

INDIA

CCPR A/39/40 (1984)

239. The Committee considered the initial report of India (CCPR/C/10/Add.8) at its 493rd, 494th and 498th meetings held on 28 March and 30 March 1984 (SR.493, 494 and 498).

240. The report was introduced by the Attorney-General of India as representative of the State party who stressed the great importance his country had always attached to standard-setting in the field of human rights, calling the accession of India to the International Covenant on Civil and Political Rights an important landmark in this regard.

241. Recalling its size, population, history and traditions, including the caste system - initially analogous to occupational stratification which had been gradually perverted by introducing a hereditary element and social disabilities such as untouchability, he also referred to the crusade against the evils of that system. India's ancient traditions and cultures were already imbued with humanism and respect for the dignity of man and "non-violence".

242. He also referred to the struggle against colonialism and the trauma of the country's partition which accompanied its independence in 1947 and had strengthened the people's resolve to maintain the integrity and unity of their homeland. He then referred to India's Constitution of 1950 - inspired by the Universal Declaration of Human Rights - which enshrined wide-ranging fundamental rights including the right to equality, freedom and the right to constitutional remedies. He emphasized that the Constitution embodied all the principles and provisions of the Covenant long before the Covenant was adopted. The rule of law, parliamentary democracy and separation of powers among the legislature, the executive and the judiciary were among its main provisions.

243. Pointing out that the Supreme Court of India over the years had greatly liberalized the locus standi of individuals to institute legal proceedings, the representative of the State party explained that apart from individuals, voluntary organizations could institute proceedings before a court for the enforcement of the rights of a third party, individual or collective, and that the Supreme Court could initiate proceedings on its own on the basis of a letter or a press report, thus affording the poorest and most disadvantaged a possibility of asserting their rights directly before the highest court of the land. This Court had been remarkably active and considered that fundamental rights created positive obligations for the State to take measures ensuring the full exercise of those rights.

244. The representative further indicated that discrimination based on religion, race, caste, sex and place of birth was prohibited; that untouchability had been abolished by law. The State had also taken special measures to provide assistance to disadvantaged groups such as "scheduled castes" and "scheduled tribes". India had no State religion but it respected the right of all individuals and denominations to practice their faith freely.

245. The representative assured the Committee of India's sincere efforts to implement the provisions of the Covenant. Mass media, the press and voluntary organizations which had espoused

the cause of human rights were raising the awareness of Indians of their rights. In such a vast developing country, however, economic and social problems continued to exist, in spite of the efforts made to resolve them.

246. Members stated that the report of India was clear and well-written but noted that the information provided by the brief report was too vague and that the report did not sufficiently indicate the factors and difficulties affecting the implementation of the Covenant. One member observed in this connection that the guidelines of the Committee concerning the preparation of initial reports - which in the case of India had been followed to the letter - tended to induce States to report on laws and regulations only and not on the human rights situation itself. Another member pointed out that the Committee's general comments, which were intended to assist States parties in preparing their reports, should have been taken into account by India.

247. Regarding the legal status of the Covenant in India, members recalled that treaties were not self-executing in India and that implementing legislation was necessary. Information was requested as to whether the provisions of the Covenant could be invoked in courts in India for the purpose of interpreting the domestic law. Clarification was also sought on the extent to which provisions of the Covenant were incorporated in India's internal legislation.

248. Questions were asked on the amount of publicity given to the Covenant in India; whether it had been printed in the official Gazette, what other measures had been taken to publicize it, in which languages it was available; whether the report of India had been made available to the public and whether the proceedings before the Committee would be publicized.

249. On the subject of remedies, it was observed that the relevant information in the report was succinct but not helpful since it provided general principles, but not hard facts and specific details needed if the Committee was to perform its task. Information needed in this respect was along the following lines; what did remedies mean to the common man; how was access to courts possible for peasants in remote areas and what other remedies were available to them; had the question of setting up an Ombudsman arisen; and did procedural safeguards exist for protecting the rights of prisoners.

250. Various questions concerning sexual equality (art..3) are raised (see paras. 254, 257, 265 and 266).

251. With regard to article 4 of the Covenant, it was questioned whether the special powers provided for in the Constitution for the re-establishment of public order were in conformity with the Covenant since they seemed to be unrestricted.

252. As regards article 6 of the Covenant, it was noted that Indian criminal law provided for the death penalty for serious crimes and information was requested on how frequently the death penalty had been imposed in India and whether it was intended to abolish it in the future.

253. Members further inquired whether, in view of the high infant mortality in the rural areas which was twice as high as in the cities, the Government would extend the provisions of medical care also to rural areas.

254. Noting that the Dowry Prohibition Act of 1961 had abolished dowries and prescribed punishments for perpetuating the practice, it was asked what other action had been taken to solve the continuing problem involving the immolation or self-immolation, particularly of young Muslim women who were unable to pay the required dowry. Concern was expressed about legislation promulgated in some disturbed regions of the country which exempted the police from prosecution in cases where fire-arms resulting in death were used. It was asked whether investigation had been conducted in such cases and what regulations and training were provided to police in the use of fire-arms.

255. With regard to articles 7 and 10 of the Covenant, information was sought on the procedures available to prisoners to follow up complaints against abuses committed by the police and security forces and regarding any provision allowing persons independent of the prison administration to inspect prisons or psychiatric establishments. More detailed information was sought, on the prison system, the means used for the social rehabilitation of prisoners and the treatment of young offenders.

256. Regarding article 8, it was noted that although Indian legislation contained many provisions prohibiting forced labour, such practices as bonded labour, to which the report made no reference, were deep-rooted. Members of the Committee therefore wished to be informed about the extent of this problem in certain regions of India and of action taken to solve it.

257. Referring to articles 9 and 14, concern was expressed that in acceding to the Covenant India had appended a declaration stating that there was no enforceable right to compensation for unlawful arrest. Members also questioned the constitutional provisions on preventive detention which lacked appropriate guarantees for the victims, as well as the long periods of detention preceding trial and pending the exhaustion of applicable remedies. It was also asked why trials against women could be conducted in camera. Noting that destitute women could obtain free legal aid and advice the question was raised why only women enjoyed this right and whether the Constitution actually recognized equality between men and women.

258. Recognizing that the independence of the judiciary was generally well established in India, a member referred to recent cases in which judges had been transferred from one part of the country to another purportedly as a punitive action and requested information in this regard.

259. With respect to article 11, the report stated that in exceptional cases civil arrest was possible; members asked what these exceptions were and to what extent they affected the implementation of article 11.

260. Regarding article 12, the report stated that “reasonable restrictions” could be imposed on the right of freedom of movement for the protection of “scheduled tribes”; members inquired what the meaning of “reasonable restrictions” was and what the reason was for imposing them.

261. As to articles 16 and 26, information was sought about the scope of the special treatment given to certain well-defined groups such as the “scheduled tribes” and the question was asked whether this treatment did not amount to discrimination.

262. Regarding article 19, members noted that freedom of the press was vigorously defended in India but asked to know, given the size of the population, how widely that specific right was implemented. It was further pointed out that the report enumerated exceptions to the right of freedom of expression other than those of article 19 of the Covenant. Clarification was sought in this connection as to how restrictions on freedom of expression could safeguard the sovereignty and integrity of the State, as mentioned in the report.

