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Human Rights Committee

Fourth periodic report submitted by India under article 40 of the Covenant pursuant to the optional reporting procedure, due in 2020*, **

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* The present document is being issued without formal editing.
** The annex to the present report may be accessed from the web page of the Committee.



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

Reply to paragraph 1 of the list of issues prior to reporting (CCPR/C/IND/QPR/4)

1. Issues referred to in the Committee's previous concluding observations are addressed in the replies to the List of Issues Prior to Reporting (LOIPR) given below.

Reply to paragraph 2 of the list of issues

2. Since the adoption of the previous concluding observations, India has made considerable progress in developing a strong and elaborate legal and institutional framework for the promotion and protection of human rights. These developments which include constitutional amendments, enactment of new legislations, amendments to the existing laws and developments affected through case laws have been highlighted at relevant places in the replies to the list of issues.

3. The institutional framework consists of general as well as specific group-oriented institutions to focus on monitoring, promoting and facilitating realization of varied rights of people. In the former category fall statutory bodies like the National Human Rights Commission (NHRC), the Central Information Commission, the Central Vigilance Commission (CVC), Lokpal of India and Lokayuktas in states. In the latter category fall the National Commission for Women (NCW), the National Commission for Minorities (NCM), the National Commission for Protection of Child Rights (NCPCR), the Office of Chief Commissioner of Persons with Disabilities and Constitutional bodies like the National Commission for Scheduled Castes (NCSC), the National Commission for Scheduled Tribes (NCST) and the National Commission for Backward Classes (NCBC), etc. (For Details, Annexure-3).

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)

Reply to paragraph 3 of the list of issues

4. The Covenant has been extensively incorporated into the domestic law in India. The extent of incorporation broadly spans substantive, conceptual and philosophical aspects of the Covenant. *Firstly*, the courts in India have relied substantively on the international norms to give effect to the guarantees implicitly embedded in the spirit of the Constitution of India, resulting in explicit recognition of specific rights. *Secondly*, the expansive and progressive understanding of concepts like equality and liberty finds reflection in the Indian legal framework (For details, Annexure-1&2). The Supreme Court of India in *Navtej Singh Johar v. Union of India* relied on the General Comment 16 on Article 17 of the Covenant while explicitly recognising right to privacy as part of Right to Life embodied in the Constitution of India. *Thirdly*, the foundational philosophy of ICCPR as recognising inherent and inalienable rights has permeated deep into the domestic legal regime, either through explicit reference to the ICCPR or otherwise (See Annexure-2). The legislature has been proactive in giving effect to international obligations through enactment of laws in India and the same have been a major driving force behind many new enactments and amendments (See Annexure-1). The judiciary has also relied on these obligations for progressively interpreting existing laws. The courts have not only limited their reliance solely on the provisions of the treaty but also relied on the elaboration of rights articulated through general comments as well as on the jurisprudence developed by the treaty body through its opinions expressed on complaints considered by it.

5. The NHRC has been imparting trainings to judges, police officials, officials managing custodial institutions, other government officials as well as members of civil society. Similarly, the NCW conducts gender sensitization programmes for police, administrative and judicial officers. Sensitization and capacity building programmes for state and district level officials regarding laws, rules and regulations pertaining to atrocities against Scheduled Castes and Scheduled Tribes are conducted by the NCSC and NCST. Judicial academies at the national as well as state levels impart training to judges and prosecutors on various categories of rights and the normative framework pertaining to the same.

6. While the Constitution of India by virtue of Article 51 encourages respect for international law and treaty obligations, in India, treaties and covenants are not self-executing and require specific legislative incorporation for execution in domestic courts. However, through its seminal judgment in *Vishaka v. State of Rajasthan* the Supreme Court of India has held that “any international convention not inconsistent with fundamental rights and in harmony with their spirit must be read into these provisions to enlarge the meaning and content thereof, to promote the object of the constitutional guarantee.” Thus, to the extent that international norms are consistent with the domestic normative principles, they are now enforceable in the domestic courts despite the absence of any specific legislative incorporation of the same.

7. Indian Constitution provides for direct access to the Supreme Court and High Courts for redressal of violations of any fundamental right, by any individual or group of individuals. In addition, India has several statutory mechanisms to address such violations, including NHRC and State Human Rights Commissions. As there are effective remedies to address the violation of the rights of individuals or group of individuals, we do not see the necessity of becoming party to the Optional Protocol, at this stage.

Reply to paragraph 4 of the list of issues

8. There is no proposal to review the reservations and declarations made by India while acceding to the Covenant, at this point of time.

Reply to paragraph 5 of the list of issues

9. India has established a framework of specialized yet integrated set of institutions for the protection and promotion of human rights amidst demographic diversity (See Annexure-3). The NHRC, established in 1993, has been further strengthened and made more compatible with the Paris Principles through the Protection of Human Rights (Amendment) Act, 2019 which is aimed at providing greater autonomy and independence to the Commission. The primary membership has been increased from five to six, with three sitting or retired judges and three other members appointed from among those having knowledge and practical experience in human rights, one of whom has to be a woman. *Secondly*, chairpersons of Constitutional and statutory bodies established for the protection and promotion of rights of vulnerable groups, such as NCSC, NCST, NCBC, NCPCR, etc., are included as deemed members of NHRC. The appointment of members is done by the President of India on the recommendation of a selection committee which is a pluralistic body comprising of elected representatives of the people and political parties in power and in opposition. The Protection of Human Rights (Amendment) Act, 2006 enhanced the scope of remedies that NHRC may recommend to the state government to include payment of compensation or damages to the complainant or victim or members of his family as well as to take such further action as it may deem fit. The Amendment Act also lifted the requirement of prior intimation to the state government about the visit of the commission to any prison or other institution under control of the state government. This allows the Commission to independently discover the *de facto* conditions prevailing in custodial institutions and ensure protection of human rights of inmates.

10. The basic reasons for providing a special procedure under the Protection of Human Rights Act, 1993 with respect to the armed forces is twin-fold. *Firstly*, armed forces are involved in internal security duties for sustained periods of time only in areas affected by insurgency/terrorism, where the security environment is complex. *Secondly*, the armed forces have their own Acts with well laid out procedures for the trial of offenders. These procedures are, in many ways, as effective as civil procedures. Further, the Commission has the power

to seek a report from the central government on alleged violations of human rights by armed forces and after receipt of the report it may make recommendations to the government. The government is obliged to submit an action taken report on the recommendations to the Commission within a period of three months or extended period of time as decided by the Commission.

11. A special human rights office has been set up under the administrative control of Vice Chief of the Army Staff, the second highest ranking officer of the Indian army, in August 2019. This office, headed by an officer of the rank of Major General, is the nodal point to examine any human rights violations reports. A high ranking police officer is also posted on deputation in this section to enhance transparency and ensure that the best of investigative expertise is available to the office. Finally, one year limitation period for investigation of past human rights violations was envisaged on account of likelihood of the Commission facing insurmountable difficulties in rendering fair and proper investigations after considerable lapse of time.

Anti-corruption measures (arts. 2 and 25)

Reply to paragraph 6 of the list of issues

12. India is committed to zero tolerance against corruption and proactively works towards eradicating it. The Prevention of Corruption Act, 1988 (POCA) including the amendments introduced in 2018 was brought into force for the purpose of effective prevention of bribery and corruption. It offers a holistic approach to ensure that law is in line with the United Nations Convention against Corruption. It covers all aspects of bribery, including passive bribery, solicitation and acceptance of bribe through intermediaries. Further, the provisions relating to criminal misconduct were redefined to cover two types of offences, namely fraudulent misappropriation of property and illicit enrichment. Prevention of Money Laundering Act, 2002(PMLA) includes offences under POCA as scheduled offences which are *sine qua non* for the offence of money laundering. This statute empowers the Directorate of Enforcement, which investigates the offences under PMLA to initiate proceedings for attachment of property and to launch prosecution in designated Special Courts for its statutory offences. Whistle Blowers Protection Act, 2014 is another important legislation which establishes a mechanism to receive complaints relating to disclosure on any allegation of corruption or willful misuse of power or discretion against any public servant and safeguard against victimization of the persons reporting matters regarding corruption by the public servant.

13. Other legislative efforts include the Lokpal and Lokayukta Act, 2013, which establishes institutions to inquire into allegations of corruption in public functionaries. The Prohibition of Benami Property Transactions Act, 1988 as amended in 2016 penalizes those who divert their funds by securing ownership of property in the name of another person while it is intended to be utilized by the person diverting the funds.

14. The right to know and be informed, has on numerous occasions been found to be an integral part of the freedom of speech and expression by the courts in India, particularly in the context of functioning of democratic institutions. The Supreme Court of India in *People Union for Civil Liberties v. Union of India* had observed “Right of information is a facet of speech and expression as contained in Article 19(1)(a) of the Constitution of India. Right of information, thus, indisputably is a fundamental right.” The fundamental right to know has been given statutory recognition in the form of the RTI Act, which established a responsive regime for citizens to secure access to information under the control of public authorities, in order to promote transparency and accountability at all levels of governance.

15. In addition, the Government has taken several measures to combat corruption which, *inter alia*, include: (i) systemic improvements and reforms to provide transparent citizen-friendly services, such as disbursement of welfare benefits directly to the citizens under various schemes of the Government, Implementation of E-tendering in public procurements, introduction of e-Governance and simplification of procedure, and introduction of Government procurement through the Government e-Marketplace (GeM); (ii) discontinuation of interviews in recruitment of Group ‘B’ and Group ‘C’ posts in

Government of India; (iii) the Prevention of Corruption Act, 1988 has been amended in 2018 to criminalize the act of giving bribe to check big ticket corruption by creating a vicarious liability in respect of senior management of commercial organizations; and (iv) the institution of Lokpal has been operationalised to directly receive and process complaints against public servants under POCA.

16. As an institutional measure, the Central Vigilance Commission (CVC) was set up in 2003. The Commission formulates strategies to combat corruption, one of them being the preventive vigilance efforts that seek to identify areas vulnerable to corruption and subsequently establish mechanisms to arrest the concern. These measures can broadly be classified as simplification and standardisation of rules, leveraging technology and automation, business process re-engineering, transparency, accountability, early detection of misconducts, time bound and effective punitive actions, training and awareness, conducive work environment, inculcating ethical behaviour, establishing scheme of whistle blower mechanism, etc. A comparative data since 2016 shows that there has been a decrease in the incidence of corruption and total punishments awarded. Similarly, the Serious Fraud Investigation Office was set up in 2003, to tackle white collar crimes and frauds. An investigation into these offences is characterized by substantial involvement of public interest; possibility of investigation leading to or contributing towards a clear improvement in system; or having inter-departmental and multi-disciplinary ramifications.

17. Judiciary is an independent organ of the State, with an independent mechanism for appointment and removal of the Judges of the Constitutional Courts. Judges functioning in any court also fall under the purview of POCA as was held in a landmark judgment of *K. Veeraswami v. Union of India*. Additional mechanism to check corruption within subordinate judiciary emerges from the power of the High Courts to exercise control over subordinate courts under Article 235 of the Constitution of India. Further, Rule 56(j) of the Fundamental Rules has the potential to check corruption as it recognizes the absolute right of the appropriate authority to retire a government servant, if it is of the opinion that it is in the public interest to do so. As a proactive measure to check corruption at the level of higher judiciary, the Supreme Court of India in 1997 resolved that every Judge must declare all his/her assets in the form of real estate or investments, within a reasonable time of assuming office. In the same year, the Supreme Court of India unanimously adopted a Restatement of Values of Judicial Life (code of conduct) that commands an honest behaviour by the judges. There is an in-house procedure for taking suitable remedial action against judges digressing from universally accepted values of judicial life. In 2018 in an attempt to further enhance transparency in judicial proceedings the Supreme Court of India permitted live streaming of proceedings in certain cases. The work is in progress to fully operationalize the same. Judicial academies in India regularly organise workshops to impart training on combating corruption.

Non-discrimination (arts 2 and 26)

Reply to paragraph 7 of the list of issues

Reply to paragraph 7(a)

18. The anti-discrimination framework embodied in the Constitution of India has dynamically evolved over the years through robust legislations and a spirited interpretation of the Constitution by the Supreme Court of India. Articles 14–18 of the Constitution establish a structure consisting of mutually reinforcing values of non-discrimination and substantive equality. Guarantee of equality before law and equal protection of law under Article 14 of the Constitution checks discrimination on any arbitrary ground based on one's identity, status, opinion or orientation, *et al.* Article 15 prohibits discrimination on the grounds of religion, race, caste, sex or place of birth. Articles 15(3), 15(4), 15(5), 15(6) and 16(4), 16 (4-A), 16(4-B), 16(6) provide for affirmative action in order to achieve equality. Article 17 not only abolishes but also penalizes untouchability. Non-discrimination and equality irrespective of one's religious or other identities is also reinforced by explicit recognition of freedom of religion and by specifically protecting interests of linguistic and cultural minorities under Articles 25, 29 and 30 of the Constitution. The legal framework prohibits both horizontal as well as vertical discrimination. The broad normative framework

established by Articles 2 and 26 of the Covenant stands demonstrably embodied in the legal framework prevailing in India as evident in the Supreme Court of India's judgement in *Jeeja Ghosh v. Union of India*. In this case the Court held that equality implies "embracing the notion of positive rights, affirmative action and reasonable accommodation."

