Student beaten to death by Madrasa teacher

On 19 June 2003, Wasim, 14-year-old son of Shaukat, resident of ward no. 2, Sector 12, in Mata Colony, of Gaziabad in Uttar Pradesh was reportedly severely beaten up by the area Madrasa Moulvi (teacher) and died 10 days later. Wasim was a student of Madrasa Jamia Hijjatul Islam, Jannat Masjid, Miza Pur Colony, Vijay Nagar, Gaziabad. Wasim had broken the Rehal (the stand on which the holy Koran is placed) on 19 June 2003. That was provocation enough for the Moulvi and others to beat him black and blue. As his condition was serious, he was not allowed to go home for three days. Instead, he was treated at the Madrasa by a quack.

Shaukat, took his son to the same quack as he could not afford proper medical treatment. Meanwhile, Moulvis and others connected with the Madrasa started exerting pressure on Shaukat to let bygones be bygones. But Wasim's mother, Anwari, admitted that her son had died as a result of the beating received in the Madrasa.⁷⁸

Case 4: Children chained by madrasa in UP



← On 18 June 2003, 12 year old Rizwan, a student of a Faiz-e-am Madrasa at Chandpur under Kotwali Dehat, in Bulandshahr, Uttar Pradesh was rescued by the police after a local newspaper reported about the student being kept in chains.

On 15 June 2003, three students - Arshad (8) son of Mohammad Din, a resident of Lisari Gate, Meerut, Iqram (10), son of Shah Zamal, a resident of Saraiya village under Buhari police station of Gonda district and Asif (7), son of Raees, a resident of Shastri Park in Bulandshahr – fled allegedly fed up with the coercive tactics employed by the cleric of the Madrasa. The local police apprehended them and handed them back to the moulvi of the Madrasa.

The children are thrashed over petty issues and chained to prevent them from running away. As they are provided free education at the Madrasa, the parents turned a blind eye to these atrocities. The police remain extremely insensitive. In an interview over the

⁷⁷ . The Asian Age, New Delhi, 18 June 2003

⁷⁸ . The Tribune, Chandigarh, 8 July 2003

incident, the Senior Superintendent of Police (SSP) Alok Sharma said, "this is not America where children have their rights. Here it is either the school or the parents who make decisions regarding children. We have handed them over to the Madrasa since their parents want them to be there".⁷⁹

The city Magistrate recorded the statements of the tortured children at the Madrasa where they were under duress.

Case 4: Corporal punishment of Dipendra Dubey

On 30 July 2003, Dipendra Dubey, a class IX student of Lucknow Public School was allegedly slapped and beaten mercilessly with sticks by four teachers of the school as a punishment. He was punished only because he skipped a class as he was having a stomach ache and had taken shelter in the school canteen. The medical examination of the boy was conducted at Rani Lakshmi Bai hospital, Rajajipuram, which confirmed that the boy had received several injuries due to thrashing.⁸⁰

Case 5: NHRC's intervention against the corporal punishment of Aarti Saroj

In the first week of July 2003, the National Human Rights Commission directed the Education Secretary in the Delhi government as well as Director of Primary Education in the Municipal Corporation of Delhi to appear before it on 30 July 2003 about the corporal punishment. The order was given after the NHRC pursuant to its intervention against the corporal punishment given to Aarti Saroj, a student of Class VI in the Government co-educational senior secondary school, Mukherjee Nagar, by her class teacher on 21 September 2001. Ms Saroj had received grievous injuries. A report from the Education Secretary to the NHRC denied the allegations. On consideration of the reports received from the Education Secretary, Additional DCP as well as the comments of the complainant on the report and the complaint of the father of the victim, the Commission was prima facie satisfied that the student was administered corporal punishment by her teacher in the school on 21 September 1996. The Commission had earlier observed that though it did not propose to proceed in the case, it was an important and fundamental issue, which required its consideration whether the Delhi School Education Act permitted corporal punishment to children in schools.⁸¹

Case 6: 60 children given corporal punishment

On 5 August 2003, about 60 minor children studying in VIII standard of Government Senior Secondary School at Chheharta, Amristar, Punjab were allegedly severely beaten up by the drawing teacher with a stick. They were kicked and abused for not bringing some geometry box instruments in his class. The beating allegedly was so severe that seven children got contusions and marks of the beating.

⁷⁹ . The Pioneer, New Delhi, 19 June 2003

⁸⁰ . TIMES NEWS NETWORK [THURSDAY, JULY 31, 2003 02:56:38 AM]

⁸¹ . Newstime, Hyderabad, 7 July 2003

Ram Singh (13) cried with pain as he lifted his shirt to show marks of beating to the local journalists. He cried that he plies an autorickshaw after school to meet his school and household expenses and could not buy the geometry instruments then, as he was awaiting his scholarship to make the purchase.⁸²

Case 7: Students stripped for skipping homework

On 13 August 2003, Mr Sadhan Pal, the headmaster of Krisnapalli Prathamik Vidyalaya, Malda district of West Bengal ordered the third graders to strip for not doing their homework. The students who resisted were caned. The class had 48 students and all but two faced the “punishment.” Among the students, mostly from impoverished families, were pre-teen girls, whose parents took strong exception to the headmaster’s order. Only two of the 48 students in the class were found to have done their homework. When the others failed to answer the questions the headmaster asked, the parents said the headmaster told them to strip and stand on benches, brandishing his cane. Some obeyed. Those who resisted were caned ruthlessly.⁸³

Case 8: Teacher breaks student's bone as 'punishment'

On 13 August 2003, Mr Subba Rao, mathematics teacher of DAV Public School at Sufilguda, Hyderabad, Andhra Pradesh almost broke the upper portion of Anandita’s left hand as punishment for not completing homework. Anandita's left hand was badly twisted by mathematics teacher Subba Rao for not completing the scheduled homework. It was only after the girl started complaining of excruciating pain that Subba Rao took a closer look at the arm. He found the upper portion severely injured. He informed the school authorities, who took her to a local orthopedic hospital. She was given first aid and the case was declared as medico-legal.⁸⁴

⁸² . The Tribune, Chandigarh, 6 August 2003

⁸³ . The Telegraph, New Delhi, 14 August 2003

⁸⁴ . Newstime, Hyderabad, 14 August 2003

VI. Education, Leisure and Cultural Activities

Article 28: Education, Leisure and Cultural Activities

Shockingly, of the 900 million illiterates in the world, almost one-third belong to India. In other words, Indians constitute the largest number of uneducated people in the world. It is a paradoxical situation in which the gains made in the realm of education since independence have been overshadowed by the presence of a huge population of illiterates, especially in rural India, and more so among girls.⁸⁵

Yet, India requires over 1.1 millions primary schoolteachers as of July 2003.⁸⁶

The Constitution of India has made it obligatory on the part of the Government to provide free and compulsory education to all children until they complete the age of 14 years. This was to be achieved by the year 1960, but could not be achieved and the target dates had to be repeatedly extended to 1990. The National Policy on Education, 1986 again extended the target date to 1995. The modified Education Policy, 1992 further revised the target date so as to achieve compulsory education for all children upto 14 years of age by the end of 20th century. In spite of the provisions having been made in the Constitution and the efforts made by successive Governments it has not yet been possible to universalise elementary education. Free and compulsory elementary education still remains a major challenge in most of the States.

In its first periodic report, the government of India (pages 241-307) illustrates various programmes to achieve universal education. This is a classic example of repeating the objectives of the programmes rather than the results of the programmes.

Case 1: Poor state of girl child: findings of Parliamentary Committee

The 14th report of the Parliamentary Committee on Empowerment of Women of the Lok Sabha (2003-2004) on the Action Taken by the Government on the recommendations contained in Sixth Report (13th Lok Sabha) to the Ministry of Human Resource Development (Department of Elementary Education and Literacy and Department of Secondary Education and Higher Education) is self explanatory about the status of the girl child's education. The excerpts from the report of the Parliamentary Committee on Empowerment of Women are given below.

⁸⁵ . The Parliamentary Committee on Empowerment of Women of the Lok Sabha, lower house of Indian parliament (2003 –2004) in its 14th report of 5 August 2003

⁸⁶ . The Asian Age, New Delhi, 24 July 2003

“Free and Compulsory Elementary Education still a major challenge

1.5 The Committee had observed that as per the Census 2001, the literacy rate in the country was 65.38 per cent. Although female literacy had improved to 54.16 per cent in 2001 from (39.2 per cent in 1991), it was quite low as compared to that of 75.85 per cent in respect of males. Further, out of 203 million added to the literate population during 1991-2001, 107 million were males and 95 million were females. Contribution to the total decrease of 31 million illiterates during this period was dominated by males (21 million) as compared to the females (10 million). An estimated 60 million children were still out of schools, of which, 35 million were girls. The problems relating to drop outs, low levels of learning achievement, and low participation of **girls, tribals and other disadvantaged groups** persisted.

1.7 The Department of Elementary Education and Literacy have further stated that as per the latest educational statistics, the population of children in the age group 6-14 is 19.2 crore⁸⁷. Of these 15.7 crore children are enrolled in schools and the number of out of school children in the age group 6-14 is 3.5 crore of which 2.5 crore are girls.

1.9 The Committee are concerned to note that despite the provisions made in the Constitution and the efforts made by the Department of Elementary Education and Literacy, 3.5 crore children in the age group of 6-14 years of which 2.5 crore are girls, are still out of schools. The fact that the number of female out of school children still continue to be much higher than the number of male out of school children is a cause of concern to the Committee. This speaks adversely of the state of affairs in the field of education in the country. *Apparently, the Department of Elementary Education and Literacy have failed in discharging their constitutional responsibility of providing free and compulsory education to all children in the age group of 6-14 years. (Emphasis ours)*

1.13 The Committee find that the National Policy on Education, 1986 as modified in 1992 envisages the concept of a national system of education which implies that all students irrespective of caste, creed, location and sex have access to education of a comparable quality. It is a matter of concern that after 11 years of the modification of the National Policy on Education, the Department is stated to have formulated a scheme for education of girls at the elementary level which has recently been approved by Expenditure Finance Committee and is still to be implemented. The Committee deplore the delay on the part of the Department of Elementary Education and Literacy in taking action in regard to formulation of a scheme for the education of girls at elementary level. The Committee desire that this Scheme which should have been formulated and implemented much earlier, be implemented expeditiously.

⁸⁷ . One crore is equivalent of 10 million.

Targets to Universalise Elementary Education unachieved Recommendation (Para No. 1.73 on various schemes/programmes such as the National literacy Mission, Mahila Samakhya, Operation Blackboard, Non-formal Education, Lok Jumbish and District Primary Education Programme

1.18 The Committee are disappointed to note that the Department of Elementary Education and Literacy in their Action Taken reply have simply repeated the objectives of the Sarva Shiksha Abhiyan and have not informed us as to what concrete steps have been taken so far to achieve the objectives of the programme. As already pointed out earlier in the Report, 3.5 crore children in the age group of 6-14 years are still out of school of which 2.5 crore are girls. The fact that the target year 2003 is already half way through and a large number of children, especially, girls are still out of school, makes the Committee apprehensive about the reply of the Department that Sarva Shiksha Abhiyan will provide useful and relevant elementary education to all children in the age group of 6-14 years by the year 2010. The Committee desire that the Department carry out a study to evaluate what has been the impact of the programme (Sarva Shiksha Abhiyan) and what have been its shortcomings, with a view to taking suitable remedial steps so that the targets set for bringing every child, particularly girls, between 6-14 years to school, becomes a reality.

Association of Panchayati Raj Institutions and Anganwadi workers in the Literacy Programmes Recommendations [Para No. 1.75(viii) and 1.75 (ix)]

1.27 In the aforesaid paragraphs, the Committee had pointed out that vigorous steps were needed to associate the elected representatives of the Panchayati Raj Institutions in the Literacy Programmes.

1.30 The Committee are not satisfied with the superficial reply furnished by the Department of Elementary Education and Literacy which states that under the National Literacy Mission (NLM) a large number of literacy campaigns are being administered through Panchayati Raj Institutions in certain States notably in West Bengal and Kerala.

1.31 While reiterating their earlier recommendation the Committee desire that the literacy campaigns through Panchayati Raj Institutions be extended to all States and not only in selected few States. Further, the Committee desire that Anganwadi workers should also be involved to play an active role and should be the focal point for a number of activities and support services for the literacy programmes especially of girls.

On Proper Utilisation of Funds for Education Recommendation (Para No. 1.77)

“1.34 The Committee, in their original Report, had observed that not only Allocation earmarked for Education was inadequate but the funds allotted for Secondary Education from 1995-1996 to 1999-2000 were not fully and properly utilised. The Committee are disappointed to note from the Action Taken reply furnished by the Department of Secondary and Higher Education that they have taken a view against the States/Union Territories who have not utilised the funds allocated in different schemes/programmes and also not sent their utilisation certificates. The Department have stated that such States have been asked to refund the amount unspent by them. It is a matter of deep concern that whereas Experts/Commissions have been recommending increased allocation for Education, the States have not been able to spend the limited funds allotted to them for the purpose. The Committee are surprised that the Department have not cared to find out the specific reasons for non-utilisation of funds by the States which obviously have affected the Educational Programmes for children. The Committee feel that the Government should be more serious about the implementation of various educational schemes/programmes. They should not be content merely releasing the money to the States but should also ensure that each rupee allocated for education is meaningfully and timely spent.

Need for increased allocation for education Recommendation (Para No. 1.80)

1.35 The Committee, in the aforesaid para of their Original Report, had pointed out that the Kothari Commission on Education (1964-66) recommended that the investment on education should be gradually increased so as to reach a level of 6% of GDP. The National Policy on Education, 1986 also reiterated that the investment on education be increased to 6% of the national income against the then allocation of only 3.3%. The Committee were concerned that the allocation for education was only 3.8% of GDP and fell far short of the target recommended by the Kothari Commission 34 years ago. The Department of Elementary Education and Literacy had admitted that in order to achieve the long cherished goal of universalisation of elementary education, there was an urgent need for increasing public expenditure on education to this level. The Committee were of the opinion that no concrete steps had been taken by the Government over all these years to step up the allocation. The Committee had desired that the Planning Commission and the Ministry of Finance should ensure increased allocation of funds for education in the immediate future. Further, since Education was a concurrent subject and was the joint responsibility of the Centre and the States, the States should also be associated in mobilisation of resources for achievement of the target of expenditure of 6% of GDP.

1.39 The Committee would like to further point out that the female literacy rate in the country as per 2001 Census is 54.16% as compared to that of 75.85% in

respect of males. The Committee are of the view that the economic and social returns on education of women are greater than those of men, as by educating women we can reduce poverty, improve productivity, ease population pressure and offer the children a better future. Therefore, to improve the participation of girls in the field of education, special allocation needs to be made in the Educational budget for female literacy and thus abridge the existing massive gender gap in literacy rates.”

Case 2: Dalit children’s lack of access to education

According to the “India Education Report” of the National Institute of Educational Planning and Administration (NIEPA), discrimination continues to obstruct the access of Dalit children to schooling as well as to affect the quality of education they receive. Therefore, progress of schooling among Dalit children between the age of five and 14 has been relatively poor compared to that of the general population.

The report highlights the discrimination that Dalits, in general, and their children, in particular, are subjected to. “Teachers refuse to touch SC children, these children are also special targets of verbal abuse and physical punishment by teachers”. According to the report, school attendance in rural areas in 1993-94 was 64.3 per cent for Dalit boys, compared to 74.9 per cent among boys from other social groups. In urban areas, Dalit boys have higher attendance rates (77.5), but the lag in enrolment rates vis-a-vis other boys continues to be around 10 percentage points.⁸⁸

Dalits lagged behind the general population by as much as 15 percentage points in literacy. Barely 24 per cent of Dalit women were literate, according to the 1991 Census. In case of tribal children, the literacy data from 1971 to 1991 show that the literacy rate for Scheduled Tribes (STs) has gone up from a lowly 11.3 per cent in 1971 to 29.5 per cent in 1991.⁸⁹

Official data shows that two-thirds of all Dalits (ages six to 14) are outside school. It is worse for the Dalit girls in rural areas. The few who do go have perhaps the highest drop out rates - far higher than those of non-SC students.⁹⁰

Savitri’s family is not well off, but when she dropped out of school in Viraatnagar (Rajasthan, India), it was not due to poverty, but discrimination. “The moment I enter the room in school, the other children make faces. They start singing, *Bhangi aayee hai, aayee hai, bhangi aayee hai*’ (The *bhangi* has come).” The words of the song are foul and insulting. Savitri is from a family of scavengers, a group that is among the most vulnerable within Dalits. The official label for them is ‘*bhangi*’. Many scavengers are close to the bottom of the social ladder and caste

⁸⁸ . TIMES NEWS NETWORK [THURSDAY, FEBRUARY 28, 2002]

⁸⁹ . *ibid*

⁹⁰ P. Sainath, “This is the way they go to school”, The Hindu Magazine, 28 November 1999.

stratification; even other Scheduled Castes (SC) practise untouchability towards them. Women scavengers cleaning dry latrines tend to draw their *pallu* (scarf) over the noses and grip it in their teeth. That offers them some protection in their unsanitary work. The children at the school mimic this when Savitri enters. They bite a side of their collar, screw up their noses and cover their faces with a hanky. "I would start crying, but it didn't matter to them," says Savitri.

What about the teacher? Didn't he do anything?

"The teacher? How is he different? We had to sit at the back of the class; near the door where everyone's shoes were kept. We were never allowed to sit on the *pattis* the rest of the students use. Even other SC children humiliated us. There were two or three of us...girls. When it became too much, we quit."⁹¹

Case 3: Denial of right to education to the Chakmas and Hajong students

The government of India in its periodic report refers to Unni Krishnan case on the right to education, in which the Supreme Court held that all citizens have a right to education upto 14 years of years. The government of India subsequently adopted the 83rd Constitutional Amendment, which guarantees the right to free and compulsory education for children from 6-14 years.

Yet, in violation of the Supreme Court judgement and 83rd constitutional amendment, the Chakma and Hajong children of Arunachal Pradesh continue to be denied the right to education. The State government in an order in 1994 (vide No. CS/HOME/94 dated 21 November 1994) withdrew all the 49 pre-primary schools (Anganwadis) solely because of their ethnic origin. The Anganwadi centres are yet to be restored. Consequently, the Chakmas and Hajongs have been facing a generation gap in education despite the Government of India making the right to education as a fundamental right.

