

**UNIVERSAL PERIODIC REVIEW  
THIRD CYCLE- INDIA  
STAKEHOLDER SUBMISSION**

Joint submission<sup>1</sup>

1. This submission is the outcome of a civil society consultation convened by **Banglar Manabdhikar Suraksha Mancha** (MASUM) on 7-8 May 2016 for civil society organisations working in Eastern states of India to prepare the joint stakeholder's report to third cycle of Universal Periodic Review of India. Over 20 civil society organisations, community based organisations and grassroots movements from Bihar, Jharkhand, West Bengal and Odisha attended the consultation, and contributed to the report. Banglar Manabdhikar Suraksha Mancha (MASUM) selected to facilitate the submission.

PARTICIPANTS OF EASTERN INDIA CONSULTATION ON UPR

SL NO.	NAME	E-MAIL ID
1	BABLOO LOITONGBAM	<a href="mailto:babloo.loitongbam@gmail.com">babloo.loitongbam@gmail.com</a>
2	MARTIN MACWAN	<a href="mailto:martin.macwan@gmail.com">martin.macwan@gmail.com</a>
3	PUNYABRATA GUN	<a href="mailto:shramajibiswasthya@yahoo.co.in">shramajibiswasthya@yahoo.co.in</a>
4	P. M. ANTONY	<a href="mailto:pmantony@gmail.com">pmantony@gmail.com</a>
5	MONA	<a href="mailto:monaparvez@gmail.com">monaparvez@gmail.com</a>
6	NIVEDITA	<a href="mailto:niveditashakal@gmail.com">niveditashakal@gmail.com</a>
7	RUPESH	<a href="mailto:rupesh_righttofood@gmail.com">rupesh_righttofood@gmail.com</a>
8	NUTAN MISHRA	<a href="mailto:Nutan69@gmail.com">Nutan69@gmail.com</a>
9	ABDUL KALAM AZAD	<a href="mailto:a.k.azad028@gmail.com">a.k.azad028@gmail.com</a>
10	BAGHAMBAR PATTANAİK	<a href="mailto:baghambar.patnaik@gmail.com">baghambar.patnaik@gmail.com</a>
11	SUJATO BHADRA	<a href="mailto:sujatobhadra@gmail.com/subratanet@yahoo.co.in">sujatobhadra@gmail.com/subratanet@yahoo.co.in</a>
12	LENIN RAGHUVANSHI	<a href="mailto:lenin@pvchr.asia">lenin@pvchr.asia</a>
13	KUHU DAS	<a href="mailto:kuhu.awwd@gmail.com">kuhu.awwd@gmail.com</a>
14	SNIGDHA SANKAR	<a href="mailto:snigdhasankar7@gmail.com">snigdhasankar7@gmail.com</a>
15	MALAY SENGUPTA	<a href="mailto:senguptawaiting@yahoo.co.in">senguptawaiting@yahoo.co.in</a>
16	MD. SABIR KHAN	<a href="mailto:saffa687@gmail.com">saffa687@gmail.com</a>
17	NARENDRA MOHANTY	<a href="mailto:mcampaignodisha@gmail.com">mcampaignodisha@gmail.com</a>
18	BIPLAB DAS	<a href="mailto:span@cal.vsnl.in">span@cal.vsnl.in</a>
19	RAJAT ROY	<a href="mailto:royrajat@yahoo.com">royrajat@yahoo.com</a>
20	SASANKA DEV	<a href="mailto:sasankadev@gmail.com">sasankadev@gmail.com</a>
21	MOHIT RANADIP	<a href="mailto:mohitranadip1@gmail.com">mohitranadip1@gmail.com</a>
22	ASOKENDU SENGUPTA	<a href="mailto:wbsepcr@gmail.com">wbsepcr@gmail.com</a>
23	ANJAN BANDYOPADHYAY	<a href="mailto:anjanaccount@gmail.com">anjanaccount@gmail.com</a>
24	BIPLAB MUKHERJEE	<a href="mailto:contactbabua@gmail.com">contactbabua@gmail.com</a>
25	KIRITY ROY	<a href="mailto:kirityroy@gmail.com">kirityroy@gmail.com</a>
26	SUDIP CHAKRABORTY	<a href="mailto:sudip.chakraborty1988@gmail.com">sudip.chakraborty1988@gmail.com</a>

<sup>1</sup> This joint stakeholder submission is made by Banglar Manabdhikar Suraksha Mancha (MASUM), Human Rights Alert, Dalit Foundation, Sramajibi Swasthya Prakalpa Samity, Anti Ethical Forum, Jana Swasthya Samaj, Right to Food Campaign (Bihar), TISS, PVCHR, World Women on Disability, Anti-Eviction Forum (Jharkhand), SPAN (West Bengal), and DISHA.

