



International Covenant on Civil and Political Rights

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Human Rights Committee

List of issues prior to submission of the fourth periodic report of India*

A. General information on the national human rights situation, including new measures and developments relating to the implementation of the Covenant

1. Please provide information on measures taken to implement the recommendations contained in the Committee's previous concluding observations (CCPR/C/79/Add.81).
2. Please report on any other significant developments in the legal and institutional framework within which human rights are promoted and protected that have taken place since the adoption of the previous concluding observations and that are not otherwise addressed in the following questions.

B. Specific information on the implementation of articles 1–27 of the Covenant, including with regard to the previous recommendations of the Committee

Constitutional and legal framework within which the Covenant is implemented (art. 2)

3. With reference to the previous concluding observations (para. 13),¹ please clarify the extent to which and the manner in which the Covenant has been incorporated into domestic law, is fully applicable across the jurisdictions of all states and union territories and is directly applicable before domestic courts, and report on any progress made in acceding to the Optional Protocol. Please provide information on measures taken to raise awareness among judges, prosecutors, senior officials and lawyers of the provisions of the Covenant and provide examples of how they have been invoked in domestic litigation or legislation processes, including in litigation against the State under article 32 or 226 of the Constitution.
4. With reference to the previous concluding observations (para. 14), please report on any process of review of reservations and declarations regarding articles 1, 9, 12, 13, 19 (3), 21 and 22 of the Covenant, with a view to withdrawing them.
5. Please report on measures taken to further strengthen the National Human Rights Commission so as to render it compatible with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles),

* Adopted by the Committee at its 126th session (1–26 July 2019).

¹ Unless otherwise indicated, paragraph numbers in parentheses refer to the Committee's previous concluding observations.



including with regard to a transparent and participatory selection and appointment process, pluralism and representation of religious and ethnic minorities in its composition. Please report on the status of the Protection of Human Rights (Amendment) Bill, 2018 or any revised amendment bill and on the extent to which that legislation addresses the Committee's concerns that the Commission is not authorized to investigate human rights violations by the armed forces and its concerns about the one-year time limit applicable to complaints (para. 22).

Anti-corruption measures (arts. 2 and 25)

6. Please respond to reports that corruption, including bribery of public officials, remains common and that judicial corruption is widespread, and report on the implementation of the Prevention of Corruption (Amendment) Act, 2018 and on the progress achieved in combating corruption at all levels of government and within the judiciary.

Non-discrimination (arts. 2 and 26)

7. Please report on the anti-discrimination legal framework and clarify whether: (a) it prohibits discrimination, including direct, indirect and intersecting forms of discrimination, on all the grounds set forth in the Covenant, including colour, language, political or other opinion, national or social origin (including caste), property, sexual orientation, gender identity and other status; and (b) it provides for effective judicial and administrative remedies.

8. With reference to the previous concluding observations (para. 15), please respond to the following allegations, and report on the measures taken to address them effectively: (a) persistent discrimination and violent attacks against Dalits and lower castes and against Adivasis, including mob violence and lynching, and an alarming rise in crimes against members of scheduled castes and scheduled tribes; (b) delays in investigating such cases, a backlog of cases pending trial and low conviction rates; and (c) continued employment of Dalits as manual scavengers, including by local government officials, despite the legal prohibition of such practice, and ensuing deaths. Please report on any progress made in revising paragraph 3 of the Constitution (Scheduled Castes) Order, 1950, which denies scheduled caste status to Dalit Muslims and Dalit Christians, depriving them of preferential benefits and of the protection against violence afforded to Hindu and other Dalits under hate crime laws and the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989.

9. Please report on measures taken to: (a) combat societal discrimination and violence, including abuses by the police, against lesbian, gay, bisexual, transgender and intersex persons; and (b) fully implement the 2014 Supreme Court judgment in *National Legal Services Authority v. Union of India and others*, in which the rights of transgender persons were recognized. Please clarify whether revisions are being considered to the Transgender Persons (Protection of Rights) Bill, which was passed by the Lok Sabha (lower house of Parliament) on 17 December 2018, with a view to bringing it into compliance with the Covenant, including as regards mandatory sex reassignment surgery for transgender people and the light sentences imposed for serious offences against transgender people.

