

## INDIA

### CERD 26<sup>th</sup> No. 18 (A/8418) (1971)

28. From its 56<sup>th</sup> to its 58<sup>th</sup> meetings, the Committee proceeded to determine formally its view as a Committee (as distinct from the views expressed at previous meetings, which were those of the individual members) as to which reports were “satisfactory”, in the sense that they furnished all or most of the required information, and which reports were “unsatisfactory” or “incomplete” and therefore needed to be supplemented by further information. The initial report (and supplementary report, if any) of each State Party was put before the Committee separately by the Chairman. Where there was no consensus, the question whether a State Party’s report (or reports) was “satisfactory” or whether, failing that, the Committee wished to request additional information from that State Party, was decided by vote.

29. The Committee expressed itself as satisfied with the completeness of the reports submitted by the following 15 States Parties, from which no additional information was requested: ... India ...

**CERD 28<sup>TH</sup> No. 18 (A/9018) (1973)**

235. The initial report of India, submitted on 19 January 1970, and a supplementary report dated 2 February 1971, were considered by the Committee at its third session and found to be satisfactory. The second periodic report, dated 19 June 1972, was considered at the seventh session (140<sup>th</sup> and 141<sup>th</sup> meetings).

236. Some members expressed the view that the report under consideration, which supplemented and brought up to date the information contained in the earlier reports, provided information on relevant legislative and administrative measures. It was noted that, in the preparation of the second periodic report, questions raised by Committee members during the discussion of the earlier reports at the third session had been taken into account. Particular note was taken of the provisions of article 46 of the Constitution of India, which related specifically to the promotion of the educational and economic interests of the Scheduled Castes, Scheduled Tribes and other weaker sections of the population; and of the information concerning the functions and accomplishments of the National Integration Council.

237. Noting that the report was submitted before the adoption by the Committee of general recommendation III, some members expressed the wish that information on the status of India's relations with the racist régimes in southern Africa would be furnished. A question was asked about the role of the National Integration Council in relation to racial discrimination, in view of the statement that that problem "had not arisen in the country in a manner which warrants specific consideration" by the Council. Some members wished to know about the extent to which the measures adopted by that Council had produced positive results in the elimination of racial discrimination. It was asked whether India had anything to report on the role played by commissions on human rights or ombudsmen. The punitive measures taken since the attainment of independence against those responsible for communal disturbances and discord were the subject of another inquiry. Although "untouchability" had been abolished by law, a question was raised as to whether that legal measure was sufficient to eliminate the actual practice and the underlying concept that others were polluted by association with "untouchables".

238. In the statement he made before the Committee, the representative of India emphasized the following points. As soon as it became independent, India had broken off all relations with South Africa; it did not have any relations with Portugal or Southern Rhodesia either. Since there was no racial discrimination in India, the National Integration Council had not had to deal specifically with that problem; the Council was one of the instruments for implementing the policy of eliminating inequality and every kind of discrimination in the political, social, cultural and economic fields. Anxious to guarantee real equality for all before the law, India had appointed an ombudsman, whose duties consisted of receiving and investigating complaints against various administrative agencies. The caste system was based not on religious structures but on social structures, which India was trying to break down, not merely by legislative measures but also by a variety of other measures, including economic development and education.

239. The Committee decided to consider the report satisfactory and expressed the hope that the Government of India would continue to co-operate with the Committee as it had done in the past.



**CERD 30<sup>th</sup> No. 18 (A/10018) (1975)**

91. The third periodic report of India, in the view of the members of the Committee, supplemented the comprehensive information contained in previous reports and brought some of that information up to date. Satisfaction was expressed, in particular, with the fact that, although the report supplied information on changes in legislation which had been made during the period under review, including amendments to the penal code, it also dealt extensively with administrative and other measures and furnished additional information on court cases as well, as required under article 9, paragraph 1, of the Convention. Diverse special measures aimed at promoting the development and safeguarding the rights of the Scheduled Castes and Scheduled Tribes were viewed as actions taken in compliance with the reporting State's obligations under article 2, paragraph 2, of the Convention. Some members were not sure, however, whether the requirements of article 4, paragraph (b), of the Convention were fully met by the legislation in force, as reported. Information was lacking, in the view of some members, on measures under articles 6 and 7 of the Convention.

92. Some members expressed interest in receiving, in future reports, information on the racial composition of the Scheduled Tribes, on any other groups that may be covered by the concept of "untouchability", on other castes or tribes (if any) that have not been scheduled, and on the legal differences between scheduled and non-scheduled tribes, as well as further information on the extent to which the practical measures to assist the Scheduled Castes and Scheduled Tribes have been successful, and on the content of the report presented by the Commissioner for Scheduled Castes and Scheduled Tribes. Furthermore, in view of the fact that article 46 of the Constitution was described in the report as "relevant" to the "socio-economic development of the Scheduled Castes and Scheduled Tribes", a request was made for the text of that article. Some members inquired about a case mentioned in the previous reports and in the report under consideration and described as having led to a decision by the Supreme Court, which in turn was followed by an amendment to the Constitution, and to further decisions by the Supreme Court, all related to the question of whether rights guaranteed by the Constitution could validly be abridged or curtailed by amendments to the Constitution.

93. The representative of India commented on the last question mentioned in the preceding paragraph from the standpoint of its relevance to India's obligations under the Covenant. He said that he would inform his Government of the comments and requests made by the members of the Committee.

## **CERD A/33/18 (1978)**

109. The fourth periodic report of India dealt in considerable detail with the efforts being made to raise the economic and social status of the 119 million people - more than one fifth of the total population - belonging to the scheduled castes and scheduled tribes. Information on those efforts was welcomed by the Committee; however, previous requests for copies of the reports prepared by the Commissioner for Scheduled Castes and Scheduled Tribes were not met in the report under consideration.

110. A member of the Committee suggested that although the information on measures affecting the underprivileged part of the population corresponded to the provisions of article 1, paragraph 4, and article 2, paragraph 2, of the Convention, and was both important and relevant to the concerns of the Committee, the next report should also include information on measures affecting the entire population. A member of the Committee asked what the Government of India was doing to preserve the cultures and languages of various groups so that they did not lose their identity; another member thought that the powers of the President and Parliament under the Constitution to specify - by public notification or by law, respectively - the castes, races or tribes, or parts thereof which are to be deemed as scheduled castes or scheduled tribes, appeared to give these groups some kind of official status, whereas in other countries there was a tendency towards prohibiting any identification by race or ethnic origin.

111. Information previously supplied by the Government of India had satisfied the Committee that the provisions of article 4, subparagraph (a), of the Convention had been complied with; information was requested, however, about the penalties provided in the Penal Code for the acts described in those provisions. The view, expressed in the past sessions, that the information provided in past reports had not shown that the requirements of article 4, paragraph (b), of the Convention had been met was reaffirmed by members of the Committee at the seventeenth session, since no additional information on that subject was given in the report under consideration.

112. With regard to the application of article 5 of the Convention, it was observed that - in connexion with subparagraph (e) (v) of that article - that the information in the report showed that, under article 29 (2) of the Constitution, racial discrimination in admission to educational institutions was prohibited only in relation to those "maintained by the State or receiving aid out of State funds"; and it was asked whether any steps were being taken to prevent racial discrimination in admission to private educational institutions as well. The representative of India stated that "private education was governed by the same rule as State education" and that "the Constitution provided for the possibility of instituting legal action in the event of discrimination".