Contact person:

Mr. Kirity Roy, Secretary, Banglar Manabdhikar Suraksha Mancha(MASUM) & National Convenor Programme Against Custodial Torture & Impunity(PACTI), Phone- +91-33-26220845,  
E. mail: [kirityroy@gmail.com](mailto:kirityroy@gmail.com)

**STAKEHOLDER SUBMISSION TO THE THIRD CYCLE OF INDIA'S UNIVERSAL PERIODIC REVIEW IMPUNITY, TORTURE, EXTRAJUDICIAL EXECUTION AND ENFORCED DISAPPEARANCE**

1. The impunity enjoyed by state officials, police and security forces remain one of the main impediments to realisation of human rights in India. Public servants, state officials and security forces enjoy legal immunity for actions undertaken in discharging their official duties.
2. In Indian legal system, public servants cannot be prosecuted in the courts without sanction from the government as envisaged under section 197 of Code of Criminal Procedure. As stated in the Section 6 of the Armed Forces Special Powers Act (AFSPA) no legal action can be brought against any member of the armed forces acting under the AFSPA, without the permission of the Central Government.
3. The government of India has ignored the concerns by international community at the widespread reports violations by and impunity of police and security forces acting under AFSPA. During the first cycle of UPR, the United Kingdom<sup>i</sup>, Canada<sup>ii</sup> and Germany<sup>iii</sup> raised concern regarding AFSPA. India did not accept any of the three recommendations it received in the second cycle of the UPR to review or repeal the AFSPA<sup>iv</sup>. It is, however, noteworthy that in May 2015 Indian state of Tripura has decided to repeal AFSPA. The Paramilitary forces the country also enjoys similar immunity through their own legal systems and judicial mechanisms, where civilians have no access, where judges and prosecutors are appointed by perpetrators.
4. Torture remains widespread in India. The National Human Rights Commission of India has repeatedly recommended to the Government of India to ratify the Convention against Torture and to criminalize the act of torture in the country. The Commission said "daily the Commission receives petitions alleging the use of torture, and even of deaths in custody as a result of the acts of those who are sworn to uphold the laws and the Constitution and to ensure the security of its citizens. Such a situation must end, through the united efforts of the Government..."<sup>v</sup>
5. The UN Human Rights Committee as early as 1997 expressed its concern about the widespread use of torture by the law enforcement agencies in India<sup>vi</sup>. Similar concerns were expressed by the Committee on Elimination of Racial Discrimination<sup>2</sup> in 2007 and the Committee on Economic Social and Cultural Rights<sup>3</sup> in 2008.
6. India has made no significant efforts towards the ratification of the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (CAT), despite accepting 17 recommendations to do so in the second cycle of the UPR. India signed the Convention on 14 October 1997.
7. A draft bill on torture has been under consideration by the government since 2010. It was tabled before the upper house of parliament but has not been tabled in Lok Sabha (lower house) for discussion and subsequent legislation; Indian and international human rights groups have observed that the anti- torture bill as inadequate and without any intention to end torture. The

---

<sup>2</sup> CERD/C/IND/CO/19

<sup>3</sup> E/C.12/IND/CO/5

Prevention of Torture Bill, 2008 also fails to comply with the CAT. The Bill fails to address compliance with the following obligations under the UNCAT<sup>vii</sup>. This raises serious questions about the government's commitment to end torture. Absence of a law on witness protection also remains a serious obstacle to ensuring accountability in cases of torture filed against security forces.

8. Increasing reports of extrajudicial killings by police and security forces continue to be a source of serious concern.
9. In December 2012, the National Human Rights Commission submitted affidavit before the Supreme Court "it had received 1,671 complaints of extrajudicial killings in the last five years", the latest reports on extra judicial killings are unavailable in public domain. But situation of reparation in cases of EJK became worse now.
10. Archaic Police Act, 1861 has been one of the main barriers to ending extrajudicial killings. Police Act of 1861 has not changed in 156 years. In a clear violation of the Article 141 of the Indian Constitution, the Indian government has failed to heed the apex court order to reform the police and Police Act. The Supreme Court of India in Writ Petition (civil) 310 of 1996 Prakash Singh & Others vs. Union of India and Others on 22 September, 2006 the government to "enact a new Police Act wholly insulating the police from any pressure whatsoever thereby placing in position an important measure for securing the rights of the citizens under the Constitution for the Rule of Law"<sup>4</sup>.
11. The National Human Rights Commission of India also issued guidelines to be followed in case of encounter deaths. However, these guidelines are remains ineffective and unimplemented. The NHRC has failed to ensure accountability in cases of authorities blatantly disregarding its guidelines and recommendations.