19. The anti-discrimination legal framework in India is conscious of and responsive to not just direct but indirect and intersectional forms of discrimination at both horizontal and vertical levels. For instance, section 3(1)(w) of the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989 (SC & ST (PoA) Act) redresses the offence of outraging the modesty of a woman belonging to either of these groups specifically, despite there being a general provision for the same in the Indian Penal Code, 1860 (IPC). The Supreme Court of India in *Vidyadharan v. State of Kerala* recognised that it is the caste identity of the woman that distinguishes this offence from that of offence of assault (for outraging the modesty) penalised under section 354 of the IPC. Adopting the intersectional approach, the Supreme Court observed, "experiences of assault are different in the case of a woman who belongs to a Scheduled Caste community and has a disability because the assault is a result of the interlocking of different relationships of power at play." In *Navtej Singh Johar v. Union of India* the court declared that Article 15, recognizes that the true operation of discrimination intersects varied identities and characteristics. It further upheld that discrimination based on sex, "whether direct or indirect ... is prohibited by Article 15 ..." Its observation that prohibition of discrimination under Article 15 "is to be assessed not by the objects of the state in enacting it, but by the effect that the provision has on affected individuals and on their fundamental rights" captures the essence of indirect discrimination which has recently been reaffirmed by the court in *Lt. Col. Nitisha v. Union of India*.

Reply to paragraph 7(b)

20. The Constitution of India extends the most formidable catena of human rights to the citizens as well as non-citizens in certain cases, with vast powers being conferred on the High Courts and the Supreme Court of India. The Supreme Court had been conferred original jurisdiction to enforce each one of the fundamental rights by entertaining direct writ petitions. The robust system provides for a single judge of the High Court enforcing these rights with an internal appeal to the division bench of two judges of the High Court and a further appeal by special leave to the Supreme Court of India. This would mean that even if at any level there was a failure to deliver justice, it would be corrected at the appellate level or at the level of the Supreme Court. The result of this is that an independent judiciary would ensure that executive violations of human rights, wherever they exist in the country, would not go uncorrected. Along with this, the National Legal Services Authority (NALSA) and the State Legal Services Authorities in each State with a vast network of lawyers render free service to the needy litigant.

21. In addition, the Constitutional guarantees of non-discrimination and equality are further buttressed by the international legal obligations assumed by India along with the legal framework developed for the realization of these principles in varied spheres through statutes and case laws. The administrative bodies are also bound by the principles of non-discrimination, equality and principles of natural justice in their actions and decisions. In the absence of specific statutory prohibition or remedy, the powers of the court under Articles 32 and 226 are invoked.

Reply to paragraph 8 of the list of issues

22. India is committed to securing all the rights recognised in the Covenant equally for all sections of society, especially the right to life, liberty and dignity. Efforts at addressing violence against weaker sections of the society, including Scheduled Castes and Scheduled Tribes, have been in the form of ensuring that the law is stringent and effective, those entrusted with the enforcement of law are sensitised to the issue, and educating people to establish a culture of mutual respect and dignity.

Reply to paragraph 8(a)

23. In order to address crimes against Scheduled Castes and Scheduled Tribes and to better secure their rights, far reaching amendments were introduced in the SC & ST

(Prevention of Atrocities) Amendment Act, 2015. The Amendment has brought several new offences under the Act thereby significantly strengthening the Act. Duties of public servants under the Act have been clearly and more extensively delineated. The Amendment imputes the knowledge regarding the caste or tribal identity of the victim on to the accused if the accused has personal knowledge about the victim or his family and thus strengthens the accountability for offences under the Act. Chapter IV-A has also been inserted into the Act for recognising rights of victims and witnesses. The Supreme Court of India in *National Campaign on Dalit Human Rights v. Union of India* called upon the state and the central governments to “strictly enforce the provisions of the Act,” and directed the National Legal Services Authority (NALSA) to prepare scheme to spread awareness and provide free legal aid to the members of the Scheduled Castes and Scheduled Tribes.

Reply to paragraph 8(b)

24. The Amendment Act of 2015 provides for establishment of exclusive special courts by the state government for the speedy trial of offences. Timeline of sixty days has been prescribed for completion of investigation and filing of charge sheet in the court. Advisory issued by the Ministry of Home Affairs recommends conduct of well-structured training programmes for sensitising and raising awareness among police personnel and inclusion of such programmes in the syllabi of various police training centres and academies. Further atrocity-prone areas are to be identified for taking preventive measures to save life and property of the members of the Scheduled Castes and Scheduled Tribes.

Reply to paragraph 8(c)

25. To eliminate the practice of manual scavenging to provide for rehabilitation of persons working as manual scavengers, the Prohibition of Employment as Manual Scavengers and their Rehabilitation Act, 2013 (Manual Scavengers Act) was enacted repealing the Employment of Manual Scavengers and Construction of Dry Latrines (Prohibition) Act, 1993. The Act specifically prohibits direct or indirect engagement or employment of any person for hazardous cleaning of a sewer or a septic tank. The law establishes an institutional structure for the identification of persons working as manual scavengers both in rural and urban areas. It also provides for constitution of vigilance committees and monitoring committees at the central and the state level to advise and oversee holistic implementation of the Act including rehabilitation of those working as manual scavengers. Recognising continued existence of insanitary latrines as primary reason behind the prevalence of the dehumanising practice of manual scavenging, the new law mandates the local authorities to ensure elimination of insanitary latrines.

26. National Safai Karamcharis Finance and Development Corporation organises sensitization workshops in municipalities for engineers, sanitary workers and contractors on safe cleaning of sewers and septic tanks. Ministry of Housing and Urban Affairs released SOP for cleaning sewers and septic tanks in 2018. A total of 62904 manual scavengers have been identified since 6.12.2013 to 31.1.2020. To ensure that no insanitary latrine is left in the country, under the Swachh Bharat Mission, 107.105 million individual sanitary toilets in rural areas and 6.257 million in urban areas have been constructed and being converted into sanitary latrines. The Ministry of Social Justice and Empowerment has launched a mobile application “Swachhata Abhiyan” in 2020 under which any person can upload the details, including photographs of the insanitary latrine and manual scavenger, if any, engaged in its cleaning. A National Action Plan is being formulated in consultation with the Ministry of Housing and Urban Affairs and Department of Drinking Water and Sanitation, Ministry of Jal Sakti to eliminate manual cleaning of Sewer system and Septic tanks and rehabilitation of workers engaged in manual cleaning.

27. Paragraph 3 of the Constitution (Scheduled Castes) Order, 1950 was revised in the year 1990. No further revision has been introduced thereafter. The applicability of the Order is only limited to Hindus, Sikhs and Buddhists has been challenged before the Supreme Court of India on the grounds of equality, religious freedom and non-discrimination and the same is currently under the consideration of the Supreme Court.

Reply to paragraph 9 of the list of issues*Reply to paragraphs 9 (a) to (b)*

28. India has strengthened its legal framework to combat discrimination against lesbian, gay, bisexual, transgender and intersex persons. The Supreme Court of India through its decision in *Navtej Singh Johar v. Union of India* decriminalized homosexuality among consenting adults in private, removing the unreasonable restriction on freedom of choice and expression of LGBT community. This ruling also created enabling environment for lesbians, gays and bi-sexual individuals to access justice as envisaged by the Covenant.

29. Further, the Parliament has enacted the Transgender Persons (Protection of Rights) Act, 2019 which comprehensively prohibits discrimination against transgender persons in all spheres of life and imposes obligations on the state to secure their inclusion in society by providing social security, education and health facilities. The Act along with the Transgender Persons (Protection of Rights) Rules, 2020 give effect to the right to self-perceived gender identity and mandate issuance of the certificate of identity solely on the basis of affidavit submitted by the person “without any medical examination.” To facilitate application for certificate and identity card by transgender persons in a digital mode, the National Portal for Transgender Persons was made operational in November 2020, which offers an end-to-end online facility for this purpose. Penalty is prescribed under the law for violence, abuse of transgender persons, for restraining them from public places, removal from residence or for subjecting them to forced labour. It ranges from six months to two years of imprisonment and fine. Penalty prescribed under the Act is in addition to and not in derogation of any other law.

30. The Government of India is working on an umbrella scheme to address issues of access to health, education, welfare, skill upgradation, shelter and economic support and livelihood for the transgender community. In November 2020, the first of its kind shelter home called ‘*Garima Greh*’ was inaugurated to provide shelter, food, medical care, recreational facilities, and support for capacity-building and skill development. Ten cities have been identified to establish thirteen such shelter homes. Additionally, the Ministry of Social Justice and Empowerment has allocated funds to National Backward Classes Finance and Development Corporation for conducting skill development of members of transgender community. Various States in India have adopted initiatives to develop and improve the quality of life of transgender persons, including launching of an umbrella scheme by the state of Odisha called *Sweekruti* to create an enabling environment to ensure equal opportunities, equity, social justice and empowerment of transgender persons, and introducing reservation of seats in educational institutions and public employment. Science, Technology and Innovation Policy 2020 provides for inclusion of LGBTQ+ community into all conversations related to gender equity as well as promote their representation in science, technology and innovation.

Equality between men and women (arts. 2, 3 and 25)**Reply to paragraph 10 of the list of issues***Reply to paragraph 10(a)*

31. India has adopted a multipronged strategy to eradicate deep rooted patriarchal attitudes and stereotypes that perpetuate discrimination against women. The measures aimed at bringing about attitudinal change span the domains of law, education and training as well as proactive measures in the form of administrative practices, schemes and programmes to overcome specific impediments to gender equality and provide enabling conditions for enjoyment of rights under the Covenant.

32. In 2013, IPC was amended to recognise varied forms of gender-based violence as cognizable offences. Special laws pertaining to domestic violence, sexual harassment of women at workplace, child marriage and sex selective conception and abortion enacted or amended in the new millennium unequivocally augment gender equality as the organizing principle of law itself.

33. Successive education policies have made steady progress towards bridging gender gap and promoting gender sensitization. The National Curriculum Framework developed by the National Council of Educational Research and Training (NCERT) in 2005 made far reaching contribution by identifying ways for epistemic, pedagogical and linguistic shifts in this direction. Taking the approach forward, the National Education Policy, 2020 recognizes gender sensitivity as an integral part of education at all levels. Even beyond formal education, gender sensitization programmes are regularly organized for officials in police and judiciary so that such attitude becomes integral part of their work culture. In *Aparna Bhat v. State of Madhya Pradesh*, the Supreme Court of India reiterated the need for gender sensitization for judges, public prosecutors, standing counsels and gave directions for mandatory foundational courses for judges on gender sensitization, inclusion of the same in the law school undergraduate courses, and in the syllabus for Bar-exam and the judicial services exam.

34. As affirmative measures to promote gender equality, the Mahatma Gandhi National Rural Employment Guarantee Act, 2005 (MGNREGA) mandates one-third of the beneficiaries under the scheme to be women; the Code on Social Security, 2020 incorporates the enhancement of the duration of paid maternity leave from 12 weeks to 26 weeks as well as mandates the provision for crèche facility by any establishment employing fifty employees. Even though the minimum participation of women secured under MGNREGA is 33%, yet in the years 2018–2019 and 2019–2020, 54.56% and 56.87% women participated in the same. Passport rules and Permanent Account Number rules have been amended to allow applicants to provide the name of only one parent and not both which enables children with single mothers to procure these documents. Gender Budgeting was adopted by India in 2005 as a tool for mainstreaming gender in all government policies and programmes.

35. India has strengthened its efforts for women empowerment by further initiating and streamlining various schemes. *Pradhan Mantri Kaushal Vikas Yojana* (PMKVY), a short-term skill development programme, launched in 2015 was reoriented as PMKVY 3.0 (2020–21 and 2021–26) with an enhanced component for the specially marginalised groups including women and transgenders. During 2014–18 the enrollment of women in long term skill development courses rose by 97%. *Beti Bachao Beti Padhao* (Save the Girl Child, Enable her Education) Scheme was, launched in 2015 to address the issue of decline in child sex ratio and has since then been expanded to all 640 districts of the country since 2019. *Pradhan Mantri Matru Vandana Yojana*, government's maternity benefit scheme, launched in 2016 provides financial assistance to pregnant women and lactating mothers. More than 10.75 million women had received such assistance till 2020. *Rashtriya Mahila Kosh* scheme provides loan to poor women through Intermediary Microfinancing Organisations. Working Women Hostels have been established for ensuring safe accommodation for women working away from their place of residence. Further the National Mission for Empowerment of Women was launched by the Government of India in 2010 with the aim to strengthen overall processes that promote all-round development of women.

