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INDIA AND THE UNIVERSAL PERIODIC REVIEW: A CRITICAL HUMAN RIGHTS PERSPECTIVE ON COMPLIANCE, ACCOUNTABILITY, AND SOVEREIGNTY

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1. INTRODUCTION

1.1 THE EVOLUTION OF HUMAN RIGHTS MONITORING AT THE UN

The promotion of human rights is no longer a secondary activity of the League of Nations but rather a fundamental principle within the framework of the United Nations (UN). It was acknowledged post World War II that “universal respect for, and observance of, human rights” was essential to achieving world peace.² What followed was a need to move beyond the phase of setting standards, exemplified by the Universal Declaration of Human Rights (1948), and into the realm of monitoring. Monitoring was carried out in two ways – either through “Treaty Bodies” (experts’ committees) or “Special Procedures” (individuals’ procedures). But both methods were plagued by lack of universality as they were applicable to signatory countries only.³

1.2 TRANSITION: FROM THE COMMISSION TO THE COUNCIL

The UN Commission on Human Rights (CHR) was the central institution responsible for human rights for six decades. However, the early 2000s saw the CHR suffering from a "crisis of legitimacy."⁴ One of the problems with the CHR, according to Kofi Annan, was that "it was becoming too

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² Charter of the United Nations (1945), Article 55(c).

³ Rhona K.M. Smith, *Texts and Materials on International Human Rights* (4th edn, Routledge 2020) 56.

⁴ Gaer, F.D., "A Voice Not an Echo: Universal Periodic Review and the UN Human Rights System" (2007) 7(1) *Human Rights Law Review* 109, 112.

politicized, and had allowed human rights abusers to join simply to protect themselves from criticism."⁵

As a result, the UN General Assembly adopted Resolution 60/251, which saw the replacement of the Commission with the Human Rights Council (HRC).⁶ The most groundbreaking change made possible by this resolution is the call for "undertak[ing] a universal periodic review, based on objective and reliable information, of the fulfillment by each State of its human rights obligations."⁷ Unlike the previous institution, the new Human Rights Council ensured "universality of coverage and equal treatment", the creation of the Universal Periodic Review (UPR), where not only smaller nations but even superpowers have to justify themselves.

2. RESEARCH METHODOLOGY

2.1 RESEARCH OBJECTIVE

The main aim of this research work is to critically evaluate the relationship between India's involvement with UPR and its nature. The aims are as follows:

- To evaluate the level of compliance of India towards those recommendations which it accepts through the process of reviewing.
- To investigate the connection between the international human rights obligations and domestic legislation.
- To explore the function of NHRC and civil societies in implementing the UPR processes.

2.2 RESEARCH QUESTIONS

In light of this project, there arise some critical legal issues that need to be addressed:

1. Legislative Influence: Is the UPR mechanism a means to stimulate legislative action in India, or is it merely a formality on the international stage?
2. Westphalian Sovereignty Versus International Human Rights Responsibility: How does the Indian state reconcile its sovereignty with the obligation to respect international human rights accountability?

⁵ Report of the Secretary-General, *In Larger Freedom: Towards Development, Security and Human Rights for All*, UN Doc. A/59/2005

⁶ UN General Assembly Resolution 60/251, *Human Rights Council*, A/RES/60/251 (15 March 2006).

⁷ *Ibid*, Operational Paragraph 5(e).

3. Consistent Themes: What makes India respond positively to the recommendations concerning socio-economic rights such as poverty and education but take an adverse stance on civil liberties like the death penalty and AFSPA?

2.3 SCOPE AND LIMITATIONS

- Periodicity of Scope: The study largely concentrates on Third Cycle (2017) and Fourth Cycle (2022-2026) reports of UPR. This timeframe is important because it is a time that captures human rights jurisprudence of India in light of modern-day challenges in the world.
- Scope of Content: The study will consider "Accepted" and "Noted" recommendations to identify human rights priorities of India.
- Limitations: One major limitation with this scope is the “soft law” aspect of UPR recommendations, which makes it hard to prove causation of the relationship between a particular recommendation in UPR and a certain Indian statutory framework.

