



Franciscans International
A voice at the United Nations



Convention on the Elimination of All Forms of Discrimination against Women (CEDAW)

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Alternative Report

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Introduction

1. This stakeholders' report is a submission of Franciscans International (FI), a faith-based International Non-Governmental Organization (INGO) with General Consultative Status with the Economic and Social Council of the United Nations. It was founded in 1982 to bring to the UN the concerns of the most vulnerable. The report highlights key concerns related to the human rights of women as stipulated in the UN Convention on the Elimination of all forms of Discrimination against Women (CEDAW). The data and information obtained for this submission came from various sources and include information from FI with the support FI network in India. The report focuses on 1) non-discrimination and equality, 2) obligation to eliminate discrimination, 3) sex-roles, stereotyping and prejudice, 4) trafficking and exploitation of women and 7) political participation and public life.

Article 1: Non-discrimination and Equality.

2. Article 15 of the Indian Constitution guarantees equal protection under the law for women and men by prohibiting discrimination on the grounds of religion, race, caste, sex, or place of birth. By enacting legislative measures, institutional mechanisms, and various programs and policies¹, the government of India has taken extensive action to ensure national laws promote women's rights. However, women continue to face adverse institutional and social barriers that prevent them from the enjoyment of these rights.

3. Barriers to equality and non-discrimination consist of intersecting political, economic, and social inequalities that work to compliment and reinforce one another, therefore compounding the discriminatory practices faced by many women. Intersecting discriminations and inequalities are facilitating "human trafficking, bonded labor, forced labor"² and violence against women. A joint publication by UN Women and ICRW entitled *Local Governance for Gender Equality*, found that violence against women in Indian society – domestic violence in particular – is "one of the most pervasive manifestations of gender inequality and male power and control over women."³ Dialogue with Franciscans at the grassroots level has revealed that the one great underlying element of discrimination and inequality is the problem of Caste and Tribal structures. Institutional failures such as a lack of mobilization, awareness, and accountability measures⁴ compounded with social barriers such as the "deeply entrenched patriarchal attitudes"⁵ perpetuated by Caste and Tribal structures limit women's opportunities for socioeconomic and political equality and further engineer discriminatory practices.

4. Although "discrimination on the basis of caste is prohibited, and laws such as the Protection of Civil Rights Act, 1955, The Schedule Castes and the Scheduled Tribes (Prevention of Atrocities) Act 1989, [and] Scheduled Tribes and other Traditional Forest Dwellers (Recognition of Forest Rights) Act, 2006, [work to] protect the rights of the vulnerable groups and provide norms for relief and rehabilitation"⁶, the gap between legislation and implementation remains⁷. Ingrained attitudes towards women, especially in "conjunction with customs, caste discriminations, and religious beliefs and practices"⁸, create ripe environments for inequalities to foster. Mind-sets often operate outside the

¹ *India Country Report to the World Congress III*, November 2008, Pages 8-15.

² *Modern Slavery in India: Cases of Bonded Labour*, a report by Franciscans International (FI) 2012, page 8.

³ From: Discussion Paper series on Women's Political Leadership; *Local Governance for Gender Equality: A study in select districts of India*, ICRW-UN Women joint publication, 2012; Page 4.

⁴ *Post-2015 Development Agenda – India*, National Consultation Report: Women's Associations Constituency (2013).

⁵ *Post-2015 Development Agenda – India*, National Consultation Report: Women's Associations Constituency (2013); Page 5.

⁶ Consideration of reports submitted by States under article 18 of the Convention (CEDAW) combined fourth and fifth periodic reports of States parties, Addendum, India, 6 July 2012. Page 22-23, Section III, Para. 96.

⁷ *Post-2015 Development Agenda – India*, National Consultation Report: Women's Associations Constituency (2013); Page 4.

⁸ *Modern Slavery in India: Cases of Bonded Labour*, a report by Franciscans International (FI) 2012, page 8.

legalistic framework that guarantees opportunities for women. The injustices plaguing Dalit and Tribal women can be attributed to attitudes on the part of male family members, communities, and states as well as systemic ignorance – as a result of illiteracy and lack of exposure to media –that prevents many women from comprehending their “legal entitlements.”⁹ The social aspects of discrimination and inequality, i.e. harmful perceptions, beliefs, and cultural norms, are affecting the economic and political dimensions of the issues as well.

5. Social discrimination against women is engineering economic inequalities and hardships. Women’s work is undervalued. 70% of women in rural India work as agricultural laborers, yet pervasive gender gaps exist between land ownership and land inheritance in these areas.¹⁰ The gap is a result of family and communal attitudes and expectations. In a study done by Landesa and UN Women entitled ‘*Challenges and Barriers to Women’s Entitlement to Land in India*’, it was found that 12% “of women respondents reported that they have or believe that they will inherit land from their parents... [And] felt their plot access was most vulnerable if they were to divorce their husbands, had a falling out with their family or their family incurred debt.”¹¹ The results show an asymmetrical indebtedness between women and their husbands, families, and communities. Although the GOI does allocate plots to women, these efforts are not inclusive enough so as to reverse the problem.