263. In the same connection, clarification was sought about the statement contained in India's report that "freedom of expression" could be limited in order to maintain friendly relations with foreign States.

264. Referring to confrontations which had occurred in India between various religious groups, a member noted that the report made no mention of that fact and asked whether efforts were made by the Government to prevent such confrontations and whether religious tolerance was taught to school children.

265. Regarding article 26, in connection with article 2, paragraphs 2 and 3, of the Covenant, it was pointed out that the exercise of basic human rights by all citizens on an equal footing was ensured, inter alia, by the possibility of eliminating privileges in the field of education. Information was requested about India's efforts to guarantee education for all. In addition, clarification was sought on the following expressions used in the report: "equality before the law" and "equal protection of the law". Questions were also raised about the status of women; how the legislative and institutional guarantees on the equality of the sexes were applied in practice; what the Government had done to ensure genuine equality since there were deep-seated cultural traditions and religious beliefs which had tremendous influence with regard to the status of women and family law.

266. Interest was expressed in the foregoing connection in knowing how many girls received a full education and whether they earned the same pay as men when entering the labour market. Additional details were also requested about any special legislation in favour of women adopted by individual States.

267. Regarding article 27, the statement of India that the concept of minorities did not apply to it evoked surprise in view of India's many different linguistic groups, particularly the "scheduled tribes" whose very existence implied that there were ethnic groups and minorities. The Government of India was requested to supply further information on this point.

268. In his reply the representative of the State party, referring to the status of the Covenant under Indian law, explained that according to a recent ruling of the Supreme Court, rules of international law must be incorporated into the national law, even without legislation, provided they do not conflict with acts of Parliament. When they did conflict, the sovereignty and integrity of the Republic and the supremacy of the constituted legislatures in making the laws could not be subjected to external rules. He also stressed that in a number of cases articles of the Covenant had been invoked directly before the Indian courts and that the Supreme Court in one such case had held that an article of the Covenant was comprehended in several different articles of the Indian Constitution. The adoption by the Supreme Court of the doctrine of incorporation also covered states of the Union so that the Covenant could be implemented throughout the entire country provided there was no

conflict with the domestic law. However, Parliament retained the ultimate jurisdiction over international law, including the Covenant. As regards due publicity for the Covenant, the Committee was assured that every lawyer in India was aware of it.

269. Referring to questions about India's declaration with regard to article 1 of the Covenant, the representative explained that the declaration reflected India's understanding that in keeping with the principles of international law concerning friendly relations and co-operation among States in accordance with the Charter of the United Nations, the right to self-determination in the international context applied only to dependent Territories and peoples. He did not appreciate the relevance of questions concerning certain component parts of the Union.

270. Referring to a question raised concerning the safeguards for the rights which under article 4 of the Covenant could not be derogated from, the representative observed that under the Constitution the President was not empowered during an emergency situation to suspend articles 20 and 21 of the Constitution which covered rights equivalent to those mentioned in article 4, paragraph 2, of the Covenant. The Preventive Detention Act was not to be confused with the declaration of a public emergency threatening the life of the nation.

271. Regarding articles 7 and 10 of the Covenant, the representative stated that article 20 of the Indian Constitution prohibited torture and he added that in general the philosophy of the Indian legal system was to emphasize reformation rather than punishment. Under the Juvenile Offenders Act first offenders were separated from habitual criminals and only the more serious offenders were sent to correctional institutions.

272. On the issue of bonded or forced labour under article 8, the representative recognized that despite legislation enacted since 1975 to combat forced labour and despite encouraging practical results, e.g. that more than 160,000 bonded workers had been identified and freed by February 1983, many such cases still existed in the rural areas of the country. The problem of eradicating debt bondage which constituted the most frequent kind of forced labour was to be tackled by solving rural unemployment and the Government had developed a specific programme in this regard.

273. The removal of persons who were a menace to public safety in a locality was temporary and was a "reasonable restriction" on such persons' rights within the meaning of the Constitution, controlled by the courts.

274. To questions raised on differences in rights between aliens and Indians and on India's reservation to article 13, the representative replied that there was no discrimination in the enjoyment of rights related to life, liberty and remedies; however, aliens did not have political rights and the reservation applied specifically to laws relating to aliens on such issues as registrations, passports and the issues of entry, stay and movement in India.

275. As to the questions posed concerning remedies and their effectiveness in the protection of fundamental rights, the representative ensured the Committee that violations of human rights, even in the most remote areas, could be brought before the Supreme Court or the high courts by sending a postcard or entrusting a third person with the submission of the complaint. Human rights cases had priority before the courts so that remedies for the protection of human rights were most effective

in India.

276. Responding to questions regarding the transfer of judges by the Executive, the representative stressed that such transfer never took place without previous consultation with the Chief Justice and the practice had been found by the Supreme Court not to affect the independence of the judiciary.

277. Referring to questions raised on the lack of enforceable compensation in the case of unlawful arrest noted in the report, the representative confirmed that the Supreme Court recently in fact had ordered compensation if warranted, and he further stressed that in addition the Preventive Detention Act and the Constitution provided many safeguards against unlawful detention, even before the adoption of the 44th amendment to which some speakers had referred.

278. Regarding compliance with article 6, the representative observed that the right to life was scrupulously respected in India and many safeguards existed against its denial. The death penalty could be imposed only for six types of serious offences. He added that for each sentence special reasons had to be recorded and recourse to the Government or President for remission was possible. As an illustration, out of 17,627 prosecutions for murder in 1977, only nine had resulted in executions. In 1980, there had been only two executions. The abolition of the death penalty was subject to a lively discussion in India.

279. Answering questions on the possibility of excessive use of arms for law enforcement, he stated that even during disturbances the forces of law and order were empowered to make only "proper" use of their weapons.

280. Infant mortality rates, according to the representative of the State party, had declined between 1978 and 1981 and life expectancy was rising steadily. Family planning was voluntary and abortion allowed when termination of pregnancy was desirable.

281. The rights of women, although guaranteed in the Constitution, in special legislation such as the Maternity Benefits Act of 1961, the Equal Remuneration Act of 1977 and the Marriage Law Amendment Act, were still violently opposed by traditionalists. Several government authorities were studying the problem and making recommendations. Similarly the dowry system, although prohibited in the Dowry Prohibition Act, the Penal Code, the Code of Criminal Procedure and the Evidence Act, still existed since established attitudes of a whole nation could not be easily changed although this was the Government's aim.

282. Replying to questions on the education of young children, particularly girls, the representative referred to five-year plans and to different schemes for drawing girls into school, which had resulted within a short time in the enrolment of 24 million girls from classes 1 to 5.

283. Commenting on the reference made by members to minorities in India, the representative insisted that ethnic minorities did not exist in India, since the country had no ethnic majority either; all the different tribes in India were not racial categories but had different religious, linguistic and cultural backgrounds.

284. Answering the question "what the equality clause in the Indian Constitution meant when it

referred to equality before and equal protection of the laws”, the representative explained that in the first place, it meant that laws must be made equal so that there was equality before the law. But since that in itself was not enough, it also meant that there must be equality in the application of those laws so that there was equal protection of the laws.