2.4 SOURCES OF DATA

Doctrinal Research Methodology is adopted in this research study, and the sources used include:

- Primary Sources: UN Outcome Reports for India, Constitution of India, and National Reports by the Ministry of External Affairs (MEA).
- Secondary Sources: Peer-reviewed articles, NHRC reports, and international NGO comments.

3. THE UPR MECHANISM: A PROCEDURAL OVERVIEW

3.1 THE THREE-STAGE PROCESS: A CONTINUOUS CYCLE

Unlike the PRC, the UPR is a continuous process that aims to ensure that human rights are constantly being monitored. The UPR is composed of three distinct phases which include:⁸

- The Review: This phase takes place in Geneva and entails an interactive session involving the State under Review (SuR) and other members of UN. This process will involve analysis of

⁸ Office of the High Commissioner for Human Rights (OHCHR), 'Information Note for State under Review' (2023) <https://www.ohchr.org/en/hr-bodies/upr/upr-main> accessed 8 April 2026.

three documents including the National Report, UN Compilation, and Stakeholders' Summary.

- **Implementation:** Recommendations accepted by the SuR should be implemented within four and half years. This process represents the most crucial part of the UPR in terms of legal reforms.
- **Reporting:** In the next phase of the review process, the State must report on what it has achieved in the implementation of previous recommendations.

3.2 THE "TROIKA" SYSTEM

The “Troika” is a special feature of the UPR procedure. The three-member Troika is chosen for each country review by drawing lots within the Human Rights Council.⁹ Three countries form the Troika in each round; these states represent different geographic regions and facilitate the process. The main responsibility of the Troika is the organization of the review and drafting the “Report of the Working Group,” which lists all recommendations made during the review. For instance, in India’s 4th cycle (2022), the Troika included Sudan, Nepal, and Argentina.¹⁰

3.3 DISTINCTIVE FEATURES: PEER-REVIEW VS. TREATY BODY MONITORING

The UPR must be differentiated from “Treaty Body” monitoring, for example, the Committee on the Rights of the Child. Despite the similarities, the legal nature of these two approaches is distinct:

Feature	Universal Periodic Review (UPR)	Treaty Body Monitoring
Legal Basis	UN Charter & HRC Resolution 60/251	Specific Treaties (e.g., ICCPR, ICESCR)
Reviewer	Peers (Diplomats from other States)	Independent Experts (Jurists/Academics)

⁹ Human Rights Council Resolution 5/1, *Institution-building of the United Nations Human Rights Council*, UN Doc A/HRC/RES/5/1 (18 June 2007) para 18.

¹⁰ UN Human Rights Council, ‘Troikas for the 4th Cycle of the UPR’ (2022) (The selection of the Troika ensures that the review process is not biased toward a single political bloc).

Feature	Universal Periodic Review (UPR)	Treaty Body Monitoring
Scope	All human rights (Universal)	Only rights mentioned in that specific treaty
Nature	Political and Diplomatic	Legal and Quasi-judicial

4. INDIA'S JOURNEY THROUGH UPR CYCLES (1ST TO 4TH)

4.1 THE SHIFT IN NARRATIVE: FROM GENERAL COOPERATION TO ASSERTIVE DIPLOMACY

India's involvement in the process of UPR has evolved from being defensive to practicing "assertive diplomacy." During the First (2008) and Second (2012) rounds, India's reports had more of a descriptive nature, with an emphasis on constitutional provisions and welfare programs.¹¹ With the advent of the Third (2017) and Fourth (2022) rounds, there was a noticeable change. India questioned the "universality" of Western human rights principles, stressing that India's "national circumstances" and "pluralistic character" must be considered.¹²

"Assertive Diplomacy" is distinguished by the following attributes:

- "The Noted" Approach: India resorts to the strategy of "noting" rather than "accepting" those recommendations which it considers as a hindrance to its sovereign decisions, particularly in cases involving the abolishment of capital punishment and revocation of AFSPA.¹³
- Global Leadership: India, at this stage, showcases its achievements in "Digital Governance" and "Socio-Economic Inclusion" as role models for other countries in the Global South region.