113. A member of the Committee thought that there might be a contradiction between the provisions of article 19 (5) of the Constitution of India, permitting the curtailment, in the interests of any scheduled tribe, of the general rights of all citizens to move freely, on the one hand and, on the other, the statement that the law in India makes no distinction between citizens, on racial or other grounds, in respect of their enjoyment *inter alia* of the right to leave and to return to their country. The representative of India denied that a contradiction existed - since the statement in the report referred to the right of all citizens, under the passport laws, to enter or leave the country freely, while

article 19 (5) of the Constitution related to the imposition, in the interests of the scheduled tribes, of reasonable restrictions on the general rights of all citizens to move freely into certain tribal areas within the country.

114. In connection with the information given in the report about existing safeguards - in constitutional and legal provisions and in the existence of an independent judiciary - against violations of the rights of individuals and minorities, it was asked whether any cases had actually been brought before the courts and, if so, what had been their outcome.

115. Several members of the Committee regretted the fact that little, if any, information was supplied in the report under consideration concerning the implementation of article 7 of the Convention.

116. Although information on relations with the racist régimes in southern Africa had been given orally by a representative of India to the Committee at its seventh session, <sup>15/</sup> some members of the Committee wished that confirmation of that information had been made by the Government of India in the report under consideration. The representative of India reaffirmed that her Government “had always condemned the gross and persistent violations by the apartheid régimes and had scrupulously complied with all United Nations resolutions”.

117. The representative of India assured the Committee that she would convey to her Government the suggestions made by members of the Committee and the requests for more details information, particularly regarding the measures taken to implement articles 4 and 7 of the Covenant, so that they could be borne in mind when the next report was being prepared.

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<sup>15/</sup> [Official Records of the General Assembly], Twenty-eighth Session, Supplement No. 18 (A/9018), paras. 237 and 238.

## **CERD A/34/18 (1979)**

363. The Committee considered the fifth periodic report of India (CERD/C/20/Add.34) together with the introductory statement of the representative of the reporting State who informed the Committee that in April 1979, after the submission of the report, India had acceded to the International Covenants on Human Rights.

364. The Committee commended the Indian Government on the detailed information provided concerning measures taken to comply with its obligations under the Convention, taking especially into account the demographic, ethnic and religious complexity of the country. It was observed that a general problem, which arose also in connection with other reports from States with a federal structure, was that information was provided concerning the federal legal order, but very little was reported about the laws of the states comprising the federal union. According to article 32 (a) of the Indian Constitution, for example, the Supreme Court did not have jurisdiction to review the constitutionality of state laws, but no indication was given in the report as to what court was competent to review such laws. It was also noted that the Indian Constitution was currently being revised to incorporate the amendments made since its adoption, and the Committee expressed the wish to be informed of the extent to which those revisions would affect the provisions of the Constitution relating to the Convention.

365. With regard to the implementation of article 2 of the Convention, satisfaction was expressed for the sincere efforts of India to abolish the practice of “untouchability” and to promote social and economic justice. Members of the Committee welcomed the measures taken in favour of the scheduled castes and tribes as an essential step to protect the rights, and to secure adequate advancement, of the vast segments of the formerly disadvantaged population as permitted under article 1, paragraph 4, of the Convention. It was asked to what extent equality was real between castes and tribes and other sectors of the population and on what criterion the scheduling of castes and tribes was based. Clarifications were requested on the “built-in provision” in the Indian Constitution to rescind or nullify any laws and regulations which had the effect of creating racial discrimination. The Committee welcomed the information received on the activities of the Commissioner for Scheduled Castes and Scheduled Tribes responsible for investigating all matters relating to the safeguards provided in the Constitution. It was noted that in his last report the Commissioner had made 96 recommendations and it was hoped that the Committee would be supplied information about the Commissioner’s report as well as on the number of those recommendations which had been accepted and implemented. It was noted also that Tribes Advisory Councils had been set up in certain states to advise Governors on matters concerning the welfare of scheduled tribes and the development of the areas inhabited by them; information was requested on how the Councils functioned and on the specific programmes to develop the areas concerned.

366. The Committee welcomed the establishment in India of a Linguistic Minorities Commission to safeguard the interests of minorities in accordance with the Constitution and it was asked whether representatives of the minorities concerned were included in that Commission. It appeared from the report that the Commission was concerned only with religious and linguistic minorities. Information was requested on measures taken against discrimination based on national or ethnic origin. It was

suggested by one member that concrete measures, such as the guarantees for equality of opportunity in employment already provided for the scheduled castes and scheduled tribes, should be taken to ensure the adequate development and protection of racial groups. The Committee noted with satisfaction that India firmly opposed the racist régimes in southern Africa and was making a substantial contribution in combating those régimes.

367. With regard to the implementation of article 4 of the Convention, it was asked whether the provisions of clause (1) of section 153-A of the Indian Penal Code, which made dissemination of ideas based on racial discrimination a punishable offence, amounted to a ban on groups and organizations propagating racist ideas and practices. Different comments were made on the constitutional provision (article 19 (2)) empowering 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. Having noted that the preaching and practice of “untouchability” was punishable under the 1955 Protection of Civil Rights Act and the 1951 Representation of Peoples Act, some members asked whether there was any possibility of conflict in the application of the two acts. As to the possibility of imposing collective penalties on the inhabitants of a village or area for untouchability offences, the question was put as to whether the notion of collective punishment was not at variance with contemporary concepts of justice. It was also asked why India, which had set up adequate machinery to combat racial discrimination, had not made the declaration concerning the competence of the Committee to receive communications from individuals, under article 14 of the Convention.

368. It was the general feeling of the Committee that the rights enunciated in article 5 of the Convention were duly protected in Indian law. Members of the Committee asked for clarification on the constitutional provisions against “unfair and unreasonable discrimination”, which appeared to require subjective judgement instead of providing for an absolute ban on racial discrimination. With reference to article 14 of the Indian Constitution, enunciating the principle of equality before the law, explanation was requested as to whether the role of the Indian Government was limited to not denying to any person equality before the law or whether it actually guaranteed such equality and equal protection. Members of the Committee noted that a number of seats in Parliament were reserved for the scheduled castes and tribes, while members of those groups could also secure seats in Parliament through the normal electoral process; it was asked whether the reserved seats represented a minimum quota or supplemented the seats won through elections. Different comments were made on the advisability of extending such special measure to other groups.

369. In connection with other rights enumerated in article 5 of the Convention, the Committee wished to know in what manner the right to inherit was regulated; what measures were taken to prevent discrimination in employment in the private sector; and what the status of aliens was in India as regards the right to employment, social security and housing.

370. With regard to the implementation of article 6 of the Convention, the Committee welcomed the references to court cases contained in the report, especially in relation to trials concerning untouchability offences. Clarification was requested on the application of the Protection of Civil Rights Act, 1955, on summary procedures, and on the departure in certain cases, from the normal legal principle of the presumption of innocence. Detailed information was requested about the relationship between the various jurisdictions in India, and about the procedure whereby a legislative



measure could be subjected to judicial review. It was noted that article 335 of the Constitution provided that the claims of the members of the scheduled castes and scheduled tribes would “be taken into consideration, consistently with the maintenance of efficiency of administration, in the making of appointments to services and posts in connection with affairs of the Union or of a State”. An explanation was requested about the meaning of the word “consistently”, used in this article.

