

# INDIA, THE LAND: WHERE LAW DENIES JUSTICE



PIC: Law denies; system dies: Dana Majhi, a tribal man who carried his dead wife on shoulder for 13km as he was denied a mortuary van or ambulance by hospital authorities in the eastern state of India, named as “Odisha”.

## Joint Stakeholders’ Report

**United Nations**

**Universal Periodic Review (UPR)**

Submitted by: **Global Human Rights Communications (GHRC)**



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**GHRC**, based in Bhubaneswar, Indian since 2010, builds respect for human rights and challenges injustice. It practices results-based advocacy through creative and strategic communications with required stakeholders. It also works closely with local human rights groups, activists, lawyers and Civil Society Organizations that respect and promote non-violence, human rights and democracy. It engages conflicting stakeholders in the interest of resolving issues in peaceful ways, thus helping to lay the foundations of peace and harmony.

# INDIA, THE LAND: WHERE LAW DENIES JUSTICE

India, a nation known for its existence as world's largest democracy, claims it recognizes the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of freedom, justice and peace in the world. Contrary the claims made, it continuously adopts and implements legislative measures which continue to deny, deprive and discriminate while making distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, social origin, property, birth or other status. Laws are made and built into system that continues to refuse justice.

## **A. Denial of right to life and access to justice by the National Green Tribunal Act- 2010**

- I. The National Green Tribunal Act -2010 was adopted as legislative measures towards India's obligation to the decisions taken at United Nations Conference on the Human Environment held at Stockholm in June 1972 and the United Nations Conference on Environment and Development held at Rio de Janeiro in June 1992, in which India participated, calling upon the States to provide effective access to judicial and administrative proceedings, including redress and remedy and to develop national laws regarding liability and compensation for the victims of pollution and other environmental damage.
- II. Contrary to protection of the fundamental rights of, right to life, access to justice, non-discrimination and equality before law for every member of the community, including the affected communities who are covered under the National Green Tribunal Act- 2010, Rule 12 of National Green Tribunal (Practices and Processor) Rule, 2011 brought arbitrary restriction and denied access to justice through undue imposition of application and appeal fee where compensation has been claimed by affected communities and their representative organization.

III. Rule 12 of National Green Tribunal (Practices and Procedure) Rules, 2011 reads as under:

- (1) An application or appeal where compensation has been claimed, shall be accompanied by a fee of equivalent to one per cent of the amount of compensation claimed, subject to a minimum of one thousand rupees:
  - i. Provided that where the Tribunal permits a single application or appeal to be filed either by more than one person or by an association of persons, the fee payable shall be equivalent to one per cent of the total amount of compensation claimed.
  - ii. Provided further that, there shall be no fee for filing of application or appeal for claiming compensation by any person who is below the poverty line determined in accordance with the guidelines or instructions issued by the Central Government or the State Government from time to time in this regard or indigent person determined in accordance with the provisions of the Code of Civil Procedure, 1908 (5 Of 2008).
- (2) An application or appeal where no compensation has been claimed shall be accompanied by a fee of one thousand rupees.
- (3) The fee under this rule shall be remitted either in form of a crossed demand draft drawn on a nationalised bank in favour of the Registrar payable at the main branch of that bank at the station where the place of sitting of the Tribunal is situated or remitted through a crossed Indian Postal Order drawn in favour of the Registrar and payable at the Post Office of the station where the sitting of the Tribunal is situated.

IV. Rule 12 of NGT Rules is quite arbitrary, illogical, irrational and unjustifiable in the eye of basic human rights standard so also the said provision is contrary to the basic structure doctrine of the Indian Constitution and the same is also against the spirit of the NGTA itself.

V. India as a ratified State Party to International Covenant on Civil and Political Rights, it also abides by the standards of the said covenant to : ensure rights without discrimination (Article 2), derogation of rights to be limited to specific circumstances, certain rights may not be derogated from and derogation must be consistent with certain rules (Article 4), covenant may not be interpreted in a way that destroys rights ensured in the covenant (Article 5), the right to life, which shall be protected in law (Article 6), the right to equality before the law; the right to be presumed innocent until proven guilty and to have a fair and public hearing (Article 14), the right to be recognised as a person before the law (Article 16), the right to participate in public affairs, to vote and to be elected and access to public service (Article 25) and everyone is equal before the law and has a right to legal protection “of the law” without discrimination (Article 26), but the Rule 12 of NGT Rules impose the restriction and create obstacles to access to a public tribunal.

**B. Denial of the right to be presumed innocent until proved guilty according to law in a public trial by the Habitual Offender Act-1952**

- I. Committee on the Elimination of Racial Discrimination in its Seventieth Session (19 February – 9 March 2007, while considering of the report submitted by India under Article 9 of the Convention, observed that the “Committee is concerned that the so-called denotified and nomadic tribes, which were listed for their alleged “criminal tendencies” under the former Criminal Tribes Act (1871), continue to be stigmatized under the Habitual Offenders Act (1952). (art. 2 (1)(c))”<sup>1</sup>.
- II. The Committee (CERD) has also recommended that “the State party repeal the Habitual Offenders Act and effectively rehabilitate the denotified and nomadic tribes concerned”.
- III. Non-compliance of the recommendation by India still persists. The community continues to face discrimination<sup>2</sup> as branded “born criminal”<sup>3</sup>.