6. The Supreme Court ruling in *K. Krishnamurthy (Dr.) vs. Union of India* (2010), upheld the constitutional validity of Articles 243-D and 243-T of the Constitution, which promote substantive equality, ensuring that nothing shall prevent the State from making any special provision for women and children. However, GOI attempts at fostering economic equality by mitigating the existing gender gaps have fallen short of their target. Although the top down legalistic approach of the GOI will have positive lasting effects that will accumulate over a long period of time, at the moment, mind-sets, harmful norms, and “deeply entrenched patriarchal attitudes” continue to facilitate discrimination and inequality, especially for women belonging to marginalized populations such as Dalit, Tribal, and Muslim groups.¹²

7. Recommendations.

1. *Adopt* “substantive” legal measures to ensure that women who are affected by intersecting discriminatory factors are recognized and protected under the law.

2. *Take* the lead in establishing a national entity that works to monitor and adjust communal attitudes that are harmful towards women.

3. *Adopt* further measures to ensure that women are aware of their legal entitlements.

Article 2: Obligation to eliminate discrimination

8. The GOI ratified the Convention on the Elimination of All forms of Discrimination against Women on 9 July 1993. Article 15 of the Constitution prohibits discrimination on the grounds of religion, race, caste, sex, or place of birth. Article 15, clauses (3) and (4) of the Constitution guarantee that nothing in the Article will prevent the State from making any special provisions for women, as well as guaranteeing that nothing in the article, clause (2), or Article 29 “shall prevent the State from making

⁹ *Post-2015 Development Agenda – India*, National Consultation Report: Women’s Associations Constituency (2013); Page 4.

¹⁰ *Challenges and Barriers to Women’s Entitlement to Land in India*, Landesa and UN Women joint publication. 2012.

¹¹ “The results discussed in the study are based on a survey conducted in September and October of 2011 with 504 women in Andhra Pradesh and Bihar. We covered two districts in each state. In each district, we selected two blocks, and in each block we choose two Gram Panchayats. We interviewed a total of 504 women in 19 villages. In each village, a stratified sample of land owning households was selected to represent Scheduled Tribes and Castes, Other Backward Castes, the general caste Hindu population, Muslims, and female headed households” (Page 5).

¹² *Post-2015 Development Agenda – India*, National Consultation Report: Women’s Associations Constituency (2013); Page 5.

any special provision for the advancement of any socially and educationally backward classes of citizens or for the Scheduled Castes and the Scheduled Tribes.” The GOI has the obligation as well as the legal arsenal to eliminate discrimination against women and has taken extensive measures in doing so. However, systemic discrimination remains, which is proving detrimental to the full enjoyment of women’s rights.

9. The Hindu Succession (Amendment) Act of 2005 “gives the daughter the same right as the son to inherit the coparcenary property.” Yet, the right is not being effectively enforced. Patriarchal attitudes towards women, such as the beliefs that women are incapable of managing land effectively, that “productive resources are lost to other families in the event of marriage, divorce, or male death”, and that men are responsible for women’s economic security¹³, are preventing women from acquiring Pattas (titles of private property). The disconnect that exists – often due to the mind-sets of individuals and communities – between the legality of an issue and its effective implementation is a fundamental aspect of continuing discrimination.

10. In the GOI’s state report, it is specified that “it is the State’s duty to ensure circumstances of safety, which inspire confidence in women to discharge the duty freely in accordance to the requirements of the profession they choose to follow.” However, violence against women continues to undermine their attempts at enjoying their implicit human rights. The violence women experience both in the home and in public affect their ability to perform daily functions as well as fulfilling leadership positions on Panchayati Rai Institutions (PRIs).¹⁴

11. In 2010, it was reported that there were cases of disparity of birth registration between girls and boys, especially in the districts of Jhunjhunu and Bharatpur, in the province of Jaipur. In these districts, it was found out that girls were denied their first legal document, which was provided by the state government in the form of birth certificate. UNICEF reported that in 2013, there were 71 million children under five whose births were not registered in India.¹⁵ The situation of the children of Dalits and of tribal people needs particular attention. About 81 per cent of the births occurring to Dalit women and 86 per cent of births occurring to tribal women takes place at home while the corresponding figure for ‘other’ social groups is 70 per cent.¹⁶ Only 20 percent of Dalit women and 17 percent of tribal women gave birth in a medical institution. This is one of the barriers for the registration of Dalit and Tribal children. There has also been a lack of infrastructure, especially easy and simple procedures at the village level for Dalit and Tribal families, and political motivation to improve the system and limited knowledge of birth registration. Poverty rates among Dalits and Tribal people also contribute as an obstacle to the registration of their children.