371. With regard to the implementation of article 7 of the Convention, general satisfaction was expressed with the Government’s efforts to enlighten public opinion on measures taken with a view to combating racial discrimination. It was hoped that specific measures would be adopted by the Indian Government to ensure equal opportunities to all students, that more information would be provided on the teaching of the subject of human rights in schools and on the measures taken to foster interpenetration between Indian and other cultures, especially African cultures.

372. The representative of India, replying to questions raised by members, assured the Committee that constitutional revisions would not affect the basic provisions relating to the Convention and that information on constitutional amendments and the latest report of the Commissioner for Scheduled Castes and Scheduled Tribes would be submitted to the Committee with the next periodic report.

373. With regard to the Tribes Advisory Councils, she explained that they had been set up under the Fifth Schedule of the Constitution and consisted of 20 members, as many as three quarters of them representing the scheduled tribes; in addition, there was a Minister for Tribal Welfare in each state government and the activities of the Councils and the Ministers were mutually supportive. Information concerning the criteria governing the registration of scheduled castes and scheduled tribes would be included in the next periodic report. The Minorities Commission mentioned in the report was the Commission for the Linguistic Minorities set up pursuant to article 350-B of the Constitution: as a secular State, India did not accord to any religion a status of preference.

374. In connection with article 4 of the Convention, the representative explained that there was no contradiction between the provisions of the 1955 Protection of Civil Rights Act and the 1951 Representation of Peoples Act since the latter’s provisions referred specifically to acts committed in connection with an election. As for the concern expressed regarding the restrictions placed on freedom of speech for reasons of public order, the imposition of collective fines, the institution of summary procedures and the departure, for untouchability offences, from the normal legal principle of the presumption of innocence, she pointed out that those measures responded to situations which were the result of social circumstances. As a State party to the International Covenant on Civil and Political Rights, the Indian Government would be repealing any domestic laws which were at variance with the provisions of that instrument.

375. In reply to questions raised in connection with article 5 of the Convention, the representative explained that the words “unfair or unreasonable discrimination” were used in the report to underline the difference from “fair”, i.e. special, measures permitted by the Convention and the Indian Constitution. As regards the question concerning the reservation of seats in State Assemblies for members of the scheduled castes and scheduled tribes, she confirmed what had already been explained by a member of the Committee, that the intention was to give members of those groups their due share in the formulation of policies at the national and state levels and to increase the number of seats they held in the State or federal legislature. Moreover, she explained that the laws

of the community governing the right to marriage, also applied to the right to inherit.

376. In reply to questions concerning the implementation of article 6 of the Convention, the representative stated that under article 32 of the Constitution the Supreme Court had the original jurisdiction in cases of violations of the rights set forth in part III of the Constitution and that the same article covered cases in which an act passed because of social circumstances in a particular state could be taken to the supreme Court by way of a High Court. In such cases the Supreme Court acted as an appeals court and not as the court of original jurisdiction.

377. With regard to the information requested in connection with article 7 of the Convention, she stated that India had signed several cultural co-operation agreements with African countries and that many African students were studying in Indian universities which offered courses in African studies.

## **CERD A/36/18 (1981)**

394. The sixth periodic report of India (CERD/C/66/Add.33) was considered by the Committee together with the introductory statement of the representative of the reporting State, in which he pointed out that even though his Government did not recognize the right of the Committee to discuss issues relating to the Minorities Commission established in India in 1978, it had provided information on the subject in accordance with its consistent policy of co-operation with the Committee.

395. Members of the Committee welcomed the information provided in the report which showed that the revision of the Indian Constitution had not affected the implementation of the provisions of the Convention in that country and commended the Indian Government on the results of its efforts to promote the welfare of all citizens regardless of origin.

396. With regard to the question of the Committee's competence to discuss issues relating to religious and linguistic minorities dealt with by the Minorities Commission, members of the Committee observed that, while they understood the Indian Government's position it was difficult to find examples of purely linguistic minorities which did not have an ethnic basis and that often, religious and ethnic origins overlapped. It was observed also that the existence of minorities in a country may lead to tension between the majority population and those minorities, and that was a problem which did not fall within the competence of the Committee. Besides, the Indian Government had maintained that castes were social groups, nevertheless it had always provided the Committee with information on the scheduled tribes and scheduled castes. It was recalled, in this connection that the Convention did not deal with minority rights as such but rather with a much broader spectrum of groups, and the wish was expressed that the Committee would continue to be provided, in the future, with the reports of the Indian Commissioner for Scheduled Castes and Scheduled Tribes and the report of the Indian High Panel Power established in 1980.

397. With reference to article 4 of the Convention, it was pointed out, as it had been done during the Committee's consideration of the fifth periodic report of India, that article 15 of the Indian Constitution, in connection with the prohibition of discrimination, mentioned the concept of discrimination on grounds of race, but not on grounds of colour or ethnic origin. Furthermore, the pertinent sections of the Indian Panel Code similarly covered discrimination on grounds of race, but ignored the concept of colour and ethnic origin. It was therefore asked whether the Indian Government would be prepared to accept an amendment to its legislation to cover those aspects which were missing and thus satisfy all the requirements of article 4 of the Convention.

398. In connection with article 5 of the Convention, it was recalled that in its initial report, the Indian Government had given information concerning the seats reserved in Parliament for the Scheduled Tribes and Scheduled Castes. That special reservation had been due to lapse in 1970, but was extended for a further 10 years. Since nothing in later reports indicated whether any further extension had been made, it was asked whether the Committee could assume that those tribes and castes had been placed on an equal footing and no longer required special measures. Attention was also drawn to the amendment to article 19 of the Indian Constitution, and it was asked what was the effect of the deletion of subclause (f), which removed from among the rights guaranteed by the

Constitution the right to acquire, hold and dispose of property, whether the deletion had any bearing on the application of article 5 of the Convention, what ownership of property was allowed a citizen of India, and what implications the deletion of the provision concerned had for those already in possession of property.

399. In connection with article 6 of the Convention, it was observed that difficulties may be created by the granting of jurisdiction to the Supreme Court to review the constitutionality of the State laws in that only judges from such States were sufficiently familiar with the laws of their States and that complainants must travel extremely long distances to present cases before the Supreme Court. Accordingly, information was requested about the effects of that procedure and what experience had been acquired through it, especially in the event the laws of one State contained discriminatory elements. With reference to the expenses incurred and financial assistance granted to individuals seeking redress, it was asked whether, as laymen, such people fully understood the relevant procedure and whether they were entitled to employ a lawyer and to receive public funds for that purpose as well.

400. Some members also drew attention to the information given in the report with regard to the reasons why India had not made the declaration provided for under article 14 of the Convention. They observed that while the decision not to make the declaration was the absolute prerogative of the Indian Government, they did not share the opinion expressed in the report that national machinery was adequate to ensure that no racial discrimination took place. In their view, article 14, when it entered into force, would add a vital part to the machinery for promoting and protecting human rights and would be an important contribution to strengthening legislation in the field of nondiscrimination.

