

## **ActionAid India Submission to the UPR III Process - 2017**

**(On behalf of NGO partner organizations, Knowledge Hubs and Policy Unit)**

ActionAid India is an Indian not-for-profit entity, entitled legally as ActionAid Association. We are working in India since the 1970s on issues of poverty, patriarchy and marginalization through our efforts on the fronts of disability, women's rights, agriculture, fisheries, right to education, livelihood collectives/cooperatives, right to dignity of *Dalits* and *adivasis* etc. We have also been working during all major and minor emergencies since the Uttarkashi earthquake in the 1980s, providing humanitarian support of immediate relief followed by rehabilitation. Rights of women and girl children have been a priority area of work for us in the 25 states and 1 Union Territory where we have presence through 12 regional and 2 field offices. For more details on our efforts on the various fronts, you could visit our [website](#).

ActionAid India has been participating in several stakeholder consultations for the last two decades in preparation of shadow reports to various international treaties, for example UNCRC, UNCRPD, and UPR I and II. Its partner organizations spread across India contribute to various such processes on regular basis. We have submitted a shadow report to the UN on Government of India's II, III, IV, & V Combined Report on ICESCR to the Committee on Economic, Social and Cultural Rights in 2008. It was a rich country wide process involving 152 organizations<sup>1</sup>.

Currently we have partnership with more than 200 organizations and institutions in India working on myriad of rights of the marginalized communities. We have created 8 Knowledge Hubs and a Policy Unit to work on policy issues and knowledge creation on women's rights, education&child rights, land and livelihood, natural resources, urban poor rights, peace&justice, democracy, south-south cooperation. This report is culmination of the contributions from the work of these units, policy unit and learning from our engagement with 83 long term partnerships, that spans over 8 to 12 years.

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<sup>1</sup> [http://www2.ohchr.org/english/bodies/cescr/docs/cescr40/ActionAid\\_India.pdf](http://www2.ohchr.org/english/bodies/cescr/docs/cescr40/ActionAid_India.pdf)

## Submissions to UPR III

### I. Housing

Poor in rural India<sup>2</sup> (nomadic & settled communities) suffer from homelessness, inadequate shelter, land deficit for housing for accessing state housing. Similar issues prevail in urban areas as well, major issue is, non-availability of land. Habitats and housing suffer from disaster resistance as well. Housing for all is linked though with right to life, it is still not a fundamental right.

There is need for comprehensive policy document to ensure Housing for All<sup>3</sup>. A Comprehensive Policy document on the right to Housing requires a Constitutional Amendment to Article 19 to make it fundamental right<sup>4</sup>.

### Recommendations

1. **Amend COI** - inserted by 19A to read as “all citizens shall have the right to adequate housing in accordance with law<sup>5</sup>”.
2. **Financial allocation** - The State and Central governments should establish a separate housing finance commission (not a housing bank) to determine separate and special

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<sup>2</sup> Particularly, Denotified, and nomadic tribal people, indigenous tribal people, single women, Dalit people coming under below poverty line suffer from inadequate shelter or no shelter situations.

<sup>3</sup> Legislation for achieving adequate housing and details the right to adequate housing to all will form part of this amendment. To achieve adequately housed persons and families it is necessary to include inadequately housed dwellers, homeless people and those living in already constructed resettlement colonies from among poor and marginalised, socially and economically deprived & other vulnerable people. Some features of the policy on housing should be:

1. **Legal Security of Tenure:** *All persons/families must be guaranteed legal security of tenure.* States parties are required to take immediate measures to confer legal security of tenure to those lacking such protection, after genuine consultation with the affected.
2. **Availability of services, materials and infrastructure:** Everyone is entitled to sustainable access to common resources, potable water, electricity and energy for cooking, heating and lighting, sanitation and washing facilities, food storage, refuse disposal, site drainage, and emergency services.
3. **Protection against eviction:** All persons shall be guaranteed Legal protection against evictions, harassment and other threats. No eviction is permitted in the guise of resettlement project or sustainable development (Mega industrial, infrastructural projects- defence, power and ports, tourism and entertainment, educational and hospital projects, building and real estate) land protection.
4. **Satisfaction of other basic needs:** Housing should be at a level sufficient to ensure that the attainment and satisfaction of other basic needs are guaranteed. This includes protection from threats to health, clean and safe environment and physical safety of the dwellers. Adequate housing must enable the expression of cultural identity and diversity. Restoration and protection of the customary rights of community / collective enjoyment access and control of housing resources is very necessary.
5. **Subsidised and free building materials / natural resources:** Housing subsidies should be available for those who are inadequately housed, homeless or tenants. It is State responsibility to provide free housing materials / either building materials or natural resources and make them available for all inadequately housed and homeless dwellers. This should be supported by the state for those who require technological support and transport of building materials at free of cost.
6. **Security to housing and livelihood:** Adequate housing must be in a location that allows access to employment options, health care services, schools, child care centers and other social facilities. Housing must not be built in an area where pollution poses a threat to the right to health.

<sup>4</sup> ActionAid India and Human Rights Foundation, Chennai, Draft Housing Policy (2014-2015)

<sup>5</sup> In this amendment Adequate housing is detailed with the right to adequate housing being subject to the needs of ecological balance. It would make this Amendment also a Fundamental Right

allocation of 10 % in the annual revenue budgets for generating adequate housing to poor and marginalised, socially and economically deprived & discriminated and other vulnerable people.

