

**Universal Periodic Review
(13th session, 21 May - 1 June 2012)**

Contribution of UNESCO

INDIA

I. Background and framework

1. Human rights treaties which fall within the competence of UNESCO and international instruments adopted by UNESCO

A. Table

<i>Title</i>	<i>Date of ratification, accession or succession</i>	<i>Declarations /reservations</i>	<i>Recognition of specific competences of treaty bodies</i>	<i>Reference to the rights within UNESCO's fields of competence</i>
Convention against Discrimination in Education 1960	Not ratified	<i>Reservations to this Convention shall not be permitted</i>		Right to education
Convention on Technical and Vocational Education. 1989	Not ratified			Right to education
Convention concerning the Protection of the World Cultural and Natural Heritage 1972	14/11/1977			Right to take part in cultural life
Convention for the Safeguarding of the Intangible Cultural Heritage 2003	09/09/2005			Right to take part in cultural life
Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005	15/12/2006			Right to take part in cultural life

II. Promotion and protection of human rights on the ground

1. Right to education¹

A. Normative Framework

i. Constitutional framework

1. The 1949 Constitution of India, as last amended in 2006, enshrines the right to education in Article 21A, established through the Constitution (86th Amendment) Act 2002, enacted in December 2002. Constitutional bases of the right to education as a fundamental human right have been enunciated by the rulings of the Supreme Court of India. In a historic judgment *Mohini Jain v. State of Karnataka* (1993), the Supreme Court held that the right to education flows from the right to life and that it is a fundamental right under Article 21 of India's Constitution which states that "No person shall be deprived of his life or personal liberty". Therefore, *Article 21A* provides that "The State shall provide free and compulsory education to all children of the age of six to fourteen years in such manner as the State may, by law, determine." Other articles deal with the right to education: articles 28 (free and compulsory education, early childhood), religious instruction), 29 (non-discrimination), 30 (right of minorities), 41 (right to education of vulnerable peoples), 45, 51A (duty of parents), 350A (instruction in mother tongue).

ii. Legislative framework

2. In relation with the right to education, the following legal tools can be mentioned:

- a. Following the Constitutional amendment, a new legislation on Compulsory Free Primary Education for All Children has been initiated in India, in 2003. On 1 April 2010, the *Right of Children to Free and Compulsory Education Act, 2009* came into force. Apart from legalising the right to education, the act places the onus on governments and local authorities to provide schools and sets out standards and norms covering numbers of teachers, training and curricula. It includes a plan to train more than one million new teachers in the next five years and retrain existing teachers.

¹ Sources:

- Indian Constitution : http://india.gov.in/govt/documents/english/coi_part_full.pdf
- Right of Children to Free and Compulsory Education Act, 2009, http://planipolis.iiep.unesco.org/upload/India/India_Education_Act_2009.pdf
- Persons with disabilities (Equal opportunities protection of rights and full participation) Act 1995, <http://education.nic.in/disab1995.pdf>
- Central Universities Act, 2009, http://planipolis.iiep.unesco.org/upload/India/India_Central_universities_act_2009.pdf
- Eleventh Five Year Plan 2007-2012, Volume II on Social Sector, http://planningcommission.nic.in/plans/planrel/fiveyr/11th/11_v2/11th_vol2.pdf
- Policy on Distance Learning in Higher Education, http://planipolis.iiep.unesco.org/upload/India/India_Policy_distance_higher_education.pdf
- Action plan on the inclusion in education of children and youth with disabilities, <http://www.education.nic.in/INCLUSIVE.asp>
- EFA Global Monitoring Report 2011, <http://unesdoc.unesco.org/images/0019/001907/190743e.pdf>

- b. The *Persons with disabilities (Equal opportunities protection of rights and full participation) Act 1995* provides for education, and vocational training in Chapter V.
- c. The *Central Universities Act, 2009* aims to establish and incorporate universities for teaching and research in the various States and to provide for matters connected therewith or incidental thereto.

B. Policy measures

- 3. The *Eleventh Five Year Plan 2007-2012, Volume II on Social Sector* has a specific Chapter on Education.
- 4. In 2003, some Guidelines for implementation of the "National Programme for Education of Girls at Elementary Level, NPEGEL" as a component of the scheme of Sarva Shiksha Abhiyan SSA were established.
- 5. In 2005, an Action plan on the inclusion in education of children and youth with disabilities was established.
- 6. In 2010, a New Policy on Distance Learning in Higher Education was launched.

C. Cooperation

- 7. India did not report to UNESCO on the measures taken for the implementation of the 1960 Recommendation against Discrimination in Education within the framework of the seventh consultation of Member States (covering the period 2000-2005).
- 8. India did not report within the framework of the fourth consultation of Member States on the measures taken for the implementation of the *UNESCO's Recommendation concerning Education for International Understanding, Co-operation and Peace and Education relating to Human Rights and Fundamental Freedoms* (1974) (covering the period 2005-2008).

