

INTERNATIONAL
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ON THE ELIMINATION
OF ALL FORMS OF
RACIAL DISCRIMINATION



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COMMITTEE ON THE ELIMINATION
OF RACIAL DISCRIMINATION
Twenty-fourth session

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

Sixth periodic reports of States Parties due in 1980

Addendum

INDIA 1/

[8 June 1981]

INTRODUCTION

1. Addressing the Eleventh Special Session on International Economic Co-operation for Development of the United Nations General Assembly on 25 August 1980, Mr. P.V. Narasimha Rao, the Minister of External Affairs, Government of India, said: "I would like to convey our warm greetings to the fraternal people of Zimbabwe on the occasion of their entry into the United Nations Organizations. Only a few months ago, we welcomed this country's emergence to life and freedom after decades of darkness imposed by colonial rule and exploitation... The example of Zimbabwe demonstrates once again that truth and justice will triumph. The heroic struggle of the brave people of Zimbabwe against external domination and racial

1/ The sixth periodic report of India was due on 5 January 1980. For previous reports submitted by the Government of India and the summary records of meetings of the Committee at which such reports were considered, see:

1. Initial report - C E R D / C / R . 3 / Add. 3 / Rev. 1 and Add. 39 (C E R D / C / S R . 33, 50, 51 and 56);
2. Second periodic report - C E R D / C / R . 30 / Add. 24 (C E R D / C / S R . 140-141);
3. Third periodic report - C E R D / C / R . 70 / Add. 29 (C E R D / C / S R . 235);
4. Fourth periodic report - C E R D / C / R . 90 / Add. 32 (C E R D / C / S R . 366-367);
5. Fifth periodic report - C E R D / C / 20 / Add. 34 (C E R D / C / S R . 441-442).

Copies of the Report of the Commissioner for Scheduled Castes and Scheduled Tribes, Parts I and II (1978-1979), forwarded to the Secretariat by the Government of India together with its sixth periodic report, will be made available to members of the Committee in the original language.

tyranny has won the admiration of all those who cherish freedom and human dignity, and will always serve as an example to oppressed peoples, wherever they may be. The ramparts of colonial domination and racial bigotry are crumbling. With their tradition of outstanding courage and sacrifice the people of Zimbabwe stand on our side today, strengthening our relentless struggle against the vestiges of racism and colonial rule in Southern Africa".

2. The above words of the Foreign Minister of India were not merely the spontaneous manifestation of India's joy and happiness over Zimbabwe's independence but a reiteration of India's commitment to the pursuit of the elimination of all forms of racial discrimination from all parts of the world. India's policy of opposition towards racism and any form of racial discrimination has in fact, been handed down to us by no less a person than the Father of the Nation, Mahatma Gandhi, who had raised his voice against the pernicious policy of racial discrimination in South Africa years ago. It was his courageous and pioneering role that has inspired independent India and its leaders like Prime Ministers Jawaharlal Nehru and Mrs. Indira Gandhi to carry the struggle forward. India was the first among the countries to break off relations in all fields with South Africa in protest against its racist policies. The Jawaharlal Nehru Award for International Understanding for the year 1979 was conferred upon Mr. Nelson Mandela, the eminent leader of the South African national liberation movement. This is yet another expression of India's support and solidarity with the oppressed people of South Africa.

3. The lessons of strict adherence to the opposition against all forms of racial discrimination, as taught by the Father of the Nation, had been duly imbibed by the Constitution-makers of India who had ensured that necessary provisions are made in the Indian Constitution so that no form of racial discrimination could be practised in our country. The earlier Periodic Reports submitted to the Committee on Elimination of all Forms of Racial Discrimination have exhaustively dealt with various constitutional provisions in this regard and, therefore, these are not being repeated. However, while examining India's Fifth Periodic Report, the Members of the Committee on Elimination of Racial Discrimination, while commending the Report in general, had raised various points on which they had wanted additional information. Accordingly, India's Sixth Periodic Report on Elimination of Racial Discrimination largely confines itself to providing the additional information in respect of the various points raised by the Members of the Committee. This, incidentally, also brings out various developments which have taken place in the juridical and administrative fields concerning racial discrimination in India during the period covered under this Report.

4. One member of the Committee had referred to the revision of the Indian Constitution being undertaken at that time and wished to know to what extent that revision would affect the provisions of the Constitution relating to the Convention.

In the Fifth Periodic Report as contained in document CERD/C/20/Add.34 dated 8 March 1979, extracts from the Indian Constitution have been given in Annex I. Articles cited in Annex I to the report have been amended by the Constitution (Forty-third Amendment Act) and the Constitution (Forty-fourth Amendment Act) as detailed below.

I. Article 19: Section 2 of the Constitution Forty-fourth Amendment Act 1978 is as under:

"In Article 19 of the Constitution

(a) in clause (1) -

(i) in sub-clause (e), the word 'and' shall be inserted at the end;

(ii) sub-clause (f) shall be omitted;

(b) in clause (5), for the words, brackets and letters 'sub-clauses (d) and (e)' shall be substituted."

II. Article 22: Section 3 of the Constitution (Forty-fourth Amendment) Act, 1978 provides:

"3. In Article 22 of the Constitution:

(a) for clause (4), the following clause shall be substituted namely:

'(4) No law providing for preventive detention shall authorize the detention of a person for a longer period than two months unless an Advisory Board constituted in accordance with the recommendations of the Chief Justice of the appropriate High Court has reported before the expiration of the said period of two months that there is in its opinion sufficient cause for such detention:

Provided that an Advisory Board shall consist of a Chairman and not less than two other members, and the Chairman shall be serving Judge of the appropriate High Court and the other members shall be serving or retired Judges of any High Court:

Provided further that nothing in this clause shall authorize the detention of any person beyond the maximum period prescribed by any law made by Parliament under Sub-clause (a) and clause (7).