Equality between men and women (arts. 2, 3 and 25)

10. Please report on measures taken to: (a) eradicate the persistent patriarchal attitudes and deep-rooted stereotypes that perpetuate discrimination against women; (b) address the low representation of women in political and public life, particularly in Parliament and state legislatures and in the judiciary, including in decision-making positions; (c) ensure substantive equality between women and men in matters related to marriage and family relations, including marital property, under the laws governing different religious groups; and (d) abolish all customary and traditional practices that prevent rural women, especially women from scheduled castes and scheduled tribes, from inheriting or acquiring land and other property.

Violence against women and harmful practices (arts. 2, 3, 6, 7, 8 and 26)

11. With reference to the previous concluding observations (paras. 16 and 32), please respond to reports of persisting harmful practices against women and girls, such as child marriage, honour killings, the dowry system, sex-selective abortion, *devadasi*, *sati*, accusations of witchcraft, and female genital mutilation within the Bohra and certain other communities. Please report on measures taken to eliminate these practices effectively, to bring perpetrators to justice (providing relevant statistics) and to provide full reparation to victims. Please also report on measures taken, and progress achieved, to effectively tackle violence against women, including domestic violence, rape (including marital rape) and other forms of sexual violence, and acid attacks. Please clarify the current legal status of the requirement that complaints of violence be initially assessed by civil society family welfare committees, as introduced by the Supreme Court in July 2018.

Termination of pregnancy, maternal mortality and reproductive rights (arts. 2, 3, 6 and 7)

12. In view of reported maternal deaths caused by unsafe abortion, please clarify whether the State party intends to remove the legal and practical barriers to effective access to safe and legal abortion by women and girls, including: (a) obstacles to access to contraception, the mandatory reporting to the authorities of teenage pregnancies and the requirement to obtain authorization from a registered medical provider for abortion on request at any stage of pregnancy; (b) the criminalization of self-managed abortion; (c) restrictions on access to legal abortion after 20 weeks of pregnancy, the related ambiguity as to permissibility on health grounds and the de facto judicial and medical authorization requirement for such abortions; (d) the non-applicability of contraceptive failure as a ground for abortion to unmarried women and girls; (e) the requirement of parental or guardian consent for girls under the age of 18; (f) the limited availability of abortion services in public health facilities and the lack of sufficient health professionals who can legally perform abortions; and (g) the refusal of medical professionals to perform abortions due to fear of prosecution under the Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 and the Protection of Children from Sexual Offences Act, 2012. Please respond to reports that unsafe and coerced sterilization continues to be performed as part of family planning programmes, affecting marginalized women in particular, and indicate the measures taken to end coerced sterilization, bring those responsible to justice and provide full reparation to victims.

Trafficking in persons (arts. 7, 8 and 9)

13. Please describe measures taken to combat trafficking in persons, especially in women and children, including trafficking for sex, bonded labour, child labour and begging. Please provide information on the process of amending the Immoral Traffic (Prevention) Act, 1956 and on cases involving the investigation, prosecution and punishment of traffickers. Please respond to concerns about the targeting of victims of trafficking in persons through criminal investigations and to reports about the complicity of certain government officials in trafficking in persons.

Counter-terrorism and security measures and accountability for serious human rights violations (arts. 2, 6, 7, 9, 14 and 26)

14. With reference to the previous concluding observations (para. 25), please report on the fate of individuals who remained in detention after the Terrorist and Disruptive Activities (Prevention) Act, 1987 had lapsed, and respond to reports that the State party continued to try individuals who had been arrested and charged under the repealed Prevention of Terrorism Act, 2002 and Terrorist and Disruptive Activities (Prevention) Act.

15. With reference to the previous concluding observations (paras. 18, 19, 21 and 24), please explain the compatibility with the Covenant, and with the principles of legal certainty, necessity and proportionality, of the special broad powers relating to the use of lethal force, arrest and detention, including “encounter killings”, preventive detention and prolonged detention without charge or trial, that are provided for under special security laws applicable in areas declared as “disturbed”, such as the Armed Forces (Special Powers)

Act, 1958, the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990, the National Security Act, 1980, the Unlawful Activities (Prevention) Act, 1967 and the Jammu and Kashmir Public Safety Act, 1978.

