

INTERNATIONAL
CONVENTION
ON THE ELIMINATION
OF ALL FORMS OF
RACIAL DISCRIMINATION



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COMMITTEE ON THE ELIMINATION OF
RACIAL DISCRIMINATION

Twenty-seventh session

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

Seventh periodic reports of States parties due in 1982

Addendum

INDIA 1/

[16 August 1982]

Introduction

Between the period of our submitting the Sixth Periodic Report and now, there have not been many substantial developments in the country in the legislative, judicial and administrative fields concerning the implementation of the provisions of the Convention on the Elimination of All Forms of Racial Discrimination. The periodic reports which have been submitted earlier have dealt in detail with the various constitutional provisions, legislative and judicial measures taken over a

1/ For previous reports submitted by the Government of India and the summary records of meetings of the Committee at which these reports were considered, see:

- (1) Initial report - CERD/C/R.3/Add.3/Rev.1 and Add.39 (CERD/C/SR.33, 50, 51 and 56);
- (2) Second periodic report - CERD/C/R.30/Add.24 (CERD/C/SR.140-141);
- (3) Third periodic report - CERD/C/R.70/Add.29 (CERD/C/SR.235);
- (4) Fourth periodic report - CERD/C/R.90/Add.32 (CERD/C/SR.366-367);
- (5) Fifth periodic report - CERD/C/20/Add.34 (CERD/C/SR.441-442);
- (6) Sixth periodic report - CERD/C/66/Add.33 (CERD/C/SR.535).

period of several years to eliminate racial discrimination in the country. Therefore, it has been felt that it would not be necessary to repeat what has already been included in our earlier reports in this connection.

2. In the light of the above, under Part I of the Seventh Periodic Report, general interpretations of the constitutional provisions which have a direct bearing on the relevant articles of the international convention have been included. The limited legislative measures that have taken place during the interregnum between the submission of India's Sixth Periodic Report and now, have been covered under Part-II of the Report. A new part, namely Part-III, has been added to the Seventh Periodic Report, though this is strictly not within the guidelines provided for reporting to the Committee on Elimination of Racial Discrimination. Replies to the queries raised by members of the Committee while considering India's Sixth Periodic Report are contained in this part of the Report.

PART - I

General

3. As indicated in the previous reports submitted by India the Constitution of India enshrines the principle of equality and absence of discrimination. Part-III of the Indian Constitution embodies these very fundamental freedoms which are enshrined in the United Nations Charter and the Universal Declaration of Human Rights, to both of which India was a signatory even prior to the Drafting of the Constitution. India is also party to the International Covenant on Economic, Social and Cultural Rights, and the International Covenant on Civil and Political Rights adopted by the General Assembly of the United Nations on 16 December 1966.

4. The close similarity between the Chapter on Fundamental Rights under the Indian Constitution and the Universal Declaration of Human Rights and the International Covenants on Human Rights is not only apparent, but real.

5. Article 14 of the Constitution provides that the State shall not deny to any person equality before the Law or the equal protection of the laws within the territory of India. The guarantee of "equal protection" is a guarantee of equal circumstances, permitting differential treatment in different circumstances. It forbids hostile discrimination but not reasonable classification. This guarantee applies to all persons - citizens or aliens. The constitution further provides that the State shall not discriminate against any citizens on grounds only of religion, race, caste, sex, place of birth or any of them. This provision lays down that a possible victim of racial discrimination in India can obtain relief from the highest court of the land, directly by means of a petition or an appropriate writ. It is a measure of the tolerance practised in India that no such complaint has so far come up before the courts. The protection is available even against discriminatory acts by private individuals. The prohibitions against discrimination, however, would not preclude the State from: (a) making special provisions for women and children; (b) making special provision for the advancement of any socially and educationally backward class of citizens or for the scheduled castes or scheduled tribes. These exceptional cases of people require special protection and hence special provisions for persons of these classes would not be unjustified or unconstitutional.

6. As a corollary of the general assurance of prohibition of discrimination by the State on grounds only of religion, race, caste, sex, or place of birth, the Constitution guarantees equality of opportunity in matters of public employment. As an adjunct to the guarantee of personal liberty and prohibition against discrimination the Constitution lays down provisions to prevent exploitation of the weaker section of the society by unscrupulous individuals or even by the State. Thus, one of the essential purposes of the Constitution is to assure freedom of the individual and the dignity of man, and to protect the basic human rights from the destructive instincts.

