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Analysing India's Universal Periodic Review Submissions on Economic, Social and Cultural Rights

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ABSTRACT

The Universal Periodic Review (UPR) process involves a cyclical peer review of a State's fulfilment of its human rights obligations under various international humanitarian law instruments ratified by the State. This review consists of three reports with large disparities apparent between the information submitted by the National Report and the realities noted by stakeholders and other peer nations. The paper undertakes an empirical study of India's UPR submissions on its economic, social, and cultural obligations through its policies on education, health, housing, and sanitation and drinking water, and food security sectors. The paper thereby assesses the reports juxtaposed against the various Working Group recommendations to analyse their implementation patterns and gaps within the State over the span of ten years. While it seems that the Stakeholders have been active in recognizing the rights of groups suffering from lack of resources, the State under Review and the Working Group have been dormant in this regard. The Reports rarely recognised the intersectionality between the objectives of education, housing, food, water, and health and their inaccessibility to these special groups, thus adopting a myopic approach ignoring the groups that suffer from multiple disabilities in accessing to these resources. The paper concludes that although the recommendations rarely fructify, India has been widely lauded for its policies within these sectors.

I. A BRIEF OVERVIEW OF THE REVIEW PROCEDURE

The Universal Period Review (UPR) mechanism was established in 2006 by the United Nations General Assembly Resolution 60/25 as a response to the profound politicization within the Human Rights Commission. It reassigned the role of an impartial arbiter of human rights to other political bodies, a move which was a significant change from other UN accountability measures which relied largely on experts.² The UPR process involves a cyclical peer review of

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² Leanne Cochrane & Kathryn McNeilly (2013) The United Kingdom, the United Nations Human Rights Council and the first cycle of the Universal Periodic Review, *The International Journal of Human Rights*, 17:1, 152-177, DOI: 10.1080/13642987.2012.720571

a State's fulfilment of its human rights obligations aimed towards 'equal treatment of all countries' under the "UN Charter, the Universal Declaration of Human Rights, human rights instruments which the State concerned has ratified, voluntary pledges made by the State, and other applicable international humanitarian law."³

Under the UPR process, 48 states are reviewed each year – wherein India was reviewed under the 2008, 2012, and 2017 cycles. The State under review is required to submit a report containing 3 documents – "(i) a national report submitted by the State under review; (ii) a report by independent human rights groups and treaty bodies; and (iii) information submitted by other stakeholders including national human rights and non-governmental organizations."⁴

Subsequently, a review of the aforementioned reports is undertaken by a Working Group consisting of the 47 members of the Council in assistance with the three 'troikas' assigned to the State producing 'outcome report'.⁵ In the following review, the State must intimate the members regarding the measures undertaken to implement the recommendations set forth.

The paper will undertake an empirical study of India's UPR submissions on its economic, social, and cultural obligations. These rights provide for the dignity and well-being of individuals through state supported entitlements. Even before India's accession to the Covenant on Economic, Social and Cultural Rights, these rights were recognised with the Directive Principles of State policy (DPSP) in the Indian Constitution. These DPSPs have been read into the Fundamental Rights by the Supreme Court and enshrined within this the right to live with human dignity including the right to shelter, nutrition, education, clothing, etc.

The paper thus maps the 'right to adequate standard of living'⁶ involving the education, health, housing, and sanitation and drinking water, and food security sectors as demarcated by the 2017 National Report. It also delves specifically into the socio-economic rights because these, unlike many other sections of the UPR reports, depicted the most development in terms of policies and the adoption of Working Group recommendations, allowing a fruitful analysis of the India's trajectory through the UPR process.

The paper therefore assesses the three documents aforementioned juxtaposed against the various Working Group recommendations to analyse their implementation patterns and gaps

³ Ohchr.org. (2019). OHCHR | UPR Basic Facts about the UPR. [online] Available at: <https://www.ohchr.org/EN/HRBodies/UPR/Pages/BasicFacts.aspx> [Accessed 28 Sep. 2019].

⁴ *ibid*

⁵ *ibid*

⁶ National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 : India, UN Human Rights Council, A/HRC/WG.6/27/IND/1 (Feb. 23 2017), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/044/56/PDF/G1704456.pdf?OpenElement>

within the State over the span of these ten years. Throughout the paper, issues of intersectionality between the various sectors and affected groups is also discussed.