Explanation - In this clause, 'appropriate High Court' means:

(i) in the case of the detention of a person in pursuance of an order of detention made by the Government of India or any officer or authority subordinate to that Government, the High Court for the Union Territory of Delhi;

(ii) in the case of the detention of a person in pursuance of an order of detention made by the Government of any State (other than a Union Territory) the High Court for that State; and

(iii) in the case of the detention of a person in pursuance of an order of detention made by the administrator of a Union Territory or an officer or authority subordinate to such administrator, such High Court as may be specified by or under any law made by Parliament on this behalf;

(b) in clause (7):

- (i) sub-clause (a) shall be omitted;
- (ii) sub-clause (b) shall be re-lettered as sub-clause (a); and
- (iii) sub-clause (c) shall be re-lettered as sub-clause (b) and in the sub-clause as so re-lettered, for the words brackets, letter and figure 'sub-clause (a) of clause (4)' the word, bracket and figure 'clause (4)' shall be substituted."

III. Article 30: The following clause has been inserted in Article 30 by Section 4 of (Forty-fourth Amendment) Act, 1978:-

"(1A) In making any law providing for the compulsory acquisition of any property an educational institution established and administered by a minority, referred to in clause (1), the State shall ensure that the amount fixed by or determined under such law for the acquisition of such property is such as would not restrict or abrogate the right guaranteed under that clause."

IV. The sub-heading "Right of Property" occurring after Article 30 of the Constitution has been omitted by Section 5 of the (Forty-fourth Amendment) Act, 1978.

V. Article 31 has been omitted by Section 6 of the (Forty-fourth Amendment) Act, 1978.

VI. Article 31A and 31C have been amended by Sections 7 and 8 of the (Forty-fourth Amendment) Act which provides as under:

"7. In Article 31A of the Constitution, in clause (1) for the words and figures 'Article 14, Article 19' shall be substituted."

VII. Article 31D added by Constitution (Forty-second Amendment) Act (cited in the Annex I) has been omitted by Constitution (Forty-third Amendment) Act.

VIII. The following new clause has been added to Article 38 of the Constitution (relating to Directive Principles of the State Policy) by (Forty-fourth Amendment) Act:

"(2) The State shall, in particular, strive to minimize the inequalities in status, facilities and opportunities not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations."

IX. Article 226 after amendment by Constitution (Forty-third Amendment) Act and Constitution (Forty-fourth Amendment) Act reads as under:

"226.(1) Notwithstanding anything in Article 32, every High Court shall have power, throughout the territories in relation to which it exercises jurisdiction, to issue to any person or authority, including in appropriate cases, any Government, within those territories directions, orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari, or any of them, for the enforcement of any of the rights conferred by Part III and for any other purpose.

(2) The power conferred by clause (1) to issue directions, orders or writs to any Government, authority or person may also be exercised by any High Court exercising jurisdiction in relation to the territories within which the cause of action, wholly or in part, arises for the exercise of such power, notwithstanding that the seat of such Government or authority or the residence of such person is not within those territories.

(3) Where any party against whom an interim order, whether by way of injunction or stay or in any other manner, is made on, or in any proceedings relating to, a petition under clause (1), without:

(a) furnishing to such party copies of such petitions and all documents in support of the plea for such interim order; and

(b) giving such party an opportunity of being heard, makes an application, to the High Court for the vacation of such order and furnishes a copy of such application to the party in whose favour such order has been made or the counsel of such party, the High Court shall dispose of the application within a period of two weeks from the date on which it is received or from the date on which the copy of such application is so furnished, whichever is later, or where the High Court is closed on the last day of that period, before the expiry of the next day afterwards on which the High Court is open, and if the application is not so disposed of, the interim order shall, on the expiry of that period, or as the case may be the expiry of said next day, stand vacated.

(4) The power conferred on a High Court by this article shall not be in derogation of the power conferred on the Supreme Court by clause (2) of Article 32.

X. Article 226A has been omitted by Section 8 of the Constitution (Forty-third Amendment) Act.

A copy each of the Constitution (Forty-third Amendment) Act 1977 and the Constitution (Forty-fourth Amendment Act) is attached at Annex I.

5. It was stated by one member of the Committee that Article 14 of the Indian Constitution initiated the principle of equality. However, the Committee would welcome an explanation as to what legal remedies were available to individuals to ensure that they effectively enjoyed equality of rights before the law. Another member pointed out that the wording of the Convention was much more forceful and positive than the wording of the Article 14 of the Indian Constitution. Under Article 5 of the Convention, States Parties undertook to "guarantee the right of everyone to equal treatment before the tribunals." He asked whether the role of the Indian State was limited to not deny to any person, equality before the law, of the equal protection of Laws or whether it actually guaranteed equality and protection.

Any person considering himself aggrieved by infringement of fundamental rights available to him may resort to speedy remedies of writ petitions available under Articles 32 and 226 of the Constitution. If the Courts find that the equality has been denied it can declare the Law as void and ultra vires of the Constitution. In case of an administrative decision it can issue an appropriate writ of mandamus directing the authorities concerned to remedy their action.

Article 14 of the Constitution prohibits class legislation and not reasonable classification for purposes of legislation. A rule of procedure laid down by law comes as much within the purview of Article 14 as any rule of substantive law and it is necessary that all litigants who are similarly situated, are able to avail themselves of the same procedural rights for relief and for defence with like protection and without discrimination.

6. Referring to paragraph 27 of the Fifth Periodic Report, one member said that he did not understand the "built-in provision" in the Indian Constitution to rescind or nullify any laws and regulations which had the effect of creating racial discrimination.

Articles 32 and 226 of the Indian Constitution cited in Annex I to the Fifth Report provide for the remedy and mode by which any law or regulation violating Articles 14 to 16 can be got rescinded i.e., got declared invalid.

7. Another member pointed out that a general problem which arose in connection with the reports from States with 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. In Annex I to India's Fifth Report, for example, it was stated that under Article 32-A of the Constitution the Supreme Court did not have jurisdiction to review the constitutionality of the State Laws, but no indication was given in the report as to what Court was competent to review such laws. Such information was essential if members were to have a clear picture of the situation with regard to the implementation of the Convention in India.

Article 32-A of the Constitution has been omitted by the Constitution (Forty-third Amendment) Act. Consequently the Supreme Court as well as the High Courts have jurisdiction, subject to the provisions of the Constitution, to review the constitutionality of the State Laws.

8. Referring to paragraph 12 of the report, one member asked for clarifications on the constitutional provisions against "unfair or unreasonable discrimination". Another member also referred to this and asked whether the Indian legislators have envisaged forms of fair and reasonable discrimination by organs of the State. The Convention permitted States to take certain measures to protect disadvantaged groups, but not to engage in discrimination.