7. Article 29 and 30 of the Constitution protect the rights of minorities to have a distinct language, script, or culture of their own and to establish and administer educational institutions of their choice. No citizen can be denied admission to any educational institution maintained by the State or receiving aid out of State Funds, on grounds only of religion, race, caste or language. The State cannot discriminate, in granting aid, against any educational institution on the ground that it is under the management of a minority whether based on religion or language.

8. The guarantees of liberty are not mere exhortations as to how government should be carried on or how its agencies will operate. They are precepts of law of the land backed by the power of the Courts of Law to refuse to give effect to legislative or executive acts in derogation thereof. The courts are charged with the duty of guarding the fundamental rights and preventing infringements of the rule of law by any authority within the State.

9. Against the above-mentioned constitutional guarantees and the need for the special provisions for the advancement of socially and educationally backward classes of citizens, such as scheduled castes and scheduled tribes, who constitute about 22.5 per cent of the population, the Government of India has undertaken programmes of socio-economic developments through successive five year plans. As a part of national plan effort special component plan for scheduled caste and tribal sub-plan are being implemented to assure that these sections of people receive due share of development of the economy as a whole. The Government of India is conscious of the need to protect and promote the interests of the weaker sections of the community.

PART - II

Information in relation to specific Articles in Part I of the Convention

10. In fulfilment of its total commitment to the elimination of Apartheid, the Indian Parliament unanimously enacted the Anti-Apartheid (United Nations Convention) Act, 1981. The text of this Act is annexed. 2/ The Act gives effect to the provisions of the International Convention on the Suppression and Punishment of the Crime of Apartheid which was adopted by the United Nations General Assembly on 30 November 1973, and to which India became a party on 22 October 1977. The Act gives effect to the Convention, in particular to Articles II and III thereof, as set out in the Schedule to the Act, which respectively define the crime of apartheid and apply international criminal responsibility, irrespective of the motives involved, to individuals, members of organizations, institutions etc. who commit the said crime. The Act also provides that the commission of the said crime, within India or abroad, shall be punished with death or imprisonment and fine. Thus the legislative means required to give effect to the Convention have been completed.

11. The Government of India would also like to add that they have never lagged behind in their support and help to the cause of the South African people, Namibian people and all those who are the victims of abhorrent practices such as apartheid. India's boycott of the racist regime of South Africa is comprehensive. India does not maintain contact with South Africa in any field, diplomatic, commercial, economic or cultural, including sports. India imposed economic and other sanctions against South Africa very much in advance of the United Nations resolution of October 1968 calling for an end to cultural, educational, sports and

2/ Available for consultation by members of the Committee in the original (English) language in the files of the Secretariat.

other exchanges with South Africa and has consistently adhered to the policy of complete boycott. In consonance with this policy and the United Nations Security Council resolution No. 418 (1977) calling for the imposition of a world-wide mandatory ban on shipment of arms and related material, the Government of India strongly supported all measures for ensuring that all States, including non-member States of the United Nations, act strictly in conformity with the provisions of the resolution.

12. As an active member of the non-aligned movement India has always endeavoured to obtain greater and more concrete support for the cause of South African victims. The New Delhi Declaration of February 1981 reiterated condemnation of the system of apartheid in South Africa. As a member of the Commonwealth, India has expressed condemnation of the racist regime at Commonwealth Meetings including the Commonwealth Heads of Government Meeting at Melbourne in October 1981. As a member of the Asian-African Group at the United Nations, and its allied agencies, India has constantly supported moves for isolation of the Pretoria regime, the latest being a resolution demanding mandatory sanctions against South Africa at the United Nations Security Council in April 1981.

13. The Government of India have contributed as in previous years to: (i) the United Nations Institute for Namibia, (ii) the United Nations Trust Fund for South Africa, (iii) the United Nations Education and Training Programme for Southern Africa, (iv) United Nations Fund for Namibia, and (v) Trust Fund for Publicity against Apartheid. India is one of the eighteen members of the Special Committee against Apartheid. India also serves on the Council for Namibia.

14. Educational and training facilities in India under various schemes and programmes, including ITEC Programme have been provided for the nominees of SWAPO, of Namibia and the ANC. India has also been providing training facilities under the United Nations Educational and Training Programmes for Namibians and Zimbabweans. The number of trainees under these categories has increased considerably in the last few years. Over 100 Zimbabwean and 25 Namibian student trainees are presently studying in India.

