

## **India's Human Rights Credentials and Role in United Nations and Its Quest to get United Nations Security Council Permanent Seat with or without Veto Power.**

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**Abstract:** *“As a democratic country, India is naturally wedded to the cause of human rights like civil rights, viz; right to life, dignity, equality to be free from torture of unlawful detention, etc. but India, joined by nearly the whole of the Third World countries and also the former socialist countries felt that the civil and political rights would have to be achieved in conjunction with, and are indeed inseparable from, the economic, social and cultural rights. India is a regional power if not a regional hegemon is a foregone conclusion as seen in the past and the present contemporary world. Each regional and emerging power has overt and covert designs/ambitions of becoming a global power; But with great power comes great responsibilities which includes being a torch and standard bearer for high moral and ethical code of conduct both at home and at international level and India in pursuit of this great power with its quest to get United Nations Security Council permanent seat with or without veto power is no different. So to say the least Human Rights credentials both at home and abroad are one of the corner stones of Indian National and Foreign Policy in this regard.”*

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### **I. Introduction**

This paper touches upon the India's Human Rights credentials at home and at United Nations and India's quest to be a Human Rights leader in the world with special emphasis to get an UNSC permanent seat. This Research Paper is divided in to three parts the first part deals with Human Rights and the United Nations and Human Rights in India an Overview; While the second part touches upon India's role in United Nations Human Rights Initiative and India's role for promotion of Human Rights in third countries through Universal Periodic Review; and in the third and last section we conclude with Human Rights Reforms at United Nations and India's Quest for UNSC permanent seat with special reference to its Human Rights Credentials.

The superficial look around the globe reveals that basic human rights are not respected in many countries. We must not forget that humankind took great steps forward in the 19th century by abolishing slavery and gradually lifting women to equal status with men...

The General Assembly (UN) adopted Universal Declaration of Human Rights...has an all-encompassing moral authority. Basically, it is a 'wish' of the human conscience for future good behavior at the international and local levels of the governance and what we are witnessing today are a global level Human Rights Movement.1.

According to Administrative Committee on Coordination (ACC): The United Nation's System and Human Rights: Guidelines and Information for the Resident Coordinator System, the definition of Human Rights is "Human Rights are universal legal guarantees protecting individuals and groups against actions which interfere with fundamental freedoms and human dignity. Human Rights Law obliges Governments to do some things and prevents them from doing others. Some of the most important characteristics of human rights are that they are Guaranteed by international standards; Legally protected; Focus on dignity of human beings; Protect individuals and groups; Oblige states and state actors; Cannot be waived or taken away; Interdependent ,interrelated and Universal."

The United Nations Human Rights mandate is rooted in the charter of the organization, the preamble of which states, 'We the people of the United Nations determined....to reaffirm faith in fundamental human rights in the dignity and worth of the human person in the equal rights of men and women...' 'Article 1,para3 of the charter holds that one of the main purposes of the United Nations is to achieve international cooperation in promoting and encouraging respect for human rights and for fundamental freedoms for all without distinction as to race, sex, language or religion.' The Economic and Social Council (ECOSOC), one of the six principal organs of the United Nations, has 'promoting respect for and observance of human rights' among its main functions.2

### **II. Human Rights And The United Nations**

Since its inception, the United Nations had always espoused the cause of human rights. The Preamble

to the UN Charter has a special mention of human rights. It promised 'to reaffirm faith in fundamental human rights, in the dignity and worth of the human person, in the equal rights of men and women and of nations large and small ... and to promote social progress and better standards of life in larger freedom'. An early effort of the UN to safeguard human rights of the people all over the world could be traced back to the General Assembly Resolution No. 217 A, which created the Universal Declaration of Human Rights on 10 December 1948. Since then, the UN has always endeavored to protect human rights and fundamental freedoms of the people around the globe. In its latest effort in this regard, in 2006 the UN created a Human Rights Council to monitor human rights activities. UN documents related to human rights have always reflected the changing and complex demands of human rights practices.

The human rights organizations of the UN may be broadly classified into two kinds-charter-based bodies and treaty-based bodies. Charter-based bodies owe their origin to provisions contained in the UN Charter, while treaty-based bodies have been established on the basis of certain legal instruments.

Among the charter-based bodies, the Sub-Commission on the Promotion and Protection of Human Rights was, one of the earlier UN organizations: It was established by a resolution of the ECOSOC in June 1946. At the time of its inception, it was known as Sub-Commission on Prevention of Discrimination and Protection of Minorities. The name was subsequently changed in July 1999. The Sub-Commission met annually on a regular basis from 1947 to 2006.

After 2006, its activities were mainly performed by the Human Rights Council Advisory Committee (HRCAC). This is a new body that was created by a resolution of the General Assembly in December 2007. It superseded the activities of the Sub-Commission on the Promotion and Protection of Human Rights. It mainly advises the UN Human Rights Council on issues of safeguarding human rights of different sections of people all over the world.

The third important charter-based body of the UN is the Human Rights Council established by a General Assembly Resolution on 15 March 2006. This council establishes special procedures to safeguard human rights. These procedures include carrying out field surveys regarding human rights practices in different parts of the world and generating reports from them. They involve special rapporteurs, special representatives, independent experts and working groups who investigate, discuss, and report about specific human rights issues under a country or about different themes like human trafficking, child labor and racial discrimination. In addition to this, the Human Rights Council also undertakes a universal periodic review of each state's fulfillment of its human rights obligations and commitments. The modalities of the universal periodic review were decided in the fifth session of the council. This council is a very effective body for the protection of human rights in the world today.