3. **Universal Housing** - Housing should be universal, not targeted. It should be adequate, disaster proof, and have basic amenities. Housing and livelihood are intertwined and there is indivisibility of all human rights. All together to be enforced, neither prior and nor post.
4. **Revision Requirement of Rural Housing** - Estimates of 12<sup>th</sup> Planning Commission of India for rural housing is inadequate. Shortage is estimated more than 6 40million<sup>7</sup>.
5. **Urban Shelters for Homeless** - Shelters should be constructed and monitored as per Supreme Court guidelines.
6. **Moratorium on evictions habitats** in both urban and rural areas.

## II. Health

India's MMR<sup>8</sup> has been reported at a 174, by a WHO study on MMR. This comes close to the Government's own estimate of 178 in the 2010-12 period<sup>9</sup>. While our IMR<sup>10</sup> stands at 39/

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<sup>6</sup> [Housing shortages in Rural India by Shamsher Singh, Madhura Swaminathan and V. K. Ramachandran Journal, 2013, vol. 3, issue 2, pages 54-72](#)

**Abstract:** The right to adequate housing is recognised as a basic human right by the United Nations and its constituent bodies. Although India is a signatory to many international covenants in this regard, it has neither a rural housing policy nor mechanisms to monitor the realisation of the right to adequate housing. This paper examines the methodology used by the Working Group on Rural Housing for the Twelfth Five-Year Plan established by the Planning Commission of India to estimate the housing shortage in rural India. We argue that the methodology of the Working Group, which focussed only on the material used for roofs and walls, was inadequate and that their estimate of the housing shortage in rural India a severe underestimate. We use data from 15 village surveys to estimate the number of households that live in houses that are built of pucca material, have two rooms, an electricity connection, a source of water inside the house or immediately outside it, and a functioning latrine. (These criteria still fall well short of the quality of housing to the provision of which India is committed internationally.) In order to estimate the order of magnitude of the shortage of housing in rural India, we then apply the ratios from our village surveys to the total rural population. While the Working Group of the Planning Commission estimates the shortage of houses to be about 40 million housing units, our estimates of the shortfall in housing is of the order of 140 million units.

<sup>7</sup> Arjun Kumar, Economic & Political Weekly Supplement June 28, 2014 vol xliX nos 26 & 27 - Pg75

The working group on rural housing for the Twelfth Five-Year Plan estimated the rural housing shortage in India to be 43.13 million in 2012. Using the latest data sets - Census 2011 and the National Sample Survey housing condition round for 2008-09 - and the improved methodology used by the technical group on urban housing shortage, this paper re-estimates the rural shortage to be 62.01 million in 2012. Households living in temporary houses and in congested conditions were found to be mainly responsible for the rural housing shortage. The results suggest the need for holistically focusing on eradicating shelter deprivation in rural India and contributing to an enhancement of the quality of life of the People.

<sup>8</sup> <http://www.thehindu.com/sci-tech/health/medicine-and-research/onethird-of-total-maternal-deaths-in-2015-happened-in-india-report/article9125054.ece> However as per a recent study by health policy research journal *Lancet*, one third of total maternal deaths even as late as 2015 happened in India. **SDG Goal 3.1. Puts high emphasis on reducing Maternal Mortality to 70 per 100,000 births by 2030.**

1000 live births, our neo-natal mortality<sup>11</sup> is as high as 26/1000 live births<sup>12</sup>. Increasing dependence on private clinics and hospitals for outpatient as well as in patient care, as against public health facilities is leading to huge out of pocket expenditures has become a continuing malady of the Indian health system<sup>13</sup>.

### Recommendations:

1. Prevention of maternal deaths would largely depend on providing accessible and quality pregnancy care during and timely as well as quality delivery services<sup>14</sup>.
2. Reviving the services of trained birth attendants in addition to promoting institutional deliveries<sup>15</sup>.
3. Campaigns against child marriages and for preventing women's malnutrition, which are considered to be the causes for low birth weight babies<sup>16</sup>.
4. Promotion of exclusive breast feeding and complementary feeding in association with awareness building for adequate provision of food and nutrition to women in families.

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<sup>9</sup> [http://www.who.int/gho/maternal\\_health/countries/ind.pdf](http://www.who.int/gho/maternal_health/countries/ind.pdf) and  
[http://www.censusindia.gov.in/vital\\_statistics/SRS\\_Bulletins/MMR\\_Bulletin-2010-12.pdf](http://www.censusindia.gov.in/vital_statistics/SRS_Bulletins/MMR_Bulletin-2010-12.pdf)

<sup>10</sup> As per SDG 3.2 preventable deaths of newborns and children under 5 years are to be put an end to by 2030. With regard to child deaths, the weakest link in our health system for children is the care of the new borns i.e. the first 28 days after birth. As high as 68 per cent of our infant mortality (deaths of children before the first birthday) is constituted of deaths of newborns i.e neonatal mortality.

<sup>11</sup> Coming to India's huge neo-natal mortality rate, these are also due to preventable causes such as pneumonia, low birth weight, lack exclusive breast feeding etc, while these along with other preventable diseases such as diarrhoea, malaria and tuberculosis lead to the deaths of infants.

<sup>12</sup> [http://www.censusindia.gov.in/vital\\_statistics/SRS\\_Report\\_2014/8.%20Chap%204-Mortality%20Indicators-2014-U.pdf](http://www.censusindia.gov.in/vital_statistics/SRS_Report_2014/8.%20Chap%204-Mortality%20Indicators-2014-U.pdf)

<sup>13</sup> Instead of strengthening the Government health facilities for primary and secondary care increasing importance is being given to adopting an insurance model of health care for which the Government will pay to the private sector for treating its citizen thereby bypassing the Government hospitals and paving the way for their eventual abandoning. **SDG 3.8 sets target to achieve universal health coverage, including financial risk protection, access to quality essential health care services and access to safe, effective quality and affordable essential medicines and vaccines for all.**

<sup>14</sup> Often complications in pregnancy and delivery are not apprehended due to inaccessibility of services or unresponsive male behaviour in the family to seek the services. This needs not just provision of services, but also sensitisation of men and mothers in laws regarding the need to ensure timely access to at least the existing health services accessible to women.