**C. Imposition and legalization of use of mercenaries, and use of police as mercenaries by the Odisha Industrial Security Force Act-2012**

- I. As its preamble states, the Odisha Industrial Security Force Act enacted in 2012 to provide for the constitution and regulation of an armed force of the state for better protection and security of industrial undertakings owned by the state government, certain other industrial undertakings including private industrial undertakings and certain other establishments and employees of all such undertakings and establishments and for matters connected therewith and incidental thereto. Creation of armed force and use of them in discrimination for private purpose for rich and powerful with impunity is contrary to the Indian Constitution and principles of non-discrimination.
- II. The draconian statute brings undue safeguard by State’s armed police to use as mercenaries as the industrial undertakings and borrowing units is entitled to hire the armed police force from the State on payment as and when they requisition the force. The force shall be deployed on request from the management of industries and other vital installations in the private sector on payment. Once deployed, the force will be under the administrative control of the industrial undertaking.
- III. The force personnel shall have power to arrest a person without any warrant and, even, without any order from a magistrate or court. The OISFA also empowers the force to search a person or somebody’s house even without any warrant. Immunity will be provided to the members of the force for the acts during discharge of duty under the rules to be framed under the new law. No court shall take cognizance of an offence against any member of the force without prior sanction of the State government.

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<sup>1</sup> Para 11 of Concluding Observation: CERD/C/IND/CO/19/ 5 May 2007

<sup>2</sup> <http://www2.ohchr.org/English/bodies/cerd/docs/ngos/resist.pdf>

<sup>3</sup> [http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/Ind/INT\\_CERD\\_NGO\\_Ind\\_70\\_9032\\_E.pdf](http://tbinternet.ohchr.org/Treaties/CERD/Shared%20Documents/Ind/INT_CERD_NGO_Ind_70_9032_E.pdf)

- IV. It is contrary to the principles and spirit of “equality before law”. In this context, it is further submitted that the OISFA breaches the state obligation and Union of India’s legal commitment to international human right treaties and standards, where India as a state party ratified to said treaty like International Covenant on Civil and Political Rights (herein after referred to as “ICCPR”). Article 2(2) of ICCPR states that “Where not already provided for by existing legislative or other measures, each State Party to the present Covenant undertakes to take the necessary steps, in accordance with its constitutional processes and with the provisions of the present Covenant, to adopt such laws or other measures as may be necessary to give effect to the rights recognized in the present Covenant.” Further article 26 of ICCPR reads as “All persons are equal before the law and are entitled without any discrimination to the equal protection of the law. In this respect, the law shall prohibit any discrimination and guarantee to all persons equal and effective protection against discrimination on any ground such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status.”

**D. Undue, selective restriction on civil society and human rights defenders by the Foreign Contribution Regulation Act -2010**

- I. The Foreign Contribution Regulation Act 2010 (FCRA) limits the right to peaceful assembly and association. It is contrary to the guarantees under fundamental rights enshrined in the Constitution of India. The FCRA also ill-conceived the definition of local governance institutions such as panchayat, municipalities other similar bodies as legislative body which is overrides the power and functions given to these bodies in the Constitution of India. Section (2)(K)(G) of FCRA 2010 defines “legislature” means- Panchayat as defined in clause (d) of article 243 of the Constitution. Section (2)(K)(E) of FCRA 2010 also defines “legislature” means Municipality as defined in clause (e) of article 243P of the Constitution. The said statutory definition overrules article 3 and 252(1) of Constitution and shrinks the power and function of the President and Governors conferred in the Constitution, and inter-alia changes basic structures of the constitution. The Constitution confers power to panchayats as executive authorities, not legislative, under Article 243G and 243H respectively.
- II. In response to petition filed by GHRC, Odisha High Court has directed the NHRC to review constitutional validity of the FCRA as early possible within three months in May 2015. But NHRC ignored judicial direction and closed the case, and noted, “The Commission does not consider it necessary to examine and adjudicate the legality or validity of the provisions of the Foreign Contribution Regulation Act”<sup>4</sup>.

**E. Manipur People Protection Bill -2015**

- I. Three bills, i.e. Manipur People Protection Bill-2015, MLR & LR (7th Amendment) Bill-2015 and Shops and Establishment (2nd amendment) Bill-2015, passed In Manipur State legislative Assembly that all citizens of India shall be required documents and registration if they move in Manipur. It brings authoritarian practices that ensure unjustified and illogical registration of citizens in every move restrict a citizen’s freedom of movement, if S/he is not Manipuri, without due procedure of

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<sup>4</sup> <http://nhrc.nic.in/display.asp?fno=2785/30/0/2015>

law. It also excludes rights of non-registered indigenous peoples and their communities who live since years. The mandatory rules of procedures and conduct of Business under Section 4 Clause 1 and 2 of Manipur State Legislative Assembly which states that all Scheduled matters in so far as they relate to the Hill Areas shall be with purview of the Hill Area Committee, is not followed on 31st August 2015. It infringes on the rights and privileges of the indigenous people and gross violation of Article 371C of the Indian Constitution<sup>5</sup>.