II. SECTOR-WISE ANALYSIS OF INDIA'S SUBMISSIONS

The recurring primary 'Development Imperative' in all National reports is of 'inclusive and accelerated growth' by empowering the disadvantaged, in every aspect of life including health, education, infrastructure, agriculture, industry, and rural and urban development. This has been achieved through various policies empowering tribals, women, scheduled castes, minorities and other backward classes as noted through India's UPR submissions over the course of the last ten years as below.

A. EDUCATION

The Right to Education was protected as a fundamental right under Article 21-A making education compulsory and free for children between the ages of 6 to 14 with special provisions for the girl child in 2002. In 2008, India reinforced its motivation to combat the issue of education claiming that it was likely to achieve a 100 per cent enrolment in primary education by 2010.⁷ The 2012 National Report delineated the previous achievements of the *Sarva Shiksha Abhiyan* stating that access to rural primary education had increased to 99 per cent while only 3.5 per cent children were not enrolled in school in 2010 and moved the program to its second phase to promote high quality secondary education.⁸

In contrast, both, the Stakeholder Report⁹ and the NHRC Report¹⁰ noted that even if the enrolment rate had increased as such, the quality of education in villages was dismal, para-teachers received poor training, and teachers were often absent. Both Reports were concerned about the discrimination against schedule caste and schedule tribe (SC/ST) children in the educational system. The NHRC Report complained its 2008¹¹ and its 2012¹² Reports that no

⁷ National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 : India, UN Human Rights Council, A/HRC/WG.6/1/IND/1, (Mar. 6, 2008) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/112/43/PDF/G0811243.pdf?OpenElement>

⁸ National report submitted in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21 : India, UN Human Rights Council, A/HRC/WG.6/13/IND/1, (8 Mar., 2012), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/116/85/PDF/G1211685.pdf?OpenElement>

⁹ Human Rights Council, Summary of other stakeholders' submissions on India, UN Human Rights Council, A/HRC/WG.6/27/IND/3, (Feb., 2012) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/046/29/PDF/G1704629.pdf?OpenElement>

¹⁰ Report of the Office of the United Nations High Commissioner for Human Rights on India, A/HRC/WG.6/27/IND/2, (Apr. 11, 2012), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/039/83/PDF/G1703983.pdf?OpenElement>

¹¹ Compilation Prepared By The Office Of The High Commissioner For Human Rights, In Accordance With Paragraph 15(B) Of The Annex To Human Rights Council Resolution 5, India, UN Human Rights Council, A/HRC/WG.6/1/IND/2, (Mar. 27, 2008), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/122/46/PDF/G0812246.pdf?OpenElement>

¹² *supra* note 9

action been taken to strengthen human rights education and no states in India had made education their priority.

These issues were reiterated by the Working Group in 2012. Nations such as Slovakia¹³, Greece¹⁴, Cuba¹⁵ provided general recommendations to strengthen the provision of access to education. However, most nations such as Qatar¹⁶ and Ecuador¹⁷ were concerned with the discriminatory practices between schedule castes, tribes, and gender disparities in access to education in the State. Sri Lanka¹⁸ and Thailand¹⁹ recommended human rights educations as a measure to increase sensitization between these groups. Japan suggested that the implementation measures such as quota programs must be monitored through special police or special courts.²⁰ Ireland suggested the extension of the minimum age to 18 for “any form of labour that prevents children from accessing a full education.”²¹

By 2017, India worked towards achieving the various recommendations from the 2012 Working Group and thereby vowed to continue to promote non-discriminatory and inclusive education.²² It therefore introduced State scholarships for marginalised groups including SC/STs, other backward classes, and women in addition to other schemes for these groups such as ‘UDAAN’, ‘PRAGATI’, etc.²³ It also included scholarships for higher education from students from North-East India.²⁴ Lastly, in complying with the recurring recommendations from nations in the 2012 Reports, India introduced a human rights education component within the subject of social science in its national curriculum.²⁵

Surprisingly, the Stakeholder Report of 2017 found that the new education policy contained no mention of human rights education.²⁶ Even The Right to Education Act (“RTE Act”) which India boasted had not been implemented in 4 states.²⁷ While the in its National Report India

¹³ Report of the Working Group on the Universal Periodic Review: India, UN Human Rights Council, A/HRC/WG.6/13/IND/3, (July 9, 2012),

