

## **Submission by the United Nations High Commissioner for Refugees**

### **For the Office of the High Commissioner for Human Rights' Compilation Report**

#### **Universal Periodic Review: 3rd Cycle, 27th Session**

## **INDIA**

### **I. BACKGROUND INFORMATION**

India is not a party to the *1951 Convention relating to the Status of Refugees*, its *1967 Protocol* (hereinafter jointly referred to as the *1951 Convention*), the *1954 Convention relating to the Status of Stateless Persons* or the *1961 Convention on the Reduction of Statelessness* (the *1954 Convention* and the *1961 Convention* respectively).

India does not have any national refugee protection legislation in place. However, it has a long-standing tradition of hosting refugees and the Government largely respects the principle of *non-refoulement*. The *Indian Foreigners Act 1946*, applies to all classes of non-nationals, including refugees and asylum-seekers, and refugee policy is determined on an *ad hoc* basis.

UNHCR has been working in India since 1981. While the Government grants refugee status to Tibetans and Sri Lankans, UNHCR registers asylum-seekers and determines refugee status for nationals of non-neighbouring countries. In New Delhi, UNHCR works with individual refugees and asylum-seekers, primarily from Afghanistan, Myanmar and Somalia. Since 1992, UNHCR has had a small office in Chennai to facilitate the voluntary return of Sri Lankan refugees.

#### **Refugees and asylum-seekers:**

At present, there are two broad categories of refugees in India: approximately 174,303 Tibetan and Sri Lankan refugees, which are directly protected and assisted by the Indian Government, and approximately 33,558 refugees and asylum-seekers from India's non-neighbouring countries and Myanmar, which are registered and protected by UNHCR under its mandate.

In general, refugees and asylum-seekers continue having access to the territory of India and asylum procedures. In addition, refugees can obtain stay visa or long term visas to regularize their stay in India. In particular, those who have been issued long term visas are less challenged by the administrative or practical barriers in accessing labour market and public services. The Government allows all refugees and asylum-seekers to have access to public health, education and legal aid, but lack of awareness of these services and the local language constitute practical barriers to effective access. Refugees and asylum-seekers are sometimes subjected to exploitation by employers and competition for scarce resources sometimes leads to disputes with the host community. Many refugees find themselves living in conditions of

poverty in India's fast developing urban environment. Instances of sexual and gender-based violence (SGBV) affecting refugee and asylum-seeking women and girls have reduced, while child labour exists amongst some refugee communities.

With regard to specific groups, Tibetan refugees have freedom of movement, access to residence and work permits, and some of them also have the possibility of acquiring Indian citizenship. Sri Lankan Tamil refugees are given shelter, food, allowances in designated refugee camps and access to the informal labour market. When it comes to durable solutions opportunities, some Sri Lankan refugees opt for voluntary repatriation, while Hindu and Sikh Afghan refugees can apply for naturalization in India, should they meet the criteria laid down by the *Citizenship Act 1955*. However, bureaucratic procedures have slowed down the process of local integration, despite recent directives by the Government to expedite the procedures. Resettlement remains a limited solution used as a protection tool for those with unmet protection needs.

### **Stateless persons:**

India has taken various steps to mitigate the risk of statelessness arising from the ratification of the *Agreement Concerning the Demarcation of the Land Boundary between India and Bangladesh and Related Matters* of 1974. First, the Ministry of Home Affairs through its notification dated 12 October 2015 declared the 14,864 enclave dwellers as Indian citizens. Second, the *Election Laws (Amendment) Act,<sup>1</sup> 2016* has been adopted on 3 March 2016 to include enclaved territories and eligible voters to come within the purview of the electoral role. Third, it is expected that in 2016 enclave dwellers will be issued with *Aadhaar* cards – a 12-digit unique identity number issued by the Unique Identification Authority of India (UIDAI). Nonetheless, challenges pertaining to the legal status of those residing outside the enclave areas and those who were not part of the head count remain.

A group of Sri Lankan refugees, the Hill Tamils, are stateless or at risk of becoming stateless as a result of lack of birth registration and/or documentation, or because they were unable to avail themselves of the benefits of change in legislation in Sri Lanka due to their displacement to India. Children born to Hill Tamil refugees in India have Indian birth certificates, but they cannot apply for Sri Lankan citizenship unless they also have a Sri Lankan Consular birth certificate. Children who were born to Hill Tamil refugees in India but have no birth documentation or registration either from the Indian or Sri Lankan Consulate are also stateless. Additionally, Hill Tamils who fled Sri Lanka in the 1990s without applying for citizenship under the *Sirimavo-Shastri Pact* and who to date chose not to accept Sri Lankan nationality will remain *de facto* stateless or are at risk of becoming stateless, as they do not have the possibility of acquiring Indian citizenship.

