

**INTERNATIONAL
CONVENTION
ON THE ELIMINATION
OF ALL FORMS OF
RACIAL DISCRIMINATION**



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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Nineteenth Session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION

Fifth periodic reports of States Parties due in 1978

Addendum

INDIA 1/

[5 March 1979]

1/ The fifth periodic report of India was due on 5 January 1978. For previous reports submitted by the Government of India and the summary records of meetings of the Committee at which such reports were considered, see:

- (1) Initial report - CERD/C/R.3/Add.3/Rev.1 and Add.39
(CERD/C/SR.33, 50, 51 and 56);
- (2) Second periodic report - CERD/C/R.30/Add.24 (CERD/C/SR.140-141);
- (3) Third periodic report - CERD/C/R.70/Add.29 (CERD/C/SR.235);
- (4) Fourth periodic report - CERD/C/R.90/Add.32 (CERD/C/SR.366-367).

Copies of the Report of the Commissioner for Scheduled Castes and Scheduled Tribes, Parts I and II (1975-1976 and 1976-1977), forwarded to the Secretariat by the Government of India together with its fifth periodic report will be made available to members of the Committee in the original language.

INTRODUCTION

1. India has a Federal Government with 22 constituent states and nine union territories including the Andaman and Nicobar Islands in the Bay of Bengal and Lakshadweep (the erstwhile Laccadive, Minicoy and Amindivi Islands) in the Arabian Sea. Fifteen languages are recognized in the constitution itself. In addition, a large number of dialects, sometimes with linguistic affinities cutting across religious communities, are spoken in the country.
2. India's population in mid-1976 was estimated at 609.5 millions. According to the census of 1971, out of a total population of 548.1 million there were 453.4 million Hindus, 61.4 million Muslims, 14.2 million Christians, 10.4 million Sikhs, 3.9 million Buddhists and 2.6 million Jains. Besides, there are other minority groups like Parsis, Jews, etc.
3. The Union of India is not identified with any religion. It is secular in character and makes no discrimination on grounds of religion, race, caste, creed or sex. There have been reform movements to eradicate caste-system and during the first half of the present century, Mahatma Gandhi enthused the nation with the ideal of complete abolition of untouchability. His ideals found a place in the Indian Constitution, the preamble of which lays down the objective, among other things, to secure to all its citizens liberty of thought, expression, belief, faith and worship, justice, social, economic and political and "equality of status and of opportunity" and also to promote among them all "fraternity assuring the dignity of the individual and the unity and integrity of the nation". Article 46 of the Constitution enjoins that the State shall promote with special care the educational and economic interests of weaker sections of the people, and in particular, of the Scheduled Castes and Scheduled Tribes, and shall protect them from social injustice and all forms of exploitation.
4. Instead of leaving it to Parliament or to State Legislatures to make the enforcement of disability arising out of untouchability a crime, the Constitution itself, in article 17, declares that "untouchability" is abolished and its practice in any form is forbidden. The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law. With a view to ensuring uniformity of legislation on the subject throughout the country, Parliament alone, and not the State Legislatures, has been empowered by Article 35 of the Constitution to make law for prescribing punishment for any offence envisaged by article 17.
5. In 1955 the Parliament enacted the Untouchability (Offences) Act, 1955 which extended to the whole of India and prescribed punishment for the practice of untouchability and for enforcement of any disability arising therefrom and for matters connected therewith. It was a culmination of a series of legislation and it repealed 21 enactments passed by State Legislatures in pre-Constitution years. In 1976 the Act was amended to plug loopholes and to make it more effective, and to make the penal provisions more stringent. The amended Act is now known as the Protection of Civil Rights Act, 1955.
6. The other articles in Indian Constitution embodying the ideal of an egalitarian society are articles 14, 15, 16, 25, 26, 28, 29 and 30. Extracts from the relevant provisions of the Constitution are given in Annex I. Text of Protection of Civil Rights Act, 1955 is given in Annex II.