The fourth and final charter-based body is the Commission on Human Rights. It was established by the ECOSOC in 1946. This Commission met in the annual sessions and, if required, in special sessions. It reported to the ECOSOC. The Commission on Human Rights concluded its sixty-second and final session on 27 March 2006. Its work is now continued by the Human Rights Council. The office of the High Commissioner for Human Rights, created in 1993 by the General Assembly, provides secretariat support to all human rights bodies of the United Nations.

Among the treaty-based committees, the Committee on Economic, Social and Cultural Rights was established by the Economic and Social Council to supervise the implementation of the International Covenant on Economic, Social and Cultural Rights. The committee meets thrice in Geneva every year. States parties to the covenant are required to submit an initial report on the measures adopted and the progress made by them in achieving the rights recognized in the covenant, within two years of its entry into force for the state party concerned and thereafter every five years.

The second important treaty-based committee is the Committee against Torture. It was established based on Article 17 of the Convention against Torture and Other Cruel, inhuman or Degrading Treatment or Punishment. It supervises the implementation of the provisions of the convention. The committee meets twice each year in Geneva. Parties to the convention (states) are also required to submit an initial report on the measures taken under the convention, within one year of its entry into force and thereafter every four years.'

The Committee on the Elimination of Discrimination against Women, the third in this category, was established pursuant to Article 17 of the Convention on the Elimination of All Forms of Discrimination against Women; this committee also supervises the implementation of the provisions of the convention. The committee meets twice each year in Geneva. Parties to the convention are required by Article 18 to submit an initial report, on the legislative, administrative, judicial or other measures they have adopted for the protection of rights as per the convention, within one year of its entry into force and thereafter every four years.

The Committee on the Protection of the Right of All Migrant Workers and Members of Their Families, the next important treaty-based committee, was established pursuant to Article 72 of the Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families to supervise the implementation of the convention. The committee meets twice every year in Geneva. Parties to the convention

'are required by Article 73 to submit an initial report on measures adopted and on the progress made on the enjoyment of those rights, within one year of its entry into force and thereafter every five years. .

The Committee on the Elimination of Racial Discrimination, the fifth in line, was established by Article 8 of the International Convention on the Elimination of All Forms of Racial Discrimination to supervise the implementation of the convention. The committee also meets twice every year in Geneva. Parties to the convention are required by Article 9 to submit an initial report on the legislative, judicial, administrative or other measures which they have adopted for the protection of rights enumerated in the convention, within one year of its entry into force and thereafter every two years.

The sixth treaty-based committee, the Human Rights Committee, was established pursuant to Article 28 of the International Covenant on Civil and Political Rights. The Committee meets thrice every year in New York and Geneva. Parties to the covenant are required by Article 40 to submit an initial report on the measures they have adopted to safeguard the covenant, as also on the progress made in the enjoyment of those rights, within one year of its entry into force and thereafter every five years. A unique feature of this committee is that unlike other treaty based committees, this committee considers appeals from individuals-under the Optional Protocol who assert that their rights, as enumerated in the covenant, have been violated without being redressed in their countries of origin.

Committee on the Rights of the Child is the seventh and final treaty-based committee. It was established by Article 43 of the convention on the Rights of the Child to supervise the implementation of the convention. This committee meets thrice every year in Geneva. Parties to the convention are required by Article 44 to submit an initial report on measures adopted and progress made on the enjoyment of those rights, within two years of its entry into force and thereafter every five years.

No discussion on human rights and the UN is complete without reference to the Universal Declaration of Human Rights (UDHR). The preamble to the UDHR notes that 'disregard and contempt for human rights have resulted in barbarous acts which have outraged the conscience of mankind, and the advent of a world in which human beings shall enjoy freedom of speech and belief and freedom from fear and want has been proclaimed as the highest aspiration of the common people'. The UDHR, in thirty articles that seek to protect all kinds of human rights, has become a fundamental document of the UN in its efforts to safeguard the basic rights and freedoms of all people around the world. Though the UDHR does not have the power of an international law, and sounds idealistic in today's context, it nevertheless sets a guideline for every member-state of the UN to follow some basic norms for the protection of human rights. In the present world, no state can claim to have a perfect record on human rights. As a consequence, the efforts of the UN to safeguard human rights and fundamental freedoms of the people have assumed increasing significance in our times.<sup>3</sup>

### **III. Human Rights in India an Overview**

India has come a long way in the evolution of Human Rights activism from abolition of sati in 1829 to decriminalizing (section 377 of IPC) 'homosexual relationship' in 2009, though the verdict was reversed in the latter case in the supreme court in 2013. The rights activists are not taking it lying down. Indian Constitution has borrowed heavily from various other constitutions in the world and sources on all sections specially Fundamental Rights (Part III of Indian Constitution, Articles 12-35.) and Directive Principles of State (Part IV of Indian Constitution, Articles 36-51). Indian judiciary is full of landmark cases and verdicts like Keshavanand Bharti, Menaka Gandhi, Shah Bano and acts like Scheduled Caste and Scheduled Tribe (Prevention of Atrocities) Act 1989, Right to Information Act, formation of National Human Rights Commission (1993) but it still has to go a long way before it can claim world leadership in upholding Human Rights.