16. Please clarify whether the mandatory prior sanction of the Government for the prosecution of members of the security forces (under the Armed Forces (Special Powers) Act and the Armed Forces (Jammu and Kashmir) Special Powers Act) and of the police (under sect. 197 of the Code of Criminal Procedure) is still required, and whether, in light of article 300 (1) of the Constitution, there are any avenues to bring civil suits against the State for damage caused by members of the security forces. Please provide information on measures taken to ensure accountability for the alleged serious human rights violations committed primarily in “disturbed” areas by the security forces and by police personnel, such as: (a) excessive use of force and extrajudicial killings, including in response to the large-scale protests that started in July 2016 throughout the Kashmir valley and in Jammu district, and also including extrajudicial killings by police in other states such as Uttar Pradesh; (b) enforced disappearances (including cases reported in 2017 such as the case of Manzoor Ahmad Khan); (c) arbitrary arrests and detentions, including of children, under the Jammu and Kashmir Public Safety Act, 1978; and (d) acts of torture, rape and sexual violence allegedly committed by members of the security forces. Please report on measures taken to ensure accountability for human rights abuses perpetrated by armed groups in Jammu and Kashmir, including abductions and disappearances, killings and sexual violence.

Right to life and prohibition of torture and other cruel, inhuman or degrading treatment or punishment, liberty and security of person (arts. 6, 7, 9 and 14)

17. With reference to the previous concluding observations (para. 20), please clarify whether an official moratorium on executions is in effect or is being planned and report on the progress made towards abolishing the death penalty. Pending the abolition of the death penalty, and in view of its application to non-lethal offences and its further expansion, please: (a) elaborate on any comprehensive review of relevant legislation to ensure that the death penalty may be imposed only for the most serious crimes, as prescribed in article 6 (2) of the Covenant, that is, only for crimes of extreme gravity involving intentional killing; (b) indicate whether the imposition of the death penalty is mandatory for certain crimes; and (c) respond to the reported racial bias in death penalty convictions resulting in disproportionate representation of “backward” classes and religious minorities, particularly Muslims, among prisoners sentenced to death.

18. With reference to the previous concluding observations (para. 23), please respond to: (a) reports of deaths in custody occurring with impunity, biased autopsy results and forensic conclusions, and incidents of intimidation and threats against the families of victims for pursuing their cases; and (b) reports of widespread torture and other forms of ill-treatment of persons deprived of liberty, sometimes leading to deaths, including allegations of rape of female and male detainees by the police, and of physical and sexual abuse, torture and humiliation perpetrated with frequency against members of minorities such as Dalits and Adivasis in custody. Please report on measures taken to prevent deaths in custody and torture or ill-treatment, to investigate all such allegations promptly and thoroughly, to prosecute perpetrators and punish them accordingly, and to provide full reparation to victims or their families (providing relevant statistics). Please report on the progress made in defining and criminalizing the offence of torture in line with the Covenant and other relevant international standards, and in ratifying the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Liberty and security of person, administration of justice and fair trial (arts. 2, 7, 9 and 14)

19. Please report on measures taken to prevent arbitrary arrests and arbitrary and unlawful detention, and clarify whether victims of unlawful arrest or detention are afforded an enforceable right to compensation both in law and in practice, as required by article 9 (5) of the Covenant. Please respond to reports alleging: (a) limited access to legal aid upon arrest and appearance before a magistrate, owing, inter alia, to the insufficient number of legal aid lawyers; (b) limited consular access for foreigners who have been deprived of

their liberty, and the arbitrary detention of foreigners in prison after completion of their sentence, pending their repatriation; (c) the lack of presumption of innocence in criminal proceedings under certain laws, including the Unlawful Activities (Prevention) Act, 1967, as amended; (d) the use of coerced confessions in criminal cases, notwithstanding the legal prohibition against using them; and (e) the treatment of juvenile defendants as adults pursuant to the Juvenile Justice (Care and Protection of Children) Act, 2015.

20. Please report on measures taken to effectively address prolonged pretrial detention, which often exceeds the duration of any sentence a suspect might receive if convicted, and the very high proportion of “undertrial” prisoners (those awaiting trial or sentencing) among the prison population, in particular the disproportionate representation of Muslims, Dalits and Adivasis among such prisoners. Please provide information on: (a) the follow-up to the recommendation made by the Law Commission of India in May 2017 regarding amending provisions governing bail; (b) alternatives to detention and their application in practice; (c) the implementation of the periodic monitoring mechanism to identify “undertrials” eligible for release under section 436A of the Code of Criminal Procedure; and (d) the number of undertrial prisoners, compared with the number of convicts, since 2014. Please report on any reforms of the judicial system aimed at resolving the lengthy delays in the delivery of justice – which result in severe backlogs of criminal cases and an overrepresentation of undertrial prisoners in prisons – and on the practical impact of those reforms.