12. Recommendations

1. *Adopt* measures to ensure that women’s Constitutional rights are protected regardless of whether or not they belong to scheduled Tribes or Castes.

2. *Take* the lead in establishing a national entity that monitors the implementation of the Hindu Succession (Amendment) Act of 2005.

3. *Adopt* all necessary measures to ensure that women’s safety is made a priority both at home and in public spaces.

¹³ *Post-2015 Development Agenda – India*, National Consultation Report: Women’s Associations Constituency (2013), page 9.

¹⁴ Discussion Paper Series on Women’s Political Leadership: Local Governance for Gender Equality – A study in select districts of India, ICRW-UN Women, 2012, page 2.

¹⁵ *Every Child’s birth right: Inequalities and trends in birth registration*, UNICEF (2013), page 16.

¹⁶ *Dalit children in Rural India: Issues Related to Exclusion and Deprivation*, Indian Institute of Dalit Studies (2009), page 9.

4. *Take* concrete measures to ensure universal birth registration, including the children of Dalit and tribal mothers.

Article 5: Sex roles, stereotyping and prejudice

13. Prejudice towards women such as the attitudes associated with Scheduled Castes and Tribes, place them in positions that engineer their exploitation. Inequalities in social and economic development as well as harmful traditional practices perpetuate stereotypes. In its state report, the GOI states that it “continues to carry on every year to eliminate discriminatory practices... such as dowry, child marriage, sati, sex selective abortions, etc... through modes such as the National Policy on Education [and] the National Policy on Empowerment of Women.”¹⁷ However, the systemic exploitation of women persists due to the roles women are perceived to fill. When sex roles are combined with Caste prejudices and harmful traditional stereotypes, the effects are compounded. For example, girls are trafficked as a consequence of ancestral religious practices such as the Devadasi system, and children [often times very young girls] are sold at auctions to Arab and Indian men who believe that having intercourse with virgins heals sexually transmissible diseases¹⁸. “*Devadasi's* largely belong to the Dalit community, illustrating the gender/caste nexus.”¹⁹

14. Prejudice towards women affects their economic opportunities. Harmful stereotypes prevent women from acquiring Pattas on the basis of false assumptions. Women account for 26% of the workforce²⁰; yet, prejudice against them affects their economic productivity. Patriarchal attitudes limit the value attributed to a woman’s work as well as her ability to be recognized as productive member of society. “There is an urgent need to recognize women as workers, producers, agents of growth and individual rights holders. More than 70 % women in rural India work as agricultural laborers; however, they do not have any ownership rights on the land and even experience discrimination in wages.”²¹ When women’s work is not recognized and valued it creates the opportunity for their exploitation. Women living in destitution who are unable to live off their wages are often lured into false promises of wealth and opportunity that result in them being trafficked or becoming forced or bonded laborers.²²

15. Recommendations

1. *Take* a concrete measure by establishing a national entity that works to facilitate norms recognizing harmful traditional practices such as the Devadasi ritual.

2. *Adopt* measures to ensure women’s work is recognized, observed and paid equally with that of men.

3. *Take* the lead in establishing a national committee that recognizes and addresses the issue of intersecting social and economic inequalities that perpetuate stereotypes and prejudices.

Article 6: Trafficking and Exploitation of Women

16. Article 23 (1) of the Indian Constitution prohibits trafficking of human beings or persons. “The Immoral Traffic (Prevention) Act, 1956 (ITPA) is the premier legislation for prevention of trafficking for commercial sexual exploitation. To further strengthen the Act, amendments have been proposed to

¹⁷ Indian State Report to CEDAW, 2012, Section (II), Article 5, Paragraph 25.

¹⁸ Donna M. Hughes, Laura Joy Sporcic, Nadine Z. Mendelsohn, Vanessa Chirgwin, The Factbook on Global Sexual Exploitation, Coalition Against Trafficking in Women, 1999, at <http://www.uri.edu/artsci/wms/hughes/india.htm>.

¹⁹ *Post-2015 Development Agenda – India*, National Consultation Report: Women’s Associations Constituency (2013).

²⁰ Indian State Report to CEDAW, 2012, Section (II), Article 11, Paragraph 63.

²¹ *Post-2015 Development Agenda – India*, National Consultation Report: Women’s Associations Constituency (2013).