285. He stated that it was not against the principle of equality to provide special treatment to women and scheduled castes and tribes. Such provisions were designed to eradicate inequality so that the disadvantaged could compete in society on an equal footing. The Supreme Court had ruled that to treat unequals as equals was a violation of the equality clause of the Constitution. He explained the legal and social situation of scheduled castes and tribes, who constituted 22.5 per cent of the total population in 1981, and described the various measures taken to promote and protect their interests.

286. In conclusion, the representative of the State party announced that any gaps in the answers he had provided would be filled in by the Government in its next report.

CCPR A/46/40 (1991)

258. The Committee considered the second periodic report of India (CCPR/C/37/Add.13) at its 1039th to 1042nd meetings, on 26 and 27 March 1991 (see CCPR/C/SR.1039-1042).

259. The report was introduced by the representative of the State party, who explained that India was a secular and democratic republic where freedom of thought, expression, belief, faith and worship were guaranteed to all citizens. The Constitution provided for parliamentary democracy with a division of powers among the legislature, the executive and the judiciary and established a union of states within a federal structure. Since the submission of India's initial report, the new State of Mizoram had come into existence, the former Union Territory of Arunachal Pradesh had been granted statehood, Goa, had become a full-fledged State and Daman and Diu had been retained as a union territory. The latest general elections to the Ninth Lok Sabha had been held in November 1989.

260. The Supreme Court of India and the High Courts in the individual States ensured the effective implementation of human rights through a liberalized review of administrative action. Such liberalization had led to the growth of public interest litigation and the seizure of court jurisdiction in such matters, even on the basis of postcards or telegrams received from individuals or of stories or reports published in magazines or newspapers, and the provision of compulsory legal aid to the needy. The Indian judiciary had also made an important contribution to the safeguarding of other major areas of human rights, including the right to life and personal liberty, freedom of expression and speech and the protection of minorities. The Supreme Court had indicated that the death penalty should be used as an exception in extremely rare cases and even then only as a deterrent.

Constitutional and legal framework within which the Covenant is implemented

261. With regard to that issue, members of the Committee wished to receive clarification of the status of the Covenant within the Indian legal system. They asked, in particular, how contradictions between domestic legislation and the Covenant were resolved and whether there had been any cases during the period under review where the provisions of the Covenant had been directly invoked before the courts or referred to in court decisions or where a law had been rejected by a court on the ground that it was contrary to the Covenant. They also wished to know what further measures had been taken since the consideration of the initial report to disseminate information on the rights recognized in the Covenant, particularly among the various minority communities and law enforcement officers, especially those in the police and the army; and what factors and difficulties, if any, affected the implementation of the Covenant. In the latter regard, they inquired about the impact of India's large population and of its culture and traditions on the implementation of human rights contained in the Covenant, and about measures that had been taken to resolve conflicts that had led to violence in the past.

262. In addition, members of the Committee asked whether the Supreme Court was empowered to act in first instance on human rights violations routinely, or only in certain cases; what the scope and main features of epistolary jurisdiction were, particularly in the light of the large numbers of people who were illiterate, and what had prompted that jurisdiction's establishment. Information was also

sought as to whether the Government intended to accede to the Optional Protocol to the Covenant, enabling the Committee to receive and consider communications from individuals. It was further asked whether the Government was giving any thought to withdrawing some of its reservations to the Covenant, which amounted to restrictions with respect to a number of articles and the possibility of whole sections of the Covenant not being applied. Clarification was requested, in particular, on India's reservation to Article 1 of the Covenant.

263. In his reply, the representative of the State party explained that in his country the rules of international law were incorporated into national law and considered to be part of it unless they were in conflict with an Act of Parliament. Article 51 of the Constitution, which provided that the State should endeavour to foster respect for international law and treaty obligations in the dealings of organized peoples with one another, was a directive principle of State policy, providing guidance for the executive and the legislature, but was not enforceable in the courts. No rights existed in India other than those that were guaranteed in the Constitution and, consequently, a citizen could claim that his rights had been violated only on the basis of a particular law, not on the basis of a provision of the Covenant. However, when a court examined challenges on the basis of a right guaranteed by the Constitution but restricted or denied by an ambiguous law, the court could overrule the law and interpret the right in question as including the full guarantees under the Covenant. The Supreme Court of India had observed that, in the event of doubt, the national rule was to be interpreted in accordance with the international obligations of the State. Since the rights included in the Covenant were reflected in the Indian Constitution and other laws, the question of contradictions between Indian legislation and other laws was purely hypothetical.

264. Referring to remedies available to individuals, he emphasized that any citizen was entitled to appeal directly to the Supreme Court in order to , enforce his fundamental rights. In fact, proceedings could be initiated on the basis of an anonymous telephone call or a postcard to the Supreme Court. Where a large group of persons could not afford to bring an action, any person could file a litigation on their behalf under the system of public interest litigation and, under article 141 of the Constitution, any decision on such matter became binding on all courts in the nation.

265. With regard to the dissemination of information on the rights recognized in the Covenant, the representative of the State party explained that citizens of India were well acquainted with the basic human rights and fundamental freedoms embodied in it as a result of the efforts of the Government and its information agencies, and of radio and television programmes in all the country's languages. The Covenant, and other international instruments on human rights, had been translated into several Indian languages, and human rights, in the broadest sense, formed part of the curriculum and syllabus for children in school.

266. Replying to questions on the scope of India's reservation to article 1 of the Covenant, the representative stressed that territorial integrity and sovereignty had to be the basis of the right to self-determination. The term "self-determination" did not apply to citizens within Indian territory, but rather only to those living outside the territory of India under foreign domination.

State of emergency

267. With regard to that issue, members of the Committee wished to know whether the amendments to article 359 of the Constitution made it permissible in the State of Punjab to derogate from the right to life and the prohibition against torture, as well as from the other non-derogable rights mentioned in article 4, paragraph 2, of the Covenant and, if so, whether the Government of India planned to adopt legislation to make its domestic legal regime in this regard consistent with the Covenant; and what safeguards and effective remedies were available to individuals during a state of emergency.

268. In addition, further information was sought regarding a series of laws that had been passed in India relating to terrorism, notably the Armed Forces (Special Powers) Act, the National Security (Amendment) Act, and the Terrorist and Disruptive Activities (Prevention) Act. It was, in particular, inquired to what extent those Acts were consistent with provisions of the Covenant relating to the physical integrity of the person and the obligation to bring a person to trial with the least possible delay and, more generally, to provisions relating to preventive detention and article 4 of the Covenant; whether the authorization of the use of force even to the causing of death in accordance with those Acts was compatible with article 4, paragraph 2, and article 6 of the Covenant; why those acts had not been proclaimed as emergency legislation and notified as derogations from the Covenant; how an Indian citizen could avail himself before the courts of the rights provided for under article 4 of the Covenant; to what extent the commitment of the Government of India to the protection of human rights had been affected by the chronic instability in the regional situation mentioned in the report; and what measures had been taken to overcome the situations which had occasioned violence in the past and to ensure that legislation was effective in preserving respect for fundamental human rights.

269. In his reply, the representative of the State party said that the amendment providing for the suspension of article 21 of the Constitution referring to the right to life had been superseded and that even during a public emergency an individual enjoyed all the safeguards and remedies that were available at other times. Any suspension of other rights required presidential action and the approval of the legislature. In view of that procedure, as well as the relevant constitutional provisions, there was no possibility of indefinite suspension of power. Any legislation adopted in an emergency which was in conflict with the fundamental rights of the citizen would be struck down when the state of emergency was terminated.