¹¹ Ministry of External Affairs, *National Report submitted in accordance with paragraph 15 (a) of the annex to Human Rights Council resolution 5/1: India* (2008) UN Doc A/HRC/WG.6/1/IND/1.

¹² Harsh V. Pant and Kartik Bommakanti, 'India's Human Rights Diplomacy' (2019) 41(2) *Strategic Analysis* 155, 158

¹³ UN Human Rights Council, *Report of the Working Group on the Universal Periodic Review: India - Addendum*, UN Doc A/HRC/52/11/Add.1 (2023)

4.2 THE ROLE OF THE NHRC AS AN INDEPENDENT VOICE

National Human Rights Commission (NHRC) in India is of paramount importance in being the "A-status" National Human Rights Institutions (NHRIs). The UPR procedure requires that the NHRC submit its separate report to UNHCHR which generally contains more detailed information than that contained in the government's National Report.¹⁴

In the 3rd and 4th UPR cycles, the NHRC has been a vital link. Although the NHRC helps the State in addressing poverty-related issues, it raises questions about:

- Human rights defenders' security.
- The situation in prisons and violence against prisoners.
- Climate change effects on vulnerable groups.¹⁵

Participation in the process by NHRC guarantees that the UPR is not simply a conversation between governments but is a "Domestic Accountability" process."

5. THEMATIC LEGAL ISSUES IN INDIA'S UPR

5.1 CIVIL AND POLITICAL RIGHTS: THE SECURITY VS. LIBERTY DILEMMA

In the third and fourth cycles, India has been subject to serious criticism about its national security laws. There have been frequent suggestions for the abolition or modification of AFSPA and UAPA in member states because of concerns about indefinite detention and limited judicial scrutiny.¹⁶The Indian justification for these laws is based on the "principle of necessity," according to which they are needed to deal with transnational terrorism and safeguard the territorial integrity of the state. As far

¹⁴ National Human Rights Commission (NHRC) India, *Submission to the UN Human Rights Council for the 4th Cycle of the UPR (2022)* <https://nhrc.nic.in> accessed 8 April 2026.

¹⁵ G.S. Bajpai, 'The Role of NHRC in UPR: A Critical Appraisal' (2021) 12 *Journal of the National Human Rights Commission* 45.

¹⁶ Working Group on the Universal Periodic Review, *Report of the Working Group on the Universal Periodic Review: India*, UN Doc A/HRC/52/11 (13 January 2023) paras 48.21–48.35 (Recommendations regarding the review of security legislation).

as Freedom of Expression is concerned, the Indian claim centers on the "reasonable restrictions" clause of Article 19(2) of the Constitution.¹⁷

5.2 SOCIO-ECONOMIC RIGHTS: THE "INDIAN MODEL" OF SUCCESS

While civil liberties continue to be criticized in India, the country's performance on socio-economic rights has been praised in UPR sessions. The Indian Government has willingly accepted recommendations regarding the RTE Act and food security initiatives.¹⁸ The reports submitted by the Indian Government highlight the growth of the welfare system that uses Aadhar cards for securing the "Right to Development." In light of the SDGs, India showcases its success story in order to serve as an example for other developing countries.

5.3 VULNERABLE GROUPS: PROGRESS AND PERSISTENT GAPS

- LGBTQ+ Rights: With the recent verdict in *Navtej Singh Johar v. Union of India*, the position of India in the UPR process is now more proactive rather than reactive. Yet, although homosexual acts between consenting adults have been legalized, India still "notes" the recommendation for recognition of same-sex marriage, stating "societal values."¹⁹
- Dalit Rights and Safety of Women: The recommendations usually revolve around implementing the SC/ST (Prevention of Atrocities) Act and POSH Act. The country accepts them, reiterating that it will uphold the principle of "Zero Tolerance."