The following schools in the Chakma settlement areas were withdrawn in 1994 and continue to be so till date:

Government Middle School, Bijoypur, circle Bordumsa, district Changlang.
Government Primary School, M-Pen, circle Miao, district Changlang.
Government Primary School, Deban, circle Miao, district Changlang

Condition of the only secondary school at Diyun

For about 40,000 Chakma and Hajong population there is only one Government Secondary School at Diyun. In the absence of any middle school in the whole Diyun circle, this school has to accommodate all the Chakma and Hajong students passing out every year from more than 10 primary schools operating in the Chakma areas. Around

⁹¹ Ibid.

1,400 students (12 teachers) are enrolled in this school with virtually no infrastructural facilities. The school building is built by the Chakmas and the State Government gives no grant. No developmental works has been undertaken by the State Government- bench, desk, duster and other required furniture are self-arranged by the guardians of students.⁹²

At the time of writing this report, the schools remained closed.

Case 4: No education for juveniles and destitute in Assam

The Assam Human Rights Commission (AHRC) stated that the State Government has not taken any steps to make literate hundreds of inmates of the destitute and juvenile homes in Assam. They are not covered under the Sarba Siksha Avijan (Education For All) and adult education programmes. There are as many as twelve such institutions in the State with a total of 741 inmates. An AHRC team had visited both the institutions recently and found that there were five deaf and dumb children taking shelter in the homes without any special care. The AHRC has suggested to the department to train one of the employees for special supervision of these physically challenged children.⁹³

Article 29: Aims of Education

In its first periodic report (pages 306 to 315), the government of India discusses the aims of education in India. However, some State educational boards and the educational institutions run by religious fundamentalists seek to distort the aims of education in their attempt to “Hinduise” the education system.

Please also refer to the chapter on the right to access to appropriate information under Article 17.

Case 1: Hinduisation of education in Madhya Pradesh

The Hindu right wing RSS runs about 2,000 schools in Madhya Pradesh. The number of students is estimated to be upwards of one hundred thousands. Though the RSS-run schools — Saraswati Shishu Mandir (primary) and Vidhya Bharati (up to Class XII) follow the state government curriculum in Madhya Pradesh, they do incorporate Sanskriti Gyan Pariksha (Cultural Knowledge Examination) as a supplementary subject. The National Integration Committee, a Madhya Pradesh government body, has observed that “The books present myths as historical facts and seek to promote hatred for certain religions”. It recommended the controversial texts be withdrawn or the schools de-recognised for teaching a “distorted history to tender minds... to prepare a militant Hindutva brigade”. The Committee stated that the book is “poisoning the impressionable minds of the children”.

⁹² . Memorandum of the Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh.

⁹³ . The Sentinel, Guwahati, 9 July 2003

The book projects India only as a country of Hindus. For instance, the list of Indian festivals in the book for Standard VIII does not include Christmas, Id and even Buddha Jayanti and Guru Nanak Jayanti. The books also say that Aryans are the “original inhabitants” of India. It teaches, “...wise shanti ka sandesh Islam mat ka mul aadhar hai parantu is sampraday ka vistar talwar ki dhar se hua hai... (Islam’s message is peace, but it has spread on the strength of the sword)”.

Some of the excerpts from the Sanskriti Gyan Pariksha are given below:

Question: “How many Ram bhakts (deciples) have laid down their lives for liberating the Ram temple?”

Ans: Three lakh fifty thousand.

Question: Why is Babri masjid not a masjid?

Ans: Because namaz was never offered there.

Question: Which is the oldest country of the world?

Answer: India.”⁹⁴

Case 2: Promotion of hatred through education in Gujarat

The books written and recommended by the Gujarat State Board of School Textbooks promotes hatred. The text book for Social Studies textbook for Class 9^h students is a case in point.

Chapter 9 of Social Studies is titled “Problems of the Country and their Solution”. The very first section (problem?) is “minority community” (P 93). It states “apart from the Muslims, even the Christians, Parsees and other foreigners are also recognised as the minority communities. In most of the states the Hindus are in a minority and Muslims, Christians and Sikhs are a majority in these respective states”. Therefore, Class 9 standards children are taught that Muslims and Christians are foreigners and that Hindus are in a minority in most states.

On “Problems of Scheduled Castes and Scheduled Tribes” (P 94) titled “What ails them?” it states, “They have not been suitably placed in our social order, therefore, even after independence they are still backward and poor. Of course, their ignorance, illiteracy and blind faith are to be blamed for lack of progress because they still fail to realise importance of education in life”. The message is clear the Scheduled Castes and Tribes have only themselves to blame for their sorry plight, and caste discrimination.

The teachings in the schools in Gujarat is contrary to universal affirmation that “all doctrines, policies and practices based on or advocating superiority of peoples or individuals on the basis of national origin, racial, religious, ethnic or cultural differences are racist, scientifically false, legally invalid, morally condemnable and socially unjust”.

⁹⁴ . The Hindustan Times, New Delhi, 3 September 2003; The Deccan Herald, Bangalore, 4 September 2003

The Class 12th students sitting for their Board examinations in Gujarat on 22 April 2002 were put to a grammar test. The English paper asked them to remove the word "if" and rewrite the sentence, "If you don't like people, kill them". This was followed by another question asking students to rewrite a short passage as a single sentence. The passage read: "There are two solutions. One of them is the Nazi solution. If you don't like people, kill them, segregate them. Then strut up and down. Proclaim that you are the salt of the earth".⁹⁵

Case 3: Promotion of disrespect to Sikh Guru Govind Singh

The Central Board of Secondary Education's Class VI Hindi textbook uses "disrespectful language against Guru Gobind Singh and publishing the Guru's sketch showing him brandishing a sword". The Khalsa Academy has written to the Prime Minister, Union Human Resources Development Minister and Members of Parliament pointing out the "offensive portions" and urging the withdrawal of the chapter.

The chapter *Baisakhi phir aa gayi* (Baisakhi, new year, has come, again). The Khalsa Academy objected to the following portion that reads: "...samne manch par khada, kisi unmaad mein duba, aankhon se chingariya bikherta, nangi chamchamati talwar ghumata hua, taitis varshiya yuva vyakti kah raha tha...mujhe sir chahiye..mujhe sir chahiye... (A 33-year-old man in a crazed state stands on the podium, fire in his eyes and brandishing a naked, shining sword... saying I want (their) head, I want (their) head...)"

It has objected to the following lines: "...bheed ke lehron par se utrata hua wah Jat us talwar ko chume is tarah ja raha hai jaise bhangre wale ki toli me koi boli bolne ja raho ho (riding the crest of the wave formed by the crowds, this Jat was kissing his sword as if in preparation for a bhangra (a Punjabi folk dance)."

The Khalsa Academy stated "Portraying the Sikh Guru in "such a fashion" and publishing an "imaginary sketch" suggested that the Central government was out to "subvert" history. The Academy stated that the government's "nefarious designs to alter history" stood exposed as the same textbook used "respectable and appropriate language vis-a-vis Lord Rama and Lord Krishna". The chapter — introduced in the CBSE's text in 2003 — is written by Mr Mahip Singh. According to a rough estimate, the textbook is studied by about 200,000 children all over the country.⁹⁶

⁹⁵ . Ordeal by Fire in the Killing Fields of Gujarat, Editors Guild Fact Finding Mission Report by Aakar Patel, Dileep Padgaonkar, B.G.Verghese, New Delhi, May 3, 2002

⁹⁶ . The Statesman, New Delhi, 31 July 2003

VII. Special Protection Measures

A. Anti-Terrorism measures and juvenile justice

Reds under the Bed India discovers McCarthyism

“POTA does not specify that students providing information to the Naxal groups can be exempt from arrest” – Jharkhand Home Secretary J B Dubit.

“Anyone caught with a copy of the Communist Manifesto or Mao’s Red Book becomes a suspicious character” – a senior police official of Jharkhand on how police level someone as a Naxal.

As of July 2003, about 702 persons have been detained under Prevention of Terrorism Act, 2002. Many of the detainees include children who have been arrested for the threat their parents allegedly pose as alleged members of the armed opposition groups

The 11th September 2001 attacks in the United States and the subsequent war against terror have provided opportunity to the governments to enforce draconian anti-terror laws. The Government of India for its part promulgated the Prevention of Terrorist Ordinance (POTO) on 24 October 2001. As parliament was adjourned *sine die* on 19 December 2001, the ordinance was re-promulgated on 30 December 2001. Although the NHRC, the media, civil liberties organisations and political parties – from within the ruling coalition as well as from the opposition – expressed reservations about the need for such legislation, the attack on the Indian parliament on 13 December 2001 served to blunt the opposition to the ordinance. The Prevention of Terrorism Bill was rejected by the Rajya Sabha, the upper house of the Indian parliament, prompting the desperate government to call an extraordinary joint session of parliament, the only way the government could muster the majority required to pass the bill. The bill was eventually passed on 26 March 2002.

This was only the third time since Indian independence that an extraordinary joint session had been called.

Analysis of the Prevention of Terrorism Act, 2002

The NHRC, political parties and civil society groups opposed POTA because of past experiences with similar legislation. The POTA contains many draconian provisions and some key draconian features are given below:

There is to be no review of POTA provisions for three years from the date it comes into force.⁹⁷

⁹⁷ . Section 1(6) of POTA

Under an expansive definition of terrorism - drawn from the text of TADA - POTA may also be applied to cases of murder, robbery, theft and other crimes that would ordinarily be covered under the Indian Penal Code, in addition to new crimes under the heading of 'terrorist act'. Such crimes include membership of an unlawful association - already covered under the Unlawful Activities (Prevention) Act, 1967 - or any voluntary act "aiding or promoting in any manner the objects of such association". Thus, POTA provides for criminal liability for mere association or communication with suspected terrorists without the possession of criminal intent.⁹⁸

It criminalises attempts to harbour or conceal a terrorist, but gives no indication of who is empowered to designate someone a terrorist for the purposes of this section.⁹⁹

POTA criminalises membership of a 'terrorist gang' or 'terrorist organisation', the latter being defined tautologically as "an organisation which is concerned with or involved in terrorism" and thus (potentially and arbitrarily) extending to many patently non-terrorist organisations.¹⁰⁰

It designates the act of "threatening a witness" as a terrorist act, and provides for the non-disclosure of witness identities - provisions that increase the threat of false accusations by the police.¹⁰¹

The Act criminalises the possession of an unauthorised weapon in notified areas and of bombs, dynamite and specified dangerous substances in any area. This section lends itself readily to abuse, especially by police officers, and may also be applied arbitrarily since many of the offences fall under the Indian Penal Code as well. Furthermore, the provision does not require criminal intent, and could extend to a person in possession of a weapon with a recently expired firearms licence.¹⁰²

POTA provides for mandatory minimum sentences, with little discretion left to judges regarding the severity of sentencing. It may also lead to extensive invocation of the death penalty, with none of the standards of scrutiny that must be ensured before such a penalty is awarded.¹⁰³

POTA provides unregulated power to the police to attach "property derived or obtained from the commission of a terrorist act or from the proceeds of terrorism."¹⁰⁴

⁹⁸. Section 3 of POTA

⁹⁹. Section 3(4) of POTA

¹⁰⁰. Section 3(5) of POTA

¹⁰¹. Section 3(7) of POTA

¹⁰². Section 4 of POTA

¹⁰³. Section 5 of POTA

¹⁰⁴. Section 6 of POTA

It provides punishment of state and private business officials for failure to furnish information (arbitrarily requested)¹⁰⁵; attachment of property of accused and seizure of property of convicted under POTA¹⁰⁶ – the proceeds accruing to the government;

It does not require the government to furnish evidence and specify grounds when issuing a notification declaring an organisation a 'terrorist organisation'. The onus is thus on the accused organisation to disprove the validity of its having been declared a terrorist organisation by the Central Government. The Central Government thus becomes judge, the jury and prosecutor¹⁰⁷.

Membership of a 'terrorist organisation' constitutes an offence under the Act; the government is not obliged to provide information pertaining to an accused organisation. Failure to disprove allegations of membership of such an organisation could result in imprisonment for ten years. This violates internationally accepted standards on the presumption of innocence.¹⁰⁸

POTA outlaws the legally undefined offence of giving 'support' to a terrorist organisation, committed by inviting 'support' (not merely through the provision of money or other property), assisting in arranging and managing a 'meeting' in 'support' of a terrorist organisation or to be addressed by a person belonging to a terrorist organisation or addressing a meeting¹⁰⁹ in support of a terrorist organisation (even in absence of criminal conspiracy or criminal intent) [Section 21]. It outlaws encouragement or reception of money or other donations intended "for the purposes of terrorism", implicating, for instance, those who are compelled to pay 'taxes' to armed opposition groups in North East Indian states which quite a few Government officials do.¹¹⁰

'Special courts' for trials are established under POTA. The creation of such courts jeopardise the independence of the judiciary.¹¹¹ Special courts are given the discretion to hold trials in non-public places (like prisons) and to withhold trial records from public scrutiny, thus preventing the independent monitoring of special court sessions.¹¹² Furthermore, special courts can try the accused for any charge under the Code of Criminal Procedure if it is connected to a POTA charge against the accused.¹¹³ They may also, at their discretion, "draw an adverse inference" from the refusal of the accused to give samples of

¹⁰⁵ . Section 14 of POTA

¹⁰⁶ . Section 16 of POTA

¹⁰⁷ . Section 18 of POTA

¹⁰⁸ . Section 20 of POTA

¹⁰⁹ . Public or private consisting of three or more people.

¹¹⁰ . Section 22 of POTA

¹¹¹ . Section 23 of POTA

¹¹² . Section 24 of POTA

¹¹³ . Section 25 of POTA

handwriting, fingerprints, footprints, photographs, blood, saliva, semen, hair and voice - yet another digression from the principle of presumption of innocence.¹¹⁴

POTA allows the possibility of a summary trial for offences punishable with less than three years' imprisonment. The absence of a provision to challenge the sufficiency of prosecution evidence prior to trial implies the possibility of custodial detention for an indefinite period in absence of evidence and of an appeal mechanism for the accused.¹¹⁵

The special courts also have the option of proceeding with trials in the absence of the accused or his/her lawyer. This strengthens special courts' subjective control over the trial process.¹¹⁶ The special courts can hold trials in camera and keep witnesses' identities secret, thus undermining the right to fair trial through prejudicing of the defence case.¹¹⁷ Such a provision also imparts protection to the witnesses for the defence, but not to the prosecution's witnesses. Finally, it denies the accused the right to oppose the withholding of witnesses' identities.

It makes confessions made to police officers admissible as evidence in violation of Section 25 of Evidence Act.¹¹⁸ There is no explicit prohibition of statements made to the police under (threat of) torture. There is no specification of conditions under which "an atmosphere of free from threat or inducement" persists.

It makes admissible as evidence intercepted communication against the accused.¹¹⁹

It provides for the option of pre-trial police detention for up to 180 days, thus violating the right of the accused to a speedy trial.¹²⁰

It requires public prosecutor's agreement for release on bail¹²¹ and denies bail to foreigners solely because of their national origin.¹²²

Allegations made by the police can result in adverse inferences - a provision that reverses the rules of evidence and violates the right to presumption of innocence.¹²³

Action taken under POTA by central or state governments "in good faith" may be protected by punishment, and blanket immunity is given to "any serving

¹¹⁴ . Section 27(2) of POTA

¹¹⁵ . Section 29 of POTA

¹¹⁶ . Section 29(5) of POTA

¹¹⁷ . Section 30 of POTA

¹¹⁸ . Section 31 of POTA

¹¹⁹ . Section 45 of POTA

¹²⁰ . Section 49 of POTA

¹²¹ . Section 49 (6) and 49(8) of POTA

¹²² . Section 49 (9) of POTA

¹²³ . Section 53 of POTA

member or retired member of the Armed Forces or other para-military forces."¹²⁴

POTA provides for punishment and compensation for malicious action on behalf of police officers "knowing that there are no reasonable grounds for proceeding" under POTA. This clause actually reduces the likelihood of prosecution of police abuse of POTA rather than increasing it, since there is no concomitant provision for the protection of witnesses for the defence.¹²⁵

The Central and State review committees lack the necessary guidelines; moreover, there is no provision for a detainee's representation before the review committees.¹²⁶ The review committees are not required to submit their reports to Parliament or State Assemblies, implying the subordination of Parliament and judiciary to the government executive.

Finally, the Act suffers from a lack of provisions for trial procedure (in the absence the applicability of the Code of Criminal Procedure). There is no requirement to make a First Information Report (FIR) or a remand report available to the accused at arrest or at the first court hearing, with the result that the accused may remain ignorant of the reason for arrest for up to 180 days. It effectively subverts the cardinal rule of the criminal justice system by putting the burden of proof on the accused. It does this by withholding the identity of witnesses, by making confessions made to the police officer admissible as evidence, and making bail extremely difficult by giving the public prosecutor the power to deny bail.

In short, POTA fails to offer the most basic safeguards for a fair trial and due process of law. The grim tradition of national security legislation in India has revealed that such laws result in maximum human rights violations, for minimum convictions.

Given the widespread misuse of POTA, the government of India set up a review committee. As of July 2003, about 702 persons have been detained under the Act respectively 234 persons in Jharkhand, 181 persons in Jammu and Kashmir, 83 persons in Gujarat, 44 persons in Delhi, 42 persons in Maharashtra, 41 persons in Tamilnadu, 40 persons in Andhra Pradesh, 28 persons in Uttar Pradesh, 6 persons in Sikkim and 3 persons in Himachal Pradesh.¹²⁷

The highest numbers of detainees are not from Jammu and Kashmir, the central focus of India's war against terror. The majority of the detainees are from Jharkhand, the heartland of India's indigenous peoples, the Adivasis. The detainees include children as young as 12 and elderly as old as 81 years.

¹²⁴ . Section 57 of POTA

¹²⁵ . Section 58 of POTA

¹²⁶ . Section 60 of POTA

¹²⁷ . Source: Lok Sabha Debates as quoted in The Kashmir Times, Jammu, 23 July 2003.

A large number of children have been detained under the POTA. Although, Madras High Court ruled that children should be tried under the Juvenile Justice Act, a large number of children were nonetheless arrested as alleged terrorists.

