



**International covenant
on civil and
political rights**

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HUMAN RIGHTS COMMITTEE

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES
UNDER ARTICLE 40 OF THE COVENANT

Second periodic report of States parties due in 1985

Addendum

INDIA */

[12 July 1989]

*/ For the initial report submitted by the Government of India, see CCPR/C/10/Add.8; for its consideration by the Committee, see CCPR/C/SR.493, SR.494 and SR.498 and the Official Records of the General Assembly, Thirty-ninth Session, Supplement No. 40 (A/39/40), paras. 239-286.

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I. GENERAL

1. India acceded to the International Covenant on Civil and Political Rights on 10 July 1979. India's first report (CCPR/C/10/Add.8), in accordance with the requirement of article 40 of the Covenant, was considered by the Human Rights Committee on 28 and 30 March 1984.

2. India's second periodic report updates the information presented in the first report and also addresses itself to some of the queries which had been made during consideration of the first report by the Human Rights Committee. The information presented in the second report pertains broadly to the period 1984-1988.

3. History has made India the home of people of diverse origin, many of whom came from beyond the country's borders. Hinduism, Buddhism, Jainism and later Sikhism were faiths cradled by India. Christianity, in the coastal regions of Western India, goes back to apostolic times. Islam came to India within the first century of its emergence. India is thus composed of a wonderful mosaic of different religions and cultures. It has a tolerant, eclectic society where people of many different faiths and persuasions have joined together in building the world's largest democracy, a democracy in which universally recognized human rights and fundamental freedoms are guaranteed to all without any discrimination on grounds of creed or community. At the time of the 1981 census, the total population of India was 683,997,512. Since 1971, it had shown an increase of 24.78 per cent. The census mentions that over 1,500 languages are spoken in the country. Of these, 15 are specified and recognized in schedule VIII of the Constitution; 90 per cent of the Indian population speaks one of these 15 languages.

4. The Indian Constitution, adopted on 26 November 1949 by the Constituent Assembly and brought into force on 26 January 1950, derives its basic inspiration from India's own history in addition to the experiences of other constitutional systems in the world. The preamble to the Constitution declares India "a sovereign, socialist, secular, democratic republic" and lays down the primary objects of the Constitution: "to secure justice for all citizens, social, economic and political; liberty of thought, expression, belief, faith and worship; equality of status and fraternity assuring the dignity of the individual and the unity and integrity of the nation". The Constitution prohibits the State from denying any person equality before the law or equal protection under the laws within the territory of India.

5. In view of the prevailing social reality that some sections of Indian society have, for historical reasons, remained backward, the Constitution enshrines special provisions in favour of these backward sections, specifically the scheduled castes and scheduled tribes, in order to help them to attain equality in real terms. These provisions and the special measures and programmes undertaken by the Government in no way violate the principle of equality but, in effect, allow for greater equality, as they aim at translating equality into practice to benefit all sections of the people of India, including those who were relatively neglected and backward.

6. The Constitution provides for separation of powers between the different arms of government, with separation of judicial and executive functions. Legislation in India is subject to review by courts as regards its constitutionality, and the exercise of executive power is subject to different

forms of judicial review. The competence and independence of the Indian judiciary is well recognized. Even the Supreme Court, the highest court of the land, can be pressed into action to provide immediate relief in the very first instance by way of writ petition in the case of infringement of any of the fundamental rights contained in the Constitution. The individual concerned is provided legal aid and assistance if necessary. Moreover, not only an affected individual, but also any member of the public or a voluntary association or public-spirited organization can also move the judiciary for the enforcement of fundamental rights. In fact, a new jurisdiction, described by some as epistolary jurisdiction, is in the process of evolution in India as a result of what is commonly known as public interest litigation set in motion in the Supreme Court and some of the high courts. This development has contributed a great deal to the creation of procedurally novel human rights jurisprudence. The provisions of the Convention have thus been given effect in India through appropriate legislation, effective and positive administrative action and judicial redress and review.

7. In the period since 1984, the Indian political system has been subjected to severe stresses and strains flowing from a rapid deterioration in the internal and external security environment. The tragic assassination of the Prime Minister, Smt. Indira Gandhi, on 31 October 1984, the spectre of terrorism fuelled by religious fundamentalism, and deterioration in the communal situation were among the factors contributing to strain on the political system. These factors were exacerbated by chronic instability in the regional situation and growing external intervention in India's neighbourhood. The political situation was compounded by the effects on agriculture of the severe drought of 1986 and 1987.

II. INFORMATION RELATING TO ARTICLES OF THE COVENANT

Article 1

8. India has been forthright and consistent in upholding the tradition of self-determination. The history of the Indian freedom struggle for total independence and self-determination from colonialism in itself provides the genesis of India's stand for self-determination of peoples and nations from colonial subjugation and foreign domination in favour of sovereignty and independence - political, economic, social and cultural.

9. As a founding member of the Non-Aligned Movement, which has given expression to the legitimate rights and aspirations of peoples to be free from relations of subordination and dependence and to shape their own destinies in accordance with their national aims and objectives, India has continued to strive for the elimination of all forms of domination, discrimination, exploitation and inequality and for the fulfilment of the aspirations of all peoples for justice, security, development and prosperity.

10. It has been the position of India ever since its independence that adherence to self-determination is coexistent with the principle of sovereign equality. The principle of domestic jurisdiction of States as enshrined in the United Nations Charter is to be equally respected.

11. In conformity with this position of principle on self-determination, India made the following declaration in 1979 at the time of its accession to the International Covenant on Civil and Political Rights.

"With reference to article 1 of the International Covenant on Civil and Political Rights, the Government of the Republic of India declares that the words 'the right of self-determination' appearing in [this article] apply only to people under foreign domination and that these words do not apply to sovereign independent States or to a section of the people or nation - which is the essence of national integrity."

Article 2

12. Paragraph 1 of the article provides that all individuals should enjoy the rights contained in the Covenant "without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status". India guarantees the right to equality before the law in its Constitution. The comparable provision of the Constitution prohibits discrimination on grounds only of religion, race, caste, sex, place of birth, or any of them.

13. However, in view of the historical and social setting which obtains in India, protective discrimination in favour of certain oppressed classes of citizens on grounds of their "social origin" has been necessitated. The Constitution thus enables the State to make any special provision for the advancement of any socially and educationally backward classes of citizens or for the scheduled castes and the scheduled tribes".

14. It is also noteworthy that distinction based on "colour" is a non-issue in India. However, India expresses its solidarity with the people of South Africa and against the racist policies of the white minority régime. It

was in furtherance of this objective that India broke its relations totally with South Africa and was the first country to raise the question of apartheid in the United Nations. India is a party to the United Nations Convention on Elimination of All Forms of Racial Discrimination and to the International Convention on the Suppression and Punishment of the Crime of Apartheid. The legal process thus initiated by India was completed by the enactment of the Anti-Apartheid Act, 1981.

15. The civil and political rights included in the Covenant already find place in the Indian Constitution and in other laws. The executive takes appropriate measures to implement the rule of law. Wherever new measures are necessary, or suitable changes in existing legislative or other framework is required, such measures are carried out in accordance with democratic and constitutional processes. While these developments may be noted in the report at appropriate places, India on its part records sincerity of purpose and sense of commitment to the values and rights contained in the Covenant. It is in this spirit that the previous report was submitted as much as the present one.

16. The bedrock of the Indian democratic system is the rule of law. The actions of the executive must conform to the authority and responsibility vested in it by, or in accordance with, applicable law. A judicial review of administrative action is possible. The Supreme Court and the high courts have the jurisdiction, under articles 32 and 226 respectively of the Constitution, to grant appropriate judicial remedy or relief for violation of the fundamental rights of individuals.

17. As regards paragraphs 2 and 3 (b) of the article, it is important to note that in India the right to enforce fundamental rights is itself recognized as a fundamental right. More specifically, the Constitution states: "The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed" (art. 32, para. 1).