270. Responding to other questions, the representative said that article 6 of the Covenant did not provide for an absolute prohibition on the taking of life, but only on the taking of life "arbitrarily". Section 4 of the Armed Forces (Special Powers) Act did not give army officers the right to fire upon civilians "arbitrarily", but only in extraordinary situations and under specific conditions. Moreover, the application of the Act in the absence of a national emergency was not a violation of article 4 of the Covenant because it was possible for the Government to declare an emergency situation in individual disturbed areas. The validity of the Armed Forces (Special Powers) Act had been challenged in the Assam courts and upheld by the New Delhi High Court. Furthermore, when acceding to the Covenant, India had expressed the clear reservation that it did so only subject to the provisions of articles 22, 23 and 24 of its Constitution, which permitted preventive detention. The National Security (Amendment) Act authorized preventive detention where a threat existed to the defence or security of India. In view of the careful scrutiny of such cases by the Supreme Court, there was no doubt that Indian legislation did not contravene article 4 of the Covenant.

271. Referring to article 355 of the Constitution, the representative said that the Indian Government had reason to believe that the agitation for secession in certain border states was being aided and abetted by foreign elements infiltrating into Indian territory. Following reports from those states, stringent measures had become necessary in order to protect innocent people from being killed by terrorists.

Non-discrimination and equality of the sexes

272. With reference to that issue, members of the Committee wished to receive information on the effectiveness of the special provisions designed to promote the advancement of “any socially and educationally backward classes of citizens or the scheduled castes and the scheduled tribes”; on the participation of members of these groups and of women in the political and economic life of the country, including the percentage of government and public sector employment at present reserved for such groups; on whether the classification of “backwardness” was solely made on the basis of caste; on how membership in scheduled castes and scheduled tribes was determined in individual cases; and in which respects, other than in the exercise of political rights, the rights of aliens were restricted as compared with those of citizens.

273. In addition, members wished to know whether any measures had been taken to combat the tradition according to which abortion of female foetuses was promoted in order to encourage families to have male children; how successful the amendment to the Equal Remuneration Act had been; and whether there was any remedy available for violations of the provisions of that Act.

274. In his reply, the representative of the State party explained that according to the 1981 census, about 105 million Indians were members of scheduled castes, while 54 million were members of scheduled tribes. The Government was required by the Constitution to reserve a certain number of posts and a certain number of seats in Parliament and in the state legislatures for members of scheduled castes and scheduled tribes. The Constitution also provided that the claims of members of scheduled castes or scheduled tribes should be taken into consideration in the appointment process for posts and services in connection with national or state affairs. Furthermore, a series of five-year plans for the advancement of “backward” classes was a priority element of national policy. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act had been enacted following the receipt of reports of atrocities committed against such persons.

275. There had been a progressive increase in the participation of women in India’s economic and political life. Women represented 11.5 per cent of the work force in the public sector and 18 per cent of the work force in the private sector. Women were legally entitled to take qualifying examinations for posts in the top echelons of public administration, but relatively few women chose to take the examinations. Although there were no legal obstacles to the participation of women in politics, no seats were specifically reserved for them. The Equal Remuneration Act had been in force for 14 years, and the extremely limited amount of litigation concerning alleged violations of that Act seemed to indicate that its provisions were rarely violated. Reports of destruction of female foetuses were alarming, and the Government was currently developing an information campaign against the practice of identifying the sex of foetuses and aborting them on the basis of their sex.

276. With respect to the treatment of aliens, the Supreme Court had recently ruled that the rights of Indian citizens, and particularly the provisions of article 14 of the Covenant, would also apply to foreigners who were legally in the territory of India, with certain exceptions regarding the acquisition of property.

Right to life

277. In connection with that issue, members of the Committee wished to know how many persons were currently on death row; how much time elapsed normally between the imposition and the execution of the death sentence; whether, since the submission of the initial report, that penalty had been extended to new offences; what procedure was followed in cases where the death sentence was commuted to life imprisonment on grounds of delay; whether the death sentence could be imposed for crimes committed by persons under 18 years of age; what the rules and regulations were governing the use of firearms by the police and security forces; whether there had been any violations of these rules and regulations and, if so, what measures had been taken to prevent recurrence; and what progress had been made in reducing infant mortality in the period under review.

278. In addition, information was requested on measures taken to counter the increasingly widespread phenomenon of political killings and disappearances, as well as about allegations that thousands of people had lost their lives in ethnic strife and that many had been killed by members of the security forces. In the latter connection, it was asked what remedies were available in cases where a law enforcement officer had exceeded the terms of his authority or when police officers had been involved in cases of deaths in custody; whether the definition of an "assembly" within the terms of the Armed Forces (Special Powers) Act covered gatherings in private homes; and whether law enforcement officers had been informed of the United Nations Code of Conduct for Law Enforcement Officials.

279. Replying to questions raised in connection with the death penalty, the representative of the State party said that a condemned prisoner had a right to appeal to the High Court and to the Supreme Court against a death sentence imposed by a sessions court, and a right to appeal for clemency to the Governor of the particular state and to the President of India. If there was an undue delay between sentencing and execution, the Supreme Court could commute a death penalty to a life sentence. The Narcotic Drugs and Psychotropic Substances Act (1985), as amended in 1989, included the possibility of the imposition of a death sentence for repeat offences under the Act. A female child under the age of 18 years and a male child who had not attained the age of 16 years could not be sentenced to death.

280. Referring to questions raised about the excessive use of force by the police or the army, the representative emphasized that parts of India, notably the border areas, were suffering from terrorist outrages, some of them carried out by terrorists who wore uniforms of the security forces in order to discredit the latter. Against such a background of killing and torture and a deliberate campaign to discredit the security forces, the Government had a duty to protect the nation. There had not, however, been any extrajudicial executions, and very strict rules of investigation were in place to examine any deaths in police custody. Should such a death occur, a magistrate would carry out an investigation and make a preliminary report. There were specific regulations on the use of firearms

to disperse unlawful assemblies and also strict rules governing the use of the army to assist a civil power such as the police.

281. Specific enactments provided for action against excessive use of force by the police or the army. Section 4 of the Armed Forces (Special Powers) Act contained many restrictions on the use of armed forces. The use of firearms against an assembly of five persons or more was authorized only when such an assembly had itself already been declared illegal under an order promulgated by a magistrate. Section 7 of the Act, while protecting public servants from arbitrary prosecution, subjected their performance of duty to scrutiny by the Government.

282. Responding to other questions, the representative emphasized the steps taken by his Government with a view to reducing the infant mortality rate to below 60 per 1,000 live births. That goal could be achieved if the socio-economic conditions of the population, including female literacy and the availability of safe water supplies, improved.

Treatment of prisoners and other detainees

283. With reference to that issue, members of the Committee wished to know whether any consideration was being given to updating the Prisons Act, 1976; what controls had been instituted to ensure that persons arrested or detained were not subjected to torture or cruel, inhuman or degrading treatment; whether there was any machinery for carrying out an independent and impartial investigation into allegations of torture and of summary, arbitrary and extrajudicial executions; and whether the United Nations Standard Minimum Rules for the Treatment of Prisoners were complied with and whether the relevant regulations and directives were known and accessible to prisoners.