<https://documents-dds-ny.un.org/doc/UNDOC/GEN/G12/118/60/PDF/G1211860.pdf?OpenElement> at 161

¹⁴ *supra* note 13 at 160

¹⁵ *supra* note 13 at 157

¹⁶ *supra* note 13 at 138.165

¹⁷ *supra* note 13 at 138.162

¹⁸ *supra* note 13 at 138.55

¹⁹ *supra* note 13 at 138.71

²⁰ *supra* note 13 at 73

²¹ *supra* note 13 at 8.114

²² *supra* note 6

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.*

²⁶ Summary of other stakeholders' submissions on India, UN Human Rights Council, A/HRC/WG.6/27/IND/3, (Feb. 27 2017) <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G17/046/29/PDF/G1704629.pdf?OpenElement>

²⁷ *Id.*

emphasized the importance of investments in education citing a 4.9 per cent increase in the budget for education²⁸, the Stakeholder report noted that the resource allocation to this sector reduced by 0.48 per cent of the GDP. In furtherance of the inclusion of human rights education in Indian curriculum, it was recommended that “India create a national action plan for human rights education that it be created in partnership with students, teachers, college and university faculty and administrators.”²⁹ Noting the various infrastructural issues, Brunei Darussalam for instance, suggested that secondary education be made more affordable.³⁰ Oman also provided for the inclusivity of disabled persons within the beneficiaries of these rights.³¹

The Working Group, as in the Stakeholder’s Report, raised concerns that in spite of India’s aims towards an inclusive approach to growth, the economic growth witnessed a widening gap between the rich and poor and a lack of trickle-down-effect resulting in social stratification.³² India, however, attempted to provide an explanation for all these problems and stated that its aim remains to reduce disparity and providing increased opportunities for education and employment.

Regardless, it can be seen through the various submissions that although India claims to have adopted an anti-discriminatory approach to education, in reality there have not been major changes in this regard while the repeated recommendations on the matter seem to have only an artificial effect on its policies.

B. Health and Rehabilitation

Article 47 of the Indian Constitution delineates that DPSPs place a duty on the State to increase nutrition and safeguard public health, pursuant to which the government launched the National Rural Health Mission (NRHM) which provides affordable health services to rural areas.³³ The 2008 report stated that the National Urban Health Mission and Health Insurance Scheme for Workers in the Unorganised Sector were to be implemented soon.³⁴ The following Stakeholder report and NHRC report of 2012, both noted the abysmal investments in the public health sector with serious deficiencies in the NRHM. The NHRC reported that “Integrated Child Development Services found that 60 per cent of the annual budget for supplementary nutrition

²⁸ *supra* note 6

²⁹ *supra* note 26 at 33

³⁰ Report of the Working Group on the Universal Periodic Review: India, UN Human Rights Council, A/HRC/36/10, (July 14 2017) <https://www.refworld.org/docid/59ba91e54.html> at 161.186

³¹ *supra* note 31 at 161.240

³² *supra* note 13

³³ *supra* note 7

³⁴ *Id.*

was being diverted.”³⁵ Even Honduras recommended in 2012 that the effective measures be undertaken to fully implement the NRHM.³⁶

The National Report recognised the rural-urban divide in access to healthcare. The Outcome Report reiterated this fact wherein United Arab Emirates recommended that assistance be provided to national schemes for rural health to increase standard of public health and nutrition in these areas.³⁷ It further recommended that the relationship between health and indicators such as personal hygiene and sanitation be strengthened.³⁸

Another major deficit recognised was that of child nutrition, and gender imbalance in the health provisions. The Stakeholders in the 2012 Report recognised the same issues of maternal mortality and unsafe abortions due to lack of prioritization in gender equality.³⁹ Belgium⁴⁰, Finland⁴¹, and Honduras⁴² recommended the implementation of a National Human Rights Plan which aspects of sexual and reproductive and health.

In 2017, India acted on some of these recommendations. It launched schemes like the *Janani Suraksha Yojana* “to provide delivery services to women below poverty line” and provide financial aid for those vaccinating their children.⁴³ It also addressed the social stigma related to menstruation and further recognised that “Men Having Sex with Men” are a high-risk Group for HIV/AIDS and instituted STI clinics.⁴⁴ However, Columbia⁴⁵ and Zimbabwe⁴⁶ noted the lack of obstetric delivery services while other nations noted the lack of access to specific groups such as the elderly. Thus, while India might have allocated a larger sum from its budget to the health sector, no effective policies to improve rural and maternal health have been implemented and maternal mortality remains a growing concern in the nation.