## **2. Recommendations to Government of India**

- 2.1.** Repeal Armed Forces (Special Powers) Act, 1958; Unlawful Activities (Prevention) Act, 1967; National Investigative Agency Act, 2008 and sections 46 (2) & 197 of Code of Criminal Procedure 1973.
- 2.2.** Ratify United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment by passing necessary domestic legislation.
- 2.3.** Sign and ratify Rome Statute of International Criminal Court, 2000 and implement subsequent legislation.
- 2.4.** Ratify, the International Convention for the Protection of All Persons from Enforced Disappearance.
- 2.5.** Repeal Article 22(4) of Constitution of India and abolish the act of arbitrary detention.
- 2.6.** Strictly adhere to declaration on law enforcement officials and Basic Principles on the Use of Fire and fire arms of UN and NHRC guidelines on death in police action and necessary changes in criminal jurisprudence.

- 2.7. Trials /investigations/ medical examinations/ post-mortem examinations in all custodial violence including death, fake encounters and torture in custody must be done by a special forensic agency under supervision of a judicial court/ commission in a fair manner.
- 2.8. HRIs must recommend for initiation of criminal proceedings against delinquent police and paramilitary personnel apart from justifiable financial compensation to the victims.
- 2.9. In Protection of Human Rights Act 1993 section 19 be deleted and should be adequately amended to increase NHRC's scope to enquire about the violence done by armed forces.
- 2.10. Section 30 of Protection of Human Rights Act 1993 be complied with and Human Rights Courts be established at all Sub-Division / Tehsil level with trained judges.
- 2.11. Sections 107 and 110 of Code of Criminal Procedure, 1973 must be adhered to by all police and magistrate court, so that none can be sent to prison.

## **CAPITAL PUNISHMENT**

3. Between 2001 and 2013, Session Courts in India sentenced 6,174 persons to death, i.e. 475 convicts were sentenced to death every year. Out of these, death sentence on 1,677 convicts was confirmed by the higher courts while death sentence on 4,497 convicts were commuted to life imprisonment.<sup>viii</sup>
4. Majority of those on death row in India are from marginalised, particularly religious minorities, scheduled castes, tribes and indigenous people. The prosecution and judiciary are insensitive. Prosecution is often accused of bias against minorities and disregarding scientific and forensic evidence. The apex court often cited judicial and prosecutorial misconduct in several death sentences it had overturned.

## **5. Recommendation to Government of India**

- 5.1. Ratify the Second Optional Protocols to the ICCPR aiming to the abolition of the death penalty.
- 5.2. Amend the Article 21 of Indian Constitution with a view to abolish the death penalty.

## **PRISON CONDITIONS**

6. The depiction of prisons in our reel world is that of a four walled, impossible to exit station. It is often a description of two contrasting facets: one showing that the convict is a dreaded criminal who is just too reluctant to change, and the other demonstrating lots of innocent masses caught in a crime pack situation by an archaic criminal justice system. All the prisons in Eastern states of India, West Bengal, Bihar, Odisha and Jharkhand are overcrowded. Beds, latrines, kitchens, wash rooms are unhygienic and dirty.
7. Muslims, dalits and tribals — three of the most vulnerable sections of Indian society — make up more than half of India's prison population, according to few confirmed sources.<sup>ix</sup> Although the proportion of these three communities in India adds up to about 39%, they make up to 53% of India's prison population. India had 4.2 lakh people in prison in 2013. Nearly 20% of them were Muslims although the share of Muslims in India's population is about 14.2% according to Census 2011. Dalits make up 22% of prisoners, almost one in four. Their proportion in population is about 17% according to Census 2011. While Tribal's makes up 11% of prisoners, their share in the

general population is 9%.According to experts; this disturbing trend is not because these people from these communities commit more crimes. Rather, it arises because they are economically and socially under-privileged, unable to fight costly cases or often even pay for bail. Some of these communities are targeted with trumped up cases. Nearly 60% of the arrests were either unnecessary or unjustified and that such unjustified police action accounted for 43.2% of the expenditure of the jails.<sup>x</sup>

8. Two of every three persons incarcerated in India have not yet been convicted of any crime, and Muslims make up the majority of those awaiting trial. Currently, there are more than 20 million cases pending in the Indian districts courts; two-thirds are criminal cases and one in 10 have been pending for more than 10 years.<sup>ix</sup> There is only one judge for every 73,000 people in India.