284. They also wished to receive detailed information regarding the procedures for receiving complaints under the Bonded Labour System (Abolition) Act, 1976; on arrangements for the supervision of places of detention and on procedures for receiving and investigating complaints; on the scientific classification of prisoners with a view to preventing exposure to criminals during custody mentioned in the report; on detention in institutions other than prisons and for reasons other than crimes; and on any measures taken to give effect to the right of prisoners not to be subjected without free consent to medical or scientific experimentation. Clarification was also requested of the alleged cases of torture and disappearances in the State of Manipur.

285. In his reply, the representative of the State party said that the Bonded Labour System (Abolition) Act was intended to put an end to the exploitation of certain sections of the population. Since bonded labourers were among the weakest and poorest members of society, the Act avoided any complex, technical procedures for receiving complaints and instead made the States responsible for ascertaining whether bonded labour existed within their jurisdiction. Such powers might be conferred on district magistrates with the assistance of "Vigilance Committees".

286. Referring to questions about conditions of detention, he explained that the All-India Committee on Jail Reforms had made recommendations on prison administration, particularly the improvement of conditions for certain categories of prisoners, water supply and sanitary facilities, training of prison staff and vocational programmes to assist in the rehabilitation of prisoners. Most of the recommendations had been implemented by the States. The state governments had also been

advised to appoint a Board of Visitors in each district who would visit all police lock-ups to ensure that prisoners under trial were lodged in separate facilities from those used for convicted inmates.

287. The Supreme Court had held that recourse to third-degree methods by police officers resulting in the death of a person in police custody was a serious and aggravated offence and that the punishment for such offences should be sufficiently severe to deter others from indulging in such behaviour. The Mental Health Act of 1987 protected citizens from being detained in psychiatric institutions without sufficient cause and prescribed conditions for the licensing and control of such institutions. The right not to be subjected to compulsory medical or scientific experimentation was implied in articles 19 and 21 of the Constitution.

Liberty and security of the person

288. With regard to that issue, members of the Committee wished to know what the maximum length of detention was for persons who remained in custody pending trial; what legal, administrative or other safeguards were provided against involuntary disappearances of persons; and whether there had been any cases of involuntary disappearances where the remedy of habeas corpus or other effective remedies had been successfully applied.

289. In his reply, the representative of the State party said that the police could not detain an accused person arrested without a warrant for more than 24 hours. The Judicial Magistrate could, however, authorize the detention of an accused person in police custody for a period not exceeding 15 days or, in custody other than that of the police, for longer periods. Habeas corpus was an effective remedy in cases involving disappearances.

Right to a fair trial

290. In connection with that issue, members of the Committee wished to receive detailed information on measures taken to reduce the cost of litigation and the delays involved in the judicial process; and on the rules which applied to the appointment, recruitment and advancement of magistrates. They also asked how extensively the free legal aid and advisory scheme under the Legal Services Authority Act, 1987, had been resorted to since the enactment of the legislation. Clarification was also sought concerning the compatibility of several provisions of the Terrorist and Disruptive Activities (Prevention) Act, dealing with the establishment of tribunals and the conduct of all proceedings in camera, with article 14 of the Covenant.

291. In his reply, the representative of the State party said that under the Administrative Tribunals Act of 1985 a Central Administrative Tribunal had been set up to provide speedy and inexpensive justice to central government employees in respect of service-related issues. In the light of the experience acquired by the lok adalats, which were experimental alternative or informal systems for settling disputes, the parliament had passed the Legal Services Authority Act. The purpose of that Act was to implement article 39A of the Constitution, which provided that the State would provide free legal aid.

292. Judges appointed to the designated courts established under the Terrorist and Disruptive Activities (Prevention) Act were officials with special experience, independence and fearlessness.

Secrecy was very important for witnesses in terrorism cases, and article 16 of the Act aimed primarily at their protection and that of investigating officers while seeking to strike a balance between the requirements of publicity and of safety. In such cases in camera proceedings were appropriate and consistent with article 14 of the Covenant, which provided for specific exceptions to the obligation to hold hearings in public.

Freedom of movement and expulsion of aliens

293. In connection with that issue, members of the Committee wished to know what legal provisions governed the expulsion of aliens and whether an appeal against an expulsion order had suspensive effect. They also requested information on the success to date of the Government's strategy aimed at promoting the safe return of refugees to their countries of origin.

294. In his reply, the representative of the State party said that matters concerning the movement of aliens in India were specifically governed by section 3 of the Foreigners Act of 1946. Under article 14 of the Constitution, a foreigner in India had the right of recourse to judicial process in the event of a violation of his rights. The courts were free to order any appropriate remedies, including interim orders with suspensive effect. Referring to the need for an amicable resolution of refugee problems, he explained that once the refugees countries of origin had established conditions conducive to the safe return of refugees to their homes, India facilitated their return. An agreement reached between India and Sri Lanka on 29 July 1987 had resulted in the repatriation of more than 25,000 Indian and Sri Lankan refugees over a period of 15 months without any incident.

Right to privacy

295. With regard to that issue, members of the Committee wished to receive information concerning the law and practice relating to permissible interference with the right to privacy and on, legislation concerning the collection and safeguarding of personal data.

296. In his reply, the representative of the State party explained that the right to privacy was governed by the Constitution and by relevant civil and criminal laws. Data concerning personal information could be collected under the Census Act of 1948 and the Registration of Births and Deaths Act of 1969. Information collected under those Acts was confidential and was currently being computerized.

Freedom of religion and expression: prohibition of propaganda for war and incitement to national, racial or religious hatred

297. With reference to that issue, members of the Committee inquired what laws and regulations governed the recognition of religions or religious sects by public authorities and what controls were exercised on the freedom of the press and the mass media. Further information was also requested on the degree of access to official information enjoyed by the general public and the media, especially in view of the alleged difficulties experienced by journalists in visiting Kashmir and in covering the predicament of the Naga people.

298. In his reply, the representative of the State party said that India was a secular democratic

republic consisting of several communities with different religious faiths and beliefs. The Constitution and other relevant laws protected the religious rights of all persons. Freedom of the press and the mass media were covered under article 19 of the Constitution and were subject to reasonable restrictions. The Press Council of India, a body constituted under the Press Council Act of 1978, was responsible for preserving the freedom of the press. Since the members of the Press Council were involved in the press and in newspaper publishing, any restrictions on the freedom of the press could be said to be self-imposed.

299. Under the Cinematographic Act of 1952, any person desiring to exhibit a film had to apply to the Cinematographic Board for permission. A film would not be certified if it presented a misleading image of the social, cultural or political institutions of India, or if it ran counter, inter alia, to the interests of the sovereignty and integrity of India, the security of the State, public order, decency or morality. In 1990, the Parliament had passed the Prasar Bharati (Broadcasting Corporation of India) Act which sought to take the mass media away from full government control.

Freedom of assembly and association

300. In connection with that issue, members of the Committee wished to receive information about the number, membership, organization and effectiveness of trade unions in India.

301. In his reply, the representative of the State party said that the Central Trade Union Organizations included more than 10,000 unions and that the membership of trade unions was approximately 10.25 million.

