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Joint Submission of UNCT India for UN Compilation

Universal Periodic Review of India, 2022

This submission is made by the UNCT in India. The submission contains available information based on work of UNCT members taking into consideration recommendations received by India during its 3rd UPR Cycle. It therefore does not represent a comprehensive review of human rights in India.

I. Background and framework

A. Scope of international obligations and engagement with UN human rights mechanisms

1. India has a long-standing and well-recognized commitment to the promotion and protection of human rights. The Universal Declaration of Human Rights contributed to the Fundamental Rights enumerated in the Indian Constitution. These rights are directly enforceable against the state in case of violation.
2. India is signatory to ten international human rights treaties including Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment; International Covenant on Civil and Political Rights (ICCPR); Convention for the Protection of All Persons from Enforced Disappearance; Convention on the Elimination of All Forms of Discrimination against Women; International Convention on the Elimination of All Forms of Racial Discrimination; International Covenant on Economic, Social and Cultural Rights; Convention on the Rights of the Child; Optional Protocol to the Convention on the Rights of the Child on the involvement of children in armed conflict; Optional Protocol to the Convention on the Rights of the Child on the sale of children child prostitution and child pornography; Convention on the Rights of Persons with Disabilities. India has ratified 47 ILO Conventions and one Protocol. The United Nations Country Team in India (UNCT) welcomes steps taken by India for possible ratification of ILO Conventions Nos. 87, 98, 102, 155, 187, 169, 177, 129, 184, 188, 189, 190 and Protocol to Convention 29¹.
3. To maintain its overall commitments, including noted recommendations from different cycles of the Universal Periodic Review (UPR), UNCT recommends India ratify all international instruments which it has signed, and to sign and ratify those to which it is not yet a party, including Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, Convention for the Protection of All Persons from Enforced Disappearance; Optional Protocols to the International Covenant on Civil and Political Rights; Convention relating to the Status of Refugees and its 1967 Protocol; and the Convention Relating to the Status of Stateless Persons and the Convention on the Reduction of Statelessness; and withdraw its declarations and reservations to the Convention on the Elimination of All Forms of Discrimination against Women and ILO Conventions listed above (see Appendix No 1).

B. Constitutional and legislative framework

1. Rights and liberties of people in India are notably guaranteed under Parts III and IV of the Constitution of India, which provide the normative framework of fundamental rights and Directive Principles of State Policy. Some challenges remain ensuring that everyone enjoys those rights.
2. Since the third UPR of India in 2017, the UNCT welcomes the important adoption of several domestic laws, including Code on Wages, 2019, Codes on Industrial Relations (IR), Occupational Safety, Health and Working Conditions (OSH) and Social Security (SS), 2020, Transgender Persons (Protection of Rights) Act in 2019, amendments to the Medical Termination of

¹ Freedom of Association and Protection of the Right to organize Convention, 1948 (No.87); Right to Organise and Collective Bargaining Convention, 1949 (No.98); Protocol of 1944 to the Forced Labour Convention, 1930; Occupational Safety and Health Convention, 1981 (No. 155); Promotional Framework for Occupational Safety and Health Convention, 2006 (No. 187); Indigenous and Tribal Peoples Convention, 1989 (No. 169); Home Work Convention, 1996 (No. 177); Labour Inspection (Agriculture) Convention, 1969 (No. 129); Safety and Health in Agriculture Convention, 2001 (No. 184); Work in Fishing Convention, 2007 (No. 188); Domestic Workers Convention, 2011 (No.189); Violence and Harassment Convention, 2019 (No.190).

Pregnancy Act, Juvenile Justice (Care and Protection of Children) Amendment Act, 2021, and Protection of Children from Sexual Offences (Amendment) Act, 2019, MTP Amendment Act of 2021, Surrogacy Act, Assisted Reproductive Technology Act, Mental Healthcare Act, Trafficking in Persons (Prevention, Care and Rehabilitation) Bill, 2021. Indian judiciary has passed some landmark judgement that include Navtej Singh Johur (reading down Section 377 of the Indian Penal Code to decriminalize same sex relations); Puttuswamy (privacy and autonomy).

3. Eleven mandate holders have visited India since 2000 including Special Rapporteurs on adequate housing as a component of the right to an adequate standard of living, and on the right to non-discrimination in this context in 2016 and Special Rapporteur on human rights to safe drinking water and sanitation in 2017.

Recommendations

- Engage more actively with the UN human rights system, including nominating independent members for UN treaty bodies, reporting regularly to treaty bodies and inviting Special Rapporteurs in line with the open invitation India has offered to Special Rapporteurs.
- Continue strengthening national and state legislation to give full expression to principles enshrined in international treaties, including as per recommendations of treaty bodies.

C. Institutional and human rights infrastructure and policies

4. India has notably established various mechanisms to protect human rights, including an independent National Human Rights Commission (NHRC); National Commission for Protection of Child Rights (NCPCR); National Commission for Women (NCW); National Commission for Backward Classes; National Commission for Scheduled Tribes; Committee on Health and Family Welfare.
5. National Human Rights Commission was established in 1993. The NHRC would benefit from further strengthening to ensure full compliance with the Paris Principles, appointment of independent commissioners, increase internal capacity and its interaction with civil society.