### **JAANKHALASH**

9. Number <sup>xi</sup> of prisoners, especially foreign nationals booked under the Foreigners Act 1946 are perishing in different jails and/ correctional homes for years in West Bengal and other Eastern states. Many of them either had been acquitted or served their sentences but still they are under detention. Those persons are under detention or in custody unlawfully as *Jan Khalas* and there is no bona fide effort from any corner towards the release and/or repatriation of those persons till date.

### **10. Recommendation to Government of India**

- 10.1. Frame a national prison policy in accordance with Mandela Rules (2015).
- 10.2. Promote equal access to justice for all, by reducing backlog and delays in the administrative sectors of cases in court and by providing adequate legal aid to the poor and marginalized.
- 10.3. Adopt a national policy on aging and sick prisoners in terms of release and rehabilitation. Specific policy and reconstruction of correctional homes should be sanctioned for prisoners with disability. Recognise the special status of political prisoners (persons arrested for political reasons) and stop treating them as criminals.
- 10.4. Allow NGOs/civil society groups/mental health activists to visit prisons and provide effective legal, social, psychological services to inmates.
- 10.5. Ensure investigating all cases of prison violence, including violence against women, by an independent institution or the judiciary. The government should end the practice incarcerating women with babies in regular jails.
- 10.6. The government should put in place measures and mechanisms to ensure judicial accountability and timely pronouncement of judgments. The government should ensure full implementation of the Article 39A of the Indian Constitution that obligates the State to promote justice on a basis of equal opportunity and follow Legal Services Authorities Act, 1987 to promote free legal services to the poor and indigent from the point of arrest.
- 10.7. Increase the number of courts and expedite the process of filling up judicial vacancies.
- 10.8. Ensure release on bail and parole and strengthen statutory prison oversight mechanisms.

**10.9.** India shall continue its decision vide office memorandum No. 14051/14/2011-F.VI of Ministry of Home Affairs (Foreigners Division) Government of India dated 1st May 2012. As series of such incidents of arrest and detention in jail of Bangladeshi women and minors under 14 and 14(c) of Foreigner's Act, who were trafficked and / or migrated for economic needs came to India without valid paper be looked into in humanitarian angle. It seems that the circular is not in operation in the state of West Bengal; even judiciary is not complying with the advisory.

## **BONDED LABOUR AND UNTOUCHABILITY**

**11.** A large proportion of labour in agriculture in Eastern states of Bihar, Orissa, West Bengal and Jharkhand are bonded labour. Bonded labour is rampant in brick kilns, stone quarries, beedi manufacturing, and construction. Child bonded labour are often used in the silk industry. A sizeable number of bonded labours are from the eastern parts of the country. The majority of the labours in bondage belong to the untouchable dalits of Hindu caste hierarchy. Similarly, migrant workers are particularly vulnerable to bondage labour. They are regularly exploited through dubious recruitment systems where labour contractors and intermediaries lure ill-informed workers from their home communities with advance payments and false promises of well-paid, decent work.

## **12. Recommendation to Government of India**

- 12.1.** Strengthen the implementation of the existing legal framework to abolish the practice of bonded labour especially the Article 23(1) of the Constitution, The Bonded Labour System (Abolition) Act 1976 and implement fully the direction of Supreme Court of India on bonded labour order dated 15 October 2012<sup>x</sup>
- 12.2.** To abolish all forms of slavery, forced labour and bonded labour implement UN Supplementary Convention on the Abolition of Slavery, the Slave Trade and Institutions and Practices Similar to Slavery (1956) for rehabilitation of bonded labourer.
- 12.3.** Ratify the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families; and enact domestic laws in compliance with the Convention to ensure the protection of the rights of migrant workers.
- 12.4.** Ban the practice of untouchability as stipulated in the Article 17 and the Schedule Caste/ Schedule Tribes (Prevention of Atrocities Act), 1989, which was introduced to combat persecution and discrimination against Dalits and Tribal (tribal) people.
- 12.5.** Enact necessary domestic legislation to ensure full implementation of International Convention on the Elimination of All Forms of Racial Discrimination (CERD).
- 12.6.** Amend the Bonded Labour System (Abolition) Act 1976 in accordance with the recommendation of the National Human Rights Commission.