Part I - Information on the legislative, judicial, administrative or other matters that have been adopted and that give effect to the following provisions of the convention.

(a) Condemnation of Racial Segregation and Apartheid (Article 3 of the Convention)

7. Well before India became independent, Mahatma Gandhi reacted strongly against policies of racial discrimination practised in South Africa and waged one of the most significant struggles in history - the non-violent resistance movement - for asserting human equality and dignity. Long before the Charter of the United Nations was framed, he led the non-violent movement to reaffirm faith in fundamental human rights, in the dignity and worth of the human person and in the equal rights of men and without distinction as to race, sex, language or religion.

8. The Government of India raised the question of treatment of Indians in South Africa at the second part of the first session of the United Nations in 1946. Subsequently, at the seventh session of the General Assembly in 1952, India, along with 12 other Member States of the United Nations, raised the general question of "race conflict in South Africa resulting from the policies of apartheid of the Government of the Union of South Africa". Since then India has always supported and generally co-sponsored resolutions condemning the racist policies of South Africa. At the thirty-second session of the General Assembly, India co-sponsored 11 of the 14 resolutions approved by the General Assembly on the problem of apartheid. India called for a mandatory embargo on supply of arms and related equipment to South Africa. The policy of Bantustans adopted by South Africa in order to separate its black population into independent African units was denounced as continuation of the apartheid policy. India refused to recognize such States.

9. At the World Conference for Action against Apartheid, held in pursuance of a United Nations resolution, in Lagos in August 1977, India reiterated its total commitment to fight against apartheid. In October 1977, India formally acceded to the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid. Implementing legislation has already been taken in hand.

10. India was the first country to take diplomatic and economic sanctions against the South African Government. In 1946 she recalled her High Commissioner in the Union of South Africa and banned trade with the country. In 1954 the Indian Mission was withdrawn. India has fully implemented United Nations resolutions on apartheid. The boycott of South Africa in all fields, including sports, has been maintained. India refused to play lawn tennis with South Africa in Davis Cup finals. India does not trade with South Africa at all even though it costs her millions of rupees in foreign exchange.

11. India continues to condemn the policy of apartheid. At the thirty-second session of the General Assembly, the Minister of External Affairs, Mr. Atal Bihari Vajpayee, stated - "There is no question that all forms of racialism must be eradicated, root and branch. Apartheid must go. Its continuance is a blot on humanity and grave reflection on the United Nations." At the thirty-third session of the General Assembly, Mr. Vajpayee declared - "Nothing is more degrading to human dignity than the practice of discrimination on the ground of race ... We must not let our reiteration of opposition to this racist policy become a mere ritual at annual General Assembly sessions. The international community cannot evade its responsibility for taking effective measures to liquidate the dehumanizing practice of apartheid."

- (b) Prohibition and elimination of racial discrimination, as enumerated in article 5, especially in the field of political, civil, economic, social and cultural rights and the right of access to any place or service intended for use by the general public

12. Article 14 of the Constitution lays down that the State shall not deny to any person equality before the law or equal protection of the laws. This article is a great protection against any form of unfair or unreasonable discrimination by any organ of the State. Apart from article 14, there are some other provisions also in the Constitution for the prevention of unfair discrimination and for guaranteeing equality of treatment. Article 15(1) prohibits the State from discriminating against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them. Article 16(1) declares that there shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State. Article 23 prohibits traffic in human beings as well as forced labour. Article 25 lays down that "all persons are equally entitled to freedom of conscience and the right freely to profess, practise and propagate religion". Article 26 gives to every religious denomination the right to establish and maintain institutions and to manage its own affairs in matters of religion. Article 28 provides that no religious instruction shall be provided in any educational institution wholly maintained out of State funds. Under Article 29(2), no citizen shall be denied admission into any educational institutions maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them. Article 30(1) confers on all minorities, whether based on religion or language, the right to establish and administer educational institutions of their choice and Article 30(2) provides that the State shall not, in granting aid to educational institutions, discriminate against any educational institution on the ground that it is under the management of a minority, whether based on religion or language.