401. Replying to questions raised by members of the Committee, the representatives of India stated that the powers of the Minorities Commission were not defined in the Constitution but rather in the resolution of 12 January 1978, which provided that the Commission should safeguard the interests of minorities, whether based on religion or language. Its primary function was to evaluate the working of the various constitutional and legislative safeguards for the protection of minorities. Accordingly, the functions of the Minorities Commission did not fall within the scope of the Convention, but were merely of an internal nature intended to ensure that the provisions of the Indian Constitution were fully implemented.

402. Referring to a question raised under article 4 of the Convention, the representative pointed out that article 153 of the Indian Penal Code also contained the expression "or any other ground whatsoever" which was all inclusive in respect to the relevant provisions of the Convention.

403. In connection with article 6 of the Convention, the representative stated that the Supreme Court of India comprised judges from the various constituent states of the Union. The judges were eminent jurists and were familiar with the laws of their respective states. Thus, if any question arose regarding a law of a given state, the judge from the state would most certainly serve on the review panel. With regard to legal expenses, the representative indicated that there were provisions whereby a petitioner or plaintiff in a legal suit could be declared a pauper and thereby obtain legal aid. The Legal Aid Society had done a great deal of work in that field. In cases of genuine need, it was always possible to receive sympathetic consideration from some charitable organization or

individual lawyers who provided free legal advice because of their interest in certain constitutional issues or in the situation of the weaker sectors of society.

404. The representative finally assured the Committee that his Government would endeavour to provide comprehensive replies to questions raised by members of the Committee in its next periodic report.

278. The Committee considered the seventh periodic report of India (CERD/C/91/Add.26) after its introduction by the representative of the reporting State. He drew the attention of the Committee to the recent ruling of the Indian Supreme Court that, where a person or class to whom legal injury had been done was unable to approach the Court for redress because of poverty, disability or socially or economically disadvantaged position, any member of the public acting in good faith could apply for judicial redress from the court, which would provide a lawyer.

279. Members of the Committee commended the Government of India for the regularity of its reports and the consistency of the information presented, which testified to India's commitment to the elimination of racial discrimination and its willingness to continue the dialogue with the Committee.

280. The attention of the Committee focused in particular on the implementation of articles 1 and 2 of the Convention. In this context, it requested explanations about article 14 of the Indian Constitution, which provided "equal protection" to individuals from various groups but permitted "differential treatment in different circumstances". It was stressed that under the Convention the rule of non-discrimination on the basis of colour and ethnic origin applied in all circumstances. Concern was expressed about the term "reasonable classification", and a member inquired about a trend amongst members of the scheduled castes and scheduled tribes to convert to Islam in order to escape such "reasonable classification". The Committee welcomed the fact that about 10 per cent of the public sector outlay in the sixth plan (1980-1985) would be used to improve the situation of scheduled castes and scheduled tribes. Yet, it noted that because of the inevitably slow process in changing traditions, article 334 of the constitution had been amended to extend the special reservation of seats in Parliament for the scheduled castes and scheduled tribes for a further period of 10 years, and it requested further information on that aspect. One member inquired to what extent that action was compatible with article 1, paragraph 4, of the Convention. The Committee also pointed out that the steps taken by the Government with a view to improving their situation were of great interest and hoped to receive the twenty-seventh report of the High-Power Panel on the Scheduled Castes, the Scheduled Tribes and other weaker Sections of the Society as well as information on the caste system and to what extent it was based on socio-economic conditions. Details on how the Supreme Court interpreted the constitutional rules relating to the provisions of the Convention were also requested.

281. The Committee asked for information regarding the various minorities and tribes living in India; their ethnic origin, languages, educational level, representation in the public service (federal government, police, judiciary, foreign service, etc.); the financial support received from the Government to accelerate their socio-economic development; the competence of the federal and, state governments concerning their rights; and their possibility to develop cultural and linguistic ties with groups in their country of origin. It was also asked how the administrative and judicial authorities were being made aware of India's obligations under the Convention in regions where the population included such disadvantaged communities. More specific information was requested concerning the number and status of Anglo-Indians and India's general policy towards the Tamils. Referring to a movement launched in 1961 to encourage large landowners to donate part of their land to the peasants, one member asked for information on the results achieved. Another member, observing that no citizen could be denied admission to educational State institutions or institutions

receiving aid from the State on grounds only of religion, race, caste or language, asked whether admission could be denied on those same grounds to educational institutions not maintained by the State or which did not receive State aid.

282. The Committee commended the Government of India for its policy and action against apartheid. It took note of the Anti-Apartheid Act of 1981 enacted by the Indian Parliament to give effect to the provisions of the international Convention on the Suppression and Punishment of the Crime of Apartheid. Also in relation to article 3 of the Convention, the Committee showed appreciation for the assistance India was providing to the victims of apartheid and for its consistent stand against the South African régime.

283. As far as article 5 of the Convention was concerned, the Committee requested detailed information about the immigrant population in India, their nationality, status as refugees or citizens, and their civil and political rights. Information was also asked for as regards the status of non-citizens in relation to article 14 of the Constitution and the requirements to become a citizen. Making reference to information provided in the report about provisions of the Constitution of India to prevent exploitation of the weaker section of society, one member showed interest to learn more about those provisions and whether the labour legislation embodied mandatory provisions in that connection.

284. Referring to the recent violence which had occurred in the state of Assam and to the implementation of article 6 of the Convention, it was observed that while recourse to the courts might be effective in the case of individuals, it seemed that it was not practicable in the case of ethnic groups pitted against each other. Reference was made to the statement by the Prime Minister of India that the country did not have the resources to quell such violent rampages and prosecute all the wrongdoers. In this connection, it was stressed that effective measures were needed to protect the life and property of ethnic and minority groups in such situations: it was indeed an agonizing problem if a State's lack of resources prevented it from discharging its fundamental duty of safeguarding the life and property of its citizens. It was further pointed out that it was within the Committee's competence to discuss conflicts arising between linguistic groups which were generally related to problems of ethnic or national considerations. It would be useful to have further information in the next report on India's experience with its autonomous regions and how the relevant machinery operated. Specific information was requested about the institution in India equivalent to an ombudsman and if that institution existed in all the states of the Republic. Inquiries were also made about what type of mechanism there was for resolving disputes entailing the exploitation of a tribal community by non-tribal groups as well as the laws protecting tribal lands and the action taken in the event that those laws were violated. It was observed that the conflicts in Assam could have been avoided if article 7 of the Convention had been fully implemented in that part of India.

285. The representative of India, replying to questions raised in connection with articles 1 and 2, explained that under article 14 of the Constitution equality before the law meant that among equals the law should be equal and should be equally administered; there could be no discrimination between individuals in substantially similar circumstances and conditions. The Supreme Court had upheld that principle and ruled that classification was permissible for the purposes of legislation, and that it was not necessary for all laws to be general in character and universal in application. He said

that he was not aware of any trend towards conversion to Islam among scheduled castes; he only knew of one isolated incident. In connection with the provision that the State should not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth, he said that there could be other circumstances under which certain classifications could be made, and referred to one case in which the Supreme Court had ruled it inadmissible for a college in Bombay to restrict Admission to Anglo-Indians since that restriction entailed only one criterion and thereby violated the Constitution. On the question of the amendment to article 334 of the Constitution, he said that seats had been reserved for members of scheduled castes and scheduled tribes and for representatives of the Anglo-Indian community in the Parliament and in the legislative assemblies for 40 years from the announcement of the Constitution. Certain groups had been subjected to repression and deprived of all facilities for centuries; 40 years was not a long period to bring such people up to the level of the rest of the community.

