

Children's Rights Extracts from ACHR's Report “India’s Draft Universal Periodic Report-II: A Case of Forced Marriage?”

3. The State of Human Rights in India: A joint submission made by ACHR on behalf of the Peoples Forum for UPR

III. Compliance with international human rights treaties

b. Status of human rights mechanisms

All the National Human Rights Institutions of India such as the National Human Rights Commission (NHRC), National Commission for Women (NCW), National Commission for Minorities (NCM), National Commission for Scheduled Castes (NCSC), National Commission for Scheduled Tribes (NCST), National Commission for Protection of Child Rights do not comply with the Paris Principles on NHRIs. First, none of them can make their Annual Reports public without the same being first placed before the parliament. Not a single Annual Report of the NCST has been made public since 2004 despite submissions of four reports to the President of India. Second, there is no legal guarantee to ensure plurality in the composition of members. Many NHRIs lack representation from women and vulnerable groups. Currently, the NHRC has no female member. Third, the NHRIs do not have financial autonomy and cannot hire their own permanent staff. The staffs are on deputation from various departments including the Intelligence Departments.

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IV. Human Rights Situation on the Ground Since 2008

1. Equality and non-discrimination

Equality and non-discrimination are guaranteed in law but not in practice. Further, special laws and policies for promotion and protection of the rights of the Dalits, indigenous peoples, religious minorities, women, children and disabled are not implemented effectively.

Patriarchy remains the root cause of discrimination against women. There is preference for boys and the Pre-Natal Diagnostic Techniques Act and other measures have failed to curb cases of female foeticide. According to the provisional census of 2011, the sex ratio (the number of females per 1,000 males) for the 0-6 age group plummeted to 914 from 927 in 2001 census. Haryana reported the worst sex ratio of 830 females in the country in the 0-6 age group. Dowry deaths of women are widespread despite the Dowry Prohibition Act. A total of 24,946 dowry deaths were reported during 2008-2010 respectively 8,172 cases in 2008, 8,383 cases in 2009 and 8,391 cases in 2010.

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2. Civil and political rights

b. Right to life

The civilians are routinely killed in disproportionate use of fire-arms by the law enforcement personnel. A total of 740 civilians were killed in police firing from 2008 to 2010, including 239 persons in 2010, 184 persons in 2009, and 317 persons in 2008. In J&K alone, at least 109 persons, including children and women, were killed in firing by security forces during the mass protest in the Kashmir Valley during 11 June 2010 to September 2010.

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2. Civil and political rights

c. Personal liberty

As per the ACHR’s report, Juveniles of J&K: Unequal before the Law & Denied Justice in Custody

of November 2011, children in J&K have been consistently detained under the J&K Public Safety Act in clear violation of the Supreme Court ruling that juveniles must be tried under the juvenile laws.

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2. Civil and political rights

i. Freedom of religion and belief, expression, association and peaceful assembly, and right to participate in public and political life

The Foreign Contribution (Regulation) Rules, 2011 adopted for implementation of the Foreign Contribution Regulation Act, 2011 violates the freedom of association and expression of the HRDs. Under Rule 3, any voluntary organization including Students Unions, Workers' Unions, Youth Forums and Women's wing of a political party; organization of farmers, workers, students, youth based on caste, community, religion, language or otherwise and any organizations which resorts to 'bandh' or 'hartal', 'rasta roko', 'rail roko' or 'jail bbharo' in support of public causes can be branded as "organization to be of political nature, not being a political party", and therefore prevented from receiving foreign grants. Further, all NGOs are required to renew their permission every five years.

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3. Economic, social and cultural rights

One national survey have found dismal state of the Right of Children to Free and Compulsory Education Act of 2009 that seeks to provide free and compulsory education to all children of the age of six to fourteen years. The survey have found that - (i) one-third of all primary and upper primary schools face acute shortage of classrooms and do not comply with the RTE requirement of one teacher one classroom ratio; (ii) about half of primary and upper primary schools face shortage of teachers; (iii) 25% schools lack office cum store; 48% schools lack playground; 50% schools do not have boundary wall or fence; (iv) 37% schools do not have library; (v) 50% of schools do not either have a toilet or unusable; (vi) 63% schools do not either have a separate toilet for girls or unusable; (vii) mid-day meals is not served in 17% schools while 19% schools lack kitchen shed for midday meals; (viii) 28% schools do not have provision for drinking water; (ix) children's attendance during period 2007-2010 was around 73% and (x) 5.9% of girls in the age group of 11-14 years are out of school compared to 3.5% boys across India.

The right to highest attainable standards of health does not exist. Health care system has collapsed in several parts of the country. At least 83 children have died in West Bengal during June – November 2011 due to lack of basic healthcare facilities in the State run hospitals. Further, a total of 585 children died due to encephalitis in eastern Uttar Pradesh in 2011 according to official data as of 23 November 2011.

The violations of the Rights of the Child are rampant with Dalit and Adivasi children being more vulnerable. The Supreme Court issued directions for implementation of the Juvenile Justice (Care and Protection of Children) Act, 2000 on 10 January 2010 but implementation remains only on paper. J&K has only one juvenile justice home for boys at R S Pura. Juvenile girls must be sent to police lock ups or prisons in the absence of a single Juvenile Home for Girls in J&K. Juveniles in Kashmir are detained with adults in prisons and tried as adults due to non-implementation of the J&K Juvenile Justice Act, 1997.

The Chhattisgarh government continues to recruit children of the police personnel killed on duty as

“balarakshaks” (Child Guards) and these children cannot attend schools at least three days a week.

The security forces continued to occupy schools in conflict affected areas. On 1 October 2010, the Supreme Court directed the MHA and the State governments “to ensure that the para military forces vacate the school and hostel buildings occupied by them” and submit an Action taken report within two months. Following Supreme Court’s order the security forces vacated six out of the 31 schools as of 6 January 2011 in Chhattisgarh. On 18 January 2011, the Supreme Court directed the state government of Chhattisgarh to vacate all school buildings under the occupation of security forces within four months. On 7 March 2011, the Supreme Court directed the Jharkhand and Tripura governments to ensure that all schools and hostels of educational institutions are free from the occupation of security forces within two months. 21 schools in Jharkhand and 16 schools in Tripura were still under occupation by the security forces. Similarly, a number of schools are said to be in the possession of security forces engaged in anti- militancy operations in J&K; and no direction has been issued by the Supreme Court.