## **II. ACHIEVEMENTS AND POSITIVE DEVELOPMENTS**

### **Positive developments linked to 2<sup>nd</sup> cycle UPR recommendations**

**Linked to 2<sup>nd</sup> UPR recommendation no. 138.41: “Enact comprehensive reforms to address sexual violence and all acts of violence against women, including “honour” crimes, child**

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<sup>1</sup> For more information, see: <http://www.prsindia.org/billtrack/the-election-laws-amendment-bill-2016-4184/>.

marriage, female feticide and female infanticide, and to remedy limitations in the definition of rape and the medico forensic procedures adopted for rape cases (Canada).”<sup>2</sup>

The 2013 *Criminal Law (Amendment) Act (the Act)* that came into force on the 3rd of February 2013, amended as well as inserted new sections in the Indian Penal Code (IPC) with regard to various sexual offences. The new *Act* has expressly recognized certain acts as offences which were dealt under related laws. New offences like, acid attack, sexual harassment, voyeurism, stalking have been incorporated into the Indian Penal Code. The *Act* recognizes the broad range of sexual crimes to which women may fall victim, and a number of ways in which gender-based discrimination manifests itself. It also acknowledges that lesser crimes of bodily integrity often escalate to graver ones. In addition, the *Act* clarifies and extends the offense of sexual assaults or rape as a result of abuse of position of trust. As per the *Act*, the police will also be penalized for failing to register first information reports (FIRs) – this will make it easier for rape victims to report their cases.

The *Act* introduced unprecedented provisions in the Indian Penal Code which criminalizes sexual voyeurism and stalking and amends legal provisions to protect the privacy of individuals, such as discontinuing the practice of examination of the sexual history of the victim of a sexual assault for evidence.

The reported instances of sexual and gender-based violence (SGBV) affecting refugee and asylum-seeking women and girls have reduced by 20 per cent in 2015 due to improved national response on SGBV and inclusion of refugees in national SGBV prevention and response mechanisms and programmes.

**Linked to 2<sup>nd</sup> UPR recommendation no. 138.131: “Take the necessary measures to ensure birth registration on a universal basis, particularly for persons living in extreme poverty, belonging to religious minorities or in remote areas (Mexico).”**

Child refugees and asylum-seekers do not face any discrimination in principle in accessing birth registration or documentation in India. In a positive development, child refugees and asylum-seekers born at home began to be registered and issued with birth documentation by the Government too. However, it should be noted that lack of awareness amongst some refugee communities on birth registration procedures especially for children born at home creates a barrier to access.

### **III. KEY PROTECTION ISSUES, CHALLENGES AND RECOMMENDATIONS**

#### **Challenges linked to outstanding 2<sup>nd</sup> cycle UPR recommendations**

##### **Issue 1: Accession to the 1951 Convention, the 1954 Convention and 1961 Convention**

**Linked to 2<sup>nd</sup> cycle UPR recommendation no. 138.25: “Consider the recommendation made by UNHCR to ratifying the Conventions relating to refugees and stateless persons (Ghana).”**

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<sup>2</sup> All recommendations made to India during its 2nd cycle UPR can be found in: “Report of the Working Group on the Universal Periodic Review of India” (09 July 2012), A/HRC/21/10, available at: <http://ohchr.org/EN/HRBodies/UPR/Pages/INSession13.aspx>.

India is not a party to the *1951 Convention*, the *1954* or the *1961 Conventions*. Although Ghana's recommendation to accede to these *Conventions* during the 2<sup>nd</sup> UPR cycle was not supported by India, UNHCR hopes that this position can be reconsidered in light of the fact that India is a party to other major international human rights instruments and has a long tradition of hospitality towards refugees and asylum-seekers.

The *1951 Convention* is the key legal document that establishes the juridical status of refugees and sets the minimum standards of treatment of refugees, including an enumeration of the basic rights to which they are entitled<sup>3</sup>. The *1954 Convention* and the *1961 Convention* are designed to ensure that every person has a nationality and that stateless persons enjoy a basic set of human rights. They do not stand alone, but complement a much broader range of international legal standards, in particular those contained in human rights treaties, including those ratified by India.

Accession to these *Conventions*, therefore, would lay out a clearer basis for the Government of India to provide refugees, asylum-seekers and stateless persons with international protection.

### **Recommendations:**

UNHCR recommends that the Government of India:

- a. Accede to the *1951 Convention relating to the Status of Refugees* and its *1967 Protocol*; and
- b. Accede to the *1954 Convention relating to the Status of Stateless Persons* and the *1961 Convention on the Reduction of Statelessness*.

### **Issue 2: Trafficking in persons, especially women and children**

**Linked to 2<sup>nd</sup> cycle UPR recommendation no. 138.108: “Reinforce efforts to protect and rehabilitate the victims of trafficking (Ukraine)” and no. 138.109: “Continue stepping up efforts in the area of fighting trafficking as well as consider the possibility of inviting the Special Rapporteur on trafficking in persons, especially in women and children, to visit the country (Belarus).”**

Currently there are no adequate response mechanisms available for identification and referral of victims of cross-border trafficking, which could also include asylum-seekers. These victims are at risk of being penalized for irregular entry and stay in the country and being detained for prolonged periods. Moreover, since the current laws in India relevant to trafficking do not specifically provide for the needs of asylum-seekers, they are at risk of being repatriated without any assessment or due consideration to their asylum claim. Additionally, due to lack of adequate documentations, it is difficult for them to benefit from national rehabilitation schemes, which are otherwise available to other victims of trafficking.