Recommendation

- In line with UPR recommendation, create a National Human Rights Action Plan and a national action plan to eliminate violence against women and girls to identify steps to improve the promotion and protection of human rights in accordance with the Vienna Declaration and Programme of Action 1993 and implementation of the Convention of the Elimination of all forms of Discrimination Against Women.
- Ensure full compliance with recommendations of the National Human Rights Commission and provide adequate resources to enable NHRC to oversee compliance of human rights framework.
- Consider reviewing legal and policy framework for NCPCR and NCW to ensure their full independence.

II. Promotion and protection of human rights on the ground: achievements, best practices, challenges, and constraints

A. Equality and non-discrimination

6. Every Indian citizen has a fundamental right to equality and non-discrimination. Furthermore, as enshrined in the UDHR, it is a universally accepted basic right of every human being to live a dignified life.
7. UNCT welcomes passage of the "Transgender Persons (Protection of Rights) Act in 2019" and efforts of state governments including Chhattisgarh, Karnataka, and Kerala to put the law into effect even beyond minimum requirements. National Medical Commission issued an advisory that medical textbooks be revised to remove all discriminatory content.
8. Discrimination based on gender is prohibited in wage matters under the Wage Code of 2019. The Committee of Experts on the Application of Conventions and Recommendations (CEACR) noted that the Code of Wages state that equal remuneration is applied to "work of a similar nature" rather than "work of equal value," and that definition of "wages" does not include additional emoluments².
9. Despite adoption of the Prohibition of Employment as Manual Scavengers and Rehabilitation Rules, local governments and municipalities continue to employ manual scavengers³.

Recommendations

- Review and amend the Transgender Persons (Protection of Rights) Act, 2019, enabling issuance of official certificates of identity.
- Raise public awareness about prohibition of caste-based discrimination.
- Make medical education and textbooks gender sensitive, including by amending content that discriminates against LGBTQI+ community.
- Amend the Wage Code to ensure full application of the Convention No. 100 principle of equal pay for work of equal value.
- Ensure that rights of scheduled tribes, vulnerable tribal groups and traditional forest dwellers guaranteed by the Indigenous and Tribal Populations Convention, 1957 (No.107) are fully respected and recognised.⁴ Consider ratifying the Convention on Indigenous and Tribal Peoples, 1957 (No.169).
- Ensure appropriate representation of marginalized groups in development and use of new technologies, particularly AI-related technologies to issues related to algorithmic bias.

B. Freedom of expression

10. Some existing legislation hinders full implementation of the Right to Information Act, such as the Official Secrets Act of 1923 (OSA 1923)⁵. Section 3 (c) of the 1923 Official Secrets Act has been used to prosecute media houses and journalists⁶. The Whistle Blowers Protection Act, 2014⁷ does not cover journalism sources. The Indian Penal Code⁸ (Sections 500 to 502) criminalizes defamation and libel.

² https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4055314:NO

³ https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4017327:NO

⁴ https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO::P13100_COMMENT_ID:4049340

⁵ http://orissasoochanacommission.nic.in/Official%20Secret%20Act_1923.PDF

⁶ https://www.thehindu.com/news/resources/article26793859.ece/BINARY/Rafale-Review-Judgement_10-Apr-2019.pdf

⁷ <https://legislative.gov.in/sites/default/files/A2014-17.pdf>

⁸ <https://legislative.gov.in/sites/default/files/A1860-45.pdf>

⁹ <http://www.dot.gov.in/act-rules/information-technology-act-2000>

11. Section 69A of the Information Technology Act (ITA) of 2000⁹ permits surveillance and criminalizes online information intended to cause “annoyance or inconvenience”. Under ITA the Government has authority in the “national interest” to block content. The 2000 Information Technology Act, through section 66A, provides punitive measures for sending offensive messages by means of a computer or communication device.
12. Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules of 2021¹⁰, regulate operations of intermediaries and digital media, and prescribe “due diligence by intermediaries and grievance redressal mechanism”. The 2021 Information Technology Rules, through Section 4 (2), require social media intermediaries to track and identify the first originator of information on their computer resources if ordered by authorities.
13. There have been 26 killed journalists in India recorded by UNESCO between 2016 and 2021.¹¹ The country has not established a specific national mechanism for protection of journalists.

Recommendations

- Establish a national mechanism for protection of journalists. Review the 2014 Whistle Blowers Protection Act, to include protection of the anonymity of journalists’ sources as also recommended by The Law Commission of India.
- Amend the 2000 Information Technology Act (ITA) and 2021 Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules to provide greater privacy online and narrowly defined considerations for surveillance and blocking of online content.
- Establish an independent broadcast media authority and authorize news broadcasts in private and community radio stations to enhance plurality and diversity of news content and news media in the country.

C. Administration of justice, including impunity and the rule of law

14. India’s expanded use of the death penalty in recent years may violate the spirit of Article 6(2) of ICCPR in this regard. The death penalty appears to be used more frequently in India's lower courts, while the Supreme Court appears more skeptical of its use. India introduced amendments to the Indian Penal Code (IPC) and the Protection of Children from Sexual Offences (POCSO) to include death penalty for non-homicide child rape ("aggravated sexual assault" in the POCSO).
15. COVID-19 pandemic related economic and social impact has led to change in modus operandi of traffickers and cyber/online-enabled sexual harassment and abuse, and trafficking is an area which needs further research and capacity building of various sectors.

Recommendations

- Increase prison staff, especially medical personnel, and provide training on effective prison management to better manage vulnerable inmates like women, children, people with communicable diseases, and drug users. Make sufficient provisions for drug addiction treatment and care in prisons.