<sup>15</sup> Institutional services cannot be made accessible in terrains with poor road connectivity, forest and mountainous areas and places with poor transport availability. However, this should be done at the cost of the presently expanding institutional deliveries, which continue to expand in all accessible areas.

<sup>16</sup> The changes need to happen in the society and in the families as these are issued of the mindset.

### III. Education and Child Rights

RTE Act, came into effect from 1st April 2010. Six years of completion, achievements are not as per the pace and scale of change envisaged in the legislation. Quality of education, is still concern<sup>17</sup>. India has been ranked at a low of 102 out of 120 countries on the Education For All Development Index. Teacher absenteeism varies from 15% in Maharashtra to 40% in Jharkhand<sup>18</sup>. There are over 5 lakhs teacher's posts lying vacant and 6.6 lakhs untrained teachers in the country<sup>19</sup>. India however continues to have highest number of dropouts and out of school children. In 2014 around 6.064 million children remained out of school<sup>20</sup>. Out of school children become child labourers. 28% children with Disabilities are out of school as compared to 2.97% other children<sup>21</sup>. This trend exists for children belonging to Dalit, Tribal, Muslim communities, & girl children<sup>22</sup>. **Privatisation of Education** is on the rise in India, both in terms of Increase in number of private schools and also increase in the number of enrolment in them. Growth in number of Private schools is 24.8% between 2010-11 to 2015-16. Likewise, increase in the percentage of children enrolled in private schools till elementary level was 37.21 percent in 2015-16, which was 30.62 percent on 2010-11<sup>23</sup>. Increasing trend in closure of government schools or merger is seen<sup>24</sup>. One lakh government schools, which is almost 15% of total government schools in India, have been closed<sup>25</sup> or are facing the imminent threat of closure<sup>26</sup>. **Child Labour:** No Child should work. All work is worst for children. School is the best place for the child to be. Amendment to the Child Labour Act in 2016, allows children to work in family enterprises, & after school, and reduced list of hazardous occupations and process under the Act to just 3, thereby providing scope for engaging children in hazardous occupations. New Act has diluted rights of children & contravenes social justice completely. Majority of child-labour are from Dalit, Adivasi & Muslim families. Although it is in line with the ILO Convention 138 on Minimum Age (1973) and Convention 182 on Worst Forms

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<sup>17</sup> The issue of lack of effective and quality schooling lies in various problems which can be easily solved like non appointment of adequate number of qualified teachers teachers and poor school infrastructure.

<sup>18</sup> The UNESCO EFA Monitoring Report on India's performance.

<sup>19</sup> Oxfam India Report.

<sup>20</sup> As shared in the Rajya Sabha discussion, by the the Minister HRD

<sup>21</sup> UPR III recommendation under 138.164. was to Ensure universal, compulsory and free education, carrying out on a priority basis measures aimed at eradicating discrimination, particularly discrimination that affects girls, marginal groups and persons with disabilities (Mexico);

<sup>22</sup> RTE Forum Report (2015)

<sup>23</sup> DISE Data, Ministry of HRD

<sup>24</sup> In various states schools are being closed down in the name of school mergers and rationalization - Karnataka, Orissa, Rajasthan etc.

<sup>25</sup> This goes against, the UPR III recommendations under 138.165. that India Continues its efforts to promote the right to children's education and ensure the importance of the principles of children's education in the country 38.161. Reinforce its efforts in provision of free and compulsory primary education.

<sup>26</sup> In a chapter on privatisation of education, by ActionAid for the RTE Forum Annual Stocktaking (2015) evidences these phenomenon of school closure.

of Child Labour (1999), and large extent with Article 32 of the CRC, however section 3 clause 5 allows child labour in “family or family enterprises”<sup>27</sup>. Since most of India’s family occupations are organised based on caste linked occupations, with poor families trapped in intergenerational debt bondage also, definitely this will have adverse effect on the most marginalised and poor. **Budget for education** continues to be below 6% of GDP<sup>28</sup>. **Corporal punishment** in schools is prohibited by the RTE Act, 2009. However, it is not prohibited legally in all institutional & family settings.

### **Recommendations**

1. Minimum age for work & employment should be 18 years. Amend the Child Labour Act accordingly.
2. Set up systems and mechanisms to improve the quality of education in schools.
3. Identify specific marginalised & social groups sensitively & design the programmes to increase access and retain them.
4. Recognise Discrimination and Violence as key factors for pushing out children from the school and prepare guidelines around them in order to make those sensitive on gender and social inclusion.
5. Regulate low quality private schools as per RTE Act norms.
6. Increase education budget to 6% of GDP for effective implementation of the RTE Act, and quality education.

## **IV. Trafficking of Persons**

India has wide framework of laws in regards to trafficking enacted by Parliament of India as well as state legislature. The article 23 of Constitution of India<sup>29</sup> guarantees right against exploitation; prohibits traffic in human beings and forced labour and make their practice punishable under law. The Immoral Trafficking Prevention Act 1956<sup>30</sup> (ITPA) exclusively deals with trafficking which prohibits trafficking of women and girls for the purpose of prostitution as an organised means of living. However various reports suggest that India has been one of the major source<sup>31</sup>, destination and transit country for trafficking for various purposes such as commercial sexual exploitation, beggary, labour etc.