## **SCHEDULED TRIBES IN INDIA**

**13.** Tribals (Indigenous Peoples of India) have historically rejected the caste-based *Varna* system of Hindu religion. They created a socio-cultural system contradictory and antidote to the rigidly stratified and *Varna*/caste system<sup>xi</sup>. However, since with the inevitably increasing interaction between Tribals and non-Tribals, the former have forcefully been incorporated into the caste-based Hindu society by aggressive actives of India's cultural nationalist forces along the line of a majoritarian fascist<sup>xii</sup> ideology under the insidious garb of propaganda like, "inclusive growth,"

“development with and for all.” These propagandists displace and dispossess Tribals of their land and livelihood resources protected under the Fifth Schedule of the Indian Constitution and several other legislations<sup>xiii</sup>. Moreover, while land-grabbing remains one of the most crucial issues, Tribal children have been denied of their Constitutional rights to learn primary school lessons in their own mother-language and their (local) history has been erased and denied to them<sup>xiv</sup>.

#### **14. Recommendations to Government of India**

- 14.1. Implement the United Nations Declaration on the Rights of Indigenous Peoples (UNDRIP) and declare India’s Tribals and Scheduled Tribes as India’s indigenous peoples and ensure all their rights accordance with the declaration. Further, these rights must be ensured by implementing the Constitutional and other significant legislations that have been enacted in their favour.
- 14.2. Implement Panchayat (Extension to Schedule Areas) Act, 2005 [PESA] in letter and spirit in predominantly Tribal or Scheduled Areas in the country.
- 14.3. Primary education in predominantly Tribal regions in India should be conducted through democratically elected local institutions of governance (the *Panchayatiraj* Institutions implemented under PESA Act 2005) in local mother tongue.
- 14.4. Ensure rights of indigenous communities to land, forest, water and natural resources. Ensure legal recognition of community right to traditional coastal communication on coast land. Protect and promote rights of indigenous peoples, including their right to determine their own developmental priorities.
- 14.5. Implement strongly the Forest Act and Forest Dwellers Act with a view to ensure tribal populace’s rights over their land.
- 14.6. End eviction of tribal communities from their traditional lands in the name of development. In case of eviction, terms of rehabilitation, relocation and compensation must be decided with the victims prior to eviction.

#### **DALIT IN INDIA**

15. Caste-based oppression and exploitation needs to be reconceptualised as the worst form of slavery. Dalits, formerly “untouchables” in India, all over the country are forced to do menial jobs such as manual scavenging despite the practice being abolished by law<sup>xv</sup>. But, in practice, Governmental bodies are still continuing to exploit Dalit people for manual scavenging In Indian Railways Dalit scavengers were employed to manage 43,000 passenger coaches, more than 8,000 stations, 172,000 toilets. With a dense network of tracks, Indian Railways is the biggest violator of the dignity of people condemned by caste to manual scavenging<sup>xvi</sup>. Furthermore, Dalit students in India face discrimination at most educational institutions in India<sup>xvii</sup>. Caste-based discrimination, oppression and exploitation violate basic Human Rights<sup>xviii</sup>. Systemic efforts to suppress, persecute and kill Dalits continue to be tolerated by the state in India.

#### **16. Recommendations to Government of India**

- 16.1. Declare caste as anti-human and illegal system and immediately include the dalits in the purview of Convention on Elimination of Racial Discrimination (CERD)
- 16.2. Collect and compile accurate statistical data on caste-based bonded labourers as per the Durban Declaration and Programme of Action.

#### **FOOD SECURITY AND POVERTY**

17. About three-fourth of India's population living in the rural area are subject to abject poverty, illiteracy, ill-health, unemployment, low quality of life and so on. Poverty and food insecurity are intrinsically linked. Poverty is currently the principle root cause of food insecurity in several households. Women and girl children often tend to be relatively more undernourished. Gender constitutes the most profound differentiating division. The International Food Policy Research Institute (IFPRI)'s 2008 Global Hunger Index says that with over 200 million people insecure about their daily bread, Indian scenario is 'alarming' in terms of hunger and malnutrition. The first ever Indian Hunger Index, released along with the Global Hunger Index, found that not a single state in India fell in the 'low hunger' or 'moderate hunger' categories. Madhya Pradesh had the most severe level of hunger in the country, followed by Jharkhand and Bihar. Punjab and Kerala scored the best on the Index. India ranks 66 among 88 countries in the hunger index<sup>xix</sup>.

## **18. Recommendation to Government of India**

18.1. Strengthen the implementation of the National Food Security Act 2013 and Public Distribution System (PDS) to provide food security to the most marginalised sections as well as make allocation of food grains for other welfare schemes at subsidized below-poverty-line (BPL) prices.

18.2. Strengthen the National Rural Health Mission to eliminate inequalities based on rural-urban divide, gender and child nutrition.