5.4 THE DEATH PENALTY: THE SOVEREIGN REDLINE

Capital punishment continues to be one of the most debated topics. Many nations (predominantly European) advocate for a temporary suspension of executions. The Indian reaction is legally sound since capital punishment is awarded in the "rarest of rare cases" and has several judicial guarantees.²⁰ India "notes" the recommendations, claiming that abolishing the death penalty is solely a matter of national legislation and not an international obligation.

¹⁷ Government of India, *National Report submitted in accordance with paragraph 5 of the annex to HRC resolution 16/21: India* (2022) UN Doc A/HRC/WG.6/41/IND/1, para 62.

¹⁸ Reetika Khera, *Dissent on Development: India's Experience with India's Social Welfare Programs* (Oxford University Press 2019) 112-115

¹⁹ *Navtej Singh Johar v. Union of India* (2018) 1 SCC 1

²⁰ *Bachan Singh v. State of Punjab* (1980) 2 SCC 684

6. DOMESTIC IMPLEMENTATION OF RECOMMENDATIONS

6.1 THE GAP BETWEEN "ACCEPTED" RECOMMENDATIONS AND "GROUND REALITY"

Despite the fact that India has a high "Acceptance Rate" for UPR recommendations, especially those concerning the SDGs, there remains a huge "Implementation Gap." It is claimed that India frequently accepts non-binding recommendations that are vague and idealistic (such as "keep striving to reduce poverty"), yet avoids accepting concrete recommendations that would necessitate an immediate overhaul of the legislation.²¹

This is most evident in the "Ground Reality" of marginalized groups. As an example, despite India agreeing to the 3rd Cycle recommendations to enhance protection for human rights defenders, domestic human rights activists are still facing difficulties in obtaining financial support through the Foreign Contribution (Regulation) Act (FCRA)²²

6.2 LEGAL HURDLES: INTERNATIONAL SOFT LAW VS. MUNICIPAL LAW

The legal challenge in the implementation of UPR outcomes mainly arises from the fact that recommendations made as part of the UPR process are "Soft Law," which means that the recommendations are politically convincing but not legally enforceable in the same way as treaties and Supreme Court rulings.²³

In the Indian legal context, following the Dualist theory of international law, international law is not automatically part of domestic law unless it is incorporated through legislation in Parliament as per Article 253 of the Constitution.²⁴ The important challenges are:

²¹ Amnesty International, 'India: Submission to the UN Human Rights Council for the 4th Cycle of the Universal Periodic Review' (2022) ASA 20/5948/2022.

²² *Noel Harper v. Union of India* (2022) SCC OnLine SC 434

²³ Walter Kälin and Jörg Künzli, *The Law of International Human Rights Protection* (2nd edn, Oxford University Press 2019) 110-112

²⁴ *Jolly George Varghese v. Bank of Cochin* (1980) 2 SCC 360

- Non-existence of any Formulation: As compared to other countries, India does not have any mechanism known as “National Mechanism for Reporting and Follow-Up” (NMRF). This leads to disunity when it comes to legislative action.
- Judicial Discretion: Although the Supreme Court frequently refers to international instruments (as evidenced in *Vishaka vs. State of Rajasthan*), it is not bound by any constitutional provisions to act upon UPR recommendations unless supported by domestic laws.²⁵
- Difficulties due to Federal Structure: Most of the UPR recommendations fall under the “State List” of the Seventh Schedule, which means that the Central Government cannot implement them on its own without the consent of individual State Governments.

7. CRITICAL EVALUATION

7.1 IS THE UPR TOO POLITICAL?

One of the main arguments against the UPR is that the entire process is more like the politics of "diplomatic reciprocity" than a legal review. The fact that the States are the reviewing Peers, and not impartial judges, implies that the whole process is heavily politicized.²⁶ According to critics, "friendly" States tend to throw each other softballs so as to avoid embarrassing each other.²⁷ In relation to India, the political nature of the procedure can be demonstrated in terms of the interests of neighboring States or those allied with it within the Global South. Such States tend to emphasize India's achievements in poverty eradication, whereas western blocs emphasize problematic security laws. The implication is that the process is a "hybrid" in which human rights and diplomacy are inseparable.