⁹ <http://www.dot.gov.in/act-rules/information-technology-act-2000>

¹⁰ <https://mib.gov.in/sites/default/files/IT%28Intermediary%20Guidelines%20and%20Digital%20Media%20Ethics%20Code%29%20Rules%2C%202021%20English.pdf>

¹¹ <https://en.unesco.org/themes/safety-journalists/observatory/country/223728>

- Implement training programmes for National, State and District Legal Support Authorities (NALSAs, SLSAs, DLSAs), paralegals, and legal aid lawyers. Increase civil society engagement in supporting victims/survivors throughout the prevention and reintegration processes.
- Reduce time required for court proceedings and establish time-sensitive procedures for repatriating foreign victims.
- Develop strong legislation, detailed rules, and mechanisms to prevent and prosecute online abuse.
- Increase resource allocation – personnel, infrastructure, finances, and capacities of Anti-Human Trafficking Unit (AHTU).

D. Right to Health

16. Ministry of Health and Family Welfare (MoHFW) initiatives such as National Health Mission (NHM), Ayushman Bharat, National Digital Health Mission, recent National Health Infrastructure Mission, Intensified Mission Indradhanush 4.0, Initiative for Zero Preventable Maternal and New-born Deaths (SUMAN), Menstrual Hygiene Scheme, Family Planning Logistics Management Information System (FPLMIS) are important advances. India has achieved its Family Planning 2020 commitments for improving contraceptive access.
17. India notably achieved universal sanitation coverage in rural areas. National Family Health Survey (NFHS-5) shows improvements in infant mortality rate, neonatal mortality rate and under-5 mortality rate, maternal mortality rate, total fertility rate and institutional delivery in public facilities. India has recorded considerable improvement in coverage of immunized children; fewer children under the age of five years suffer from acute respiratory infections, diarrheal diseases, measles; family planning and contraceptive prevalence has improved; incidence of neglected tropical diseases and vector-borne diseases has decreased; and endemic areas have shrunk.
18. Progress needs to be accelerated in several aspects of the population's health, including to further reduce childhood malnutrition, maternal mortality, eliminating communicable diseases and combating non-communicable diseases (NCDs) amongst others.
19. India mounted a rapid response to COVID-19 adopting a whole of society approach including enabling additional financing^{12,13,14,15,16}. It is remarkable that starting from a very low baseline, India rapidly scaled /converted health facilities in public and private sector, testing^{17,18,19} and vaccination infrastructure^{20,21} enhanced national capacity to produce essential medical

¹² <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1787361>

¹³ UN Joint Response Plan, Annual Progress Report 2020

¹⁴ Kabaniha et al (2021) Reducing Financial Barriers for Households Due to COVID-19: The Case in India - <https://doi.org/10.1080/23288604.2021.1897323>

¹⁵ Bhatia, Rajesh; Abraham, Priya, Lessons learnt during the first 100 days of COVID-19 pandemic in India, Indian Journal of Medical Research: May 2020 - Volume 151 - Issue 5 - p 387-391 doi: 10.4103/ijmr.IJMR_1925_20

¹⁶ Economic Survey 2021-22 <https://www.indiabudget.gov.in/economicsurvey/doc/echapter.pdf>

¹⁷ Gandham, Ramana N.V.; Mutasa, Ronald; Mohammed, Suresh Kunhi; Jammy, Guru Rajesh; Bhatnagar, Aarushi. 2020. COVID-19 Testing and Tracking : Lessons Learned and a Look Ahead. Health, Nutrition and Population Discussion Paper;. World Bank, Washington, DC. © World Bank. <https://openknowledge.worldbank.org/handle/10986/35270> License: CC BY 3.0 IGO.

¹⁸ <https://www.who.int/india/news/feature-stories/detail/how-india-scaled-up-its-laboratory-testing-capacity-for-covid19>

¹⁹ Gupta, Nivedita¹; Bhatnagar, Tarun⁴; Rade, Kiran³; Murhekar, Manoj⁴; Gangakhedkar, Raman R.¹; Nagar, Anu² ICMR COVID Team Strategic planning to augment the testing capacity for COVID-19 in India, Indian Journal of Medical Research: Feb–Mar 2020 - Volume 151 - Issue 2-3 - p 210-215 doi: 10.4103/ijmr.IJMR_1166_20

²⁰ <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1781267>

²¹ <https://www.indiabudget.gov.in/economicsurvey/doc/echapter.pdf>

equipment, new vaccine development.

20. As in other countries, COVID-19 pandemic disrupted essential non-COVID health services putting vulnerable populations at higher risk of malnutrition, food insecurity, family violence and disease exposure.²² Yet, best practices emerged such as workarounds for continuing delivery of essential health services^{23, 24} deployment of CoWIN as a global public good²⁵, use of technology for rapid capacity building (e.g. iGOT platform), designating gender-based violence (GBV) services as essential during COVID so they remained open, massive upsurge in use of telemedicine²⁶ as well as state specific responses to COVID-19^{27,28, 29,30}.
21. Many States continue to have population control policies³¹ offering incentives/disincentives based on number of children. Such policies (e.g. two-child norms) may violate right to decide freely the number, spacing and timing of one's children and can have various unintended consequences.³²

Recommendations

- Declare the right to health a fundamental human right.
- Invest in building resilient health system with sustained public funding in health while maximizing its effectiveness and impact
- Strengthen surveillance, risk reduction, reporting and build national and state-level capacities, invest in public health workforce in adequate numbers, capacity, safety, and wellness to prevent, prepare, and respond to all types of health emergencies (including GBV) and control antimicrobial resistance.
- Ensure full implementation of real-time Integrated health information platform (IHIP), including all health information and disease surveillance systems with IHIP.
- Addressing NCDs must continue to be given priority in national health agendas along with accelerated multisectoral collaboration.