Reply to paragraph 10(b)

36. India encourages women's participation in political life and the same has been gradually rising. The proportion of women members in Lok Sabha (Lower house of the Parliament) increased from 11.6% in 2014 to 14.4% in 2019. The voter turnout amongst women has also risen progressively from 55.82% in 2009 to 65.3% in 2014 and further to 68% in 2019. It surpassed the voter turnout among men in 2019. For appointment of judges to higher judiciary the Government has been calling for due consideration be given to suitable candidates belonging to Scheduled Castes, Scheduled Tribes, other backward classes, minorities and women. As on 31.03.2021, there is one woman judge in the Supreme Court of India and 75 women judges in various High Courts.

37. The Constitution of India ensures participation of women in local government by mandating not less than 33% reservation of total seats for women. To ensure parity, more than twenty Indian States have already made provisions for 50% reservation of total seats for women. In this regard, a bill is under consideration of the Parliament. Efforts in other spheres are marked by moderate but progressive steps towards opening up of positions that hitherto excluded women. The foremost measure in this regard has been the recognition and enforcement of equality of opportunity for women as Short Service Commission officers in

the armed forces and considering them for the grant of Permanent Commission not only in staff appointments but also in criteria and command appointments. The Government of India has also proactively advised the states to increase representation of women in non-gazetted posts in police to 33% and approved the same for the Union Territories in 2015. At least 20 states adopted varying targets for the same ranging from 38% (one state), 33% (nine states) and less than 33% (ten states).

38. Legislative efforts have also been made to improve participation of women in economic sphere. Every publicly listed company having either paid up share capital of 100 crore rupees (1 billion) or more or a turnover of 300 crore rupees (3 billion) or more, are required to have at least a woman director on its board under Section 149, Companies Act, 2013. The Securities and Exchange Board of India has mandated for top 1000 Indian companies by market capitalisation to have one-woman independent director on their Boards by 01.04.2020 and as of 03.03.2021, 850 of such 1000 companies have appointed independent women directors.

39. Efforts at financial inclusion of women aim to empower them and bring them into the mainstream. From 2015-2020, 68% of the total beneficiaries under the *Pradhan Mantri Mudra Yojana* have been women. Women are also the largest beneficiaries under the *Pradhan Mantri Jan Dhan Yojana*, one of the biggest financial inclusion initiatives in the world which also provides access to direct benefits under various welfare schemes, credit and insurance services. As of August 2020, out of 400 million accounts opened under *Pradhan Mantri Jan Dhan Yojana*, 55.2% are owned by women. *Mahila Shakti Kendra* Scheme was launched in 2017 to empower women through skill development, employment, digital literacy, health and nutrition. It also mobilises women into joining collectives, provides easy access to information and aims at increasing their participation in Panchayati Raj Institutions.

Reply to paragraph 10(c)

40. Marriage and family relations in India are primarily governed by personal laws of the specific religious community to which a person belongs. India, being a secular country follows a policy of non-interference in the personal affairs of any community without its initiative and consent. Nevertheless, India has been continuing its steady move towards substantive equality for women in family matters especially through legislative amendments and judicial pronouncements. The Hindu Succession (Amendment) Act, 2005 secured equal position of daughters in the Hindu Mitakshara coparcenary property as the sons have. It also removed the disability of female heirs to ask for partition in respect of a dwelling house wholly occupied by a joint family until the male heirs chose to divide their respective shares therein. The Personal Laws (Amendment) Act, 2010 amended the Guardian and Wards Act, 1890 and the Hindu Adoption and Maintenance Act, 1956. The amended Guardian and Wards Act, 1890 equally recognizes both mother and father as guardian of a minor child. After the amendment the Hindu men and women have equal capacity to give and take a child in adoption. Further, the Muslim Women (Protection of Rights on Marriage) Act, 2019 makes pronouncement of triple *talaq* by Muslim husbands a cognizable offence compoundable at the instance of the married Muslim woman upon whom *talaq* is pronounced.

41. Inequality between men and women under Hindu law in the matters of guardianship has grown narrower with the decision of the Supreme Court of India in *Githa Hariharan v. Reserve Bank of India* through the progressive interpretation given to section 6(a) of the Hindu Minority and Guardianship Act, 1956 which recognized highly unequal/differential right of guardianship to mother and father. Enlightened interpretation of Muslim Women (Protection of Rights on Divorce) Act, 1986 by the Supreme Court in *Danial Latifi v. Union of India*, secured an expansive right to maintenance and provision for divorced Muslim women.

42. A major symbol of patriarchy and gender stereotype in the form of offence of adultery in the IPC has been struck down as unconstitutional by the Supreme Court of India in *Joseph Shine v. Union of India*. While criminalizing adultery on the part of a wife, the law only allowed the husband of a woman to lodge a criminal complaint against the person with whom the wife was alleged to be in adulterous relationship. The provision, it was held, violates the principle of non-discrimination and constitutes denial of substantive equality.

Reply to paragraph 10(d)

43. Although customs have the force of law in India, they may be outlawed on account of being violative of the Constitution of India. The Constitution recognizes both gender equality and right to conserve culture. In *Madhu Kishwar v. State of Bihar*, the Supreme Court of India while upheld the customary practice that provided for the right of inheritance to the male descendants among Scheduled Tribes, it carved out the right of the females to derive livelihood from that land and limited the right of the male descendants to the exclusive ownership of the inherited land till female dependents/descendants choose another means of livelihood. The decision manifests the interface of cultural rights and right to equality and non-discrimination.

Violence against women and harmful practices (arts. 2, 3, 6, 7, 8 and 26)**Reply to paragraph 11 of the list of issues**

44. India has always taken a serious note of the persisting harmful practices against women and has taken concerted actions to eradicate them.

45. *Child marriage* – The Prohibition of Child Marriage Act, 2006 provides for prohibition and punishment of solemnisation of child marriages. The Act provides an option to the child whose marriage is solemnized, to get it annulled through courts. It creates institutional structure by prescribing a Child Marriage Prohibition Officer for prevention of child marriage, raising awareness on the issue, and counseling of local residents. Further, the law provides enhanced punishments for the offences and provides a mechanism of support for the female contracting party to the marriage.

46. *Honour Killing* – Recognizing that honour killing guillotines individual liberty and freedom of choice, the Supreme Court of India in *Shakti Vahini v. Union of India* held that the “right needs to be protected and it cannot succumb to the conception of class honour or group thinking.” The court laid down preventive, punitive and remedial measures to address the challenge of honour killing. The court also directed creation of special cells at the district level, a 24-hour helpline within those cells and trial of such cases by courts designated for that purpose for speedy disposal of such cases.

47. *Dowry System* – The practice of dowry system has been a matter of grave concern for India. Not only amendments have been introduced to the Dowry Prohibition Act, 1961 to make it more stringent and effective, harassment for dowry has been criminalized and under the Protection of Women from Domestic Violence Act, 2005 (PWDV Act) it has been recognized as a ground for civil remedies.

48. *Sex-selective Abortion* – In India the practices of sex determination and sex selection are strictly prohibited and punishable by law. Pre-Conception and Pre-Natal Diagnostic Techniques Act, 1994 was amended in 2002 as Pre-conception and Pre-natal Diagnostic Techniques (Prohibition of Sex Selection) Act, 1994 (PCPNDT Act) to strengthen the institutional machinery and mechanisms established for eradicating these practice and comprehensively prohibits advertising facility of sex selection in any form. The Supreme Court of India in *Sabu Mathew George v. Union of India* directed software companies to appoint “in house experts” so as to ensure strict compliance with the prohibition. In *Voluntary Health Association of Punjab v. Union of India*, the Supreme Court issued elaborate directions further streamlining and enabling rigorous implementation of the Act through variety of mechanisms at social, administrative and judicial levels.

49. *Devadasi* – The IPC 1860 as amended in 2013 outlaws trafficking and exploitation of trafficked persons. The inclusive definition of exploitation as encompassing sexual exploitation, slavery or practices similar to slavery, servitude is broad enough to take within its purview the exploitative practice of *devadasi*. It also penalizes recruitment, transportation, harbouring, transfer or receipt of any person for the purposes of exploitation. The law further clarifies that the consent of the victim is immaterial in determination of the offence of trafficking. Being a central legislation, it is applicable throughout India. The Ministry of Home Affairs has also clarified the same through its advisories issued to all the states and Union Territories, and has also recommended them to undertake a special drive to identify

and rehabilitate *devadasis* by providing counselling, medical treatment and guidance. Special sensitization and skill development programmes are also directed to be undertaken.

50. *Sati* – The harmful practice of *Sati*, involving burning of the widow on the funeral pyre of her husband has been eradicated. Commission of *Sati* (Prevention) Act, 1987 was enacted to provide for effective prevention of the commission of *Sati* and its glorification and since then, there has been no recorded case of *Sati* in India.

51. *Witchcraft* – Violence on any account, including through identification of a person as a witch falls under various categories of offences recognized and penalized under the IPC. Eight states in India, including Jharkhand, Odisha and Chhattisgarh, have enacted special laws to curb the victimization of women under allegations of them being a witch.

52. *Female Genital Mutilation (FGM)* – The practice of FGM is a penal offence under Section 320-326 of the Indian Penal Code which deals with causing harm to body by causing hurt or grievous hurt by means of any instrument for shooting, stabbing or cutting. Further, with regard to the practice on girls below 18 years of age, the Protection of Children from Sexual offences Act, 2012 can also be invoked. In *Sunita Tiwari v. Union of India* it was contended that the issue of Female Genital Mutilation is located at the interface of right to bodily integrity and the right to religion. The matter has been referred to a Constitutional bench of the Supreme Court of India and is currently *sub judice*.

53. *Sexual Violence* – The legal framework to eliminate violence against women has been expanded through an amendment introduced in the IPC whereby specific forms of violence against women have been criminalized like of acid attack, disrobing, voyeurism, and stalking. Sexual harassment has also been defined and penalized under the criminal law. The definition of rape which was limited to penile-vaginal sexual intercourse has been expanded to include a range of penetrative and non-penetrative forms of sexual assault. Consent, in the context of rape stands clearly defined. More stringent and graded punishment is now provided for the offence of rape depending on the additional injuries caused while committing the offence of rape like death or leaving the victim in a persistent vegetative state, the number of perpetrators, the age of the victim and whether the perpetrator holds a position of authority or is a repeat offender. The amendments also require the fine imposed on the perpetrators to be paid to the victim and that it should be just and reasonable to meet the medical expenses and rehabilitation of the victim. In order to secure rigorous enforcement of law enacted to effectively tackle violence against women, penalty is prescribed for a public servant who fails to perform his/her duties especially pertaining to registration and investigation into cases of sexual violence against women.

54. The Supreme Court of India in *Independent Thought v. Union of India* read down the provision under Section 375 of IPC and held that marital rape does not stand as an exception where the wife is below 18 years of age.

55. Absence of a comprehensive law on domestic violence has been overcome by enactment of the Protection of Women from Domestic Violence Act, 2005 (PWDV Act). The law has adopted a comprehensive definition of domestic violence and seeks to add civil remedies to the already existing criminal penalties while further adding to the scope of latter in certain circumstances. It establishes a remarkable support structure for the victims of domestic violence. The NCW has a special NRI Cell to deal with complaints arising out of cross-country marriages involving deprivation of women's rights.

56. The Government also introduced a scheme in 2019 to set up 1023 Fast Track Special Courts (FTSCs) including 389 exclusive Protection of Children from Sexual Offences (POCSO) Courts across the nation for time bound completion of trials relating to sexual offences. Besides strengthening the legal framework, steps have been taken at the operational level to effectively tackle the problem of violence against women. Pan-India Emergency Response Support System has been established which provides a single internationally recognized number for all emergencies, with computer aided dispatch of field resources to the location of distress. One Stop Centres are being set up across the country to facilitate access to an integrated service ranging from medical, legal, psychosocial to temporary support service to women affected by violence under one roof. There are 728 such centres that have been approved out of which 595 centres are already operational in the country.