286. Regarding the questions about tribes and tribal communities, he pointed out that a great deal of information had already been provided in previous periodic reports. He referred to various tribal sub-plans for the advancement of members of scheduled castes and tribes which laid down the strategies and priorities for each state and which were subject to periodic review in various forums, including the Planning Commission. The education of members of tribes and scheduled castes up to the secondary level was entirely free in government schools. About 1.6 million children had received scholarships during the period of the fifth plan up to the high-school level and over 2,000 hostels and 200 boarding schools were maintained; in addition some 23,000 youths from scheduled castes and tribes had received vocational training in industrial training institutes. The number of students from scheduled castes and tribes who had been awarded scholarships for higher education had increased from 2,179 in 1951-1952 to over 400,000 in 1978. The numbers of members of scheduled castes and tribes employed in public services had risen from 360,000 in 1966 to over 3 million in 1979. In the public sector and at the central and state government levels there were specific quotas for members of scheduled castes and tribes, and each year a number of places was reserved for members of such groups in the public service examinations, including two or three places in the foreign service.

287. In daily life, the caste system was gradually disappearing. A possible exception was marriage, since marriages were often arranged by parents, and the first consideration tended to be caste, although the phrase "caste no bar" was being seen increasingly frequently in the classified matrimonial advertisements in Indian newspapers. Untouchables had received extensive protection under the Constitution; all activities directed against members of scheduled castes or for the purpose of untouchability were crimes. When cases were brought before the courts, the onus of proof lay with the accused person. Many cases did not go to the courts at all; problems were sorted out at the village level by village elders under the panchayat system. At all levels, from the sarpanch to the district magistrate, the interests of the backward castes were protected without the need to go to court. People of Tamil origin had been assimilated and given Indian citizenship. On the question of land redistribution, the Government had restricted the size of individual landholdings so that tenants could hope to own the land they farmed; the ceiling on the size, though it varied from state to state, averaged 30 acres per person.

288. Turning to questions posed in relation to article 5 of the Convention, he indicated that protection by the State did not distinguish between citizens and non-citizens. The Ministry of



Labour had responsibility for all labour problems; members of backward classes or socially disadvantaged groups could also apply directly to the Supreme Court.

289. Answering questions related to article 6 and the events which had occurred in Assam, he stated that the Government had had a constitutional obligation to organize elections in Assam; certain individuals had been unwilling to allow the elections to be held and had even tried to stop others from participating in them. They had disrupted communications and spread fear, and that situation had given rise to the recent shocking events. The Government of India had condemned those events and was taking all possible steps to rehabilitate the persons affected. The violence which had occurred amongst different groups of the population was indeed tragic. The Indian Constitution and Penal Code made incitement to violence an offence and under section 153 A of the Penal Code various actions constituting incitement to hatred or violence were an offence and were subject to appropriate penalties. On the question of ombudsmen, he said that there was a vigilance commissioner's office in Delhi which took action on all complaints against the Executive; similar offices existed in each state.

290. He would not ascribe the events in Assam to failure to implement article 7 of the Convention. Details on how article 7 was being implemented, by inculcating principles of human rights in universities and schools, had been provided in the sixth periodic report.

291. Finally, he assured the Committee that further information in relation to other questions asked would be provided in the next periodic report.

## **CERD A/42/18 (1987)**

745. The eighth and ninth periodic reports of India submitted in one document (CERD/C/149/Add.11) were considered by the Committee at its 796th and 797th meetings on 16 March 1987 (CERD/C/SR.796 and CERD/C/SR.797).

746. The report was introduced by the representative of India, who supplemented and updated the information it contained. He referred to the contribution of India, together with other Commonwealth countries, to the international struggle against apartheid as well as to its contribution to the Action for Resisting Invasion, Colonialism and Apartheid Fund. He informed the Committee that two Union Territories, Mizoram and Arunachal Pradesh, which were largely composed of tribal communities, had been granted the status of federal states. The Government had established an Indian Commission on Human Rights entirely composed of members participating in their private capacity, and a Central Social Welfare Board. He further stated that, as of 30 November 1986, a total of 213,465 bonded labourers had been identified and that 172,352 had been rehabilitated. Finally, he informed the Committee that his Government had adopted a new national policy on education, one of the objectives of which was the generalization of primary education by 1990.

747. Members of the Committee congratulated the Government of India for the instructive and comprehensive report it had submitted and for the supplementary information that the representative of India had provided in introducing the report. They paid tribute to India's commitment to the elimination of racial discrimination at both the national and international levels. They also noted with satisfaction the results achieved in spite of the difficulties faced by India as a developing country. They welcomed the demographic information contained in the report.

748. Further information was requested on the amendments to the Constitution and clarification was sought regarding the legislative purpose of the introduction of the concept of race in article 15 of the Indian Constitution of 1949 and regarding the groups that required protection.

749. In relation to the implementation of article 2, paragraph 2, taken in conjunction with article 5 of the Convention, members were gratified to note the measures taken in support of the scheduled castes and tribes, in particular, the establishment of two states inhabited by scheduled tribes. The fact that those two states had been established in India was a sign of progress, which proved that the principle of federalism could also be applied to developing countries. Within that context, it was asked whether those two states were in the region of the Sino-Indian conflict. One member pointed out that there was a boundary dispute.

750. Members requested information about the social and educational policy measures adopted by the Government to improve the situation of the untouchables and to abolish untouchability. They wished to know whether former untouchables participated in public affairs at the federal and state levels and what part the members of that disadvantaged class played in the country's political, economic, social and cultural life. Further information was requested on the Commission set up in 1978 to deal with matters pertaining to the scheduled castes and tribes and it was pointed out that the Indian authorities might wish to provide members of the Committee with a copy of one of the Commission's reports or at least with a summary thereof. Further details on the implementation of

the Protection of Civil Rights Act, 1955 were also requested. It was noted that the Constitution provided that the State could set aside jobs in the public services for the backward classes. The fact that that provision applied to the scheduled castes and tribes was highly appreciated, but it was felt that it should also apply to other groups. In that context, information was requested about the representation of the various communities in the public services.

751. Members of the Committee requested additional information on the action taken by the Government to improve conditions with regard to housing, nutrition and employment, particularly in respect of the 40 per cent of the population living in extreme poverty, and on the number of families that had managed to cross the poverty line by the end of each five-year plan. It was asked whether industrialization had led to further poverty and the emergence of privileged groups or whether it had benefited the various ethnic groups equally, without prejudice to their traditional culture, and inquiries were made concerning government efforts to provide certain disadvantaged ethnic groups that spoke different languages with employment opportunities. Clarification was sought regarding the statement in the report that more than 300 million man-days of additional employment were being generated annually under the rural employment programmes.

752. Members noted with satisfaction the measures adopted by the Government with a view to abolishing debt bondage. They inquired about the functioning of the scheme, the method of identifying bonded labourers and the procedure for their release from bondage.

753. It was observed that the laws and customs governing marriage and succession in the various communities might be an obstacle to the promotion of civil and political rights and it was asked whether the dowry system had been eliminated in India.