Case 1: Arrest of children under POTA after Godra massacre in Gujarat

At least seven boys, all said to be under the age of 16, were booked under the Prevention of Terrorism Ordinance by the Government Railway Police for the 27 February 2001 attack on a train in Godhra. Following a newspaper report on the biased manner in which POTO was used, the Government withdrew the ordinance against 62 persons, all Muslims. But the accused, including the seven boys, still face charges of murder, attempt to murder, criminal conspiracy, arson, rioting and damaging public property. In violation of earlier Supreme Court orders - that the families of those arrested should be informed within 24 hours - the boys' parents were not informed, their lawyers said. Godhra town police station inspector K Trivedi claimed it was not possible to check their age at the time of arrest. "They were seen near the site of the incident, so we arrested them." The rest, he said, "will be taken care of by the judiciary."¹²⁸

Case 2: Arrest of 16 year old Janki Bhuyan

"I will die of hunger but not stay in this state. The MCC took away my father and the state took away my freedom."

For 16-year-old Janki Bhuyan, the government is no better than the banned Maoist Communist Centre (MCC) in terms of making his life miserable.

Bhuyan was arrested under the Prevention of Terrorism Act (POTA) for the dangers his outlawed father, Maoist Communist Centre area commander Sohan Bhuyan, poses. Sohan Bhuyan's name figures in the list of the most-wanted rebels in connection with a number of criminal cases. He has been eluding the police for many years.

On 25 January 2003, Jharkhand Police barged into Garikala residence of Mr Janki Bhuyan and started hunting for Mr Sohan Bhuyan. Not finding him, they started grilling the family members. When they pleaded innocence, the police took them to jail.

While his mother was released later, Janki Bhuyan was booked under POTA and transferred to Kerdari Thana.¹²⁹

Case 3: Arrest of 15-year-old Shankar Karmali

On the morning of 29 January 2002, the Jharkhand Police, the Jharkhand Armed Police and the Central Reserve Police Force were conducting cordon-and-search operations at the nearby Khapia, Batuka and Salga villages in Jharkhand. Houses were demolished.

¹²⁸ . The Indian Express, New Delhi, 26 February 2002

¹²⁹ . The Telegraph, Calcutta, 21 February 2003

Women, children and elderly people were dragged out and brutally beaten. Many youths were tortured. The security forces finally picked up 13 people including 15-year-old Shankar Karmali who was setting out for school. All 13 were arrested under POTA and jailed in Ranchi.¹³⁰

Shankar Karmali was to appear for his high school final examination. His father, Gugan, had sent him to the district headquarters, 75 km away, to pursue his studies. Shankar lived in a rented room in town and only visited his village once a month to collect rice from his field for his own use.¹³¹

He was arrested for alleged links with the MCC and booked under POTA. His headmaster, deposing before the court, said Shankar was a brilliant student and had nothing to do with any underground activities. He was nevertheless taken into police custody. He was allowed to give his exams from inside the detention cell. He failed one subject but following a court directive was allowed to appear for a supplementary examination.¹³²

Case 4: Arrest of 15 year old G Prabhakaran¹³³

On 24 November 2003, the police arrested G. Prabhakaran (15) along with 25 others apparently because they could not locate his father, Gurusamy, a suspected Naxalite. A case against him was filed in the Othankarai Police Station under various sections of the Indian Penal Code, Indian Explosives Act and Indian Arms Act. He was presented before the Oothankarai Judicial Magistrate on 25 November 2003 and was remanded to judicial custody without checking if he was a minor.

The boy's date of birth as per the school transfer certificate was 11 May 1987. When Prabhakaran was produced before the Uthangkarai judicial magistrate, he was "mechanically remanded to judicial custody" and was lodged along with the Naxalite¹³⁴ prisoners. However, the Krishnagiri principal sessions judge, S. Ashok Kumar, granted bail, observing that the school certificate would prevail over the result of a radiological examination conducted to determine the boy's age. When the Government moved the POTA court at Poonamallee, it first asked that the boy be produced for "age determination" and asked his counsel why bail should not be cancelled.

In the writ petition to the Madras High Court, K. Chandru, senior counsel, questioned the POTA court jurisdiction, saying Prabhakaran should have been granted bail even at the time of arrest or kept in an observation home and produced before the Juvenile Justice Board.

¹³⁰ . In Jharkhand all the laws of the land are replaced by POTA – A preliminary fact finding on POTA cases in Jharkhand by an all India team, Delhi, 05/02/2003

¹³¹ . The Telegraph, Calcutta, 4 February 2003.

¹³² . The Telegraph, Calcutta, 4 February 2003.

¹³³ . The Hindu, New Delhi, 19 March 2003

¹³⁴ . The Naxalites are left wing insurgents.

Mr. Justice Sampath of Madras High Court stated: "The rights of a child are an integral part of human rights, yet the protagonists of human rights hardly ever focus their attention on the exploitation and abuse of the rights of children".

"The POTA court, in the present case, has exceeded its jurisdiction and trespassed into another territory and the mischief has to be undone," Justice Sampath said in a 137-page order. In effect, the order would mean that the POTA charges against the boy should be dropped and only provisions of the Juvenile Justice Act should be applicable against him. In the petition, Prabhakaran prayed to the HC that the special court be prohibited from proceeding with an inquiry and all future proceedings with regard to the teenager.¹³⁵

Case 5: Arrest of 17 year old Ropni Kharia

Seventeen-year-old Ms Ropni Kharia from Tira Masori Toli village under Palkot police station of Gumla district, Jharkhand was arrested under POTA. She is the only woman in the village to have passed the high school final examination and had reportedly been educating the women of the village on resisting patriarchal oppression. Some of the men in the village accused her of being a member of the Maoists Communist Centre, a radical left wing group, and 'informed' the police. The police searched her home several times but did not find any incriminating documents. The police also beat her father and other men in her family. She was arrested under the POTA, allegedly without any concrete evidence of her involvement with the banned group.¹³⁶

B. Article 22: Refugee Children

Who is a refugee in India?

"Refugees" and "foreigners" are not synonymous as the way government of India implies in the first periodic report. There is no word called "refugees" under Indian laws. The grant of refugee status is an adhoc decision taken after considering the political exigencies.

In its concluding observation after consideration of India's initial report, the Committee on the Rights of the Child recommended India to adopt comprehensive legislation to ensure adequate protection of refugee and asylum-seeking children, including in the field of physical safety, health, education and social welfare, and to facilitate family reunification. In order to promote the protection of refugee children, the Committee encouraged India to consider ratifying the 1951 Convention relating to the Status of Refugees, and its 1967 Protocol; the 1954 Convention relating to the Status of Stateless Persons; and the 1961 Convention on the Reduction of Statelessness.¹³⁷

¹³⁵ . The Indian Express, New Delhi, 19 March 2003

¹³⁶ . "In Jharkhand all the laws of the land are replaced by POTA"- A preliminary fact finding on POTA cases in Jharkhand by an all India team, Delhi, 05/02/2003

¹³⁷ . CRC/C/15/Add.1115, 23 February 2000

The condition of the refugee children cannot be seen in abstract. Their condition must be viewed in the context of the overall situation of the adult refugees. While the government of India in its first periodic report (pages 331 to 338) provides some information on the refugees, the report is economical with the truth on the status of refugees and their children. The refugees and asylum seekers are caught between the devil and the deep blue sea because of the inhumane treatment meted out to them both by United Nations High Commissioner for Refugees (UNCHR) and government of India

1. Problems of refugees under the protection of government of India

“The legal framework dealing with refugee-related issues is contained in the relevant provisions of the Indian Constitution, related domestic legislation and regulations dealing with citizenship, naturalization and foreigners, such as, Foreigners Act, 1947 and obligations assumed by India under various international human rights a series of judicial pronouncements.” – first periodic report of the government of India (page 331)

No national law to deal with refugees

The legal framework cited by the government of India for dealing with refugees is flawed. As government of India states the following on refugees in the same periodic report:

“The Chief legislation for regulation of foreigners is the Foreigners Act, 1946, which deals with the matter of “entry of foreigners in India, their presence therein and their departure therefrom”. Paragraph 3(1) of the Foreigners Order, 1948 lays down the power to grant or refuse permission to a foreigner to enter India, in the following terms:

“No foreigner shall enter India-

- (a) otherwise than at such port or other place of entry on the borders of India as a registration officer having jurisdiction at that port or place may appoint in this behalf; either for foreigners generally or any specified class or description of foreigners; or
- (b) without leave of the civil authorities having jurisdiction at such port or place”.

“Refugees” and “foreigners” are not synonymous. This is classic a case of mixing oranges with apples.

The Foreigners Order cited in the first periodic relates to entry for foreigners or denial of visas etc. Not surprisingly, a large number of refugees have been charged under section 14 of the Foreigners Act for illegal entry into India. As the Foreigners Act 1946 contains no special category of protection for the 'refugees' regarding their well-founded fear of persecution, the refugees can be refouled even if they face torture and death in their countries of origin.

There is no word called "refugees" under Indian laws. The grant of refugee status is an adhoc decision taken after considering the political exigencies rather than examining the actual plight of the victims. While the Sri Lankan Tamils have been granted refugee status, about 80,000 Chins from Burma have been denied refugee status by the government of India, having dismantled their camps at Saiha, Mizoram in 1995.

Applicability of international law in India:

India is not a party to the 1951 Convention on the Relating to the Status of Refugees and its 1967 Optional Protocol.

Moreover, as the government of India in its Third Periodic report to the Human Rights Committee stated, "In India, treaties and covenants are not self-executing but require enabling legislation, or constitutional and legal amendments in cases where existing provisions of law and the Constitution are not in consonance with the obligations arising from the Treaty or Covenant."¹³⁸

If the Foreigners Act, 1946 and Foreigners Order of 1948 are the only sources of refugee law in India at domestic level, there is no understanding of "what is refugee law". The government of India has failed to take effective measures to protect the rights of the refugees in India. Despite that it all depends on the predilection of individual judge or bench, the track records of Indian judiciary on the protection of refugee rights have been positive. However, courts continue to face problems, which senior Supreme Court advocate, Rajeev Dhavan succinctly puts in the following way: "Courts look to the letter of Indian law to be confronted with the stark legal reality: There is no category called 'refugee' in Indian law. Refugees have no special due process rights."¹³⁹

Case 1: Insecure refuge: Burmese refugees in Mizoram

The Mizo Joint Action Committee (MJAC) consisting of the Young Mizo Association and Mizo Zirlai Pawl (MZP) evicted more than 50 Myanmarese refugees, mostly ethnic Chins, from their new settlement at Rangvamual and Phunchawng at Lunglei between 20 and 23 June 2003.

¹³⁸ . CCPR/C/76/Add.6 of 17 July 1996

¹³⁹. The refugee in India, By Rajeev Dhavan, The Hindu, New Delhi, 28 June 2003

The MZP and MJAC leaders reportedly defended their action stating that 20 families living in the two villages were asked to leave the place as they continued with their alleged illegal liquor making business, despite repeated warning.

Many of the refugee families are very poor and often face hunger. There is no assistance for the refugees from the State government of Mizoram or Union Home Ministry. The refugee camps, which used to shelter about 50,000 Chin refugees at Saiha, were dismantled in 1995 by the state government of Mizoram. As it is not always possible for them to find alternative means of earning a livelihood, many refugees worked as weavers, domestic helps and small-time traders.

Even if the allegations of refugees brewing local alcohol are found to be true, it is the responsibility of the State and its agencies to take appropriate actions under relevant provisions of the law. However, the State government of Mizoram had abdicated the responsibilities of the government to private organisations like the MJAC and MZP.¹⁴⁰

Patterns of evictions, arrest and deportation

Since July and August of 2000, Mizoram police launched massive arrests and deportation of Chin-Burmese refugees (mainly in the capital city of Aizwal), most of whom were charged with illegal entry into India under the Foreigners Act. The refugees continue to be arrested and deported without ascertaining the threat of persecution because of their ethnic origin, religion, nationality, political opinion, or membership to the Chin group by a competent body.

The first eviction started in mid August 2001 from different localities. 31 families from Ramthar ward were evicted. 11 families in Salem ward were removed on 15 September 2001 and another 29 families in Farm ward were evicted on 25 October 2001.

On 3 March 2002, members of the YMA entered into the homes of Chin refugees and threatened them to voluntarily evacuate their house or risk all their belongings being thrown out. In the process 18 of the 29 families living in Chanmary ward were forcibly evicted. The rest were threatened that they would be handed over to the police to arrest them.¹⁴¹

Case 2: YMA - Model NGO turns model oppressor for Burmese Chin refugees

In its page 299, the government of India refers to Young Mizo Association (YMA) as a model NGO in the field of education.

¹⁴⁰ . Complaint to stop forcible eviction of the Myanmar Chin refugees from Lunglei areas of Mizoram by a private organisation, Mizo Joint Action Committee from 20 June 2003, their arrest and imminent deportation to Myanmar by Asian Centre for Human Rights, 23 June 2003.

¹⁴¹ . www.chro.org

Yet the same NGO, Young Mizo Association has become a model oppressor of the Chin refugees.

In July 2003, the Young Mizo Association and Peace Accord MNF Returnees Association (PAMRA) from Aizwal areas called for deportation of all the Chin refugees.

A local Mizo girl was raped on July 17 by an alleged Mizo immigrant from Myanmar in a hotel run by his father in Aizwal. Angered by the “ghastly crime”, the state’s largest NGO, the Young Mizo Association, has vowed to “clean up” the capital of “foreigners”. The Myanmar refugees have been asked to leave Mizoram immediately by the YMA.¹⁴²

Adding fuel to the controversy, the Peace Accord MNF Returnees Association (PAMRA) — a splinter group of Mizo National Front (MNF) returnees in a press release on 22 July 2003 stated that it would take action against foreigners who continue to remain in the state a month from now.

While the State and its agencies must take action against crimes and punish the rapist under relevant provisions of the Indian Penal Code, the YMA and PAMRA have no jurisdiction or legal power to enforce forcible repatriation of the Chin refugees without due process of law or punish all the Chins for a crime committed by an individual Chin refugee.

By 19 August 2003, 5210 Myanmar asylum seekers including women and children have returned to Myanmar by 15 August 2003 fearing violent actions of the YMA.¹⁴³

2. Problems of refugees under the so-called protection of the United Nations High Commissioner for Refugees (UNHCR)

Source: Mizzima News (www.mizzima.com)



“We have five demands: money to meet our daily requirements, reimbursement of medical bills, security, money for education and work permit,” said one of the refugees sitting on the pavement outside the UNHCR office. “If they can’t meet all our demands, we want resettlement in a third country.”¹⁴⁴

¹⁴² . Assam Tribune, Guwahati, Monday, July 28, 2003

¹⁴³ . The Sentinel, Guwahati, 20 August 2003

¹⁴⁴ . The Hindu, New Delhi, 8 July 2003

It would not be an under-statement to state that the main interest of the United Nations High Commissioner for Refugees (UNHCR) is not protection of refugees but to somehow maintain its office in India. It has been reduced to refugee certificate issuing agency without providing any meaningful assistance, legal or material, to the refugees.

UNHCR shared uneasy relationship with the Indian government. During the 1971 Bangladesh liberation war, hundreds of thousands of refugees crossed over to India. India described them as “evacuees” so that UNHCR would have no role in their welfare and to make it clear that they would have to return home at some stage. UNHCR’s dealings with New Delhi became more difficult when Sadruddin Aga Khan, the then Chief of UNHCR, accepted Pakistan President Yahya Khan’s invitation and went to Pakistan in June 1971. The Indian Prime Minister Indira Gandhi reportedly viewed the visit as an endorsement of the Pakistani junta’s human rights violations in East Pakistan. UNHCR was not allowed to set up missions in India.¹⁴⁵

After Soviet invasion of Afghanistan, a large number of Afghans fled to India. UNHCR was allowed to operate as a subsidiary organ of the UNDP. The government of India had also asked one of the Chief of Missions of UNHCR to be withdrawn from India.¹⁴⁶

A case study of the UNHCR’s dealing with Burmese asylum seekers

UNCHR’s motto

*It would not be an under-statement
to state that the interest of the
UNHCR is not protection of
refugees but to somehow maintain
its office in India*

There are more than 900 recognized Burmese refugees living in New Delhi under the protection of United Nations High Commissioner for Refugees (UNHCR), in New Delhi. There are also about 600 Burmese nationals in New Delhi who have not been recognized as refugees by UNHCR. Most Chin refugees came to India after their camps were destroyed in Saiha, Mizoram in 1995.

As the Chin armed opposition groups did not sign any cease-fire agreements with the military Junta as yet, repression in the Burmese State of Chinland increased manifold. Since early 2002, more than six hundred Burmese nationals have fled to India seeking refugee status with the UNHCR office in New Delhi. The face serious repression by the Burmese military junta such as using them as forced labour for military purposes and other human rights violations. However, as of June 2003, only 20 of these 600 have been recognized by the UNHCR ‘refugees’. The rest are being denied refugee status without any written explanation as to the reasons for the rejection.

¹⁴⁵ . The Telegraph, Calcutta, 21 August 2003

¹⁴⁶ . The Telegraph, Calcutta, 26 July 2003.

Of those 20 who have been recognized as refugees, only 5 have been deemed eligible to receive the Subsistence Allowance. In the absence of any skill to find job or legal work permit, the question arises as to how are the refugees supposed to survive in Delhi?

On 9 June 2003, hundreds of Burmese refugees in New Delhi held a demonstration protesting the refusal of the UNHCR to grant them refugee certificates and Subsistence Allowance. The demonstration highlighted a number of severe problems faced by refugees in New Delhi.

Some of the problems with the UNHCR could be summarised in the following way:

a. UNHCR: Above the law

UNHCR: Above the law

There is no transparency in the decision making of UNHCR on the grant of refugee status. The UNHCR never provides the justification in writing as to grounds for rejection of asylum to the concerned applicants.

UNHCR acts as judge and jury on its decisions. Its appeal mechanisms are neither transparent nor meet the international standards on due process of law.

Even the government of India can be questioned before court of law for its decision but not UNHCR Delhi.