C. Sanitation and Water

The Reports did not delve into an in-depth discussion of the issue and this section will thus provide a cursory analysis of the same. While the National Reports depicted progress in the sector, the Stakeholder reported that “the provision of water and sanitation, although claimed to be a priority, was dismal and 665 million people defecated in the open.” However, the

³⁵ *supra* note 11

³⁶ *supra* note 13 at 138.156.

³⁷ *supra* note 13 at 138.148.

³⁸ *Id.*

³⁹ *supra* note 9

⁴⁰ *supra* note 13 at 61

⁴¹ *supra* note 13 at 73

⁴² *supra* note 13 at 94

⁴³ *supra* note 6

⁴⁴ *Id.*

⁴⁵ *supra* note 40 at 161.180

⁴⁶ *supra* note 40 at 161.177

outcome report found that per the Joint Monitoring Programme Report 2012 by WHO and UNICEF, India was “on track to achieving its Millennium Development Goal (MDG) target of safe drinking water.” To ensure equitable access, specific allocations were made for SC/ST concentrated areas under the National Rural Drinking Water Programmes. The Working Group again, made very broad recommendations on the matter.

D. Housing

While the 2012 Stakeholder report noted the acute housing shortage in India, the National Report highlighted three flagship programmes for housing targeting families in rural areas below poverty line, urban infrastructure including slum improvement including a third party inspection and a monitoring agency to assess progress, and providing aid to states assigning property rights to slum dwellers.⁴⁷ In a recent ruling in January 2012, the Supreme Court directed compliance with the right to live with dignity under Article 21 by providing night shelters for the homeless since people sleeping on pavements in the night.⁴⁸ To address the issue of rehabilitation, the new National Mineral Policy of 2008 states that “all measures proposed to be taken will be formulated with the active participation of the affected persons, rather than externally imposed.”⁴⁹ However, this consultation process was never actually undertaken. India’s ‘Housing for All’ project was criticized for promoting forced evictions, homelessness, and displacement as a means for achieving economic growth.⁵⁰ Therefore, Sri Lanka⁵¹ recommended a focused rights-based approach to food security which targets marginalized groups wherein Germany⁵² delineated these groups as including Dalits and other scheduled castes/ tribes, ethnic minorities, the disabled, and women.

Stakeholders recommended the “development of a rights-based national housing policy or law with a focus on social housing”⁵³, ensuring, especially the right to promulgate this right to SC/ST women. The Report also found that the policy on rural housing, required that the applicant own a plot of land thereby excluding millions of landless rural citizens from its fold.⁵⁴ The scheme failed to provide enough money to build a house, and those who took the often money ended up in debt.⁵⁵ India has been repeatedly unable to provide adequate housing and rehabilitation schemes. The reports also highlighted the lack of opportunity participation by

⁴⁷ *supra* note 8

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Supra* note 26

⁵¹ 161.153 - 2017

⁵² 161.154

⁵³ *supra* note 34

⁵⁴ *Id.*

⁵⁵ *Id.*

affected groups in the sector.

E. Food Security

India has placed essential services such as the distribution of food within the public sector to ensure its equitable distribution. In 2008, the NHRC reported that although India had overcome food deficit in the country, there existed widespread malnutrition and starvation.⁵⁶ Stakeholders noted that the Targeted Public Distribution System a system to determine those below poverty line has been left undetermined and the system suffers from corruption as well as caste prejudices.⁵⁷ This Report commenting on the intersection between food and clean water, noted that the lack of access to clean water affects irrigation as well.⁵⁸ In another win, India recognized the rights of Scheduled Tribes and other forest dwellers and aimed to conserve forests to ensure livelihood and food security to this community.⁵⁹ The 2008, Working Group Reports were relatively unhelpful in tracking any issues in the food security system, usually asking only for additional disaggregated data.⁶⁰

In 2012, India provided a more targeted approach to food security. It dealt extensively with farmers such as providing remunerative prices for their produce, or the inclusion of policies for its small and marginalised farmers in its 11th Year Plan.⁶¹ The Report also spoke about food to the most vulnerable groups but did not state who it was targeting specifically. Again in 2012, the Working Group failed to provide substantive recommendations on the matter but simply lauded India for its efforts. However, the Stakeholder Report once again commented on the arbitrary ceilings set by the government to determine those citizens below poverty line and on the fact of malnutrition and hungry children in the country.⁶² It also noted that the National Food Security Bill had failed to universalise the Public Distribution System.⁶³