57. A 24x7, toll free telecom service has been established throughout India to facilitate crisis and non-crisis intervention to women seeking support through referral to appropriate agencies and to provide information on appropriate support schemes and programmes on women empowerment. National level Investigation Tracking System for Sexual Offences has been established to monitor and track time-bound investigation in sexual assault cases. National level database on sexual offenders was launched in 2018 to facilitate investigation and tracking of sexual offenders across the country by law enforcement agencies. A cyber-crime portal has also been launched for citizens to report obscene content. Safe city projects have been sanctioned in the first phase in eight cities which entail use of technology to aid smart policing and safety management. Government of India has set up a dedicated fund called Nirbhaya Fund for implementation of initiatives aimed at enhancing the safety and security of women in the country. Compensation Scheme for Women Victims/Survivors of Sexual Assault/Other Crimes, 2018 provides for compensation to women victims of identified gender-based crimes and victims of child sexual abuse. She-Box, an online complaint management system has been established, to provide a single window access to every woman for registration of complaints related to sexual harassment at workplace.

58. *Acid Attack* – The Criminal Law (Amendment) Act, 2013 inserted Section 326A and Section 326B in the Indian Penal Code, 1860 creating special provisions against acid attacks with a minimum sentence of ten years which may extend to imprisonment for life along with a fine. The fine shall be just and reasonable to meet the medical expenses of the treatment of the victim. Acid attack induced disfigurement has been included as a disability under the Rights of Persons with Disabilities Act, 2016 enabling such victims to claim entitlements under the Act.

59. Civil Society Family Welfare Committees constituted by the Supreme Court of India in 2018 was later found by the Court to be statutorily impermissible in *Social Action Forum for Manav Adhikar and Another v. Union of India, Ministry of Law and Justice and Others*.

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

Reply to paragraph 12 of the list of issues

60. India is strongly committed to removal of legal as well as practical barriers to effective access to safe and legal abortion by women and girls as part of its obligations under the Covenant. In order to achieve the same, the Medical Termination of Pregnancy Act, 1971 (MTPA), amended in 2021, seeks to ensure dignity, autonomy, confidentiality and justice for women who need to terminate pregnancy. It is also pertinent to mention that the Act was introduced after an extensive consultative process involving all the possible stakeholders.

Reply to paragraph 12(a)

61. With a view to ensuring availability of contraceptive methods at all the levels of health system, the Ministry of Health and Family Welfare launched *Mission Pariwar Vikas* in 2016. The mission aims to provide greater choice of contraceptives, assured services and commodity security. The latest National Family Health Survey 5 (Phase I) indicates substantial increase in overall contraceptive prevalence rate. Scheme for the free supply of contraceptives has also been adopted whereby at the time of procurement, contraceptives are tested for their quality and then freely supplied through dispensaries, hospitals, primary health centres as well as delivered at the doorstep by ASHA (Accredited Social Health Activists) workers. Comprehensive abortion care services are being strengthened through trainings of health care providers, supply of drugs, equipment, information education and communication, etc. Over 25,000 'Delivery Points' across the country have been strengthened in terms of infrastructure, equipment, and trained human power for provision of comprehensive reproductive, maternal, new born, child and adolescent health (RMNCH+A) services. Mandatory reporting of teenage pregnancies/sexual assault is provided under the Protection of Children from Sexual Offences Act, 2012 and the IPC. Given the culture of silence around sexual offences and the sensitive context, mandatory reporting serves the essential purpose of ensuring that no sexual offence against any child

goes unreported leaving the victim out of the protective care of the state and the perpetrator beyond the reach of the criminal justice system. Further, the requirement of obtaining an authorization from registered medical provider for the purpose of abortion under MTPA is to safeguard the health and well-being of women undergoing abortion.

Reply to paragraph 12(b)

62. In India, MTPA seeks to secure the right to abortion in conditions that are safe and suited to good health of women. The exercise of this right requires adherence to certain reasonable conditions. Three such conditions relate to the length of pregnancy, conduct of abortion only by a registered medical practitioner and the procedure to be conducted in a hospital or at a place designated for the same by the appropriate government. Self-managed abortions are therefore illegal.

Reply to paragraph 12(c)

63. On account of the advancement of medical technology for safe abortion, the restriction on access to legal abortion after twenty weeks of pregnancy has been revised through the MTP Amendment Act, 2021. Therefore, legal abortions without any requirement of judicial authorization are now available well upto twenty-four weeks of gestation and in certain cases even beyond that period.

Reply to paragraph 12(d)

64. The non-applicability of contraceptive failure as a ground for abortion to unmarried women and girls has been done away with through the Amending Act, which substitutes the words “any married woman or her husband” by the words “any woman or her partner.” The change expands the applicability of failure of contraceptive as a ground for abortion to include all women and girls, whether married or unmarried.

Reply to paragraph 12(e)

65. Requirement of parental or guardian consent for abortion in case of girls under the age of 18 is statutorily provided under MTPA. The rationale for such provisions is grounded in the public policy approach with respect to minors across all aspects of life.

Reply to paragraph 12(f)

66. The issues of limited availability of abortion services and lack of sufficient health professionals are being actively addressed. Recent figures in this regard indicate positive improvements. The need for family planning has fallen from 12.9% (2015–16) to less than 10% (2019–20) in all the states except two. In order to move from the current doctor population ratio of 1:1456 to WHO prescribed 1:1000, India has embarked upon an ambitious programme for upgrading health infrastructure. Since 2014, one hundred and forty one new medical colleges have been sanctioned and the intake of medical students has been increased. The recent decision of the Supreme Court of India in *Association of Medical Superspeciality Aspirants and Residents and Others v. Union of India* upholding the Constitutional validity of requirement of executing compulsory bonds of service in government health sector as a condition of admission in post graduate medical courses is also expected to enhance the number of doctors in government health centres.

Reply to paragraph 12(g)

67. The fear of prosecution under PCPNDT Act, a duly enacted law, felt by medical professionals despite the existence of legal remedies available in case of misuse of law are not well-founded. The Supreme Court of India in *Voluntary Health Association of Punjab v. Union of India* also refused to read down certain provisions, add provisos and exceptions to certain other provisions of PCPNDT Act on the ground of harassment to medical professionals on account of misuse.

68. In response to the reports regarding unsafe and poor quality sterilization procedures performed in sterilization camps, the National Health Policy, 2017 duly recognizes the imperative to move away from camp based services. Further, Assurance Committees have

been established across all the states and districts in India to monitor working of the sterilization camps. Monitoring visits and state reviews regarding sterilization services are being regularly undertaken by the family planning division of the Ministry of Health and Family Welfare. There has been a decline of 0.55 points and 62.5 points for death and failure rates attributable to sterilizations as compared to the previous year (2017–18). The principles regarding reparation of victims adversely affected by sterilization procedure have been laid down by the Supreme Court of India in *Ramakant Rai (I) v. Union of India*.

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

Reply to paragraph 13 of the list of issues

69. The legal framework to address trafficking in persons, consists of Article 23 of the Constitution of India, the Immoral Traffic Prevention Act, 1956 and the Indian Penal Code, 1860. It has been further buttressed over the years through many legislative efforts. The efforts are divisible into two categories viz., *firstly*, preventing, suppressing and punishing trafficking itself and *secondly*, punishing further exploitation that persons trafficked are subjected to and offering redress to those who are exploited. Further, the Criminal Law (Amendment) Act, 2013, introduced a new Section 370A of IPC providing a comprehensive definition of human trafficking and strict punishment for the offence of exploitation of a trafficked person. Section 370 has been strengthened so as to enlarge the scope of the offence and include within its purview not just the mischief of slavery, but trafficking in general - of minors, adults, forced or bonded labour, prostitution, organ transplantation and to some extent child-marriages, etc. In 2019, the National Investigation Agency Act, 2008 was amended to authorise NIA to investigate cases of human trafficking under sections 370 and 370A of IPC.

70. The concern over 'high incidence of child prostitution' raised in the Concluding Observations is being addressed in multiple ways viz., legislation pertaining to Juvenile Justice (Care and Protection of Children) Act, 2015 (JJCPA Act) particularly recognizes 'child likely to be trafficked as neglected child' and sets up institutions for care of such children. Section 2(14)(ii) of the Act recognises a child found begging as 'child in need of care and protection'. From the prohibition of employment of children based on the nature of work, India in 2016, transitioned into complete prohibition of labour by children upto 14 years of age. Employment of adolescents in hazardous occupations is prohibited while it is regulated in other occupations. Moreover, a special, stringent and more comprehensive legislation, namely Protection of Children from Sexual Offences Act, 2012, which was further strengthened by the Protection of Children from Sexual Offences Act, 2019 addresses the problem of sexual exploitation of children which may be inter-alia a consequence of trafficking.

71. The Supreme Court of India in *Public Union for Civil Liberties v. State of Tamil Nadu and Others* entrusted the NHRC with the responsibility of monitoring and overseeing the implementation of its directions as well as provisions of the Bonded Labour System (Abolition) Act, 1976. Subsequently, NHRC submits regular reports regarding the status of implementation of this statute in different States/Union Territories.

72. In addition, India has a framework in place for protection and rehabilitation of victims of trafficking. A number of schemes focusing on rescue, rehabilitation and repatriation of victims of trafficking have been instituted by the Government of India. The *Swadhar Greh* scheme which provides shelter, food, clothing health as well as economic and social security for women victims of difficult circumstances. NALSA (Victim of Trafficking and Commercial Sexual Exploitation) Scheme, 2015 provides legal assistance to the victims of trafficking and sexual exploitation at the time of rescue and thereafter during trial. The *Ujjawala* Scheme is for prevention of trafficking, rescue, rehabilitation, re-integration and repatriation of victims of trafficking for commercial sexual exploitation. There are 254 projects including 134 Protective and Rehabilitative Homes in the country. 5,291 women had benefitted from the scheme till July 2019.

73. In 2019, a total of 2260 cases of human trafficking (encompassing forced labour, sexual exploitation for prostitution, other forms of sexual exploitation, domestic servitude,

forced marriage, petty crimes, child pornography, begging, drug peddling, removal of organs and other reasons) were reported. Cases at the stage of prosecution and punishment stood at 1606 and 172 respectively. 6571 victims were rescued in the same year.

74. In order to prevent revictimization of the trafficked persons particularly during the investigation and prosecution stages, a range of initiatives including issuance of advisories, standard operating procedures, and enhanced training of investigative and prosecutorial officers have been undertaken. Recognising the special vulnerability of child victims of human trafficking subjected to commercial sexual exploitation and bonded labour, specific advisory indicating measures to be taken for rescue and rehabilitation of trafficked child victims have also been issued.

75. The Government of India in association with the United Nations Office on Drugs and Crime (UNODC) has initiated a multi-year project for training of Law Enforcement Officers on human trafficking in four States – namely Maharashtra, Goa, West Bengal and Andhra Pradesh-to raise their awareness, enhance their capacity to investigate, effectively prosecute the offenders, and proactively protect the victims and survivors of trafficking. The Central Government has supported the State Governments and Union Territories to set up new Special Anti-Human Trafficking Units (AHTUs) at district level and a Women Help Desk at the level of Police Station covering all Districts for preventing and countering the crime of human trafficking. An anti-trafficking cell was established in 2006 to be an interface between different ministries, States and Union Territories. A national level communication platform – Crime Multi Agency Centre (Cri-MAC) – has also been launched to facilitate dissemination of information about significant crimes, including human trafficking cases across the country, on real time basis and enables inter-State coordination. This portal, inter-alia, helps the law enforcement agencies in flashing messages of trafficking to all relevant Police authorities and is useful in locating and identifying the trafficked victims as well as helps in prevention, detection and investigation of crimes.

76. Workshops focusing on capacity building, sensitization and skill enhancement of judicial officers with respect to trials pertaining to human trafficking, victim support and assistance have been regularly undertaken in collaboration with UNODC and Judicial Academies across the country. Apart from having ratified United Nations Convention on Transnational Organised Crime in 2011 and its protocols, India has signed the SAARC Convention on Prevention and Combating Trafficking in Women and Children in Prostitution in 2002 and has also entered into a bilateral Memorandum of Understanding for Prevention of Human Trafficking with the Governments of Bangladesh, UAE, Cambodia and Myanmar.

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

Reply to paragraph 14 of the list of issues

77. India continues to be a victim of terrorism. This has, over the years, necessitated certain specific measures like the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA), the Prevention of Terrorism Act, 2002 (POTA) to ensure security of its citizens. The constitutional validity of these legislations was upheld by the Supreme Court of India in *Kartar Singh v. State of Punjab* and *People's Union for Civil Liberties and Another v. Union of India*.

78. With regard to cases under TADA and POTA, it may be noted that these legislations carried the sunset and the savings clauses. As per the sunset clause the legislations were to remain in force only for a limited period of time. By virtue of the savings clause, notwithstanding the repeal, ongoing trials were allowed to continue till their completion. After the repeal of these legislations, no fresh cases have been filed under the enactments.