754. Members congratulated the Indian Government on the spectacular progress achieved in the sphere of education. They asked for additional information about government measures to promote the use of a language likely to open up more job opportunities for the various ethnic groups and thereby generally improve their social situation. They asked whether the country's 15 main languages were used in schools and whether English was still the common language. They also requested information on the literacy rate and the standard of education in primary and secondary schools, if possible, by ethnic group.

755. Clarification was sought concerning the authority responsible for defining the national interest when preparing media programmes on news and current affairs.

756. It was asked whether the social system, in which divisions into different castes and groups still subsisted, was to some extent the result of religious belief.

757. Members also wished to know, in general, what India was doing to preserve and encourage the cultural identity of the various Indian states and, in particular, of the State of Sikkim, the population of which was mostly of Mongolian descent. It was asked whether the languages spoken in Sikkim were taught at school and whether its history and culture were covered by educational curricula.

758. With regard to article 3 of the Convention, members of the Committee commended the Indian

Government for its opposition to apartheid and its endeavours to isolate South Africa and to provide material and moral support to the liberation movements and the front-line States. It was asked whether there were any diplomatic, consular, commercial or cultural relations between India and South Africa.

759. Concerning the implementation of article 4 of the Convention, it was noted that the Government had enacted appropriate legislation. It was asked whether the Indian Penal Code, which predated the Convention, had been amended following the entry into force of the latter so as to reflect more precisely the provisions of that article.

760. As far as the implementation of article 6 was concerned, members of the Committee were gratified to note the establishment of a Commission on Human Rights in India, a development that reflected the Government's sincerity and determination to overcome the problems posed by racial discrimination in the country. They also welcomed the new form of jurisdiction, described as epistolary, by which the Supreme Court had taken action on the basis of an ordinary postcard or telegram, or even on its own initiative on the basis of press reports. Examples of judicial decisions of the Supreme Court were requested.

761. Members of the Committee pointed out that the judicial process was very slow and asked whether the Government was taking any action to improve its efficiency. They requested information about the penalties applicable in respect of discrimination, the relevant judicial precedents and the composition of the Supreme Court, and asked whether rulings on points of law and on the facts were handed down by the same section of the Court. They also asked about the operation of recourse procedures in the various states, since India was a federal country and the citizens were more frequently in touch with the local administration than with the central administration.

762. It was asked whether the democratization process which India was undergoing posed problems of separatism and even terrorism, and whether any cases involving such problems had been referred to the courts.

763. Members wished to know why the institution of Lok Ayukts, with powers similar to those of the ombudsman, was implemented in only a few states of India and which states those were. It was also asked whether there was an ombudsman at the federal level.

764. In reply to the questions asked and the comments made by the members of the Committee, the representative of India stated that the distinction established in article 15 of the Constitution had been specifically designed to provide protective discrimination in favour of the disadvantaged sections of Indian society and to remove educational, economic and social disparities resulting largely from colonial rule in India. The development and literacy of backward communities, scheduled tribes and castes had progressed at double or triple the rate of that for the rest of the population since 1947.

765. The Commissioner for scheduled castes and scheduled tribes was already investigating all matters relating to constitutional safeguards, reservation of jobs in public services, and so forth. The Commissioner reported to Parliament, where his conclusions and recommendations were the subject

of intense debate. Other structures and institutions were also in place to safeguard the interests of the tribal populations, as indicated in the report.

766. Regarding the achievements of specific government programmes, he said that, between 1961 and 1981, the level of literacy had increased from 28 to 41 per cent for the population as a whole; for scheduled castes, it had increased from 10.27 to 21.38 per cent, and for scheduled tribes from 8.53 to 16.35 per cent. In the area of employment, whereas in 1965, scheduled castes had constituted 13.17 per cent of all persons employed in the public services, and scheduled tribes, only 2.25 per cent, by 1983, their representation had increased to 16.24 and 4.56 per cent, respectively. In that same period, overall employment of scheduled castes had risen by 93 per cent, and that of scheduled tribes, by nearly 217 per cent. The number of members of scheduled castes in top civil service posts, for which entry was by competitive examination, had increased more than tenfold, and their representation in second-category posts had risen sevenfold. There had been a 14-fold and nearly ninefold increase, respectively, in the representation of scheduled tribes in those posts.

767. As to representation at the highest level, one Deputy Prime Minister belonged to a scheduled caste customarily known as the “untouchables”. A former Minister of State for Foreign Affairs had also been a member of a scheduled caste. Members of scheduled tribes were represented in the current Cabinet, and one was the Minister of Labour. A number of ambassadors and other senior officials also belonged to those traditionally disadvantaged groups, which had come a long way as a result of government efforts to overcome the problem of the backward classes and remove the barriers to social mobility.

768. One member of the Committee had pointed out that there were other backward communities in India, in addition to the scheduled tribes and scheduled castes. That matter had been examined in detail by a national commission in 1980. Several State governments currently followed their own independent practice with regard to the reservation of posts. However, the Supreme Court of India, in a judgement dating back a quarter of a century, had stated that no reservation beyond the level of 50 per cent could be allowed. The High Court of Andhra Pradesh, moreover, had ruled unconstitutional a government order calling for a further reservation of posts for certain categories of the population other than scheduled tribes and scheduled castes. In other words, the debate on the subject of reservation continued unabated in India and he wished to assure the Committee that any new developments would be duly reflected in future reports submitted by his Government.

769. The two Union Territories that had recently been granted statehood were Mizoram and Arunachal Pradesh, both bordering on China. Mizoram had a population of 500,000 while the population of Arunachal Pradesh was 650,000. Tribal dialects prevailed in those States. In 1962, India and China had had a boundary exchange in that area following a border conflict.

770. Concerning the impact of some of the country’s social programmes, a national sample survey had indicated that, in the year 1977/78, 48.3 per cent of the population, representing 306.8 million people, had been below the poverty line on the basis of per capita consumption. By 1984/85, that proportion had fallen to 36.9 per cent, representing 273 million people and, by 1989/90, it was projected that it would fall to 25.8 per cent or 210 million people. There had already, therefore, been a significant reduction in the number of people below the poverty line. The survey had concluded that, between 1977/78 and 1983/84, 36 million people had moved above the poverty line. Those

results reflected the priority given by the Government to improving the living conditions of the underprivileged.

771. Interest had been expressed in the annual report on the implementation of the provisions of section 15A of the Protection of Civil Rights Act, 1955. He would endeavour to make a copy of that document available to the Committee when it considered the next periodic report submitted by his Government.

772. Under the Uniform Civil Code regarding marriage and inheritance, people from different religious communities could contract a civil marriage. The normal laws of inheritance prevailed in such cases.

773. He explained that the figure of 300 million referred to the number of eight-hour work-days of additional employment being generated annually under the rural employment programmes. In that regard, he mentioned the programmes for hill regions, drought-prone areas and deserts and the relatively new scheme, introduced in 1983, for guaranteeing employment to landless rural labour.

774. With reference to the set of norms laid down for news and current affairs programmes on radio and television, the representative said that the broad parameters of news policy for the broadcasting media were approved by Parliament.