Protection of the family and children

302. With regard to that issue, members of the Committee wished to receive information on the main features of the Commission of Sati (Prevention) Act of 1987; on any reported cases of sati since the passage of the Act; on the Dowry Prohibition (Amendment) Act of 1986 and, in particular, on the number of dowry deaths before and after the enactment of such legislation; on the effectiveness to date of the Dowry Prohibition (Amendment) Act and of the amendments to the Penal Code, the Code of Criminal Procedure and other legislation relating to arranged marriage, child marriage and divorce; and on the activities undertaken by the Child Welfare Boards established pursuant to the Children Act. Information was also sought on the impact on the right of equality before the law of some provisions of Hindu or Muslim personal law under which polygamy was tolerated or of the laws allowing different treatment of the sexes as to the causes for divorce.

303. In his reply, the representative of the State party said that the Commission of Sati (Prevention) Act provided for the prevention of the commission of sati, and made glorification of it, through any ceremony, procession or function, an offence. Special courts to try sati-related offences were to be created, and responsibility for implementing the provisions of the Act lay with the state governments and Union Territory administrations. No case of commission of sati had, however, been reported since the passage of the Act.

304. An offence committed under the Dowry Prohibition (Amendment) Act of 1986 was non-bailable and the Criminal Law (Second Amendment) Act had been amended to deal effectively not

only with cases of dowry death but also with cruelty to married women. A section had also been added to the Indian Penal Code with a view to providing protection to women and discouraging atrocities and cruelty against them. Anyone found guilty of committing dowry death was subjected to punishment by imprisonment for from seven years to life. The problem of offences against women was a source of serious concern for the Government and needed to be addressed in a broader social framework; through their full integration and participation in national development. India's difficulty in reaching the goal of equality was more a social than a law enforcement problem.

305. Child marriage, in spite of the prohibition of such practice by law, was deeply entrenched in certain sections of Indian society, and the Government had taken steps to educate the people about its consequences. Furthermore, the Child Labour (Prohibition and Regulation) Act prohibited the employment of children under the age of 14 in certain hazardous occupations and provided for the regulation of their conditions of work in all other jobs. The Government had a national policy on child labour to rehabilitate children withdrawn from prohibited employment and to provide education, health care and other services for working children. Cases under the Juvenile Justice Act were to be brought speedily before Juvenile Welfare Boards and the juvenile was to be sent to an observation home or place of safety during the inquiry unless he was staying with his parents or a guardian.

Rights of persons belonging to minorities

306. With regard to that issue, members of the Committee requested clarification of the statement in the report that "the reference to ethnic minority does not apply to Indian society"; and of the functions and activities of the Minorities Commission. They also asked whether there were any special factors and difficulties in the effective enjoyment by minorities of their rights under the Covenant.

307. In his reply, the representative of the State party explained that although there were religious and linguistic minorities in India, the Indian people formed a composite whole racially, and hence the concept of ethnic minorities and ethnic majority did not apply. All human and fundamental rights and mechanisms for redress were equally available to minorities, which also enjoyed a specific constitutional right to establish and administer educational institutions. The Minorities Commission had been set up in 1978 to safeguard the interests of minorities and to review the implementation of constitutional safeguards for different minority groups. In addition, a Special Officer for Linguistic Minorities had been appointed and a Minorities Cell had been set up. The Minorities Cell ensured fuller participation by minorities in all aspects of national life, through coordinating and monitoring the implementation of a 15-point programme aimed, *inter alia*, at preventing communal violence, promoting communal harmony and giving minorities special consideration in recruitment to services such as the state and central police forces.

Concluding observations

308. Members of the Committee expressed their thanks to the representatives of the State party for their cooperation in presenting the second periodic report of India and for having engaged in a fruitful and constructive dialogue with the Committee. Although the report had been drafted in conformity with the Committee's guidelines regarding the form and contents of reports from States

parties under article 40 of the Covenant, it failed to refer to practice and the specific implementation of legislative provisions and, in that respect, was deficient. Satisfaction was expressed over the improvements that had occurred since the consideration of the initial report of India, including, in particular, the legislation recently enacted to prohibit the practice of sati, the measures taken to prevent “dowry deaths”, the efforts made on behalf of the scheduled castes and tribes, the role of the Supreme Court in upholding provisions of the Covenant that were not contained in the Indian Constitution, and the new provisions on legal aid.

309. At the same time, the consideration of the second periodic report had also highlighted some of the difficulties India had faced in implementing the Covenant, partly as a result of the country’s size, economic problems and demographic composition, and the concerns expressed by members of the Committee had not been entirely allayed. Furthermore, the reservations entered by the Government and the fact that the provisions of the Covenant had not been fully incorporated in the Constitution tended to make it difficult to identify clearly the extent to which the Covenant was actually implemented in India. In that connection, members pointed out that rights, other than those limited by a specific limitation clause in the Covenant, could only be restricted by means of a formal derogation under article 4 of the Covenant; and that several provisions of the Armed Forces (Special Powers) Act, the National Security (Amendment) Act, and the Terrorist and Disruptive Activities (Prevention) Act seemed to be incompatible with articles 6, 9 and 14 of the Covenant.

310. Concerns were also expressed with respect to a number of issues such as the implementation of the Covenant in “disturbed” areas; arbitrary killings and arrests in some states; police excesses and the mistreatment of detainees; the failure to bring proceedings against police offenders; the system of preventive detention; and problems relating to the implementation of articles 19 and 22 of the Covenant and of the rights of persons belonging to minorities. It was also felt that greater efforts should be made to eliminate discriminatory practices rooted in India’s social and ethnic diversity. Members of the Committee, in conclusion, expressed the hope that India, with its democratic traditions and institutions, would succeed in overcoming its difficulties with regard to the implementation of the Covenant and that the third periodic report would reflect continuing progress towards that goal.

311. The representative of the State party assured members that there had been no misuse of the powers conferred under the Armed Forces (Special Powers) Act, the National Security (Amendment) Act, and the Terrorist and Disruptive Activities (Prevention) Act and that the third periodic report of India would contain updated information on those matters that were of concern to the Committee.

312. In concluding the consideration of the second periodic report of India, the Chairman thanked the representative of the State party for his cooperation and urged the State party to ratify the Optional Protocol to the Covenant.

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416. The Committee considered the third periodic report of India (CCPR/C/76/Add.6) at its 1603rd to 1606th meetings (sixtieth session), held on 24 and 25 July 1997, and at its 1612th meeting, on 30 July 1997, adopted the following observations.

1. Introduction

417. The Committee welcomes the third periodic report of India, although it regrets the delay in submitting it to the Committee. While noting that the report provides comprehensive information on the constitutional and legislative norms applicable in India in the field of human rights and makes reference to the Committee's previous comments during consideration of the State party's second periodic report, as well as to a number of court decisions, the Committee regrets the lack of information on difficulties encountered in implementing the provisions of the Covenant in practice. The delegation acknowledged in some measure those difficulties and it provided the Committee with detailed and comprehensive written and oral information in the course of the consideration of the report. The Committee appreciates the cooperation which India thus extended to the Committee in the discharge of its mandate.

418. The information submitted by a wide range of non-governmental organizations also assisted the Committee in its understanding of the human rights situation in the State party.

2. Factors and difficulties affecting the implementation of the Covenant

419. The Committee recognizes that terrorist activities in the border States that have caused death and injury to thousands of innocent people force the State party to take measures to protect its population. It stresses, however, that all measures adopted must be in conformity with the State party's obligations under the Covenant.