Human rights in India is an issue complicated by the country's large size, its tremendous diversity, its status as a developing country and a sovereign, secular, democratic republic. The Constitution of India provides for Fundamental rights, which include freedom of religion. Clauses also provide for Freedom of Speech, as well as separation of executive and judiciary and freedom of movement within the country and abroad.

In its report on human rights in India during 2010, Human Rights Watch stated India had "significant human rights problems". They identified lack of accountability for security forces and impunity for abusive policing including "police brutality, extrajudicial killings, and torture" as major problems. In 2011, Margaret Sekaggya, the U.N. Special Rapporteur on the situation of human rights defenders, expressed concern that she found human rights workers and their families who "have been killed, tortured, ill-treated, disappeared, threatened, arbitrarily arrested and detained, falsely charged and under surveillance because of their legitimate work in upholding human rights and fundamental freedoms.<sup>4</sup>

Of relevance and interest to this article are the perceived, substantiated and unsubstantiated reports of Human Rights abuses in Indian Administered Kashmir.

### **Indian Administered Kashmir**

Periodically, India also bristles at reports or remarks of UN offices that call for independent investigations into accusations of civilian killings in Kashmir by Indian army personnel. In 2008 the UN High Commissioner for Human Rights (UNHCHR) released a statement asking India to, 'comply with international human rights principles in controlling the demonstrators' during an upsurge in anti-India protests by Kashmiri Muslim outfits. New Delhi snapped back that the comments were 'uncalled for and irresponsible', and that the UN should be monitoring incidents in Kashmir where innocent civilians were being victimized by Islamist terrorists. In July 2010 a release that the 'Secretary General is concerned over the prevailing security situation there (in the Kashmir Valley) over the past month', brought immediate comments from India that this was 'gratuitous advice', and a UN semi-retraction that this was guidance rather than a statement on the part of Ban Ki-moon, and had been taken out of context by India.<sup>5</sup>

Several international agencies and the UN have reported human rights violations in Indian-administered Kashmir. In a press release the OHCHR spokesmen stated "The Office of the High Commissioner for Human Rights is concerned about the recent violent protests in Indian-administered Kashmir that have reportedly led to civilian casualties as well as restrictions to the right to freedom of assembly and expression.". A 1996 Human Rights Watch report accuses the Indian military and Indian-government backed paramilitary forces of "committing serious and widespread human rights violations in Kashmir." One such alleged massacre occurred on 6 January 1993 in the town of Sopore. In addition to this, there have been claims of disappearances by the police or the army in Kashmir by several human rights organizations.

Many human rights organizations such as Amnesty International and the Human Rights Watch (HRW) have condemned human rights abuses in Kashmir by Indians such as "extra-judicial executions", "disappearances", torture and the "Armed Forces Special Powers Act", which "provides impunity for human rights abuses and fuels cycles of violence. The Armed Forces Special Powers Act (AFSPA) grants the military wide powers of arrest, the right to shoot to kill, and to occupy or destroy property in counterinsurgency operations. Indian officials claim that troops need such powers because the army is only deployed when national security is at serious risk from armed combatants. Such circumstances, they say, call for extraordinary measures." Human rights organizations have also asked Indian government to repeal the Public Safety Act, since "a detainee may be held in administrative detention for a maximum of two years without a court order". One 2008 report determined that Indian Administered Kashmir, was 'partly Free',

### **Freedom of Expression**

According to the estimates of Reporters without Borders, India ranks 122nd worldwide in 2010 and the press freedom index for India was 38.75 in 2010 on a scale that runs from 0 (most free) to 105 (least free).

The Indian Constitution, while not mentioning the word "press", provides for "*the right to freedom of speech and expression*" (Article 19(1) a). However this right is subject to restrictions under sub clause (2), whereby this freedom can be restricted for reasons of "sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, preserving decency, preserving morality, in relation to contempt of court, defamation, or incitement to an offence". Laws such as the Official Secrets Act and Prevention of Terrorism Act (POTA) have been used to limit press freedom. Under POTA, person could be detained for up to six months before the police were required to bring charges on allegations for terrorism-related offenses. POTA was repealed in 2004, by Prevention of Terrorism Repeal Act. The Official Secrets Act 1923 is abolished after right to information act 2005

For the first half-century of independence, media control by the state was the major constraint on press freedom. Indira Gandhi famously stated in 1975 that All India Radio is "a Government organ and it is going to remain a Government organ..." With the liberalization starting in the 1990's, private control of media has burgeoned, leading to increasing independence and greater scrutiny of government. Media Houses like Tehelka and NDTV have been particularly influential. In addition, laws like Prasar Bharati Act passed in recent years contribute significantly to reducing the control of the press by the government. Other aspects of Human Rights abuses prevalent in India are, human trafficking, religious violence and intolerance, Casteism etc.

Invasive methods like 'Narco-Analysis' is now commonly permitted by Indian courts for crime investigation. Even though according to Indian constitution "nobody may be made a witness against himself", courts have recently proclaimed that even a permission from court is not necessary for conducting this practice. Narco-Analysis is now widely used to replace/circumvent the lack of skill and infrastructure for conducting scientific methods of crime investigation. Narco-Analysis is also alleged as against medical ethics.