775. With reference to Sikkim, he explained that that region had become a full state of the Indian Union in 1975. There were four principal languages but all, except Nepali, were dialects with no written literature and could never therefore be used as official languages. The social and economic development of all the frontier states had rightly received attention out of proportion to the population of the area. Since 1979, Sikkim had implemented 30 new irrigation schemes to bring water to 3,163 hectares of land; hydroelectric stations with a total installed capacity of 15 megawatts, to serve a population of 300,000, had also been constructed. In 1975, there had been no electrification in Sikkim but, by 1984, 154 villages out of a total of 405 had been electrified.

776. Education was the responsibility of both the central and the state governments. The central Government was directly responsible for the central universities and institutes of national importance and also autonomous agencies, such as the University Grants Commission and the National Institute of Educational Planning. School education was conducted in the various states in 15 recognized local languages. There was provision for special English language schools. Education was conducted in the local language in all public, i.e., government, schools at the primary and secondary level. The local languages were also used in state institutions of higher education, apart from institutions dealing with the frontier areas of science and technology. In 1951, soon after India had achieved independence, only 16.7 per cent of the population had been literate; the current literacy rate was 40 per cent. In May 1986, the Government had introduced a new educational policy and increased the budget for education by 130 per cent for the current financial year. Particular emphasis was being laid on elementary education and on adult literacy during the next decade. The social evil of the dowry system was gradually disappearing with the spread of education.

777. As for relations with South Africa, India had no relations with that country. The sacrifice that India had made in that connection was reflected in the fact that, before the embargo, 2 per cent of India's total external trade had been with South Africa.

778. Regarding article 4, the representative said that, since the submission of the seventh periodic report, there had been no new developments in India, as existing laws were deemed adequate to deal with any problem of implementation that might arise.

779. The Supreme Court of India consisted of a Chief Justice and not more than 17 other judges appointed by the President. The fundamental basis of the Indian Constitution and general practice was to have an independent and powerful judiciary. The independence of the courts and, in particular, the Supreme Court was ensured by a number of provisions, including a prohibition on the removal of a Supreme Court judge except by order of the President, following parliamentary approval of the proposed action by a two-thirds majority. No case of such removal had occurred since India had achieved independence.

780. An explanation of epistolary jurisdiction was contained in the report, as well as in former Chief Justice Bhagwati's address. The practice, as it had evolved, was that, where a person or class of persons had suffered a legal wrong and, by reason of poverty, disability or social or economic disadvantage, had no judicial redress, any member of the public, acting in good faith, could take the initiative of bringing an action seeking redress for the legal injury caused. Under that doctrine, social action groups could therefore take the initiative, if they found that there was no administrative response to the legal injury which had occurred. The process was intended to ensure the enforcement of social welfare legislation, such as the Minimum Wage Act, in order to improve the conditions of the underprivileged. The procedure was therefore of particular importance with reference to India's implementation of the Convention.

781. He mentioned a case which had been referred to the Supreme Court in 1983 and had originally been brought by the People's Union of Democratic Rights on behalf of workmen employed on construction projects who were allegedly not benefiting from the labour laws. Further cases involved a letter to the Chief Justice regarding distressing living conditions in a women's home in the State of Uttar Pradesh, the Limestone Quarries Case, where limestone quarrying in the hills was allegedly affecting the ecology and agriculture of the region, and a case involving bonded labour in stone quarries in the region of Hyderabad. In all those cases, the action taken had produced legal remedies which had corrected injustices. The procedure was therefore relevant to India's implementation of the Convention.

782. The institution of Lok Ayukts, with powers similar to those of an ombudsman, had been created four or five years earlier and had been adopted in six states. The calibre of the Lok Ayukts might be judged from the fact that their number included a former judge of the Supreme Court and other eminent jurists. Redress for corruption and misconduct by public officials was currently a local and not a national responsibility. Consequently, the central government had not yet taken action to appoint a central Lok Ayukt; a bill currently before Parliament was, however, likely to be enacted for the creation of such an office in the central Government and all officials of that government would fall within his jurisdiction.

783. On the subject of terrorism, the representative of India stated that individual instances did occur and that the Government endeavoured to cope with them with political maturity by dealing with the terrorist groups, on the one hand, and by addressing the grievances of the communities concerned, on the other, each in the appropriate manner. The particular instance referred to, the blowing up of a train, had involved Tamil refugees. It could not be said that there was a generalized problem of terrorism in the State of Tamil Nadu, although some groups of refugees were disaffected as a result of having been uprooted from their homes. Despite economic and social constraint, the Government was doing its best to cope with the difficulties of the refugees, and those who wished to stay in India could do so with honour and dignity until the political situation in Sri Lanka improved.



## **CERD A/51/18 (1996)**

India 9/

339. At its 1161<sup>st</sup>, 1162<sup>nd</sup> and 1163<sup>rd</sup> meetings, held on 7 and 8 August 1996 (see CERD/C/SR.1161-1163), the Committee on the Elimination of Racial Discrimination considered the tenth to fourteenth periodic reports of India (CERD/C/299/Add.3) and adopted, at its 1182<sup>nd</sup> meeting held on 22 August 1996, the following concluding observations.

### A. Introduction

340. The Committee expresses its appreciation for the opportunity to resume its dialogue with the State Party on the basis of its tenth to fourteenth periodic reports. It regrets the brevity of the report, all the more so since 10 years have passed since the previous report was submitted. It also regrets that the report does not provide concrete information on the implementation of the Convention in practice; it furthermore regrets that the report and the delegation claim that the situation of the scheduled castes and scheduled tribes does not fall within the scope of the Convention.

341. The Committee notes that the State Party has not made the declaration provided for in article 14 of the Convention. Some of the members of the Committee requested that the possibility of making such a declaration be considered.

### B. Factors and difficulties impeding the implementation of the Convention

342. It is noted that India is a large multi-ethnic and multicultural society. It is also noted that the extreme poverty of certain groups in the population, the system of castes and the climate of violence in certain parts of the country are among the factors which impede the full implementation of the Convention by the State Party.

### C. Positive aspects

343. The leading role played by India in the struggle against racial discrimination and apartheid at the international level is welcomed by the Committee. The Committee also acknowledges the far-reaching measures adopted by the Government to combat discrimination against members of scheduled castes and scheduled tribes.

344. The demographic data on the composition of the population and on the representation of various communities in the public service at the central and state level of government provided by the delegation during the meetings are welcomed.

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9/ The comments of India were submitted to the Committee on the Elimination of Racial Discrimination pursuant to article 9, paragraph 2, of the Convention and are reprinted in annex IX.

345. The broad functions and powers of the recently established National Commission on Human Rights, as defined by the Protection of Human Rights Act (1993), which include the capacity to inquire into complaints of violations of human rights, to intervene in any proceeding involving allegations of violation of human rights pending before a court, to review constitutional and legal safeguards, to study treaties and other international instruments on human rights, to recommend measures for their effective implementation and to spread human rights literacy among the population, are welcomed by the Committee. It is noted with interest that the Commission encourages the states within the federation to create human rights commissions, as well as tribunals dealing specifically with human rights.

346. The Committee takes note of the plurality of newspapers and the mass media, and their awareness of human rights problems. The Committee holds that they play an important role in the implementation of the International Convention on the Elimination of All Forms of Racial Discrimination.

347. Note is also taken of the procedure of public interest litigation adopted by the Supreme Court, which affords the possibility to anyone, and not only to the victims of human rights violations, to seek redress from the court by any means, even by means of a postcard.