18. Further, concerning the enforcement of fundamental rights, article 32 of the Constitution empowers the Supreme Court to issue appropriate directions or orders or writs, including writs in the nature of habeas corpus, mandamus, prohibition, quo warrants and certiorari. On the provision dealing with enforcement of individual rights and its status, B.R. Ambedkar, the architect of the Indian Constitution, stated in the Constituent Assembly of India as follows:

"If I was asked to name any particular article in this Constitution as the most important article without which this Constitution would be a nullity, I would not refer to any other article except this one. It is the very soul of the Constitution and the very heart of it."
(Constituent Assembly Debates, vol. VII, p. 953)

Article 3

19. This article requires States parties to the Covenant to ensure equality of men and women in the enjoyment of civil and political rights. The Constitution of India ensures to all persons equal protection of laws within the territory of India. The Constitution prohibits discrimination and thus ensures equality between men and women in the enjoyment of fundamental rights and freedoms as enshrined in the Constitution.

20. Article 15, paragraph 3, of the Constitution enables the State to make special provision in favour of women. Such legislation in favour of women cannot be treated as discriminatory if it is intended to ensure that women attain equality with men. Similarly, special treatment may be accorded to socially and educationally backward classes, or scheduled castes and tribes.

21. The position and status of women in India today reflects the transitional nature of Indian society. The condition of women is subject to wide variations and is a function of different class and social backgrounds, rural urban divides, etc. It is recognized that a great deal needs to be done for the enhancement of the position of women in Indian society.

22. In recognition of the special needs of women and to protect their social and economic status and their civil and political rights, a number of recent enactments and legal measures have been resorted to. These include the Criminal Law (Amendment) Act of 1982, the Criminal Law (Second Amendment) Act of 1983, the Dowry Prohibition (Amendment) Act of 1986, the Family Courts Act of 1984, the Muslim Women (Protection of Rights on Divorce) Act of 1986, and the Indecent Representation of Women (Prohibition) Act of 1986. These laws will be discussed under the appropriate articles of the Covenant. Some recent innovative legislation is briefly discussed below.

23. The Suppression of Immoral Traffic in Women and Girls Act, 1956, was amended in 1986 in view of suggestions from various voluntary organizations and individuals urging the enlargement of the scope of the Act to make penal provisions more stringent and to provide for certain minimum standards for corrective treatment and rehabilitation of the victims. The scope of the Act was enlarged to cover all persons, whether male or female, who are exploited sexually for commercial purposes. The main features of the amending Act are that the principal Act has been renamed as "The Immoral Traffic (Prevention) Act". Offences under the Act involving children and minors have been made more stringent by increasing the period of imprisonment; in cases of seduction in custody, the punishment has been increased to that laid down for rape in the Indian Penal Code; provision for release of convicted persons on probation on good conduct or after admonition and on security from habitual offenders for good behaviour has been omitted from the Act. The Act provides that women or girls removed from brothels after a search shall be medically examined and any interrogation of such women or girls shall be made by women police officers only; where no women officers are available, they shall be interrogated only in the presence of a woman social worker.

24. The Equal Remuneration (Amendment) Act, 1987, the Equal Remuneration Act, 1976, provided for the payment of equal remuneration to men and women workers and for the prevention of discrimination, on the grounds of sex, against women on the matter of employment and for matters connected therewith or incidental thereto. There was a lacuna in the Act since it did not specifically state that discrimination should not be made between men and women while in employment. Therefore section 5 of the earlier Act has been modified to prohibit discrimination against women not only in recruitment but also in relation to conditions of service subsequent to employment, such as promotion, training, transfers, etc.

Article 4

25. Articles 352, 358 and 359 of the Indian Constitution contain provisions relating to proclamation of an emergency and suspension of certain rights during that period. The power to proclaim an emergency in accordance with the Constitution lies with the President. Accordingly, he may proclaim an emergency in respect of the whole or a part of India, on his being satisfied as to the existence of a grave emergency whereby the security of India or any part of the territory thereof is threatened, whether by war or external aggression or armed rebellion. During the operation of an emergency, article 19 of the Constitution stands suspended, with the result that the State's power to pass laws or take executive action is not restricted by it any longer; also, the President may by order declare the suspension of the right to move any court for enforcement of such of the fundamental rights conferred by part III, except articles 20 and 21, as may be mentioned in the order.

26. Since the last report, article 356(5) of the Constitution has been amended so as to facilitate the extension of the Presidential Proclamation with respect to the State of Punjab, if necessary up to a period of three years, as permissible under clause 4 of that article. It was also felt that it might be necessary to invoke the provisions of article 352 of the Constitution to declare a partial emergency. However, the expression "armed rebellion" alone included in that article as one of the grounds for the declaration of an emergency was not considered appropriate. Hence, article 352 has been amended in its application to the State of Punjab to facilitate the taking of action under that article on the grounds of "internal disturbance" if it becomes necessary at a future date. Articles 358 and 359 have been amended so as to provide respectively for the automatic suspension of article 19 of the Constitution and the issuing of an order by the President suspending the operation of any of the other provisions contained in part III (except article 20), if and when a proclamation of emergency on the grounds of internal disturbance is issued in relation to the whole of the Punjab or any part of the territory of the Punjab. These amendments shall cease to operate on the expiry of two years from the commencement of the Constitution (Fifty-ninth Amendment) Act, 1988.

27. The above legal measures were considered absolutely necessary to combat the menace of terrorism from a handful of disgruntled and anti-national forces operating from within and outside India, who in the name of religion are attempting to create communal hatred and social disorder in the Punjab with the intention of compromising the territorial and national integrity of India. It is in the light of the overwhelming political consensus among the Indian people and the commitment of India to combat acts of terrorism and steadfastly to protect the territorial and national integrity of the country that the Indian Parliament, in accordance with the constitutional process, amended these provisions of the Constitution. Accordingly, the presidential power to declare an emergency entirely accords with the letter and spirit of the constitutional law of India. The possibility of a proclamation of emergency on grounds of internal disturbances is limited to the Punjab alone. The exception contained in article 359 of the Constitution relating to article 21 had to be deleted only to ensure that, during an emergency, a terrorist when caught should not get away or start vexatious procedural wrangles under the cover of personal liberty by abusing it. Article 4 of the Covenant does not prohibit such derogation from article 9 thereof dealing with

the right to liberty and security of persons. That is, under the Covenant, derogation from the right to liberty and security of persons during the operation of an emergency is permissible. However, unlike the Covenant scheme, which treats the right to liberty separately under article 9, as distinct from article 6 dealing with the right to life and article 7 on freedom from torture, the Indian Constitution covers all these aspects under the omnibus provision of article 21 thereof.

28. In any case, no proclamation of emergency is in existence in India. As a State party to the Covenant, India has scrupulously fulfilled its obligations under the Covenant.

Article 5

29. India accepts the interpretation of the Covenant as given in this article.

Article 6

30. Article 21 of the Indian Constitution lays down that a person may not be deprived of his life or liberty except in accordance with procedures established by law. This is a fundamental right guaranteed by the Indian Constitution. In India's first report, it was pointed out that the death penalty was resorted to only "in the rarest of rare cases".

31. Further, even when a court has awarded a death penalty, the President and the Governors of the States are empowered under the Indian Constitution to grant pardons, commute, suspend or remit the death sentence in appropriate cases. Article 72 of the Constitution bestows on the President the power to grant pardons, commute or suspend or remit a death sentence, and the Governor of a State, by article 161 of the Constitution, has the power to grant pardons, reprieves, respites or remission of punishments or to remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends. Further, provision for tender of pardon to an accomplice is made in sections 306 and 307 of the Criminal Procedure Code, 1973.

32. The Indian Penal Code contains provisions governing situations of mass killings and murders. India has signed and ratified the Convention on the Prevention and Punishment of the Crime of Genocide.

33. Section 416 of the Code of Criminal Procedure, 1973, requires the High Court to postpone the execution of capital sentence on pregnant women and may, if it thinks fit, commute the sentence to imprisonment for life.

34. The statistical data on persons subjected to capital punishment and those pardoned or their sentences commuted, etc., from 1984 to date (March 1989) is as follows:

(a) Number of persons executed after rejection of mercy petitions: 22;

(b) Number of persons whose death sentence was commuted to life imprisonment by the President: 6;

(c) Number of persons whose sentence was reduced to life imprisonment by the Supreme Court and the high courts mainly on grounds of delay in execution: 5.