In 2016, India has floated a draft anti-trafficking Law (*Trafficking of Persons Bill 2016*). The draft "*Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2016*" has been generally well received by practitioners and civil society. Prior to this draft, India's legal framework for addressing trafficking in persons consisted of a myriad of various statutory laws and provisions applied in tandem, leaving a legal vacuum when it came to the

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<sup>3</sup> UNHCR, *Self-Study Module 5: Human Rights and Refugee Protection (Vol. II)*, 15 December 2006, Vol. II, p. 21, available at: <http://www.refworld.org/docid/4669434c2.html>.

investigation and prosecution of trafficking offences. This draft law is comprehensive and addresses the core issue, aiming to strengthen investigation and prosecution, while also taking into account a victim's needs and perspective, which are steps in the right direction.

Broadly, the draft law aims to address trafficking in persons through prevention, protection, and rehabilitation of victims. It calls for the creation of anti-trafficking committees at the district, state, and central levels to oversee implementation of the law's provisions. The draft also proposes the creation of a special agency to investigate these crimes, and special courts and public prosecutors to expedite prosecution and hold perpetrators and traffickers accountable under the law.

The Committee on the Elimination of Discrimination against Women, in its *Concluding Observations* of 24 July 2014, while acknowledging "the establishment of anti-trafficking units, awareness-raising programmes and a task force on human trafficking", expressed concern over "the alarming persistence of trafficking, both internal and cross-border, the lack of protection and services available to women and girls who are victims of trafficking and sexual exploitation and the lack of efforts to tackle the root causes."<sup>4</sup>

### **Recommendation:**

UNHCR recommends that the Government of India:

- a. Ensure that victims of trafficking have access to refugee status determination in which their potential need for international protection can be determined;
- b. Establish appropriate mechanisms aimed at early identification, referral, assistance and support for asylum-seekers, especially women and children, who are victims of trafficking, and amend the *Anti-Trafficking Laws* to include specific safeguards for persons in need of international protections; and
- c. Amend the *Indian Foreigners Act 1946* with a view to de-penalizing the irregular entry and stay of non-nationals, specifically in relation to asylum-seekers and victims of trafficking, as provided under the Ministry of Home Affairs' *Office Memorandum No. 14051/14/2011-F.VI* of 1 May 2012.

### **Additional protection challenges**

#### **Issue 3: Establishment of a national legislation on the protection of refugees, asylum-seekers and stateless persons**

India lacks specific legislation governing asylum procedures and defining the rights of refugees, asylum-seekers and stateless persons. In the absence of such a domestic legal framework, India has employed *ad hoc* protection measures and positive administrative frameworks, including an intensified issuance of long term visas in 2015 for UNHCR registered refugees as well as access to education, healthcare, legal aid and child protection systems, following strengthened advocacy efforts by UNHCR and partners. Nonetheless, challenges of refugees, asylum-seekers and stateless persons' inclusion in access to national services remain in certain locations, and the lack of specific legislation does not allow for consistency and coherence in the national asylum framework.

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<sup>4</sup> Committee on the Elimination of Discrimination against Women, *Concluding Observations on India*, 58th Session, (24 July 2014), CEDAW/C/IND/CO/4-5, para. 22, available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fIND%2fCO%2f4-5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CEDAW%2fC%2fIND%2fCO%2f4-5&Lang=en).

It is hoped that the Government of India take steps to formalize its asylum procedures and systematically identify, register, assess the claims of, and protect the rights of persons in need of international protection, particularly in light of the proposals submitted in 2015 by three Members of Parliament to enact a national refugee legislation, which has been admitted for further discussion in 2016.

**Recommendations:**

UNHCR recommends that the Government of India:

- a. Adopt and implement a national refugee and statelessness legislation consistent with international standards, to ensure protection of refugees, asylum-seekers and statelessness persons including finding suitable durable solutions.

**Issue 4: Detention of asylum-seekers in border areas for irregular entry and stay**

Only approximately one per cent of asylum-seekers is reportedly detained in border areas for irregular entry and for breach of the *Foreigners Act 1946*. They are detained primarily in West Bengal which borders Bangladesh. It is a land border and asylum-seekers crossing via this land border areas, do not possess travel documents to facilitate regular entry. As a result, some asylum-seekers are detained by the border guards. UNHCR's continued advocacy with the border guards and other government authorities have resulted in some asylum-seekers being released from detention. However, some of them continue being detained even after the completion of their sentence since the courts sometimes are not inclined to release them because they lack documentation. UNHCR therefore continues to advocate with the Government to allow asylum seekers access to UNHCR, access of UNHCR to asylum-seekers in detention in order to determine refugee status.