348. Articles 15 (i) and 15 (ii) of the Constitution of India, prohibiting all forms of discrimination by the State and its agents, or between individuals, including discrimination based on race and castes, as well as article 153, paragraphs (a) and (b), and article 505 of the Penal Code, which prohibit actions that promote disharmony, hatred, feelings of enmity and ill-will on grounds of race or religion, are found to be mainly in conformity with article 2, paragraph 1, of the Convention.

349. The Committee welcomes the statement in the State Party's report to the effect that no organization which promotes and incites racial discrimination can legally exist in India and that the Constitution and the laws in this regard make it clear that the State Party will take all necessary measures within the law to prevent activities and propaganda which promote and incite racial discrimination.

350. The lapse of the Terrorist and Disruptive Activities (Prevention) Act (TADA), which applied in parts of the north-eastern part of the country and in Jammu and Kashmir, under which the right to personal security of some members of ethnic and religious minorities living in those areas was often reported to be violated by security forces, is welcomed.

351. The importance accorded by the authorities to education as a means to spread awareness of human rights and literacy among the population and to struggle against all forms of discrimination, in particular racial discrimination, as well as the activities of the National Commission on Human Rights and the inclusion of human rights in the training of law enforcement officials, are welcomed.

#### D. Principal subjects of concern

352. Noting the declaration in paragraph 7 of the report, reiterated in the oral presentation, the Committee states that the term "descent" mentioned in article 1 of the Convention does not solely refer to race. The Committee affirms that the situation of the scheduled castes and scheduled tribes

falls within the scope of the Convention. It emphasizes its great concern that within the discussion of the report, there was no inclination on the side of the State Party to reconsider its position.

353. The Committee is seriously concerned that the Kashmiris, as well as other groups, are frequently treated, on account of their ethnic or national origin, in ways contrary to the basic provisions of the Convention.

354. Clause 19 of the Protection of Human Rights Act prevents the National Commission on Human Rights from directly investigating allegations of abuse involving the armed forces. This is a too broad restriction on its powers and contributes to a climate of impunity for members of the armed forces. Moreover, it is regretted that the Commission is debarred from investigating cases of human rights violation that occurred more than a year before the making of the complaint.

355. The absence of information on the functions, powers and activities of the National Commission on Scheduled Castes and Scheduled Tribes and of the National Commission on Minorities makes it impossible to assess whether these Commissions have a positive impact upon the enjoyment of human rights and fundamental freedoms by members of the groups in question.

356. It is regretted that no information has been provided to the Committee on the effective implementation of the penal provisions referred to in paragraph 348 above. In this regard, concern is expressed at numerous reports of acts of discrimination based on race, colour, descent or national or ethnic origin, although it was stated that no such case has yet been brought before the courts; this leads the Committee to wonder whether individuals are sufficiently informed about their rights.

357. The lack of concrete information on the legal provisions in force to prohibit organizations which incite and promote racial discrimination and hatred, and to punish members of such organizations in accordance with article 4 of the Convention, as well as on their application in practice, including eventual court decisions, is regretted. This is most serious in view of widespread violence against certain minorities actively sponsored by extremist organizations that have not been declared illegal.

358. The lack of information on the text of the Directive Principles of State Policy of the Constitution relating to the promotion of social, economic and cultural rights, and on measures to give them effect, makes any evaluation of the implementation of article 5 of the Convention more difficult.

359. Regrets are expressed that the National Security Act and, in some areas of India, the Public Safety Act, remain in force.

360. It is noted with concern that the denial of the equal enjoyment of political rights, as provided for in article 5 (c) of the Convention, has led to an increase of violence, in particular in Jammu and Kashmir.

361. It is noted that although constitutional provisions and legal texts exist to abolish untouchability and to protect the members of the scheduled castes and tribes, and although social and educational policies have been adopted to improve the situation of members of scheduled castes and tribes and

to protect them from abuses, widespread discrimination against them and the relative impunity of those who abuse them point to the limited effect of these measures. The Committee is particularly concerned at reports that people belonging to the scheduled castes and tribes are often prevented from using public wells or from entering cafés or restaurants and that their children are sometimes separated from other children in schools, in violation of article 5 (f) of the Convention.

362. The Committee regrets that certain communities do not enjoy representation in proportion to their size.

363. Although it is noted that the Supreme Court and the high courts have the jurisdiction to award compensation to victims of human rights violations, including in the field of racial discrimination, concern is expressed that there exists no specific statute providing for the right of individuals to seek from the courts just and adequate reparation or satisfaction for any damage suffered as a result of acts of racial discrimination, as required by article 6 of the Convention.

#### E. Suggestions and recommendations

364. The Committee recommends that the State Party continue and strengthen its efforts to improve the effectiveness of measures aimed at guaranteeing to all groups of the population, and especially to the members of the scheduled castes and scheduled tribes, the full enjoyment of their civil, cultural, economic, political and social rights, as mentioned in article 5 of the Convention. In this regard, the Committee recommends that the next report to be submitted by the State Party contain full and detailed information on the legislative aspects and the concrete implementation of the Directive Principles of the State Policy of the Constitution.

365. The Committee recommends that special measures be taken by the authorities to prevent acts of discrimination towards persons belonging to the scheduled castes and scheduled tribes, and, in cases where such acts have been committed, to conduct thorough investigations, to punish those found responsible and to provide just and adequate reparation to the victims. In this regard, the Committee particularly stresses the importance of the equal enjoyment by members of these groups of the rights to access to health care, education, work and public places and services, including wells, cafés or restaurants.

366. The Committee recommends that clause 19 of the Protection of Human Rights Act be repealed to allow inquiries of alleged abuses committed by members of the armed and security forces to be conducted by the National Commission on Human Rights, and that the Commission be enabled to look into complaints of acts of racial discrimination that occurred more than a year before the filing of the complaint.

367. The Committee recommends that the next periodic report of the State Party include information on the powers and functions, as well as on their effective implementation, of the National Commission on Scheduled Castes and Scheduled Tribes and of the National Commission on Minorities.

368. The Committee also recommends that the Government provide in its next periodic report

information, including the number of complaints lodged and sentences passed, about the implementation in practice of the legal provisions prohibiting acts of racial discrimination and organizations which promote and incite racial discrimination, in accordance with articles 2 and 4 of the Convention.

369. The Committee recommends a continuing campaign to educate the Indian population on human rights, in line with the Constitution of India and with universal human rights instruments, including the International Convention on the Elimination of All Forms of Racial Discrimination. This should be aimed at eliminating the institutionalized thinking of the high-caste and low-caste mentality.

370. The Committee reaffirms that the provisions of article 6 of the Convention are mandatory and that the Government of India should adopt legal provisions making it easier for individuals to seek from the courts just and adequate reparation or satisfaction for any damage suffered as a result of acts of racial discrimination, including acts of discrimination based on belonging to a caste or a tribe.

371. The Committee suggests that the State Party ensure wide publicity, as far as possible in the official and state languages, to its tenth to fourteenth reports and to the present concluding observations.

372. The Committee recommends that the State Party ratify at its earliest convenience the amendments to article 8, paragraph 6, of the Convention, adopted by the fourteenth meeting of States Parties.

373. The Committee recommends that the State Party's next periodic report, due on 4 January 1998, be a comprehensive report and that it address all the points raised in these concluding observations.