The UNHCR's Chief of Mission, Lennart Kotsalainen in a letter to Burma Support group in Nordic countries dated 3 July 2003 states "The arrival of applicants suddenly increased between the months of May to July 2002 when almost 600 asylum seekers from Myanmar approached our office. The number of new arrivals thereafter dropped sharply to the level we had experienced in the past. UNHCR has called 631 Myanmar cases for refugee status interview between the months of May to December 2002. In view of the high number of unexpected applicants and in order to ensure quality of the interviews, the waiting period for a first interview (following registration already conducted) unfortunately was extended up to 4 months. UNHCR interviewed 478 Myanmar cases during the above time period while 153 cases did not turn up for the interview. Of the 478 cases interviewed 19 cases were accepted, 419 cases were rejected and 40 cases were pending a first interview in the beginning of 2003. In addition 105 cases had appealed and were pending appeal results."¹⁴⁷

The problems of the asylum seekers could be classified in the following way:

First, as the UNHCR Chief of Mission states out 631 refugees, about 153 asylum seekers about 24.25% of the asylum seekers have not appeared for interview. As neither the

¹⁴⁷ . Letter of UNHCR Chief de Mission to Burma Support Groups in the Nordic cited at http://www.burma.no/nbk/svarbrev/030303_svar_unhcr.htm

government of India or UNHCR has any policy to support the asylum seekers while waiting for a decision. The asylum seekers have no other means to support themselves. Therefore, a lot of them return to the North East even if the Damocles sword of refolement hangs.

Secondly, there is no transparency in the decision making of UNHCR on the grant of refugee status. The UNHCR never provide the justification in writing as to grounds for rejection of asylum to the concerned applicants. Contrary, if the government of India orders deportation of any asylum seekers and the same is challenged in the court, the government of India must justify its action before the court. As UNHCR acts as judge and jury on its decisions, appeal mechanisms of the UNHCR are neither transparent nor meet the standards of due process of law.

b. Inadequate Subsistence Allowance and discrimination on the basis of sex

In 1994, UNHCR increased the subsistence allowance to Rs. 1,400 and Rs. 600 to the dependent person respectively. Although, the prices of essential commodities have increased manifold in the last nine years, UNHCR has not increased the subsistence allowance. The UNHCR does not obviously take into account the inflation in the country.

Rather, UNHCR has been consistently reducing the Subsistence Allowance. More than 400 Burmese refugees who are living in New Delhi held a demonstration in front of UNHCR office in New Delhi on 17 February 2003 to protest against the threat to cut subsistence allowance. Demonstrators shouted “ Don’t stop---Subsistence Allowance”, “Don’t treat refugees ---as Animals”, “Silent killer--- UNHCR” etc.¹⁴⁸

In addition, the policy of the UNHCR is sexist. Under the UNHCR’s Subsistence Allowance policy, women are automatically considered dependants of their husbands. A single woman who originally registered as a primary applicant for SA, receiving Rs.1,400 a month (approximately \$30), will have her SA automatically cut down to Rs.600 a month (\$13) if she later marries. Furthermore, the money is also no longer given to her directly, but to her husband, thus removing financial control and decision-making from women.¹⁴⁹

c. Promotion of illegal work

The refugees in India do not have the right to work. Yet, UNHCR consistently promotes “self-reliance” of the refugees by encouraging participation in vocational training courses with a view to obtain jobs. In the absence of the right to work, the UNHCR’s self reliance policy is nothing but promotion of illegal work. In addition, there is job scarcity even for the Indian nationals. Refugees who do not have the language skills in Hindi and English are disadvantaged and face discrimination.

¹⁴⁸ . <http://www.mizzima.com/archives/news-in-2003/news-in-feb/17-feb03-19.htm>

¹⁴⁹ . <http://www.hrhc.net/sahrdc/hrfeatures/HRF78.htm>

d. Education

A large number of families report widely varying amounts of money received for the education of their children. There is a strong commitment in the Burmese community to both primary and higher-level education, but many can simply not afford it – especially those who have had their SA cut off, or those with large families or additional dependants to provide for. For most, the education allowance provided by UNHCR does not cover the actual costs of a child's education. While new education initiatives have been introduced by UNHCR with the intention of improving access to education, these proposals have largely been met with disinterest or scepticism due to UNHCR's failure to adequately consult or inform refugees about the plans.¹⁵⁰

e. Medical Care:

UNHCR has a policy of reimbursing refugees for expenses related to medical care and treatment – provided that it is obtained at a government hospital. The policy is implemented on the presumption that the refugees have the necessary money first to spend at government hospital and then follow bureaucratic procedures of the UNHCR and claim reimbursement later. Since UNHCR provides Rs 1400 to the head of the family out of which the refugees are expected to cover rent, food, travel etc, is it fair and reasonable to expect that the refugees have the money in advance to take care of the medical expenses? Moreover, the reimbursement provided by UNHCR does not cover their total expenditure and there is not a transparent or consistent policy regarding the calculation of such reimbursements. This shows the extreme insensitivity of UNHCR to the plight of the refugees.

In addition, the refugees face discrimination at government hospital – ranging from neglect to verbal abuse, sometimes because of their inability to communicate. In serious cases, the refugees are unable to wait for long periods of time at a government hospital.

C. Article 39: Internally Displaced Persons' Children - Discrimination against indigenous children



There are over 500,000 conflict-induced IDPs in India. Yet, the government of India only refers to the displaced Kashmir pandits. This explains the discriminatory practices against other internally displaced persons.

Apart from the Kashmiri Hindu pandits, the rest are indigenous peoples. Throughout the 1990s, ethnic conflict

¹⁵⁰ . Ibid.

based on demands for greater autonomy or secession generated hundreds of thousands of IDPs in India, primarily in the country's northeastern areas of Assam, Tripura, Manipur, Arunachal Pradesh and Mizoram, and in the northern state of Jammu and Kashmir. At present, there are 1,67,000 persons belonging to 33,000 Adivasi families living in 54 relief camps in Kokrajhar district of Assam. There are more than 20,000 ethnic Paite, Kuki, and Naga displaced in Manipur and 39,000 ethnic Reangs/Brus displaced from Mizoram to Tripura. Recent conflicts between Hmars and Dimachas since April 2003 have displaced thousands of people.

The camp conditions in Kokrajhar and Bongaigaon are very poor. Shelters consist of rows of temporary sheds made of polythene and aluminium sheets. People sleep on the ground on makeshift beds of bamboo. There is a lack of clean drinking water; and diseases such as malaria, jaundice, dysentery, diarrhoea and influenza pose a serious threat. Groups of five to six people are forced to share essentials. To supplement food rations, which are adequate for at most 10 days a month, they are reportedly compelled to consume snails, insects and wild plants. Pregnant women, children, and the elderly suffer the highest health risks in the camps. Over the past couple of years, camps have been attacked repeatedly, leaving several dead and dozens injured.

The government provided only one tube well for 1,000 people and one ring well for more than 15,000 people in Kachugaon, Daosri, Sapkata and Bongaon relief camps. Rate of mortality, particularly among the infants, is high in every relief camp due to improper nutrition. As per the record of the Galoganj Adivasi relief camp in Dhubri district, altogether 80 inmates died so far since 1999, of which 25 were infants.¹⁵¹

Discrimination Against Indigenous IDPs

Stepchildren

The Kashmiri pandits are provided cash relief of Rs.600/- per head per month subject to a maximum of Rs. 2400/- per month per family.

The Reang IDPs are provided Rs 2.67 i.e. Rs 80 per month per adult.

In Indian State of Jammu and Kashmir, Kashmiri armed opposition groups attacked Hindu Pandits and most of them fled to Jammu region of the state and Delhi. Most IDPs from Kashmir live in Jammu (some 240,000 people) or Delhi (around 100,000 people), where the government aid they receive is substantially greater than that given to their northeastern counterparts.

¹⁵¹. The Sentinel, Guwahati, 24 June 2003

According Annual Report 2001-2002 of the Ministry of Home Affairs of the Government of India:

“There are 31490 migrant families registered in Jammu, 19338 families registered in Delhi and 2710 families registered in other States. Out of this, 4674 families are staying in migrant relief camps in Jammu and 235 families are staying in relief camps in Delhi. The Government of J&K is giving cash relief of Rs.600/- per head per month subject to a maximum of Rs. 2400/- per month per family plus dry ration @ 9 kgs of rice and 2 kgs of atta per person and one kg of sugar per family per month to needy migrants. The amount spent by the Government of J&K in providing this relief is reimbursed to the State Government by the Government of India. Other State/UT Governments, where Kashmiri migrants are residing, are also giving relief as per the rates prescribed by the concerned State Governments / UT Administrations. In Jammu, where a sizeable number of migrants are staying in relief camps, migrant families have been provided with one-room tenement accommodation. Necessary physical facilities like water, electricity, sanitation, etc. have been provided free of cost. There are twelve dispensaries within Jammu to provide medical facilities. The living conditions of the migrants in these camps are monitored by the State Government. In Delhi also, accommodation, water, electricity, sanitation, etc. have been made available by the Government of NCT of Delhi¹⁵².”

The discrimination against the indigenous IDPs is clear. In a complaint to the Home Minister of India on 15 September 2002, the Reang/Bru Refugees Welfare Committee stated that in 2002 alone, at least 150 persons died of diarrhoea, blood dysentery, malaria, measles, malnutrition etc". The Central Government presently pays Rs 2.67 per adult and Rs 1.33 per children. The Bru leaders demanded school for the refugee children in the camps. There are no schools, tube wells do not function and many refugees do not receive their subsistence dole for many months.

Indigenous IDPs do not have access to food, health care, education, proper shelter and sanitation. Since government of India provides all these assistance to the Hindu migrants from Jammu and Kashmir, the denial of facilities clearly violates Article 14 (right to equality and non-discrimination) and Article 21 (right to life) of the Constitution of India and Indian's obligations under various treaties.

D. Article 38: Children in armed conflict situations

In its concluding observations after considering the initial report of the government of India, the Committee on the Rights of the Child recommended the followings:

“63. The Committee is concerned that the situation in areas of conflict, particularly Jammu and Kashmir and the north-eastern states, have seriously

¹⁵² . Annual Report 2001–2002, Ministry of Home Affairs, Government of India.

affected children, especially their right to life, survival and development (art. 6 of the Convention). In the light of articles 38 and 39, the Committee expresses its very serious concern at reports of children who are involved in and are victims of these conflicts. Moreover, it is concerned at reports of involvement of the security forces in disappearances of children in these conflict areas.

64. The Committee recommends that the State party at all times ensure respect for human rights and humanitarian law aimed at the protection and care of children in armed conflict. The Committee calls upon the State party to ensure impartial and thorough investigations in cases of rights violations committed against children and the prompt prosecution of those responsible, and that it provide just and adequate reparation to the victims. The Committee recommends that clause 19 of the Protection of Human Rights Act be repealed to allow inquiries into alleged abuses committed by members of the security forces to be conducted by the National Commission on Human Rights. In line with the recommendations of the Human Rights Committee (CCPR/C/79/Add.81), the Committee recommends that the requirement of governmental permission for criminal prosecutions or civil proceedings against members of the security forces be abolished.”

India has done very little to implement the Concluding Observations of the CRC Committee. Rather, India denies existence of armed conflict. This despite the fact that according to 2002-03 Annual Report of Ministry of Home Affairs, India faces intensive internal armed conflicts. Assam, Arunachal Pradesh, Jammu and Kashmir, Meghalaya, Manipur, Mizoram, Nagaland and Tripura are afflicted by armed conflicts with various groups seeking autonomy or secession from India. In addition, Indian states of Andhra Pradesh, Bihar, Chattisgarh, Orissa, West Bengal, Madhya Pradesh, Maharashtra, and parts of Uttar Pradesh are afflicted by left wing Naxalites movement against inequity and social injustices.

Show me the conflicts

16 out of 28 States of India are afflicted by internal armed conflicts – reports the Annual Report 2002-03 of India’s Home Ministry. The first periodic report refers to none. The internal armed conflicts in India appear a passé –the periodic report only refers to armed conflict in Punjab that ended almost a decade ago!

Yet, the government of India’s periodic report remains silent on the situation of children in armed conflicts situations as if there are no armed conflicts in India. Obviously, the government of India has little to write home about its records on respect for human rights and humanitarian laws in internal armed conflict situations. In the process, it also fails to inform the CRC Committee about the serious violations of international humanitarian laws by the armed opposition groups in India.

Children in armed conflict situations face tremendous problems including risks to the security of their lives. They are subjected to arrest, detention, torture, rape,

disappearances and extrajudicial executions by the law enforcement personnel of the government of India. The armed opposition groups and government-sponsored vigilantes are also responsible for serious abuses against children including execution, rape, and forcible marriage. Often children are made victims for the alleged offences or crimes allegedly committed by parents.

Special focus: Impunity in India

Impunity is the single most important factor contributing to violations of rights of the child in armed conflict situations. The members of the armed opposition groups who commit abuses in contravention of the common Article 3 of the Geneva Conventions are seldom prosecuted for their offences. Yet, what is most disconcerting is the grant of virtual impunity to the security forces by the government of India. There is virtually little difference between the law enforcement personnel and members of the armed opposition groups in terms of accountability for violation of rights because of the impunity provided by the government of India.

Section 6 of the Armed Forces Special Powers Act, 1958 states that "No prosecution, suit or other legal proceedings shall be instituted, except with the previous sanction of the Central Government against any person in respect of anything done or purported to be done in exercise of powers conferred by this Act."

It is virtually impossible to take government sanction to prosecute those responsible for torture, extrajudicial executions and other human rights violations. In any event, the victims are poor and powerless. To obtain permission from the Indian bureaucracy in a charged jingoistic atmosphere is next to impossible. Consequently the armed forces enjoy virtual impunity.

The armed forces are also kept out of the purview of the NHRC under section 19 of the Human Rights Protection Act, 1993. This despite the fact the armed forces are primarily responsible for dealing with internal armed conflict situations. The impunity to the security forces contributes to the vicious circle of violence.

The security forces are also provided impunity under Section 197 of the Criminal Procedure Code by making it mandatory to obtain permission from the government for prosecution of the armed forces. It provides that,

“(2) No Court shall take cognizance of any offence alleged to have been committed by any member of the Armed Forces of the Union while acting or purporting to act in the discharge of his official duty, except with the previous sanction of the Central Government.

(3) The State Government may, by notification, direct that the provisions of sub-section (2) shall apply to such class or category of the members of the Forces charged with the maintenance of public order as may be specified therein,

wherever they may be serving, and thereupon the provisions of that sub-section will apply as if for the expression "Central Government" occurring therein, the expression "State Government" were substituted.

(3A) Notwithstanding anything contained in sub-section (3), no Court shall take cognizance of any offence, alleged to have been committed by any member of the Forces charged with the maintenance of public order in a State while acting or purporting to act in the discharge of his official duty during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force therein, except with the previous sanction of the Central Government.

(3B) Notwithstanding anything to the contrary contained in this Code or any other law, it is hereby declared that any sanction accorded by the State Government or any cognizance taken by a Court upon such sanction, during the period commencing on the 20th day of August, 1991 and ending with the date immediately preceding the date on which the Code of Criminal Procedure (Amendment) Act, 1991, receives the assent of the President, with respect to an offence alleged to have been committed during the period while a Proclamation issued under clause (1) of article 356 of the Constitution was in force in the State, shall be invalid and it shall be competent for the Central Government in such matter to accord sanction and for the Court to take cognizance thereon.]”

Consequently, the security forces enjoy impunity for gross human rights violations.

1. Hazards of living in armed conflicts

Case 1: Loss of life due to negligence

On 25 March 2003, four boys were killed at Pangei Wairipat Firing Range after one of the empty bombshells left behind by the security forces exploded. The four boys identified as Sagolshem Jiten (13) s/o Thoiba of Waiton Mayai Leikai, Leitanthem Sunil (13) s/o Tondon of Waiton Maning Leikai, Leitanthem Romeo (13) s/o Shyam of Waiton Mayai Leikai and Leitanthem Lanpu (14) s/o Ibotomba of Waiton Mayai Leikai Leitanthem Babu (14) s/o Chandra of Waiton Maning Leikai were playing in the ground.

Leitanthem Lanpu received serious wounds on his legs, both hands and right side of his stomach. His wrist was shattered into pieces. Both hands of S Jiten were cut off by the explosion. Police have recovered a plier, a knife, two bags along with a large number of empty cartridges and empty bombshells left behind by the security forces.¹⁵³

Case 2: Girl injured in firing

On 15 April 2003, a 10- year old girl, Lamneichong alias Chochong, daughter of Jamsei Mate was hit by a stray bullet during a heavy exchange of fire between two unidentified

¹⁵³ . The Sangai Express, Manipur, 26 March 2003

rival armed opposition groups at Tuibuong under Churachandpur Police Station of Manipur. The injured girl, Lamneichong was hit on the right rib in her sleep.¹⁵⁴

2. Abuses by the government security forces

Case 1: Disappearance

On 19 March 2003, Zahoor Ahmad Shiekh, 18, a painter and Arshad Ahmad Sheikh, 15 were picked up during a raid by Border Security Forces at their house in the Radio Colony, Srinagar, Jammu and Kashmir. Their house at Ikhraj Pora in Jawahar Nagar was raided leading to their arrest. The family said their "fault" is that their elder brother is a militant whose whereabouts are unknown for last five years. They have disappeared subsequently.¹⁵⁵

Case 2: Rape of a Reang girl

On 26 May 2003, a group of three Special Police Officers (SPO) jawans Sudhir Mullick, Sudip Saha and Surjya Das had been on duty in the Manoranjan Das para camp at remote Gandacherra subdivision under Dalai district, Tripura. The security forces came across a young indigenous Reang girl heading for a paddy field below the camp and made advances towards her with an indecent proposal. Stunned by the audacious approaches the girl rejected them summarily and kept on working in the field alone all through the day.

When the girl was on her way back home at 4 pm in the afternoon, the trio waylaid and gang-raped her in the jungle near the road. Incensed by the girl's resistance the three culprits pushed a cane up her sex organ. As a result, the girl fainted and started bleeding profusely. Finally other members of the SPO camp reached the spot coming out in search of their missing colleagues and took the girl home.

The victim's family filed a complaint with the Gandacherra police station naming the three guilty SPOs. The officers in the police station 'detained' the trio but did not record the complaint in the register of the police station. The victim girl had to be rushed to G.B.hospital in the capital Agartala in a critical condition.¹⁵⁶

Case 3: Attempt to rape inside the temple of justice in Manipur

On 16 August 2003, two personnel of the 6th Manipur Rifles attempted to rape two minor girls, Ms Forest Gate, 15 years and Ms Gangte Veng, 14 years from Churachandpur at the complex of Gauhati High Court, Imphal Bench. The security forces were guarding the High Court Bench. The girls were forcefully abducted at gun point from the gate of the

¹⁵⁴ . The Sangai Express, Manipur, 17 April 2003

¹⁵⁵ . The Kashmir Times, Jammu, 27 March 2003.