²² Various documents highlight the impact of COVID on health service utilization across various periods. Select few are referenced here. (i) Impact of COVID-19 on PM-JAY

https://pmjay.gov.in/sites/default/files/2020-10/Assessing_Impact_of_COVID-19_on_PMJAY.pdf (ii)

[https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736\(20\)31089-8.pdf](https://www.thelancet.com/pdfs/journals/lancet/PIIS0140-6736(20)31089-8.pdf) (iii)

<https://www.thehansindia.com/life-style/health/population-foundation-of-india-assesses-impact-of-covid-19-on-women-and-girls-632997?infinite-scroll=1> (iii) The national lockdown imposed in March and April 2020 resulted in tumbling of TB notification by 38% (44% in private notifications) as compared to January and February 2020 as reported in India TB Report 2021 at <https://tbcindia.gov.in/showfile.php?lid=3587> (iv)

<https://bmcpublichealth.biomedcentral.com/articles/10.1186/s12889-021-10708-w>

²³ <https://www.who.int/india/news/feature-stories/detail/operationalizing-telemedicine-through-the-simple-app>

²⁴ http://www.who-seaiph.org/temp/WHOSouth-EastAsiaPublicHealth10349-2689303_072813.pdf

²⁵ <https://www.who.int/india/news/feature-stories/detail/india-shares-vaccination-and-clinical-research-know-how-for-countries-to-customize-and-adapt>

²⁶ <https://pib.gov.in/Pressreleaseshare.aspx?PRID=1787361>

²⁷ Ramana, Gandham N.V.; Mutasa, Ronald; Mohammed, Suresh Kunhi; Nandraj, Sunil; Jammy, Guru Rajesh; Smith, Owen 2021. Responding to COVID-19 in Urban Settings : Emerging Evidence, Lessons, and a Look Ahead. World Bank, Washington, DC. © World Bank. <https://openknowledge.worldbank.org/handle/10986/36298> License: CC BY 3.0 IGO.

²⁸ <https://www.who.int/india/news/feature-stories/detail/technological-innovation-partnerships-and-holistic-approach-guided-the-covid-19-response-in-karnataka>

²⁹ <https://www.who.int/india/news/feature-stories/detail/responding-to-covid-19---learnings-from-kerala>

³⁰ <https://www.niti.gov.in/sites/default/files/2021-11/State-practices-on-home-based-care-forCOVID-19.pdf>

³¹ Most recent example being the Uttar Pradesh Population (Control, Stabilization and Welfare) Bill, 2021

³² Unintended negative consequences of these policies include increase in gender-biased sex selection practices due to son preference, forced and unsafe abortions, desertions and disowning of the third child and unequal sex ratio – such policies disproportionately burden vulnerable and marginalized women.

- Build capacities of a people-centered primary health care system, including providing mental health care and scaling up quality Mental Health & Psychosocial Support (MHPSS).
- Review and amend population control and other policies and programmes from a human rights perspective.
- Expand range and reach of contraceptives, with a focus on young people.
- Accelerate and sustain gains to cover the last mile towards elimination of neglected tropical diseases and health services to support survivors of GBV.

E. Right to Food

22. According to the Comprehensive National Nutrition Survey 2016-18, nearly 39 million Indian children were stunted, or nearly 34.7% of all children under five. Poor dietary intake contributes to child malnutrition. In 2016-18, only 53% of children aged 6–8 months received complementary foods. Bad diets, poor hygiene and sanitation, and unequal food sharing contribute to child and adolescent undernutrition. Due to lack of awareness and social norms, women and girls often eat last and least. Food insecurity among women, poor and vulnerable children could reverse recent progress in reducing malnutrition.
23. In 2013, India promulgated the National Food Security Act, an important, comprehensive right to food legislation. Three key food safety schemes – Targeted Public Distribution System (TPDS), MDM (earlier Mid-Day Meal and now PM Poshan) and Integrated Child Development Services (ICDS) – together provide nearly one billion people with food and nutrition entitlements. During COVID-19, Government commendably took extra measures initiating Pradhan Mantri Garib Kalyan Anna Yojana (PMGKAY) which provides additional 5 kg of free foodgrains to over 800 million TPDS beneficiaries. With schools and ICDS centers closed, many states and Union Territories provided cash and cash transfer of entitlements to beneficiary households.
24. Despite these extensive food safety net programmes, acute malnutrition challenges remain. NFHS-5 (2019-21) shows 35.5% of children under five are stunted, 19.3% children are wasted, and 32.1% children are underweight. Prevalence of anemia is another concern with 67.1% children under five and 57% women aged 15-59 anemic.

Recommendations

- Reinforce social safety nets and provide full range of entitlements to food for those suffering from acute malnutrition.
- Broaden range of entitlements to include diverse, nutritious and indigenous foods in government food based safety net programmes.

F. Environment and human rights

1. Polluted air threatens India's development prospects by increasing public health costs, decreasing labour productivity, and decreasing agricultural yields. National Clean Air Programme (NCAP), launched in 2019, is India's flagship programme for better air quality in 122 cities.
2. Against targeted emission reduction of 33-35 % by 2030, India has already achieved emission reduction of 28% over 2005 levels. At this pace, it is notably set to exceed its NDC commitments before 2030. The Indian power sector has achieved the important milestone of 100 GW of installed Renewable Energy Capacity against the revised target of 450 GW by 2030

as announced by PM in COP-26.