420. It notes, moreover, that the size of the country, its huge population, the massive poverty and the great disparities in the distribution of wealth among various social groups affect the advancement of rights. The persistence of traditional practices and customs, leading to women and girls being deprived of their rights, their human dignity and their lives and to discrimination against members of the underprivileged classes and castes and other minorities, and of ethnic, cultural and religious tensions constitute impediments to the implementation of the Covenant.

3. Positive aspects

421. The Committee notes with satisfaction the existence of a broad range of democratic institutions and a comprehensive constitutional and legal framework for the protection of human rights. It welcomes frequent references to provisions of international human rights instruments by the courts, in particular the Supreme Court.

422. The Committee welcomes the establishment of the National Human Rights Commission in 1993 and the respect which the Government of India accords to its recommendations. The

Committee notes that the Commission has been given powers, limited though they are, under the Protection of Human Rights Act, to inquire into complaints of human rights violations, to intervene in court proceedings involving allegations of human rights violations or otherwise dealing with human rights issues, to review constitutional and legal norms and the conformity of laws with international human rights instruments, to make specific recommendations to the Parliament and other authorities and to undertake activities in the field of human rights education. It also welcomes the recent setting up of human rights commissions in six states, including Punjab and Jammu and Kashmir, and of human rights courts in several other states of the Union.

423. The Committee also welcomes the establishment of the National Commission for Scheduled Castes and Tribes and the National Commission for women in 1992, and the National Commission for Minorities in 1993. Those commissions have initiated some improvements, in particular in the levels of education and the representation of the various groups concerned in elected bodies and other authorities.

424. The Committee welcomes the lapse, in 1995, of the Terrorist and Disruptive Activities Act (TADA Act), under which members of the security and armed forces enjoyed special powers in the use of force, arrest and detention. It also welcomes the related review of cases under that Act, following which a number of cases were dropped, and the directives given by the Supreme Court to deal with questions of bail under the TADA Act, although a number of cases still require to be dealt with.

425. The Committee has noted that positions in elected bodies are reserved for members of Scheduled Castes and Tribes and that a constitutional amendment has reserved one third of the seats in elected local bodies (Panchayati Raj) for women. The Committee also notes the introduction of a Bill to reserve one third of the seats for women in the Federal Parliament and in state legislatures.

426. The Committee welcomes the restoration of elected legislatures and governments in all states within the Union, including Punjab and Jammu and Kashmir, as well as the holding of federal parliamentary elections in April-May 1996. In addition, the Committee welcomes the constitutional amendment giving a statutory basis to Panchayati Raj - village self-rule institutions - and the enactment of the Panchayati Raj (Extension to Scheduled Areas) Act of 24 December 1996, which are designed to increase participation in the conduct of public affairs at the community level.

427. The Committee further welcomes the intention declared by the Government to introduce legislative measures to further freedom of information.

4. Subjects of concern and the Committee's recommendations

428. The Committee, noting that international treaties are not self-executing in India, recommends that steps be taken to incorporate fully the provisions of the Covenant into domestic law, so that individuals may invoke them directly before the courts. The Committee also recommends that consideration be given by the authorities to ratifying the Optional Protocol to the Covenant, enabling the Committee to receive individual communications relating to India.

429. The Committee, noting the reservations and declarations made by the Government of India to

articles 1, 9, 12, 13, 19, paragraph 3, and 21 and 22 of the Covenant, invites the State party to review those reservations and declarations with a view to withdrawing them, so as to ensure progress in the implementation of those rights within the context of article 40 of the Covenant.

430. The Committee notes with concern that, despite measures taken by the Government, members of Scheduled Castes and Tribes, as well as the so-called backward classes and ethnic and national minorities, continue to endure severe social discrimination and to suffer disproportionately from many violations of their rights under the Covenant, including, *inter alia*, inter-caste violence, bonded labour and discrimination of all kinds. It regrets that the de facto perpetuation of the caste system entrenches social differences and contributes to these violations. While the Committee notes the efforts made by the State party to eradicate discrimination, it recommends that further measures be adopted, including education programmes at national and state levels, to combat all forms of discrimination against those vulnerable groups, in accordance with article 2, paragraph 1, and article 26 of the Covenant.

431. While acknowledging measures taken to outlaw child marriages (Child Marriage Restraint Act), the practice of dowry and dowry-related violence (Dowry Prohibition Act and the Penal Code) and sati - self-immolation of widows - (Commission of Sati (Prevention) Act), the Committee remains gravely concerned that legislative measures are not sufficient and that measures designed to change the attitudes which allow such practices should be taken. The Committee is also concerned that giving male children preferred treatment persists, and it deplors the fact that practices such as foeticide and infanticide of females continue. The Committee further notes that rape in marriage is not an offence and that rape committed by a husband separated from his wife incurs a lesser penalty than for other rapists. The Government must take further measures to overcome those problems and to protect women from all discriminatory practices, including violence. Additional information should be provided in the State party's next periodic report on the functions, powers and activities of the National Commission for Women.

432. The Committee is concerned that women in India have not been accorded equality in the enjoyment of their rights and freedoms in accordance with article 2, paragraph 1, and articles 3 and 26 of the Covenant. Nor have they been freed from discrimination. Women remain under-represented in public life and at the higher levels of the public service and are subjected to personal laws which are based on religious norms and which do not accord equality in respect of marriage, divorce and inheritance rights. The Committee points out that the enforcement of personal laws based on religion violates the right of women to equality before the law and to non-discrimination. It therefore recommends that efforts be strengthened towards ensuring the enjoyment of their rights by women without discrimination and that personal laws be enacted which are fully compatible with the Covenant.

433. The Committee remains concerned at the continuing reliance on special powers under legislation such as the Armed Forces (Special Powers) Act, the Public Safety Act and the National Security Act in areas declared to be disturbed, and at serious human rights violations, in particular with respect to articles 6, 7, 9 and 14 of the Covenant, committed by security and armed forces acting under those laws, as well as by paramilitary and insurgent groups. The Committee, noting that the examination of the constitutionality of the Armed Forces (Special Powers) Act, long pending before the Supreme Court was due to be heard in August 1997, hopes that its provisions will also

be examined for their compatibility with the Covenant. Bearing in mind the provisions of articles 1, 19 and 25 of the Covenant, the Committee endorses the views of the National Human Rights Commission to the effect that the problems in areas affected by terrorism and armed insurgency are essentially political in character and that the approach to resolving such problems must also, essentially, be political, and it emphasizes that terrorism should be fought with means that are compatible with the Covenant.

434. The Committee regrets that some parts of India have remained subject to declaration as disturbed areas over many years - for example, the Armed Forces (Special Powers) Act has been applied throughout Manipur since 1980 and in some areas of that state for much longer - and that in those areas, the State party is in effect using emergency powers without resorting to article 4, paragraph 3, of the Covenant. The Committee recommends that the application of those emergency powers be closely monitored so as to ensure its strict compliance with the provisions of the Covenant.

435. The Committee expresses concern at the lack of compliance of the Penal Code with article 6, paragraphs 2 and 5, of the Covenant. It therefore recommends that the State party abolish by law the imposition of the death penalty on minors and reduce the number of offences carrying the death penalty to the most serious crimes, with a view to its ultimate abolition.