¹⁵⁶ . Complaint by Asian Centre for Human Rights to National Human Rights Commission of India on 2 June 2003.

court to the Court Room number 2 on 16 August 2003. The victims were passing through the gate along with two married women and a small girl.

One of the persons who was with the girls managed to escape from the Manipur Rifles and informed the police and media persons immediately.

The two jawans tried to rape both the girls. The jawans even threatened to shoot them if they declined to submit to their whims and at the same time began to harass them physically.

The two victims further narrated that upon their denial to the Jawan's demand, the security personnel forced the girls to perform fellatio. On further denial, the jawans resorted to other forms of sexual harassment and started to rough up one of the victim. The whole incident took place at a sofa near the dock of the Court Room Number 2. The girls were rescued by the journalists.¹⁵⁷

3. Abuses by the government mercenaries

Case 1: Forcible marriage

In October 2002, 17-year old Shahzada of Dangerpora, Beerwah of Jammu and Kashmir along with her family had gone to Warpora, another village in Beerwah to join the marriage ceremony of one Mohammad Ramzan, a closed relative.¹⁵⁸

After the ceremony concluded, Shahzada along with her 12-year old sister Shameema headed for their home. They were waiting for a bus at the local bus stop. A private car surfaced and they were kidnapped by the gunmen.

The family identified the surrendered insurgent, Mohammad Moqbool Mir of Raayyar as the main culprit who is allegedly working for a Rashtriya Rifles unit. Three days later, their father was called in and "threatened not to disclose the incident before anybody or face dire consequences". Some other surrendered insurgents Rasheed Khan, Fayyaz Khan and Nazir Denda from Rayyar were also present there.

After some more days, 12 year old Shameema was released but Shahzada was kept in captivity. She was shifted from one hide-out to other and they allegedly outraged her modesty repeatedly.

The family members met the Deputy Inspector General who directed the concerned district Superintendent of Police to take action. The SP asked SHO Beerwah to recover the girl who did it. The father was asked to take girl home. Fearing that here daughter may again be lifted, the father urged the SHO to provide the family security first. In the meantime, the girl was kept with a local resident of Beerwah and the father was asked to

¹⁵⁷ . The Sangai Express, Manipur, 17 August 2003

¹⁵⁸ . The Kashmir Times, Jammu, 1 May 2003

come three days later. "He visited the police station after three days but was shocked to find that her daughter was handed over by SHO to her abductors".

But after three months, the girl managed to give them a slip. The fathers along with her family has now fled from their home and are hiding at one or other place, as the gunmen are still pursuing them.

Earlier, the family lodged a writ petition in the High Court the state government "to file status report if the case is registered and in case of non registration, register and investigate it." The court also directed the police to provide them security and "called for stern and full-fledged action on part of police authorities as part of their legal duty."

On 2 May 2003, Abdul Rehman Dar along with his two minor daughters, were assured by Jammu and Kashmir Finance Minister Muzaffar Hussain Beigh that the surrendered militants would be arrested within 48 hours. However, when they returned home at Dangerpora village in Budgam district on 3 May 2003, Dar was again put on notice by the group to marry his elder daughter, to one Mohammad Maqbool Mir, a father of three.

Dar fled the village with his daughters. When he tried to stage a demonstration in front of the civil secretariat in Srinagar, police arrested them about half-a-kilometre from the secretariat and detained them for hours.

The surrendered insurgents have threatened to kill Dar if he did not marry 17-year-old Suraiya to Mir. After Dar fled with his daughter, the surrendered militants were threatening to kill his wife and two little sons.¹⁵⁹

4. Abuses by armed opposition groups

The armed opposition groups are also responsible for serious violations of Common Article 3 of the Geneva Conventions. The victims include children who are targeted because of the alleged crimes committed by their parents.

Case 1: Killing of Nasreen

A 17-year-old girl, Nasreen, was injected some poisonous substance and killed by members of the armed opposition groups at Dalasan village in the Thana Mandi area of Rajouri district on 24 June 2003. She was reportedly abducted from her house and later killed in the jungle.¹⁶⁰

Case 2: Nadimarg Massacre

On 23 March 2003, unidentified gunmen massacred 24 Kashmiri Pandits (Kashmiri Hindus) including 11 women and two children. Eyewitnesses said a group of heavily

¹⁵⁹ . The Indian Express, New Delhi, 7 May 2003.

¹⁶⁰ . The Tribune, Chandigarh, 25 June 2003

armed men dressed in army uniform entered into the Pandit dominated village, Nadimarg at 11.30 in the night. The gunmen straight away went to the police picket meant for the security of the pandits. They told the cops that they were to conduct a cordon and search operation and subsequently snatched the weapons including four SLRs, three 303 rifles, a carbine gun and wireless set from them.

Later the armed men knocked at the doors of the houses of the Pandits and asked all people to assemble in the compound. They broke open some doors and beat some people who were reluctant to come out. The gunmen forcibly took the Pandits out and huddled them in the compound.

They fired indiscriminately on the people killing 24 persons including 11 women and two minor children. One person sustained injuries in the incident.¹⁶¹

Case 3: Massacre at Rajouri on 18 May 2003

In a gruesome incident, members of the armed opposition groups massacred six members of a family, including two children and four women, at Mehra-Chokian village in the border district of Rajouri, Jammu and Kashmir on 18 May 2003. The members of the armed opposition groups slit the throats of the victims after they forced their entry into their house. The male members were away at a marriage function. The victims were Khatton Begum (60), wife of Mehboob Bakarwal, Hanifa Begum (30), Zakra Begum (29), Taj Begum (20), Irshad Ahmed (4) and Mehroof Ahmed (2). They were butchered reportedly in retaliation against the killing of two of their men by security personnel. The victims were members of a policeman's family. The two massacred children were son of Wazir Hussain, whose wife, Hanifa Begum, was also killed.¹⁶²

Case 4: Massacre at Rajouri on 26 May 2003

On 26 May 2003, heavily armed opposition groups barged into the house of Kesar Din, a member of the Village Defence Committee at Keri Khwas in the border Rajouri district of Jammu and Kashmir and asked for food. After eating, they tortured the family members and later shot them dead. The deceased included Kesar Din (30 years), his wife Rakiya Begum (26 years) and children, Mohammad Khan (13 years), Raj Hussain (8 years) and Mohammad Shakeel (5 years). Before fleeing, they also set the house afire.¹⁶³

Case 5: Gang-rape of Ms Kunjabati Reang

On 30 July 2003, members of an armed opposition group gang-raped 15 year old Ms Kunjabati Reang and then burnt her alive to wipe off all evidence in remote Karbook area under Natun Bazar police station of south Tripura. According to details available from police a group of six armed NLFT militants stormed the house of tribal shifting cultivator

¹⁶¹ . The Kashmir Times, Jammu, 25 March 2003

¹⁶² . The Tribune, Chandigarh, 20 May 2003

¹⁶³ . The Indian Express, New Delhi, 27 May 2003

Dhaliram Reang around 12-30 in the afternoon and looked for him. Both Dhaliram and his wife Bidyapati had gone to work in their 'jhum' (shifting cultivation) field. The militants found Dhaliram's daughter, Ms Kunjabati Reang sleeping alone in the hut and gang-raped her. Since the girl could identify one of her tormentors, the group kept her within the hut, locked it up and then set it on fire. Since other tribal settlements Dhaliram's house was located on a desolate upland, none of the neighbours could hear Kunjabati's frantic cries for help and she was roasted alive. Subsequently Dhaliram and his wife came back home and saw what had happened and filed a complaint with the Natun Bazar police station. The post-mortem conducted on slain Kunjabati's half-burnt dead body in Natun Bazar hospital confirmed gang rape on her.¹⁶⁴

Case 6: Killing of nine-year-old girl, Nazia

On 31 July 2003, nine-year-old girl, Nazia was killed while her 11 year old sister, Sarifa was seriously injured allegedly by members of the armed opposition group, Harkat-ul-Jehadi-Islami (HUJI) at Khablan village in the Thannamandi of Rajouri district of Jammu and Kashmir. A group of Harkat-ul-Jehadi-Islami members barged into the house of Nissar Hussain and asked her daughters about their father's whereabouts. Not satisfied with their answer, they mercilessly beat the family members. They hit Nazia, a daughter of Nissar Hussain with the rifle butt, killing her on the spot and injuring her sister Sarifa. Nazia received serious head injury resulting in her on the spot death. Sharifa was shifted to Rajouri hospital for treatment.¹⁶⁵

E. Article 39: Physical and psychological recovery and social reintegration

Apart from death, there is no effect of conflicts upon the child more profound than being maimed and incapacitated during conflicts. Physical injuries effect the emotional development of the child, attacking the very basis of his/her self-dignity. After the fighting is over, the memories of atrocities and injustices live on. These must be specifically addressed through processes of justice and community healing.

States are required to take measures to promote the physical and psychological recovery and social reintegration of a child victim of: any form of neglect, exploitation, or abuse; torture or any other form of cruel, inhuman or degrading treatment or punishment; or armed conflicts. Such recovery and reintegration should moreover take place in an environment that fosters the health, self-respect and dignity of the child.

Case 1: Discriminatory justice

“37. All-pro State victims and most of the other effected survivors have been provided with monetary compensation and pension. Ninety six per cent have been provided with opportunities for employment, and educational scholarships have

¹⁶⁴ . The Telegraph, Calcutta, 31 July 2003.

¹⁶⁵ . The Kashmir Times, 2 August 2003.

also been provided to children” – page 340 of the periodic report of the government of India.

There is a policy of the government of the India to make distinction between so-called pro-State and so-called anti-State victims. Although the admission by the government of India is candid, it is extremely disturbing.

Those who are victims of violence by the State agencies have to undergo arduous judicial trial amidst intimidation, harassment and sometimes, threat to the right to life if they seek compensation and justice.

In a rare of the rarest cases, on 7 May 2003 the Jammu and Kashmir High Court directed the government of India to pay compensation of Rs. five lakh to the parents of Maroof Hussain, a student of class 12th at Government Higher Secondary School, Kishtwar. Maroof Hussain was dragged out of his house by Border Security Force personnel in the evening of 10 February 1995 and succumbed to torture on 13 February 1995. The question is will the government of India give the permission to prosecute the BSF personnel?¹⁶⁶

Rather, those who seek to investigate such gross human rights violations by State agencies are threatened and killed. The kidnapping and subsequent disappearance of Jaswant Singh Khalra, who was inquiring into the cremation of hundreds of unclaimed bodies during the insurgency period in Punjab, on 6 September 1995 from his house, is a stark reminder of the danger posed by law enforcement personnel to the common man's attempt to restore faith in the rule of law and accountability. On 8 May 2003, the NHRC gave another 10 weeks to Punjab government to file affidavits about 582 fully identified bodies found from three cremation grounds in Amritsar, Patti and Tarn Taran between 1984 and 1994 as a part of the Supreme Court direction to the NHRC to act on its behalf on the issue. But, the prosecution of police officers who were involved in the cremation was excluded from the mandate given to the NHRC.

In addition, Punjab police have been harassing Special Police Officer Kuldeep Singh, the main witness in the Jaswant Singh Khalra murder case. Kuldeep Singh sat in a demonstration in front of the court complex in Patiala on 6 March 2003 demanding that the Punjab DGP be hauled up in court for stopping his pay and not giving a serviceable vehicle to him to ensure his protection from the members of Punjab police who killed Khalra. He alleged that his salary had been stopped since April 2002. He further said although he had been given protection of 20 security personnel from Central Reserve Police Force, he could not house them in his village nor use the vehicle given to him by the Punjab police. He said he had to give money to house his security guards in a rented accommodation at Bachede village. Kuldeep Singh in his statement before the court had claimed that he was present at the Jhabbal police station in Tarn Taran when Jaswant Singh Khalra was tortured and killed. He claimed that five police officials led by DSP Jaspal Singh had tortured Khalra. He said he had been asked to get some lukewarm

¹⁶⁶ . Injustice contributes to terrorism, Suhas Chakma, The Pioneer, New Delhi, 20 May 2003

water. Even as he was getting the water, he heard two gunshots. Rushing to the site, he found Khalra dead. The SPO said the police officials wrapped a blanket around the body and threw it in a river near Harike. He said the officials, including him, came back to the Harike guest house where they had liquor.¹⁶⁷

Segregative justice

Only the victims of the armed opposition groups and the members of the armed opposition groups who surrender can get compensation in India.

Those who seek justice for violation of their rights by State agencies must sweat it through the courts, amidst judicial delay, intimidation, harassment and sometimes killings for daring to seek justice.

Since the government shields its agencies for all kinds of excesses including violations of the right to life under various laws such as section 197 of the Criminal Procedure Code and section 6 of the Armed Forces Special Powers Act, only the members of the armed opposition groups and victims of their abuses can thus receive compensation. Such practices in clear violation of the equality before law under Article 21 of the Indian constitution create a vicious circle of human rights violations undermining the rule of law. Discriminatory justice itself can potentially contribute to terrorism that the government seeks to address in the first place.¹⁶⁸

F. Article 40: Juvenile Justice

While the government of India in its periodic report discusses administration of juvenile justice at length (pages 340 to 356), it paints a rosy picture about the children deprived of their liberty, including in the form of detention, imprisonment or placement in custodial settings (pages 357 to 360) by making generic reference to the Juvenile Justice (Care and Protection of Children Act) 2000.

The enactment of a law is not an indication of its effectiveness. Nor it reflects the sincerity of the government. Although the Juvenile Justice (Care and Protection of Children) Act, 2000 came into force in 2001, many States are yet to take effective measures for its implementation. In the absence of effective measures for its implementation and lack of resources, the Act may be considered as ineffective.

¹⁶⁷ . ibid.

¹⁶⁸ . ibid.

Replying to starred question on 3 December 2001, Minister for Social Justice and Empowerment provided the following figures about the juvenile delinquents in various States of India.¹⁶⁹

S.No.	Name of the State	No of the cases in 1998	No of cases in 1999	percentage of increase or decrease
1.	2.	3.	4.	5.
1	Andhra Pradesh	754	590	-21.75
2	Arunachal Pradesh	24	42	+75
3	Assam	146	182	+24.66
4	Bihar	407	382	+6.14
5	Chattisgarh			
6	Goa	27	21	-22.22
7	Gujarat	1033	1075	+4.06
8	Haryana	325	300	-7.69
9	Himachal Pradesh	57	47	-17.54
10	Jammu & Kashmir	0	0	0
11	Jharkhand			
12	Karnataka	255	286	+12.15
13	Kerala	65	51	-21.54
14	Madhya Pradesh	2349	2380	+1.32
15	Maharashtra	2254	1848	-18.01
16	Manipur	0	0	0
17	Meghalaya	42	15	-64.28
18	Mizoram	89	11	-87.64
19	Nagaland	8	0	-100
20	Orissa	108	195	+80.56
21	Punjab	10	20	+100
22	Rajasthan	683	674	-1.32
23	Sikkim	5	6	+20
24	Tamil Nadu	394	403	+2.28
25	Tripura	0	17	+1700
26	Uttaranchal			
27	Uttar Pradesh	23	14	-39.13
28	West Bengal	5	15	+200
29	Andaman & Nicobar Islands		3	+200
30	Chandigarh	14	16	+14.28
31	Dadra & Nagar Haveli	2	0	-100

¹⁶⁹ . RAJYA SABHA, STARRED QUESTION NO 197 of 3 December 2001.

32	Daman & Diu	1	0	-100
33	Delhi	246	288	+17.07
34	Lakshadweep	0	1	+100
35	Pondicherry	12	6	-50
	Total	9339	8888	-4.83

While the lack of figures in the newly formed States such as Uttaranchal, Jharkhand and Chattisgarh is understandable, according to the statistics there are no juvenile delinquents in Jammu and Kashmir and Manipur.

No juvenile delinquents in Jammu and Kashmir!

Is there no juvenile detainee in Jammu and Kashmir as reported by the Minister of Social Welfare to the Rajya Sabha, upper house of Indian parliament, on 3 December 2001? If one is to go by methods of collection of statistics by the government of India, there will not be any juvenile detainee in 2003 also!

The Jammu and Kashmir legislature extended Juvenile Justice Act, 1986 in the state by abolishing the Children Act of 1970 in the year 1997. The Act came into force with effect from 1 April 1998. However, as of August 2003, the government of Jammu and Kashmir has not taken any initiative to implement the Juvenile Justice Act, 1986. In the meantime, Juvenile Justice (Care and Protection), Act 2000 has come into force instead of the 1986 Juvenile Justice Act. As of August 2003, there is no juvenile home, juvenile court or any juvenile board in Jammu and Kashmir. The juvenile detainees are being kept in District Jail of Jammu along with harden criminals.¹⁷⁰ Therefore, according to the government of India, there are no juvenile delinquents in Jammu and Kashmir.

The juvenile detainees face detention, torture, imprisonment, sexual harassment etc. Often the magistrates do not enquire as to whether the detainee is a juvenile if the police produces them before the magistrates. The maltreatment of the juvenile delinquents in the juvenile's home, repression by the law enforcement personnel in custody and indifference of lower level of judiciary and non-implementation of the Juvenile Justice Act (Care and Protection of Children) Act, 2000 make the condition of the juveniles in India pitiable. A few case studies below reflect the state of the implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000.

Case 1: The lack of funds to run juvenile court in Assam

More than 200 cases are pending in the upper Assam's only Juvenile Court at the Observation Home, Lichubari, Jorhat for the last one and half years due to non-availability of service stamps at the court.

¹⁷⁰ . The Kashmir Times, Jammu, 11 August 2003

According to official sources, warrants and summons could not be dispatched for 200 accused, under 15 years of age to wind up their cases.

Several accused could not be contacted or called for further hearing to the court due to lack of service stamps of the Indian Postal Service due to lack of funds.

According Ms R Farheen, Principal Magistrate of the Court, due to fund crunch, the cases remained pending, as warrants could not be sent to defaulters and accused putting them in a fix, as, in many a case, cases later on take new turn.