Treatment of persons deprived of their liberty (art. 10)

21. In connection with the previous concluding observations (para. 26), please report on measures taken to address overcrowding in most prisons, including severe overcrowding in a number of states such as Chhattisgarh, and to improve prison conditions that are reported to be often life-threatening, due in particular to inadequate sanitation and medical care. Please clarify whether any independent mechanism is mandated to inspect all places of deprivation of liberty, including military detention centres.

Treatment of aliens, including refugees and asylum seekers (arts. 7, 9, 13 and 24 (3))

22. Please clarify whether the State party intends to adopt comprehensive national refugee legislation, to introduce alternatives to detention for asylum seekers and refugees and to prohibit the detention of children in the context of immigration. Please report on measures taken to: (a) ensure that all asylum seekers have access to the territory of the State party and to its asylum procedures; (b) provide adequate safeguards against refoulement, and respond, in this respect, to concerns that the return of 17 Rohingya detainees to Myanmar between October 2018 and March 2019 put them at risk of refoulement; (c) ensure that refugees and asylum seekers are not penalized for irregular entry and stay; (d) provide for safeguards against the arbitrary and indefinite detention of asylum seekers, ensuring that the detention of asylum seekers is a measure of last resort, is applied for the shortest possible period and is reasonable, necessary and proportionate in the light of the circumstances; and (e) register at birth all children of asylum seekers and refugees, including all Rohingya children, and prevent child statelessness.

Right to privacy (art. 17)

23. Please comment on the reported data and privacy breaches involving the Aadhaar biometric identification project, including the accidental revelation of Aadhaar identification numbers and the public sharing of Aadhaar records, and outline the measures taken to ensure adequate safeguards against arbitrary interference with the privacy of individuals, including with regard to the protection of personal data. Please report on the progress made in adopting comprehensive data protection regulations that are compliant with the Covenant, and on measures taken to give effect to the Supreme Court ruling of 24 August 2017, in which the fundamental right to privacy under the Indian Constitution was recognized. Please respond to reports that the Central Monitoring System allows the monitoring and interception of electronic communications in real time without judicial authorization.

Freedom of conscience and religious belief, non-discrimination, and prohibition of advocacy of national, racial and religious hatred (arts. 2, 18, 20 and 26)

24. Please respond to the reported rise in, and impunity for, hate speech, public incitement to violence against religious minorities, including online and by politicians, government officials and religious leaders, and persecution, violence and hate crimes taking the form of communal or sectarian violence, mob violence and lynching and the actions of vigilante cow protection mobs perpetrated against members of religious minorities, particularly Christians and Muslims, by, inter alia, various Hindu nationalist groups and their supporters; and to reports of disruption of religious activities. Please report on the measures taken to prevent and curb such acts of religious intolerance and to ensure the effective protection of religious minorities. Please provide information (including relevant statistics) on measures taken to thoroughly investigate such cases and to prosecute suspected perpetrators where appropriate and, if perpetrators are convicted, to punish them and provide the victims with adequate remedies.

25. Please explain how the vaguely defined state-level anti-conversion laws are compatible with the Covenant, and respond to concerns that such legislation is frequently misused to persecute Christians and Muslims who have engaged in proselytism on the basis of false accusations of forced or induced religious conversion. Please also respond to reports of conversion of individuals back to Hinduism through “homecoming” (*ghar wapsi*) conversion ceremonies, in some cases by force or through coercion, performed by members of Hindu nationalist groups.

Freedoms of expression and peaceful assembly (arts. 19 and 21)

26. Please respond to consistent reports of undue restrictions on freedom of expression in law and in practice, including the banning of certain books and films on broad or vague grounds, frequent suspension of mobile telephony and Internet services on multiple occasions in Jammu and Kashmir; and broad rules regulating Internet shutdown, the authority to issue orders to block online content on vaguely defined grounds and without court authorization, and detentions and prosecutions for online expression, including for spreading false rumours on social media. Please report on the status of the draft Information Technology [Intermediary Guidelines (Amendment)] Rules, 2018 and on their compatibility with the Covenant, and respond to concerns that the proposed rules on intermediary liability would undermine freedom of expression, digital security and user privacy.