Reply to paragraph 15 of the list of issues

79. National security legislations, for instance, the Armed Forces (Special Powers) Act, 1958 (AFSPA), the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990 (AFSPA J&K), the National Security Act, 1980, the Unlawful Activities (Prevention) Act, 1967

(UAPA) and the Jammu and Kashmir Public Safety Act, 1978 (J&K PSA) were passed to protect the sovereignty of India and ensure security of its citizens. Under these statutes, armed forces and security personnel are bestowed with powers for the maintenance of public order and prevention of acts prejudicial to the defence and security of India. Government of India remains committed to dealing with law and order and security situations with minimum use of force, in accordance with principles of legal certainty, necessity and proportionality, and after due consideration of various factors including ground realities. The following factors are pre-requisite for use of force and power of detention under the noted legislations, namely declaration of (i) an area as 'disturbed' or 'prohibited' or 'protected'; (ii) an association as 'unlawful'; and (iii) of the grounds of an order of detention to the detainee. In *Extra Judicial Execution Victim Families Association and Another v. Union of India and Another* (hereinafter *Extra Judicial case*), the Supreme Court of India highlighted the necessity of using minimum force even against terrorists, militants and insurgents, and the need to enquire into any disproportionate use of force.

80. It is important to note that the above noted legislations also incorporate crucial safeguards against exercise of powers of arrest and detention by the State. The arrests and detention that are authorised under these legislations are to be carried out with least delay and with a report of circumstances occasioning them. The statutes provide for revocation of the detention order to facilitate temporary release of detainees. As per Section 6 of UAPA, the notification declaring an association as unlawful can be cancelled by the Central Government on a request made by the aggrieved party. Before 'proceeds of terrorism' are forfeited, a show cause notice has to be made, subsequent to which an appeal is available to the aggrieved party.

81. The Supreme Court of India in *Naga Peoples' Movement of Human Rights v. Union of India* upheld the constitutionality of AFSPA, and concluded that the special powers under the Act were not arbitrary or in violation of the rights to equality, freedom and life as enshrined under the Constitution of India. It identified certain additional conditions for the exercise of powers under the Act, some of which are: (i) declaration of an area as disturbed only if a grave situation of law and order exists; (ii) this declaration to be for a limited duration; (iii) the use of force under the AFSPA must be of minimal nature that is required for effective sanction against the person/s acting in contravention of the prohibitory order; and (iv) the search and seizure under the Act must be conducted as per the provisions under the Code of Criminal Procedure, 1973 CrPC. In the *Extra Judicial case*, the Supreme Court of India held that if in the name of fulfilment of public duty, the State uses excessive or retaliatory force and it leads to an extrajudicial killing, the same is not acceptable since it is destructive of the rule of law. If there is no reasonable connection between an official act and the use of excessive force, the same shall not be supported and therefore an enquiry should ensue. This flows from the democratic requirements of the State.

82. Operation of AFSPA is periodically reviewed by the Government of India after consultation with State Government and the Central Agencies. Due to improved security situation, AFSPA has been removed completely in the State of Tripura vide State Government's notification dated 27th May, 2015 and in the State of Meghalaya w.e.f. 1st April, 2018.

Reply to paragraph 16 of the list of issues

83. The security and armed forces of India discharge the crucial public function of keeping the citizens of India safe from internal and external threats to life and liberty. Therefore, actions taken in good faith by them are granted legal protection from malicious prosecution by requiring prior sanction of the Government for the prosecution of members of the forces. This requirement however does not imply impunity or immunity against violation of human rights, as has been stated by the Supreme Court of India in the *Extra Judicial case*. In genuine instances the Government of India has accorded sanction for prosecution. Further, in appropriate instances, courts and quasi-judicial bodies in India have granted compensation.

84. Certain areas in India have suffered from terrorism and insurgency leading to an acute law and order situation. These continuing acts of terror and other acts of violence have necessitated involvement of civilian and armed forces to protect life and liberty of citizens of

India. Therefore, such interventions are for specific areas designated as disturbed and for a limited period of time depending upon the gravity of the situation. For instance, in Jammu & Kashmir the following measures have been adopted: (i) organisation of Police-Public meetings and counselling of youth by police authorities; (ii) security forces/ police were advised to strictly adhere to the Standard Operating Procedure and resort to use of non-lethal weapons, while handling law and order situations; (iii) special training was imparted to specific battalions of the state police force to deal with large crowds and employ better methods of crowd management, and (iv) wherever required, ambulance and other services have been provided to the needy. The Supreme Court of India has taken cognizance of the fact of extrajudicial killings while admitting that police in India has to perform a delicate task when many hardcore criminals take roots in society. Therefore, in *People's Union for Civil Liberties and Another v. State of Maharashtra and Others*, it laid down a standard procedure for thorough, effective and independent investigation in matters of death in police encounters. The J&K PSA, 1978 notifies (i) certain places as prohibited places and protected areas; and (ii) prohibition of circulation of certain documents that may harm the communal, sectarian or regional harmony or affect public order. The statute not only lays down the grounds on the basis of which people may be detained, which have to be disclosed to people who are affected by the order, but also provides for grounds of revocation of such detention orders and temporary release of the persons so detained, where the latter safeguards individual liberty even under difficult conditions. Therefore, norms pertaining to arrests and detention under PSA seek to balance the twin aims of maintaining safety and security of citizens and ensure absence of arbitrary actions.

85. The Constitution of India and laws made thereunder provide adequate recourse including the writ of *habeas corpus* that secure liberty of every individual in India. Other modes of redressals are also available under criminal laws of India. The NHRC has taken *suo motu* cognizance of instances of disappearances. India maintains an inviolable stand on torture, rape or sexual violence by the state actors including security forces. There are provisions under the IPC on certain aggravated forms of rape which includes rape by a member of the armed forces.

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)

Reply to paragraph 17 of the list of issues

86. In India, death penalty is considered to be an exceptional punishment that is imposed only in the rarest of the rare cases when the alternative option is unquestionably foreclosed, where the crime committed was so heinous as to shock the conscience of society. This principle having been developed through case laws is applicable across penal provisions that prescribes *inter alia*, death penalty. Death sentence, if given to a pregnant woman is commuted to life imprisonment, and no order for death is made for a child in conflict with law.

87. In the instance where it is imposed, multiple avenues of review of death penalty at the judicial level and at the executive level are available to the death convict. The President of India and the Governors of the states have the power to grant pardon, reprieves, respites or remissions of punishment, or to suspend, remit or commute the sentence of death, which is an important constitutional responsibility to be discharged by the highest executive. There is also a provision for filing a curative petition under the Constitution of India, where the Supreme Court of India can review its own judgment or order. The Government has also issued guidelines pursuant to *Shatrughan Chauhan & Anr. v. Union of India & Ors.* to safeguard the interests of the death row convicts which includes, *inter alia*, provision of legal aid, prompt procedure in placing the mercy petition before the President of India, prescription of a minimum period for execution of death sentence.

88. India has held mandatory death sentence to be unconstitutional as it “runs contrary to those statutory safeguards which give judiciary the discretion in the matter imposing death penalty. It is thus ultra vires the concept of judicial review which is one of the basic features

of our Constitution.” There have been amendments to punishments of certain crimes involving aggravated forms of rape that have listed death penalty as one of the punishments.

89. The criminal justice framework in India is strongly rooted in principles of equality and non-discrimination. There is nothing in the institution of criminal justice in India that classifies accused and prisoners as people belonging to different religions, castes or classes.

Reply to paragraph 18 of the list of issues

90. India condemns any form of torture. The Supreme Court of India in *Sube Singh v. State of Haryana & Ors.* held that the custodial torture “requires to be tackled from two ends, by taking measures that are remedial and preventive.” As preventive measures, the Government is focusing on the following: (i) police training needs to be re-oriented to bring in a change in the mindset and attitude of the Police personnel with regard to investigations, so that they recognize and respect human rights, and adopt thorough and scientific investigation methods. (ii) The functioning of lower-level Police Officers should be continuously monitored and supervised by their superiors to prevent custodial violence and adherence to lawful standard methods of investigation. (iii) Computerization, video-recording, and modern methods of records maintenance should be introduced to avoid manipulations, insertions, substitutions and ante-dating in regard to any information and investigation report and to bring in transparency in action. Various guidelines issued by NHRC has resulted in accountability mechanism at the levels of (i) senior administrative and police personnel; (ii) state medical functionaries and (iii) conduct of magisterial enquiry in instances of custodial death.

91. The Government of India has issued an advisory on custodial deaths which incorporate guidelines issued by the NHRC on various aspects of custodial deaths. These guidelines require the District Magistrate and Superintendent of Police in every district should report to NHRC any incidents of deaths in police custody/judicial custody within 24 hours of occurrence or of these officers-having come to know about such incidents, failing which presumption of attempt to suppress the incident would arise. The NHRC has further issued guidelines for video-filming and photography of post-mortem examination in case of death in police custody. It lists down precautions to be taken before conducting the post-mortem examination. Strict guidelines have been issued which require that the voice of the doctor should be recorded and coloured photographs of the whole body and specific parts need to be taken. Similar instructions in respect of deaths in jail have also been issued by NHRC.

92. NHRC has issued further guidelines that need to be followed while conducting the magisterial enquiry in case of custodial death or death in the course of police action. Magisterial enquiry needs to be conducted at the earliest without undue delay to cover aspects in the nature of circumstances of death, manner and sequence of incidents leading to death, causes of death, person found responsible for death, adequacy of medical treatment. The magistrate is directed to examine the Inquest report, Post mortem report and other similar reports.

93. The Supreme Court of India, in *Prakash Singh and Ors. v. Union of India and Others*, has directed the establishment of a Police Complaints Authority at the district level to look into complaints against police officers (of and up to the rank of Deputy Superintendent of Police), with a similar structure in place at the State level. NHRC makes efforts to sensitize public servants for better protection of human rights through workshops and seminars.

94. There is no enforceable statutory right to compensation for persons claiming to be victims of unlawful arrest or detention against the State. However, courts in India have recognised this right as is evident from the observations of the Supreme Court of India in *Nilabati Behra v. State of Orissa* “relief of monetary compensation ... for indefeasible rights guaranteed under Article 21 of the Constitution is a remedy available in public law.” In limited instances, the courts and the NHRC have directed payment of compensation, which the State has duly complied.

95. The law in India incorporates requirements of Article 7 of the Covenant. India has signed but not ratified the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. The framework to address torture including remedial

measures as outlined in India's third periodic report continues to operate in full measure. Further, a comprehensive report from the Law Commission of India is awaited on the issue of prevention of torture which it has taken up for study and examination.

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

Reply to paragraph 19 of the list of issues

96. The provisions governing arrest of individuals under the CrPC are informed by the principles of reasonableness, certainty and necessity. The law envisages imposition of minimal restraint on persons arrested to prevent escape. It further secures to them the right to legal representation and right to bail. Highlighting the criticality of individual liberties, the Supreme Court of India in *DK Basu v. State of West Bengal* laid down extensive guidelines pertaining to arrests. Indian Courts have provided compensation for established violations of the fundamental rights, including that of liberty. The Supreme Court of India in this regard has observed "the right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of public interest and which present for their protection the powers of the State as a shield".

Reply to paragraph 19(a)

97. India, a country of 1.35 billion people with diverse legal needs and requirements, ensures that everyone gets access to legal aid through a Supreme Court Legal Services Committee, 39 High Court Services Committees, 36 State Legal Services Authorities, 670 District Legal Services Authorities and 2277 Taluk Legal Services Committees. Article 39A of the Constitution of India provides for free legal aid to ensure that opportunities for securing justice are not denied to any citizen. Legal Services Authorities have been established under the Legal Services Authorities Act 1987 at the national, state and district levels. These authorities are charged with providing a variety of services such as legal aid, organising *lok adalat*, providing mediation services, raising legal awareness, etc. As of 2019, 11,356 and 72,915 detainees were provided legal assistance at the police station prior to being produced before courts and at remand stage, respectively. To strengthen the legal aid framework in India, new initiatives which include training and capacity building of not just panel lawyers, but also para legal volunteers, elected representatives of *panchayats* and rural health workers have been undertaken at frequent intervals.

Reply to paragraph 19(b)

98. Article 21 of the Constitution equally applies to all citizens and foreigners, guaranteeing against arbitrary deprivation of their life and personal liberty. India continues to provide consular access to foreign nationals detained/arrested in India. The Ministry of External Affairs is the nodal agency in this regard. For further details on consular access, refer to paragraph 118 of this report.

Reply to paragraph 19(c)

99. The presumption of innocence is a cardinal principle of criminal jurisprudence in India. However, under limited number of special circumstances as clearly enumerated in the appropriate legislations, the presumption has been done away with. Therefore, the lack of presumption of innocence under UAPA is extremely limited to those instances wherein there exists a specific connection between the offence committed and the accused, and such a connection is scientifically established by experts.