- II. Unfortunately, the NHRC transferred the complaint filed with them to State Human Rights Commission which is not in function<sup>6</sup>.

#### **F. Discriminatory laws on health status**

- I. GHRC approached the NHRC with a petition requesting measures to stop discrimination on the health status by describing the issues of the people with leprosy<sup>7</sup>.
- II. People with leprosy continue to suffer because of social stigma associated with it and discriminatory laws. NHRC ignored the plea. But the Law Commission of India, in its report submitted to the then Law Minister DV Sadananda Gowda, said that by 2014, 58% of global leprosy cases had occurred in India making it home to the largest number of people suffering the disease. The commission, in its 256th report, noted that apart from social stigma, "another problem is that of Indian laws, which continue to directly and indirectly discriminate against persons affected by leprosy."
- III. Recommending amendments to Personal Laws, the commission said under the Hindu Marriage Act, 1955, the Dissolution of Muslim Marriage Act, 1939, the amended Indian Divorce Act, 1869, Special Marriage Act, 1954 and the Hindu Adoption and Maintenance Act, 1956, leprosy affecting either spouse constitutes a ground for divorce, annulment of marriage or separation without forfeiture of maintenance. Referring to the Industrial Disputes Act, 1947, the panel said many employers misuse the existing employment legislations to terminate the employment of persons once they are diagnosed with leprosy. Section 56 of the Indian Railways Act 1989 empowers the Railways to refuse to carry a person suffering from leprosy<sup>8</sup>.

#### **G. Denial of access to justice by the Armed Forces Special Powers Act in certain parts of India**

- I. Committee on Economic, Social and Cultural Rights in its Fortieth Session (28 April - 16 May 2008) while considering of the report submitted by State Parties under Article 16 and 17 of the ICESCR made Concluding Observations in para 50 which reads, "The Committee recommends that the State party improve its human rights

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<sup>5</sup> Complaint filed with National Human Rights Commission by Global Human Rights Communications, Bhubaneswar, India.

<sup>6</sup> <http://nhrc.nic.in/display.asp?fno=18/14/0/2016>

<sup>7</sup> Complaint filed by Global Human Rights Communications with National Human Rights Commission on dated 10 Jan 2009.

<sup>8</sup> <http://lawcommissionofindia.nic.in/reports/Report256.pdf>

training for law enforcement officials especially police officers, and ensure that all allegations of human rights violations are promptly and thoroughly investigated by an independent body capable of prosecuting perpetrators. The Committee also recommends that the State party consider repealing the Armed Forces Special Powers Act.”<sup>9</sup>.

- II. Global Human Rights Communications approached the Ministry of Home Affairs of the Government of India with the appeal to repeal the Act, which was rejected by Government of India on 8<sup>th</sup> September 2016<sup>10</sup> without providing the opportunity to the complainant to place the fact on record or defence.

#### **H. Denial by non-implementation of Constitutional provision**

Communities, through peaceful and democratic means, have been demanding implementation of Article 244 A of the Indian Constitution in the interest indigenous peoples of Karbi Anglong and NC Hills but the non-implementation has raised serious human rights situation.

#### **I. Recommendation**

- Repeal:
  - Rule 12 of National Green Tribunal (Practices and Procedure) Rules, 2011
  - The Habitual Offender Act-1952
  - The Odisha Industrial Security Force Act-2012
  - The Foreign Contribution Regulation Act -2010
  - The Armed Forces Special Powers Act and Other Security Laws
  - Relevant provisions of the Hindu Marriage Act-1955, the Dissolution of Muslim Marriage Act-1939, the amended Indian Divorce Act-1869, Special Marriage Act-1954, the Hindu Adoption and Maintenance Act-1956, the Industrial Disputes Act-1947 and Section 56 of the Indian Railways Act-1989
- Reject Manipur People Protection Bill-2015, MLR & LR (7th Amendment) Bill-2015 and Shops and Establishment (2nd amendment) Bill-2015
- Ratify the Convention against Torture and the Convention against Enforced Disappearances, and criminalize enforced disappearances.
- Refrain from interfering in the work of whistleblowers, Human Rights Defenders, Journalists etc and create protection mechanism for their legitimate work.
- Implement the Constitution, Article 244A in particular.

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<sup>9</sup> E/C.12/IND/CO/5, 8 August 2008

<sup>10</sup> Complaint filed by Global Human Rights Communications, which is registered with Ministry of Home Affairs, GOI bearing number MINHA/E/2016/04283.

This document is prepared as input received from series of consultations held in Imphal, Hyderabad, Bangalore, Bhubaneswar, Delhi and Varanasi with civil society leaders, and written by **Dr. Subash Mohapatra**, Executive Director of the Global Human Rights Communications.

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