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<sup>27</sup> The clause is also dangerous as it does not define the hours of work; it simply states that children may work after school hours or during vacations. As we know most Child Labourers end in home based units like beedi rolling, bindi making, zaree- saree making, agarbatti, papad making, packing and sticking labels, chappal making and handicrafts manufacturing, this amendment will in a way legitimize and perpetuate caste based occupations. This will lead to hidden unregulated forms of exploitative labour conditions where the most poor and marginalised families are engaged. Previous Chairperson of NCPCR (National Commission for Child Rights) Ms. Santha Sinha says “Understanding the challenges faced by the most deprived castes and communities, this amendment defeats its very purpose - enabling children to enjoy their right to education”.

<sup>28</sup> Besides the UPR II, Kothari Commission in 1964-1966, had suggested 6% of GDP to be earmarked for education.

<sup>29</sup> <http://www.constitution.org/cons/india/const.html>

<sup>30</sup> [http://tcw.nic.in/Acts/Immoral Traffic Prevention Act \(ITPA\) 1956.pdf](http://tcw.nic.in/Acts/Immoral%20Traffic%20Prevention%20Act%20(ITPA)%201956.pdf)

<sup>31</sup> <http://www.childlineindia.org.in/child-trafficking-india.htm>

According to NHRC Report on Trafficking in Women and Children<sup>32</sup>, in India the population of women and children in sex work in India is stated to be between 70,000 and 1 million of these, 30% are 20 years of age. Nearly 15% began sex work when they were below 15 and 25% entered between 15 and 18 years (Mukherjee & Das 1996). A rough estimate prepared by an NGO called End children's prostitution in Asian Tourism reveals that there are around 2 million prostitutes in India. 20% among them are minors.

To address the lacunae of ITPA and as well as dealing with trafficking issue comprehensively, Government of India has circulated a draft bill called Trafficking of Persons (Prevention, Protection and Rehabilitation) Bill 2016<sup>33</sup>. It is still under discussion.

### Recommendations

1. India needs a robust and comprehensive trafficking legislation which address the trafficking issue not just limiting to commercial sexual exploitation. The legislation should be supported by a robust implementation framework, strict monitoring parameters and fixed accountability.
2. New and emerging forms of trafficking such as trafficking for forced marriage or child labour, or into armed conflict, trafficking through massage parlours or placement agencies or with the use of drugs, etc., should be identified and strategies developed to counter them.
3. Coordination, sharing of information and unrestricted communication among various agencies at the state level and among district, state and central agencies of the Government must be secured to ensure that solutions are found for gaps and challenges identified.
4. Rehabilitation of trafficked children should ensure their Right to Education guaranteed under the Right of Children to Free and Compulsory Education Act 2009. In the case of children above 14 years or completed the Class VIII also, opportunity for education should be provided to them as part of rehabilitation. School enrolment and retention should be also a measure to prevent trafficking.

### V. Dalit Rights

Dalit human rights continue to be violated, and has seen an increasing trend. State measures to create awareness on values enshrined in the Constitution of India (COI) of equality, dignity and rights are poor or absent<sup>34</sup>. Registered cases of atrocities were 46114 in 2013, and 47064 in 2014. Many go unreported. Untouchability practices continues<sup>35</sup>. Navigating the criminal justice system is a challenge for Dalits, there is lack of legal and social support for Dalits.

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<sup>32</sup> <http://nhrc.nic.in/Documents/ReportonTrafficking.pdf>

<sup>33</sup> <http://wcd.nic.in/sites/default/files/Draft%20Trafficking%20of%20persons%20Bill%202016.pdf>

<sup>34</sup> A recent attack on dalit youth in 2016 in Una is a glaring example of violation of COI.

<sup>35</sup> A study done by AAI in M.P. (2014), A study by AAI in (2005), Untouchability in Rural India; Mander, Harsh et al: Sage Publishers. A study to revisit the villages of 2005 is currently being done to ascertain prevalence of untouchability and caste based unclean occupations. The instances of village elites refusing to cooperate with a Dalit Village Pradhan, or children refusing to eat their mid-day meal made by a Dalit cook in a school are all instances where the inherent notion of purity and pollution raises its head. So caste based discrimination and prejudice exists even in 21<sup>st</sup> century India and one cannot live in denial of that anymore.

Legal Aid is a right of the poor; the State is unable to fulfill the same effectively, with only 4% of Dalits accessing it. There is a high population of Dalits in under-trial or remand prison, for want of legal support and bail services.

### Recommendations

1. Increase awareness on Constitutional values, legal provisions for protection of Dalit rights & dignity by GOI<sup>36</sup>.
2. Implementation report of the Prevention of Atrocities on SC&ST Act (POA) should be tabled in every session of the Parliament and State Assembly.
3. Appropriate institutional mechanisms in a decentralized manner should be set up to review implementation of the POA. In addition set up special courts to address cases of atrocities effectively and expeditiously, including providing and monitoring legal aid to all poor dalits.
4. Legal Aid should be provided and monitored to all under-trial prisoners, and measures taken should be informed in the Crime in India Report of GOI.
5. Introduce reservation in employment for Dalits in private sector to ensure equality in employment opportunities.
6. Disaggregated data on caste based discrimination should be evolved periodically, measures should be taken to address the same.
7. A wider understanding of caste based occupations, reinforcing caste system and social exclusion should be developed and caste based occupations discriminating and exploitative in nature should be eradicated. E.g. manual scavenging, funeral work, sex work, devdasi etc.