27. Please respond to the following allegations and report on measures taken to address them effectively, including with regard to accountability:

(a) Harassment, intimidation, smear campaigns and violent attacks against human rights defenders, activists and journalists and their family members; killings, such as in the cases of the writers and activists Govind Pansare, Narendra Dabholkar and Malleshappa Madivalappa Kalburgi and the journalist Gauri Lankesh; travel bans to prevent engagement with the United Nations and other international bodies and retaliation for such engagement;

(b) Abuse and misuse of broadly formulated sedition laws (sect. 124A of the Indian Penal Code and sect. 124-A of the Jammu and Kashmir State Ranbir Penal Code), the law on criminal defamation (sects. 499–500 of the Indian Penal Code and sect. 199 of the Code of Criminal Procedure), and other laws such as the National Security Act, the Unlawful Activities (Prevention) Act and the Jammu and Kashmir Public Safety Act, to arbitrarily arrest, detain and prosecute – and often to ill-treat – members of minority groups, journalists and other individuals for expressing minority or dissenting views and exercising their right to peaceful assembly;

(c) Arbitrary application of section 144 of the Code of Criminal Procedure to prevent peaceful assemblies, debates and conferences at which criticism of the State may be expressed, and the prohibition of assemblies of five or more people under section 144 of the Code of Criminal Procedure of Jammu and Kashmir;

(d) Frequent disruption of demonstrations and excessive use of force against protesters, including the opening of fire on protesters in the Toothukudi district of Tamil Nadu on 24 March 2018, which resulted in 13 deaths, and the alleged use of pellet-firing 12-gauge shotguns for crowd control purposes in Jammu and Kashmir, which resulted in scores of injuries, including serious eye injuries, and loss of life.

Freedom of association (art. 22)

28. Please comment on the reported misuse of the Foreign Contribution (Regulation) Act, 2010 to impede the legitimate activities of civil society organizations working on politically sensitive matters, including matters concerning human rights, by cancelling, suspending and refusing to grant or renew foreign funding licences, and on the freezing of assets and shutting down of non-governmental organizations based on alleged violations of foreign funding regulations, as in the case of the human rights organizations Lawyers Collective, Sabrang Trust, Navsarjan Trust, People's Watch and Amnesty International India. Please respond to reports of criminal proceedings being initiated against Indira Jaising and Anand Grover of the Lawyers Collective for the alleged misuse of foreign funding under the Act, supposedly in retaliation for their human rights work.

Citizenship and prevention of statelessness (arts. 2, 18, 24, 26 and 27)

29. Please report on measures taken to ensure that the revision of the National Register of Citizens in the State of Assam does not lead to discrimination against minorities, particularly Muslims and persons of Bengali descent, and that robust safeguards, including judicial review, are in place to prevent arbitrary exclusion from the Register, arbitrary deprivation of citizenship, the arbitrary denial of rights (including electoral rights), statelessness, arbitrary detention and expulsions. Please clarify the status of the Citizenship (Amendment) Bill, 2016, which was passed by the Lok Sabha in January 2019, or report on any similar draft legislation.

Participation in public affairs (arts. 25 and 26)

30. Please respond to concerns that the current system of electoral bonds does not ensure transparency in the funding of political parties, including because of financial donations being made to political parties anonymously and without public scrutiny. Please report on measures taken to review section 16 (b) of the Representation of the People Act, 1950, under which persons with intellectual or psychosocial disabilities are deprived of their right to vote. Please comment on the compatibility with the Covenant of the current Panchayati Raj legislation, which bars candidates with more than two children from standing for election for posts in local government.

Rights of indigenous peoples (art. 27)

31. Please respond to reports that: (a) the scheduled tribes remain among the most disadvantaged socioeconomic groups; (b) extractive and other industrial activities, often approved without effective consultation, are undermining the land and forest rights of tribal communities and are resulting in displacement; (c) some 40,000 families, including many Adivasi families, have not received adequate reparation following displacement as a result of the construction of the Sardar Sarovar dam in Gujarat; (d) Adivasis in Raigarh, Chhattisgarh, sold their land to private companies under coercion; and (e) land for coal mining was acquired by the Government without seeking the free, prior and informed consent of Adivasis.