

## India

### *Initial report*

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### *Introduction*

1. This report to the Human Rights Committee established under the International Covenant on Civil and Political Rights is submitted by India in accordance with the requirements of article 40 of the Covenant.

2. India acceded to the Covenant on 10 April 1979 and, pursuant to article 49, it became effective for India on 10 July 1979.

3. India has received and considered the guidelines, adopted by the Human Rights Committee at its forty-fourth meeting (second session) on 29 August 1977 and has prepared its report in accordance with those guidelines.<sup>1</sup>

### *I. General*

#### 1. GENERAL LEGAL FRAMEWORK

4. The people of India, who became independent by putting an end to the centuries long colonialism, gave unto themselves in 1950 a written constitution. The preamble to the Constitution reads:

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:

JUSTICE, social, economic and political;

LIBERTY, of thought, expression, belief and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and integrity of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HEREBY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

5. The Indian Constitution enshrines Parliamentary democracy, and division of powers among the legislative, executive and the independent judiciary with counter-checks and balances. Thus the Indian Constitution sets out unitary as well as federal mechanisms in which legislative, executive and judicial powers are distributed among the Union, States and Union territories (details of the Union territories and States are

given in annex I<sup>2</sup>). The powers of the Union extend to all over India while that of the States and Union territories are exercisable in their respective territories. Each of these units has a legislature (Parliament in case of Unions; Assemblies and Councils in States and Union territories) elected by the people, and executive responsible to the legislature represented by the majority party, and an independent judiciary.

#### 2. LEGAL EMBODIMENT OF RIGHTS

6. Many of the human rights and freedoms in the International Covenant on Civil and Political Rights, 1966, are guaranteed under the Indian Constitution. These are treated as fundamental rights, directive principles of State policy and constitutional rights. Recognition of the human dignity of the individual is elevated to the status of the fundamental rights. The Constitution of India guarantees the fundamental rights of equality before law, prohibition of discrimination, equality of opportunity, freedom of speech, protection of personal liberty and life, right against exploitation, prohibition of forced labour among others. The fundamental rights are guaranteed in part III of the Constitution, consisting of articles 12 to 35. A very wide definition to the expression "State" has been given by article 22. Any law inconsistent with or in derogation of the fundamental rights is void to the extent of inconsistency (art. 13).

7. Certain substantive and procedural aspects of some of those rights particularly concerning criminal proceedings are embodied in the Indian Penal Code, 1860 and the Criminal Procedure Code, 1973. These matters concerning freedom to marry and protection to family are governed by the customary and codified laws applicable to different communities of the Indian society. Freedom of association and right to join trade unions are protected under the Constitution and are regulated by different labour legislation.

8. The human rights and freedoms recognized by the Indian Constitution and relevant laws are being enforced by the forward looking legislature, dynamic executive and by the independent judiciary.

9. While each of the human rights recognized in the International Covenant on Civil and Political Rights

<sup>1</sup> The annexes to this report are kept in the files of the Secretariat, in the original language, as received from the Government of India.

<sup>2</sup> Yearbook. . . 1977-1978, vol. II, document A/32/44, annex IV.

is discussed with respect to India in detail below, it is appropriate to mention here that the embodiment of human rights in India falls into the following categories:

- (i) The rights that are recognized under the Indian Constitution;
- (ii) The rights that are recognized under other legislation; and
- (iii) Clarification of these rights by Indian judiciary by way of judicial interpretation.

### 3. RULE OF LAW

10. The quintessence of our Constitution is the rule of law. The executive officers of the State cannot interfere with the rights of individuals unless they can point to some specific rule of law which authorizes their acts.

### 4. AUTHORITIES WITH HUMAN RIGHTS JURISDICTION

11. The Indian Parliament has the power to legislate on matters relating to human rights which are embodied in the Indian Constitution as fundamental rights, directive principles or other constitutional rights. The judiciary, particularly, the Supreme Court of India, under article 32 of the Constitution, and the High Courts of various States, under article 226 of the Constitution, have jurisdiction to give appropriate relief for violation of any of the fundamental rights. In addition to these courts, the criminal courts at different levels have jurisdiction with respect to certain human rights involving criminal charges. The administrative tribunals also deal with matters falling within their jurisdiction. For instance, the labour tribunals deal with matters affecting the rights of the labourer.

### 5. REMEDIES AVAILABLE

12. The Indian legal system enables individuals to challenge legally the violation of their civil and political rights. The fundamental rights guaranteed under part III of the Indian Constitution vest the individual with legal capacity to challenge the measures adopted by the State which affect or threaten to affect his or her civil and political rights. For enforcement of fundamental rights, the individual can approach the highest court of law, that is, the Supreme Court, even at the very first instance. Article 321 provides:

The right to move the Supreme Court by appropriate proceedings for the enforcement of the rights conferred by this part is guaranteed.