18.3. Continue to strengthen existing housing schemes such as Indira Awaas Yojana (IAY), Jawaharlal Nehru National Urban Renewal Mission (JNNURM), and Rajib Awas Yojana (RAY) to address housing shortage.

18.4. Ensure safe and sustainable access to drinking water facilities for rural households under National Rural Drinking water mission and continue its Total Sanitation Campaign (TSC) to assure sanitations facilities in rural areas.

18.5. Ensure 100 days of wage employment every year for rural poor by implementing of NREGA programme. Right to food and right to work be guaranteed as fundamental rights.

## **ENVIRONMENT**

19. Indigenous peoples in India are in a constant struggle for their rights to water, land and forests. The forest is an important source of food and livelihood for indigenous and tribal populations. However, indigenous peoples are increasingly being evicted from their traditional lands by national corporations and multinational corporations with the support of police and state administrations in the name of development and industrialization. The Forest Rights Act 2006, that guarantees certain rights of indigenous peoples common land and homestead land have become virtually ineffective.

20. The rapid growth of cities, expansion of industry and transportations has worsened pollution. India has ratified global environment conventions such as Convention on Biological Diversity (CBD) and the International Framework Convention on Climate Change (IFCCC). India has enacted environmental laws. However, the implementation of environmental laws is very weak due to poor enforcement mechanism and inadequate opportunities accountability and redress. Environmental legislation has now been relegated to a mere administrative formality.

## **21. Recommendation to Government of India**

**21.1.** Protect the rights of forest dwellers in accordance with the Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006.

**21.2.** India shall adopt specific provision relating to environmental protection that was previously incorporated under Article 48A (Directive Principle of State Policy) and Article 51-A (fundamental duty) and Article 246 (Seventh Schedule).

## **RIGHTS OF PERSONS WITH DISABILITY**

**22.** Human rights violations in the context of disability are prominent in Indian society. An estimated 70 million disabled Indians are treated as second-class citizens and are forced to confront segregation, discrimination, barriers and stereotypes. An entire range of disability issues -- such as the causes of disability, care, rehabilitation, empowerment, mainstreaming through education, employment, health care, and transportation – wait to be practically resolved.

**23.** “The Rights of Persons with Disabilities Act, 2012” has come into force to safeguard the right of persons with disabilities. The Act addresses a certain portion of the society instead of guaranteeing civil and political rights to wider section of the disabled people. To the delight of disability groups, India ratified the UN Convention on the Rights of Persons with Disabilities (Disability Convention) in October 2007. The Convention recognizes that persons with disability are right-holders instead of passive recipients of government schemes. There is a definite need to review the existing legislative framework in India to examine whether it adequately promotes the rights contained in the Convention.

## **24. Recommendation to Government of India**

**24.1.** Review the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act, 1995 to fully comply with the Convention on the Rights of the Persons with Disabilities.

## **RIGHTS OF WOMEN**

**25.** Physical, mental, emotional, and sexual violence against women is commonplace in Indian society. Women in the Northeast are affected by armed-conflict. Tribal and Dalit women face increased risk of violence and discrimination. Lack of legal protection and awareness continue to be main causes of rampant violence against women. Existing laws are either inadequate to ensure protection of women from violence and discrimination or are not properly implemented. Rights of women to ancestral property under the amendment of Hindu Succession Act in 2005 have not been properly implemented and women are deprived of their fair share in ancestral property. Reports of violence against women increased by 58.2% between 2010 and 2013, and 9.2% in between 2013 and 2014<sup>xx</sup>.

**26.** Indian families still prefer boys over girls as their first child. The Pre-Natal Diagnostic Technique (Prohibition of sex selection) Act, 1994 is weak in incentivizing the birth of girl child and encouraging families to educate them like boys. As a result, declining of sex ratio emerged as a matter of concern. The 2011 Census, indicated that only 914.23 girls were born for every 1,000 boys, compared with 927.31 for every 1,000 boys in the 2001 Census<sup>xxi</sup>.

**27.** The sense of security at the workplace will improve women's participation in work, reducing in their economic dependence and overall growth. But, ratio of male to female labour force participation rate in between 1990 to 2014 has reduced from 41% to 34% respectively<sup>xxii</sup>.

## **28. Recommendations**

**28.1.** Withdraw the reservation to the Article 16 (1) of the Convention on Elimination of All Forms of Discrimination against Women (CEDAW) in all matters relating to marriage and family relations and in particular same right to enter into marriage, same right freely to choose a spouse and to enter into marriage only with their free and full consent.