There are currently no alternatives to detention for asylum-seekers detained under the *Foreigners Act 1946*. UNHCR strongly believes that detention should only be used as a matter of last resort and should in no way constitute an obstacle to the ability of asylum-seekers to pursue their asylum application. UNHCR continues to advocate for non-penalisation for irregular entry and stay, alternatives to detention, access to asylum-seekers in detention and thereafter their release. To date, procedural safeguards for detained asylum-seekers consist of due access to legal proceedings and the judicial system without any discrimination against them on the basis of their status.

**Recommendation:**

UNHCR recommends that the Government of India:

- a. Take immediate steps to pursue alternatives to detention for asylum-seekers and establish legal and procedural safeguards to ensure that asylum-seekers are not subjected to arbitrary or indefinite detention; and
- b. Ensure that detained asylum-seekers are entitled to minimum procedural safeguards, including the possibility to contact and be contacted by the local UNHCR Office and the ability to pursue their asylum application.

**Issue 5: Access to education for child refugees and asylum-seekers**

The Government of India guarantees to all children, including child refugees and asylum-seekers, access to national services, in line with its *Right to Education Act* and child protection mechanisms as well as international standards. Moreover, UNHCR and its partners' advocacy work for the equitable inclusion of persons of concern into national

services resulted, *inter alia*, in their increased enrolment into local *anganwadis* (government run childcare centres). However, in some geographical areas child refugees and asylum-seekers face barriers in accessing educational services as some local government authorities requests for specific documentation, which are available mostly to Indian nationals (such as Adhaar cards, which is a Unique identification document issued to residents in India), to support school admission.

**Recommendation:**

UNHCR recommends that the Government of India:

- a. Ensure that all children in India have equal access to education, in particular by removing remaining administrative barriers and that refugees are also issued with Adhaar cards to enable them access services at par with nationals.

**Human Rights Liaison Unit**  
**Division of International Protection**  
**UNHCR**  
**August 2016**



## ANNEX

### Excerpts of relevant Recommendations from the 2nd cycle Universal Periodic Review, Concluding Observations from UN Treaty Bodies and Recommendations of Special Procedures mandate holders

#### INDIA

We would like to bring your attention to the following excerpts from the 2nd cycle UPR recommendations, UN Treaty Monitoring Bodies' Concluding Observations, and recommendations from UN Special Procedures mandate holders' reports relating to issues of interest and persons of concern to UNHCR with regards to India.

#### I. Universal Periodic Review (Second Cycle – 2012)

Recommendations <sup>5</sup>	Recommending State/s	Position <sup>6</sup>
<b>Convention on the Elimination of All Forms of Discrimination against Women</b>		
138.21. Consider signature and ratification of the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women;	Czech Republic	Noted
138.22. Remove reservations to the Article 16(1) of the Convention on the Elimination of Discrimination against Women;	Finland	Noted
138.23. Withdraw its reservations to Convention on the Elimination of All Forms of Discrimination against Women and consider signing and ratifying its Optional Protocol;	Republic of Korea	Noted
138.37. Consider expediting the process to pass the 108th Constitutional Amendment Bill which seeks to reserve a significant portion of seats for women at the Lower House and state legislative assemblies and consider the ratification of the Optional Protocol to Convention on the Elimination of All Forms of Discrimination against Women;	Timor-Leste	Noted
138.38. Consider signing and ratifying the Optional Protocol to Convention on the Elimination of All Forms of Discrimination against Women;	Costa Rica	Noted
<b>Convention relating to refugees and stateless persons</b>		
138.25. Consider the recommendation made by UNHCR to ratifying the Conventions relating to refugees and stateless persons;	Ghana	Noted
<b>Sexual and Gender-Based Violence</b>		

<sup>5</sup> All recommendations made to India during its 2nd cycle UPR can be found in: "Report of the Working Group on the Universal Periodic Review of India" (09 July 2012), A/HRC/21/10, available at: <http://ohchr.org/EN/HRBodies/UPR/Pages/INSession13.aspx>.

<sup>6</sup> India's views and replies can be found in: *Addendum* (17 September 2012), A/HRC/21/10/Add.1, available at: <http://ohchr.org/EN/HRBodies/UPR/Pages/INSession13.aspx>.



138.41. Enact comprehensive reforms to address sexual violence and all acts of violence against women, including “honour” crimes, child marriage, female feticide and female infanticide, and to remedy limitations in the definition of rape and the medico forensic procedures adopted for rape cases;	Canada	Noted
138.79. Continue its legal efforts in the protection of women and children’s rights as well as improve measures to prevent violence against women and girls, and members of religious minorities;	Iran	Supported
138.106. Take the necessary legislative, civil and criminal measures to provide the appropriate protection to women, and children that are victims of sexual abuse;	Mexico	Supported
<b>LGBTI</b>		
138.72. Ensure that laws are fully and consistently enforced to provide adequate protections for members of religious minorities, scheduled castes, and divasi groups, as well as, women, trafficking victims, and LGBT citizens;	United States of America	Noted
<b>Trafficking in persons</b>		
138.107. Accelerate its efforts on combatting human trafficking (Iran);	Iran	Supported
138.108. Reinforce efforts to protect and rehabilitate the victims of trafficking;	Ukraine	Supported
138.109. Continue stepping up efforts in the area of fighting trafficking as well as consider the possibility of inviting the Special Rapporteur on trafficking in persons, especially in women and children, to visit the country;	Belarus	Noted
138.110. Continue to strengthen its efforts to combat trafficking in persons by providing the necessary budget to establish a larger number of local bodies to combat this scourge;	Paraguay	Noted
<b>Birth registration</b>		
138.131. Take the necessary measures to ensure birth registration on a universal basis, particularly for persons living in extreme poverty, belonging to religious minorities or in remote areas;	Mexico	Noted
138.132. Ensure timely registration of all births;	Holy See	Noted