D. Achievements, best practices, challenges and constraints

- 9. Parents identified cost as a major concern. While primary education in India is now officially free, many schools continue to levy charges. Parents were often unclear about what they were paying for. In addition, parents were encouraged to give their children private tuition, which was widely considered affordable only to wealthier parents.
- 10. Government allocation mechanisms can play a key role in narrowing learning gaps. In India, per-pupil allocations from central government funds have been substantially increased to the districts with the worst education indicators. The formula targets districts that have poor school infrastructure, limited access to higher grades of primary school, large populations of disadvantaged children (particularly from scheduled castes) and wide gender disparities in enrolment. In 2008/2009, per-pupil allocations to such districts were nearly double those to the districts with the best indicators. The additional resources helped fund extra teachers and narrow gaps in infrastructure.

11. Social and cultural discrimination weighed heavily in India. Most teachers belonged to upper castes, and several expressed strong prejudice against Dalit and Adivasi children. Pupils were perceived as poor learners and their parents as violent, alcoholic and prone to gambling, with limited interest in their children's future. Such prejudices translated into practical discrimination, with Dalit and Adivasi children more likely to face corporal punishment — a factor widely cited by parents as a reason for withdrawing their children. Parents also had few ways to challenge discriminatory practices because their voice in parent-teacher associations and education committees was weak. Contrary to teacher perceptions, Dalit and Adivasi parents were widely convinced of the importance of sending their children to school. They recognized that the skills gained through education could lead to more secure and productive livelihoods. However, parents were also aware of the poor quality of education provided to their children, leading them to question the value of schooling.

12. In 2005, just 18% of India's schools were accessible to children with disabilities in terms of facilities such as ramps, appropriately designed classrooms and toilets, and transport. National education policies reflect growing awareness of the problems associated with disability. Measures introduced so far range from providing aids and appliances in schools to stipends for children with disabilities.

13. In India, Naxalite insurgent groups have systematically attacked schools to damage government infrastructure and instil fear in communities in Chhattisgarh state. In some cases, security forces have also been implicated in using school buildings. The National Commission for the Protection of Child Rights has identified the use of schools by security forces as contributing to their abandonment, and a high court ruling has called for the withdrawal of armed forces from schools.

2. Right to take part in cultural life

A. Normative Framework

i. Constitutional framework

14. The Constitution of India guarantees cultural rights of the citizens in the following terms: "Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same". The Constitution further provides that it shall be the duty of every citizen of India to value and preserve the rich heritage of India's composite culture.

15. The Cultural and Educational rights, given in Articles 29 and 30 of the Indian Constitution, are measures to protect the rights of cultural, linguistic and religious minorities, by enabling them to conserve their heritage and protecting them against discrimination. (Sources: Basu, Durga Das (2003). *Shorter Constitution of India (13th ed.)*. Nagpur: Wadhwa & Co. p. 1972. ISBN)

16. Article 29 grants any section of citizens having a distinct language, script culture of its own, and the right to conserve and develop the same, and thus safeguards the rights of minorities by preventing the State from imposing any external culture on them. (Sources: Basu, Durga Das (1993). *Introduction to the Constitution of India (15th ed.)* New Delhi: Prentice Hall of India. p. 475. ISBN 81-203-0839-5)

17. The federal structure of the Indian Constitution provides for the legislation both at the Union and the State level. Amendment acts of the Constitution of India in 1993 provide for the states to endow the local governments with powers and authority, “to enable them to function as institutions of self government”. Therefore, decisions regarding the conservation and management of heritage can be taken in consultation with local communities in consonance with the Constitution of India.

ii. Legislative framework

18. Most States have enacted laws for the protection and conservation of their cultural assets. The law that is most important for the conservation of the art and cultural heritage is ‘The Ancient Monuments and Archaeological Sites and Remains Act, 1958’.

19. There are numerous legislation acts that deal with the subject of “culture” as related to the UNESCO 1972, 2003 and 2005 Conventions and that are related to the following domains:

- a. Promotion and preservation of historical monuments, heritage sites
- b. Establishment of/support for cultural institutions
- c. Protection of intellectual property rights (copyright, patents, geographical indication)
- d. Conservation of indigenous traditional knowledge
- e. Tribes Cultural Rights
- f. Media and content monitoring

20. These legislations were enacted to preserve and protect the cultural wealth of the country both by the constituent States and Central Government.

B. Institutional framework

21. Several ministries and departments of the Government of India are concerned with Culture, among which the Ministry of Culture and the Ministry of Tribal Affairs. The Ministry of Culture is responsible for the protection, conservation and promotion of cultural heritage of India by supporting and sustaining cultural creativity and its multiple expressions, as a unifying factor within diversity. The wide functional spectrum of the ministry ranges from generating cultural awareness at the grassroots levels to promoting cultural exchanges at an international level. Tangible and intangible heritage are given importance. Tangible heritage includes the protection of monuments of national importance, archaeological sites, and the national and regional museums.

22. To fulfil its mission a wide range of services are provided by the Ministry through a large number of specialized and competent institutions and organizations throughout the country.

