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India faces UN tests on human rights

Written by Imphal Free Press | May 23, 2012 | 0 Comments and 1 Reaction

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By Suhas Chakma

NEW DELHI, May 23: The United Nations Human Right Council is slated to review India's human rights record on 24th May 2012 in Geneva during the 13th session of the Universal Periodic Review (UPR). The UPR mechanism was introduced through the UN General Assembly on 15 March 2006 by resolution 60/251, which established the Human Rights Council itself, to review of the human rights records of all 192 UN Member States once every four years. All countries from Liechtenstein to the United States are subject to the review and the States are required to declare pledges to improve the human rights situations in their countries and to fulfill their human rights obligations.

India's previous examination was done in May 2008. As India was one of the first countries to have been examined and the procedures were not clear, there were only very few questions on its human rights record and only 18 recommendations were made. However, on 24th May, India's delegation led by Attorney General G E Vahanvati will face question from 87 governments who have signed up to speak during India's examination.

India submitted its 22 page National Report and the report sadly reflects India's anachronistic positions on human rights. It has failed to report on implementation of the pledges made for being elected to the Human Rights Council while it has nothing to report about the implementation of the recommendations made in May 2008 except extending Standing Invitation to the Special Rapporteurs of the UN. The National Report widely invokes constitutional provisions and highlights the success stories but fails to acknowledge any of the human rights problems. The report gives an impression that there are no human rights problems in India despite the fact that there is no country in the world which does not face human rights problems. As India does not want to acknowledge the human rights problems and insists on only positive aspects, its remains to be seen as to how Indian delegation responds to the questions from other member States.

In contrast to the report of the Government, the submission of the National Human Rights Commission (NHRC) prepared after five regional consultations and a national consultation with NGOs, academics, officials and State Human Rights Commissions and submitted to the UN Human Rights Council is on the spot on human rights problems of the country. The NHRC reported that there is no evidence that India intended to ratify UN Convention Against Enforced Disappearances while enforced disappearance is not codified as a criminal offence in domestic law despite NHRC receiving 341 complaints of disappearance in 2010 and 338 in 2011. The Government of India drafted anodyne "Prevention of Torture Bill, 2010" but failed to introduce the Prevention of Torture Bill as drafted by the Parliamentary Select Committee. The Armed Forces Special Powers Act remains in force in Jammu & Kashmir and the North-Eastern States, conferring an impunity that often leads to the violation of human rights while India's 2011 report on the Optional Protocol to the CRC states that "India does not face either international or non international armed conflict situations". About 35% of the complaints to the NHRC annually are against the police but custodial justice remains a problem. The scheduled castes and scheduled tribes remain particularly vulnerable despite laws to protect them, because of the indifference of public servants.

In addition, the NGOs too cover wide and vast spectrum of issues from extrajudicial executions to female foeticide. Further, in this age of internet that India is seeking to censor like a totalitarian regime, there is no scope to hide.

While India will be rightly censured for its failure to implement any of the recommendations of the previous UPR examination as well as continuing worsening human rights situations in the country, India can expect some brickbats too.

Since India has been elected to the UN Human Rights Council from 1 January 2011, India's policy on human rights issues of other countries has been gradually changing. While India remained ambivalent on the UN Security Council resolutions on Libya, India voted against Syria at the Security Council on 16 February 2012. On 23 March 2012, India expressed "its deep concern over the recent developments in Mali" and called "for respect of the Constitutional order and democratic process in that country" while welcoming "the statements by the United Nations Security Council, the African Union and the ECOWAS on the developments in Mali." India also voted against Sri Lanka at the 22nd Session of the UN Human Rights Council that created contentions in the region. Sri Lanka which is listed as the fourth speaker is expected to raise

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tough questions and make appropriate recommendations.

Undoubted India faces multifarious human rights problems. There are very few human rights issues in the world that one does not find in India. India does not have human rights problems such female genital mutilation but its caste system that survived since the Pagan period remains unique to India. In such a situation, India can expect dozens of recommendations.

Yet, there is no doubt that India should make a statement of commitment to address the root cause of all human rights violations in the country i.e. impunity through the regime of prior sanction. The Supreme Court in its judgement dated 31 January 2012 in Civil Appeal No. 1193 of 2012 ordered that “all proposals for sanction placed before any Sanctioning Authority, empowered to grant sanction for the prosecution of a public servant under section 19 of the Prevention of Corruption Act must be decided within a period of three months of the receipt of the proposal by the concerned authority”. The question is if a judge considering the facts and circumstances of a case decides to prosecute an accused public servant, how can the executive without application of the same judicial mind on the same facts and circumstances of the case decide otherwise? This exposes that independence of judiciary is suspect as the executive can prevail over the judiciary to block prosecution of the accused public servants. Since India is being led by none other than the Attorney General, its delegation should make a commitment that all laws that undermine the supremacy of the judiciary will be repealed.

(The writer is Director, Asian Centre for Human Rights)

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