436. The Committee notes with concern that criminal prosecutions or civil proceedings against members of the security and armed forces, acting under special powers, may not be commenced without the sanction of the Central Government. That practice contributes to a climate of impunity and deprives people of remedies to which they may be entitled in accordance with article 2, paragraph 3, of the Covenant. The Committee recommends that the requirement of governmental sanction for civil proceedings be abolished and that it be left to the courts to decide whether proceedings are vexatious or abusive. It urges that judicial inquiries be mandatory in all cases of death at the hands of the security and armed forces and that the judges in such inquiries, including those under the Commission of Enquiry Act of 1952, be empowered to direct the prosecution of security and armed forces personnel.

437. The Committee regrets that the National Human Rights Commission is prevented by Clause 19 of the Protection of Human Rights Act from investigating directly complaints of human rights violations against the armed forces, but must request a report from the Central Government. The Committee further regrets that complaints to the Commission are subject to a one-year time limit, thus preventing the investigation of many alleged past human rights violations. The Committee recommends that those restrictions be removed and that the National Human Rights Commission be authorized to investigate all allegations of violations by agents of the State. It further recommends that all states within the Union be encouraged to establish human rights commissions.

438. The Committee expresses concern at allegations that police and other security forces do not always respect the rule of law and that, in particular, court orders for habeas corpus are not always complied with, particularly in disturbed areas. It also expresses concern about the incidence of custodial deaths, rape and torture and at the failure of the Indian Government to receive the United Nations Special Rapporteur on the question of torture and other cruel, inhuman or degrading treatment or punishment. While the Committee welcomes the requirement by the National Human

Rights Commission that all such alleged incidents be reported and investigated and that all post-mortem examinations be taped, it recommends: (a) the early enactment of legislation for mandatory judicial inquiry into cases of disappearance and death, ill-treatment or rape in police custody; (b) the adoption of special measures to prevent the occurrence of rape of women in custody; (c) the mandatory notification of relatives of detainees without delay; (d) the guarantee of the right of detainees to legal advice and assistance and to have a medical examination; and (e) that priority be given to providing training and education in the field of human rights to law enforcement and custodial officers and members of the security and armed forces, as well as judges and lawyers, and that the United Nations Code of Conduct for Law Enforcement Officials be taken into account in this regard.

439. The Committee regrets that the use of special powers of detention remains widespread. While noting the State party's reservation to article 9 of the Covenant, the Committee considers that that reservation does not exclude, *inter alia*, the obligation to comply with the requirement to inform promptly the person concerned of the reasons for his or her arrest. The Committee is also of the view that preventive detention is a restriction on liberty imposed as a response to the conduct of the individual concerned, that the decision as to continued detention must be considered as a determination falling within the meaning of article 14, paragraph 1, of the Covenant, and that proceedings to decide the continuation of detention must, therefore, comply with that provision. The Committee recommends that the requirements of article 9, paragraph 2, of the Covenant be complied with in respect of all detainees. The question of continued detention should be determined by an independent and impartial tribunal, constituted and operating in accordance with article 14, paragraph 1, of the Covenant. It further recommends, at the very least, that a central register of detainees under preventive detention laws be maintained and that the State party accept the admission of the International Committee of the Red Cross and Red Crescent to all types of detention facilities, particularly in areas of conflict.

440. The Committee notes with concern that, although the Terrorist and Disruptive Activities (Prevention) Act has lapsed, 1,600 people remain in detention under its provisions. The Committee recommends that measures be taken to ensure either the early trial of those people or their release. It is also concerned that there are legislative proposals to reintroduce parts of the Act and that this could lead to further violations of the Covenant.

441. The Committee expresses concern at the overcrowding and poor health conditions and sanitation in many prisons, the inequality of treatment of prisoners and the lengthy periods of pre-trial detention, all of which are incompatible with articles 9 and 10, paragraph 1, of the Covenant. The Committee, while welcoming the initiative to give the Central Government a greater role in the administration and management of prisons, recommends that measures be taken to reduce overcrowding, to release those who cannot be given a speedy trial and to upgrade prison facilities as quickly as possible. In this respect, the Committee recommends that attention be given to the United Nations Standard Minimum Rules for the Treatment of Prisoners.

442. The Committee urges the institution of reforms to the procedure of the courts to ensure a speedy trial of those charged with offences, prompt hearing in civil cases and similar urgency in hearing appeals.

443. The Committee expresses its concern at reports that fines have been imposed on communities in areas declared as disturbed, without hearing. It thus recommends that the relevant penal provisions be closely monitored and effectively implemented, so that the imposition of such fines is prohibited.

444. The Committee expresses concern at the extent of bonded labour, as well as the fact that the incidence of that practice reported to the Supreme Court is far higher than is mentioned in the report. The Committee also notes with concern that eradication measures which have been taken do not appear to be effective in achieving real progress in the release and rehabilitation of bonded labourers. The Committee therefore recommends that a thorough study be urgently undertaken to identify the extent of bonded labour and that more effective measures be taken to eradicate that practice, in accordance with the Bonded Labour System (Abolition) Act of 1976 and article 8 of the Covenant.

445. The Committee expresses concern at reports of forcible repatriation of asylum seekers, including those from Myanmar (Chins), the Chittagong Hills and the Chachmas. It recommends that, in the process of repatriation of asylum seekers or refugees, due attention be paid to the provisions of the Covenant and other applicable international norms.

446. The Committee deplores the high incidence of child prostitution and trafficking of women and girls into forced prostitution, and it regrets the lack of effective measures to prevent such practices and to protect and rehabilitate the victims. The Committee also regrets that women who have been forced into prostitution are criminalized by the Immoral Trafficking Prevention Act and, further, that article 20 of the Act puts the burden of proof on a woman to prove that she is not a prostitute, which is incompatible with the presumption of innocence. The Committee recommends that the application of that law to women in the situation described be repealed and that measures be taken to protect and rehabilitate women and children whose rights have been violated in this way.

447. The Committee further regrets the lack of national legislation to outlaw the practice of Devadasi, which is left to the states. It appears that the practice continues and that not all states have effective legislation against it. The Committee emphasizes that this practice is incompatible with the Covenant. It therefore recommends that all necessary measures be taken urgently to eradicate it.

448. The Committee expresses its concern at the plight of street children and at the reported high level of violence against children, within society. It is particularly concerned at reports of child mutilation. It recommends that urgent measures be taken to address the problem and that specific mechanisms be set up for the protection of children.

449. The Committee expresses concern that, despite actions taken by the State party, there has been little progress in implementing the Child Labour (Prohibition and Regulation) Act of 1986. It recommends that urgent steps be taken to remove all children from hazardous occupations, that immediate steps be taken to implement the recommendation of the National Human Rights Commission to respect the constitutional requirement to make it a fundamental right for all children under 14 to have free and compulsory education, and that efforts be strengthened to eliminate child labour in both the industrial and rural sectors. The Committee also recommends that consideration

be given to establishing an independent mechanism with effective national powers to monitor and enforce the implementation of laws for the eradication of child labour and bonded labour.

450. The Committee draws to the attention of the Government of India the provisions of paragraph 6 (a) of the Guidelines Regarding the Form and Contents of Periodic Reports from States parties, and requests that, accordingly, its next periodic report, due on 31 December 2001, should contain material which responds to all the present concluding observations. The Committee further requests that the concluding observations be widely disseminated among the public at large in all parts of India.