C. Policy measures

23. India ratified the Convention concerning the Protection of the World Cultural and Natural Heritage 1972 as early as 1977 but the Government did not take any action to adopt a suitable legislation as set forth under the Article 5 of the Convention. However, an amendment was adopted in 2010 to the existing Act [the Ancient Monuments and Archaeological Sites and Remains Act, 1958] as a measure towards safeguarding the monuments and their surroundings.

24. In order to strengthen activities in the field of performing arts, the Ministry of Culture has enunciated programmes and policies to safeguard and protect intangible cultural expressions and cultural diversity in order to meet the obligations arising from the Convention for the Safeguarding of the Intangible Cultural Heritage 2003 and the Convention on the Protection and Promotion of the Diversity of Cultural Expressions 2005. Indian authorities are planning to adopt a new “Scheme for Safeguarding and other Protective measures in the area of the Intangible Heritage and Cultural Diversity” with the involvement of communities, local government and the civil society, thereby demonstrating a will to ensure the wide participation of all the segments of the society in cultural life as per the principles of UNESCO’s conventions.

D. Cooperation

25. India actively participates in programmes and activities of regional organizations such as the South Asian Association for Regional Cooperation (SAARC), UN organizations, programmes, funds (including UNESCO) and other intergovernmental organizations (such as the International Centre for the Study of the Preservation and Restoration of Cultural Property - ICCROM), as well as with leading professional international associations active in the cultural field such as the International Council for Museums (ICOM), the International Council on Monuments and Sites (ICOMOS), the World Conservation Union (IUCN) and the World Monuments Fund.

E. Work with civil society

26. There is a very active civil society engaged in the cultural life of the country, which undertakes initiatives and activities in all facets of culture and that support the principles contained in the three major cultural conventions of 1972, 2003 and 2005. The civil society actors have helped develop international standards of practice in the field of preservation and conservation of heritage and play an instrumental role in influencing legislation and policy in the country.

F. Achievements, best practices, challenges and constraints

27. India is taking a very active part in the implementation of the Convention concerning the Protection of the World Cultural and Natural Heritage 1972 and the Convention for the Safeguarding of the Intangible Cultural Heritage 2003. India representatives served on the World Heritage Committee from 1985 to 1991, and 2001 to 2007, and served on the Intergovernmental Committee for the Safeguarding of Intangible Cultural Heritage in 2006 and 2010.

28. However, attention should be drawn to the following issues:

- a. The existing legislation is much focused on the monuments and sites, while there is no specific legislation that is directly translatable to the 2003 Intangible Heritage and 2005 Diversity of Cultural Expressions Conventions.
- b. With regard to community engagement, civil society organizations are far ahead of existing legislation and working effectively in areas covering the three major UNESCO cultural Conventions.
- c. In order for Indian citizens to fully participate in their cultural life, there is therefore a need to harmonize the institutional framework, update and coordinate legislation.

G. Capacity-building and technical assistance provided and/or recommended by UNESCO:

29. UNESCO supports a wide range of awareness raising activities and capacity building workshops in the country, paying a particular attention to involving communities and civil society actors so as to foster their participation in cultural life.

3. Freedom of opinion and expression

A. Achievements, best practices, challenges and constraints

i. Legislative framework

30. The Constitution provides for freedom of expression. India's media landscape is relatively free, with a wide variety of sources, and diversely owned by private and governmental entities representing different perspectives.

ii. Media self-regulatory system

31. Self-regulation in the form of a press council exists for print media. In 2009 the News Broadcasters' Association (NBA) issued a new set of self-regulatory guidelines to include areas such as crime, violence, and national security.

iii. Safety of journalists

32. The safety of journalists and media workers continues to be a problem in India. Between 2008-2011, UNESCO's Director General has publicly condemned the killings of eight media professionals who died carrying out their professional responsibilities. They include, newspaper journalists, Jyotirmoy Dey, Umesh Rajput, Vijay Pratap Singh, Hem Chandra Pandey; correspondent Vikas Ranjan, Jagajit Saikia; local TV cameraman, Javed Ahmed Mir and photojournalist, Ashok Sodhi. In addition, physical intimidation of media professionals is also widespread, especially in, rural areas or conflict regions.

B. Capacity-building and technical assistance provided and/or recommended by UNESCO

33. The training of journalists and media workers to raise professional standards and safety awareness could be strengthened.

III. Recommendations

1. Right to education

34. India should be encouraged to ratify UNESCO Convention against Discrimination in Education (1960) and report to UNESCO within the framework of the eighth consultation of Member States on the measures taken for the implementation of the Convention and the Recommendation against Discrimination in Education (covering the period 2006-2011).

2. Right to take part in cultural life

35. India should be encouraged to ensure that its domestic laws and practices are consistent with the provisions of UNESCO's three major Culture Conventions.

3. Freedom of opinion and expression

36. UNESCO recommends:

- a. The 1923 Official Secrets Act should be overhauled or amended so as to be brought into line with international standards
- b. Journalist safety should be strengthened through training and sensitization