It has been found that more than half of the prisoners of the country are detained without adequate evidence. Unlike in other democratic countries, the investigation in India generally commence with the arrest of



the accused. As the judicial system is understaffed and sluggish, it is not uncommon to find innocent civilians languishing in jail for many years.<sup>6</sup>

#### **IV. India's Role In United Nations Human Rights Initiative**

Article 13 of the Charter of the United Nations declares that one of the purposes of the U.N. is to achieve international cooperation in promoting and encouraging respect for human rights and fundamental freedom for all without distinction as to race, sex, language or religion. In pursuance of these objectives, the first major achievement of the UN was the adoption of the Universal Declaration of Human Rights, by the General Assembly on December 10, 1948. The Assembly proclaimed the Declaration to be "a common standard of achievement for all peoples of all nations."<sup>7</sup>

India played a prominent role in advancing the cause of human rights when she led the fight in the newly created United Nations against South Africa's Ghetto Act. Not yet an independent country, India's team led a rousing debate within the General Assembly. Ultimately, India secured a two thirds majority vote condemning South Africa for its abhorrent domestic law, which relegated Indians living there to second class status. Though General Smuts and his allies (US, UK and Others) tried to hide behind Article 2(7) of the United Nations Charter, the domestic jurisdiction clause, which was meant to protect the sovereign actions of member states, India carried the day, however, in what was seen as the first "Asian victory" and, more broadly, a victory of the oppressed, in the modern world.<sup>8</sup>

In this context, it is a matter of great satisfaction that in 1993-South Africa declared itself apartheid – free following which a freely elected democratic government assumed power under the leadership of Nelson Mandela, Mahatma Gandhi's Spiritual heir.

India is credited for taking up liberation of subject populations, i.e. the people under the yoke of colonial rule in different parts of the world. Being one of the first to gain freedom after the end of the Second World War, to continue the struggle against colonialism elsewhere is but natural to India. The cause of Indonesia for freedom from the Dutch colonialism was one of the first issues India took up in the late 1940s. The freedom fighters in numerous parts of Asia, Africa and Indo-China (Algeria, Angola, Namibia, Rhodesia (now Zimbabwe), Tunisia) looked upon India for diplomatic and political support and guidance. During the 1960's, India led the anti-colonial cause by heading the UN Committee charged with speedy implementation of the Declaration on Decolonization. Statistics speak for themselves: There were nearly 750 million colonized people when the UN was founded now none remain to be decolonized. Most of the liberated territories have become members of the United Nations taking the tally from the original figure of 51 to 193 now.

As a democratic country, India is naturally wedded to the cause of human rights like civil rights, viz; right to life, equality, to be free from torture of unlawful detention, etc. but India, joined by nearly the whole of the Third World countries and also the former socialist countries felt that the civil and political rights would have to be achieved in conjunction with, and are indeed inseparable from, the economic, social and cultural rights. They go hand in hand, not one at the expense of the other. Among the political rights, the right to self-determination is among the most controversial issue. Whether the right is to be applied in the context of foreign, colonial occupation/rule, or to be extended to the ethnic, cultural minorities to secede from a country is among the most hotly debated questions. Another issue is: whether those using violence to secede from a country could enjoy the protection of right as freedom fighter, or are to be put on a different plane as terrorists? Are states accountable to the world outside on account of gross violation of human rights? Can foreign powers militarily intervene citing human rights violations? In this case India has taken a rather tougher, neoconservative, stand in favor of the unity and sovereign authority of states.

Economic and social development is an issue at the core of human rights debate as well. Again it is a vital concern that makes India and the United Nations partners. India's basic position is twofold. First, economic development is a necessary precondition for peace. World peace can be durable only when conditions like poverty, hunger, exploitation that breed conflict are alleviated. Secondly, the newly acquired political independence of most of the erstwhile colonial countries would be incomplete without the economic and social development. In other worlds, the development element of the world order is critical. India has devoted considerable energies for the establishment of scores of UN bodies dedicated for assisting the economically backward nations, viz. the regional economic commissions, the UN Development Program me, and UN Conference on Trade and Development. In the 1960's and 1970's, India was in the forefront raising demands and grievance with regard to unstable prices of agricultural products in the Western export markets and also the unhelpful terms of trade that worked to the benefit of the rich and industrially advanced countries. The Third World (also known as the "Group of 77") came to be identified as a distinct (though diverse) entity in diplomatic conferences and negotiations. One of the dream themes of this group that echoed in the UN forums in the 1970's was the establishment of New International Economic Order (NIEO) based on the principles of democracy, equity, and justice.<sup>9</sup>

Earlier on India's representative on the Human Rights Commission, Hansa Mehta, fought hard to make Nehru's vision a reality. She tried to bring human rights enforcement under the umbrella of the Security

Council, and led efforts to create strong implementation methods. As the discourse of human rights soon got caught up in Cold War antagonisms, she, along with Nehru and Vijayalakshmi Pandit, did everything possible to bridge the gap. The policy of non-alignment was but one plank in their greater strategy, which was to keep all sides talking and working together. This was best illustrated in India's efforts to bridge the chasm between the frigid warring ideological sides over the emerging concepts of human rights. The International Covenants on Civil and Political Rights and Economic and Social Rights exemplified the division in the idea of human rights, but India supported both elements.