PART - III

Replies to the queries raised by the members of the CERD while considering India's 6th Periodic Report

15. The members of the Committee had noted while considering India's Sixth Periodic Report that the revision of the Indian Constitution had not affected the implementation of the provisions of the Convention in the country (para. 395 of the Committee's Report). In this context, the Government of India would like to reiterate that the Indian Constitution does not permit discrimination among its citizens on grounds of religion, race, caste, sex, place of birth or any of them. On the other hand, special provisions have been made for the advancement of socially and educationally backward classes of citizens such as the Scheduled Castes and Scheduled Tribes. The Scheduled Castes and Scheduled Tribes, who number about 41 million and 80 million respectively, constitutes about 22½ per cent of the country's population as per the 1971 census. Special efforts have been made to raise their socio-economic levels. As a part of the national plans effort, special component plan for Scheduled Castes and Tribes sub plan are being implemented to ensure that these sections of the people received due share of five year plan investment. Rough estimates indicate that about 10 per cent of the public sector outlay in the Sixth Plan (1980-85), i.e. about Rs.10,000 crores (Ten thousand crores only) will be utilized for implementing programmes for the benefit of the Scheduled Castes and the Scheduled Tribes. Thus the Government of India is conscious of the need to protect and promote the interests of the weaker sections of the community.

16. The members of the Committee also expressed the wish that the Committee should continue to be provided, in the future, with reports of the Indian Commissioner for Scheduled Castes and Scheduled Tribes and the report of the Indian High Power Panel established in 1980 (para. 396 of the Committee's report). Copy of the 26th report of the Commissioner for Scheduled Castes and Scheduled Tribes (1978-1979) has already been furnished to the Committee along with the Sixth Periodic Report. The 27th report is yet to be submitted to the Government. The Report of the High Power Panel on the Scheduled Castes, the Scheduled Tribes and other weaker sections of the Society has not yet been released.

17. While considering India's sixth Periodic Report, the members of the Committee had pointed out (para. 397 of CERD report), with reference to Article 4 of the Convention that Article 15 of the Indian Constitution mentioned the concept of discrimination on grounds of race but not on grounds of colour or ethnic origin. They asked whether the Government of India would be prepared to amend its Constitution and laws appropriately. The Government of India does not consider any amendment of Article 15 of the Constitution to be necessary, since Articles 14 and 15 cover adequately the elements of all forms of racial discrimination.

18. In connection with Article 5 of the Convention, the members of the Committee had asked for information concerning the seats reserved in Parliament for the Scheduled Tribes and Scheduled Castes (para. 398 of the Committee's report). Article 334 of the Constitution has since been amended giving effect to the provisions in that part up to a period of 40 years from the announcement of the Constitution, i.e. up to 1990.

19. Similarly, the members had also asked for information on the amendment to Article 19 of the Constitution and the effect of the deletion of sub-clause (f) of Clause (1) of Article 19, concerning the right to acquire, hold and dispose of property (para. 398 of the Committee's report). This has been taken care of by the Indian Parliament by insertion of Article 300 A in the Constitution which reads as follows:

"No person shall be deprived of his property save by authority of law".

20. In connection with Article 6 of the Convention, the members had observed that difficulties may be created by the granting of jurisdiction to the Supreme Court to review the constitutionality of the State laws, in that only judges from such States who are sufficiently familiar with the laws of their states and that complainants must travel long distances to present cases before the Supreme Court. The Committee further asked whether, as laymen, such people fully understood the relevant procedure and whether they were entitled to employ a lawyer and to receive public funds for seeking redressal of their grievances (para. 399 of the Committee's report). With reference to the above it would be seen that the Supreme Court has jurisdictions to review the constitutionality of state as well as central laws from the commencement of the Indian Constitution and that there is no legal or constitutional problem for the Supreme Court of India from rescinding any state law. The Constitution is uniformly applicable to all the states in India and as such there is no difficulty in applying the provisions of the Constitution in respect of any state laws. Every person is free to be represented through the lawyer of his choice. The Constitution of India provides in Article 39 A as follows:

"The state shall secure that the operation of the legal system promotes justice on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities."

21. Some members of the Committee had desired to know the reason why India had not made the declaration provided for under Article 14 of the Convention (para. 400 of the Committee's report). The Government of India would like to reiterate that the existing constitutional and other administrative, legislative and judicial guarantees against any act of discrimination do provide sufficient protection to the individual's rights and also enable him or her to seek redressal of any grievances borne out of discrimination based on race, caste, sex or religion. In the present context and stage of India's development, therefore, the Government of India does not consider it necessary to make the declaration under Article 14 of the Convention.

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