35. On 16 December 1988, the Constitutional Bench of the Supreme Court delivered an important judgement on the scope of presidential powers under article 72 of the Constitution. The President is entitled to go into the merits of the case notwithstanding that it has been judicially concluded by the consideration given to it by the Supreme Court. Further, the Presidential Order under article 72 may not be subjected to judicial review on its merits. The proceeding before the President is of an executive character and, when the petitioner files his petition, it is for him to submit with it all the requisite information necessary for the disposal of the petition. It lies within the discretion of the President to decide how best he may acquaint himself with all the information that is necessary for its proper and effective disposal. It is entirely within the President's discretion to call for further material relevant to the issue or give oral hearing to the petitioner or duly authorized legal representative. It may not be possible to lay down any precise and clearly defined guidelines, since power under article 72 is of the widest amplitude, in which merits and reasons of State may be profoundly affected by prevailing occasion and passing time. It is of great significance that the function itself enjoys high status in the constitutional scheme.

Article 7

36. The Indian socio-legal system is based on non-violence, mutual respect and the human dignity of the individual.

37. Article 21 of the Constitution of India guarantees "personal liberty" and thereby prohibits any inhuman, cruel or degrading treatment of any person, whether he is a national or a foreigner. Any violation of this provision attracts the provisions of article 14 of the Constitution, which guarantees equality before the law and equal protection of the law for any private individual or the State. Remedies are available under articles 226 and 32 of the Constitution.

38. The Constitution of India and also the criminal laws of India can be invoked when the liberty and human dignity of an individual are encroached upon by inhuman or degrading treatment.

39. In addition, the question of cruelty to prisoners is dealt with specifically by the Prisons Act, 1899. If any excesses are committed on a prisoner, the prison administration is held responsible for them.

40. Any excesses committed on prisoners by the police or gaol authorities not only attract the attention of the legislators but that of the judiciary as well. The Indian judiciary, particularly the Supreme Court, has been very vigilant against encroachments upon human rights. The Supreme Court has held:

"True, our Constitution has no 'due process' clause or the VIII Amendment; but, in this branch of law, after Cooper (1971) I SCR 512 (AIR 1970SC 1318) and Maneka Gandhi (1978) 1 S,C,C, 248 (AIR 1978SC 597), the consequences are the same. For what is punitively outrageous, scandalizingly unusual or cruel and rehabilitatively counter-productive, is unarguably unreasonable and arbitrary and is shot down by articles 14 and 19 and, if inflicted with procedural unfairness, falls foul of article 21, Part III of the Constitution does not part company with the prisoner at the gates, and the judicial oversight protects the prisoner's

shrunk fundamental rights, if flouted, frowned upon or frozen by the prison authority ... So the law is that for a prisoner all fundamental rights are an enforceable reality, though restricted by the fact of imprisonment." (Sunil Batra vs Delhi administration, AIR 1978, S.C. 1675, at pp. 1690 and 1691.)

41. In short, the prison authorities may only carry out sentences but they may not exceed the legal boundaries of prescribed punishment.

Article 8

42. Slavery, servitude and forced labour are prohibited and are made punishable under the Indian Constitution and Indian laws.

43. Article 23 of the Indian Constitution embodies the right against exploitation and prohibits begar (i.e. labour or service exacted by government or a person in power without giving remuneration for it) and other similar forms of forced labour. Further, the Supreme Court of India has noted that remuneration below the minimum wages prescribed under the Minimum Wages Act, 1948, falls within the purview of article 23. The Supreme Court, in the case of Sanjit Roy y. State of Rajasthan, has held as follows:

"We must, therefore, hold consistently with this decision that, where a person provides labour or service to another for remuneration which is less than the minimum wage, the labour or service provided by him clearly falls within the meaning of the words 'forced labour' and attracts the condemnation of article 23. Every person who provides labour or service to another is entitled at the least to the minimum wage and, if anything less than the minimum wage is paid to him, he can complain of violation of his fundamental right under article 23 and ask the Court to direct breach of article 23 may be abated." (AIR 1983 (ISC) 38, at pp. 43, 44)

44. Any contravention of the provision prohibiting forced labour is punishable under and in accordance with the Bonded Labour System (Abolition) Act, 1976. In addition, the Indian Penal Code provides for punishment of a person engaging in unlawful compulsory labour of any person against his will, and treats the offence as cognizable. The Indian Penal Code makes the offence of kidnapping or abducting any person for subjecting him to slavery as a cognizable offence by the State, and provides that, whoever engages in such an offence, shall be punished with imprisonment of either description up to 10 years and also a fine. Further, whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves may be punished with imprisonment even for life. Similarly, whoever buys or disposes of any person as a slave is punishable.

45. During consideration of India's first report, certain queries were raised with regard to the pernicious system of bonded labour in India. In view of this, some details are provided in this report. The problem of bonded labour in India is the outcome of certain categories of rural indebtedness which, prevailing over a long period of time, involved the social exploitation of weaker sections of society. The system originated from a highly stratified social structure, based on artificial considerations of caste and class, left by an inequitable and unethical land revenue system initiated under colonial rule, which perpetuated rack-renting, absentee landlordism, inequitable

distribution of land, lack of avenues of employment, etc. It is this historically conditioned, highly regressive and backward agrarian structure which led to the transformation of small and marginal farmers into landless agricultural labourers and their being economically and socially tied to certain feudal and semi-feudal elements of rural society. The bonded labour system is therefore an extreme manifestation of the sorry plight of rural unorganized labour. While recognizing that this system is a vestige of our colonial past which created highly regressive social structures in India, the Government of India has no doubt that the existence of such bonded labourers is a slur on any civilized society. This system was abolished throughout the country from 25 October 1975 by the promulgation of an ordinance which was later replaced by the Bonded Labour System (Abolition) Act of 1976. The Government is fully committed to the eradication of this evil. It is also realized that, for the complete elimination of this social slur, the conditions which created this pernicious system have to be routed out to prevent any relapse in the future. In spite of the enactment of the Bonded Labour System (Abolition) Act of 1976, it cannot be stated with any certainty that the evil of bonded labour is fully eradicated. There is no single factor which can fully account for the existence of such categories of rural labour and which could explain the difficulties inherent in the process of identification. Thus, despite the most earnest effort, the process of identification, release and rehabilitation of bonded labour has not been as rapid as the Government desires. Government remains manifestly and seriously concerned with this problem and is determined to overcome it through both direct and indirect methods. The new 20-point programme announced in 1986 specifically covers bonded labour.

46. With a view to intensifying efforts concerning the problem of bonded labour, and as envisaged in the New 20-Point Programme, 1986, of the Government, a new scheme for involvement of voluntary agencies in the identification and rehabilitation of bonded labour was launched on 30 October 1987. The modalities and guidelines for implementation of the Scheme have been circulated to all the State Governments/Union Territories. The Scheme provides for selection of voluntary agencies either by the concerned State Governments or the Council for Advancement of People's Action and Rural Technology, New Delhi. Under the Scheme, State Governments are provided central financial assistance on a matching grant (50:50) basis. An outlay of Rs.1.00 crore and Rs.5.00 lakhs has been provided for in the seventh Five-Year Plan and in the revised estimates 1988-1989 respectively for this Scheme.

47. The State Governments have been advised, from time to time, to conduct periodic surveys through their existing agencies for identification of bonded labourers and to secure quick release and rehabilitation thereof. It has been emphasized that there should be the least time lag between identification and release of bonded labourers and also between their release and rehabilitation. The intention is that identification, release and rehabilitation should be simultaneous, so that there are no chances of the bonded labourers sliding back to bondage.

48. With a view to ensuring that bonded labourers are rehabilitated on a permanent basis, the State Governments have been advised suitably to integrate/dovetail the centrally sponsored scheme with other similar schemes, viz. IRDP, NREP, Special Component Plan for Scheduled Castes. Tribal sub-Plan and other ongoing schemes of the State Governments, so as to pool and

integrate the resources available under different schemes for the purpose of effective and permanent rehabilitation of bonded labourers. A blueprint containing detailed guidelines for bringing about such an integration has also been sent to the State Governments to secure a qualitative and meaningful rehabilitation of bonded labourers. The central objective of such integration is to add to the incremental income of the beneficiaries in such a manner as would lift them above the poverty line over a period of time, and improve the quality of their lives.

49. In order to complete the process of rehabilitation of bonded labourers in a time-bound programme, State-wide targets are fixed annually and the State Governments are required to rehabilitate the targeted number of bonded labourers.

50. The State Governments have been advised to ensure that the schemes to rehabilitate all the remaining freed bonded labourers should be given greater publicity through films, posters and pamphlets, along with publicity already engaged in by the field publicity organizations regarding family planning and other programmes.