3. India is achieving a reduction in emissions intensity through schemes for energy efficiency such as UJALA and Perform Achieve Trade (PAT) which have resulted in reducing millions of tonnes of CO₂ per annum. Pradhan Mantri Ujjwala Yojana (make clean cooking fuel available to rural and deprived household), Pradhan Mantri Sahaj Bijli Har Ghar Yojana or Saubhagya (largest household electrification drive in the world), Green corridors, and greening of islands (Solar PV power projects) are positive steps.
4. The Council for Energy, Environment and Water finds that 5 out of 20 Indians live in districts affected by droughts, floods and cyclones. Out of 15 most polluted cities in the world, 14 are in India; exposure to air pollution during the first trimester decreases both height-for-age (stunting measure) and weight-for-age (underweight measure) for children under five.

Recommendations

- Mandate regular updates for emission and pollution loads. Grant greater fiscal autonomy for Urban Local Bodies to maintain infrastructure necessary for sustaining air quality and moving from city-centric to airshed-centric air quality management. Build on encouraging work meeting targets on air pollution reduction by setting even more ambitious targets.
- Make climate adaptation a core component of Government programming across ministries and sectors.
- Organize safety training for employees and public awareness campaigns about dangers of improper handling and disposal of hazardous substances contained in obsolete electrical and electronic equipment, as well as precautions for minimizing adverse effects on health and environment.

G. Women's human rights

5. The National Crime Records Bureau (NCRB) reported a 19% drop in cases registered under the Protection of Women from Domestic Violence Act, from 553 in 2019 to 446 in 2020. However, the National Commission for Women (NCW) reported receiving 5,297 complaints of domestic violence in 2020, with 1,477 complaints within a span of 68 days, an indication that, as in many countries, domestic violence likely increased considerably during COVID-19 lockdowns. Between January and May 2021, more than 2,300 complaints were filed with the NCW.
6. Importantly, during the first and second waves of the pandemic, 700 One-Stop-Crisis centers remained open in India, supporting over 300,000 women who suffered abuse and needed shelter, legal aid and medical attention. India has recently announced the welcomed opening of 300 more.
7. With the positive intension of removing the legal gap between men and women, Government introduced the Child Marriage (Amendment) Bill, 2021, raising the legal age of marriage for girls also to 21 years. However, consequences may include effectively reducing adolescent minors' legal capacity and agency and providing a basis for increased number of prosecutions of girls who choose to marry against parents' wishes or between the ages of 18 and 21, as is now legal. The Protection of Children from Sexual Offences Act (POCSO) requires health care providers to report consenting cases as 'abuse' to police, preventing girls from accessing confidential and safe sexual and reproductive health services, including abortion³³. These provisions also conflict with government campaigns to increase young people's access to

³³ Section 19, POCSO

contraception. Poverty and economic insecurity are key drivers of early marriage³⁴, highlighting the need to empower girls throughout their lives.³⁵

Recommendations

- Seek alternative means of addressing the legal gap between women and men while considering retaining age of marriage for girls at 18 years and decriminalising adolescent consensual and non-coercive sexual activity between peers (close in age partners) from 16 years.
- Enact exceptions under POCSO (relating to mandatory reporting of adolescents and young women seeking abortion or other SRH services) to accommodate professional confidentiality for health care providers and counsellors.
- Increase the capacity and effectiveness of One Stop Centres.
- Ensure adequate resources are available to expedite adjudication of cases of violence against women.
- Operationalize health sector response to GBV at all levels, including medico-legal care for survivors of sexual violence, including during crises and disasters.
- Ensure full range of quality sexual and reproductive health care services and information are available, accessible (physically, economically, and informationally), acceptable to all, especially vulnerable groups including adolescents, disabled persons, and persons with non-conforming gender identity and sexual orientation and remove legal and policy impediments.
- Introduce further evidence-based prevention programmes to eliminate GBV.

H. Children's human rights

8. Mission Vatsalya and Mission Shakti were launched by Government as significant efforts to further enhance the Integrated Child Protection Services 2009. Budget allocations have recently decreased in comparison to pre COVID (2019-2020)³⁶. The ratio of child protection social workers per child remains low, high vacancy rate, and a lack of statutory structures at sub-district and community levels. While state-level information management systems exist, there is no national integrated Child Protection Information Management System (CPIMS) to inform policies, plans, and case management.
9. Government has taken important steps to reduce child marriage through programmes such as Beti-Bachao, Beti-Padhao. As a result, child marriage has fallen 50% in 15 years. Despite this progress, 23%³⁷ of females marry before the age of 18. (NFHS-5).

³⁴ The reported spike in child marriages during the COVID 19 pandemic confirms this correlation which is a fallout of the continuing financial distress, job losses and closure of schools

³⁵ Investing in education access, retention, and quality deters early and forced marriage - data show that child marriage is a result of girls dropping out of school rather than the cause (Bajracharya, Psaki and Sadiq, 2019). Similarly, poverty and quality health services are far more important than age at marriage in improving women's and children's health and nutrition. Women's empowerment through increased employment opportunities is important in the Indian context, where many women work in low-paying informal/casual jobs out of necessity, and the proportion of women employed has been seen to decline as marriage ages have increased.

