

FACTSHEET - UPR 2017 - INDIA

3rd CYCLE UNIVERSAL PERIODIC REVIEW

ACCESS TO JUSTICE

SUMMARY OF KEY ISSUES IN PREVIOUS UPR CYCLES

During the second UPR cycle India received recommendations concerning access to justice in the legal, police, and prison systems. The recommendations addressed: judicial backlog, inadequate legal aid services for the indigent, impunity of security forces, alternatives to pre-trial detention, enforced disappearance, torture, and barriers to access justice for vulnerable groups. Though India accepted most of the recommendations and took incremental steps towards improvement there remains a need to achieve progress towards better access to justice.

CHALLENGES

ISSUES AND IMPACTS

Judicial Backlog & Court Understaffing

The understaffing of the court system has created an insurmountable judicial backlog for the current court staff. In the higher judiciary including the Supreme Court, there were 425 vacant posts out of 1,049 sanctioned posts as of December, 2015. Understaffing is also characteristic of District and Subordinate Courts where there are 4,501 vacant posts out of 20,620 as of December 2015. The resulting judicial backlog accounts for 39,34,286 of pending higher judiciary cases and 2,71,00,951 of pending subordinate cases.

Accepted by India in UPR 2

A recommendation made by **Thailand** to “promote equal access to justice for all, including by reducing backlog and delays in the administration of cases in court” *A/HRC/21/10 - Para. 138 & A/HRC/21/10/Add.1*

Police & Prison Reform

Re Police: Legislative competence for both police and prisons lies with each Indian state. At the Centre police and prison systems continue to function under the Police Act of 1861 and the Prison Act of 1894 respectively. Over the years, and most recently in 2015, the Centre has created model legislation for police. Close to two years later, the draft remains with the Home Ministry.

In 2006, the Supreme Court, laid down 6 binding directives which when implemented holistically would have considerably improved police operational responsibility, management and accountability. Neither the Centre nor any state has fully complied with the Court's directives even though 17 states have enacted new Police Acts since 2006.

Re prisons: Following a Supreme Court order asking governments to incorporate new rules the 2003 Model Prison Manual was revised in 2016. The Court will review the extent of compliance with its directions in May 2017. Despite progressive advisories from the Centre to improve the supervision of prisons, less than 1% of all prisons had appointed fully constituted and working Boards of Visitors as required by law.

Inadequate Legal Aid Services for the Indigent

Despite the guarantee of free and effective legal representation for the indigent, women, and those in custody, structural barriers prevent timely legal aid reaching those that need it the most. Legal aid is not available at police stations, only three percent of the legal aid beneficiaries are persons in custody; application procedures are long drawn and convoluted; panel lawyers are in short supply and delay in appointments ensures that in toto the mechanism does not work to ensure fair trial standards of legal representation are met. The Probation of Offenders Act 1958, offers alternates to custody for first time and petty offenders. At present no national data is published on its use.

Accepted by India in UPR II

A recommendation made by Thailand “to provide more legal aids to the poor and marginalized, as well as increasing the use of alternative measures to pre-trial detention” *A/HRC/21/10 - Para. 138.122 & A/HRC/21/10/Add.*

Prison Conditions

According to data from 2015: Approximately 67% of the total prison population comprised of people in pre-trial detention. Scheduled castes make up 21% of all prisoners; 1584 prison deaths were reported; the national occupancy rate averaged 114.4%; 3599 under-trials (or 1.3%) were detained for more than 5 years.

Witness Protection

India lacks legal mechanisms and programs for witness protection despite guidelines from the Indian Supreme Court and the ruling in the 2003 case of the NHRC vs. The State of Gujarat. There is an urgent need to develop a program as there are over 560 witnesses that were granted central paramilitary protection by the Supreme Court before, during, and after the trial, following the application by Citizens for Justice and Peace (CJP).

Human Rights Violations by the Police

Violations of law and human rights continue to typify police behaviour despite a range of safeguards. Custodial torture, unlawful arrests, suspicious deaths in custody, and extrajudicial killings, abuse of power and excess use of force are frequently reported, and verified to the National Human Rights Commission. Between 2013 and 2015, 308 custodial deaths were reported across India and criminal charges were filed against 51 policemen. Prosecution of police officers remains elusive both due to legal obstacles that require prior permission to prosecute, delays in the legal process and response from authorities and the tendency to shield establishment reputation.

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CHALLENGES

Access to Justice for Vulnerable Groups

Noted by India in UPR II

Recommendations made by **United States of America and Spain** to “end impunity for security forces accused of committing human rights violations” and “guarantee effective access to justice in cases of human rights violations committed by security forces personnel with regard to the use of torture respectively” **A/HRC/21/10-Para. 138.119 & Para. 138.4**

Accepted by India in UPR II

A recommendation made by **Spain, Sweden, Switzerland, Timor-Leste, the UK and Northern Ireland, USA, Australia, Austria, Botswana, Brazil, Czech Republic, Indonesia, Iraq, Italy, Maldives, Portugal, and the Republic of Korea** to “finalise the ratification of the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment” **A/HRC/21/10-Para. 138.115 & A/HRC/21/10/Add.**

It is frequently reported that accessing justice is particularly problematic for vulnerable groups including: women, scheduled castes, scheduled tribes, LGBTQ and gender non-conforming people, IDPs, the homeless, religious and ethnic minorities, non-citizens, refugees, people living near the Bangladesh border, and those caught in conflict areas.

In areas affected by conflict, there are frequent complaints of enforced disappearances at the hands of agents of the state. Registration of complaints is itself difficult and allegations are voiced that complaints are not registered. Enforced disappearance is not specifically criminalized in the Indian legal system, and, in Kashmir for instance any lodged complaints fall under the Section 364 or 365 abduction clauses of the Ranbir Penal Code. Most people living near the border with Bangladesh are subject to policing by paramilitaries, and lack adequate access to normal civilian protections.

Women face barriers when registering police complaints. In 2015, only 6% of the police in India were women. The absence of policewomen required by law to register sexual offences complaints leads to delays that are often fatal to just outcomes. There are serious allegations of sexual assault on women during police operations particularly in conflict areas.

ISSUES AND IMPACTS

RECOMMENDATIONS

- **Immediately address the shortage of personnel in criminal justice institutions.**
- **Ensure compliance with the National Legal Services Authority guidelines for prompt legal services to persons in police and judicial custody.**
- **Establish legal aid clinics in every prison with trained lawyers and paralegals.**
- **Institutionalise a regular reporting and monitoring processes in the legal aid machinery to ensure accountability and transparency.**
- **Ensure that Boards of Visitors are constituted in all jails across states in compliance with the 2011 MHA advisory.**
- **Review and withdraw all undue restrictions on access to prisons in the 2015 MHA advisory.**
- **Fully comply with the amended UN Standard Minimum Rules for the Treatment of Prisoners, 2015.**
- **Initiate a widespread public consultation process on the draft of model Police and Prisons Acts by releasing the drafts into the public domain and providing adequate time for both public and expert consultation.**
- **Acknowledge and increase accountability and redress for all victims of custodial violence or other human rights violations by the police.**
- **Review the pace and quality of states' compliance with the Supreme Court's 2006 directives on police reform and call for full compliance.**
- **Implement witness protection in conjunction with the relevant actors involved in criminal justice.**