51. Offences under the Bonded Labour System (Abolition) Act, 1976, are cognizable, with penal provisions providing for imprisonment and fine. The offences are tried summarily by the executive magistrates, who have been conferred the powers of judicial magistrates, and the cases are decided accordingly.

52. It has been observed in a number of cases that there is a considerable time-lag between identification and formal release of bonded labourers. It is noticed that, hitherto, a formal rigid and legalistic approach has been followed for securing release of bonded labourers. This was found to be an endless process which was detrimental to the interests of bonded labourers who, due to their poverty, illiteracy and social and economic backwardness, could ill afford to stand up to the rigidity of the legal process. In order to ensure that identification and release is simultaneous, the State Governments have been instructed that the district magistrate or the sub-divisional magistrate, as the case may be, should conduct a summary trial immediately on receipt of a report from the concerned field agencies and release the bonded labourers. It is only when there is resistance to such release from the keeper of bonded labourers that recourse to formal trial of cases, in accordance with the procedure established by law, should be taken.

53. It is well known that the system of bonded labour in India originated from an uneven social structure characterized by feudal and semi-feudal conditions. The existence of the system is closely linked with the socio-economic conditions prevailing in the country. Eradication of this system, therefore, depends upon socio-economic development of the country and removal of illiteracy and poverty. Under these circumstances, there cannot be a short-cut method for total eradication of the bonded labour system, and only a long-term approach can help in abolishing this system. Nevertheless, as may be seen from the details given above, both the central Government and the State Governments are making every effort to ensure eradication of the bonded labour system at the earliest.

Article 9

54. Protection of life and person liberty are guaranteed under article 21 of the Indian Constitution, which lays down that no person shall be deprived of his life or personal liberty except in accordance with the procedure established by law. The Supreme Court has held that the procedure contemplated by article 21 must be right, just and fair and not arbitrary, fanciful or oppressive; otherwise it would be no procedure at all and the requirement of article 21 would not be satisfied (Special Courts Bill, 1979, AIR 1979 SC 478, at p. 516). Further, the procedure contemplated under article 21 must satisfy article 14, which guarantees to every person equality before the law or the equal protection of the laws within the territory of India. The Supreme Court held in *Nand Lal v. Punjab* (1982,1, SCR, 718 at p. 725):

"Article 14 strikes at arbitrariness in State action and ensures fairness and equality of treatment. The principle of reasonableness, which legally as well as philosophically is an essential element of equality or non-arbitrariness, pervades article 14 like a brooding omnipresence, and the procedure contemplated by article 21 must answer the test of reasonableness in order to be in conformity with article 14."

The scope of article 21 is wider, so much so that even the law of preventive detention covered by article 22 has to be in conformity with article 21. The Supreme Court has held as follows:

"The law of preventive detention has therefore now to pass the test not only of article 22 but also of article 21, and, if the constitutional validity of any such law is challenged, the Court would have to decide whether the procedure laid down by such law for depriving a person of his personal liberty is reasonable, fair and just. ... The expression 'personal liberty' occurring in article 21 is of the widest amplitude and it includes the right to socialize with members of the family and friends subject, of course, to any valid prison regulations and, under articles 14 and 21, such prison regulations must be reasonable and non-arbitrary". (*Francis Coralie v. Union Territory of Delhi*, AIR 1981 S.C. 746 at p. 747.)

55. Article 22 of the Indian Constitution, in addition, provides that no person who is arrested shall be detained in custody without being informed, as soon as may be possible, of the grounds for such arrest, nor shall he be denied the right to consult and to be defended by a legal practitioner of his choice. Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of his arrest to the court of the magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate. Section 50 of the Criminal Procedure Code, 1973, also provides that the person arrested shall be informed of the grounds of his arrest and of the right to bail. No police officer shall detain a person in custody without warrant for a longer period than is reasonable under all the circumstances of the case, and such period shall not, in the absence of a special order of the magistrate, exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the magistrate's court. Section 309 of the Criminal Procedure Code specifically enjoins that, in every inquiry or trial, the proceedings shall be held as expeditiously as possible. In short, speedy

trial is a fundamental right of an accused implicit in article 21 of the Constitution (Kadra Pehadiya v. State of Bihar, AIR 1981 S.C. 939 at pp. 940-941).

56. Apart from the provision for punishment for wrongful confinement under the Indian Penal Code, the high courts of India have also been empowered to issue the writ of habeas corpus, which is a prerogative process for securing the liberty of the subject and also an effective means of immediate release from unlawful deprivation whether in a prison or in private custody. Accordingly, the court can command the production of the detained person and inquire into the cause of his imprisonment. The writ is applicable as a remedy in all cases of unlawful deprivation of personal liberty.

57. The Terrorist and Disruptive Activities (Prevention) Act is a special enactment made against the background of terrorist violence in the State of Punjab. The Act seeks to make special provision for the prevention of, and for coping with terrorists and disruptive activities and incidental matters. The Act does not violate article 9 of the International Covenant on Civil and Political Rights, as it does not provide for depriving anyone of his liberty on grounds or in accordance with procedures other than those established by law. It does not interfere with the existing provision for producing the accused before a magistrate within 24 hours of his arrest. The provisions regarding bail under the Act are different from the provisions under normal law. In case of unreasonable detention under the Act, the accused may move the high court or the Supreme court under articles 226 and 32 respectively of the Constitution for writ of habeas corpus. The magistrate may grant compensation for accusation without reasonable cause under section 250 of Cr. P.C. in certain cases. Under the Indian legal system, the State is also liable for tort in respect of tortious acts of its servants acting within the scope of their employment (see Vidhyawati AIR 1962 SC 933).

58. It may also be mentioned that, under the Prime Minister's newly announced package for the Punjab, special provisions under the National Security (Amendment) Act, 1987, for the Punjab will be allowed to lapse in June 1989, and that the State Government will issue detailed guidelines for selective issue of the Terrorist and Disruptive Activities (Prevention) Act only in some disturbed districts of the State.

59. Regarding compensation on account of unlawful arrest, India appended a declaration when acceding to the International Covenant on Civil and Political Rights to the effect that, "under the Indian legal system, there is no enforceable right to compensation for persons claiming to be victims of unlawful arrest or detention against the State". However, the Supreme Court of India has awarded damages to victims of unlawful detention in a number of cases.

Article 10

60. In India it has been a matter of State policy to ensure respect for the dignity of the individual, protection of human personality and the individual's physical and intellectual integrity. The matter is governed by the Prisons Act and gaol manuals. Further, a person who is deprived of personal liberty in accordance with the law still enjoys the inherent right to human dignity under the Indian Constitution. The Government has taken the necessary steps to ensure restraints on the use of force by law enforcement

authorities. The State Governments have to keep grievance/complaint boxes in all the prisons to enable prisoners to ventilate their grievances needing remedial action. Moreover, law officers have been appointed in gaols to assist prisoners in legal matters. There is provision for allowing persons independent of the prison administration to inspect prisons.

61. In India, accused persons are to be segregated from the convicted. On this question, the Supreme Court has held that keeping under-trial prisoners along with convicts in the same gaol is violative of the Constitution, specifically of personal liberty for want of fairness warranted by article 21 (Sunil Batra *v.* New Delhi Admn. AIR 1980 SC 1579).

62. As regards accused juvenile persons, the most significant development since the time of the last report is the passing by Parliament of the Juvenile Justice Act, 1986, comprehensively providing for just treatment of young delinquents. The Act aims to bring the national juvenile justice system into conformity with the United Nations Standard Minimum Rules for the Administration of Juvenile Justice. The statement of objects and reasons made at the time of proposing the bill for its passing and enactment by Parliament stated: "The justice system as available for adults is not considered suitable for being applied to juveniles. It is also necessary that a juvenile justice system should be available throughout the country."

63. The Act envisages the establishment of juvenile courts before which young offenders will be tried. It provides that no juvenile shall be charged with or tried for any offence together with a person who is not a juvenile.

64. The Indian Parliament is quite conscious of the aim of reformation and social rehabilitation of young offenders. According to section 21 of the Juvenile Justice Act, 1986, if a juvenile court is satisfied that a juvenile has committed an offence, it may:

(a) Allow the juvenile to go home after advice or admonition;

(b) Direct the juvenile to be released on probation of good conduct and placed under the care of any parent for good behaviour and well-being of the juvenile for any period not exceeding three years;

(c) Direct the juvenile to be released on probation of good conduct and placed under the care of any fit institution for the good behaviour and well-being of the juvenile for any period not exceeding three years;

(d) Make an order directing the juvenile to be sent to a special home.