The Observation Home at Lichubari is the only home of the State Social Welfare Department covering ten districts - Karbi Anglong, Lakhimpur, Silchar, Nagaon, Dibrugarh, Darrang, Sonitpur, Jorhat, Sivasagar and Tinsukia.¹⁷¹

Case 2: No Juvenile board in Punjab, Haryana and UT of Chandigarh

Two years have lapsed since the Juvenile Justice (Care and Prevention) Act came into force, but Juvenile Welfare Boards are yet to be constituted in the states of Punjab and Haryana, besides the Union Territory of Chandigarh.¹⁷²

Case 3: Juvenile home lacks child welfare panel in Andhra Pradesh

The Juvenile Welfare Home for Boys at Saidabad, Andhra Pradesh does not have a full-fledged child welfare committee to monitor its functioning though the 'Juvenile Justice Act'. The Act specifies that a four-member committee is a must.

However, for the past two years, the committee has been 'functioning' with just two members, that too a couple. The couple — G F Prabhakar and his wife G Lakshmi — run a home for street children named 'Karuna Nilayam'. However, they managed to become members of the committee and Prabhakar is now the ad-hoc chairman.

The couple became members before the new Act was passed and were part of the AP Juvenile Welfare Committee. They submitted their resignations in September 2002 but were asked to continue till a new committee was formed.

The new Committee is yet to be formed.¹⁷³

Case 4: Inhumane and degrading treatment of Puli Shiva, Orissa

Master Puli Shiva, 9 years, is a resident of Nejipelli village under Berhampur police station of the Balasore district of Orissa. On 16 March 2003, Puli Shiva was trying to steal some money by breaking the box attached to the motorcycle of one Akshaya

¹⁷¹ . The Sentinel, Guwahati, 4 February 2003

¹⁷² . The Tribune, Chandigarh, 5 April 2003

¹⁷³ . TIMES NEWS NETWORK [SUNDAY, JUNE 29, 2003 02:00:08 AM]

Behera, an LIC agent. Seeing this, some people present on the spot tried to catch hold of him. But Puli by throwing the moneybag on the ground ran away. The police managed to catch and produced him before the court.

It was while being taken to the court that Master Puli Shiva was meted out inhuman and degrading treatment. He was tied with a rope around his waist like a hard-core criminal and made to walk bare foot.¹⁷⁴

Case 5: Death of juvenile detainee Sukant Das, Orissa

Mr Sukant Das, 14 years was arrested in a theft case by Puri Ghat police on 23 June 2003. While he was being taken to Berhampur based juvenile home from Cuttack boarding Howrah-Chennai Mail, two constables belonging to Puri Ghat police station were guarding him on the train. After the train crossed Khurda railway station, the constables after tying up the hands of Mr Das with a rope, instructed him to sit on the upper berth. Later they had taken rest on the lower berth. Some passengers who were traveling on the same berth stated that when Sukant Das sought their permission to go to the toilet, they reportedly misbehaved with him. After the train crossed the Tapang passenger halt, Sukanta jumped outside from the speeding train and died on the spot.

Case 6: Juvenile detained in prison

On 6 August 2003, Mumbai High Court awarded a compensation of Rs 15,000 to 16-year old Iqbal. He was arrested in a robbery case. Iqbal was 16 when picked up in a murder case. But the police decreed that he was 20 and sent him into Thane Central Prison. Ten months later the Sessions Court scrutinised his documents and medical reports and confirmed that he was a minor. It took another three months and writ petition before he was transferred to the Dongri Observation Home. The Bombay High Court awarded compensation of Rs 15000 for delay to transfer him as the Juvenile Justice Act specifies that suspects under the age of 18 have to be placed in an observation home.

Hundreds of minors are reportedly languishing in Maharashtra's prisons and denied the protection of the Juvenile Justice (Protection and Care) Act. The magistrates are supposed to order age verification if a suspect seems under 21 years involving scrutiny of birth or school certificates and bone ossification tests. "But most don't even look up from their paperwork".¹⁷⁵

¹⁷⁴ . Complaint of Asian Centre for Human Rights to National Human Rights Commission of India on 27 March 2003.

¹⁷⁵ . TIMES NEWS NETWORK[THURSDAY, AUGUST 07, 2003 11:05:55 PM]

G. Article 34: Children in Situation of Exploitation, Including Physical and Psychological Recovery and Social Integration

The government of India in its periodic report refers to sexual exploitation of children in prostitution etc. However, it fails to report that the law enforcement agencies are themselves responsible for sexual exploitation of children including rape. Sexual exploitation of street children, especially girls, by the field staff of the Delhi Police is rampant in Delhi. It has reportedly been admitted in an official circular (44 of 2003) of the Delhi Police.¹⁷⁶ Three constables sodomised a 10-year-old boy in Srinivaspuri area of New Delhi in March 2003. They were suspended after an inquiry.¹⁷⁷

Often punishment for the police ends with suspension and then re-instatement later on. In 2002, a Chandni Chowk police station constable in New Delhi was found involved in sodomising a minor boy. An inquiry was conducted. According to an NGO, the case was hushed up as the boy was forced to change his version.¹⁷⁸

Case 1: Rape of 15 year old girl by Punjab police

In mid June 2003, a 15 year girl, daughter of a rickshaw puller in Batala, was brought to Chandigarh, Punjab by Wilson Kumar, a Punjab Police on the promise that he would give her the job of looking after his nine-year-old daughter. On the night of 22 June 2003, when Wilson's wife, who works as a nurse, was on night shift, Mr Kumar allegedly assaulted the girl sexually.

However, when the girl raised an alarm he gagged her and threatened her to keep quiet. Next morning, the girl reportedly narrated the incident to Wilson's wife who brushed the matter aside and rebuked her.

The girl insisted on going home, but the couple allegedly kept her under duress and did not allow her to leave. However, after Wilson left for Batala and when his wife was also away, the girl managed to come out of the house. She reached a public telephone booth and tried to call home. She also narrated her story to some women who took her to the Maloya police post. After getting the girl medically examined, a case under sections 376, 342, 511, IPC, was registered at the Sector 39 police station of Chandigarh.¹⁷⁹

Case 2: Rape of 13 year old girl by Assam Police

Md Abdul Gani, a constable of Harisinga outpost under Panery police station in Darrang district of Assam raped a 13-year old girl of class VII in his residence at village Barigaon (Adhikari) under Mangaldai police station on the morning of 18 April 2003. On the next day, the accused constable took the seriously injured victim to Guwahati Medical College

¹⁷⁶ . The Hindustan Times, New Delhi, 29 July 2003

¹⁷⁷ . ibid

¹⁷⁸ . ibid

¹⁷⁹ . TIMES NEWS NETWORK, [TUESDAY, JULY 01, 2003 12:10:51 AM

hospital for treatment. On 20 April 2003, the victim was handed over to her family member by the accused constable with a warning not to divulge about the incident. On the basis of the FIR lodged by the father of the victim, the Mangaldai police have registered a case.¹⁸⁰

Case 3: Police illegally detain rape victim

A minor girl, who came from West Bengal to work in Delhi, was allegedly raped by her employer's married son, Lovely for over a year. She reportedly worked at the accused's house as a domestic help. When she complained to the police at Paschim Vihar in New Delhi, they took her into their custody on 18 May 2003. They got her statement recorded before a magistrate only on 20 May 2003 and detained her illegally for three days.

When illegal detention was brought to the court's notice, the Metropolitan Magistrate transferred the investigation to another officer. In her first statement the girl did not identify the accused. The Magistrate further directed that the victim should be sent to Nari Niketan.

Four days later Nari Niketan's superintendent moved an application before the court seeking permission for a professional counselling for the victim. After the counselling session, the victim wanted to give another statement before the magistrate.

In her second statement, she accused the police officers of influencing her. She also told the court that the accused got her pregnancy aborted through medicines administered by a "madam". Metropolitan Magistrate Santosh Snehi Mann took cognizance of the allegations and directed the police commissioner to look into the matter and identify the "madam".¹⁸¹

H. Children of indigenous peoples (Article 30)

While children as individuals enjoy many of the rights provided under the United Nations Convention on the Rights of the Child, the enjoyment of such rights by the indigenous and minority children depends on the status of these groups as a whole in the society and in the country. The condition of indigenous children cannot be seen in abstract. The issue of collective rights is crucial for realisation of indigenous peoples.

In this context, UN the Human Rights Committee in its General Comment on Article 27 of the International Covenant on Civil and Political Rights states, "With regard to the exercise of the cultural rights protected under article 27, the Committee observes that culture manifests itself in many forms, including a particular way of life associated with the use of land resources, especially in the case of indigenous peoples. That right may include such traditional activities as fishing or hunting and the right to live in reserves protected by law. The enjoyment of those rights may require positive legal measures of

¹⁸⁰ . The Sentinel, Guwahati, 23 April 2003

¹⁸¹ . The Times of India, New Delhi, 1 June 2003

protection and measures to ensure the effective participation of members of minority communities in decisions which affect them”.

The rights of indigenous children are violated because of discrimination and displacement. When a community is displaced, children face tremendous hardship. Not only it affects their daily lives, displacement poses threat to their cultural identity, as their parents often have to change traditional activities. Although, India has ratified the ILO Convention No 107 on Indigenous and Tribal Peoples in independent countries, it has so far not signed the ILO Convention No 169. Indigenous children have been effected by appropriation of the lands of their parents, forcible evictions in the name of forest conservation and construction of dams, among others.

i. Discrimination against socalled Criminal Tribes

As recent as on 5 May 2003, the Session Judge of Morigaon of Assam in case no. 47(a)/99-GR case No.731/96 stated in the sentence that "accused Holiram Bordoloi had his wild blood in committing such an offense, because first of all he is a tribal and secondly he was a defence personnel, for which he did not feel at all to kill one person after another".¹⁸² The prejudices of the judiciary too against the indigenous tribal peoples are obvious.

Children of a lesser god

Many indigenous groups are still identified as criminals under the Criminals Tribes Act, now called Habitual Offenders Act defying the universal notion that all are born free and equal.

The Government of British India, in order to bring the rebellious aborigines in inaccessible areas under its control, passed the Criminal Tribes Act of 1871, without examining the socio-economic conditions of these indigenous peoples. Under the Act, *Maghya Doms* in Bihar, the *Khunjurs* (or *Khangars*) in Bundhelkhund and the *Ramosi, Mang, Kaikari (Bowrie)* tribes in the Narmada Valley, and many others, were categorically condemned as criminal members. The adult members had to report weekly to the police.

The Act was extremely racist, and is absolutely indefensible in any country committed to fair and equal treatment of its populace. In 1952, Government of India officially "denotified" the stigmatised ones, without making any provisions for their livelihood. In 1959, Government of India passed the "Habitual Offender's Act" which is not much different from the "Criminal Tribes Act, 1871. From 1961, Government of India, through the state machineries has been publishing state-wise lists of "Denotified and Nomadic Tribes."

On the petition of the Denotified and Nomadic Tribals Rights Action Group, National Human Rights Commission of India (NHRC) set up an Advisory Group in June 1998 to report to the NHRC on the Act, which affects the nearly two and a half percent of the

¹⁸² . The Sentinel, Guwahati, 23 July 2003

total Indian population considered members of Denotified and Nomadic Tribals (DNT/NT). Following a high-level meeting of NHRC members, the NHRC recommended that the Government of India repeal the Act. The NHRC also recommended derogating responsibility for DNT/NT to the individual states, and for each state to set up a special commission to interact with tribals, and to require police in the state to undergo sensitivity training on the DNT/NT situation. While this recommendation is laudable, the Government has yet to accept the recommendation, and the legislation, Habitual Offenders Act, is still pending.

ii. Displacement of indigenous peoples in India

Nothing explains more lucidly the extent and reasons for displacement of indigenous/tribal peoples in India than the Ministry of Tribal Affairs of the government of India. It states:

“Since independence, tribal displaced by development projects or industries have not been rehabilitated to date. Research shows that the number of displaced tribal till 1990 is about 85.39 lakhs (55.16% of total displaced) of whom 64.23% are yet to be rehabilitated. Although accurate figures of displacement vary it is clear that majority of those displaced have not been rehabilitated. Those displaced have been forced to migrate to new areas and most often have encroached on to forestlands and are, on record, considered illegal. It is a known fact that displacement has led to far reaching negative social and economic consequences, not be mentioned the simmering disturbances and extremism is most of the tribal pockets. Economic planning cannot turn a blind eye to these consequences in the light of displacement.....

All projects in tribal areas were considered 'public purpose' even for private mining industries. This is biggest fallacy of our development paradigms in tribal areas.”¹⁸³

According to 1991 census, the population of the Scheduled Tribes in India is 67.8 million, about 8.1 percent of the total population of the country. The fact that 8.1% of the total population of India constitutes 55.16% of total displaced people is indicative of the massive victimisation of indigenous peoples.¹⁸⁴

¹⁸³. <http://tribal.nic.in/index1.html>

¹⁸⁴. *ibid*

A conservative estimate of the number of total persons displaced and tribals displaced by Developmental Schemes from 1951-1990 in India¹⁸⁵ is given below (in lakhs¹⁸⁶):

Category of project	All DP ¹⁸⁷ s	DPs Resettled	Backlog	Tribals Displaced	Resettled	Backlog
Dams	164.00	41.00	123.00	63.21	15.81	47.40
Mines	25.50	6.30	19.20	13.30	3.30	10.00
Industries	12.50	3.75	8.75	3.13	0.80	2.33
Wildlife Sanctuaries	6.00	1.25	4.75	4.50	1.00	3.50
Others	5.00	1.50	3.50	1.25	0.25	1.00
Total	213.00	63.80	159.20	85.39	21.16	64.23

Trends of Displacement

Displacement poses the most serious threat to indigenous children. Their cultural identity is linked to the mother earth.

→ The Attorney General recommended constitutional amendment of the fifth schedule of Indian Constitution to circumvent Supreme Court judgement in the Samatha case for restoration of land rights;

→ an estimated 10 million indigenous peoples including children will be evicted from their habitat pursuant to the order of 5th May 2002 by Ministry of Environment;

→ Increase of the height of the Narmada dam from 95 to 100 meters displaced thousands of people in 2003. Earlier evicted peoples are yet to be compensated and rehabilitated.

The Government of India has been in the process of amending Land Acquisition Act, 1894. In a reply to the Parliament on 14 March 2001, Prof Rita Verma, Minister of State for Rural Development stated, “no decision has so far been taken to include provisions for resettlement and rehabilitation of displaced persons due to construction of big projects in the Land Acquisition (Amendment) Bill”.¹⁸⁸

The National Human Rights Commission in a hearing on the proposed Land Acquisition Amendment Bill on 13 February 2001 “expressed the view that it was desirable to incorporate the rehabilitation and resettlement (R&R) package in the Land Acquisition Act itself as an ILO convention, to which India is a party, provides for the protection of rights of indigenous and tribal people. In addition, the incorporation of R&R package in the law will ensure the R&R of Project-Affected-People in a systemic manner..... Further, in the interests of transparency and full information to the people likely to be affected by a project, a Committee consisting of representatives of Government,

¹⁸⁵ . National Centre for Advocacy Studies, Advocacy Update, January 1996

¹⁸⁶ . One lakh is one hundred thousand.

¹⁸⁷ . DP stands for Displaced Persons.

¹⁸⁸ . RAJYA SABHA, UNSTARRED QUESTION NO 2051 TO BE ANSWERED ON 14.03.2001

the industry/agency for which land is proposed to be acquired and the project affected people, should have detailed consultations before the land is acquired.”¹⁸⁹

The Land Acquisition Amendment Bill has since then been shelved.

iii. Circumventing the Supreme Court judgement for appropriation of indigenous peoples lands

Under the Fifth Schedule¹⁹⁰ of the Constitution of India, the government has notified tribal areas in Andhra Pradesh, Bihar, Chhatisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Maharashtra, Orissa and Rajasthan as Scheduled areas. The Fifth Schedule prohibits transfer of land by or among members of the Scheduled Tribes in Scheduled Areas to reduce land alienation.

Beginning in the 1960s, the state government had been giving out scores of mining leases of hundreds of acres of lands in the area to private companies. In the 1990s, the State Government of Andhra Pradesh leased 120 acres of forestland of indigenous peoples to the rayon company, Birla Periclase, to mine for calcite. An NGO, Samata filed a writ petition in the State High Court on behalf of the indigenous peoples. The petition was dismissed. Samata approached the Supreme Court with a Special Leave Application in 1995.

The Supreme Court in its judgement, which came to be known as the Samata Judgement, stated that: (a) In the Andhra Pradesh Scheduled Area Transfer Regulation, 1959, person includes the State Government; and “transfer of immovable property” includes “the prospecting licenses and mining lease; (b) All transfers of land belonging to the State Government at any time in the past or present in “scheduled area of Andhra Pradesh”, to non-tribals, and of mining leases/prospecting licenses whensoever granted by the State Government in such areas to non-tribals were absolutely void and impermissible; and (c) all mining operations in the scheduled areas of Andhra Pradesh by industrialists may be stopped forthwith.

¹⁸⁹ . Newsletter, National Human Rights Commission, New Delhi, March 2001

¹⁹⁰ . Article 5(2) of the Fifth Schedule of the Constitution of India states,

“ The Governor may make regulations for the peace and good government of any area in a State which is for the time being scheduled area.

In particular and without prejudice to the generality of the foregoing power such regulation may-

prohibit or restrict the transfer of land by or among members of the Scheduled Tribes in such areas;
regulate the allotment of land to members of the Scheduled Tribes in such area;
to regulate carrying on business as money lender by persons who lend money to members of the Scheduled Tribes in such area.”