Measures violative of the fundamental rights can also be challenged before the High Court in the States.

13. It is to be noted that the procedural right to get relief for violation of individual fundamental rights guaranteed by the Constitution is in itself a fundamental right. In addition, individuals can also seek administrative remedies. In certain circumstances particularly affecting life, resort could be made to the executive head of the Union or State.

### 6. COURT REMEDIES

14. The courts have wide powers to entertain civil and criminal matters and to make enforceable orders. In criminal matters the remedies are acquittal, release on bail or commutation of sentence etc. The criminal penalties may be a fine, imprisonment or other punishments. In civil matters, the remedies are by way of damages, specific performance or injunction. In cases where the fundamental right of an individual is infringed by a legislative measure, resort can be had to the Supreme Court or the High Court challenging such measures as *ultra vires* the Constitution. Where a Government official is involved in the violation of rights of an individual the aggrieved person may seek remedy through writ petition or declaration.

### 7. ADMINISTRATIVE REMEDIES

15. In India, the Supreme Court and the High Courts have jurisdiction to issue prerogative writs against the unlawful administrative action and for protecting the fundamental rights of the individuals, (arts. 32 and 226). In other words superior courts have jurisdiction to review the exercise of powers by subordinate authorities such as lower courts, quasi-judicial tribunals and officials through writs. The Supreme Court and High Courts have power to issue directions or orders or writs, including writs in the nature of

- (a) Habeas corpus
- (b) Mandamus
- (c) *Certiorari*
- (d) Prohibition
- (e) *Quo warranto*.

16. The Indian Courts have generally done away with the technicalities of British law in issuance of the prerogative writs. The discretionary powers of the Indian courts are wider. This is clear from article 136 (1) which reads:

Notwithstanding anything contained, in this Chapter, the Supreme Court may, in its discretion grant special leave to appeal from any judgment, determination, sentence or order in any cause or matter passed or made by any court or tribunal in the territory of India.

17. Courts may also grant injunction and declarations in their equitable jurisdiction.

18. In addition, within the administrative machinery itself appeal to higher levels is permissible. The principles of natural justice are to be applied in such a process.

### 8. COURT STRUCTURE

19. In view of the frequent references made to the "Courts" in the following pages of the report, it may be useful here to briefly indicate the general structure of Courts in India.

20. The Supreme Court of India is at the apex of the Indian judicial system and has original as well as appellate jurisdictions. The High Court is the highest judicial organ of each State and the Union territories. Below the High Court there are different criminal and civil courts. The classes of criminal courts are Sessions Courts, Courts of Judicial magistrate first class or met-

ropolitan magistrate, judicial magistrate Class II and the executive magistrate. The corresponding Civil Courts are the District Courts, the Subordinate Courts and the small Causes courts etc. Appeals lie from the lower courts to the higher courts in both civil and criminal matters. In some matters, an appeal against the High Court could lie to the Supreme Court if the former has reversed an order of acquittal of an accused person and convicted him/her and sentenced him/her to death or to imprisonment for a term of life or to imprisonment for a term of 10 years or more. An appeal to the Supreme Court can also lie by special leave.

21. In some matters concerning the rights provided for in part III of the Indian Constitution, the original jurisdiction of the Supreme Court or that of the High Court can be invoked even in the first instance.

22. Thus, the structure of the Courts in India is coherently integrated with necessary provisions for appeals from lower to higher courts.

#### 9. LEGAL STATUS OF THE COVENANT

23. In India treaties are not self-executing. The provisions of treaties to which India has become a party do not automatically form part of the internal law. Implementing legislation is necessary to give effect to the provisions of the treaties. The Union Parliament has exclusive powers to enact on matters concerning treaties and international instruments. In certain cases the implementation of a treaty might require a constitutional amendment. In certain other matters a treaty might be implemented by the exercise of the executive power of the President under article 53 of the Constitution.

24. This general part of the report may aptly be concluded with the Indian perspective to civil and political rights as based on the touchstone of the Indian Constitution which is the bedrock of the Indian system. The essence of Indian perspective has been succinctly enunciated by the Supreme Court in its authoritative pronouncement, in *Prem Shankar v. Delhi Administration* as follows:

The preamble sets the human tone and temper of the Founding Document and highlights justice, equality and the dignity of the individual. Article 14 interdicts arbitrary treatment, discriminatory dealings and capricious cruelty. Article 19 prescribes restrictions on free movement unless in the interests of the general public. Article 21 after the landmark case in *Maneka Gandhi* (1978) ISC 248 (AIR 1978 SC 597), followed by *Sunil Batra* (AIR 1978 SC 1675) is the sanctuary of human values, prescribes fair procedure and forbids barbarities, punitive or processual. Such is the aperçu, if we may generalise (AIR 1980 SC 1535 at p. 1541).