13. The law in India makes no distinction, in respect of the following rights as between different citizens on racial or other grounds:

- (i) The right to leave any country including his own, and to return to his country.
- (ii) The right to marriage and choice of spouse. (Individuals are governed by their own personal laws which is generally the laws of the community to which they belong).
- (iii) The right to inherit.
- (iv) The right to just and favourable conditions of work; protection against unemployment, equal pay for equal work and just and favourable remuneration;
- (v) The right to housing, and
- (vi) The right to public health, medical care and social security and social services.

14. The right of access to any place or service intended for use by general public, such as transport, hotels, restaurants, cafés, theatre parks and Hindu religious institutions of public character is covered by Article 15(2) and 25(2)(b) respectively of the Constitution and Sections 3 to 7 of the Protection of Civil Rights Act, 1955.

(c) Assuring effective protection and remedies through competent national tribunal and other State Institutions in accordance with article 6 of the Convention

15. Prohibition of discrimination is set out in Part III of the Indian Constitution which contains fundamental rights enforceable in Courts of Law not only against all executive organs of the State but against the Parliament and State Legislatures as well. Article 12 of the Constitution defines the term "State" to include "the Government and Parliament of India and the Government and the Legislature of each State and all local or other authorities within the territory of India or order or control of Government of India". By judicial construction, the expression "State" has been held to include statutory bodies and statutory corporations such as insurance corporations, nationalized banks, airline corporations, electricity boards and others having the power to make binding rules and regulations. The practical effect of this liberal judicial interpretation is that Fundamental Rights can be claimed and enforced even against these bodies and corporations in respect of discriminating practices in the field of employment.

16. Article 32 which contains the fundamental right to constitutional remedies, provides for judicial review of legislation and executive action in respect of matters relating to fundamental rights. Any aggrieved person can move the Supreme Court and the High Courts in writ petitions for enforcement of fundamental rights, under Articles 32 and 226 of the Constitution respectively.

17. Under the Protection of Civil Rights Act, 1955, all Untouchability Offences are cognizable and since 1976 also non-compoundable and in cases where the minimum punishment does not exceed three months' imprisonment, these can be tried summarily. Moreover, Section 12 of the Act declares that where any act constituting an offence is committed in relation to a member of Scheduled Caste, "the Court shall presume, unless the contrary is proved that such act was committed". The accused has to prove that he has not committed an offence against the Act. It is for the prosecution to prove that he is guilty. This makes a deliberate departure from one of the normal legal principle that an accused is presumed to be innocent unless his guilt is proved by the prosecution. This has been justified as an extraordinary remedy for dealing with a peculiar and difficult problem in the country.

18. Another significant characteristic of the Protection of Civil Rights Act, 1955, is that public servants who wilfully show negligence in the investigation of any offence, under the Act, shall be deemed to have abetted an offence, and shall render themselves subject to punishment prescribed for such abetment. This provision was inserted in 1976 to ensure that public servants do not fail in their duty due to any traditional prejudice.

19. The amendment of 1976 also inserted a new Section 15(A) which lays down the duty of State Governments to ensure that the rights accruing from the abolition of "Untouchability" may be availed of by the concerned persons. The article requires State Governments to take measures including:

- (i) the provision of adequate facilities, including legal aid, to the persons subjected to any disability arising out of 'untouchability' to enable them to avail themselves of such rights;
- (ii) the appointment of officers for initiating or exercising supervision over prosecution for contravention of the provisions of this Act;
- (iii) the setting up of Special Courts for the trial of offences under this Act;

- (iv) the setting up of Committees at such appropriate levels as the State Government may think fit to assist the State Government in formulating or implementing such measures;
- (v) provision for a periodic survey of the working of provisions of this Act with a view to suggesting measures for the better implementation of the provisions of this Act;
- (vi) the identification of the areas where persons are under any disability arising out of 'untouchability' and adoption of such measures as would ensure the removal of such disability from such areas."