Cold War tensions nonetheless successfully slowed down negotiations regarding human rights at the UN and made the creation of international, justiciable rights particularly difficult. The Universal Declaration was seen as a positive first step, while efforts to create what would be the binding covenants remained under discussion. The UDHR was not binding, reflecting the fear and suspicion among countries that pervaded the international arena. Nehru knew that India had to lead by example. He and Mehta saw to it that the Universal Declaration was essentially embedded into the Indian Constitution. Mehta, as a member of the Fundamental Rights Sub-Committee, was keen to ensure that India was bound to work within, build up, and protect the international system of administration and law, by spelling much of this out in Article 51 of the Directive Principles. While the Principles are not enforceable per se, Mehta ensured that the Principles were enshrined as "duties of the state." Together with the specific rights spelt out in the Constitution, India immediately made human rights justiciable, and linked the new postcolonial state with International Law and Institutions.

Nehru and his team felt that global government—a true, federated union of humankind—was the only way forward, and the only means to prevent future wars while also maintaining a sustainable and just peace. Everything was bound up in this solution: minorities, refugees, migrant peoples, warring or antagonistic states, notions of domestic integrity, poverty and public health. All of these problems were at once local issues, as well as complicated global ones. Only by understanding the complex network of associations between the local and global, and the inter-connectedness of one issue to another, could the world hope to meaningfully address its problems. Nehru did not live to see his dream realized, but in many ways it remains in progress. The creation of the International Criminal Court, and of the European and Inter-American Human Rights Courts all bear the hallmarks of Nehru's vision. And so the dream lives on.<sup>10</sup>

#### **India's Role For Promotion Of Human Rights In Third Countries Through Universal Periodic Review:**

Under the Universal Periodic Review (UPR) mechanism the United Nations Human Rights Council (HRC) scrutinizes human rights records of all the member states of the United Nations. The UPR was created as a mechanism of the HRC ostensibly to address selectivity and politicization under then UN Commission on Human Rights.

Since its first session in April 2008, the UPR has essentially removed the taboo on so called non-interference in internal affairs of a member State of the UN. Not raising questions or not making recommendations as a strategy to avoid scrutiny of one's human rights record is not an option available to any Member State under the UPR. During the first cycle of the UPR, human rights records of the 192 member States of the United Nations were reviewed from 2008 to 2011 and about 20,000 recommendations were made by over 160 member States.

While Indian civil society organizations focused exclusively on scrutinizing India's human rights record at the UPR, they paid little or no attention to India's role in scrutinizing human rights records of third countries. This is despite that India has a prominent role to play for promoting human rights in third countries through the UPR.

During the first cycle, India participated in the UPR deliberations on 107 countries while it remained silent on the rest 84 countries. Out of 107 countries on which India intervened, it made a total of 38 recommendations on 28 countries while comments and questions were asked from 79 countries.

India has so far been examined twice in April 2008 and May 2012. Comparatively, India has slightly improved its performance during the second cycle of the UPR. In terms of number of recommendations India made 37 specific recommendations on 19 member States until the 16th Session of UPR as against 38 recommendations on 28 out of the 107 member States during the first cycle.

India ought to further improve its performance at the UPR on a number of areas. First, India needs to increase its geographical focus beyond the Western countries. Second, at the UPR, India needs to promote its experiences of addressing discrimination through affirmative action. This has strong resonance including for the Romas in Europe and is provided under the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD). Third, India needs to follow up recommendations it makes in the previous sessions. Fourth, India needs to expand thematic focus beyond its favorite's issues like the Rights of the Child, the Rights of the Persons with Disabilities and the National Human Rights Institutions (NHRIs).

Article 1(4) of ICERD provides that “Special measures taken for the sole purpose of securing adequate advancement of certain racial or ethnic groups or individuals requiring such protection as may be necessary in order to ensure such groups or individuals equal enjoyment or exercise of human rights and fundamental freedoms shall not be deemed racial discrimination, provided, however, that such measures do not, as a consequence, lead to the maintenance of separate rights for different racial groups and that they shall not be continued after the objectives for which they were taken have been achieved”.

In the first UPR with respect to civil and political rights, India requested Iran to strengthen “the machinery for civil and political rights” India also requested Maldives to share details about assistance required in the areas of judicial and prison reform.

On freedom of religion and belief, India expressed concerns with France, Germany and the Netherlands but with Iran it noted “challenges related to reconciling some religious principles with international human rights obligations”. India requested Iran to strengthen empowerment of women, including by acceding to the Convention on the Elimination of Discrimination against Women; developmental efforts for vulnerable groups, including religious minorities; the machinery for civil and political rights; and Iran’s human rights education program me.

On democracy and good governance, India welcomed consolidation of multi-party democracy with respect to Angola, Bangladesh, Bhutan, Cameroon, Côte d’Ivoire, Egypt, Ghana, Guyana, etc.

India was very specific to Canada and sought response on discrimination against First Nations women and children as raised by the UN Committee on Convention on the Elimination of All Forms of Discrimination against people of ‘First Nation’.

Iran was urged to ratify the CEDAW while Malaysia was asked “to share its experience on the success of the measures taken to enhance the participation of minorities and various ethnic groups in the country’s political and decision-making process.”