Article 14 of the Constitution is a pledge of the protection of equal laws, i.e. that laws operate alike on all persons under like circumstances. The principle of reasonableness which legally as well as philosophically is an essential element of equality or non-arbitrariness pervades Article 14 like brooding omnipresence and procedure contemplated by Article 21 must answer the test of reasonableness in order to be in conformity with Article 14. Unfair or unreasonable discrimination means discrimination without real or just cause. Article 15(1) very clearly prohibits discrimination on grounds of race only as well by the State by providing "The State shall not discriminate against any citizens on grounds only of religion, race, caste, sex, place of birth or any of them."

9. One member pointed out that the Fifth Periodic Report indicated that the Indian citizens enjoyed right of individual redress and could take their complaints to the Supreme Court. In that connection, he was interested to know what expenses were incurred in such action and whether financial assistance was given to individuals who sought redress.

The Government does not provide any financial assistance to individuals seeking redress in a Court of Law. It may be pointed out that it is legally not necessary for a person seeking redress in a Court of Law to engage a counsel, yet counsels are generally engaged for the sake of convenience. It is generally for the counsel and his clients to settle the fees. Besides, the parties are also generally required to pay the prescribed court fees. Supreme Court Rules 1966 also provide for obtaining leave to sue as Pauper. When a person obtains leave to sue as Pauper, he is not required to pay any court fee. Rule 5, order 17 of Supreme Court Rules 1966 provide "where the petitioner obtains leave of the Court to appeal as a pauper he shall not be required to pay court fee or to lodge security for the costs of the respondents. Also Rule 6, order 17 of the Supreme Court Rules provides for assignment of an advocate on record by providing as under:

"The Judge in Chambers may assign an advocate on record to assist a pauper in the case, unless the pauper has made his own arrangement for his representation. Such assignment shall ordinarily be from a panel of advocates willing to assist paupers and chosen by the Judge in Chambers. It shall, however, be open to the Judge in Chambers in his discretion to assign as Advocate outside the panel in any particular case."

10. One member wanted to know the process of judicial review of the legislative measure.

The judicial review in India would mean the power of superior courts, authorized by Constitution, to consider the constitutionality of a legislative measure by appropriate proceedings and to declare them invalid or ultra vires, if in the judgement of the court they are violative of a Constitutional limitation or prohibition.

11. One member was interested to know what India was doing to foster interpenetration between India and other cultures, specially African cultures. In reply the Indian representative stated that India had signed several cultural co-operation agreements with African countries and that many African students were studying at Indian universities which offer courses in African studies.

India has been steadily developing its cultural ties with the African countries since independence. India has entered into cultural co-operation agreement with the following countries:

Algeria, Guyana, Lesotho, Rwanda, Sudan, Senegal, Tanzania, Tunisia, Arab Republic of Egypt, Zambia, Zaire, Somalia and Mauritius.

The cultural agreements with these countries envisage co-operation in various fields such as education, culture, science, medicine, agriculture,

radio and television, film and press, Art and Sports, with a view to promoting the activities in these fields; Cultural exchange programme or ad hoc exchange arrangements are entered into from time to time with these countries. At Annex II is given a statement showing the number of scholarships allotted to and utilized by the African countries under the General Cultural Scholarship Scheme of the Government of India for the three years 1977-78, 1978-79 and 1979-80.

12. Referring to paragraph 17 of the Fifth Report one member stated that while understanding the fundamental preoccupation of the Government to put an end to the practice of untouchability he had doubts concerning the provisions in the protection of Civil Rights Act, 1955 relating to summary procedures and the departure in certain cases from the normal legal principle that the accused was presumed innocent unless proved guilty. Another member wanted to know what special circumstances could be invoked to justify collective punishment of the practice of untouchability. A third member said that to Westerners at least, the idea that innocence must be proved was unacceptable. A practical illustration of how that concept was applied would be most welcome. He, however, conceded that he did not feel that he was in a position to judge whether the idea of collective punishment of the practice of untouchability was good or bad, for he was not sufficiently familiar with the Indian life and custom. In any case the question of collective punishment was not covered by the Convention. Referring to paragraph 18 of the report, he said that this also might be unacceptable to Westerners for, in their eyes public servants guilty of negligence in investigating an offence were not necessarily guilty of abetting that offence. Another member commended the exception to the usual principle according to which the accused was considered innocent until proved guilty. It was essential to demonstrate in practice that protection of the individual takes precedence even over such hallowed legal principles. He wanted additional information on the application of the protection of Civil Rights Act as it related to untouchability offences.

(1) The full text of Section 12 of the Protection of Civil Rights Act, 1955 reads as under:

"Where any Act constituting an offence under this Act is committed in relation to a member of the Scheduled Caste, the Court shall presume, unless the contrary is proved that such Act was committed on the ground of untouchability."

Thus the presumption is not about actual commission of the act or omission constituting an offence, but in reality about the act being committed on the ground of untouchability when such act is committed in relation to a Member of the Scheduled Caste.

It may also be pointed out that collective fine under Section 10A of the Act can be imposed after an enquiry in the prescribed manner.

In exercise of the powers conferred by Section 16B of the Act, Protection of Civil Rights Rules, 1977, have been framed. Rules 3 to 5 prescribe the manner of conducting the enquiry contemplated by Section 10A of the Act. These are as under:

"3. Manner of inquiry under sub-section (1) of Section 10A-(1) the State Government may appoint an officer not below the rank of a Sub-Divisional Magistrate for the purpose of making an inquiry referred to in sub-section (1) of Section 10A.

(2) The officer appointed under Sub-Rule (1) (hereinafter in this rule referred to as the inquiry officer) shall issue a public notice specifying the date, time, place and the purpose of such inquiry and calling upon all the residents of the area in respect of which the inquiry is to be held to furnish such information and materials, including documents in their possession, as may be relevant for the purpose of the inquiry.

(3) The public notice referred to in Sub-Rule (2) shall be in local language or in languages of the area and same shall be

- (i) published on the notice board in the offices of the District Magistrate, the District Superintendent of Police, the Village Panchayat or Municipal Committee of the area and such other places as the inquiry officer deems fit and at least in one daily newspaper circulating in the area; and
- (ii) proclaimed in the area by beat of drum or in such other manner as the inquiry officer may think best in the circumstances to bring the contents of the public notice to the notice of the inhabitants of the area.