## II. Information in relation to individual articles of the Covenant

### Article 1

25. India has been forthright and consistent in upholding the tradition of self-determination. The history of 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 for-

eign domination in favour of total independence — political, economic, social and cultural.

26. At the international level it is well known that India has staunchly supported the right to self-determination of peoples under colonial domination. India has consistently fought for and extended its help to the peoples fighting for self-determination in all corners of the world. Its consistent position in the United Nations forums is but illustrative of India's positive record of its response in this direction.

27. 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 the States as enshrined in the United Nations Charter is to be equally respected.

28. In conformity with this principled position of India on self-determination the following declaration has been made in 1979 at the time of the 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 [that article] apply only to the peoples under foreign domination and that these words do not apply to sovereign independent States or to a section of a people or nation — which is the essence of national integrity.

### Article 2

29. Article 2 sets out the obligation for implementation of the rights recognized under the Covenant by each State party through suitable legal measures by providing effective remedies including the judicial remedies, and the enforcement of these remedies without distinction of any kind. The rights covered under this article have generally found their place in the existing legislative measures in India. In fact, the Constitution of India itself provides for fundamental rights, as stated in part I of the report. In addition, other legislations also provide for the procedural and implementational methods for enforcement of these rights.

30. The Constitution of India guarantees that "the State shall not discriminate against any citizen on grounds of religion, caste, race, place of birth or any of them". Article 14 of the Constitution strikes at arbitrariness in State action and ensures fairness and equality of treatment (*Nand Lal v. Punjab*, 1982's ISCR 718 at p. 724).

31. Discrimination on any basis including untouchability is prohibited. These rights are also protected under the Protection of Civil Rights Act, 1955. The question of discrimination and distinction based on untouchability has also been prohibited under the Untouchability (Offences) Act, 1955. Remedies for violations of those rights and freedoms are recognized against the persons acting in their personal as well as official capacity. As already stated above in part I, an appropriate prerogative writ could also lie against the officials who violate the Act or infringe these rights or freedoms.

32. The Indian legal system also provides judicial remedies for violation of civil and political rights by way of decree, order, specific relief, damages, injunction. Several competent authorities are vested with powers to adjudicate and provide suitable remedies depending upon the nature of the right in violation and the remedy sought.

### Article 3

33. This article requires the State parties to the Covenant to ensure equal rights of men and women to 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 to the enjoyment of fundamental rights or freedoms as enshrined in the Constitution.

34. At the same time, article 15 (3) of the Constitution enables the States to provide special legislation in favour of women. Such legislation in favour of women cannot be treated as discriminatory, for it is intended to ensure that women attain equality with men. Similarly, special treatment is accorded to socially and educationally backward classes, or scheduled castes and tribes.

### Article 4

35. The provisions for and limitations on emergency in India are provided for in the Indian Constitution itself (arts. 352, 358 and 359, etc.). During the operation of emergency, the Constitution places certain restrictions on the enjoyment of rights by individuals.

36. Under the Indian Constitution the President of India has the power to proclaim emergency in respect of the whole of India 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. The President can also proclaim financial emergency under the Constitution. While a proclamation of emergency on grounds of threat to the security of India or any part of the territory of India due to war or external aggression is in operation, the protection of fundamental rights concerning speech, etc. contained in article 19 of the Constitution stand suspended. During the operation of emergency, the President may also by order declare the suspension of the right to move any court for alleged infringement of other fundamental rights contained in part III, articles 20 and 21.

### Article 5

37. The Government of India takes note of article 5 as the basis for the interpretation of the Covenant.

### Article 6

38. According to article 21 of the Indian Constitution no person can be deprived of his life or liberty except according to procedure established by law. This right is protected as a fundamental right.

39. Indian criminal law contains provisions for punishment with sentence of death for very serious crimes only. The Supreme Court of India has ruled that awarding the sentence of death "ought not to be done save in the rarest of rare cases". (*Bachan Singh v. State of Punjab*, AIR 1980 SC 898 at p. 902). However, it is to be noted that death penalty as a punishment even in these instances need not necessarily be meted out, for generally other punishments are also provided for the same offence depending upon the circumstance of each case.

40. Further, even when a court has awarded death penalty, the President and the Governors of the States are empowered under the Indian Constitution to grant pardons, commute, suspend or remit death penalty in appropriate cases. Article 72 of the Constitution bestows the President with the power to grant pardons, commute, suspend or remit 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.