In the midst of civil war in Syria, India welcomed “reform measures aimed at improving the democratic system and strengthening public freedoms” during Syria’s UPR on 7 October 2011. Four months later in February 2012, India voted in favor of the UN Security Council resolution backing an Arab League peace plan that called for Syrian President Bashar al-Assad to step down amid escalating violence.

Persons with disabilities have been one of the favorite topics. With respect to Cambodia, India echoed the Committee on Economic Social and Cultural Rights concerning the absence of an anti-discrimination law for persons with disabilities. India recommended ratification of the Convention on the Rights of Persons with Disabilities (CRPD) and both Optional Protocols to Côte d’Ivoire, Gambia, Guyana, Malta, the Former Yugoslav Republic of Macedonia, Uruguay, and Suriname.

On equality and non-discrimination, India expressed concerns with Austria and asked whether Austria considered it useful to extend an invitation to the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance to visit the country. India expressed “concerns regarding the persistent discrimination against the Roma people with respect to education, health, employment and housing, and the disproportionately high levels of poverty among them” in Hungary. While Malaysia had been asked to explain “about steps taken to protect human rights defenders and migrant workers” Sudan and South Sudan were requested to tackle concerns relating to sexual violence and impunity.

On minorities, India was specific with respect to Armenia, Azerbaijan, but it equally recommended Egypt and Iran on the rights of the religious minorities.

On monitoring detention conditions, India welcomed Kazakhstan’s commitment to establishing a national preventive mechanism for monitoring detention conditions while with respect to Tunisia “India noted with appreciation the agreement of April 2005 with the ICRC on giving access to prisons. In that regard, further information on Tunisia’s experience of cooperation with International Committee of the Red Cross was requested”. Maldives was requested to share details about assistance required in the areas of judicial and prison reform. India expressed concerns about the disproportionately high conviction rates for African-Americans in the United States.

On adequate housing Lebanon was specifically “requested information about the measures that were taken to secure the right of its citizens to adequate and decent housing”. However, India did not make any comment or recommendation on 84 countries.

India’s recommendations however did not match the questions raised or comments made. India made recommendations with comments on 28 countries.

India excessively focused on the human rights situation in the member States of European Union and the United States as it made recommendations on 16 European countries and the United States in comparison to 12 countries from the rest of the world in the first cycle of the UPR.

While Georgia, United States of America and Singapore were recommended to ratify various treaties (ICESCR, CEDAW and CRC), Vietnam was recommended to “continue its efforts to preserve the languages and culture of ethnic minorities.” Recommendations relating to equality and non-discrimination were made to

Australia, Italy, Portugal, and the United States of America.

On judiciary and its independence, France was urged to “actively consider undertaking more aggressive strategies to increase the number of people with immigrant heritage in the public service, particularly the police, civil service and the judiciary, in order to better reflect the broad diversity within France”.

On migration and immigrants, recommendations were made to France and Singapore. India had no specific recommendations on the Middle Eastern countries where large number of Indian expats live and work.

While Nepal was recommended to “strengthen the National Human Rights Commission (NHRC) to enable it to maintain its A-status accreditation”, Portugal, Sweden, Switzerland, Sudan, Belgium and Hungary were asked to consider the establishment of NHRI's in full compliance with the Paris Principles. The Netherlands was recommended to consider establishing an institutional mechanism to ensure respect for diversity and tolerance. India recommended Myanmar to “expedite the establishment of a national human rights institution that is fully compliant with the Paris Principles.”

A total of 55 UN member States including India were reviewed in the five sessions during the second cycle of UPR up to 16th Session held on 22 April -3 May 2013. In terms of coverage, India's performance relatively improved during the second cycle. During the second cycle, out of the 54 member states reviewed up to 16th Session held on 22 April -3 May 2013, India made 37 specific recommendations on 19 member States as against 38 recommendations on 28 out of the 107 member States during the first cycle.

On Indonesia, India made comments including on the judicial system but made no recommendation. India made comments and raised questions but made no specific recommendation to Ukraine. On Sri Lanka, India improved its statements compared to the first cycle. India stated that it looked forward to speedy resolution of the residual issues in resettlement and rehabilitation of the internally displaced people in Sri Lanka. It called for credible investigations into allegations in the Lessons Learnt and Reconciliation Commission (LLRC) report. It noted the action plan for time-bound implementation of LLRC recommendations but India continued to stay away from making any specific recommendation.

Considering India has over-crowding in its own prisons, India boldly recommended to Argentina during the second cycle to “continue its efforts specifically with regard to over-crowding of prisons and prison violence”

To Republic of Korea, India recommended to “ensure the passage of the Anti-Discrimination Act.” India made five specific recommendations to Germany to “(1) Expand the mandate of the German Institute for Human Rights to receiving complaints of human rights violations; (2) Legally ban discriminatory ethnic profiling; (3) Safeguard the rights of victims of human trafficking consistent with its human rights obligations; (4) Establish concrete goals to accelerate the achievement of substantive gender equality, including measures to increase women's representation in decision making positions and addressing the long-standing pay gap between women and men; and (5) Take steps to integrate minority communities in Germany by promoting their access to education, housing, employment and health care.” This is significant improvement given that apart from comments India had made no specific recommendation on Germany during the first cycle of the UPR.<sup>11</sup>

### **Human Rights Reforms at United Nations**

The United Nations Commission on Human Rights came under fire during its existence for the high-profile positions it gave to member states that did not guarantee the human rights of their own citizens. Several nations known to have been guilty of gross violations of human rights became members of the organization, such as Libya, Cuba, Sudan, Algeria, China, Azerbaijan and Vietnam. Meanwhile, the United States was also angry when it was ejected from the Commission in 2002. While it was re-elected, the election of human rights-abusing nations also caused frictions. It was partly because of these problems that Kofi Annan in the In Larger Freedom report suggested setting up a new Human Rights Council as a subsidiary UN body.