(4) The inquiry officer, while making such inquiry shall follow as nearly as practicable, the procedure for summary trials including the recording of evidence as laid down in Chapter XXI of the Code of Criminal Procedure, 1973 (2 of 1974).

(5) The inquiry officer shall complete the inquiry as expeditiously as possible and submit his report to the State Government within such a period, not exceeding six weeks as may be specified by the State Government in the order appointing the inquiry officer:

Provided that the State Government may, having regard to the nature of the inquiry, extend the period of submission of the report by such period, not exceeding two months in total, as it may consider necessary."

The principle of presumption of the innocence of the accused unless proved guilty is not given up in this Act. The onus of proving of the commission of offences under this Act lies on prosecution. Section 12 of the Act pertains to a situation where an offence under this Act is proved to have been committed in accordance with the normal law of evidence. If the victim of offence is a member of Scheduled Castes then the presumption is required to be drawn at that stage, namely that the offence was committed on the ground of untouchability. The justification for the presumption will be obvious to anyone who knows the nature and practice of untouchability. The measure for collective fine was introduced to curb the tendency where offences in certain cases are committed by a whole community. The Act provides that public servant who wilfully neglects investigation of an offence was to be deemed to be tried as an abetter. The provision has been made taking into account the various implications of the laws of natural justice.

13. (a) With reference to paragraph 66 of India's Fifth Periodic Report one member suggested that India should give details of the development programmes for the tribal areas so that the Committee could determine exactly what were the opportunities for the more isolated tribes to be integrated to the mainstream of national life. He also suggested that information should be given on how the Tribes Advisory Councils function in advising the governors and on the specific programmes designed to develop the areas.

(b) With regard to paragraph 45 two members wished to know what criteria had been used to identify the Scheduled Castes and Scheduled Tribes.

(c) One member noted that the Commission for Scheduled Castes and Scheduled Tribes had made 96 recommendations and he hoped that the Committee would be informed as to how many of these recommendations had been accepted and implemented.

(a), (b) and (c) In a fast developing country like India where the levels of living of the masses of the population are low by international standards, there are groups which are backward even as per the Indian standards. Among them two groups have been recognized in the Constitution, namely, the Scheduled Castes and Scheduled Tribes. As per provisions contained in the Constitution they are separately specified and notified under Articles 341 and 342 of the Constitution.

According to 1971 census the population of Scheduled Castes was about 80 million and that of the Scheduled Tribes about 38 million. With the introduction of the Modification Order 1976 under which area restrictions in respect of certain communities were removed, the population of these communities put together constitute about one fifth of the country's total population. Realizing the fact that adequate protection and promotion of

interests of these groups are necessary, the Constitution of India has laid special emphasis and has safeguarding provisions incorporated in it. Articles 17, 46, 244, 275, 330, 335, 338, 339 and Fifth Schedule and Sixth Schedule of the Constitution are relevant.

The main thrust of development of the Scheduled Castes is now through a Special Component Plan. Under this strategy the State authorities allocate a certain percentage of their total plan funds having regard to the population of the Scheduled Castes in that State for promoting their development. The Government of India also assists the State Governments with additional direct assistance. Under the approach, schemes of general sectors of development which could benefit the Scheduled Castes are identified and quantification of funds from divisible sectors determined and specific targets laid. The main sectors on which priority is placed presently are agriculture and allied sectors including animal husbandry, dairying, medical, irrigation and fisheries, industry, special village and small scale industries, education, health, housing, water supply and urban development.

In addition to the above, special programmes in the fields of education, economic uplift, health schemes and other schemes such as stipends and scholarships, hostel facilities, book banks, coaching and allied schemes continue to be operated. Grants-in-aid are also given to non-official voluntary organizations working for the development of the Scheduled Castes.

In order to promote plan assistance to the Scheduled Castes, survey and analysis of their needs in different occupation categories, estimation of the number of families in each category, determination of the number of families to be assisted, assessment of available opportunities, identification of arrangements necessary to reach the benefits to target group, working out time and action schedule etc. are being attempted.

In regard to tribal development it has already been indicated in the earlier report that a sub-Plan approach was adopted for the development of the Scheduled Tribes in the country during the Fifth Five Year Plan period.

The tribal sub-Plan 1974-79 spelt the broad strategy and priority in each State. Elimination of hindrances leading to exploitative practices in credit, trade, land, forest, excise policy, etc. was given high priority followed by implementation of programmes in agriculture and allied sectors and social services. The tribal sub-Plan programmes are subject to review with the concerned representatives in various forums from time to time including Annual Plan discussions in the Planning Commission and the Ministry of Home Affairs and subject matter discussions with the concerned Ministries etc.

Having due regard to the psyche, personality, cultural milieu and level of socio-economic development of each group or tribe, distinctive plans for development of each such community are sought to be prepared and the future Integrated Tribal Development Project reports numbering about 180 would reflect a close relationship between the programmes and schemes suggested and the needs of each community.

Important physical achievements on account of the implementation of programmes for tribal development are at Annex III. It may be noted that during the Fifth Plan period areas of tribal concentration (having more than 50 per cent Scheduled Tribes), at block level were carved out as tribal sub-Plan areas (details at Annex IV). As it was found that there were still pockets of tribal concentration outside the tribal sub-Plan area which warranted integrated development, it was decided that during the Sixth Plan period pockets with more than 10,000 tribe population having more than 50 per cent Scheduled Tribe population be also carved out. Accordingly 138 pockets having a Scheduled Tribe population of about 2.6 million have been provisionally identified.

In developmental planning for any broad target group or area, the socio-economic levels of different sub-groups and undeveloped areas need special attention. Of the 41 million Scheduled Tribes in the country each group is at a different stage of development. The question of tackling the problems of the more backward tribal communities received the attention of the various Commissions and Study Teams. Having regard to the fact that communities living at pre-agricultural level of technology, having a low level of literacy and stagnant or diminishing population, 52 communities have been identified as needing special attention. These communities are listed in Annex V. Programmes relevant to the groups are being undertaken for the development of these backward communities among the Scheduled Tribes.