65. Similarly, even in respect of adults, the Indian penitentiary system has always recognized the social rehabilitation of prisoners as an important objective. A number of steps have been taken in this direction. Scientific classification of prisoners is being progressively introduced with a view to preventing exposure to criminals during custody.

66. In order to inculcate healthy mental and social attitudes among prisoners, industry and agriculture are introduced in the prisons and are being modernized with new machinery and equipment and the recruitment of qualified staff in the prisons. In order to bring about all-round

development, suitable educational, recreational and cultural activities are also undertaken. Voluntary organizations are allowed access and are encouraged to extend their services for the after-care of released prisoners.

Article 11

67. Imprisonment of a person merely on the ground of inability to fulfil a contractual obligation is considered in India illegal and violative of the provision of article 21 of the Constitution on personal liberty.

Article 12

68. The right to liberty of movement and freedom to choose residence are enshrined in article 19 of the Constitution as fundamental rights. While freedom to leave any country, including his own, is not provided for in so many words in the Indian Constitution, the Supreme Court of India has interpreted the personal liberty aspect of article 21 of the Constitution to comprehend this right as well. The Court has laid down the law beyond any doubt that "the right to go abroad is included in personal liberty within the meaning of article 21 and this is a fundamental right protected by that article". (Maneka Gandhi *v.* Union of India 1978 (1) SCC. 248) The right to leave India, travel abroad, and return to India are the necessary incidents of the right to personal liberty (Satwant Singh *v.* APO, New Delhi, AIR 1967 SC. 1836).

69. However the restrictions on these rights envisaged in paragraph 3 of article 12 are also recognized in India. Article 19, paragraph 6, of the Constitution subjects these freedoms of individuals to reasonable restrictions in the interest of the general public. The purpose of such reasonable restrictions is to safeguard enjoyment of basic rights and not to interfere with them (Bombay Hawkers Union *v.* Bombay Municipal Corporation, AIR 1985 SC 1206).

Article 13

70. The status of a foreigner in India is governed, in addition to the Constitution, by specific national legislation dealing with their registration, passport, issue of entry, stay and movement in India. It is in these respects that India's reservation made at the time of its accession to the Covenant applies. It may however be noted that, in India, a foreigner enjoys the rights relating to life and liberty and equality before the law and equal protection of the laws, but not political rights. Accordingly, while a foreigner may be expelled from India by the Government in accordance with the provisions of the Foreigners Act, such foreigner in the event of violation of his rights can move courts to obtain judicial and administrative remedies.

71. During the interval between the previous report and the present one, India has faced and coped with a tremendous financial and social burden with the influx of several hundred thousand foreigners/refugees into its territory from the south, north-east and north-west. India has initiated, contributed to and still strives for the return of these people to their countries of origin in conditions of safety and dignity. The Indo-Sri Lankan accord, India's support to the Geneva accords on Afghanistan, and its continued dialogue with Bangladesh regarding the people from the Chakema area who have come to India reflect India's policy towards foreigners in the present context of the subcontinent.

Article 14

72. Before the Indian judicial system, all persons are equal. The judiciary in India is independent and impartial; the proceedings before the courts or tribunal are open to the public as a rule. However, as envisaged in article 14 of the Covenant, for instance in matters involving women and their private lives, the hearings may exclude the public in order to protect the personal dignity and representation of the persons concerned. In addition to matrimonial disputes, cases concerning children and juveniles also attract similar procedural considerations.

73. Presumption of innocence of the accused is a well accepted principle in the administration of criminal justice in India. Consequently, the onus lies on the prosecution to prove the guilt of the accused beyond reasonable doubt. The Supreme Court has held in a case in this connection that the presumption of innocence is reinforced in a case where an accused was acquitted by the trial court.

74. Under Indian laws, every accused person has the right to know the grounds of his arrest or the charge against him in a vernacular language that he easily understands. Such a person also has adequate opportunity in criminal cases to prepare his defence to contest the charges. An accused has the right to consult a legal practitioner of his choice and, in accordance with the criminal procedure code, the right to be defended by a pleader of his choice to prepare his case, to obtain the attendance of witnesses through assistance of the court, and to examine and cross-examine them and lead the defence.

75. The right of the accused "to be tried without undue delay" has been held to be a part of article 21 of the Constitution. The Supreme Court has observed: "We think that even under our Constitution, though speedy trial is not specifically enumerated as a fundamental right, it is implicit in the broad sweep and content of article 21 ... No procedure which does not ensure a reasonably quick trial can be regarded as 'reasonable, fair or just' and it would fall foul of article 21". There can therefore be no doubt that speedy trial is an integral and an essential part of the fundamental right to life and liberty (*Hussainara v. State of Bihar*, AIR 1979 S.C.-1360, at p. 1365).

76. Consistent with the decision of the Supreme Court, Patna High Court has stated that the right to speedy trial includes in its ambit the period involved in police investigation as well as the appellate stage. In the case in point due to the inordinate delay in the trial, the court ordered the unconditional release of the prisoner (*Madheswardhari Singh v. State*, AIR, 1986, Pat. 324).

77. In the event that the accused is unable to exercise the right of representation by a lawyer of his choice due to economic or other disabilities, such person has a right to free legal service. As the Supreme Court has stated, "free legal service is an inalienable element of reasonable, fair and just procedure, for without it a person suffering from economic or other disabilities would be deprived of the opportunity for securing justice" (*Hussainara Khatoon & Ors v. State of Bihar*, AIR 1979 SC 1360). The Indian Parliament passed the Legal Services Authority Act, 1987, to give force to its commitment to reach out legal aid to the poor. Further, as a measure of administrative action to provide legal aid for the benefit of indigent persons, legal aid boards have been established at the national and State

levels in urban and rural areas. The sitting judges of the Supreme Court oversee the country-wide activities of the legal aid boards. Lawyers are engaged and paid by these boards on the basis of the cases taken up by them.

78. In India, every accused has a right against self-incrimination. The Constitution itself guarantees that no person accused of an offence "shall be compelled to be a witness against himself".

79. As regards procedural safeguards in the case of juveniles, the information provided above under article 10 is applicable.

80. The cost of litigation and the delays involved in the judicial process are the principal drawbacks and problems which the Indian civil and criminal judicial system faces in general, and in particular with regard to the implementation of the Covenant. These factors, coupled with the large and mounting arrears of pending cases in all categories of courts, have admittedly contributed to making the process of justice somewhat unwieldy and cumbersome and have even, in individual cases, vitiated the rule of law. The Government recognizes the danger this poses to the credibility of the judicial system and is committed to finding equitable and workable solutions.

Article 15

81. Ex post facto criminal law would be ultra vires the Indian Constitution, which clearly provides that no one shall be convicted "except for violation of law in force at the time of the commission of the act charged as an offence". Like the Covenant, the Indian Constitution also prohibits ex post facto imposition of heavier punishment. Similarly, the Constitution also guarantees protection against double jeopardy, in that "no one shall be prosecuted and punished for the same offence more than once".

Articles 16 and 26

82. The rights envisaged in these articles are enshrined in the Constitution of India. Accordingly, everyone has the right to recognition as a person before the law and "the State shall not deny any person equality before the law or the equal protection of the laws". The non-discrimination clause is enshrined in article 15 of the Constitution. The information provided above under article 2 may also be read in this connection to appreciate the concept of equality without discrimination in the Indian legal system.

83. There is no doubt about the equality and equal protection of all persons before the law without any distinction. Instances of inequality owing to traditional social and economic structures cannot be ruled out in realistic terms. However, the State, through all its three arms, is determined to eradicate such inequality. In a way, the importance of protection of equality through law lies precisely in its role as a catalyst in removing social inequality. Economic equality is one goal which cannot be realized immediately for the benefit of all in India, due to several constraints, including those of an existing colonial past, international economic conditions, population, etc. The three-stage reports submitted by India under the International Covenant on Economic, Social and Cultural Rights, to which it is a party, contain detailed information in this respect.