**28.2.** Ratify the optional protocol to CEDAW.

## **RIGHT OF THE CHILD AND CHILD LABOUR**

**29.** Article 21(A) of the Indian Constitution guarantees, the right to education. Sarva Shiksha Abhiyan (SSA) 2001, Right of Children to Free and Compulsory Education (RTE) Act, 2009 came into force and ensure access to primary education and provides special focus on education of girls. But in reality 60 million children (6-14 years of age) in India are not in school. Of those in schools, only 47 out of 100 children enrolled in class I reach class VIII. Children have no option but to stay away from schools due to poor socio-economic condition of their families, perpetuating the cycle of poverty. It is obvious that poverty compels many parents to put all focus on meeting basic survival priorities and education is not considered a priority.

**30.** Children are forced to work to support their families. Child labour is common in brick kilns, slaughterhouses, carpet weaving, zari and bidi units, mica or diamond cutting, handling e-waste, scavenging or as domestic help. UNICEF estimates that India has the highest number of child (children below the age of 14 years) labourers in the world. Notably, Constitution of India prohibits child labour in hazardous industries (but not in non-hazardous industries) as a fundamental right under Article 24. Similarly Child Labour (Prohibition and Regulation) Act, 1986 prohibits use of child labour. However, these legal provisions remain inadequate to eradicate child labour.

## **31. Recommendation to Government of India**

**31.1.** Ratify the ILO convention no 138 concerning minimum age of admission to employment, ILO convention no 182 concerning the Prohibition and Immediate Action of child labour (including sale and trafficking of children, any other types of forced labour such as using children in war and armed conflict, involvement of illegal activities especially production and trafficking of drugs, any work which could damage health safety and well-being of children and ban on employment of children under 14 years as domestic helps or at eateries).

**31.2.** Ensure all domestic laws on the rights of children are in compliance with the Convention on the Rights of the Child and its optional protocols.

**31.3.** Take steps to implement existing legal provisions such as the Article 21(A) of the Indian Constitution which makes education a fundamental right for every child between the ages of 6 and 14 years, as well as the Right of Children to Free and Compulsory Education Act, by progressively taking steps to ensure free education to all children.

## **HUMAN RIGHTS DEFENDERS**

Human rights defenders and members of their families are facing increasing threats, harassment, intimidation and other forms of physical and psychological attacks both online and offline by state and non-state actors. They are arbitrarily arrested or detained on fabricated cases or trumped up charges. Their offices are raided, and files and documents related to their work are stolen or confiscated. In extreme cases, they are tortured, disappeared or even killed. Despite the increasing number of complaints and cases of attacks filed with authorities, there has been very little or no action on the ground to formally charge, try and convict those responsible or to prevent future attacks. Domestic protection mechanisms are inadequate. The Protection of Human Rights Act 1993 that mandates

Human Rights Courts in every province has not been implemented. The National Human Rights Commission has one focal point, appointed from lower administrative staff, on human rights defenders.

## **32. Recommendation to Government of India**

**32.1.** Ensure the protection of human rights defenders in accordance with the “Declaration on the Right and Responsibility of Individuals, Groups and Organs of Society to Promote and Protect Universally Recognized Human Rights and Fundamental Freedoms” or “The Declaration on human rights defenders”.

**32.2.** As India is a federal state and the law and order is a provincial subject; the Government of India must develop a country wide comprehensive mechanism to deal with the issue.

**32.3.** To Set up functional Human Rights Courts in every district of country in accordance to section 30 of The Protection of Human Rights Act 1993 with appointment of a judge with knowledge of international human rights and humanitarian laws.

**32.4.** Appoint a focal point on HRDs at the NHRC from its members with a clear mandate and authority to address issues faced by HRDs, and this practice should be replicated in all human rights institutions in the country.

**32.5.** Plan and initiate a programme to sensitize all components and layers of Criminal Justice Administration to the work of human rights defenders.

---

i A/HRC/8/26, para 25

ii A/HRC/8/26, para 27

iii A/HRC/8/26, para 40

iv A/HRC/21/10, paras 138.35 (Switzerland), 138.44 (Slovakia) and 138.45 (France)

v [http://nhrc.nic.in/bib\\_torture.htm](http://nhrc.nic.in/bib_torture.htm)

vi CCPR/C/79/Add.81

vii <http://www.prsindia.org/uploads/media/Torture/prevention%20of%20torture%20bill%202010.pdf>

viii Annual Reports 2001 to 2013 of the National Crimes Record Bureau, Ministry of Home Affairs, Government of India

ix [http://www.newindianexpress.com/states/tamil\\_nadu/Most-Prisoners-in-India-Are-Muslims-BCs-NCRB/2015/10/03/article3060254.ece](http://www.newindianexpress.com/states/tamil_nadu/Most-Prisoners-in-India-Are-Muslims-BCs-NCRB/2015/10/03/article3060254.ece)