**Education** though is provided largely free with affirmative policy, is marred with discrimination. Across 83 projects of AAI different forms of discrimination against dalit children is reported. A study entitled<sup>37</sup>, *They say We are Dirty* evidences discrimination on dalit children that pushes children out of school. Although the Sub Plan for Scheduled Caste in State Budgets can provide increased financial and institutional support to Dalit children, it is both unspent and diverted for other purposes. Legislative framework to bind spending & prevent diversion is still pending nationally. Only Two Indian States, Karnataka & Andhra Pradesh<sup>38</sup> have legislated sub plan<sup>39</sup>. As a result, in Telengana both residential and scholarship support for Dalit children have seen steep increase. Dalit girls drop out of school early. Programs like this will help in their retention.

### Recommendations

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<sup>36</sup> The Ministry of Information and Broadcasting, Ministry of Social Justice and Empowerment have key responsibility to create awareness on social justice.

<sup>37</sup> Human Rights Watch, *They Say We are Dirty*, (2014). <https://www.hrw.org/report/2014/04/22/they-say-were-dirty/denying-education-indias-marginalized>.

<sup>38</sup> The undivided Andhra Pradesh, now divided into Telengana and Andhra Pradesh.

<sup>39</sup> More insights is available in: <http://www.ncdhr.org.in/resources/publications/daaa-publication/Institutional%20Exclusion%20in%20Education-2.pdf>

1. Make constitutional values part of school curriculum & teacher training. Also these values be displayed on school & panchayat walls.
2. Enact National SC & ST Sub-Plan Act, to ensure budget justice for excluded people.
3. Media should be widely used to promote values of equality, creating casteless society, and on POA.

**Subaltern women's rights**, Dalit women suffer double marginalization, of patriarchy and caste based discrimination. In school, on way to school, and in community, Dalit girls experience violence. Rape and reportage of incidences of rape have seen steep increase. 2233 cases registered in 2014<sup>40</sup>. Dalit, Adivasi women are victims of honor killing & witch-hunting.

### Recommendations

1. National Mission for Empowerment of Women must evolve special program in critical districts to address protection and women's rights issues of Dalit women, including their political and economic empowerment.
2. Programs of Ministries of Women & Child Development, HRD, SJ & E, should have a gender lense, in both programming and budgeting to address dalit women's rights.
3. Status report on socially excluded women should be evolved annually by the NHRC & Min of WCD, and appropriate actions should be taken to address rights violations.

### VI. Indigenous Community People (Tribal)

Indigenous people form 8.2% of general population. Marginalised socially, economically & politically they are losing autonomy & control over resources. They live in resource rich areas, forests, water, mines & minerals<sup>41</sup>. Myriad of protective mechanisms were created, by way of laws & policies for protecting their habitats, resources, participation in decisions concerning them. **PESA Act, 1996** empowers Gram Sabha to have decision making powers over development & resources of 5<sup>th</sup> Schedule of COI. The Schedule entrusts the Governor with the task of ensuring 'peace and good governance', with powers towards this end over the legislatures and executives of the Union and States, however, in collaboration with the President. An analysis of annual reports submitted by the Governor to the Centre in the past years show that these reports hardly bear any resemblance to their objective <sup>[2]</sup>, or even touched upon the themes of displacement, land alienation, poor governance etc. **PESA and Forest Rights Act<sup>42</sup>, 2006<sup>43</sup>** that reinforces tribal self-governance in Schedule areas as was intended by the PESA<sup>44</sup>, are deliberately paid as little attention as possible.

<sup>40</sup> NCRB - Crime in India (2014), GOI.

<sup>41</sup> The United Nations Declaration on the Rights of Indigenous Peoples, adopted in September 2007 reaffirms the right of Indigenous Peoples to have meaningful control over their own lives, to maintain their distinct cultural identities, to live free from discrimination and the threat of genocide, and to have secure access to the lands and resources essential to their well-being and ways of life. United Nations Declaration on the Rights of Indigenous Peoples, [http://www.un.org/esa/socdev/unpfii/documents/DRIPS\\_en.pdf](http://www.un.org/esa/socdev/unpfii/documents/DRIPS_en.pdf)

<sup>[2]</sup> PESA, Left-Wing Extremism and Governance: Concerns and Challenges in India's Tribal Districts Ajay Dandekar & Chitragada Choudhury Institute of Rural Management, Anand

<sup>42</sup> The Schedule Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act 2006

<sup>43</sup> Scheduled Tribes and Other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006., <http://tribal.nic.in/WriteReadData/CMS/Documents/201211290332077861328File1033.pdf>

<sup>44</sup> It extended certain provisions of the PESA Act even to the non-scheduled areas, such as by empowering the Gram Sabha as the ultimate authority in respect of ownership and management of all kinds of forest land. Besides,

**Habitat rights of Particularly Vulnerable Tribal Groups (PVTGs)**, given under FRA [Sec.3(1)(e)] are not fully recognized in some States<sup>45</sup>. **Budgets earmarked for development of Indigenous people** under the Tribal Sub-Plan (TSP)<sup>46</sup> are not utilized fully for development, or used without participation of people<sup>47</sup> in planning<sup>48</sup>.

### Recommendations:

1. The Government of India should ratify ILO Convention No. 169 on Indigenous Peoples
2. There should be comprehensive legislation prohibiting transfer/alienation from all forms of natural resources including land in the 5<sup>th</sup> & 6<sup>th</sup> Scheduled Areas to the non-tribal or any agencies or institution. In this regard all states and Union Territories should amend their respective Land Revenue codes to be in consonance with this. If any tribal land has been transferred illegally it should be restored back
3. Provision of Panchayat Extension to the Schedule Area (PESA) 1996, Forest Rights Act (FRA) 2006 and Tribal Sub- Plan (TSP) should be implemented effectively.
4. Enact pending bill on SC&ST Sub-Plan Bill to give legislative safeguard for implementation of budget under the sub-plan.
5. There should be special provisions for taking care of tribal community especially primitive tribal groups (PVTGs) with regards to their daily livelihood, education, health care, language, culture and other basic necessities.
6. No displacement of tribal from their homeland should be allowed. If inevitable must follow Free, Prior, Informed Consent (FPIC) process at each step.
7. Destruction of places of religious, cultural importance for tribal should be treated as criminal action as per the provisions of International Court of Crime (ICC)