41. In addition there are several procedural safeguards. For instance, if a Session Court passed a sentence of death, the proceedings shall be submitted to the High Court for confirmation without which the sentence cannot be executed. The High Court has the power to direct further inquiry to be made or additional evidence to be taken or commute the sentence or annul the conviction. Appeal lies from the High Court to the Supreme Court in cases where the High Court has, on appeal, reversed an order of acquittal of an accused person and convicted him and sentenced him to death. The Criminal Procedure Code, 1973, further provides that execution of sentence of death is to be postponed in case an appeal is pending before the Supreme Court. Moreover, when the conviction is for an offence punishable with death, the judgement should state the special reasons for such sentence. The following observation by the Supreme Court will explain the question of "special reasons":

From a reading of SS.354 (3) and 235 (2) and other related provisions of the Code of 1973, it is quite clear that for making the choice of punishment or for ascertaining the existence or absence of "special reasons" in that context, the Court must pay due regard both to the crime and the criminal . . . And it is only when the culpability assumes the proportion of extreme depravity that "special reasons" can legitimately be said to exist.

(*Bachan Singh v. State of Punjab*, AIR 1980 SC 898).

42. The Indian Constitution prohibits the making of *ex post facto* criminal law. Further, it also prohibits the infliction of a penalty greater than that which might have been inflicted under the law which was enforced

when the act was committed. This applies equally to the question of death penalty.

43. The Indian Penal Code contains provisions to govern the situations of mass killings and murders. India has signed and ratified the Covenant on the Prevention and Punishment of the Crime of Genocide.

44. 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.

### Article 7

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

46. Article 21 of the Constitution of India guarantees "personal liberty" and thereby prohibits any inhuman, cruel or degrading treatment to 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 and equal protection of laws against any private individual or the State.

47. The Constitution of India and also the criminal laws of India are applicable when the liberty and human dignity of an individual are encroached upon by the State or a private individual by way of cruelty or inhuman or degrading treatment.

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

49. Any excesses committed on a prisoner 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 his rights as a human being. The Supreme Court has held:

True, our Constitution has not "due process" clause or the VIII Amendment; but, in this branch of law, after *Cooper* (1971) 1 SCR 512 (AIR 1970 SC 1318) and *Maneka Gandhi* (1978) 1 S.C.C.248 (AIR 1978 SC 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 shrunken 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 v. Delhi Administration*, AIR 1978 SC 1675 at pp. 1690 and 1691)

50. In short, the prison authorities can only carry out the sentences but they cannot exceed the legal boundaries of prescribed punishment.

### Article 8

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

52. Article 23 of the Indian Constitution embodies the right against exploitation and prohibits *begar* (meaning 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 interpreted that remuneration below the minimum wages prescribed under the Minimum Wages Act, 1948, falls within the purview of article 23. The Supreme Court held in the case of *Sanjit Roy v. State of Rajasthan*:

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 payment of the minimum wage to him so that the breach of article 23 may be abated.

(AIR 1983 (ISCALE) 38 at pp. 43-44)

53. 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 prescribes that whoever engages in such an offence, shall be punished with imprisonment of either description up to 10 years and also fine. Further, whoever habitually imports, exports, removes, buys, sells, traffics or deals in slaves could be punished with imprisonment even for life. Similarly, whoever buys or disposes of any person as a slave is punishable.

54. In order that prohibition of forced or compulsory labour be implemented, the Constitution also abolished untouchability which was a heinous offshoot of caste system. This matter is also governed by the Untouchability (Offences) Act of 1955 and the Protection of Civil Rights Act.

55. Yet another aspect intertwined with and common to the problems of forced labour, slavery and servitude but which concerns exclusively women was the question of immoral trafficking or trade. Article 23 of the Constitution of India prohibits traffic in human beings. This right of woman against exploitation had separately been given legislative effect through the Suppression of Immoral Traffic in Women and Girls Act of 1956. Many provisions of the Indian Penal Code are addressed to the problems of crimes against women, including forcing minors to prostitution, and are attended with strict punishments.

56. The Indian Penal Code and other relevant laws do provide for rigorous imprisonment for heinous offences connected with slavery, servitude and forced la-

bour in all its forms. The rigorous imprisonment need not always necessarily include hard labour during the period of punishment. But such punishment could be given only on the basis of a judgement of the court.

### Article 9

57. Protection of life, and personal 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 according to the procedure established by law. The Supreme Court held that the procedure contemplated by article 21 must be "right and 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 case*, 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 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. 724):

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, even the law of preventive detention covered by article 22 has to be in conformity with article 21. The Supreme Court, in 1981, held:

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.

Also

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 SC 746 at p. 747)

58. Article 22 of the Indian Constitution, in addition, sets out that no person who is arrested shall be detained in custody without being informed, as soon as may be, 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 in custody a person without warrant for a longer period than under all the

circumstances of the case is reasonable, 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 at pp. 940-941.)