On Wednesday, 15 March 2006, the United Nations General Assembly voted overwhelmingly in favor of establishing a new United Nations Human Rights Council, the successor to the United Nations Commission on Human Rights, with the resolution receiving approval from 170 members of the 191-nation Assembly. Only the United States, the Marshall Islands, Palau, and Israel voted against the Council's creation, claiming that it would have too little power and that there were insufficient safeguards to prevent human rights-abusing nations from taking control.<sup>12</sup>

## **V. India's Quest for United Nations Security Council Permanent Seat with special reference to its Human Rights Credentials and Conclusion**

According to Meenakshi Ganguly and seconded by me as an emerging economy with a growing work force, India believes it should have a voice in global affairs. No one disagrees. But then, on crucial foreign policy issues, India should take initiatives that seek an end to human suffering. Many Indians believe that as an emerging power, their country has a growing role in world affairs. The government seeks a global profile,



partnering with other nations through a dizzying array of international organizations and associations that look as though they have been picked up in a Scrabble game: BRICS, CHOGM, ASEAN, IBSA, SAARC, NAM, IOCARC, to name just a few.

India's foreign policy establishment also believes that India deserves a permanent seat on the United Nations Security Council. New Delhi has become an important stop for almost every significant world leader and they are usually accompanied by business leaders looking for opportunities to tap into India's vast market potential. Almost all of them also claim to support a permanent seat for India on the Security Council.

Yet what India would do with an international leadership role is still unclear. To date, it has not made use of intergovernmental organizations to promote respect for democracy and human rights abroad. Instead, the Asian giant is a chronic fence-sitter on key issues. It rarely votes for human rights resolutions on specific countries (though Sri Lanka has been a welcome exception in the past two years). Its recent two-year term on the Security Council was widely seen in foreign policy circles as a disappointment. India abstained on hard issues of international peace and security— (even when civilians were at grave risk) a policy paralysis that has not helped the country's stature.

As perhaps the most established democracy in the developing world, India has the potential to develop a powerful role on the international stage as a promoter of democracy and rights, thereby making common cause with the world's oppressed and marginalized people. While India wants to defend the sovereignty of nations, it should speak for the rights of citizens, not the actions of governments.

Despite its growing economic power and leverage as an international donor, India only appears to have a clear vision of what it does not want to do. It abstains from western-led initiatives it considers aggressive. It also resists actions it views as conflicting with its strategic agenda towards China.

With its growing international influence, New Delhi seems to have adopted China's selective policy of promoting non-interference in the "internal affairs" of other states. Its foreign policy highlights bilateral engagements and "quiet diplomacy." Experts express distrust for international action to address human rights violations by the state, noting, with reason, that smaller and vulnerable countries are targeted, while major powers and favorites of the west are shielded from international action. New Delhi regards itself as a champion for governments in developing states that believe that their former colonial masters, having destroyed economies and created communal divisions in the colonies for their own financial gain, are now imposing standards that they themselves violated for centuries.

Traditionally, Europeans and North Americans have taken the lead on global bilateral and multilateral diplomacy for the protection of human rights. That power stemmed from the economic ability to invest abroad, provide aid, trade and financial services, use their military strength, and cultural and historical affiliations. India is now gaining the resources and clout to play a positive leadership role. And if it does not agree with the interventionist approach, it should still offer alternatives. Right now the largest democracy in the world has a chance to lead and support attempts by countries from the global south to persuade and pressure abusive governments.

A hopeful sign is its recent willingness to speak out on Sri Lanka. After several years of 'quiet diplomacy' which had no impact, India joined others at the UN Human Rights Council to call for accountability for war crimes committed by both the government and the LTTE. It has supported Human Rights Council resolutions on Sri Lanka in 2012 and 2013. In his 2013 statement in support of the resolution, the Indian envoy noted "the inadequate progress by Sri Lanka," and called "for an independent and credible investigation into allegations of human rights violations and loss of civilian lives."

India has to overcome some crucial challenges to meet its foreign policy expectations. It has a very small diplomatic cadre and thus is often ill-equipped to tackle country situations. Civil society in India rarely participates in or forms foreign policy discourse. The few think tanks and universities that address these issues have little influence over the foreign policy establishment. India also has to come to terms with the rising role of China on the world stage. Until now its foreign policy, to a large part, has been focused on strategic concerns. Pakistan remains an anxiety because of militant groups that are based on and supported by some in the establishment. But it is China, with its expanding footprint in the region, which includes ports in Pakistan, Sri Lanka and Burma, that is being tracked by experts. China actively rejects human rights to protect its foreign trade and investment, and acted strategically in Burma to capitalize on India's decision to cut ties with the junta following the detention of Aung San Suu Kyi. The Indian establishment believes that if it develops a principled approach to foreign affairs, China will once again use this to its own advantage.