In 2017, India targeted specifically maternal and child malnutrition. The Act interestingly also included a gender-component, treating the eldest adult woman as the head of the household for the issuing of ration cards under the legislation.⁶⁴ However, the Stakeholder Report still noted

⁵⁶ *supra* note 11

⁵⁷ UN Human Rights Council, Summary of other stakeholders' submissions on India, (6 March 2008), A/HRC/WG.6/27/IND/3, <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/113/17/PDF/G0811317.pdf?OpenElement>

⁵⁸ *Id.*

⁵⁹ *supra* note 9

⁶⁰ UN Human Rights Council, Report of the Working Group on the Universal Periodic Review: India, A/HRC/8/26, (23 May 2008), <https://documents-dds-ny.un.org/doc/UNDOC/GEN/G08/136/54/PDF/G0813654.pdf?OpenElement>

⁶¹ *supra* note 8

⁶² *supra* note 9

⁶³ *Id.*

⁶⁴ *supra* note 6

that each state used different methodologies to identify beneficiaries causing confusion.⁶⁵ The Report identified agrarian distress, forced migration, and rural landlessness as possible reasons.⁶⁶ This is particularly important since in its 2012 Report, India delineated its attempted to improve conditions of farmers within its food policies thus depicting that this remained an issue after 5 years too. These Reports also found that “food insecurity is intrinsically linked, and women and girls tend to be more undernourished”, thus depicting policy focus on special groups.⁶⁷ The reports on food security are also important because unlike others, they recognise the interlinkages between housing (i.e., rural landlessness and farmer suicides), food, and clean water and attempt to provide a holistic policy for the same in the of minimum support prices, etc.

III. CONCLUSION

India’s National Reports have witnessed a major shift structurally. It introduced a segment on ‘rights of specific persons or groups’ which targets women, children, SC/STs, the disabled, the elderly, sexual orientation, and other minorities specifically. The Reports have, however, rarely recognised the intersectionality between the objectives of education, housing, food, water, and health and their inaccessibility to these special groups.

The Stakeholder Report noted the intersection of these rights within the Adivasi community “who experience poor levels of health, education, food security and political representation together with these problems” where “the paramount issue remains the question of Adivasi land rights.”⁶⁸ Further, it found that the Muslim minority in Gujarat faced widescale socio-economic boycotting without basic amenities or recognition post the 2002 communal violence.⁶⁹

While it seems that the Stakeholders have been active in recognizing the rights of groups suffering from lack of resources in one of the sectors dealt with in this paper, the State under Review and even the NHRC or the Working Group have been dormant in this regard. For instance, India hosts a lot of refugees, who lack food, sanitation, housing, water, and health however, their issues were never mentioned through any reports between 2008 and 2017. The interrelation between the sectors has also been ignored except in case of food security to an extent, as aforementioned. National Reports in fact noted the relationship between food and water only once in all its reports. Thus, while the reports adopt a sectoral approach, assessing

⁶⁵ *supra* note 26

⁶⁶ *Id.*

⁶⁷ *Id.*

⁶⁸ *supra* note 58

⁶⁹ *Id.*

each issue within its limited ambit, they overlook the groups that suffer from multiple disabilities from access to these resources. India's policies follow a myopic approach and while specific groups such as women, children, or Dalits are provided for, India has escaped the liability of accounting for its obligations towards groups such as refugees who suffer from a manifold deprivation of state-provided amenities. This fact overlooked even by the Working Group or the NHRC.

Additionally, there existed a gap between the claims in India's National Reports and the reality presented by the Stakeholder and NHRC Reports. An analysis of the Stakeholder Reports depicts that while India accepts the recommendations, recognizing issues in its current policies, it is only done artificially and rarely results in a substantial policy. However, that fact that the Working Group often provided very broad recommendations which failed to address specific issues and NHRC more often than not merely reiterated the points in the Stakeholder Reports, could be contributing factors to the vague response by India on the implementation of the various recommendations it was given. Nevertheless, surprisingly, India showed prodigious development in its policies over the years and was applauded for its facilitation of its socio-economic obligations by various nations in the Working Group over the years.