Reply to paragraph 19(d)

100. Under the Indian Evidence Act, all confessional statements made to police officers are inadmissible in evidence, unless permitted by special laws. Notwithstanding this, any confession that is coerced is inadmissible as evidence in a court of law. To prevent its occurrence during investigation, the Supreme Court of India has given extensive directions for installation of CCTV cameras in Police Stations.

Reply to paragraph 19(e)

101. India is party to the Convention on the Rights of the Child (CRC) and abides by its principles of taking the best interests of the child as a primary consideration in all actions concerning children. The JJCP Act, 2015 was passed to comprehensively provide for care and protection to children found to be in conflict with law. Only when a heinous offence is alleged to have been committed by a child of 16 years and above, the Juvenile Justice Board constituted under the Act conducts a preliminary assessment as regards the mental and physical capacity to commit such an offence, ability to understand the consequences of the offence and the circumstances under which allegedly the crime was committed. Pursuant to such an inquiry, if the Board orders that there is a need for trial of the child as an adult, it may transfer the trial of the case to the Children's Court. This Court then decides whether to try the child as an adult. In any case, death sentence or life imprisonment (without the possibility of release) shall not be passed for any child in conflict with law.

Reply to paragraph 20 of the list of issues*Reply to paragraph 20(a)*

102. The life and liberty of individuals is secured by the Constitution of India and laws made thereunder. The Supreme Court of India in *Hussainara Khatoon and Others v. Home Secretary, State of Bihar* observed that "a procedure which keeps large numbers of people behind bars without trial so long cannot possibly be regarded as 'reasonable, just or fair' so as to be in conformity with the requirement of Article 21." A detainee can avail of bail provisions that are made available to him. Further, by virtue of an amendment in 2005, Section 436A was introduced into the CrPC under which a limitation period for which an undertrial prisoner can be detained is prescribed. Plea Bargaining, a pre-trial negotiation, was also introduced through an amendment in 2006.

103. In the case of *Hussain & Anr. v. Union of India*, the Supreme Court required the High Courts to direct the subordinate courts to dispose off the bail applications, magisterial trials, release under trials on personal bonds within specific time periods and accordingly prepare and monitor steps for speedy investigation and trials.

104. A Model Prison Manual, prepared pursuant to directions of the Supreme Court of India in *In Re: Inhuman conditions in 1382 prisons, inter alia*, provides for guidance on the facilities to be provided to under trials viz. legal defence, interview with lawyers, signing of *vakalatnama*, application to courts for legal aid the cost of which is borne by the State. NALSA plays an important role in reducing overcrowding in prisons. It has been providing free legal services to all under trial prisoners through its legal service clinics running in jails all over India and is also promoting plea bargaining for quick disposal of cases.

Reply to paragraph 20(b)

105. Criminal laws in India provide for anticipatory bail and bail as alternatives to detention. The approach adopted was succinctly captured by the Supreme Court of India in *State of Rajasthan v. Balchand* where it observed "the basic rule may perhaps be tersely put as *bail, not jail*." In *Sanjay Chandra v. Central Bureau of Investigation*, the Court further observed that "The primary purposes of bail in a criminal case are to relieve the accused of imprisonment, to relieve the State of the burden of keeping him, pending the trial, and at the same time, to keep the accused constructively in the custody of the court, whether before or after conviction, to assure that he will submit to the jurisdiction of the court and be in attendance thereon whenever his presence is required."

Reply to paragraph 20(c)

106. E-prison portal and Under Trial Review Committee (UTRC) constitute two administrative measures for operationalising Section 436A of the CrPC. The E-prison portal has integrated all activities related to prison and prisoners' management, including digitization and computerisation of information about the inmates lodged in the prisons. UTRC has been established for periodically identifying under trials eligible for release under Section 436A of the CrPC. As of 2020, 315 identification exercises had been conducted by

the UTRC, 2201 under trial prisoners were identified who had completed more than half of their maximum possible sentences and 759 under trial prisoners had been released as per the recommendation of UTRC. In 2014, the decision of the Supreme Court of India in *Bhim Singh v. Union of India* provided further momentum to the operationalisation of the spirit of Section 436A. It directed the Judicial Magistrate/Session Judge to hold sittings for a particular time period to identify the under-trial prisoners who have completed half period of the maximum sentence they would have got had they been convicted, for their release immediately. E-prisons has greatly facilitated the prison authorities in generating list of inmates whose cases are due for consideration by the UTRCs, thus making the system more robust and transparent. The Government of India had supported all States and UTs with a grant of Rs. 100 crores released between 2018–19 to 2019–2020 for digitising prison records and computerisation of the functioning of all prisons in the country. The E-prisons portal is integrated with the Interoperable Criminal Justice System (ICJS), which is a common platform for information exchange and analytics of all the pillars of the criminal justice system comprising of Police, Forensics, Prosecution, Courts and Prisons.

Reply to paragraph 20(d)

107. The number of under trial prisoners compared with the number of convicts since 2014 is given in the table below:

Year	Undertrial prisoners	Convicted prisoners
2014	282 879	131 517
2015	282 076	134 168
2016	293 058	135 683
2017	308 718	139 149
2018	323 537	139 488
2019	330 487	144 125

Source: National Crime Records Bureau.

108. Extensive and inclusive reforms have been introduced in the Indian judicial system to realise the right to speedy trial. These reforms have focused on timely adjudication, increased use of technology, adoption of case management process, and introduction of alternative fora. Some specific instances include: Lok Adalats under the Legal Services Authorities Act, 1987 were introduced to promote amicable resolution of disputes and Fast Track Courts were established in 2000 for expeditious disposal of long pending cases.

109. In *Anil Rai v. State of Bihar*, the Supreme Court of India directed delivery of judgment without undue delay on conclusion of trial. The Supreme Court in *Salem Bar Association v. Union of India* recommended the launch of a case flow management system that enables the judge or an officer of the court to set a time table and monitor the case from its initiation to its disposal.

110. Further, e-courts project was initiated in 2005 with the vision to enhance judicial productivity both qualitatively and quantitatively through adoption of ICT (information and communication technology). The e-Courts National portal which was launched in 2013 to play a key role in bringing about judicial reforms is presently in Phase II and lays great emphasis on digital service delivery to the litigants, lawyers and other stakeholders. The project also includes provision of video conferencing facility between courts and prisons, thereby facilitating the hearing of under trial prisoners at 500 locations across the country.

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

Reply to paragraph 21 of the list of issues

111. India takes the issue of overcrowding in prisons seriously and adopted a multi-pronged approach taking into account the Nelson Mandela Revised Rules of 2015. The Model Prison Manual, adopted in 2016, provides for detailed guidelines on various important

aspects of prison administration viz. Medical Care, Education of Prisoners, Legal Aid, Welfare of Prisoners, After-care and rehabilitation, Women Prisoners and formal Inspection of Prisons. The Manual provides for both informal as well as formal inspection of Prisons and submission of reports to competent authorities.

112. Various governmental schemes have been in place, out of which National Mission for Justice Delivery and Legal Reforms that was introduced in 2009 adopted innovative measures for expeditious case disposal by focusing on increasing access, reducing delay and arrears, and enhancing accountability through structural changes. Under the scheme of modernisation of prisons, 119 new jails, 1572 additional barracks in the existing prisons and 8568 staff quarters for the prison personnel have been constructed.

113. Various steps have been taken to improve prison conditions in India. Regular advisories and notifications from Ministries and guidelines by the Supreme Court are aimed at improving sanitation and other medical issues in the prisons. Training and sensitization workshops on prevention and control of HIV AIDS are being conducted for prison personnel.

114. Similar efforts have also been made to improve the mental health of the prisoners. In *Re: Illegal Detention of Machal Lalung*, the Supreme Court of India has issued general directions to avoid mentally ill persons languishing in psychiatric hospitals for a long time. It bestows powers on the Court/Magistrate to pass appropriate orders. The Supreme Court of India in *Shatrughan Chauhan and Anr. v. Union of India & Ors.*, directed regular mental health evaluation of death row convicts. To take care of the mental health of the prisoners, stress relieving programmes are conducted regularly. The NHRC has the mandate to independently inspect the conditions prevailing in custodial institutions and ensure protection of human rights of inmates. The Ministry of Home Affairs also engages with the National Institute of Mental Health and Neurosciences (NIMHANS), Bangalore to address these issues. For instance, two handbooks on dealing with mental health issues in prisoners during COVID-19 pandemic were prepared by NIMHANS in consultation with prison authorities.

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

Reply to paragraph 22 of the list of issues

115. The Constitution of India guarantees to all persons, not merely citizens, the basic rights such as rights to life, personal liberty, equality before the law and equal protection of laws. However such rights do not include rights to reside and settle in the country which are applicable only to the citizens of the country. In accordance with the provisions of Article 9 of the Covenant, the constitutionally protected rights to life and liberty in India can be abrogated only in accordance with procedure established by law.

116. While India does not have a national refugee legislation, all foreign nationals including refugees and asylum seekers are governed by the provisions contained in the Foreigners Act, 1946, the Registration of Foreigners Act, 1939, the Passport (Entry into India) Act, 1920 and the Citizenship Act, 1955 and the Rules/Orders/Standard Operation Procedure issued thereunder. In accordance with the provisions of Article 13 of the Covenant and the declarations made by India in this respect at the time of its accession, aliens in India are not expelled except in accordance with the applicable laws.

117. India has a long-standing tradition of hosting refugees and has been practicing the principle of voluntary repatriation and resettlement in line with the national laws and mutual agreement with the country concerned. An increasing number of refugees from bordering countries have voluntarily returned to their homelands in conditions of safety and in accordance with the agreements reached.

118. Every foreigner entering or staying in India should be in possession of valid documents and authorisation by appropriate authorities (passport and visa). India attaches high importance to providing timely consular access to foreign Missions for their nationals detained in India. State Governments are required to give immediate intimation of the arrest/detention of the foreigner in any part of the country to Ministry of External Affairs which in turn notifies the foreign Embassy concerned.

119. It has been the consistent stand of India that while it remains committed to the humanitarian protection of refugees, this humanitarian endeavor must be consistent with its goals of welfare of its citizens and national security. This is in consonance with Article 13 of the Covenant. The issue of deportation of illegal migrants of Rakhine state was considered by the Supreme Court of India in *Mohammad Salimullah and Anr V. Union of India*, and they found no grounds to interfere with the decision. Further, other matters concerning return of illegal migrants of Rakhine State are presently sub-judice.

120. India provides development and humanitarian assistance for displaced persons especially in the neighbourhood. It firmly believes that normalcy can only be restored with the safe, speedy and sustainable return of the displaced persons to Rakhine State of Myanmar, and that the only long-term solution to the situation is rapid socio-economic and infrastructure development that would help all communities living in the State. In this regard, India has signed a MoU for Rakhine State Development Programme with Government of Myanmar in December 2017 and has earmarked USD 5 million per year for the economic development of the Rakhine State. For the returnees to Myanmar, 250 modern pre-fabricated houses were constructed and handed over in July 2019. India is implementing the second phase of the programme signed in 2020, which includes projects on water supply, solar power plants, construction of roads, etc. India is also developing the Sittwe Port in the Rakhine State thereby augmenting trade and connectivity. It is important to note that all projects being undertaken by India in Rakhine State are grant-in-aid projects for the welfare of the people and that there are no commercial interests involved. In the interest of providing help to Bangladesh, which is also hosting a million displaced people in its territory, Government of India has delivered five separate tranches of aid including food, medicine, clothes, winter wear, cooking fuel and stoves, and solar street lights – amounting to nearly USD 7 million.

121. Refugees or asylum seekers do not face any discrimination in accessing birth registration in India. It is however important to note, that citizenship of India is governed by the provisions of the Citizenship Act, 1955 and Rules made thereunder. Therefore, children born in India to non-citizens are not automatically granted citizenship.

Right to privacy (Article 17)

Reply to paragraph 23 of the list of issues

122. While the right to privacy has been recognised to be an inalienable right and an integral part of the right to life, personal liberty and dignity as articulated in Article 21 of the Constitution of India, it is not absolute in nature. However, a range of legislations including the IPC, Indian Telegraph Act 1885, The Indian Post Office Act 1898, Information Technology Act 2000, the RTI Act, provide an interlinked framework for the safeguard of privacy in specific instances and protection of data. For more details, please refer to paragraph 127 of this report.

123. In recent years, as a part of its good governance initiatives India has undertaken numerous measures to utilise technology to improve service delivery. The flagship programme in this regard is the Aadhaar Project launched pursuant to the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016. The Act aims at provisioning of efficient, transparent, and targeted delivery of subsidies, benefits and services to individuals residing in India through assigning them biometric based unique identification numbers. Aadhaar can be used as a permanent financial address, which facilitates financial inclusion of the underprivileged and weaker sections of the society within the economic safety net provided by the State. It is therefore a tool of distributive justice and equality. It is a random number and cannot be used to profile people based on caste, religion, income, health and geography. Aadhaar database is not linked to any other database, or to information held in other databases. Its only purpose is to verify a person's identity at the point of receiving any subsidy or benefit or a service, and that too with the consent of the Aadhaar number holder.