59. Apart from the provisions made for punishments 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 the cases of unlawful deprivation of personal liberty.

60. Regarding the matter of compensation on account of unlawful arrest, India has appended a declaration while 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".

### Article 10

61. The position of prisoners in India is governed by the Prison Act, 1894. Accordingly, the prisoners in judicial custody are extended humane treatment. Indian gaols provide prisoners with basic amenities and facilities including those concerning food, health, sanitation and recreation.

62. There also exists a special procedure to keep the convicted persons separated from under-trials. Similarly, there is a provision to keep the women convicts and under-trials separately.

63. Juveniles are kept separately in the reformatories and other institutions set up under the Children Acts. The Acts provide for the care, protection, maintenance, welfare training, education and rehabilitation of delinquent children. The juveniles are tried by children's courts, specially constituted for the purpose. These courts are assisted by honorary social workers, and adequate representation is given to women on these courts. The police authorities are not supposed to enter the children's courts in their official uniforms. Their cases are to be speedily probed, processed, tried and concluded by the courts without any unnecessary delay.

### Article 11

64. The question of contractual obligations, their fulfilment, and imprisonment in consequence of inability to fulfil contractual obligations are governed by the

Indian Constitution and other relevant laws such as the law of contracts, Civil Procedure Code.

65. The question of imprisonment is essentially and fundamentally governed by article 21 of the Constitution which, as stated above, guarantees the fundamental right to life and liberty. Deprivation of personal liberty on the ground of inability to fulfil a contractual obligation as well falls within the purview of this fundamental right. The law of contractual obligation is a part of the Indian law of contracts. No person, accordingly, could be imprisoned solely on the ground of inability to discharge a contractual obligation. But in exceptional cases civil arrest may, however, be possible subject to the exhaustion of elaborate civil procedure. In any case, a person who intends in good faith to fulfil the contractual obligation, but could not do so because of lack of means, could not be arrested on the ground of inability to perform contractual obligation. (*Jolly George Verghese v. Bank of Cochin*, AIR 1980 SC 475)

### Article 12

66. The right to liberty of movement and freedom to choose residence, etc. are recognized in India.

67. Article 19 (1) (d) and (e) of the Indian Constitution bestows on all citizens the fundamental rights to move freely throughout the territory of India and to reside and settle in any part of the territory of India. These fundamental rights are, further, closely associated with article 21 which guarantees personal liberty.

68. The rights enshrined in article 19 are subject to the operation of any existing law imposing reasonable restrictions on them in the interests of the general public or for the protection of the interests of any Scheduled Tribe. "The interests of general public" may enable the legislature to impose restrictions to deal with acts that are aimed at breach of public order or security of the State or those acts which have a tendency to cause these effects. With regard to the standard of reasonable restrictions the Supreme Court laid down in the case of *Bishambar Dayal Chandra Mohan v. State of UP* (AIR 1982 SC 33 at p. 35):

The expression "reasonable restriction" signifies that the limitation imposed on a person in enjoyment of the right should not be arbitrary or of an excessive nature, beyond what is required in the interests of the public. The test of reasonableness, wherever prescribed, should be applied to each individual statute impugned, and no abstract standard, or general pattern of reasonableness can be laid down as applicable in all cases. The restriction which arbitrarily or excessively invades the right cannot be said to contain the quality of reasonableness and unless it strikes a proper balance between the freedom guaranteed in articles 19 (1) (g) and the social control permitted by cl. (6) of article 19, it must be held to be wanting in that quality.

69. In addition to the above stated provisions of substantive law concerning freedom of movement and residence, the procedural aspect of natural justice is also attracted. Thus, a restriction upon the freedom of movement would be procedurally unreasonable if it offends against the principles of natural justice; for example, the person against whom an order is made should have the right to be heard in his defence and he

must be informed of the grounds or charges upon which the order is made, and he should have opportunity to show that he does not come within the mischief of the law.

70. A law providing for restriction in the interests of the security of the State would not be an unreasonable restriction of the freedom of movement, if the procedural and substantive requirements of the law with regard to these rights are complied with. For example, removal of persons who are a menace to the safety of the public in a locality cannot be considered an unreasonable restriction. India's position in regard to foreigners has been clarified through declaration IV made at the time of accession that this article is to be applied to India so as to be in conformity with article 19 of the Constitution.

### Article 13

71. An alien's entry, stay, movement within, departure from the territory of India or any part thereof, are governed by Indian laws such as the Foreigners Act, 1946, Registration of Foreigners Act, 1939, Passport (Entry into India) Act, 1920, Constitution of India, and the relevant Orders and Rules made thereunder.

72. The Central Government may, in accordance with the Foreigners Act, order an alien to leave India. However, an aggrieved alien can move the appropriate court against such order.