## II. Treaty Bodies

### Committee on the Elimination of Discrimination against Women

Concluding Observations, (24 July 2014), [CEDAW/C/IND/CO/4-5](#)

#### **Equality and non-discrimination**

8. The Committee notes that article 15 of the Constitution guarantees equal protection under the law for women and men and prohibits discrimination on the ground of sex. The Committee is concerned, however, at the absence of a comprehensive anti-discrimination law addressing all aspects of direct and indirect discrimination against women and all the forms of intersectional discrimination, as explicitly listed in paragraph 18 of the Committee's general recommendation No. 28 on the core obligations of States parties under article 2 of the Convention.

**9. The Committee recommends that the State party:**

- (a) Adopt comprehensive anti-discrimination legislation that prohibits discrimination on all grounds referred to in general recommendation No. 28;**
- (b) Protect women from multiple or intersectional forms of discrimination and other grounds referred to in general recommendation No. 28;**
- (c) Include a comprehensive definition of discrimination against women, in accordance with articles 1 and 2 of the Convention and the principle of equality between women and men.**

### **Violence against women**

10. The Committee notes the State party's efforts to enact a legal framework to prevent and respond to violence against women, including women from the marginalized castes and communities, such as Dalit and Adivasi women, and the establishment in 2013 of the Justice Verma Committee on Amendments to Criminal Law to review existing normative gaps. The Committee is concerned, however, about the:

- (a) Stark increase in violent crimes against women, especially rape and abduction, and the high number of cases of rape reported by the National Crime Records Bureau in 2012, indicating an increase by 902.1 per cent since 1971, and continuing impunity for such acts;
- (b) Retention in the Penal Code of an exemption from punishment when a rape is committed by the victim's husband if the wife is above 15 years of age;
- (c) Escalation of caste-based violence, including rape, against women and girls and the downplaying by key State officials of the grave criminal nature of sexual violence against women and girls;
- (d) Poor implementation of the Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act and the impunity of perpetrators of serious crimes against women;
- (e) High number of dowry-related deaths since 2008;
- (f) Persistence of so-called "honour crimes" perpetrated by family members against women and girls;
- (g) Declining girl child sex ratio from 962 per 1,000 in 1981 to 914 per 1,000 in 2011;
- (h) Criminalization of same-sex relationships, as referred to in the ruling of the Supreme Court (Suresh Kumar Koushal and another v. NAZ Foundation, 2013);
- (i) Increasing number of acid attacks against women since 2002, the underreporting of such crimes notwithstanding.

**11. The Committee urges the State party:**

- (a) To implement the recommendations of the Justice Verma Committee regarding violence against women;**

- (b) **To promptly enact the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill and to ensure that it provides for a comprehensive system of reparations for victims and for gender-sensitive, victim-centred procedural and evidentiary rules;**
- (c) **To amend the Criminal Law (Amendment) Act, ensuring that marital rape is defined as a criminal offence, as requested by the Committee in its previous concluding observations (CEDAW/C/IND/CO/3, para. 23), expanding the scope of protection of the law to cover all prohibited grounds of discrimination and defining gang rape as constituting an aggravating factor meriting a more severe punishment;**
- (d) **To enact specific legislation to introduce heavier sentences for perpetrators of acid attacks, to regulate the sale and distribution of acid substances and to conduct large-scale campaigns to raise public awareness of the criminal nature of such attacks;**
- (e) **To strengthen the efficiency of the police, to ensure that police officers fulfil their duty to protect women and girls against violence and are held accountable, to adopt standard procedures for the police in each state on gender-sensitive investigations and treatment of victims and of witnesses and to ensure that first information reports are duly filed;**
- (f) **To establish, without delay, one-stop crisis centres providing women and girls who are victims of violence and rape with free and immediate access to medical attention, psychological counselling, legal aid, shelters and other support services;**
- (g) **To provide systematic training on women's rights to all law enforcement personnel, medical staff and judicial officials;**
- (h) **To put in place an effective system to monitor and evaluate the implementation, effectiveness and impact of legislation to combat sexual violence;**
- (i) **To make efforts to eliminate any criminalization of same-sex relations by studying the possibility, as accepted by the State party during its universal periodic review (see A/HRC/21/10/Add.1), and to take note of the ruling of the Supreme Court (Suresh Kumar Koushal and another v. NAZ Foundation, 2013) in this regard;**
- (j) **To take urgent measures to adopt a national plan of action for improving the girl child sex ratio;**
- (k) **To allocate sufficient resources for the immediate enforcement of legislation on violence against women and for the establishment of special courts, complaints procedures and support services envisaged under that legislation in a time-bound manner.**