³⁶ HAQ: Centre for Child Rights (2021) Budget for Children 2021-22 Cast in Shadows <https://www.haqcrc.org/wp-content/uploads/2021/02/budget-for-children-2021-22.pdf>

³⁷ National Family Health Survey 2019-21

10. According to NHFS-4, 17% of girls have been physically abused since age 15. Between 2016 and 2020³⁸, reported child sexual abuse cases increased 30%. Improvements in reporting systems may also have increased reporting. During COVID-19³⁹, evidence suggests internet searches for child sexual abuse materials increased by 95% in India, and at least 25,000 images of child sexual abuse are uploaded daily⁴⁰. Despite explicit legal prohibitions, some schools continue to use corporal punishment.
11. In 2020, over 30% of reported juvenile law violations were for non-detention offenses like public disorder, property damage, and other misdemeanors. In April 2020, the Supreme Court ordered the release of children in institutional care. That over 64% of children in institutional care (1,45,788 out of 2,27,518) were returned to their families and kin shows the possibility of considering alternatives to institutionalization and detention⁴¹.
12. Between April 2020 and January 2021, 10,094 children were orphaned, 136,910 lost both parents, and 488 were abandoned⁴². Government has taken important steps to protect children who have lost parental care due to COVID-19. However, child institutionalization is still high, and family-based alternative care systems are underfunded.
13. Children in Kashmir are exposed to the decades-long violence. According to the Secretary-General's most recent report, 15 children were killed or maimed, including by pellets⁴³. 68 children aged 9 to 17 have been detained by Indian security services in the state on national security charges⁴⁴. Indian police rescued ten children from Naxalite insurgents in Jharkhand State.⁴⁵

Recommendations

- Prevent family separation and promote family-based alternatives for alternative care for children without parental care, including by notifying guidelines for family-based alternative care programmes for children without parental care and enhance connections to social protection programme
- Further professionalize the child protection workforce, increase resources for Mission Vatsalya and Mission Shakti, including towards ensuring child protection community-based structures are created to enhance prevention, and develop an integrated information management system to better manage child protection cases and oversight.

³⁸ National Crime Record Bureau (NCRB 2020) <https://ncrb.gov.in/en/Crime-in-India-2020>. According to NHFS-4 data, one in five adolescent girls have experienced physical violence since age 15.

³⁹ Global Threat assessment report 2021- <https://www.weprotect.org/global-threat-assessment-21/>

⁴⁰ The National Centre for Missing and Exploited Children 2018; Global Research Project 2018: A Global Landscape of Hotlines Combating Child Sexual Abuse Material on the Internet and an Assessment of Shared Challenge <https://www.missingkids.org/content/dam/missingkids/pdfs/ncmec-analysis/grp.pdf>

⁴¹ SC Order dated 03.04.20 in Contagion of COVID 19 Virus in Children Protection Homes, Suo Motu Writ Petition (Civil) No.4 of 2020

https://main.sci.gov.in/supremecourt/2020/10820/10820_2020_0_4_21584_Order_03-Apr-2020.pdf

⁴² National Commission for Protection of Child Rights (NCPCR) Bal Swaraj Portal -COVID Care; submission made to Hon'ble Supreme Court

⁴³ Report of the Secretary-General 2020 : Children and armed conflict https://reliefweb.int/sites/reliefweb.int/files/resources/15-June-2020_Secretary-General_Report_on_CAAC_Eng.pdf

⁴⁴ Report of the Secretary-General 2020 : Children and armed conflict https://reliefweb.int/sites/reliefweb.int/files/resources/15-June-2020_Secretary-General_Report_on_CAAC_Eng.pdf

⁴⁵ Report of the Secretary-General 2020 : Children and armed conflict https://reliefweb.int/sites/reliefweb.int/files/resources/15-June-2020_Secretary-General_Report_on_CAAC_Eng.pdf

- Develop a multisectoral costed action plan to end violence against children.
- Standardize alternatives to detention, diversion mechanisms, and detention protocols to ensure that detention is used as a last resort in accordance with Juvenile Justice (Care and Protection of Children) Act, 2015 (Amendment 2021).
- Conduct training programme for law enforcement and security forces, and consider banning the use of pellets that can cause indiscriminate injury to children.

J. Right to Education

14. The National Education Policy (NEP), 2020 ⁴⁶ aims at universalization and inclusive education from pre-school to secondary level with 100% Gross Enrolment Ratio (GER) by 2030. Ministry of Education's Union Budget allocation increased by 12% in 2022-23, but the education budget's overall share of the union budget decreased.
15. In India, as in many countries, primary school children faced significant losses in basic mathematical and language skills due to COVID-19. Only 60% of students reported having access to remote learning, compared to 45% and 57% of SC and ST students⁴⁷. Employability was found in 45.9% of graduates, down from 47.4% in 2019, with fewer women than men employable. Unemployed youth aged 15-24 make up 29.7% of total, with girls making up 57%. One estimate is that 32.2 million children aged 6-17 are out of school, with a higher percentage of children aged 14-17. (21.5%) ⁴⁸. Girls outnumber boys in out-of-school children aged 14-17 (22.5%). (20.6%). It is also higher for disadvantaged groups like SC (21.5%), ST (33.3%), and Muslim children (34.9%).
16. Children with disabilities account for nearly one-third of out-of-school children. The majority of the 5.6 million disabled children aged 0-14 live in rural areas (72%), and many are either excluded from (especially girls) or only marginally involved in education.