Article 17

84. Protection from unlawful interference with privacy and family and unlawful attacks on honour and reputation are guaranteed by the Indian Constitution and other laws. Article 21, relating to the right of personal liberty, and article 19, providing for freedom of residence, speech and expression, etc., inter alia, offer these constitutional guarantees to individuals and citizens. These rights are closely related to the protection of privacy. The Supreme Court of India in the Kharak Singh case clarified this right affirmatively (AIR 1963 SC 1295). Further, the Indian Penal Code treats certain acts in violation of privacy, trespass and defamation as criminal offences and prescribes varying punishments.

85. When these acts do not constitute criminal offences, violations may be proceeded against in civil law, including the law of torts.

Article 18

86. This article deals with the right to freedom of thought, conscience and religion. The provisions of this article are of great importance to India, which comprises people belonging to different religions, faiths and beliefs. The secular and democratic nature of Indian society demands mutual tolerance of different religions, beliefs and faiths, with full freedom to practise the respective religions, beliefs or faiths of any community.

87. The Constitution of India in articles 25 and 28 specifically deals with freedom of religion. The Indian Constitution guarantees to all persons freedom of conscience and the right freely to profess, practise and propagate religion. The freedom to manage religious institutions, etc. is also guaranteed.

88. The rights to freedom of thought, conscience and religion are subject to considerations of public order, morality and health.

89. Freedom of religion as enshrined in the Constitution means freedom for all religions. Therefore, what the Constitution guarantees is the right to profess, practise or propagate a particular religion, but it does not authorize any religious group to work against the same rights of another religious group or persons.

90. The Indian Penal Code treats offences relating to religion, such as injuring or defiling places of worship with the intention to insult the religion of any class, acts against any religion, disturbing religious assemblies and making utterances to wound the religious feelings of others, as crimes and prescribes specified punishments.

91. The customary and codified personal laws of different communities residing in India also provide for the liberty of children to develop their own religious convictions. In addition, the Constitution of India prohibits imposition of religious beliefs by any educational institutions recognized by the State or receiving aid out of State funds on persons attending such institutions. No student may be required to take part in any religious instruction that may be imparted in such institution or to attend any religious worship that may be conducted in such institution on its premises without the individual's consent, or without the consent of the guardian in case the student is a minor.

Article 19

92. The Indian Constitution guarantees the fundamental right to freedom of speech and expression under article 19 to all its citizens. This freedom also covers freedom of the press.

93. Freedom of speech and expression is, however, subject to reasonable restrictions on specified grounds. Accordingly, restrictions on this fundamental right may be placed on the grounds of (a) the sovereignty and integrity of India; (b) security of the State; (c) friendly relations with a foreign State; (d) public order; (e) decency or morality; (f) contempt of court; (g) incitement to an offence.

94. In view of the above, India made a declaration at the time of its accession to the Covenant that the application of paragraph 3 of this article to India should be in conformity with the provisions of article 19 of the Indian Constitution (see declaration IV in India's Instrument of Accession).

Article 20

95. Article 51 of the Indian Constitution lays down that the State shall endeavour to promote international peace and security and maintain just and honourable relations between nations. Further, as explained above in connection with article 19 of the Covenant, the right to freedom of speech and expression in India may be restricted in the interests of friendly relations with foreign States. Thus, the Indian Constitution covers the question of propaganda for war by enabling the State to impose restrictions on the expression of opinions of its citizens in such a way that they do not violate friendly relations with foreign States.

96. The Indian Constitution and the Penal Code unambiguously disapprove any ideas or theories of superiority of one race or group of persons of one colour or ethnic origin, or which attempt to justify or promote racial hatred and discrimination in any form. Any violation of the relevant provisions constitutes an offence punishable in accordance with the law. To this end, the Universal Declaration of Human Rights was duly taken into consideration at the time of drafting the Indian Constitution. The rights set forth in article 4 of the Covenant are already enshrined in Indian laws. Racial discrimination is not only incongruous with the temper and traditions of the Indian people but also negates the very principles on which the Indian Constitution is founded. The secular and democratic character of the Indian policy necessitates that Indian laws and administrative action provide for adequate and positive measures aimed at deterring any threat to the principle of racial equality.

Article 21

97. All Indian citizens, under article 19, paragraph 1 (b), of the Constitution of India, have the fundamental right "to assemble peaceably and without arms".

98. The right, however, is not an absolute or unlimited one, but is subject to reasonable restrictions. The State by law can impose restrictions on this right "in the interests of the sovereignty and integrity of India, or public order".

99. Further, exercise of this right, for instance the holding of public meetings in public places, is subject to the control of the appropriate local authority in this regard for maintenance of peace and public order. The Indian Penal Code and Criminal Procedure Code provide for temporary prohibition of meetings or assemblies to preserve peace in the concerned area.

Article 22

100. The right to freedom of association is guaranteed under the Constitution of India. Article 19 of the Constitution guarantees a fundamental right to all citizens to form associations or unions. However, clause 4 of article 19 empowers the State to make any law imposing, in the interests of the sovereignty and integrity of India or public order or morality, reasonable restrictions on the right to form associations or unions.

101. Parliament may also by law determine, in accordance with article 33 of the Indian Constitution, to what extent any of the rights conferred by the Constitution shall, in their application to the members of the armed forces or the forces charged with the maintenance of public order, be restricted or abrogated so as to ensure the proper discharge of their duties and the maintenance of discipline among them. The right of association of the personnel of the armed forces and the police is thus subject to national laws in this regard.

102. The fundamental right to form unions as guaranteed under the Indian Constitution was given effect by the Indian Trade Unions Act, 1926.

103. As the subject of "trade unions" and "industrial and labour disputes" figures in the concurrent list of the seventh schedule to the Indian Constitution, both Parliament and the legislatures of the States are empowered to enact legislation on matters pertaining to them. However, the laws enacted by the State legislatures should in no way be repugnant to the central law on the subject, according to article 254, which reads as follows:

"1. If any provision of a law made by the legislature of a State is repugnant to any provision of a law made by Parliament which Parliament is competent to enact, or to any provision of an existing law with respect to one of the matters enumerated in the concurrent list then, subject to the provisions of clause 2, the law made by Parliament, whether passed before or after the law made by the legislature of such State, as the case may be, the existing law shall prevail and the law made by the legislature of the State shall, to the extent of the repugnancy, be void."

"2. Where a law made by the legislature of a State with respect to one of the matters enumerated in the concurrent list contains any provision repugnant to the provision of an earlier law made by Parliament or an existing law with respect to that matter, then the law so made by the legislature of such State shall, if it has been reserved for the consideration of the President and has received his assent, prevail in that State: provided that nothing in this clause shall prevent Parliament from enacting at any time any law with respect to the same matter, including a law adding to, amending, varying or repealing the law so made by the legislature of the State."

104. The fundamental right of freedom of association as guaranteed under the Constitution is a justiciable one. The Trade Unions Act, 1926, provides for appeal to the High Court against any refusal by the Registrar of Trade Unions to register a trade union.

105. Application of article 22 of the Covenant to India should be in conformity with the rights recognized under article 19 of the Constitution of India (see India's declaration IV to the Covenant).

Article 23

106. Indian society has historically centred upon the family, more specifically the joint family system. The joint family in India was not only the natural and fundamental group unit in sociological terms, with its own unique kinship system and relations, but also constituted an economic unit and management model in traditional India. Even though the joint family system is being progressively overtaken by the nuclear family due to migration, urbanization and modernization, there are still vast segments of rural India whose functioning may be described in terms of the "joint family system". Either in its traditional base or now in modern India, the family remains a fundamental unit lending emotional support to its individual members and forming the social fabric of Indian society.

107. In Indian society, the position of woman has been traditionally that of a "dependant" - first on parents, then on husband and, later, on the sons. The woman assists her mother in her early childhood; after marriage, her role is that of wife and mother. The traditional functions of the family are: transmission of culture; child care; marriage and family relations.

108. The family is the most important socializing agency. The task of promoting the healthy development of the child falls on the shoulders of the parents, especially the mother, who provides an atmosphere of acceptance, love and encouragement to build up and strengthen the child's self-image. Rural women in 1972 were found to be more authoritarian in disciplining children. Scolding, threatening and physical punishments were found to be more common methods of disciplining them. Today, mothers feel that a child thrives better on warmth, both mental and physical. They adopt mostly democratic methods of disciplining. Educated mothers are better at adopting positive disciplinary techniques.