124. Unique Identification Authority of India, the statutory authority in charge of the Aadhaar project, has adopted strict security and storage protocols for the protection of Aadhaar data. Data of all Aadhaar number holders is secured with advanced encryption

technologies in a highly secure data vault, the Central Identities Data Repository (CIDR). All access details are properly logged. A Constitution bench of the Supreme Court of India, in 2018 upheld the Aadhaar framework as fulfilling the constitutional benchmarks of legality, legitimacy and proportionality. Till date, there has been no instance of breach of Aadhaar database or public sharing of Aadhaar records.

125. In a landmark decision, a nine judge Constitution Bench of the Supreme Court of India in *Justice K.S. Puttuswamy (Retd.) v. Union of India* (2017) recognised the right to privacy as a fundamental right and any limitations thereon was required to satisfy the triple test of legality, legitimate aim and proportionality. In reaching this conclusion the Court relied on the Covenant and observed “India’s commitment to a world order founded on respect for human rights has been noticed along with the specific articles of the Universal Declaration of Human Rights and the ICCPR which embody the right to privacy. In the view of this Court, international law has to be construed as a part of domestic law in the absence of legislation to the contrary and, perhaps more significantly, the meaning of constitutional guarantees must be illuminated by the content of international conventions to which India is a party.”

126. The Personal Data Protection Bill 2019, which is in advance stages of consideration by a Joint Parliamentary Committee, seeks to establish a comprehensive legal framework for protection, processing and storage of personal data. Similarly, an expert committee was constituted in 2019 by the Ministry of Electronics and Information Technology to deliberate upon issues relating to non-personal data, and suggest a comprehensive governance framework for its regulation. The revised Report of the Committee was released in 2020 and public submissions thereon were invited till 31.01.2021. Currently the usage and transfer of sensitive personal data of citizens is regulated under the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011.

127. The regulatory framework for lawful interception is provided under the Indian Telegraph Act 1885 and the Information Technology Act 2000. Interception can be done only on the occurrence of any public emergency or in the interest of public safety, when it is deemed to be necessary or expedient to do so, in the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States or public order or for preventing incitement to the commission of an offence. It is undertaken strictly in conformity with the provisions of law and only by authorised Law Enforcement Agencies. To further guard against unlawful and arbitrary interference, directions of interception are periodically reviewed by independent review committees constituted under the law. In *PUCL v. Union of India* the Supreme Court of India clearly held that prior judicial scrutiny was not required before intercepting telephone conversations. However, procedural safeguards are necessary for preventing violation of right to privacy as embodied under Article 21 of the Constitution of India.

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

Reply to paragraph 24 of the list of issues

128. India is a Secular state, characterised by religious tolerance, equal treatment of all religious groups and respect for all faiths and religions. All religions enjoy the same constitutional protection without favour or discrimination. Secularism is a basic feature of the Constitution of India. The Constitution of India protects freedom of religion and conscience, and the right of all individuals to freely profess, practice and propagate religion subject to considerations of public order, morality and health. This includes making of laws regulating or restricting any economic, financial, political and other secular activity that may be associated with religious practice.

129. IPC punishes offences such as promoting of enmity between different groups on ground of religion, committing a deliberate and malicious act designed to outrage the religious feelings of any class by insulting its religion or religious beliefs, and doing acts

prejudicial to maintenance of national integration and harmony. This is in compliance with Article 20(2) of the Covenant.

130. Pursuant to the order of the Supreme Court of India, in *Tehseen S Poonawalla v. Union of India*, senior police officers of the Police Department have been nominated as the Nodal Officer in each District, with the mandate to take strict action against members of vigilante cow protection mobs that behave or engage in unlawful activities including any form of vigilantism. Other measures have included regular community meetings, constitution of special task force, regular patrolling in sensitive areas, proactive steps to curb and stop dissemination of irresponsible and inflammatory messages on social media, constitution of fast-track courts for expeditious trial in such matters, and disciplinary action against erring state officials. Detailed guidelines on communal harmony were issued by the Government of India to prevent and address communal disturbances. The Ministry of Home Affairs have also issued advisories to States and UTs, from time to time, to maintain law and order, to keep watch on circulation of fake news and rumours having potential of inciting violence, take all required measures to counter and curb incidents of mob lynching in the country. The Government through audio-visual media has also generated public awareness to curb the menace of mob lynching. Government constituted a Group of Ministers (GoM) headed by the Union Home Minister to examine the matter and make recommendations. In addition, the Committee for Reforms of Criminal Law is currently appraising the possibility of inclusion of provisions pertaining to mob lynching in the IPC, 1860. The NCM and NHRC, investigate allegations of religious discrimination. Additionally, the Ministry of Minority Affairs and State Minorities Commissions, may also investigate allegations of religious discrimination.

Reply to paragraph 25 of the list of issues

131. India is a multi-religious and multi-ethnic society and is home to several religions, in particular Hinduism, Buddhism, Islam, Christianity, Zoroastrianism, Jainism and Sikhism. While freedom of religion and conscience is a fundamental right in India, its operation is subject to public order, morality, health and other fundamental rights. This is in consonance with Article 18(3) of the Covenant. In *Rev Stainislaus v. State of Madhya Pradesh* the Supreme Court of India has upheld the constitutional validity of a legislation prohibiting conversion of a person by force, fraud or allurement. Various anti-conversion laws impose restrictions, prohibit conversions from one religion to another by the use of force, inducement, allurement, or fraudulent means.

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

Reply to paragraph 26 of the list of issues

132. Freedom of expression in India is part of a composite right to freedom of speech and expression and is available only to citizens. The freedom is not absolute in nature and is subject to reasonable restrictions in the interests of the sovereignty and integrity of India, security of the State, friendly relations with foreign States, public order, decency or morality, contempt of Court, defamation or incitement to an offence. Specific articulations of these grounds are found in various legislations including the IPC 1860, Cinematograph Act, 1952, etc. It is a settled law in India that any restrictions imposed must not be excessive or disproportionate. The procedure and manner of imposition of the restrictions must also be just, fair and reasonable. The general standard of reasonableness subsumes doctrines of proximity, arbitrariness, vagueness, and proportionality. They are in consonance with Article 19(3) of the Covenant. Being a fundamental right, any restriction imposed is amenable to the judicial review by the Constitutional Courts, including directly approaching the Supreme Court of India.

133. The suspension of mobile telephony and internet services, including in Jammu and Kashmir, were imposed under the Telegraph Act, 1885 and Temporary Suspension of Telecom Services (Public Emergency or Public Safety) Rules, 2017 as necessary and unavoidable response to a public emergency. Such responses prevent aggravation of situation by transmission, including cross border transmission, of misinformation and false news all of which were detrimental to the integrity and sovereignty of India. The Supreme Court of

India in *Anuradha Bhasin v. Union of India* (2020) broadly upheld the power of the State to impose reasonable restrictions on mobile telephony and internet services subject to constitutionally prescribed principles. The Information Technology Act, 2000 read with the Information Technology (Procedure and Safeguards for Blocking for Access of Information by Public) Rules, 2009 allows blocking of access to information on the internet. The framework also provides for executive and judicial review of the exercise of such power. The Supreme Court of India in *Shreya Singhal v. Union of India*, upheld the constitutional validity of the framework provided in the Act.

134. The Information Technology (Intermediary Guidelines and Digital Media Ethics Code) Rules, 2021 was notified on 25.02.2021, replace the Information Technology (Intermediaries Guidelines) Rules, 2011 to address the growing concerns around the increasing instances of misuse of social media by criminals and anti-national elements. The intermediaries are further enjoined to develop a robust grievance redressal system. Actions under the Rules are subject to judicial review.

Reply to paragraph 27 of the list of issues

Reply to paragraph 27(a)

135. India strongly condemns instances of harassment, intimidation, smear campaigns and violent attacks against human rights defenders, activists and journalists and their family members. India attaches highest importance to the safety and security to every citizen of the country including journalists. A 'Journalist Welfare Scheme' has been implemented to provide *ex gratia* relief of upto 5 lakhs on urgent basis to journalists or their families under extreme hardship on account of death or permanent disability of journalists. During the last three years (2018–19 onwards) a total of 112 journalists have benefitted under the scheme. Regular advisories on safety of journalists including emphasizing the importance of time bound investigation for speedy delivery of justice, have been issued by the Government of India to States/UTs.

136. On the specified instances of attacks against writers and activists, a number of arrests have been made, investigations have been completed, charge sheets have been filed against the accused persons and the trials are ongoing. No travel restrictions have been imposed as alleged in the LOIPR.

137. NHRC has set up a dedicated focal point for receiving and examining complaints about alleged violation of human rights of Human Rights defenders. The Commission has also made efforts to strengthen its complaint handling mechanism through promotion of online submission of complaints and utilization of common Service Centres in the country for enhancing the outreach to people. The complaints received are processed on priority and taken up with the authorities concerned in the state Government for ensuring protection to the human rights defenders as well as redressal of their grievances. NHRC has made recommendation for monetary relief of Rs. 13.25 lakh in five cases (one each from Bihar, Karnataka, West Bengal, Chhattisgarh and Tamil Nadu) during last four years till 31.08.2020. However, release of human rights defenders is a matter within the jurisdiction of respective Courts. Further, Toll Free numbers have been put in place to provide required assistance to human rights defenders and NGOs, civil society members, etc., to obtain easy access to NHRC in case of alleged violation of human rights. Efforts are also being made to sensitize public servants in this regard through workshops, seminars and camp sittings.

Reply to paragraph 27(b)

138. Laws in India recognise rights and freedoms but with reasonable restrictions. Provisions in the nature of arrest and detention under laws like NSA, etc had been introduced to secure a balance between the liberty of citizens and security of the state. A robust system of checks and balances overseen by an independent judiciary is in place to ensure that there is no abuse or misuse of such laws. For instance, the Supreme Court of India in *Rajat Sharma and Anr. v. Union of India and Others*, has stated that the expression of view which is a dissent from a decision taken by the Central Government itself cannot be said to be seditious.

Reply to paragraph 27(c)

139. Section 144 of the CrPC bestows power on certain officials as a measure to preserve law and order. The order under this section is open to judicial review which is a potent tool for any person aggrieved by such an action. In *Anuradha Bhasin v. Union of India* the Supreme Court of India has clearly summarised the legal position of this section being remedial and preventive in nature for the danger so contemplated. The Magistrate is duty bound to balance the rights and restrictions based on the principles of proportionality to not suppress legitimate expression of opinion or grievance of any democratic rights.

Reply to paragraph 27(d)

140. The Government of Tamil Nadu appointed a Commission of Inquiry to inquire into the causes and circumstances that led to the opening of fire in Thoothukudi, to determine whether appropriate force was used as warranted by the circumstances and to ascertain whether there was any excess on the part of police officials. In addition, the state Government is taking measures like providing employment and financial assistance to citizens who were affected during violence, withdrawal of cases that were filed against various political parties and issuance of no-objection certificates to the youths involved in the case so that they may apply for jobs or continue their education.

141. Pellet guns, in the state of Jammu and Kashmir were used as a means of crowd control when the violent protests and rioting caused disruption of law and order. Pellet guns were used as a last resort, in the rarest of the rare cases, to control the violent situation at hand. Further, the use of pellet guns was done strictly in accordance with the established SOPs and in the presence of supervisory officers and Executive Magistrates. SOPs ensure that pellets are fired below the waist line using deflectors so as to cause minimum damage to the members of mobs and violent protesters. The High Court of J&K in the case of *J&K High Court Bar Association vs Union of India* dismissed the allegations of illegal and excessive use of pellet guns. Keeping in mind the balance between the freedom of speech and expression of a citizen and the security of State, the Government of India constituted an Expert Committee in 2016 to explore other possible alternatives to Pellet Guns. The recommendations of the Committee have been taken into account by the Government for appropriate implementation. Accordingly, *PAVA-Chilli* (Shells and Grenades), *STUN-LAC* (Shells and Grenades) and Tear Smoke Shells may be used to disperse the unlawful violent protesters before the use of Pellet Guns.

Freedom of association (art. 22)**Reply to paragraph 28 of the list of issues**

142. In India freedom to form association is available to everyone under the relevant Acts. The Foreign Contribution (Regulation) Act 2010 (FCRA) seeks to regulate acceptance and utilization of foreign contribution/donation by individuals, association and companies in India.