73. In view of the Indian laws relating to foreigners, India made a specific reservation to this article at the time of its accession to the Covenant that "India reserves its right to apply its laws to foreigners".

### Article 14

74. Article 14 of the Indian Constitution stipulates that the State shall not deny to any person equality before the law or equal protection of the laws within the territory of India. All persons are accorded equal treatment before the Indian courts irrespective of caste, colour or creed. Everyone is fully entitled to have a fair trial and to be defended through a lawyer of his own choice,

75. There are special provisions in respect of juvenile persons as dealt with under article 10 above. In the cases involving women, the trial can be conducted in camera. The proceedings of such trials cannot be published except with the consent of the parties.

76. Under Indian laws no one can be forced to plead guilty or be convicted unless his guilt is proved beyond doubt in accordance with the procedure established by the law. The contents of the grounds of arrest and the charges against the accused person are to be supplied to him in vernacular which is easily understood by the accused person.

77. Adequate opportunity to the accused person is extended in the Indian courts to prepare and lead his defence. Opportunity to the accused person is also granted at the time of the charge so that he may argue

before the court that no prima-facie case is made out against him and that he is entitled to be discharged. Thus, any person accused of an offence before a criminal court, or against whom proceedings are instituted has a right to be heard, to lead his defence, and to procure the services of the counsel of his choice, by virtue of section 303 of the Criminal Procedure Code.

78. Every endeavour is made by the Indian courts to dispose of the pending cases as early as possible.

79. Article 39 (a) of the Constitution requires the State to provide free legal aid by suitable legislation. Free legal aid societies and boards have been established to provide free legal aid and service to the under-trials in addition to the facility of *amicus curiae*. Further, there are special boards established to render free legal aid and advice to the destitute women in matrimonial and other cases. More importantly, right to free legal service in deserving cases is itself a fundamental right which is clear from the following observations of the Supreme Court in the case of *Khatari v. State of Bihar* (AIR 1981 SC p. 928);

The right to free legal services is clearly an essential ingredient of reasonable, fair and just procedure for a person accused of an offence and it is implicit in the guarantee of article 21. The State Government cannot avoid its constitutional obligations to provide free legal services to a poor accused by pleading financial or administrative inability. The State is under a constitutional mandate to provide free legal aid to an accused person who is unable to secure legal services on account of indigence, and whatever is necessary for the purpose has to be done by the State.

Moreover, this constitutional obligation to provide free legal services to an indigent accused not only arises when the trial commences but also attaches when the accused is for the first time produced before the magistrate. That is the stage at which an accused person needs competent legal advice and representation and no procedure can be said to be reasonable, fair and just which denies legal advice and representation to him at this stage.

80. In India every accused person may obtain from the court that a person be summoned to appear as witness and is permitted to examine and cross-examine on his own or through his authorized counsel.

81. Whenever any evidence is given in a language not understood by the accused, and he is present in a court in person, it shall be interpreted to him in open court in a language understood by him, as per section 379, Criminal Procedure Code.

82. Article 20 (3) of the Indian Constitution stipulates that no person accused of any offence shall be compelled to be a witness against himself. The scope of this article extends to non-citizens also. The accused person is not compelled to testify against himself or to confess his guilt. Further, section 316 of the Criminal Procedure Code provides that except as provided in sections 306 and 307, no influence, by means of any promise or threat or otherwise, shall be used on an accused person to disclose or withhold any matter within his knowledge. One is free to lead one's defence the way one likes.

83. The procedure in respect of juveniles is governed by the Criminal Procedure Code as well as the Children Act, 1960. Accordingly, juveniles are tried by special courts, where they are assisted by voluntary social workers. The proceedings are conducted in a

friendly manner, without any kind of hostility, so that juveniles should not be fearful when undergoing a trial.

84. The affected persons can go in for appeal to the higher courts namely a Court of Session, High Court and the Supreme Court.

85. There is no provision in India for compensation for wrongful conviction. India has made a declaration, while acceding to the Covenant, to this effect. Reference may be made to the discussions under article 9 above.

86. Article 20 (2) of the Indian Constitution guarantees that no person shall be prosecuted and punished for the same offence more than once. Similarly, the Criminal Procedure Code stipulates that the person once convicted or acquitted is not to be tried again for the same offence.

### Article 15

87. Indian laws do not permit retrospective operation of criminal laws. There is no doubt that a sovereign legislature has the power to enact prospective as well as retrospective laws. However, article 20 of the Indian Constitution sets forth two limitations upon the law making power of every legislative authority in India as regards criminal legislation. It prohibits (i) the making of *ex post facto* criminal law, that is, making an act a crime for the first time and then making that law retrospective; (ii) the infliction of a penalty greater than that which might have been inflicted under the law which was enforced when that act was committed. The prohibition of this clause is not merely against the passing of such retrospective laws but also against conviction under such laws. This position has also been referred to while discussing article 6 above.