Adequate administrative arrangements for the implementation of programmes in the tribal sub-Plan are being worked out. Special incentives such as enhanced compensatory allowance and residential accommodation for employees working in the tribal areas are also being given. From the beginning, the objectives of Government policy in regard to the Scheduled Tribes and the tribal areas has been primarily directed towards the preservation of their traditional customs from sudden erosion and safeguarding their conventional vocation without the danger of their being pauperized by sophisticated elements of population. At the same time, it was recognized that isolation should not be allowed to last indefinitely.

Sub-clause (1) of Clause 4 of the Fifth Schedule to the Constitution provides for the establishment of the Tribes Advisory Council in States having Scheduled Areas as also, if the President so directs, in States not having Scheduled Areas but having Scheduled Tribe population. All the eight States having Scheduled Areas namely Andhra Pradesh, Bihar, Gujarat, Himachal Pradesh, Madhya Pradesh, Maharashtra, Rajasthan and Orissa have set up Tribes Advisory Councils. Tribes Advisory Councils have also been set up in Tamil Nadu and West Bengal. In addition, State Tribes Advisory Boards exist in Kerala, Tripura and Uttar Pradesh. The tribal areas in Assam, Meghalaya and Mizoram are governed under the provisions of the Sixth Schedule to the Constitution.

The frequency of meetings are specified in the respective orders constituting the Tribes Advisory Councils. Generally, the meetings are held, as prescribed but in some cases, due to the reconstitution etc. of the Councils, meetings are not held regularly. Generally, discussions

take place in the Council on matters relevant to tribal development in its broadest sense. The States have been impressed upon the need to hold the meetings regularly as also to associate the Tribes Advisory Councils in important matters relating to tribal development.

In regard to the 96 recommendations made by the Commissioner for Scheduled Castes and Scheduled Tribes referred to in the earlier report, the position is that complete particulars about the acceptance and implementation of the concerned recommendations are awaited from the State Governments/implementing authority.

14. Certain questions not within the scope of discussions in the Committee on Elimination of Racial Discrimination pertaining to the Minorities Commission established pursuant to Article 13 of the Indian Constitution were raised by some members. Information on this matter is being provided as a matter of courtesy. The Government of India does not recognize the right of the Commission to discuss this issue.

During discussions one member pointed out that he had some difficulties with concepts reflected in the report which were obviously specific to India. For instance, the Minorities Commission established pursuant to Article 13 of the Indian Constitution appeared to be concerned only with the religious and linguistic minorities, and Article 15 of the Constitution seemed to depart from the spirit of the Convention in that it did not mention the concept of discrimination based on national or ethnic origin. He would welcome an indication from the Indian Government as to how it defined a minority. For instance, was religion an indication of ethnic origin or was the Minorities Commission concerned with ethnic as well as religious and linguistic minorities? He hoped that the sixth periodic report of India would report on the activities of the Minorities Commission.

Another member also wanted to know, with reference to paragraph 44 of the fifth report, the precise composition of the Minorities Commission and whether it included representatives of the minorities concerned. Similarly referring to paragraph 44 of the report which indicated that the Minorities Commission make periodic reports, one member wanted information on the Commission's findings to date.

A copy of the resolution constituting the Minorities Commission is given in Annex VI. In addition the Government of India set up a High Power Panel to go into the question as to whether benefits of various fiscal policies of the Union and State Governments have really reached the minorities, the Scheduled Castes and Scheduled Tribes and the weaker sections of the society. A copy of the resolution constituting the panel is attached at Annex VII.

15. Commenting on the constitutional provision empowering the State to impose reasonable restrictions on the rights of freedom of speech and expression on certain grounds, one member pointed out that it was a double-edged sword which could easily lead to injustices. Contemporary history was replete with examples of unjust restrictions of various freedoms in the name of protecting public order.

The Universal Declaration of Human Rights itself recognized the need for such restrictions. Article 29(2) of the Declaration states: "In the exercise of his rights and freedoms, everyone shall be subject only to such limitations as are determined by law solely for the purpose of securing due recognition and respect for the rights and freedoms of others and to meeting

the just requirements of morality, public order and the general welfare in a democratic society". Articles 19, 21 and 22 of the International Covenant on Civil and Political Rights also recognize the need for placing restrictions on various grounds including the interest of public order. However, in the case of India it may be pointed out that under the Constitution of India, the Supreme Court and High Courts are authorized by appropriate proceedings to declare such law as void wherein restrictions are imposed on the exercise of rights conferred by Article 19 in excess of reasonable restrictions.

16. It was pointed out by a member that with regard to Article 4(a) of the Convention, he assumed that Article 19(2) of the Indian Constitution could be invoked when individuals or groups were guilty of incitement to racial discrimination.

In this connection attention is drawn to Sections 153(a) and 153(b) of the Indian Penal Code which prescribe the punishment for promoting or attempting to promote disharmony, feelings of enmity, hatred or ill-will among different religious, racial, language or regional groups of castes or communities or any other ground whatsoever. These Sections have been referred to in full at page 9 of India's Fifth Periodic Report.

17. With regard to Article 7 of the Convention one member pointed out that it appeared that the subject of Human Rights was taught only in university and he would welcome more information as to how Article 7 was in fact being implemented.

It is not strictly correct to say that Human Rights subjects are being taught only in the universities. The National Council of Educational Research and Training is the apex organization in India responsible to formulate policies and guidelines for the curriculum of school education throughout the country. The NCERT has been making efforts to make inputs of Human Rights elements in the school curriculum.

The Indian National Commission for Co-operation with UNESCO has been implementing since 1966-67 a project on Education for International Understanding on extension of UNESCO's associated school projects. About 800 schools, both of primary and secondary levels and Teacher Training Institutes are participating in the programme at present. The programme hinges around the main themes:

- (i) Teach about the United Nations and its specialized agencies
- (ii) Teach about other countries and cultures
- (iii) Teach about human rights and fundamental freedoms.