In the Samata judgment, the Supreme Court specifically laid down the following guidelines: (1) Government lands, forest lands and tribal lands in Scheduled Areas cannot be leased out to non-tribals or to private companies for mining/industrial operations; (b) Government cannot lease out lands to non-tribals for mining operations as it is in contravention of Schedule V of the Constitution. It therefore declared all mining leases granted by the State Govt. in Schedule V areas and renewals thereof illegal and null and void and asked the State government to stop all industries from mining operations; (3) Mining activity should be taken up only by the State Mineral Development Corporation or a co-operative of tribals and that too if they are in compliance with the Forest Conservation Act and the Environment Protection Act; (4) Pursuance to the 73rd Amendment and the Panchayati Raj (Extension to Scheduled Areas) Act, the Gram Sabhas (village councils) are competent to preserve and safeguard community resources and reiterated the right of self-governance of adivasis; (5) In cases where similar Acts in other States do not totally prohibit grant of mining leases of the lands in the Scheduled Area, similar Committees of Secretaries and State Cabinet Sub-Committees should be constituted and decision taken thereafter; (6) Before granting leases, it would be obligatory for the state government to obtain concurrence of the Central Government which would, for this purpose, constitute a Sub-Committee consisting of the Prime Minister of India, Union Minister for Welfare, Union Minister for Environment so that the State's policy would be consistent with the policy of the nation as a whole; (7) It would also be open to the appropriate legislature, preferably after a thorough debate/conference of all the Chief Ministers, Ministers concerned, to take a policy decision so as to bring about a suitable enactment in the light of the guidelines laid down above so that there would emerge a consistent scheme throughout the country, in respect of the tribal lands under which national wealth in the form of minerals, is located and (8) Finally, at least 20% of the net profits should be set up apart as a permanent fund as part of business activity for establishment and provision of basic facilities in areas of health, education roads and other public amenities. This order was given with retrospective effect.

The Andhra Pradesh Government in its letter of 21 October 1997 requested the Union Government of India to file a review petition to look into so-called far reaching implications of the Samatha judgement. The Supreme Court of India dismissed the review filed by the Union Government of India on 4 February 1999. Thereafter, the Government of India (i) filed an application for impleadment as a party respondent, (ii) application for modification of the court order dated 11 July 1997 and (iii) an application for permission to file a petition for modification. The three-member bench of the Supreme Court dismissed the applications on 4 February 2000.

The Government of India sought the views of the Attorney General to overcome the Supreme Court judgement. The present Attorney General of India, Mr Soli J Sorabjee advised the Government of India that the way forward is to "effect the necessary amendments so as to overcome the said SC judgement by removing the legal basis of the said judgement" by amending the Fifth Schedule of the Constitution of India.

The Committee of Secretaries of the Government of India in a decision classified as "SECRET" on 10th July 2000 (No.16/48/97-M.VI) has proposed to amend the Fifth Schedule of the Constitution of India to remove the legal basis for the Samata Judgement. The secret note proposes that as advised by the Attorney General an explanation be added after para 5(2) of in the V Schedule removing prohibition and restrictions on the transfer of land by *adivasis* to non-adivasis for undertaking any non-agricultural operations including prospecting and mining.

The proposed amendment of the Government of India is a clear attempt both to negate the constitutional guarantees and safeguards for the one of the most vulnerable group of people in India and to subvert the Supreme Court judgement. Rather than exploring ways and means to implement the directions of the Supreme Court judgement in its enabling spirit and provisions especially concerning the involvement of tribal co-operatives and profit sharing, the secret note only exposes how the Union Government is actually searching for ways and means to nullify the judgement.

Present Status of Samatha

Since the Samatha judgment, the government has not taken any initiative for its implementation except attempts to circumvent the Supreme Court judgement. The State government has not cancelled any of the existing mining. Rather the Andhra Pradesh government has allegedly been inviting mining companies.¹⁹¹

What is more disconcerting is the opinion of the Supreme Court of India on the status of the Samatha judgement. The Supreme Court in *BALCD Employees' Union (Regd.) v. Union of India* (2002) 2 SCC 333) has given a hint of the possible future of Samatha, as evident from the following relevant extract:

"71. While we have strong reservations with regard to the correctness of the majority decision in Samatha case, which has not only interpreted the provisions of the aforesaid Section 3(1) of the AP Scheduled Areas Land Transfer Regulation, 1959 but has also interpreted the provisions of the Fifth Schedule of the Constitution, the said decision is not applicable in the present case because the law applicable in Madhya Pradesh is not similar or identical to the aforesaid Regulation of Andhra Pradesh. Article 145(3) of the Constitution provides that any substantial question of law as to the interpretation of the provisions of the Constitution can only be decided by a Bench of five Judges. In Samatha case, it is a Bench of three Hon'ble Judges who by majority of 2: 1, interpreted the Fifth Schedule of the Constitution..."

¹⁹¹ . Shruti Pandey, Defying Samata with impunity, *Combat Law*, Mumbai, October –November 2002.

iv. Nature without people: evictions of 10 million indigenous peoples

Displacement of indigenous peoples, the so-called Scheduled Tribes in India is nothing new. However, the impending eviction of an estimated 10 million indigenous peoples pursuant to the order of Union Ministry of Environment and Forests (MoEF) of 3 May 2002 has brought the issue of "Nature Without People" to the forefront. The eviction order was issued in furtherance of an order of the Supreme Court of India on 23 November 2001 in Interlocutory Application of the Amicus Curiae in Writ Petition No. 202 of 1995. The Supreme Court in its order has restrained the Central Government from regularisation of alleged encroachments of forest lands in the country under the Forest Conservation Act, 1980 and ordered to frame a time bound programme for eviction of the alleged encroachers from the forest lands. Majority of the victims are indigenous peoples.

The Ministry of Environment and Forests in its order of 3 May 2002 suggested the following steps for evictions:

- “1. All encroachments which are not eligible for regularization as per guidelines issued by the Ministry vide No.13.1/90-FP.(1) dated 18.9.90 should be summarily evicted on a time bound manner and in any case under 30th September 2002.
2. A cell should be constituted in the PCCF office headed by the CCT level officer to plan and monitor eviction of encroachment on forest land on a continuous basis.
3. Forest officers should be delegated powers under relevant acts for trials of encroachers and adequate steps should be taken for the completion of the eviction process through summary trials in a time bound manner.
4. At the State level, a monitoring committee may be constituted under the Chairmanship of the Chief Secretary, which may meet biannually to take stock of the situation. The Committee while monitoring forest encroachments should also fix responsibility of the field formulations including the revenue officials for their failures to prevent/evict encroachments on the forestlands.
5. At the forest Circle level, a Committee should be constituted under the Chairmanship of Conservator of Forests with District Collector and Superintendent of Police as member which may meet every quarter and take effective steps to assist the Divisional Forest Officers or the Territorial Division/Wildlife Warden/National Park and Sanctuary Director for the eviction of the encroachers.”

In order to set the eviction process in motion, on 9 May 2002 the Supreme Court appointed a Central Empowered Committee (CEC) with the powers to examine the reports and affidavits of the States and to place their recommendations before the Supreme Court for orders. On 20 June 2002, the Central Empowered Committee issued

its rules and procedures for examining the reports and affidavits. The CEC has no indigenous/tribal representative.

The Central Empowered Committee subsequent to its meeting on 25 July 2002 has given numerous draconian recommendations. The recommendations not only question the rights of indigenous peoples and their role for preservation of forest contrary to government policies but also impinge on due process of law and law of natural justice.

Recommendation of CEC: (a) *"Further regularization of encroachments on forest lands in any form including by issue of pattas, ownership certificate, certificate of possession, lease, renewal of lease, eligibility certificate or allotment/use for agricultural, horticultural or for plantation purposes is strictly prohibited except encroachments which are eligible for regularization in conformity with the guidelines dated 18/9/1990 issued by the MOEF."*¹⁹²

The XXIX Report of the National Commissioner Scheduled Castes and Scheduled Tribes to President drew the attention to longstanding disputes concerning the rights of the tribal people living in and around the forest. These disputes have not been addressed since India's independence. Following the report of the Commissioner, an Inter Ministerial Committee was set up to examine the numerous areas of dispute between the Forest Administration and the Forest Dwellers. The whole range of disputes were examined and a series of guidelines were issued vide Circular No 13-1/90-FP of Government of India, Ministry of Environment & Forests, Department of Environment, Forests & Wildlife dated 18.9.1990. The circular addressed to the Secretaries of Forest Departments of all States/Union Territories contained the following guidelines to address the disputes:

- i. II.1 FP(2) Review of disputed claims over forest land arising out of forest settlement.
- ii. II.2 FP(3) Disputes regarding pattas/leases/grants involving forest land
- iii. II.3 FP(1) Review of encroachments on forest lands.
- iv. II.4 FP(5) Conversion of forest villages into revenue villages and settlement of other old habitations.

Further recognising the need for involvement of indigenous/tribal people and other forest dwellers as necessary for forest conservation, the Government of India¹⁹³ issued a Circular No. 15-2/90-FP, dated 20.12.1990 concerning the Centrally Sponsored Scheme for Association of Scheduled Tribes and rural poor in afforestation of degraded forests.
¹⁹⁴

¹⁹² . Submission of the KASHTAKARI SANGATHAN, IN THE MATTER OF T. N. GODAVARMANPETITIONER VERSUS UNION OF INDIA & ORS.RESPONDENTS, INTERLOCUTORY APPLICATION NO. 703 OF 2001 IN WRIT PETITION (CIVIL) NO. 202 OF 1995

¹⁹³ . Ministry of Environment & Forests, Department of Environment, Forests & Wildlife

¹⁹⁴ . Submission of the KASHTAKARI SANGATHAN, IN THE MATTER OF T. N. GODAVARMANPETITIONER VERSUS UNION OF INDIA & ORS.RESPONDENTS, INTERLOCUTORY APPLICATION NO. 703 OF 2001 IN WRIT PETITION (CIVIL) NO. 202 OF 1995

Earlier, the government of India issued National Forest Policy on 7 December 1988. Section 4.6 recognises the symbiotic relationship between indigenous tribal peoples and forests and that indigenous tribal peoples are indeed the protectors and not predators of forests. Section 4.6 of National Forest Policy states:

“4.6 Tribal People and Forests

Having regard to the symbiotic relationship between the tribal people and forests, a primary task of all agencies responsible for forest management, including the forest development corporations should be to associate the tribal people closely in the protection, regeneration and development of forests as well as to provide gainful employment to people living in and around the forest. While safeguarding the customary rights and interests of such people, forestry programmes should pay special attention to the following:

- One of the major causes for degradation of forest is illegal cutting and removal by contractors and their labour. In order to put, an end to this practice, contractors should be replaced by institutions such as tribal cooperatives, labour cooperatives, government corporations, etc. as early as possible;
- Protection, regeneration and optimum collection of minor forest produce along with institutional arrangements for the marketing of such produce;
- Development of forest villages on par with revenue villages;
- Family oriented schemes for improving the status of the tribal beneficiaries; and

Undertaking integrated are a development programmes to meet the needs of the tribal, economy in and around the forest areas, including the provision of alternative sources of domestic energy on a subsidised basis, to reduce pressure on the existing forest areas.”¹⁹⁵

There is yawning gap between policy and practice. The state governments have not implemented all these guidelines. Consequently, indigenous peoples are being accused of illegal encroachment by the Supreme Court order. A large area of cultivable lands of indigenous tribal peoples are being categorised as encroachment areas. These cultivable

¹⁹⁵ . <http://envfor.nic.in/divisions/fp/nfp.htm>

lands are not encroachments but existed prior to both the Indian Forest Act 1927 and the Forest Conservation Act 1980.¹⁹⁶

Moreover, the differentiation between the pre-1980 and post-1980 encroachments is quite immaterial at the ground level. The National Commission on Scheduled Castes and Scheduled Tribe noted that as a result of the Forest Conservation Act, 1.48 lakh persons, mainly tribals, occupying 1.81 lakh hectares of lands in forest areas in Madhya Pradesh suddenly became encroachers on October 24, 1980, and thus liable for eviction.¹⁹⁷ Further, the reasons and circumstances may be same for both categories of encroachment but the Forest Conservation Act provides a legal remedy for encroachments prior to 1980 only, by providing for a process for their regularisation. It is on record, however, that a large number of the pre-1980 encroachments, running into hundreds of thousands of hectares, have not been regularised even after 21 years and their accurate recording is also contested.¹⁹⁸

Recommendation of CEC: (b) *"The First Offence Report issued under the relevant Forest Act shall be the basis to decide whether the encroachment has taken place before 25.10.80."*

The National Commissioner for Scheduled Castes (SCs) and Scheduled Tribes (STs) in his foreword note to *"Resolution of conflicts Concerning Forests Lands - Adoption of a Frame by the Government of India"* at para 39 on page 9 lucidly explained the situation: "If the claims of the tribal people are to be determined on the basis of the record of the forest department or at best, record of other government departments, his claim is as good as lost. It is the fact of possession, of law, its cultivation and actual reclamation, in some cases by his ancestors which is the common knowledge of the village which is the basis of his claim. These facts may or may not have been brought on record. The reasons for this dissonance are many. For example, the official may not have visited the area or may have preferred not to take note of the cultivation, or may not have bothered to bring it on record and such like. They are of no concern of the tribal people. They cannot be expected to know what is there in government records. In these circumstances if the records are to be insisted upon, the disputes about land can never be expected to be resolved".¹⁹⁹

Recommendation of CEC: (j) *"Any person or authority aggrieved by any action taken during the course of removal of encroachments in compliance with the orders of this Court including in respect of alleged excessive use of force, un-provoked firing, atrocities punishable under the SC/ST Atrocities Act will be at liberty to approach this Court*

¹⁹⁶ . Submission of the KASHTAKARI SANGATHAN, IN THE MATTER OF T. N. GODAVARMANPETITIONER VERSUS UNION OF INDIA & ORS.RESPONDENTS, INTERLOCUTORY APPLICATION NO. 703 OF 2001 IN WRIT PETITION (CIVIL) NO. 202 OF 1995

¹⁹⁷. People's Democracy, Weekly Organ of the Communist Party of India (Marxist), Vol. XXVII, No. 01, January 05, 2003

¹⁹⁸ . Ibid.

¹⁹⁹ . Ibid.

through the Central Empowered Committee for redressal of the grievances. The Committee after examining such complaints shall place its recommendations before this Court for passing appropriate orders."

Impunity has been the single most important factor encouraging further human rights violations in India.²⁰⁰ The government enacted a series of laws such as Section 197 of the Criminal Procedure Code and Section 6 of the Armed Forces Special Powers Act, 1958 which require prior permission from the Centre for prosecution of the accused armed forces. This recommendation creates obstacles for prosecution even in case of alleged unprovoked police firing, which might even cause death and is akin to providing impunity through procedural measures.

Recommendation of CEC: (o) *"This order is to operate and to be implemented notwithstanding any order at variance, made or which may be made by any government or any authority, tribunal or Court including the High Court."*

This *ex parte* recommendation without even examining the orders of the various courts and taking into consideration the grounds for government decisions unilaterally seeks to eliminate all judgements or governmental decisions. The High Courts and the subsidiary courts are governed by the precedents laid down by the Supreme Court in its various judgements and apply the same judiciously in the cases being heard by them. This recommendation discredits the lower judiciary including the High Court, destroys their independence and makes a mockery of due process of law and law of natural justice.²⁰¹

Circular effect in Andhra Pradesh

A few months ago, 32,000 hectares of land was reclaimed by the Forest Department of the State government through a World Bank project. A local non-governmental organisation (NGO), Samata, took up the case, and subsequently the State government had to give a promise that the tribal people would not be evicted from the forest land. It was at that juncture that the MoEF circular came, as a green signal to the State government to evict tribal people.

As regards rehabilitation, the CEC has given a one-line recommendation: "Any concerned State government shall be at liberty to provide suitable rehabilitation package to the encroachers, particularly to the tribals."²⁰² It is a fact that the eviction of tribal people has already started in most States without the respective governments framing rehabilitation packages for the displaced people.

In order to inform the tribal people concerned about an eviction procedure, the Committee recommends publication of notices in local and other Indian language

²⁰⁰ . *ibid.*

²⁰¹ . *ibid.*

²⁰² . Targeting tribal people, Naunidhi Kaur, Frontline, Volume 19–Issue 21, October 12–25, 2002.

newspapers "at least seven days before the actual removal is undertaken, specifying, to the extent feasible, the compartment/survey number, the forest range, forest division and district from where the encroachments are being removed in compliance of this order". The CEC has overlooked the fact that tribal people residing deep in the forest will never know of such an advertisement, as they have no access to newspapers. The CEC has not thought of using a more tribal-friendly means of communication.²⁰³

As the CEC determines various complaints of alleged encroachments, eviction hangs like the Damocles sword over 10 million indigenous peoples spread over 12.5 lakh hectares of land.

v. Narmada: Dams and displacement

Thousands of families are still awaiting land-for-land rehabilitation at 95m dam height of the Sardar Sarovar dam, popularly known as Narmada dam. As per the Indian Supreme Court judgment of October 2000 and the Narmada Tribunal awards, land-for-land resettlement must precede submergence by at least six months. Those who were displaced at 95 meters dam height are yet to be rehabilitated.

Yet, on 14 May 2003 the Narmada Control Authority authorized an increase in height of the Sardar Sarovar Dam across the river Narmada from 95 m to 100 m. Thousands of indigenous peoples and their children from more than 100 thickly populated villages in Madhya Pradesh and 33 villages in Maharashtra will be uprooted if the dam height is raised to 100 metres.

The Narmada dam has become a symbol of displacement of indigenous peoples of India. The World Bank initially funded the project. However, the World Bank later withdrew following the recommendations of its own Morse Committee due to large-scale irregularities by the Project authorities. The dam is set to displace around half a million people (mostly indigenous people) when completed to its full height of 138 metres.

For the last ninth consecutive year, thousands of villagers in Maharashtra have lost their homes and their fields under the rising waters of the Narmada.²⁰⁴ The Habitat International Coalition, a Delhi-based organization in its report titled, *The Impact of the 2002 Submergence on Housing and Land Rights in the Narmada Valley* after fact-finding trip found that thousands of people who should have been fully rehabilitated six months prior to increasing the dam height to 95 meters last year still lacked resettlement and rehabilitation (R&R). This despite the fact that many of these people are officially listed as "rehabilitated." There are severe implementation failures relating to resettlement and rehabilitation.²⁰⁵ The report shows that:

²⁰³ . Ibid.

²⁰⁴ . The Hindu, New Delhi, 7 August 2003

²⁰⁵ . <http://www.narmada.org/resources/DanaWBLetter.pdf>

- Resettlement sites that should have been available prior to the 2002 increase in the dam height to 95 meters were found to be uninhabited and of poor quality, lacking agricultural land, lacking water and basic amenities, not ready to house people, and in some instances subject to submergence as the dam height goes up;
- There is a lack of available land and as a result state governments are emphasizing cash payments instead of land-for-land, in violation of relevant policies. Given that land is already scarce, there is no guarantee that current or future evictees will receive the land for land benefits to which they are entitled.
- In addition, the report documents institutional failures, including grievance redress mechanisms that lack basic resources and infrastructure to independently investigate grievances or ensure implementation of their decisions. The GRA for Madhya Pradesh confirmed that there had been no field visits since the year 2000;
- Policy requirements regarding the improvement in the standard of living of displaced persons, and the restoration of their livelihood and resource base have been violated in all three states - Madhya Pradesh, Maharashtra, and Gujarat.