### **Trafficking in women and exploitation of prostitution**

22. The Committee takes note of the establishment of anti-trafficking units, awareness-raising programmes and a task force on human trafficking. It remains concerned, however, at the alarming persistence of trafficking, both internal and cross-border, the lack of protection and services available to women and girls who are victims of trafficking and sexual exploitation and the lack of efforts to tackle the root causes. The Committee is also concerned at the persecution of women in prostitution as a result of measures taken to address trafficking, such as raid and rescue operations.

**23. The Committee recommends that the State party:**

- (a) Review the Immoral Traffic (Prevention) Act and include provisions addressing the prevention of trafficking in women and girls and the economic and emotional rehabilitation of victims;**
- (b) Address the root causes of trafficking by promoting alternative income-generating activities developing the economic potential of women and raise awareness among the population in rural areas of the risks of trafficking and the way in which traffickers operate;**
- (c) Ensure that traffickers are effectively investigated, prosecuted and punished and collect data and establish appropriate mechanisms aimed at the early identification and referral of, and assistance and support for, victims of trafficking, including foreign women, and provide them with remedies;**
- (d) Ensure that trafficked women and girls have access to victim and witness protection shelters, high-quality medical care, counselling and support programmes for alternative income-generation activities and for their reintegration into the education system and labour market, in addition to access to adequate housing and free legal aid, regardless of their ability or willingness to testify against traffickers.**

**Committee on the Rights of the Child**

Concluding Observations, (7 July 2014), [CRC/C/IND/CO/3-4](#)

**Birth registration**

39. The Committee expresses its concern at the generally low rate of birth registration as well as the disparities in birth registration rates across the State party and the insufficient awareness among the relevant authorities and the population about the importance of universal birth registration. The Committee is also concerned at the discordance between the birth registration rate and the issuance of birth certificates.

**40. The Committee strongly urges the State party to:**

- (a) Expedite the adoption of the amendments to the Registration of Births and Deaths Act, 1969; make it accessible to the population; and guarantee both birth registration and prompt issuance of birth certificates;**
- (b) Take all necessary measures to increase the birth registration rate, including by establishing mobile registration offices in particular in rural areas and undertaking a campaign aimed at registering all children who have not yet been registered and who do not have birth certificates;**
- (c) Promote awareness of the importance of birth registration among parents and relevant authorities through regular mass campaigns and provide information on the procedures for birth registration and the rights and entitlements deriving from birth registration.**

**Nationality**

43. The Committee is concerned about the statelessness of children born in villages situated in border areas between the State party and Pakistan, such as children belonging to the Kutchi

community, and the consequent limitation of their rights in all areas covered by the Convention.

**44. The Committee urges the State party to take all necessary measures to provide children belonging to those communities with a nationality, in line with article 7 of the Convention, and consider ratifying the Convention relating to the Status of Stateless Persons.**

#### **Asylum-seeking and refugee children**

77. The Committee welcomes several measures taken by the State party, such as the decisions to allow refugees to apply for long-term visas and work permits and to simplify the procedures for acquisition of citizenship for Hindu and Sikh refugees. However, the Committee is concerned at reports of hardships faced by asylum-seeking and refugee children in accessing services, for instance due to language barriers; discrimination against asylum-seeking and refugee children in schools by teachers and classmates, as well as in health services facilities; and limitations on the right to play in public spaces due to discriminatory attitudes. The Committee is further concerned at reports that Rohingya asylum seekers from Myanmar, including children, are routinely detained because of illegal entry into the State party.

**78. In line with its general comment No. 6 (2005) on the treatment of unaccompanied and separated children outside their country of origin, the Committee recommends that the State party:**

- (a) Strengthen existing child protection systems, including the Integrated Child Protection Scheme, with the aim of identifying and providing assistance to children in need of protection, especially unaccompanied refugee and asylum-seeking children;**
- (b) Guarantee refugee and asylum-seeking children access to education and health care, including by taking measures to eliminate societal barriers and discrimination against them;**
- (c) Release asylum-seeking and refugee children held in detention and enable them to access the Office of the United Nations High Commissioner for Refugees (UNHCR); ensure that unaccompanied and separated children, refugee and asylum-seeking children are not detained because of illegal entry/stay in the State party; and grant them the right to seek asylum and to stay in the State party until the completion of asylum procedures;**
- (d) Establish a proper referral system under the Ministry of Home Affairs to refer refugee and asylum-seeking children to UNHCR, and develop standard operating procedures to facilitate the prompt identification and referral of such children;**
- (e) Consider acceding to the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol.**

#### **Sale, trafficking and abduction**

85. The Committee notes the adoption of the Comprehensive Scheme for Prevention of Trafficking and Rescue, Rehabilitation, Re-integration and Repatriation of Victims of Trafficking for Commercial Sexual Exploitation, in December 2007. However, it is concerned at the high levels of internal trafficking of children and that the State party is a

source, destination and transit country for trafficking children for labour and sexual exploitation, including sex tourism and child pornography. The Committee is concerned at reports that children are being trafficked in the State party for begging, marriage and illegal adoption. The Committee expresses its concern at the lack of effective measures to address and prevent the sale, trafficking and abduction of children as well as the lack of data on those activities.