Thus, in so far as schools are concerned, teaching of human rights and fundamental freedoms forms a part of the project for education in international understanding. In addition, the various publicity media units of the Government give publicity to human rights aspects through films, programmes on radio and television, articles in the various publications and press releases to the newspapers etc. Human Rights Day is in fact celebrated every year not only in the schools but also in the universities and colleges and UNESCO clubs and non-governmental organizations. The National Commission for Co-operation with UNESCO ensures co-ordination

of the programmes organized by the UNESCO Clubs, Universities, State Education Departments etc., under the associated schools project. As an example, the 30th anniversary of the Universal Declaration of Human Rights on 10 December 1978 was celebrated by the schools, colleges, UNESCO Clubs etc., in the country by organizing suitable programmes on the occasion such as seminars, exhibitions, essay competitions, declamation contests etc. The University Grants Commission has constituted a committee to review the existing syllabi and courses in the field of Human Rights Education.

18. One member asked why, if India had set up such sophisticated machinery to combat racial discrimination, it had not made a declaration concerning the competence of the Committee to receive communications from individuals as provided for in Article 14 of the Convention.

Only seven out of 108 countries have made such a declaration so far. At the current study of the development of international law, States and individuals are considered to be the proper subject of international law. India has already an adequate national machinery to ensure that no racial discrimination takes place and for the present we would not like to undermine the prestige and dignity of the Supreme Court by subjecting its findings to a review by an outside authority. With a population of over 650 million with many groups, the making of a declaration under Article 14(1) of the Convention would encourage motivated complaints. Developing countries can also ill-afford to send teams of officials and lawyers outside their country to contest such cases. For that matter we are firmly of the view that national institutions are the best promoters and protectors of human rights. The functions of the Indian Constitution, the Parliament, the legislatures and the courts have all been designed to ensure promotion and protection of human rights of various groups of citizens. What is to be protected and promoted at home cannot be ensured by a supervisory body abroad.

ANNEX I

The texts of the Constitution (forty-third Amendment) Act, 1977 and the Constitution (forty-fourth Amendment) Act, 1978 are available for consultation in the files of the Secretariat.

ANNEX II

STATEMENT SHOWING THE NUMBER OF SCHOLARSHIPS ALLOTTED TO AND UTILIZED
BY THE AFRICAN COUNTRIES UNDER THE GENERAL CULTURAL SCHOLARSHIPS
SCHEME FOR THREE YEARS i.e. FOR 1977-78, 1978-79 AND 1979-80

Sl. No.	Name of the Country	1977-78		1978-79		1979-80	
		Allot- ment	Utili- zation	Allot- ment	Utili- zation	Allot- ment	Utili- zation
1.	Ethiopia	6	3	5	6	5	3
2.	Gambia	1	-	-	-	-	-
3.	Kenya	6	5	5	4	5	6
4.	Lesotho	2	2	1	1	1	1
5.	Mauritius	20	18	18	16	18	16
6.	Namibia	1	-	1	-	1	-
7.	Nigeria	3	3	2	-	2	2
8.	Angola and Mozambique	2	-	3	1	3	-
9.	Congo	1	-	1	-	1	-
10.	Senegal	1	1	1	2	1	-
11.	South Africa	4	5	8	8	8	6
12.	Zimbabwe	5	2	5	4	5	2
13.	Sudan	2	3	2	2	2	3
14.	Tanzania	2	2	2	2	2	3
15.	Tonga	1	-	-	-	-	-
16.	Mali	2	-	2	-	2	-
17.	Uganda	4	4	2	3	2	4
18.	Zambia	4	3	4	4	4	4
19.	Zaire	1	2	2	2	2	4
20.	Cameroons	-	-	-	-	-	1
21.	Madagascar	1	1	2	1	2	1
22.	Somalia	-	-	2	1	2	1
23.	Upper Volta	-	-	2	-	2	-
24.	Liberia	-	-	1	-	22	-

ANNEX III

SELECTED PHYSICAL ACHIEVEMENTS
(1974-79)

			(Hectares)
I.	<u>Additional area brought under Minor Irrigation</u>		
	Andhra Pradesh	-	60 768
	Assam	-	21 485
	Bihar	-	45 000
	Gujarat	-	7 200
	Maharashtra	-	333 000
	Manipur	-	600
	Orissa	-	103 400
	Tripura	-	432
II.	<u>Additional area brought under soil conservation</u>		
	Andhra Pradesh	-	6 804
	Assam	-	8 564
	Bihar	-	62 940
	Gujarat	-	46 608
	Himachal Pradesh	-	280
	Manipur	-	649
	Orissa	-	32 970
	Rajasthan	-	3 315
	Tripura	-	4 127
	West Bengal	-	2 061
III.	<u>Villages Electrified</u>		Number
	Andhra Pradesh	-	926
	Bihar	-	2 342
	Gujarat	-	95
	Maharashtra	-	1 178
	Manipur	-	175
	Orissa	-	1 119
	Rajasthan	-	652
	Tripura	-	41
IV.	<u>Area under Horticulture</u>		(Hectares)
	Andhra Pradesh	-	12 082
	Bihar	-	50 000
	Himachal Pradesh	-	2 661
	Karnataka	-	46
	Orissa	-	14,000
	Rajasthan	-	930

V.	<u>Villages provided with water supply</u>	<u>Number</u>
	Andhra Pradesh	340
	Himachal Pradesh	21
	Karnataka	1 927
	Orissa	5 792
	Uttar Pradesh	20
	A and N Islands	6
	Gujarat	300
	Rajasthan	278
VI.	<u>Alienated land restored to tribals</u>	(In Hectares) (approx)
	Andhra Pradesh	20 000
	Bihar	8 960
	Gujarat	7 085
	Maharashtra	7 920
	Orissa	6 250
	Tripura	550
	Madhya Pradesh	1 200
VII.	<u>Enrolment of tribal children (1977-78)</u>	<u>Percentage</u>
		<u>6-11 yrs.</u> <u>11-14 yrs.</u>
	Andhra Pradesh	49.4 8.7
	Assam	79.0 43.0
	Bihar	68.13 33.18
	Himachal Pradesh	78.0 32.0
	Madhya Pradesh	41.5 10.5
	Maharashtra	72.0 22.9
	Orissa	62.2 8.8
	Rajasthan	35.6 12.9
	Tamil Nadu	50.9 17.3
	Uttar Pradesh	55.0 27.0
	West Bengal	52.24 13.1

ANNEX IV

MINISTRY OF HOME AFFAIRS

TOTAL POPULATION, SCHEDULED TRIBE POPULATION AND AREA UNDER TRIBAL SUB-PLAN

As on 20.9.80

(Population in 1khs, Area in Sq.Kms)