Recommendation

- As provided in NEP, increase public investment in education to 6% of GDP.
- Encourage curriculum and pedagogy changes to be more flexible, inclusive, and focused on 21st century skills and rights education.
- Address the digital gender and equity divide in education, ensuring all children's rights to education are met through traditional and hybrid forms of education.
- Achieve full compliance with national law prohibiting corporal punishment in schools through prevention, response, redress, and accountability.

I. Business and Human Rights

17. In 2018, India issued the National Guidelines on Responsible Business Conduct (NGRBC) to guide businesses toward more responsible and sustainable practices.⁴⁹
18. Ministry of Corporate Affairs released a zero-draft of the National Action Plan on Business and Human Rights in 2019⁵⁰, demonstrating Government's commitment to the UN Guiding

⁴⁶ https://niepid.nic.in/nep_2020.pdf.

⁴⁷ Education Rapid Assessment, UNICEF

⁴⁸ 75th Round household survey by NSSO 2017-2018.

⁴⁹ https://www.mca.gov.in/Ministry/pdf/NationalGuideline_15032019.pdf

⁵⁰ https://www.mca.gov.in/Ministry/pdf/ZeroDraft_11032020.pdf

Principles on Business and Human Rights. India is currently finalizing its first National Action Plan on Business and Human Rights.⁵¹

19. In August 2020, Ministry of Corporate Affairs released 'Report of the Committee on Business Responsibility Reporting' recommending the Business Responsibility and Sustainability Report (BRSR) framework.⁵² SEBI, vide circular dated May 2021, made filing of BRSR mandatory for top 1000 listed companies (by market capitalization) w.e.f. financial year 2022-2023⁵³.

Recommendations

- Encourage early publication of India's first National Action Plan on Business and Human Rights in compliance of recommendations - 'Establish and implement regulations to ensure the business sector complies with international and national human rights, labour, environment and other standards'- made during India's 3rd UPR.
- Engage with business stakeholders and sensitize around importance of preventing forced, bonded and child labour in business supply chains and adhering to Business responsibility and sustainability reporting indicators.

J. Human Rights at work

20. According to 2018–19 Periodic Labour Force Survey, regular wage workers account for 23.8% of working population compared to 22.8% in 2017-2018. Workers engaged in non-regular work include 48.2% as own account workers, 9.2% as helpers in family businesses and 28.3% in casual labour.
21. ILO estimates there are 4,764,018 domestic workers in India based on India's PLFS 2019 (2,870,801 females, 1,893,217 males). Domestic and home-based workers continue to be excluded from labour codes. Ministry of Labour and Employment has started but not finished a National Domestic Workers Policy.
22. As per ILO 89% of employed women are in informal jobs, while the national average for men and women is 88.6%. (ILOSTAT). Women workers have limited access to employer-based maternity benefits. No data is available on how many women take advantage of increased maternity leave and use of creches. Despite ongoing advocacy efforts, Anganwadi workers remain volunteers, not covered by minimum wage or social security.
23. OSH Code authorizes inspectors-cum-facilitators to notify employers in writing and provide at least three days' notice for inspections in mines unless an emergency arises. Inspectors shall not initiate prosecution proceedings against an employer, which is not aligned with Convention No.81⁵⁴.
24. Decades after enactment of the Bonded Labour System (Abolition) Act, 1976, forced and bonded labour continues to be prevalent in India. Disaggregated government statistics on bonded and forced labour are not available⁵⁵.

Recommendations

- Strengthen regulatory mechanisms in compliance with ratified ILO Conventions, including

⁵¹ https://www.mca.gov.in/Ministry/pdf/NationalPlanBusinessHumanRight_13022019.pdf

⁵² https://www.mca.gov.in/Ministry/pdf/BRR_11082020.pdf

⁵³ https://www.sebi.gov.in/legal/circulars/may-2021/business-responsibility-and-sustainability-reporting-by-listed-entities_50096.html

⁵⁴ https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4124826.

https://www.ilo.org/dyn/normlex/en/f?p=NORMLEXPUB:13100:0::NO:13100:P13100_COMMENT_ID:3958308:NO

⁵⁶ https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4000296

equal pay for work of equal value, social security system, reduce the unequal burden of unpaid care and domestic work.

- Facilitate formalization of informal workers.
- Ensure effective labour inspections in all workplaces and labour inspectors have full powers in compliance with ILO Convention No.81.⁵⁶

K. Right to housing

25. India is implementing a welcome Housing for All Mission providing central assistance to all eligible beneficiaries in urban areas to build or acquire all-weather dwelling units with basic amenities.
26. Yet, housing and amenities remain a challenge, particularly for low-income urban households, and social exclusion based on discrimination contributes to housing inequality.

Recommendations

- Frame a policy on non-discriminatory access to housing and adopt slum improvement strategies, particularly those that focus on slums where minorities are concentrated.

L. HIV/ AIDS and human rights

27. As per National AIDS Control Organization (NACO), India has shown significant reduction of 33.3% in adult HIV/AIDS prevalence, 55.5% reduction in HIV incidence and 82% reduction in AIDS related deaths between 2010-2020. Over the last decade, Annual New HIV Infections (ANHI) declined 47.8% among adults and 55% among children.
28. Recent legal developments now protect and advance rights of people living with HIV and key populations including adoption of the HIV/AIDS (Prevention and Control) Act, 2017; Transgender Persons (Protection of Rights) Act, 2019 and Rules notified in 2020. Sex workers, on the other hand continue to face raids, rescues, and arrests under the Immoral Traffic (Prevention) Act 1956⁵⁷, making them more vulnerable to HIV.⁵⁸
29. The Mental Healthcare Act, 2017's rights-based approach includes persons with substance use disorders.⁵⁹ However concerns remain about continued criminalization of drug users⁶⁰, low coverage of opioid substitution treatment and harm reduction programs in prisons, despite mandated coverage under the Rights of Persons with Mental Illness Rules, 2018, and the prevalence of HIV among people who inject drugs⁶¹.