x <http://www.thehindu.com/news/national/two-thirds-of-prison-in-mates-in-india-are-under-trials/article6545617.ece>

xi <http://indianexpress.com/article/india/india-news-india/over-6000-foreigners-in-jail-most-of-them-are-bangladeshis/>

xii National Judicial Data Grid - [http://164.100.78.168/njdg\\_public/main.php](http://164.100.78.168/njdg_public/main.php)

xiii <http://supremecourtindia.nic.in/ottoday/3922.pdf>

xiv After having lived more than half a century with Tribals and have observed their socio-cultural practices very closely in Bastar district of Chattisgarh, Mr. Mahawar, a cultural rights activist, says, “Tribals don't believe in *chatur-varna* [the fourfold caste system] that is the basis of Hindu society. They lived with their native tradition, and for over five thousand years refused to get dominated by Hindus. Hence, they are not Hindus” [Mahawar, N. (2012) “I have a problem with the makeover of tribal culture,” *The Hindu*, 24 October]: <http://www.thehindu.com/opinion/interview/i-have-a-problem-with-the-makeover-of-tribal-culture/article4026265.ece>.

---

Saha, S.K. (1986) "The Historical Premise of India's Tribal Problem," *Journal of Contemporary Asia*, 16(3): 274-319:

<http://www.tandfonline.com/doi/abs/10.1080/00472338685390141?journalCode=rjoc20>

xv <http://www.outlookindia.com/website/story/welcome-to-fascist-nation-building-project/296671>

See Sundar, Nandini (2009) (ed.) *Legal Grounds: Natural Resources, Identity and the Law in Jharkhand*, New Delhi: Oxford University Press: Appendix by Sharan, R. and C. Upadhyaya "Laws Related to Land and Resource Rights in Jharkhand", pp. 217-228. Also see "Where do Tribals / Tribals stand in Indian law?"

<http://www.kractivist.org/wheredoTribalstribalsstandinindianlaw/>

xvi <http://www.thehindu.com/opinion/oped/in-doctrination-in-the-guise-of-education/article7045761.ece?css=print>

<http://www.kractivist.org/profharagopalsaffronisationofeducationandhistoryinindia/>

<http://www.catchnews.com/politicsnews/projectbharatiyakaranr8pointguidetosaffroniseeducation1442033693.html>

<http://www.unesco.org/new/en/internationalmother-language-day/>

xvii <http://www.tehelka.com/2016/02/dalitsstillstodieingaschambers/#.Vq9wTgtW1Mc.facebook>

xviii <http://infochangeindia.org/human-rights/struggle-for-human-dignity/the-railways-in-denial.html>

xix <http://www.thehindu.com/news/national/dalits-and-higher-education-delaying-scholarship-for-dalits-is-also-discrimination/article8146159.ece>

[www.frontline.in/.../exclusionary-practices-are-deeply-pervasive/article8183610.ece](http://www.frontline.in/.../exclusionary-practices-are-deeply-pervasive/article8183610.ece)

[www.frontline.in/cover-story/this-is-an-antidalit-government/article8182770.ece](http://www.frontline.in/cover-story/this-is-an-antidalit-government/article8182770.ece)

<http://www.jantakareporter.com/india/centre-swings-into-action-to-rescue-bajrang-dal-goon-who-be-at-paraded-muslim-man-on-street/34973>

<http://www.outlookindia.com/magazine/story/caste-as-gang-why-hindu-society-is-anti-social/296958>

<https://www.google.co.in/#q=93%25dalit+families+still+live+below+poverty+line%2C+says+survey>

<http://www.indiasists.com/mis-mission-2016-bastar-watch-isha-khandelwal-exposing-chhattisgarh-govts-dangerous-farce/>

xx A/HRC/31/56

xxi <http://blogs.wsj.com/indiarealtime/2015/10/14/see-india-climb-up-the-global-hunger-index>

<http://www.humanrights.asia/resources/books/endangered-humanity-hungry-faces-angry-river/report-of-the-independent-public-tribunal-inquiring-into-starvation-deaths-at-jalangi-in-the-district-of-murshidabad-in-the-state-of-west-bengal-india>

xxii <http://ncrb.nic.in/StatPublications/CII/CII2014/chapters/Chapter%205.pdf>

xxiii <http://lawquestinternational.com/alar-ming-sex-ratio-and-problem-female-foeticide-and-infanticide-india>

xxiv <http://data.worldbank.org/indicator/SL.TLF.CACT.FM.ZS?locations=IN>