### Articles 16 and 26

88. These two articles of the Covenant recognize that everyone shall have the right to recognition as a person before the law and that all persons are equal before the law and are entitled to the equal protection of the law. All Indian courts recognize all individuals as persons before the law and the Indian legal system recognizes the right to equality before the law and equal protection of the law. These rights are enshrined in article 14 of the Constitution, which reads as follows:

The State shall not deny to any person equality before the law or the equal protection of laws within the territory of India.

89. As already explained above, the Constitution of India requires the State not to discriminate against any citizen on grounds of religion, race, caste, sex, place of birth or any of them.

90. Equality here, however, does not mean unrealistic and theoretical equality. It refers to the right to equal treatment in similar circumstances. However, the principle of equality under the Indian Constitution permits reasonable classification in legislation for a well defined class which must be founded on an intelligible differentia which distinguishes persons or things that

are grouped together from others left out of that group, and that differentia must have a national relation to or nexus with the object sought to be achieved by such legislation.

### Article 17

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

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

### Article 18

93. 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 of people belonging to different religions, faiths and beliefs. The secular and democratic nature of Indian society demands mutual tolerance of different religious beliefs and faiths with full freedom to practise the respective religious belief or faith of any community.

94. The Constitution of India in articles 25 and 28 specifically deals with the freedom of religion etc. The Indian Constitution guarantees to all persons the freedom of conscience and the right freely to profess, practise and propagate religion. The freedom to manage religious institutions without any payment of taxes etc. is also guaranteed.

95. The rights to freedom of thought, conscience and religion are subject, according to the Constitution of India, to considerations of public order, morality and health which are necessary in the interests of the general public in a democratic society such as India.

96. 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 enable any religious group to work against the same rights of another religious group or persons.

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

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

### Article 19

99. The Indian Constitution guarantees fundamental right to freedom of speech and expression under article 19 to all its citizens. This freedom covers the freedom of press as well within its scope.

100. The freedom of speech and expression is, however, subject to reasonable restrictions on specified grounds. Accordingly, restrictions on this fundamental right could be placed on the grounds of (i) Sovereignty and integrity of India; (ii) Security of the State; (iii) Friendly relations with foreign States; (iv) Public order; (v) Decency or morality; (vi) Contempt of Court; (vii) Defamation; (viii) Incitement to an offence.

101. In view of the above, India made a declaration (IV) 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 provision of article 19 of the Indian Constitution.

### Article 20

102. 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 on Civil and Political Rights, the right of freedom of speech and expression in India could 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 and opinions of its citizens in such a way that they do not violate friendly relations with foreign States. Further the Indian Penal Code treats the acts aimed against foreign States as crimes, with suitable punishments.

103. India has been against any advocacy of racial or religious hatred, and has consistently followed the policy of non-violence (*ahimsa*). Accordingly, India has become a party to the International Convention on the Suppression and Punishment of the Crime of *Apartheid*. The Indian Parliament has already passed legislation on this matter, namely, the Anti-Apartheid (United Nations Convention) Act, 1981.

104. The subject of religious hatred has been dealt with above under article 18 of the Covenant.

### Article 21

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

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

107. 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 of India provide for temporary prohibition of meetings or assemblies to preserve peace in the concerned area.

### Article 22

108. The right to freedom of association is guaranteed under the Constitution of India. Article 19 of the Indian 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.

109. The Parliament may also by law determine, according to 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 so as to ensure proper discharge of the duties and maintenance of discipline among them. The rights of association of the personnel of armed forces and the police are thus subject to national laws in this regard.

110. The fundamental right as guaranteed under the Indian Constitution has been given effect to by the Indian Trade Unions Act, 1926.

111. As the subjects of "trade unions" and "industrial and labour disputes" figure in the concurrent list of the Seventh Schedule of the Indian Constitution, both the 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 any existing law with respect to one of the matters enumerated in the Concurrent List, then, subject to the provisions of clause (8), the law made by Parliament, whether passed before or after the law made by the Legislature of such State, or, 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 provisions repugnant to the provisions 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.

112. The fundamental right of freedom of association as guaranteed under the Constitution is a justifiable 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.

113. Application of article 22 of the Covenant by India should be in conformity with the rights recognized under article 19 of the Constitution of India (see Declaration IV made by India upon accession to the Covenant).

### Article 23

114. In the Indian society which is based on its historical traditions and culture, family system not only lends basic strength to continuity and change in the social process but is also a fundamental cohesive unit of the secular and democratic set up. The Indian legal system based on this social reality naturally reflects and guarantees full sanctity to and protection of the family.