### **VII. Denotified Communities**

A National Commission for Nomadic and Denotified Communities was set up in 2008 (NTDNTC I) preceding the UPR II process and during UPR I, to address socio-economic disparities experienced by communities that were notified criminal during colonial era, and are leading

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the role of Gram Sabha in protecting the natural resources was upheld by the Supreme Court, such as in the Niyamgiri case on 18<sup>th</sup> April 2013 Writ Petition (Civil) NO. 180 OF 2011 Orissa Mining Corporation Versus Ministry of Environment & Forest & Others <http://supremecourtindia.nic.in/outtoday/judgments/180.pdf>

<sup>45</sup> There are 13 PVTGs in the State of Orissa, habitat rights of not a single PVTG have been recognized as per Section 3(1) (e) of FRA. Not a single forest village or un-surveyed village has been converted in to a revenue village as per Section 3(1) (h) and even not a single Forest Protection and Management Committee as per Section 3(1) (i) and Section 5 of FRA has been formed till date by any Gram Sabha <http://www.orissadiary.com/CurrentNews.asp?id=41484#sthash.MKMEER70.dpuf>

<sup>46</sup> Special Central Assistance to Tribal Sub Plan, <http://www.tribal.nic.in/Content/SpecialCentralAssistancetoTribalSubPlan.aspx>

<sup>47</sup> Ground experience from implementation of Dalit Bahujan Movement Project by ActionAid in Karnataka (2010-2014); and learnings from review of documents of NCDHR, Delhi, India.

<sup>48</sup> It is a strategic policy initiative to secure overall development of the STs, was first introduced in the Fifth Five Year Plan of India. The focus of TSP is on “securing budgetary allocations for tribal development at least proportionate to their population, in order to bring them at par with other sections of society and to protect them from exploitation.”

nomadic life. NTDNTC I, submitted its recommendations to GOI, which are not implemented so far<sup>49</sup>. A new Commission was set up in 2015<sup>50</sup> (NTDNTC II) with same objectives of NTDNTC I.

Habitual offenders Act, 1952 is used repeatedly to arrest members of DNT community. This is based on the bias against DNT communities created through erstwhile Criminal Tribes Act, that the community youth and adults are engaged in criminal activities.

### Recommendations:

- a. NTDNTC II and NITI Aayog should implement recommendations of NTDNTC I.
- b. Constitution should be amended to create a backward category-NTDNT community<sup>51</sup> to address socio-economic, political backwardness.
- c. Extend provisions of SC and ST prevention of Atrocities Act to these communities.
- d. The Habitual Offenders Act should be repealed forthwith, it allows repeated arrest on suspicion of commission of crime & thus declaring a person as habitual offender.
- e. National NTDNT mission should be set up with adequate budgetary provisions to address development gaps in the community.

### VIII. Persons with Disabilities.

Constitution of India (COI) does not explicitly prohibit discrimination based on disability<sup>52</sup>. Despite India's ratification of UNCRPD (2007), concept of insanity and unsound mind still exists both in the COI and in some domestic laws.

21 million people with disabilities are in India (Census of India:2011). This may be gross under-representation. There are one billion disabled people in the world. Is India's disabled population so low, despite high general population<sup>53</sup>?

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<sup>49</sup> Many from these communities come under backward category of COI (SC, ST & OBC). Some however, are still to be placed under any backward category

<sup>50</sup> <http://pi.b.nic.in/newsite/PrintRelease.aspx?relid=114573>

<sup>51</sup> This would be akin to Vimukta Jaati / Denotified backward community category in the State of Maharashtra, enjoying benefits of positive discrimination.

<sup>52</sup> Constitution calls for non-discrimination and equality before the law and eyes of the law. But specificities for discrimination based on disability does not exist. Serves only as a general measure.

<sup>53</sup> World Disability Report Page 29, Chapter-2 - Disability a global picture. Based on 2010 population estimates - 6.9 billion with 5.04 billion 15 years and over and 1.86 billion under 15 years - and 2004 disability prevalence estimates (*World Health Survey* and *Global Burden of Disease*) there were around 785 (15.6%) to 975 (19.4%) million persons 15 years and older living with disability. Of these, around 110 (2.2%) to 190 (3.8%) million experienced significant difficulties in functioning. Including children, over a billion people (or about 15% of the world's population) were estimated to be living with disability.

**There is increased exploitation, violence & abuse of disabled in both state and non-state run institutions. Women, Children & persons with psycho-social disabilities suffer worst. Exclusion of children with disabilities from education is four times higher than the children belonging to other communities<sup>54</sup>** Thus, a small percentage of disabled children access education. Reasons being, inadequate teacher training, inaccessible text books, child unfriendly curriculum and a poor evaluation system. **The employment rate** both in terms of wages and self-employment is less than 10% for persons with disabilities due to negative attitudes, inaccessibility and unaffordability of technology and transport systems. **Public spaces** including information are inaccessible to persons with disabilities. **Disabled People remain out of political process, no provision for reservations in elections, as compared to other marginalized sections.** They are unable to vote with dignity as polling booth are largely in-accessible, dependency on others violates secrecy of voting.