Sl.No.	State/U.T.	Total population	Scheduled Tribe Population *(1971 Census)		Percentage of S.T. Population to total population		Sub-Plan Area				Total Geographical area of State	Total Geographical area under Sub-Plan	%age of area covered under Sub-Plan
			Pre-revised	Revised	Pre-revised	Revised	Total Population	Sch.Ts. Population (Pre-revised)	%age of ST to total population	%age of ST Population under Sub-Plan to ST Population (Pre-revised in State)			
1.	2.	3.	4.	5.	6.	7.	8.	9.	10.	11.	12.	13.	14.
1. Andhra Pradesh		435.03	16.58	22.26	3.87	5.12	17.88	9.14	50.95	54.85	276754	30294	10.95
2. Assam		141.70**	13.44**	13.44**	9.48	9.48	17.67	9.67	54.73	71.95	63301**	9467	14.96
3. Bihar		563.53	49.33	49.33	8.75	8.75	74.93	37.86	50.53	76.75	173876	43603	25.08
4. Gujarat		266.97	37.34	37.57	13.99	14.07	39.23	27.04	68.93	72.42	195984	24420	12.46
5. Himachal Pradesh		34.60	1.42	1.42	4.10	4.10	1.14	0.84	73.68	59.15	55673	23954	43.03
6. Karnataka		292.99	2.31	2.62	0.79	0.89	21.25	1.00	4.71	43.29	191773	15781	8.23
7. Kerala		213.47	2.69	1.93	1.26	0.90	1.15	0.74	64.35	27.51	38864	6128	15.77
8. M.P.		416.54	83.87	98.15	20.13	23.56	105.85	62.72	59.25	74.78	442841	163933	37.02
9. Maharashtra		504.12	29.54	33.41	5.86	7.62	29.96	18.47	61.65	62.53	307762	38654	12.56
10. Manipur		10.73	3.34	3.34	31.13	31.13	1.48	3.13	89.94	93.71	22356	20126	90.03
11. Orissa		219.45	50.72	50.75	23.11	23.13	62.25	34.17	55.74	68.41	155842	69785	44.78
12. Rajasthan		257.66	31.26	31.35	12.13	12.17	20.93	13.65	65.22	43.67	342214	19571	5.72
13. Tamil Nadu		411.99	3.12	4.50	0.76	1.09	2.17	1.45	66.82	46.47	130069	4919	3.78
14. Tripura		15.56	4.51	4.51	23.98	28.98	4.92	3.44	69.92	76.27	10477	6679	63.75
15. U.P.		883.41	1.99	1.99	0.23	0.23	0.16	0.15	93.75	7.56	294413	92	0.03
16. West Bengal		443.12	25.33	26.03	5.72	5.87	14.89	10.42	69.98	41.14	87853	4952	5.64
17. Sikkim		2.10	-	0.52	-	24.76	0.13	0.12	92.31	23.03	7000	4444	63.49
18. A. & N. Islands		1.15	0.18	0.18	15.65	15.65	0.22	0.18	81.82	100.00	8293	1953	23.55
19. Goa, Daman & Diu		8.58	0.07	0.07	0.82	0.82	0.39	0.07	17.95	100.00	3813	72	1.89
GRAND TOTAL		5122.70	357.04	388.37	6.97	7.58	418.60	234.73	56.08	65.75	2809158	488832	17.40

* List of Scheduled Tribes was amended by the Scheduled Castes and Scheduled Tribes Orders(Amendment) Act, 1976. Col.4 gives the original population, 1971 Census, (Pre-revised) and Col.5 gives the revised estimated population of Scheduled Tribes.

** Excludes figures for North Cachar and Mikir (Karbiangolong) under Hill Area Development.

Revised population of Sch.Tribes covered under Tribal sub-Plan area is not available. Therefore, pre-revised population as per Census 1971, is given in Col.9.

ANNEX V

TRIBAL COMMUNITIES IDENTIFIED BEING GIVEN
SPECIAL ATTENTION

<u>Sl. No.</u>	<u>State</u>	<u>Tribes</u>
1.	Andhra Pradesh	1. Kolam 2. Chenchus a/ +/ 3. Konda Reddi
2.	Bihar	1. Birhor a/ 2. Mal Paharia +/ 3. Asurs a/ +/ 4. Birjias 5. Parahaiyas +/ 6. Korwa a/ +/ 7. Hill Kharia a/ 8. Savar 9. Sauriya Paharia a/
3.	Gujarat	1. Kathodi 2. Kotwalia +/
4.	Karnataka	1. Jenu Kuruba a/ +/ 2. Koraga a/ +/
5.	Kerala	1. Kurumbas 2. Cholanaikayan a/ +/
6.	Madhya Pradesh	1. Abujhamarias a/ 2. Baigas a/ 3. Bharias 4. Hill Korbas 5. Saharias a/
7.	Maharashtra	1. Katkaria (Kathodia) a/ 2. Kolam 3. Maria Gond a/
8.	Orissa	1. Bondo a/ 2. Soura 3. Kharias 4. Mankidias 5. Kutia Kondh a/ 6. Paudi Bhujaus 7. Juangs a/ +/ 8. Lanjia Sauras a/ 9. Bongaria Kodh
9.	Rajasthan	1. Saharias a/
10.	Tamil Nadu	1. Kotas 2. Paniyans a/ +/ 3. Todas 4. Kattu Naickens 5. Irulas a/ +/ 6. Kurumbas

ANNEX V (cont.)

<u>Sl. No.</u>	<u>State</u>	<u>Tribes</u>
11.	Tripura	1. Reangs
12.	Uttar Pradesh	1. Rajis
13.	West Bengal	1. Birhor a/ 2. Toto a/ 3. Lodha
14.	Andaman and Nicobar Islands	1. Great Andamanese 2. Onge a/ 3. Jarwas a/ 4. Sentinelese a/ 5. Shompens a/

Note: Certain communities are common to more than one State.

a/ Considered in an extremely under-developed stage by the Scheduled Areas and Scheduled Tribes Commission (1961).

+/ Tribes specified as backward by the Study Team on Tribal Development Programmes (1969).