115. 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 pertinent legislations of the Indian Parliament.

116. 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' Re-marriage Act, 1956 (as modified in 1969); the Indian Christian Marriage Act, 1872; the Indian Divorce Act, 1896; and the Child Marriage Restraint Act, 1929, as amended in 1978.

117. 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, 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 the 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 for civil marriage by way of registration.

118. Equality of rights and responsibilities of spouses as to marriage, during marriage, and dissolution is ensured in accordance with the personal laws of each community. However, equality for marriage is sought to be reinforced by legislative reform to do

away with certain evils which burden one party to marriage over the other. For instance, the Dowry Prohibition Act, 1961, abolishes dowry and prescribes punishment for engaging in such unlawful practice. "Dowry means any property or valuable security given or agreed to be given either directly or indirectly (a) by one party to a marriage to the other party to the marriage or (b) by the parents of either party to a marriage or by any other person, to either party to the marriage or to any other person — at or before or after the marriage as consideration for marriage."

119. In order to put an end to the social prohibition of remarriage of widows among Hindus, a traditional evil that existed in the past and was challenged by the social reformatory movement led by some forward looking Hindu leaders, the Hindu Widows' Remarriage Act was enacted. The evil has since then been eradicated enabling such women to attain equal status with men, socially and legally, and to enter into marriage again.

120. Equal marital and other rights and obligations of spouses are recognized. Each spouse has equal right for and at the time of dissolution of marriage. However, as family is viewed as a strong bond in India, the scope and mechanisms for constitution of marriage are maintained in the Indian legal system until eventual dissolution according to law takes place. These mechanisms include judicial separation and restitution of conjugal rights. The Indian legal system recognizes divorce by mutual consent of the spouses.

121. In the case of dissolution of marriage, provisions for the custody, protection, maintenance and education of the minor child or children is made, and the concerned Court dealing with marriage dissolution proceedings takes note of this fact necessarily. The Special Marriage Act, the Hindu Marriage Act, the Christian Marriage Act and the Muslim Law provide for this.

#### Article 24

122. 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 the previous article (art. 23). The personal laws, as explained in the course of discussion of the previous article, contain provisions for the protection of the children as well.

123. The fate of the unfortunate, neglected, destitute, delinquent or victimized children had warranted special attention of society and the legislatures, requiring their protection and rehabilitation. The Indian Parliament as well as the State Legislatures adopted legislative measures to ensure protection to this section of society. For example, the 1960 Children Act 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 the care, protection, maintenance, welfare, training, education and rehabilitation of these children.

124. According to part II of the Constitution and 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 possesses such immunity from suits and legal process as is accorded to any envoy of a foreign sovereign power accredited to the President of India and is not a citizen of India or (b) if at the time of his birth his father is an enemy alien and the birth occurs in a place then under occupation by the enemy. It is immaterial, except in the two cases mentioned above, whether one or both parents were Indian nationals or foreign nationals at the time of birth of the child.

125. The Government of India has also established registration offices and procedures for the registration of birth of children. Importance and utility of registration of births is generally recognized in both the urban and rural areas. Registration of births is done on a voluntary basis. However, in view of the vastness of the country, 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 as indicated by the parents.

#### Article 25

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

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

128. The elections of the Members to the House of the People and to the Legislatures of the States are conducted by secret ballot through direct participation of the voters. The 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 the other Houses.

129. Elections in India are governed in addition to the Constitution by the Representation of the Peoples Act 1950 and 1951, the Delimitation Act, 1972, the Scheduled Castes and Scheduled Tribes Orders (Amendments) Act 1960, the Registration of Electoral Rules 1960, the Conduct of Elections Rules 1961, the law relating to disqualification — for instance the 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 such electoral roll on grounds only of religion, race, caste, sex. By virtue of article 326, the elections to the House of the 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 less than 21 years of age, and is not otherwise disqualified under the Constitution or any law made by the appropriate legislature on the ground 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 ensure adequate representation to all sections of the society, the Constitution of India provides for legislative reservations to Scheduled Castes, Scheduled Tribes, Anglo-Indians, and Backward Classes. Accordingly, certain constituencies are reserved for elections, from among the representatives of these communities.

132. As the system of elections in India is based on universal and equal suffrage and as the 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 the 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, or 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, 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 article shall prevent the State from making any provision for the reservation of appointments or posts in favour of any backward class of citizen 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.

135. The position as regards religion and culture in India has been stated above under article 18.

136. Article 29 of the Indian Constitution guarantees the protection of the cultural and educational rights and the interests of minorities. Article 29 (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.

Further article 29 (2) says:

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.

137. The Indian Constitution provides suitable protection to all the languages and the linguistic communities and guarantees equal treatment.