**86. The Committee recommends that the State party:**

- (a) Establish a comprehensive and systematic data collection mechanism on the sale, trafficking and abduction of children, and ensure that the data are disaggregated by, inter alia, sex, age, national and ethnic origin, state or autonomous region, rural or urban residence, indigenous and socioeconomic status, with particular attention to children living in the most vulnerable situations;**
- (b) Conduct awareness-raising activities in order to make parents and children aware of the dangers of both internal and external trafficking;**
- (c) Further strengthen its cooperation with South Asian countries to combat trafficking in children across States, including through the conclusion of bilateral and multilateral agreements.**

### **III. Special Procedures**

#### **Report of the Special Rapporteur on violence against women, its causes and consequences**

Mission to India, (1 April 2013) [A/HRC/26/38/Add.1](#)

#### **Conclusions and recommendations**

**75. The Government of India has recognized the need to address violence against women as a human rights violation, and also as an issue that detracts from the country's path to prosperity and inclusive development. It has taken legislative measures in that regard, including measures to address rape and sexual violence. However, significant gaps remain in the legislative framework as regards the failure to recognize all forms of violence against women and to adopt a holistic approach that addresses the root and structural causes of violence against women. Moreover, there is a lack of effective remedies to address the main manifestations of violence against women, owing either to the absence of specific programmes or to a lack of implementation. The inability to ensure accountability and redress for victims has led to an increase of violence against women and the continued discriminatory treatment of victims.**

**76. The persistence of harmful practices, pervasive gender stereotypes and deeply entrenched patriarchal social and cultural norms is of serious concern. Based on the idea of superiority of men over women, those manifestations exacerbate women's position of dependence and subordination and significantly obstruct effective implementation of relevant legislative and policy measures. Without a comprehensive effort to address them, in schools or university, at work, in the family, in the community and in printed and electronic media, the elimination of violence against women remains**

**a challenge. It is essential that the authorities do not underestimate the negative effects of this challenge in their efforts to eliminate all forms of violence against women.**

### **Law and policy reforms**

75. **The Special Rapporteur recommends that the Government:**
- (a) Ratify all outstanding international human rights instruments;**
  - (b) Withdraw the declarations and reservation to the Convention on the Elimination of All Forms of Discrimination against Women, in particular regarding articles 5 (a); 16, paragraphs 1 and 2; and 29, paragraph 1;**
  - (c) Amend the Criminal Law (Amendment) Act, 2013 and in particular review the provisions that provide for the death penalty in section 376A; include a definition of marital rape as a criminal offence; expand the scope of protection of the law and include other categories of women, including unmarried women, lesbian, transgender and intersex women, religious minorities and underage citizens; and define gang rape as multiple crimes requiring appropriate punishment (section 376D);**
  - (d) Repeal section 377 of the Penal Code, which criminalizes consensual same-sex behaviour;**
  - (e) Review the Immoral Traffic (Prevention) Act, 1956 that de facto criminalizes sex work and ensure that measures to address trafficking in persons do not overshadow the need for effective measures to protect the human rights of sex workers;**
  - (f) Repeal, as a matter of urgency, the Armed Forces (Special Powers) Act and the Armed Forces (Jammu and Kashmir) Special Powers Act and ensure that criminal prosecution of members of the Armed Forces is free from legal barriers;**
  - (g) Adopt the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill, 2005 and ensure that the Bill incorporates the recommendations of the Committee on the Elimination of Discrimination against Women in that regard (CEDAW/C/IND/CO/3, para. 25);**
  - (h) Adopt the Indecent Representation of Women (Prohibition) Bill, 2012, to ensure that gender stereotypes are also banned in electronic media;**
  - (i) Ensure women's participation in elected parliamentary bodies, through the adoption of legislation, including the Women's Reservation Bill;**
  - (j) Ensure a rights-based approach in the Rights of Persons with Disabilities Bill, 2012, in line with international standards;**
  - (k) Strengthen the implementation of the Protection of Women from Domestic Violence Act, 2005, by:**
    - (i) Allocating sufficient resources to ensure that an adequate proportion of protection officers are employed;**
    - (ii) Ensuring that protection officers are properly equipped to conduct their activities, in terms of administrative and logistical resources, and that**