⁵⁶ https://www.ilo.org/dyn/normlex/en/f?p=1000:13100:0::NO:13100:P13100_COMMENT_ID:4000296

⁵⁷ https://www.sangram.org/resources/violence_against_people_in_sex_work_in_india.pdf

⁵⁸ [Sankalak_Report.pdf \(naco.gov.in\)](#)

⁵⁹ Tripti Tandon, Drug Policy in India: Key developments since UNGASS 2016, Briefing Paper for the International Drug Policy Consortium, February 2019, pp. 5-6. Available at <https://idpc.net/publications/2019/02/drug-policy-in-india-key-developments-since-the-ungass-2016>

⁶⁰ According to the Ministry of Home Affairs, National Crime Records Bureau, Crime in India Report, 2020, (Table 1.3), over 56% of all cases under the Narcotic Drugs and Psychotropic Substances Act, 1985 ("NDPS Act") involved 'possession of drugs for personal use/consumption'.

⁶¹ [Sankalak_Report.pdf \(naco.gov.in\)](#)

30. Despite the National Adolescent Health Strategy 2014⁶², limited quality and coverage of sexual and reproductive health services for adolescents remains concerning including HIV testing, given adolescents heightened vulnerability to HIV⁶³

Recommendations

- Review the Immoral Traffic (Prevention) Act of 1956, which makes sex work illegal.
- Scale up harm reduction, pursue decriminalization of drug possession for personal consumption, and address provision of OST and HR services in prisons.
- Examine and address all barriers to uptake of integrated, non-judgmental, sexual and reproductive health services, including HIV testing as a key entry point for HIV prevention and treatment among adolescents.
- Develop human rights-based, HIV-sensitive law enforcement practices through capacity building and training of law enforcement officials

M. Refugees and asylum seekers

31. India has a long history of hosting refugees. Currently, 169,233 Tibetan and Sri Lankan refugees are directly assisted by the Government, and approximately 44,917 refugees and asylum-seekers from non-neighboring countries and Myanmar are registered and protected by UNHCR under its mandate.
32. India actively contributed to development of the Global Compact on Refugees affirmed on 17 December 2018.
33. The Indian Foreigners Act of 1946 applies to all categories of foreigners, including refugees and asylum seekers, and refugee policy is determined on a case-by-case basis.
34. In 2019, India passed the Citizenship Amendment Act, which reduces the time required to apply for citizenship by naturalization from 11 years to five years for Hindus, Sikhs, Buddhists, Jains, Parsis, and Christians from Afghanistan, Bangladesh, and Pakistan who arrived in India on or before December 31, 2014. However, rules for implementing the Act are still being developed.
35. In India, resettlement remains a limited solution used as a protection tool for those with unmet protection needs.

Recommendations

- Remove administrative barriers to essential services like birth registration, health and education for refugees and asylum seekers. Ensure no family separation or institutionalization or detention of children from migration procedures
- Adopt national refugee legislation to formalize India's long-standing commitment to refugee protection.
- Review the Foreigners Act to include refugees and asylum seekers as a special category of foreigners exempt from entry and stay penalties and eligible for asylum procedures (in accordance with internationally accepted standards).
- While noting reforms in the Citizenship Amendment Act of 2019 to expedite access to naturalization for certain groups, recommend considering enhanced inclusivity of application to benefit other persecuted groups.

⁶² [UNFPA India | Implementation Guide on RCH II Adolescent Reproductive Sexual Health Strategy for State and District Programme Managers, National Rural Health Mission; rskk-strategy-handbook.pdf \(nhm.gov.in\)](#)

⁶³ [ALL IN to End Adolescent AIDS-2016_0.pdf \(childrenandaids.org\)](#)

N. Migrants' rights

36. India has supported the Global Compact for Safe, Orderly, and Regular Migration (GCM).
37. The COVID-19 national lockdown highlighted the urgent need to incorporate both internal and external migrants in existing social protection mechanisms. Lack of adequate portability mechanisms meant internal migrants, especially migrant women and children were often unable to access social protection and welfare services, including emergency relief measures, at destination locations, particularly in cities, where social protection delivery is complicated by poor governance capacities.⁶⁴

Recommendations

- Mainstream both internal and external migration in policy discussions across departments, as well as raise awareness on migrants' vulnerabilities and lived realities, particularly among children and women.
- Incorporate specific and unique vulnerabilities of children who migrate with family, children left behind at source locations and children migrating alone.
- Strengthen portability of social protection programs across food security, health and nutrition, education and child protection to ensure seamless and continuing social services.
- Facilitate collaborative arrangements with CSOs and employers to facilitate migrant incorporation and raise migrant beneficiaries' awareness of government programs.
- Converge multiple scheme databases and village-level migrant registers using IT-enabled data systems to track circular and seasonal patterns on a larger scale.

⁶⁴ CPR India and UNICEF India. Assessing the portability of social protection and services for children affected by migration: A study across five Indian state, 2021.