109. Traditionally among the Hindus, marriage was possible within the framework of the caste system only. The attitude of educated middle-class women has, however, started to change and they seem less bound by the constraints laid down by traditional patterns of marriage. There is increasing approval of inter-caste marriages among educated middle-class people. There is growing evidence that modern women are more in favour of arranged marriages than they were 10 years ago. Although the ideology of romantic love marriage has gained popularity in Indian society and is regarded as a panacea by many social reformers for freeing Indian society from the stranglehold of the caste system, the vast majority of the people, both educated and uneducated, continue to conform to the traditional pattern of the arranged marriage.

110. Child marriage has played havoc with the physical and mental health of Indian girls and currently the age of marriage for girls has been raised from 15 to 18 years. There is considerable improvement in this position in the cities and among educated families. However, child marriages still continue to be solemnized in rural areas and in the backward sections of the city population. Education of women has tended to raise the age of marriage and lower the birth rate.

111. Although educational and occupational opportunities are providing women with new roles outside the home, their social position in the family remains largely unchanged because the system of arranged marriage confirms the authority of caste norms and the obligation of conformity to the traditional image of woman as wife and mother. Attitudes towards marrying a widower/widow or divorcee and attitudes towards sex, pre-marital sex and sexual freedom have been changing gradually. The percentage of widow remarriages increases as the educational level and socio-economic status of the widow improves. The favourable attitude towards widow remarriage is seen more among educated and working women.

112. As several communities, with their distinct religious customs and cultures, compose India, matters concerning marriage within these communities are governed by their respective personal laws and by the pertinent legislation of the Indian Parliament.

113. The relevant legislative measures governing family, marriage and children include the Hindu Marriage Act, 1955, amended by the Marriage Laws (Amendment) Act 1976; the Special Marriage Act, 1954; the Hindu Succession Act, 1956; the Hindu Minority and Guardianship Act, 1956; the Dowry Prohibition Act, 1961; the Hindu Widows' Remarriage Act, 1856 (as modified in 1969); the Indian Christian Marriage Act, 1872; the Indian Divorce Act, 1869; and the Child Marriage Restraint Act, 1929, as amended in 1978.

114. The right of men and women of marriageable age to marry and to establish a family is recognized and protected. Under the Child Marriage Restraint Act, 1929, the marriage age for men and women is prescribed as 21 and 18 years respectively. Consent for marriage is regulated by the personal laws prevalent in different communities. Marriage by consent among Hindus is required under the Hindu Marriage Act, 1955. Among Muslims, this is provided for in the Muslim personal law, and accordingly, every Muslim who has attained puberty and is of sound mind can enter into a contract of marriage. The Christian Marriage Act governs marriage by consent among Christians in India. The Special Marriage Act requires consent of the intending spouses to civil marriage by way of registration.

115. In recognition of the special needs of women and to protect their rights, a number of recent enactments have been made. These include the Criminal Law (Amendment) Act, 1982, and the Criminal Law (Second Amendment) Act, 1983. These Acts amend the Indian Penal Code, Code of Criminal Procedure, and the Indian Evidence Act, 1872, and provide for stringent penalties and punishment in cases of sexual offence against women and cruelty to married women. The Dowry Prohibition (Amendment) Act of 1984 and the Dowry Prohibition (Amendment) Act of 1986 have amended the Dowry Prohibition Act and made certain changes in the Indian Penal Code, Code of Criminal Procedure and the Indian Evidence Act to provide stringent penalties for offences relating to

dowry. The family Courts Act, 1984, provides for establishment of family courts with a view to promoting conciliation and securing speedy settlement of disputes relating to marriage and family affairs.

116. In connection with the Muslim Women (Protection of Rights on Divorce) Act, 1986 (25 of 1986), the decision of the Supreme Court in Mohd. Ahmed Khan v. Shah Bano Begum and others (AIR 1985, SC 945) led to some controversy as to the obligation of the Muslim husband to pay maintenance to the divorced wife. The Act specifies the rights to which a Muslim divorced woman is entitled at the time of divorce and protects her interests. According to the provisions of the Act, a Muslim divorced woman shall be entitled to a reasonable and fair provision for maintenance within the period of iddat by her former husband, and, in case she maintains the children born to her before or after her divorce, such reasonable provision and maintenance would be extended to a period of two years from the dates of birth of the children. She will also be entitled to mahr, or dower, and all the properties given to her by relatives, friends, husband and husband's relatives. If the above-mentioned benefits are not given to her at the time of divorce, she is entitled to apply to the magistrate for an order directing her former husband to provide for such maintenance, the payment of mahr or dower or the delivery of the properties. The Act also provides that, if the Muslim woman is unable to provide for herself after the period of iddat, the magistrate is empowered to make an order for payment of maintenance by her relatives, who would be entitled to inherit her property on her death according to Muslim law in the proportions in which they would inherit her property.

117. The Dowry Prohibition (Amendment) Act, 1986, amends the Dowry Prohibition Act, 1961, to make the provisions thereof more stringent and effective. The minimum punishment for taking or abetting the taking of dowry has been raised to five years and a fine of 15,000 rupees. The burden of proving that there was no demand for dowry will be on the person who takes or abets the taking of dowry. Any advertisement which relates to the offering of any share in property in consideration of the marriage shall be punishable with imprisonment from six months to five years or with a fine of up to 15,000 rupees. The offences under the Act have been made non-bailable. A new offence of "dowry death" has been included in the Indian Penal Code and the necessary consequential amendments in the Code of Criminal Procedure, 1973, and in the Indian Evidence Act, 1872, have also been made. A definition of "dowry death" has been given which contains an irrebuttable presumption that, if a woman's death occurs in mysterious circumstances and it is proved that she has been subjected to cruelty or harassment by her husband or any relative of her husband on grounds of demand for dowry, it shall be presumed that the husband and the husband's relatives committed the offence of dowry death.

118. The salient features of the Indecent Representation of Women (Prohibition) Act, 1986, are:

(a) Indecent representation of women is defined to mean the depiction in any manner of the figure of a woman, her form or body or any part thereof in such a way as to have the effect of being indecent or of being derogatory to or denigrating women or is likely to deprave, corrupt or injure public morality, or any person or persons of any class or age group, notwithstanding that persons in any other class or age group may not be similarly affected;

(b) The Act prohibits all advertisements, publications, etc. which contain indecent representation of women in any form;

(c) It also prohibits the sale, distribution or circulation of any books, pamphlets, etc. containing indecent representations of women;

(d) Offences under the Act are punishable with imprisonment of either description for a term extending to two years and a fine extending to 2,000 rupees on first conviction. Second and subsequent convictions will attract a higher punishment.

119. In connection with the Commission of Sati (Prevention) Act, 1987, the recent incident of the commission of sati in the village of Deorala, in Rajasthan, its subsequent glorification and the various attempts made by the protagonists of this practice to justify its continuance on religious grounds, aroused apprehension all over the country that this evil social practice, eradicated long ago will be revived. A general feeling has also grown in the country that the efforts made by social reformers like Raja Ram Mohan Roy and others in the last century would be nullified by this single act in Rajasthan. The commission of sati in Deorala was followed by a number of congregations, ceremonies and festivals, and attempts were also made to collect funds for the construction of a temple at the site where sati was committed. The place also attracted large crowds and, in spite of the various steps taken by the State Government of Rajasthan and the order of the High Court of Rajasthan to prohibit any ceremony being conducted, it was feared that a temple would be constructed at the site to perpetuate the memory of the widow who had committed sati. These incidents evoked protest throughout the country and demands from women's organizations and from persons inside and outside Parliament for the enactment of a strong and deterrent central law to provide for the more effective prevention of the commission of sati and its glorification, so that this practice or its glorification would not be continued in States where there was no law for the prevention or glorification of sati. Although the offence of attempted suicide as contained in section 309 of the Indian Penal Code had been held by various high courts to include the commission of sati punishable under the provision, the sentence provided in that section was not deterrent enough to prevent the commission of such practice. Further, that section did not provide for the glorification of sati subsequent to its commission. There are at present only three laws in force in the States, including the Rajasthan Sati (Prevention) Act, 1987. The other two enactments are the Bengal Sati Regulation, 1829 (Bengal Regulation XVII of 1829) and the Tamil Nadu Sati Regulation, 1830 (Tamil Nadu Regulation 1 of 1830). It was therefore considered desirable to enact a central law which should be applicable to the whole of India except the States of Jammu and Kashmir.