### **Recommendations:**

1. Amend the COI and both general and specific legislations in line with UNCRPD.
2. Comply with Article 31 - UNCRPD, by establishing data collection methods and systems in order to gather accurate statistics of persons with disabilities.
3. Disability segregated data should be provided in all the reports submitted to the UN treaty bodies including the UPR.
4. Employ protective measures to prevent exploitations, violence and abuse in institutions against persons with disabilities, especially women & children.
5. Take affirmative actions to provide access & quality education for children with disabilities with appropriate support system in both private and state schools.
6. Promote livelihood for persons with disabilities in both public and private sector through vocational - technical training & professional training, skill building, and adequate credit support
7. Take immediate measures to create barrier free environment in all spheres in time bound manner.
8. Promote political participation of persons with disabilities in the political & electoral processes by amending appropriate legislations to introduce quota system in local, federal state, and country level elections.

## **IX. Condition of minorities**

Muslims are minority in India, they constitute 14.2% [172 million] of India's population (Census:2011). Condition of Muslims<sup>55</sup> is:

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<sup>54</sup> Page 207, Chapter -7, Education: In India a survey estimated the share of disabled children not enrolled in school at more than five times the national rate, even in the more prosperous states. In Karnataka, the best performing major state, almost one quarter of children with disabilities were out of school, and in poorer such states as Madhya Pradesh and Assam, more than half (11). While the best-performing districts in India had high enrolment rates for children without disabilities - close to or above 90%, school attendance rates of children with disabilities never exceeded 74% in urban areas or 66% in rural. Most special education facilities are in urban areas (19, 20), so the participation of children with disabilities in rural areas could be much worse than the aggregated data imply (19, 21). [http://www.who.int/disabilities/world\\_report/2011/report.pdf](http://www.who.int/disabilities/world_report/2011/report.pdf)

<sup>55</sup> According to the findings of the Justice Rajinder Sachar Committee appointed by the Prime Minister of India during UPA I period.

- Living in poverty, socio-economic exclusion despite Constitutional guarantees without any political voice
- Having low educational levels, 24% matriculates, 4% graduates, high dropout rates
- No jobs - 52% of Muslim men were unemployed, compared with 47% of Dalit men. Among Muslim women, 91% were unemployed, compared with 77% of Dalit women. Participation in salaried jobs stands at merely 13%. Only 27% are engaged in regular work<sup>56</sup>
- Muslims live with fear and insecurity owing to communal riots
  - Ghettoized living across the country
  - Stereotyping and sense of alienation
- Less than 5% of government jobs for Muslims whereas they account for 40% of India's prison population.
- The PM's 15 Point Program has failed totally in implementation<sup>57</sup>.

### **Recommendations**

- There is need to focus on Muslim citizens' plight while laying down policies and this should be backed by financial allocations. The mind-sets of the elected representatives need to undergo a change to recognize the continued exclusion faced by Muslims and the need to change this.
- Ensuring that in all development schemes, allocate resources to Muslims in different localities on a scale proportionate to their population. Also set up proper mechanism to ensure that the allocation is suitably made and implemented and there is proper representation and participation of the community.
- Urgent measures for inclusion of muslims in govt entitlements and schemes concerning poverty alleviation
- There should be availability of modern secular education in government/ private schools for girls in Muslim neighbourhoods. There should be monitoring against enforced dress code for girls in these schools
- Special steps for primary, high school and higher education. Special steps for girls' higher education.
- Special economic measures for small businesses, trading units, artisanal families, families in traditional occupations such as weaving, brassworks, glass making, leather work, garment making and skill-based work such as carpenter, auto mechanics, masons etc
- Measures for communal harmony and against discrimination in society, police, administration etc. Need to stop stereotyping as *jihadis*, terrorists etc
- The government should abide by its Constitutional obligation of gender justice by enabling reform in muslim personal law through abolition of triple divorce and polygamy. A codified family law should be brought in for justice to women.

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<sup>56</sup> Findings of the Justice Rajinder Sachar Committee

<sup>57</sup> ActionAid India study on the implementation of the 15 Point Program for Muslims (2014)

## **X. Human Rights Defenders**

Working or campaigning for ensuring human rights and basic entitlements, even those schemes and programmes being promoted and implemented by the government, is fraught with risk to campaigners, activists, media persons, lawyers and members of formations like student or labour unions. The threat to Human rights Defenders (HRDs) continues, as campaigners and activists are often perceived to be fighting against the state and are being portrayed as anti-nationals or subversives. Such labelling leads to restrictions and curtailments to their individual rights and increases their risk to abuse. This is often a precursor for arrest and incarcerations under different pretexts including the section in the Indian Penal Code pertaining to sedition.

HRDs continue to be vulnerable and in need of protection from government and non-state actors, and increasingly from *vigilante groups* with allegiance to different ideological groupings. Human rights defenders have been subjected to extra-judicial killings, violence, incarceration without sufficient access to legal process, torture, molestations and rape.

### ***Yet at a time when more protection of HRDS is necessary:***

- Institutional mechanisms<sup>58</sup> for defending Human rights are weakening from a noticeable lack of motivation in members of the establishment to uphold the rule of law. *Suo-Moto* action on the part of judiciaries and government agencies taking cognizance of offences have declined. HRDs filing RTIs and PILs find themselves increasingly discouraged by the commissions and courts. Perpetrators of serious offences often remain shielded and even protected by laws like the Armed Forces Special Powers Act (AFSPA). Administrative and judicial inaction is impacting the work and security of Human Rights Defenders.
- The commitment of governments to human rights is undermined by the fact that several states in the country have not set up State Human Rights Commissions mandated under the Protection of Human Rights Act of 1993; this in turn impedes the ability of HRDs to obtain protection and redress.<sup>59</sup>
- There is a perception that corrosion in the implementation of checks and balances in media reporting by the statutory institutions like the Press Council of India has impacted coverage and neutrality in reporting violations of human rights. Agenda driven and biased reporting compromises the neutrality of reports and on the contrary provokes situation and sometimes threatens the safety of human rights defenders.