143. NGOs registered or granted prior permission under the FCRA by Central Government can receive foreign contribution/ donation. Such contribution can be utilized for a definite cultural, economic, educational, religious or social programme. Based on inputs from security agencies and based on scrutiny of records, if any violations are found, action is initiated against the alleged violators after following due process as prescribed in the Act. Depending on the gravity of violations, action such as suspension, cancellation of registration under FCRA compounding of the offence, initiation of prosecution, or placing the recipient or the foreign donor under prior permission category are taken. Till 23.08.2021, a total of 22,716 association had valid FCRA registration.

144. It is incorrect to suggest that India is in anyway misusing FCRA against human rights institutions and activists. Actions against the noted institutions, particularly Amnesty International, arose from illegal practices, including *mala fide* rerouting of money, and wilful and continuing violations of extant legal provisions like FCRA regulations, foreign exchange management rules and tax laws. Currently the matter is *sub-judice*. It is important to reiterate

that all institutions are permitted to operate in India, but must do so in accordance with the law.

145. India is committed to ensuring a safe working environment for people engaged in promotion and protection of human rights. At the same time, India believes that the activities of the human rights defenders should be in conformity with the law of the land and the rights guaranteed by the Constitution. With regard to the criminal proceedings pending against Ms Indira Jai singh and Mr Anand Grover of the Lawyers Collective, the allegations are that the organisation received foreign funds between 2009 and 2015, but failed to disclose a major part of it, was in violation of FCRA and Indian tax laws. The matter is currently pending before the Supreme Court. In the last hearing, the Court gave a clear direction that the investigation agencies can probe the case in accordance with the law.

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

Reply to paragraph 29 of the list of issues

146. The first NRC was prepared in 1951 after the conduct of the Census of 1951, by recording particulars of all the persons enumerated during that census. At present the process of updating NRC has been undertaken only for the State of Assam, which commenced in 2013 pursuant to the direction of the Supreme Court of India. The legal framework governing the NRC update is The Citizenship Act, 1955, and The Citizenship (Registration of Citizens and Issue of National Identity cards) Rules, 2003.

147. The NRC updation process was conducted pursuant to a robust mechanism created in accordance with existing legal framework and incorporating appropriate safeguards to protect the rights of people involved and comprehensively address any concerns as to discrimination. Information on the process was regularly provided through numerous online and offline media. Adequate opportunity of being heard was given to all persons at every stage of the process. 2,500 NRC Seva Kendras (Help Desks) and Data Helplines were set up in Assam to assist the public. Verification of claims and objections as to omission from the NRC was carried out in a manner that was fair, transparent and provided a reasonable opportunity to all concerned. It was carried out by senior officers of the state Government and the work was closely monitored and supervised by the District Magistrates. They were required to undertake necessary Quality Checks in at least 10% of the cases. Further senior state Government officers were appointed as Observers to oversee the process of determination of claims and objections in the district and were required to report directly to the State Coordinator, NRC. Additionally, the progress in the preparation and updation of the NRC for the state of Assam was directly and closely monitored by the Supreme Court of India.

148. It is important to reiterate, that non-inclusion of a person's name in the NRC did not imply that the concerned person was declared as a foreigner. Any person who was not satisfied with the outcome of the determination of claims and objections could prefer an appeal against the determination before the Foreigners Tribunals of Assam established under the Foreigners (Tribunals) Order 1964 within a period of one hundred and twenty days. Judicial review of the order of the tribunal was available in the form of recourse to the Gauhati High Court and further before the Supreme Court of India.

149. The Citizenship (Amendment) Act 2019 (CAA) is a limited and focused legislation, which reaffirms India's faith and commitment to secularism. It was enacted by the Indian Parliament after extensive deliberations in both the houses of the Parliament. Its provisions were also considered at length by a 30-member Joint Parliamentary Committee comprising of members from Lok Sabha and Rajya Sabha. The Amendment Act is aimed at enabling foreigners of six minority communities from three specified neighbouring countries who have migrated to India owing to religious persecution. It neither takes away citizenship of any Indian citizen nor amends nor abridges any existing process for acquiring Indian citizenship by any foreigner of any country belonging to any faith or religion. It is important to note that the Constitution of India, guarantees life and liberty of every individual in India, which can be restricted only in accordance with procedure established by law. Further, as

mentioned at paragraph 116 of this report and the previous report, aliens in India are not expelled except in accordance with the procedure established by law.

Participation in public affairs (arts. 25 and 26)

Reply to paragraph 30 of the list of issues

150. Political parties are an essential ingredient of a multi-party parliamentary democracy. A transparent method of funding political parties is vital to the system of free and fair elections. To that end, the Government of India notified the Electoral Bond Scheme in 2018, to regulate the system of political funding in the country. The scheme specifically aims to address the menace of unaccounted and black money in Indian politics by making the process of election financing more transparent and injecting it with greater accountability. Only the political parties registered under the Representation of the People Act, 1951 and which secured not less than one per cent of the votes polled in the last General Election to the House of the People or the Legislative Assembly of the State, are eligible to receive the electoral bonds.

151. An electoral bond can only be purchased through a formal banking system and encashed by an eligible political party, only through a bank account with an authorized bank. As a result, details pertaining to every bond transaction made (including records of donor and recipient political parties) is appropriately accounted for and traceable. It should however be noted that identity of donors is kept confidential, as donors had in the past expressed reluctance in donating by cheque or other transparent methods as it would disclose their identity and entail adverse consequences. Additionally, disclosure of names of donors and donees of electoral bonds would infringe their right to privacy. The CIC in *Vihar Durve v. CPIO, State Bank of India, Mumbai* endorsed this approach by concluding “The Commission upholds the contention of the respondent that in the disclosure of the names of the donors and donees of electoral bonds from books of accounts may be in contravention of the provisions contained under section 8 (1)(e) and (j) of RTI Act, 2005. There appears to be no larger public interest overriding the right to privacy of the donors and donees concerned.” While few concerns as regards the electoral bonds scheme have been raised, they are currently pending consideration before the Supreme Court of India.

152. India has a direct and participatory democracy based on the principle of one person one vote. The legal framework governing various aspects of the electoral process is provided in the Constitution of India, the Representation of Peoples Act 1950, the Representation of Peoples Act 1951, and the Rules made thereunder. The Supreme Court of India in *People’s Union for Civil Liberties v. Union of India* affirmed that the right to vote is a statutory right, and not a fundamental or constitutional right. The right to vote of an eligible person with intellectual or psychosocial disabilities is protected under the applicable law.

153. The right to contest the elections to Panchayati Raj Institutions (PRI) is a constitutional and statutory right and therefore subject to reasonable restrictions under the law. The Constitution of India contemplates Panchayats as a potent instrument of family welfare and social welfare schemes for the betterment of people’s health. Adoption of two child norm for the purposes of PRI elections was done with the objective of promoting family welfare and family planning. This is consistent with the National Population Policy 2000 which stressed on family planning and improvement of quality of life. It was based on the assumption that its adoption by elected representatives, who are viewed as models, will inspire and encourage other people to follow their example in family composition. The noted limitation applies to all without distinction. Therefore, the purpose of the legislation, as required by the Covenant, is both reasonable and objective. Endorsing this understanding, the Supreme Court of India in *Javed and others v. State of Haryana* had observed, “In our view, disqualification on the right to contest an election on having more than two living children does not contravene any fundamental right nor does it cross the limits of reasonability. Rather it is a disqualification conceptually devised in national interest.”

Rights of indigenous peoples (art. 27)

Reply to paragraph 31 of the list of issues

Reply to paragraph 31(a)

154. India regards all its citizens as indigenous. The Constitution provides for notification of certain communities as Scheduled Tribes (ST) and envisages affirmative action in their favour through reservation of seats in representative bodies, educational institutions, employment etc. A multi member NCST has also been set up for ensuring effective protection and implementation of various safeguards provided for the Scheduled Tribes in the Constitution and other protective legislations.

155. In order to empower the Scheduled Tribes and improve their educational, social and economic conditions, a number of initiatives have been undertaken, including establishment of Eklavya Model Residential Schools, upgradation of existing schools, construction of hostels and strengthening of community and primary health care infrastructures, skill development programmes, scholarship schemes etc. Every year about 30 lakh ST beneficiaries reap benefit to the tune of INR 25 billion. The scheme of Development of Particularly Vulnerable Tribal Groups (PVTGs) covers 75 identified PVTGs amongst most vulnerable tribal communities for the socio-economic development. Under the scheme, activities for Conservation-Cum-Development Plans are to be prepared by the Governments in the sectors of education, health, sanitation, nutrition, livelihoods, conservation of culture, heritage and recognition of habitat. Tribal Cooperative Marketing Development Federation of India Ltd. (TRIFED) undertakes marketing of tribal products through network of retail outlets, having generated a business of more than INR 21 million in 2020. Four diverse initiatives for the development of Tribes that have been very effective are “Eco-Rehabilitation of tribal villages through Innovative design in water management using Ice-stupa”, “Swasthya: Tribal Health and Nutritional Portal”, “Performance Dashboard Empowering Tribals Transforming India” and “Empowerment of Tribals through IT enabled Scholarship Schemes.”

Reply to paragraph 31(b)

156. Identifying the distinct way of life of tribals, the Constitution guarantees greater autonomy and powers of self-governance to the areas designated as scheduled areas, wherein the Governor, advised by the Tribes Advisory Council, may exclude or direct variable application of any law made by the Parliament or state legislature. To further democratise self-governance by the tribals in scheduled areas, the Parliament enacted the Panchayats (Extension to the Scheduled Areas) Act, 1996 (PESA) which specifically authorises the *Gram Sabha*, a body of all the adult members of a village, to approve plans and programmes of social and economic development, to be consulted before acquisition of land, recommend grant of mining lease or grant of concession for exploitation of minor minerals. PESA places special responsibility on the concerned state legislature with regard to redefining the role of panchayats at the district level. In pursuance of the same, many state legislatures have operationalised PESA to varied degrees, making consultation and recommendation from the *gram sabha* a pre-requisite for transfer of land for industrial and other activities.

157. The transfer of land for extractive activities in forest areas is circumscribed by the Scheduled Tribes and Other Traditional Forest Dwellers Act 2006. It secures the individual as well as collective rights of Scheduled Tribes and other traditional forest dwellers to *inter alia* hold and live on the forest land, use, collect and dispose of minor forest produce, use common property resources etc. The Government of India has also issued advisories clarifying that mining lease deeds by the State Governments under the Mines and Minerals (Development and Regulation) Act, 1957 must necessarily be in compliance with provisions of the Forest Dwellers Act. The context of extractive activities often demands balancing the right to development with the autonomy and cultural rights of tribals and presents difficult situations.

Reply to paragraph 31(c)

158. The total number of families affected by the Sardar Sarovar dam project are 32,546. All these families (4,764 from Gujarat, 4,180 from Maharashtra and 23,602 from Madhya Pradesh) have been resettled and adequately compensated. Key benefits given to displaced families include provision of agricultural plots of land, productive assets, resettlement grants etc. All matters related to compensation, rehabilitation and resettlement of affected families are overseen by the Narmada Control Authority.

Reply to paragraph 31(d)

159. As a general principle, sale of land through coercion is illegal, which in turn can be challenged and declared null and void by the appropriate court. In addition, transfer of land from tribal to a non-tribal through coercion is also outlawed under the laws prevailing in areas designated as Scheduled Areas under the Fifth Schedule of the Constitution. Certain areas in Raigad district of Chhattisgarh are designated Scheduled Areas. Section 170-B of the Chhattisgarh Land Revenue Code, 1959 provides for the return of land in scheduled areas where a non-tribal is shown to have taken possession of land illegally from a tribal owner. Apart from the legal mechanisms that exist for challenging coercive sale of land, the matter of coercive selling of land by the tribals to private companies was proactively taken up by NCST, a quasi-judicial body, which issued a set of recommendations to the state government in this regard.

Reply to paragraph 31(e)

160. The acquisition of land for coal mining may take place in a scheduled or a non-scheduled area, which is also determinative of the law applicable in these different situations. The Right to Fair Compensation and Transparency in Land Acquisition Rehabilitation and Resettlement Act, 2013, is a general law laying the requirement of consultation for the purposes of acquisition of land and is applicable to scheduled areas as well. It adopts a fair, transparent and consultative approach to acquisition of land and rehabilitation of the displaced. It circumscribes the sovereign power of eminent domain to the rights of people. However, this circumscription does not extend to certain purposes which are crucial for the basic infrastructural and fuel needs of the society at large. The application of 2013 Act, therefore, does not extend to acquisition under the Coal Bearing Areas Acquisition and Development Act, 1957. However, acquisition of land for coal mining, in a scheduled area must be done in accordance with PESA and rules made by the respective state thereunder. Most of the states in India have adopted rules for operationalisation of PESA. Chhattisgarh operationalises PESA through amendments introduced in its land revenue code, 1959.