However, India should instead recognize that it is unlikely to have the cash to compete with China in checkbook diplomacy. As a democracy, it faces risks by openly supporting dictatorships and regimes that remain in power through oppression.

India has had past opportunities to distinguish itself on the international stage. In Syria, an IBSA (India, Brazil and South Africa) team met with the Bashar Al-Assad government in 2011 to call for protection of human rights. Assad admitted to "some mistakes" and promised reform. But IBSA failed to follow up and press

for an end to human rights violations. Two years on, some 80,000 people are dead, nearly four million displaced, and international efforts to broker peace, humanitarian assistance and accountability are at a standstill.

In Sri Lanka, India chose private diplomacy to address concerns about risks to civilians during the brutal conclusion to the fighting between the military and the Liberation Tigers of Tamil Eel am. A United Nations Panel of Experts report found that 40,000 civilians may have died in the last months of the war, largely from indiscriminate government shelling. Strong and early objections by the Indian government to the Sri Lankan government's conduct of the war might have saved civilian lives.

Ironically, when India had far less clout in the global community, it took stronger positions on contentious issues. In 1959, while still a very young nation, India provided asylum to the Dalai Lama. This continues to be a sore point in India's relations with China, but the Tibetan government-in-exile has remained based in India, along with nearly 100,000 Tibetan refugees. India was one of the leading voices to oppose apartheid in South Africa. In its own neighborhood, India, in the early 1990's, promoted democracy in Bangladesh and Nepal. New Delhi was a strong critic of the Burmese military regime in the early days when Aung San Suu Kyi was being persecuted.

Today, India has the chance to align its interests with the oppressed people of the world who are increasingly demanding dignity and respect for their basic rights. India should not be shy to speak up for the rights of people in other parts of the world and try to end their suffering. It should respond to expectations that as a democracy, India, unlike China, will promote human rights. 13.

### **End Notes**

1. Ghai .U. R,(2011), International Politics Theory and Practice, New Academic Publishing Cooperation, Mai Hiran Gate, Jullundur., Book II: International Organization: The United Nations.pp-417-447.
  2. Administrative Committee on Coordination (ACC): The United Nation's System and Human Rights: Guidelines and Information for the Resident Coordinator System.
  3. Chatterjee .A, (2010) International Relations Today, Concepts and Applications, Longman(Pearson), the United Nations, pp-90-115.
  4. Human Rights in India, Source: Web: Wikipedia the Free Encyclopedia.
  5. Chaulia .S,(2011):India and the United Nations, Handbook of India's, International Relations, Edited by Scott D, Routledge, Taylor and Francis Group, pp-278-288.
  6. Human Rights in India, Source: Web, Wikipedia the Free Encyclopedia.
  7. Khanna .V .N,(2003)International Relations: Fourth Edition (Revised), Vikas Publishing House, The United Nations and Regional Organizations , pp-379-427.
  8. Bhagwan. M,(2012),One World 2020: A Decade-long Vision for India's Relations with the United Nations,Grand Strategy for India 2020 and Beyond Editors Venkatshamy. K and George. P,( Pentagon Security International, An Imprint Pentagon Press, IDSA, New Delhi, pp-253-260.
  9. India and The World. MPSE -001,(2006), School of Social Sciences, IGNOU, Political and Diplomatic Issues, pp-207-215.
  10. Bhagwan. M,(2012),One World 2020: A Decade-long Vision for India's Relations with the United Nations, Grand Strategy for India 2020 and Beyond Editors Venkatshamy. K and George .P,( Pentagon Security International, An Imprint Pentagon Press, IDSA, New Delhi, pp-253-260.
  11. India's Role For Promotion OF Human Rights In Third Countries Through Universal Periodic Review, pp1-8, Source: Web, Asian Centre for Human Rights, has Special Consultative Status with the United Nations Economic and Social Council, Website: [www.achrweb.org](http://www.achrweb.org).
- Note: Israel is the only country which has so far refused to be reviewed by the UPR process. It was scheduled to be examined on 29 January 2013 for the second cycle but none had appeared from the delegation of Israel.
  - Interestingly, India and Pakistan made no comments and recommendations on each other during the first and second cycle of the UPR.
  - Russia, China veto UN resolution on Syria; India votes for regime change, NDTV, February 04, 2012 available at <http://www.ndtv.com/article/world/russia-china-veto-un-resolution-on-syria-india-votes-for-regime-change-173375>.
  - The 28 countries included Afghanistan, Australia, Austria, Belgium, Cuba, large number of Indian migrants are based other than Bahrain which was recommended to "take necessary measures to address issues relating to foreign workers, such as their facing travel bans and sometimes loss of rights to residence and work while being investigated for financial irregularity, so that the principles of natural justice are adhered to scrupulously".
- 12.Reform of the United Nations, Source: Web, Wikipedia, the Free Encyclopedia.
  13. Ganguly .M: Can India be an International Human Rights Leader?, 21 June 2013,Source:Web, Meenakshi Ganguly is the south Asia director for Human Rights Watch. She joined HRW in 2004. Before then she was south Asia correspondent for *Time* magazine, where she reported from Afghanistan, Pakistan, Nepal, India, Bangladesh and Sri Lanka.