²⁵ Upendra Baxi, 'The "Uttar" in the Universal Periodic Review: Some Reflections' (2018) 4 *Indian Journal of International Law* 12 (Critiquing the "ritualistic" nature of state responses to UPR).

²⁶ Nico Schrijver, 'The UN Human Rights Council: A New "Society of Nations" or a "Great Power Club"?' (2007) 20(4) *Leiden Journal of International Law* 809.

²⁷ Edward R. McMahon, 'The Universal Periodic Review: A Work in Progress' (2012) *Friedrich-Ebert-Stiftung Report* 14

7.2 THE "NAME AND SHAME" VS. "CONSTRUCTIVE DIALOGUE" DEBATE

UPR, however, was deliberately devised to abandon the "Naming and Shaming" approach of its predecessor, the Commission on Human Rights, which often resulted in the state's rejection and resentment. On the other hand, it espouses the idea of "Constructive Dialogue".²⁸

The Pro-Dialogue Argument: The proponents claim that by maintaining a tone of "constructive" dialogue, even the most recalcitrant states (even India when it comes to delicate issues concerning their internal affairs) are forced to be involved and participate in the dialogue with the international community. It promotes "internalization" of norms, not imposition.²⁹

The Ritualism Argument: By contrast, legal experts such as Hilary Charlesworth believe that UPR might become a mere "ritual", where states just go through the motions of submitting reports and adopting general recommendations without any intention of changing laws at home.³⁰

India would adopt the approach of "Constructive Dialogue," which ensures that the Indian nation-state retains its dignity while engaging in the universal dialogue of human rights. The question, however, is whether this dialogue would reach those who have been affected by the violation of human rights.

PART V: CONCLUSION & RECOMMENDATIONS

8. CONCLUSION: INDIA'S EVOLVING HUMAN RIGHTS JURISPRUDENCE

It may therefore be seen from this study that India's participation in the UPR process indicates a growing constitutionally-based democracy which is becoming more assertive internationally. In the matter of socio-economic rights, India has progressed from being in the standard-setting phase to the

²⁸ UN Human Rights Council Resolution 5/1, *Institution-building of the United Nations Human Rights Council*, UN Doc A/HRC/RES/5/1 (18 June 2007),

²⁹ Thomas Risse and Stephen C. Ropp, *The Power of Human Rights: Strategic Action and Domestic Change* (Cambridge University Press 1999) 234-236

³⁰ Hilary Charlesworth and Emma Larking, *Human Rights and the Universal Periodic Review: Rituals and Ritualism* (Cambridge University Press 2014) 11.

compliance-oriented phase. It should be mentioned that the paradox of sovereignty remains present in the Indian approach: while India welcomes international criticism regarding its developmental policies such as the Right to Education and food security, it is very resistant to suggestions regarding national security legislation and capital punishment.

Conclusively, the process of Universal Periodic Review has been used as a "constitutional mirror" by making the Indian state reveal its priorities on human rights. It has not resulted in any "legislative revolution" but has created an environment of reporting and dialogue which makes India's checks and balances stronger.

9. SUGGESTIONS: THE PATH TOWARD AN NMRF

In an effort to reconcile "Geneva Promises" with "Ground Realities," the following suggestions have been put forth by this study:

- Formation of a Permanent NMRF: India must evolve from its existing system of ad hoc coordination between various ministries and establish a Permanent NMRF to keep track of the implementation of "Accepted" recommendations in the 4.5 year cycle.
- Involvement of the Judiciary: The Supreme Court of India must utilize UPR recommendations as "interpretative tools" to broaden the scope of Article 21, thus making sure that international obligations are translated into judicial decisions.
- Engagement of Civil Society Organizations: Regular consultations between the Ministry of External Affairs (MEA) and civil society organizations must be conducted during the implementation phase to ensure that UPR remains a "people-centric" exercise.

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