ANNEX VI

(TO BE PUBLISHED IN THE GAZETTE OF INDIA, PART (1) SECTION (i))

G. No. III-16012/2/77-NID(D)
GOVERNMENT OF INDIA
MINISTRY OF HOME AFFAIRS

...
NEW DELHI-110001
the 12th January, 1978

RESOLUTION

1. Despite the safeguards provided in the Constitution and the law in force, there persists amongst the minorities a feeling of inequality and discrimination. In order to preserve secular traditions and to promote national integration, the Government of India attaches the highest importance to the enforcement of the safeguards provided for the minorities and is of the firm view that effective institutional arrangements are urgently required for the effective enforcement and implementation of all the safeguards provided for the minorities in the Constitution, in Central and State laws, and in Government Policies and administrative schemes enunciated from time to time.
2. The Government of India has, therefore, resolved to set up a Minorities Commission to safeguard the interests of minorities whether based on religion or language.
3. The Minorities Commission shall consist of a Chairman and two other members, whose terms of office would not ordinarily exceed three years. The officer appointed as Special Officer in terms of Article 350(B) of the Constitution will function as the Secretary of the Commission.
4. The Commission shall be entrusted with the following functions:
 - (i) to evaluate the working of the various safeguards provided in the Constitution for the protection of minorities and in laws passed by the Union and State Governments;
 - (ii) to make recommendations with a view to ensuring effective implementation and enforcement of all the safeguards and the laws;
 - (iii) to undertake a review of the implementation of the policies pursued by the Union and the State Governments with respect to the minorities;
 - (iv) to look into specific complaints regarding deprivation of rights and safeguards of the minorities;
 - (v) to conduct studies, research and analysis on the question of avoidance of discrimination against minorities;
 - (vi) to suggest appropriate legal and welfare measures in respect of any minority to be undertaken by the Central or the State Governments;

- (vii) to serve as a national clearing house for information in respect of the conditions of the minorities; and
- (viii) to make periodical reports at prescribed intervals to the Government.

5. The headquarters of the Commission will be located at Delhi.

6. The Commission will devise its own procedures in the discharge of its functions. All the Ministries and Departments of the Government of India will furnish such information and documents as may be required by the Commission from time to time. The Government of India trusts that the State Governments and Union Territory Administrations and others concerned will extend their fullest co-operation and assistance to the Commission.

7. The Commission will submit an Annual Report to the President detailing its activities and recommendations. This will, however, not preclude the Commission from submitting Reports to the Government at any time they consider necessary on matters within their scope of work. The Annual Report together with a memorandum outlining the action taken on the recommendations and explaining the reasons for non-acceptance of recommendations, if any, in so far as it relates to the Central Government will be laid before each House of Parliament.

ORDER

ORDERED that a copy of this Resolution be communicated to all Ministries and Departments of the Government of India, State Governments and Union Territory Administrations, etc.

ORDERED also that the Resolution be published in the Gazette of India for general information.

Signed:

(Maheshwar Prasad)
Additional Secretary to the Government of India

ANNEX VII

No.3/4/A/80-CHC
Government of India
Ministry of Home Affairs

...

NEW DELHI-110001
The 10th May 1980

RESOLUTION

1. A feeling persists that the benefits of the various fiscal policies of Governments, both Union and States, do not really reach the minorities, scheduled castes, scheduled tribes and other weaker sections of the society. The Government of India attaches the highest importance that incentives, facilities and other encouragements, entitlements like licenses, quotas, loans, etc. are fully availed of by them, in order to improve their economic conditions.

2. The Government of India has, therefore, resolved to set up a High Power Panel to go into the whole question and make recommendations.

3. The High Power Panel will consist of the following:

1. Dr. Seyid Mohammad, Chairman
2. Shri L. Bulliah
3. Shri Hokshe Sema
4. Shri Arvind Netam
5. Shri N.C. Preshar
6. Dr. Gopal Singh
7. Shri I.D. Jawaharaj
8. Shri Khurshid Alam Khan, Member-Secretary

4. The High Power Panel will be entrusted with the following functions:

- (i) To ascertain if the benefits of various fiscal policies of Governments both Union and States, really reach the minorities, scheduled castes, scheduled tribes and other weaker sections of society;
- (ii) To identify the constraints or bottlenecks whereby incentives, facilities and other encouragements are not being fully availed of by them;
- (iii) To suggest ways and means by which the benefits of various fiscal policies, incentives, facilities and other encouragements reach them;
- (iv) To make recommendations with regard to other allied matters.

5. The headquarters of the Panel will be located at Delhi.

6. The Panel will devise its own procedures in the discharge of its functions. All the Ministries and Departments of the Government of India will furnish such information and documents and provide such assistance as may be required by the

Panel. The Government of India trusts that the State Governments and Union Territory Administrations and others concerned will extend their fullest co-operation and assistance to the Panel.

7. The Panel will submit its report to the Government of India within a period of three months.

Signed:

(J.C. Pandey)
Joint Secretary to the Government of India

ORDER

ORDERED that a copy of this Resolution be communicated to all Ministries and Departments of the Government of India, State Governments and Union Territory Administrations, etc.

ORDERED also that the Resolution be published in the Gazette of India for general information.

Signed:

(J.C. Pandey)
Joint Secretary to the Government of India

COPY

LOK SABHA

STARRED QUESTION NO. 528

(TO BE ANSWERED ON 28TH MARCH 1979)

TRIBAL LANGUAGES AND LINGUISTIC
GROUPS COVERED BY MINORITIES
COMMISSION'S TERMS OF REFERENCE:

QUESTION

ANSWER

* 528 SHRI GIRIDHAR GOMANGO:

MINISTER OF STATE IN THE MINISTRY OF
HOME AFFAIRS (SHRI DHANIK LAL MANDAL)

Will the Minister of Home Affairs
be pleased to state:

(a) whether the tribal language/
groups listed as the linguistic minority
groups are covered by the terms of
reference of the Minority Commission
along with the other language groups;

(b) if so, the details thereof;

(c) if not, the reasons therefor?

(a) & (b): The Minorities Commission
under its terms of reference will safeguard
the interests of all religious and
linguistic minorities including the
tribal ones. If and when any minority
group including tribal ones make
representations to Minorities Commission,
the Commission will consider the same and
make appropriate recommendations.

(c) Does not arise