- funds are made available for their full-time employment;
- (iii) Ensuring that the systems and procedures established under the Act are adequately adapted to deal with violence against women with disabilities;
  - (l) Ensure that police stations are equipped with sufficient and trained human and financial resources to handle all cases of violence against women and establish specific gender mechanisms, where possible;
  - (m) Take effective measures to ensure that the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is adequately implemented, in particular with regard to the establishment and functioning of the complaints system;
  - (n) Harmonize the framework of the National Commission for Women Act, 1990, in accordance with the principles relating to the status of national institutions for the promotion and protection of human rights (the Paris Principles), to ensure independence, transparency and accountability. In particular:
    - (i) Amend the Act to ensure a system for the nomination and selection of the Commission's members and chairperson that is transparent, democratic and non-partisan; apply an eligibility criteria for membership with clear requirements regarding expertise and professional experience on women's issues; prohibit members of Parliament or state legislatures or persons connected with political parties from being appointed; apply the same selection principles as regards staff; and allow the Commission more autonomy in appointing its own personnel;
    - (ii) Further ensure that the Commission is empowered to undertake independent investigation into alleged violations of women's rights;
    - (iii) Undertake a comprehensive qualitative review of the performance of the Commission, in particular with regard to its achievements in addressing violence against women and systemic, gender-related social, economic and legal issues pertaining to women, including accountability for crimes against women;
  - (o) Take appropriate measures to address the situation of irregular and domestic migrant women, including women refugees and asylum seekers; strengthen temporary special measures, including by ensuring that they are included in governmental and National Commission for Women programmes and projects, to enable them to better access services and improve their participation and representation in public life; strengthen and expand the services of the women protection clinics across the country;
  - (p) Make available increased resources to support income-generating activities for women, including marginalized women and women with disabilities. In that context, adopt the Micro

**Finance Institutions (Development and Regulation) Bill, 2011 to ensure that microfinance institutions operate within a single regulatory framework to eradicate poverty and extreme poverty in accordance with international standards, including through transparent pricing, the provision of adequate financial products and the prohibition of multiple lending, which results in over-indebtedness;**

- (q) Take measures to ensure that displaced populations and evicted families have adequate access to livelihoods, including access to health and education;**
- (r) Establish an independent national inquiry mechanism to review the current situation and challenges with regard to the fulfilment of women's human rights;**
- (s) Ensure that programmes and projects designed for women are periodically and qualitatively reviewed;**
- (t) Consider adopting a State policy to address the structural causes of all levels of poverty of women;**
- (u) Intensify efforts to ensure that training initiatives for women are designed to improve access to all occupational groups and industries.**

## **Accountability**

**79. The Special Rapporteur recommends that the Government:**

- (a) Take effective measures to ensure access to justice and effective redress for all victims of violence against women. In particular, it should:**
  - (i) Ensure that the full ban on Khap Panchayats by the Supreme Court is implemented throughout the country;**
  - (ii) Ensure that cases of violence against women are addressed by the judiciary and not by informal justice mechanisms;**
  - (iii) Monitor the implementation of judicial decisions on cases relating to violence against women, and ensure that victims have prompt access to effective remedies;**
  - (iv) Ensure that all allegations of violence against women are adequately investigated by the police, and that perpetrators are punished;**
  - (v) Ensure that women and family members wishing to lodge complaints are free from any act of intimidation, threat or harassment, and that protection is provided free of cost for the victim, if necessary;**
  - (vi) Ensure legal, housing, security and financial assistance measures for victims of violence that enable them to pursue accountability for crimes and also to rebuild their lives.**

**Societal transformation, including awareness-raising, addressing gender stereotypes and women's empowerment**

**80. The Special Rapporteur recommends that the Government:**

- (a) Design and launch a comprehensive training and awareness-raising programme for police officers charged with the responsibility of filing**

**complaints of violence against women, including First Information Reports and domestic incident reports;**

- (b) Design and launch targeted awareness-raising campaigns at the community level on harmful customary practices, including, inter alia, dowry-related practices, acid attacks, so-called honour crimes and witch-hunting;**
- (c) Carry out measures to train and sensitize media on issues relating to women's rights and violence against women in particular, so as to contribute to changing cultural and social beliefs based on patriarchal norms that perpetuate harmful stereotypes and myths about women;**
- (d) Develop and implement, in cooperation with international partners and civil society, capacity-building and training activities for service providers, including public officials, members of Parliament and the judiciary, health-care professionals and others, on issues relating to violence against women**

#### **Statistics and data collection**

**81. The Special Rapporteur recommends that the Government:**

- (a) Strengthen the current system hosted by the National Crime Records Bureau of the Ministry of Home Affairs for the collection and analysis of data relating to crimes against women, by disaggregating data by sex, age, caste, disability, religion, language and other relevant characteristics;**
- (b) Establish intergovernmental linkages among the ministries responsible for gender-related work to ensure consistent and standardized collection of data by each respective ministry;**
- (c) Periodically conduct a thorough analysis of data, to understand the different trends and evolutions of manifestations of violence against women;**
- (d) In cooperation with civil society organizations, develop monitoring and evaluation tools to assess progress in eradicating violence against women and integrate such tools in the design of relevant schemes and programmes.**