By the end of July 2003, water levels in many villages that lie within the submergence zone of the Sardar Sarovar Project had already crossed 108 metres. As a result, even a village such as Nimgavhan, located at a higher altitude than other villages, has been completely submerged. Last year in 2002, the water had touched this height towards the end of the monsoon in September.²⁰⁶

As happened during the past few monsoons, the villagers along with the NBA activists refused to leave their villages and move out despite rising water levels as a non-violent protest against lack of proper rehabilitation of the project affected people and the government apathy. On 27 July 2003 the Maharashtra Government sent a police force to Chimalkhedhi, one of the villages marooned into an island due to submergence. The police force destroyed homes, let cattle loose and forcibly evicted the villagers and moved them to tin sheds, arresting 74 people including women, children and activists.²⁰⁷

In December 2000, over 400 police of the Government of Madhya Pradesh laid a siege on the Bhavaria village in the plains of Nimad to forcibly occupy 22 hectares of land for the Sardar Sarovar Dam. Over 60 people - men and women - were beaten up, arrested and the standing crop of chilly, onion and cotton was destroyed.

I. Child victims of Gujarat riots (Article 30)

Since 27 February 2002, Gujarat burnt and was convulsed with barbarous violence for over 40 days when the Sabarmati Express, running from Faizabad to Ahmedabad, was attacked and torched at Godhra killing 58 passengers, many of them women and children.

²⁰⁶ . The Hindu, New Delhi, 7 August 2003

²⁰⁷ . URGENT ACTION - Forest Peoples Programme, United Kingdom, 8 August 2003

Whatever the provocation, as alleged by some, nothing extenuates the outrage that followed.

Nearly 800 persons were killed according to the official count. Unofficial estimates put the figure at 2000. It was a slaughter of the innocents. The brutalities were unprecedented, especially against women. The targeting of Muslim homes, establishments and sources of livelihood was precise and bears evidence of premeditation. The term "ethnic cleansing" and "genocide" have been used to describe the horror. The children were victims and witness to such unprecedented violence.²⁰⁸

India's NHRC noted that the communal marauders were widely reported to have been "singling out certain homes and properties for death and destruction in certain districts—sometimes within view of police stations and personnel..."²⁰⁹

The riots effect

Somatic responses

Riots such as the one in Gujarat have brutal effects particularly on children. The victims are forced to develop within contexts of seemingly permanent psychosocial trauma or what some psychologists refer to as the "normal abnormality" of violence. Situations that once seemed unimaginable - the burning of one's home, the massacre of one's own family members, the murder of one's parent or sibling.

Two Gujarat High Court judges, one a serving judge Justice M. H. Kadri and another a retired judge and former Chairman, MRTP Commission, Justice A.N. Divecha, had to leave their own homes on 28 February 2002, on the advice of the Chief Justice of the High Court, because adequate police protection was not available. Justice A.P. Ravani, former Chief Justice, Rajasthan High Court, in his deposition to the NHRC of 21st March 2002, has stated that he advised Justice Kadri that for him "to shift from his official residence for the reason that he is not given full protection would amount to [an] insult to the independence of the judiciary and also an insult to the secular philosophy of the Constitution."

The NHRC in its comment on this event noted that the "pervasive sense of insecurity prevailing in the State...extended to all segments of society, including to two Judges of the High Court of Gujarat, one sitting and the other retired who were compelled to leave their homes because of the vitiated atmosphere. There could be no clearer evidence of the failure to control the situation."

²⁰⁸ . Gujarat Carnage 2002: A Report To the Nation by An Independent Fact Finding Mission consisting of Dr. Kamal Mitra Chenoy, Associate Professor, School of International Studies, Jawaharlal Nehru University, New Delhi; S.P. Shukla, IAS [retired], former Finance Secretary of India & former Member, Planning Commission; K.S. Subramanian, IPS [retired], former Director General of Police, Tripura; and Achin Vanaik, Visiting Professor, Third World Academy, Jamia Millia Islamia, New Delhi, 30 April 2002

²⁰⁹ . *ibid.*

Case 1: Burning to death of 6 year old Imran

Mr Nasir Khan Rahim Khan Pathan, Principal of Sunflower School was a witness to the attack on Noorani Masjid, Naroda Patiya in Ahmedabad on 28 February 2002. Amidst rape and killing of women, Mr Khan Pathan stated, "I saw with my own eyes, petrol being poured into the mouth of 6-year-old Imran. A lit matchstick was then thrown into his mouth and he just blasted apart." At least 80 people were burnt alive and thrown into the well, Tisra Kuan, near Gangotri and Gopi Park, behind ST workshop. I saw as many as 120 persons burnt alive and had the misfortune of witnessing four rapes. Besides, 5-10 young girls were whisked away to God knows where.²¹⁰

Case 2: Attack on Noorani Masjid

On 28 February 2002, Ms Amina Appa was witness to the massacre. "The Noorani Masjid, which is behind the basti along the road, was targeted by a mob of about 50-100 persons. Then, Shafiq, an 18-year-old boy, was critically injured in firing. He bled to death. That terrible day, I was hiding with some others on the roof of my house. From there, I saw my dearest friend Kauser Bano (resident of Pirojnagar, opposite Noorani Masjid, Kumbhajini Chawl, Naroda Patiya) raped, her unborn baby slashed out from her womb before being tossed into the fire to be roasted alive. Thereafter, she too was brutally cut up and torched. She was 9 months pregnant.

There is not a single woman resident of Hussain Nagar whose dignity was left intact. They were all raped, cut to pieces and burnt."²¹¹

Case 3: Noor-un-Nissa (12 years old) as witness

"We were in the farm when lots of people came shouting and started attacking us. My *chacha* (uncle) fell down and some men placed a sword on my father's neck. We were trying to run up the hill to save our lives. Allah saved us. I remember seeing a woman crying because her baby was thirsty. I did not see them after that. My mother was with me and so was my *khala* (aunt). My father is alive but my uncle was killed in front of us.

I was begging everybody, "Please don't kill my father, please don't kill my mother!" One Fakirbhai, who is a flourmill worker had his head chopped off. I almost fainted out of exhaustion when one Bhil told me to run away fast. Two adivasis took me into their house. They changed my dress and made me put on a *lengha* (scarf). The crowd came and started shouting, '*Nikalo, nikalo!*' (*bring them out, bring them out*). But they said there is no Muslim in the house. Then the police arrived and I got saved. The deceased: Fakirbhai and *chacha* of Noor-un-Nissa beheaded."²¹²

²¹⁰ . <http://www.sabrang.com/cc/archive/2002/marapril/ahmedabad.htm>

²¹¹ . <http://www.sabrang.com/cc/archive/2002/marapril/ahmedabad.htm>

²¹² . <http://www.sabrang.com/cc/archive/2002/marapril/Panchmahal.htm>

Case 4: Judiciary on trial: The Best Bakery case

A bakery named Best Bakery was burnt in the Hanuman Tekri area of Vadodara on March 1, 2002 and along with that, a number of persons were killed or injured. In total 14 persons, including 3 women and 4 children, killed; most of them burnt to death.²¹³

One of the eyewitnesses Sheikh Zahira Habibullah provided the following testimony on 21 March 2002:

“Jayanti Chaiwala, Mahesh Munna painter, Thakkar *ke do ladke*, all led a mob of about 500-700 people that attacked our bakery on March 1 at 8 p.m. They were flinging petrol bombs on us and were shouting that they will loot and burn us. Three trucks full of timber were burnt and destroyed.

We phoned 100 (Control room) and even contacted the policemen at Panigate police station. They kept saying, "*Hum aa rahe hain*" ("We are coming.") An hour and a half later, around 9.30 p.m., a police vehicle passed by the bakery, stopped briefly and then drove away without doing anything to stop the mob.

It was after the police had come and gone that the mob started its destruction. There were shouts, filthy abuse and threats to rape us. The entire mob had surrounded us. They looted and torched the ground floor store room and workers' room.

Twenty of us, along with our mother, remained trapped and terrified on the terrace, as they burnt eight people to death. My *mama*, my sister, Shabira and my *mama's* children, Zainab and Shabnam (twins) were burnt alive along with the workers in the bakery. Out of the 18 of us present, 10 members, including 3 women and 4 children, were killed in the night itself.

My mother kept begging that she had no support except for her sons. Our three Hindu servants' stomachs were slit open. Two of my brothers were burnt alive; two others were tied up and torched. They are struggling for their lives in the hospital. My mother, Zairunissa and two brothers, Nafiullah and Nasiullah, are very serious; my sister is also serious.

In all, 14 persons were burnt and killed, including my two sisters and my *bhabi*. My *chacha's* entire family and one sister were burnt alive. Even our domestic animals, like goats, were not spared. All the attackers were from the *mohalla*.

²¹³ . <http://www.sabrang.com/cc/archive/2002/marapril/bestbakery.htm>

I filed a complaint naming all the accused but the police have refused to give me a copy of the complaint. I want justice, that is all. I want all the accused to be punished. If the police had done its job, this tragedy would not have occurred.

All the 14 people killed were thrown into the fire. This included four children, three women (my sister Shabira and two *chachis*). Kausar *mama* was cut into pieces and flung into the fire. Two bodies we could not find. Jayanti Batija is the main culprit. He told us that afternoon that we should not worry, he was there, nothing would happen to us and then in the night they attacked. Two young men, Firoz and Nasru, were also killed.

From 8 p.m. in the night to 10 a.m. the next morning, their dance of death continued. The main culprits are the policemen in the police van from Panigate police station who passed by our bakery and our house at around 9.30 p.m., stopped briefly and then drove away.

A Hindu, who owns the Phoolchand bakery, was part of the attackers and he took away the ample stock of flour, ghee and other things.

I am very lucky to have survived. The next morning, three of them dragged me far from the house, near a small thicket. One man, pointing a *talwar* at me, told the others to rape me. Just then the police came.

The next day, March 2, I went to the police station and found out that the first FIR registered by the police was false. It said that the victims were sleeping when they were burnt. I had witnessed what happened to my sister Shabira and Mama Kausar. Yet they have not given me a copy of FIR.

The threat to the witnesses and response of the lower level of judiciary:

In the first verdict in a case relating to the Gujarat riot, Additional Sessions Judge H U Mahida acquitted all the 21 accused. The charge sheet in the case was filed on 24 June 2002 and charges were framed against all 21 accused in March 2003, under sections 147, 148, 149, 188, 504, 342, 436, 395, 307, and 302 of the Indian Penal Code. The trial in the case began on 9 May 2003 in a fast track court. Delivering his 24-page judgment, Mahida said, "It was proved beyond doubt that a violent mob had attacked the bakery and killed 12 persons. However, there was no legally acceptable evidence to prove that any of the accused presented before the court had committed the crime."²¹⁴

Out of 73 witnesses who had appeared before the court, 39, including key witness Zahira Shaikh and her entire family, had turned hostile towards the fag end of the trial.²¹⁵ Later,

²¹⁴ . <http://www.rediff.com/news/2003/jun/27guj.htm>

²¹⁵ . *ibid.*

Sheikh told reporters she had lied in court following threats from local right-wing Hindu nationalist BJP leaders, and she demanded the case be reopened.²¹⁶ On 8 August 2003, Zahira Sheikh moved the Supreme Court seeking retrial of the case at any place outside Gujarat alleging that "crucial evidence was shut out through threats and intimidation" given on behalf of accused.²¹⁷

The intervention of the NHRC

“This was not justice but miscarriage of justice,” – stated Dr Adarsh S. Anand, former Chief Justice of India and chairman of the National Human Rights Commission (NHRC) while commenting on the lower court judgement on the Best Bakery case.²¹⁸ A NHRC team subsequently visited Gujarat. In a press release on 31 July 2003 NHRC “deeply concerned about the damage to the credibility of the criminal justice delivery system and negation of human rights of victims on consideration of the report of its team which was sent to Vadodara” filed a Special Leave Petition under Article 136 of the Constitution of India in the Supreme Court with a prayer to set aside the impugned judgement of the Trial Court in the Best Bakery case and sought directions for further investigation by an independent agency and retrial of the case in a competent court located outside the State of Gujarat.

The NHRC has, inter-alia, contended in the SLP that

- The concept of fair trial is a constitutional 'imperative and is explicitly recognized as such in the specific provisions of the Constitution including Articles 14, 19, 21, 22 and 39A of the Constitution as well as the various provisions of the Code of Criminal Procedure 1973 (Cr.P.C)
- The right to fair trial is also explicitly recognized as a human right in terms of Article 14 of the International Covenant on Civil and Political Rights (ICCPR) which has been ratified by India and which now forms part of the statutory legal regime explicitly recognized as such under Section 2(1)(d) of the Protection of Human Rights Act, 1993.
- Violation of a right to fair trial is not only a violation of fundamental right under our Constitution but also violative of the internationally recognized human rights as spelt out in the ICCPR to which India is a party.
- Whenever a criminal goes unpunished, it is the society at large which suffers because the victims become demoralized and criminals encouraged. It therefore, becomes duty of the Court to use all its powers to unearth the truth and render justice so that the crime is punished.

²¹⁶ . The Telegraph, Calcutta, 1 August 2003

²¹⁷ . The Hindu, New Delhi, 9 August 2003

²¹⁸ . Indian Express, New Delhi, 3 July 2003.

· It is, therefore, imperative in the interests of justice for the Hon'ble Supreme Court, in exercise of its powers under Article 142 of the Constitution, to lay down guidelines and directions in relation to protection of witnesses and victims of crime in criminal trials which can be adhered to both by the prosecuting and law enforcement agencies as well as the subordinate judiciary. This is essential in order to enhance the efficacy of the criminal justice delivery system.

The Commission has also filed a separate application under Section 406 Cr.P.C. before the Supreme Court for transfer of four other serious cases, namely, the Godhra incident, Chamanpura (Gulburga society) incident, Naroda Patiya incident and the Sadarpura case in Mehsana district, for their trial outside the State of Gujarat.²¹⁹

The interim direction of the Supreme Court

On 8 August 2003, the Supreme Court issued notice to the Centre and the Gujarat Government on a petition from the National Human Rights Commission seeking retrial of the case outside Gujarat. The Court directed the Gujarat Government to furnish within two weeks the statement of the witnesses given to police before the trial court, the memo of the grounds of appeal filed by the State in the High Court and the names of the lawyers appearing for the State Government in the appeal. It directed the Government to provide protection to the witnesses and their families.

Further, the Gujarat Government was asked to inform the court of the steps it had taken to protect the victims and their family members and the action taken against those who had allegedly threatened the witnesses. Although Gujarat government filed a petition in Gujarat High Court as an afterthought after NHRC filed the petition before the Supreme Court, the Bench was categorical: "Though we cannot undermine our courts and the High Court in Gujarat, we would not allow the appeal to be "mere eyewash".²²⁰

While it is ultimately based on evidence that the Supreme Court will award its judgement. However, the threat to the witnesses even if trials are to be held outside of Gujarat²²¹ and the description of NHRC as "anti-Hindu" by spokesman of the ruling BJP spokesman, Mr Vijay Kumar Malhotra²²² need to be borne in mind. After all, it is the agencies of the same government that will conduct fresh inquiries, if so needed.

²¹⁹ . http://www.nhrc.nic.in/press_Jul_2003.htm#no1

²²⁰ . The Hindu, New Delhi, 9 August 2003.

²²¹ . Witnesses equally scared of deposing outside Gujarat, The Hindustan Times, New Delhi, 3 August 2003

²²² . The Kashmir Times, Jammu, 6 August 2003

VIII. Conclusions and recommendations

The government of India sought to impress upon the CRC Committee by the size of the report. It is an attempt to escape scrutiny. After all, scrutinising about 500 page report of the government of India and various alternate reports of NGOs is a daunting task by itself for the Committee members.

The Committee on the Rights of the Child in order to facilitate constructive dialogue should request the government of India to provide the following information:

- a list measures taken by each state government for implementation of the Juvenile Justice (Care and Protection) Act of 2000 including the number of juvenile courts, juvenile boards and homes in respective States;
- a list of the measures being taken by the Ministry of Human Resources Development to ensure that Juvenile Justice Act, 2000 is extended to the Jammu and Kashmir;
- a list of the States which have set up Special Courts under the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 and the number of courts in respective States;
- a list of the measures being taken to ensure that Special Courts are set up instead of the designating courts of sessions as Special Courts;
- statistics about the rate of conviction under the SCs/STs Prevention of Atrocities Act in the Special Courts or designated courts of sessions;
- information about the violation of right to life other than female infanticide;
- information on the denial of right to nationality to the Chakma and Hajong children of Arunachal Pradesh and implementation of the Supreme Court judgement (NHRC Vs State of Arunachal Pradesh) and Delhi High Court judgments;
- information about the number of children tortured in India;
- information about the ratification of the Convention Against Torture and its Optional Protocol;
- measures being taken to ban corporal punishment in schools;

- measures being taken to correct the factual errors and biases against minorities in the school text books and propagation of doctrine of superiority through school text books;
- measures being taken to improve access of the Dalit children to education;
- measures being taken to restore the school facilities for the Chakmas and Hajongs students of Arunachal Pradesh;
- number of juvenile arrested under the anti-terror laws and measures being taken to ensure that the Prevention of Terrorism Act complies with the Convention on the Rights of the Child;
- information about the status of the children caught in armed conflict situations including the number of children killed by the armed forces, armed opposition groups and vigilante groups and measures being taken to ensure ratification of the Optional Protocols to the CRC;
- information about the condition of the refugee children under the protection of the government of India;
- information about the condition of the refugee children under the care of the United Nations High Commissioner for Refugees including the right to work of the adult refugees;
- information about the deportation of the Chin refugees by the Young Mizo Association;
- information about the scale of humanitarian assistance provided to Kashmiri IDPs and other IDPs in various States of India;
- measures being taken to address the problems of the so-called criminal tribes of India;
- measures being taken to address the problems of the displaced indigenous peoples and their children including measures being taken to protect their cultural rights and identity;
- information about the number of children effected due to displacement due to increase in the height of the Narmada dam; and
- measures being taken for rehabilitation of the Gujarat riots and addressing the trauma of the children.