20. The Central Government has been asked to co-ordinate the measures and to place on the table of each House of the Parliament, every year, a report on measures taken by itself and the State Governments under the aforesaid provision.

21. The Government of India has suggested to the State Governments to issue instructions to the prosecuting agencies to give high priority to the cases under the Protection of Civil Rights Act, 1955, and to press for deterrent sentences to the culprits so that the people at large may be made aware of the legal consequences of their acts of discrimination. It has also been suggested that suitable institutional arrangements should be made at the district level, viz., in the office of the Superintendent of Police and the District Collector to register complaints of harassment and other grievances of Scheduled Castes and Scheduled Tribes and to monitor on a regular basis, the action taken on such complaints.

22. The responsibility for investigating all matters relating to the safeguards provided in the Constitution for Scheduled Castes and Scheduled Tribes is vested with a special officer appointed by the President. He is known as the Commissioner for Scheduled Castes and Scheduled Tribes. The Commissioner investigates all matters relating to the safeguards provided for the Scheduled Castes and Scheduled Tribes under the Constitution and reports to the President upon the working of these safeguards every year. The report is laid before both Houses of Parliament and all political parties take keen interest in the debate on this report. His latest (24th) report was laid down on the tables of the Lok Sabha and Rajya Sabha in May 1978.

23. However, considering the magnitude of the problem, it has been felt that instead of having a single officer reporting on the safeguards, it will inspire greater confidence if matters relating to the Scheduled Castes and Scheduled Tribes are entrusted to a Commission consisting of persons of eminent status. Accordingly, the Government have set up a Commission for the Scheduled Castes and Scheduled Tribes consisting of a Chairman and four members. The Government have since introduced the Constitution (46th Amendment) Bill, 1978, to give constitutional status to the Commission for Scheduled Castes and Scheduled Tribes and the Minorities Commission.

Part II - Information on the legislative, judicial, administrative or other measures that have been adopted and that give effect to the following provisions of the Convention.

(a) The undertaking "to engage in no act or practice of racial discrimination against person, groups of persons or institutions and to ensure that all public authorities and public institutions national and local shall act in conformity with this obligation (article 2.1 (a) of the Convention).

24. Clause (1) of Article 15 of the Constitution is meant to be a safeguard against discrimination by State which by definition in Article 12 and by judicial expansion of the meaning referred to in paragraph 15 above includes statutory bodies, corporations etc. While clause (1) of Article 15 imposes a prohibition against discrimination of the State, clause (2) extends the said prohibition to places of public resort even if owned by private persons. The courts in India have zealously protected the citizen's right to equality before law and the State has not been allowed to make any inroads on them except where it is so permitted by the Constitution (see paras. 50 to 53 below).

(b) The undertaking not to sponsor, defend, or support racial discrimination by any person or organization (article 2.1 (b) of the Convention).

25. The Government of India do not sponsor, defend or support racial discrimination either at national or at international level. Rather it is the policy and practice of the Government to condemn and curb such discrimination.

(c) The undertaking not to permit public authorities or public institutions, national or local, to promote or incite racial discrimination (article 4 (c) of the Convention).

26. Article 19 (2) of the Indian Constitution empowers the State to impose reasonable restrictions on the right to freedom of speech and expression on certain grounds including "public order" and "incitement to offence". The preaching of communal hatred or feeling of enmity between different sections of the community is punishable under sections 153A, 153B and 505 of the Indian Penal Code and under the Protection of Civil Rights Act, 1955. In *Virendra vs. State of Punjab* (AIR 1957 SC 896), the Supreme Court of India had ruled that reasonable preventive measures may also be taken for maintenance of communal harmony.