Article 24

120. Every child in India is protected without any discrimination as to race, religion, caste, sex, place of birth, etc. the right of a child to protection as a minor is governed by the relevant laws concerning family and marriage, as discussed under article 23 above.

121. The personal laws, as explained in the course of discussion of article 23, contain provisions for the protection of children as well. The fate of unfortunate, neglected, destitute, delinquent or victimized children

has warranted the special attention of society and the legislatures in matters concerning their protection and rehabilitation. The Indian Parliament as well as the State legislatures have adopted legislative measures to ensure the protection of this section of society. For example, the Children Act, 1960, provides for the establishment of child welfare boards to investigate the problems of these children and to formulate treatment plans for them. The purpose of this enactment, as stated in its preamble, is to provide for care, protection, maintenance, welfare, training, education and rehabilitation of these children.

122. According to part II of the Constitution and the Citizenship Act of 1955, every person born in India on or after 26 January 1950 shall be a citizen of India by birth except in two situations, namely, (a) if at the time of his birth his father possessed such immunity from suits and legal process as was accorded to any envoy of a foreign sovereign Power accredited to the President of India and was not a citizen of India, or (b) if at the time of his birth his father was an enemy alien and the birth occurred in a place then under occupation by the enemy. However, by the passing of the Citizenship (Amendment) Act of 1986, citizenship of India by birth can be granted only if at the time of his birth either of his parents is a citizen of India.

123. The Government of India has also established registration offices and procedures for the registration of birth of children. The importance and utility of registration of births is generally recognized in both urban and rural areas. Registration of births is done on a voluntary basis. However, in view of the vastness of the country, the large population, inadequate means of communication and transportation in certain parts, illiteracy and a multitude of other factors, child registration has not been made compulsory by law. At the time of registration, the child is registered by a name indicated by the parents.

124. The care, protection and rehabilitation of abandoned, neglected, destitute, victimized or delinquent children has been receiving special attention in the welfare policies and programmes of the Government. With a view to providing a uniform legal framework, the Indian Parliament has enacted the Juvenile Justice Act, 1986. The Act provides for the care, protection, treatment, development and rehabilitation of neglected or delinquent juveniles and for the adjudication of certain matters relating to delinquent juveniles, and disposition thereof. A specialized machinery and procedures have been contemplated to deal with children coming within the purview of the law. While neglected children are processed through the juvenile welfare boards, juvenile delinquents are dealt with by the juvenile courts. The placement of children within the family, the community and the mainstream of social life is preferred over institutional care. The enactment and enforcement of the Juvenile Justice Act, 1986, has replaced the earlier Children Acts in States and Union Territories. India is perhaps the first country which has enacted this law in keeping with the principles enunciated under the United Nations Minimum Standard Rules for Juvenile Justice Administration.

125. The National Policy for Children as formulated in 1974 spells out a set of comprehensive approaches towards the well-being and welfare of children. Among the various schemes devised for the purpose is one that relates to the welfare of children in need of care and protection. The scheme is being implemented by the Ministry of Welfare through voluntary organizations all

over the country. It provides for the setting up of children's homes and foster-care placement. Adoption of children, specially in-country adoption, is also being promoted as an integral part of the policy towards child welfare.

Article 25

126. Every Indian citizen has the right and opportunity to participate in public affairs, elections and public services on an equal basis. The Constitution of India prohibits discrimination against any citizen on grounds of race, religion, caste, sex, place of birth, as discussed above under article 2.

127. The Indian political system is based on parliamentary democracy. The Constitution in part XV lays down the basic principles concerning elections. The Election Commission of India is established to conduct and supervise elections.

128. The elections of members to the House of People and to the legislatures of the States are conducted by secret ballot through direct participation of the voters. Elections to the Upper House and to the State Councils are based inter alia on the votes of the representatives of the people elected to other houses.

129. Elections in India are governed, in addition to the Constitution, by the Representation of the Peoples Act of 1950 and 1951, the Delimitation Act, 1972, the Scheduled Caste and Scheduled Tribes Orders (Amendments) Act 1976, the Conduct of Election Rules, 1961, Parliament (Prevention of Disqualification) Act, 1959, and by many other statutory rules and orders.

130. India is a secular democratic republic, as pointed out in the preamble to the Constitution, and by virtue of article 325 no person is ineligible for inclusion in any electoral roll on grounds only of religion, race, caste, sex or any of them. By virtue of article 326, elections to the House of People and to the legislative assembly of every State are based on the principle of adult suffrage. Accordingly, every person who is a citizen of India and who is not under 21 years of age, and is not otherwise disqualified under the Constitution or any law made by the appropriate legislature on grounds of non-residence, etc. is entitled to be registered as a voter for such elections.

131. In conformity with independent India's social philosophy and with a view to ensuring adequate representation to all sections of society, the Constituion of India provides for legislative reservations for scheduled castes, scheduled tribes, Anglo-Indians, and backward classes. Accordingly, certain constituencies are reserved for candidates from among the representatives of these communities.

132. As the system of elections in India is based on universal and adult suffrage, and as elections are held by secret ballot, the free expression of the will of the voters is completely guaranteed.

133. The Constitution of India guarantees equality of opportunity to all citizens in the public services. The question of employment deserves special mention here. Article 16 of the Constitution guarantees the fundamental

rights of equality of opportunity to all citizens in matters relating to employment or appointment to any office under the State. It prohibits discrimination on grounds of religion, race, caste, sex, place of birth or any of them. Article 16 provides:

"1. There shall be equality of opportunity for all citizens in matters relating to employment or appointment to any office under the State;

"2. No citizen shall, on grounds only of religion, race, caste, sex, descent, place of birth, residence or any of them be ineligible for, discriminated against in respect of, any employment or office under the State;

"3. Nothing in this article shall prevent Parliament from making any law prescribing, in regard to a class or classes of employment or appointment to an office under the Government of, or any local or other authority within a State or Union Territory, any requirement as to residence within that State or Union Territory prior to such employment or appointment;

"4. Nothing in this shall prevent the State from making any provision for the reservation of appointment or posts in favour of any backward class of citizens which, in the opinion of the State, is not adequately represented in the services under the State;

"5. Nothing in this article shall affect the operation of any law which provides that the incumbent of an office in connection with the affairs of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination."

Article 27

134. The reference to "ethnic" minority does not apply to Indian society. The position as regards religion and culture in India has been stated above under article 18. Article 29 of the Indian Constitution guarantees the protection of the cultural and educational rights and interests of minorities. Article 29, paragraph 1 reads:

"Any section of the citizens residing in the territory of India or any part thereof having a distinct language, script or culture of its own shall have the right to conserve the same."

Paragraph 2 of Article 29 provides further:

"No citizen shall be denied admission into any educational institution maintained by the State or receiving aid out of State funds on grounds only of religion, race, caste, language or any of them."

The Indian Constitution provides suitable protection to linguistic minorities to establish and administer educational institutions of their choice.

Article 28

135. With a view to ensuring effective enforcement of the implementation of the constitutional provisions, the Government established a Minorities Commission in 1978. The functions of the Minorities Commission are as follows:

(a) 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;

(b) To make recommendations with a view to ensuring the effective implementation and enforcement of all the safeguards and laws;

(c) To undertake a review of the implementation of the policies pursued by the Union and the State governments with respect to minorities;

(d) To look into specific complaints regarding deprivation of rights and safeguards of minorities;

(e) To conduct studies, research and analysis on the question of avoidance of discrimination against minorities;

(f) To suggest appropriate legal and welfare measures in respect of any minority to be undertaken by the central and State governments;

(g) To serve as a national clearing house for information and in respect of conditions of minorities; and

(h) To make periodic reports at prescribed intervals to the Government.

136. In order to protect the interests of linguistic minorities, the Office of the Special Officer for Linguistic Minorities, designated as Commissioner for Linguistic Minorities, was created in July 1957 in pursuance of the provisions of article 350 B of the Constitution. The Office of the Commissioner for Linguistic Minorities investigates all matters relating to safeguards provided for linguistic minorities under the Constitution, as also those agreed to at the national level, and submits a report annually. The organization looks into the representations and complaints received from various institutions, bodies and individuals belonging to linguistic minorities for redressal of their grievances. So far, 26 reports submitted by the organization have been laid before Parliament.