### **Recommendations:**

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<sup>58</sup> The National and State Human rights commissions are found to be *quasi-judicial* bodies lacking adequate autonomy or the necessary resources and powers for independent investigation and enquiry.

<sup>2</sup> India has refused to adopt the UN general assembly resolution calling for a separate domestic law to protect human rights defenders makes the states complacent.

- National and State Human rights commission need judicial autonomy with necessary resources and powers for independent investigation and enquiry
- The NHRC Act may be amended to include a provision on protection of Human Rights Defenders
- Freedom of the press both from state and corporate power needs to be institutionalized better and cherished as a value.

**XI. Women’s Rights**

Discrimination, deprivation of equal opportunity, and violence against women continues. **Enactment of bills** that are aimed at empowering women, including the women’s Reservation Bill are pending. **Honor Crimes are still prevalent** in India with the highest incidences in Tamil Nadu and Haryana. No national law exists to prevent honor killing. **Employment of women** in formal sector is far low compared to men. Women in informal sector are paid lower than men, and bear the burden of care due to lack of social security measures. Systemic bias against pregnancy exists in formal sector, and considers women less productive than men. Maternity benefits lack in private and informal sector. **Adult Sex-ratio has though seen improvement** since Census 2001, national figure is still 1000:943<sup>60</sup>. Juvenile sex ratio<sup>61</sup> has declined, and is 1000:919 for 0-6 years (Census:2011). Gender differentials in infant mortality, stand at 59 for female and 54 for male<sup>62</sup>. **34771 rape cases, including incest have taken place in 2015** (NCRB:2015). One woman dies every hour in India due to dowry pressure. Bihar State ranks high, with reported incidence 1373, followed by M.P. 733<sup>63</sup>.

**Domestic violence is deep-rooted and accepted.** *Appropriate institutional mechanisms-including staff & budgetary support for implementation of the Domestic Violence Act is lacking.* In a patriarchal and feudal society, women are not only socialized into being silent about their experiences of violence, but traditional norms teach them to accept, tolerate and even rationalize domestic violence<sup>64</sup>. Although as per the NFHS-II, higher percent (27%) women with lower family incomes experienced violence as compared to women with higher family incomes (12%) and one must bear in mind that a culture of silence prevails in the context of domestic violence. The report also records that working women tend to experience more violence<sup>65</sup>.

<sup>60</sup> Violence against women is systemic & structural. India privileges males to the extent of mass sex selection. Over the past century, 35 million women have gone missing - eliminated before birth. Discrimination against women is pervasive from cradle to grave. Girls get less food, medical attention and access to education than boys. Most never experience adolescence or discover their inner urges and true personalities. From girls, they suddenly become wives and mothers - and chattel slaves with no right to their own bodies.

<sup>61</sup> GOI in 2014 has begun a comprehensive program for survival, education, dignity and development of girl children in 160 gender critical districts. The Scheme is entitled, *Beti Bachav Beti Padoos*. It though with some limitations in its perspectives on overall rights of girls and women, also appropriate strategies.

<sup>62</sup> Though the above indicators have shown improvement in due course of time, the figures still are self-explanatory and indicate a pathetic condition. 34.54% women in India are illiterate. The Human Development Report 2010 says that education along with vaccination and medical care is a key factor in reducing malnutrition.

<sup>63</sup> One woman dies every hour due to dowry related reasons on an average in the country, which has seen a steady rise in such cases between 2007 and 2011, according to official data.

<sup>64</sup> (Jaisingh, 1995; Hegde, 1996; Prasad 1999)

<sup>65</sup> Similar figures are consolidated for NFHS III:

Percentage of women between 15-49 who have suffered domestic violence

	Physical violence	Sexual violence	Physical and sexual violence	Physical or sexual violence
India	26.9	1.8	6.7	35.4

Source: NFHS III, GOI

## Recommendations

1. Enact all pending bills meant for empowering women, especially Women's Reservation Bill.
2. Introduce feminist training for elected representatives, judiciary, state departments, police, staff of shelter homes and teachers.
3. Make public & private transport safe & secure for women, with proper regulations of security.
4. Establish Help Centre for Women in Crisis across the country<sup>66</sup>.
5. Implement recommendations of Justice Verma Committee for law reforms and addressing violence against women.
6. Inclusion of gender justice and body literacy in the existing school curriculum to enable the students to challenge notions of hegemonic masculinity from early on.

## Conclusion

India is playing leading role in BRICS mission & operationalization. GDP has seen steep economic growth. Forecast of GDP for 2016 is 7.10%<sup>67</sup>. Wealth however, is in the hands of handful of wealthiest rich. Social sector spending and taxation is not in line with growth. Social sector spending has seen a decline, especially on health, education, agriculture & NREGS. India must aim for taking social and economic development in tandem. The momentum built in social sector development, including legislations during 2007-2011 should be built further.

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<sup>66</sup> The state should support a women in crisis centre at every district.

- a. The Centre would have a counsellor, another lawyer apart from a support group of prominent individuals.
- b. The Centre would support the survivor of assault in the following
  - i. Making the woman aware of the procedures she needs to undertake to file a case.
  - ii. Ensuring that the support from the hospital is provided in terms of immediate relief, health check up and medicines.
  - iii. Ensuring that the FIR gets filed and the accused get nabbed.
  - iv. Filing the petition for financial and related compensation for the woman.
  - v. Linking the woman/her kins to shelter home as she might need protection.

<sup>67</sup> <http://www.tradingeconomics.com/india/gdp-growth-annual/forecast>