²² *Modern Slavery in India: Cases of Bonded Labour*, a report by Franciscans International (FI) 2012

widen its scope, focus on traffickers and perpetrators of crime, and prevent re-victimization of victims.²³” The GOI has taken extensive measures to combat human trafficking. Indian Penal Code includes provisions that outlaw kidnapping, abducting or inducing women for marriage²⁴, selling minors for the purposes of prostitution²⁵, wrongful restraint²⁶, and wrongful confinement²⁷. Institutional mechanisms such as the National Commission for Women (NCW), the National Human Rights Commission (NHRC), and the National Commission for Protection of Child Rights and the Central Advisory Committee (CAC) for Preventing and Combating Trafficking of Women and Children for Commercial Sexual Exploitation are employed by the GOI in its fight against trafficking. Yet, human trafficking remains, and disturbing trends such as “sex tourism, child sex tourism, and pedophilia, prostitution in pilgrim towns and other tourist destinations, cross-border trafficking (especially from Nepal and Bangladesh)²⁸” have appeared and in some cases increased in recent years. Harmful and degrading cultural, traditional, and communal norms continue to engineer ripe environments for the trafficking and exploitation of women. The socially constructed aspect of the issue combined with severe economic destitution is exasperating the current situation.

17. According to the *National Consultation Report of the Women’s Associations Constituency*, violence against women in India “is an outcome of deeply entrenched patriarchal attitudes²⁹.” Victims generally belong to the Scheduled Castes and Tribes and live in disadvantaged regions. After being trafficked, they are exploited in situations like brick kilns, embroidery factories, and the agricultural sector. Others are sexually exploited, forced into marriage, or fall prey to the organ transplanting racket.³⁰ Attitudes towards women determine behavior towards them and as long as mind-sets remain patriarchal and entrenched, legalistic attempts will only mitigate the situation instead of addressing the underlying causes. This consequence is apparent, as India has not made sufficient progress in either its prevention, or protection efforts to address trafficking and cases of modern slavery resulting from it.³¹ Discussions with Franciscans on the ground have revealed that the Caste structure puts individuals, especially vulnerable groups like women, girls, and children in general, in a position of helplessness and hopelessness. Regardless of the laws protecting the rights of these vulnerable groups – whether informed of these rights or not – the attitudes towards them adversely affect their respective treatment. This can be illustrated by sex-selective abortions and ancestral religious practices such as the Devadasi system.

18. Destitution, often as the result of Caste hierarchies, plays a major role in women’s exploitation. “Poor parents, deprived of any job prospects, often sell their daughters on fraudulent promises of marriage or for employment in towns. The reality however is that girls are brought to brothels, locked up for days, starved, and beaten until they accept the demands of the traffickers. They are forced to entertain a maximum number of clients every day. Tribal adolescent girls from rural areas of the States of Bihar, Jharkhand, Chhattisgarh, Orissa, West Bengal, and Assam are deceived, trafficked, and then sold for sexual exploitation in Delhi, Mumbai, Kolkata, Chennai, Goa, and Bangalore. Widespread corruption among police and armed forces, along with the lack of proper training and documentation on victims of trafficking, exacerbate the problem.³²”

²³ India Country Report to the World Congress III, November 2008. Page 8.

²⁴ Indian Penal Code (Section 366).

²⁵ Indian Penal Code (Sections 372-3).

²⁶ Indian Penal Code (Section 339).

²⁷ Indian Penal Code (Section 340).

²⁸ India Country Report to the World Congress III, November 2008, page 4.

²⁹ *Post-2015 Development Agenda – India*, National Consultation Report: Women’s Associations Constituency (2013).

³⁰ *Modern Slavery in India: Cases of Bonded Labour*: a report by Franciscans International (FI) 2012.

³¹ *Modern Slavery in India: Cases of Bonded Labour*: a report by Franciscans International (FI) 2012.

³² *Modern Slavery in India: Cases of Bonded Labour*: a report by Franciscans International (FI) 2012.

19. Recommendations

1. *Implement* fully the provisions of the Indian Penal Code designated to protect women from all forms of exploitation and discrimination.

2. *Take* the lead in adopting policies that mitigate the many situations that lead to the trafficking of women such as economic destitution and “deeply entrenched patriarchal attitudes.”

3. *Take* the lead in creating a national entity that works specifically to identify and address the aspects of Caste and Tribal structures that lead to women’s trafficking and exploitation.

Article 7: Political participation and public life

20. Enacted in 1993, the 74th Amendment Act of the Constitution reserves one-third of Panchayati Raj Institutions (PRIs) – locally elected governance bodies that address localized and communal based issues – for women as both members and as chairpersons. Affirmative action is a bold step forward in ensuring women’s right to political representation and leadership and to “further democratize and engender local governance.”³³ However, due to “institutional and social barriers” women are unable and sometimes unwilling to carry out “practical and strategic gender needs. Affirmative action recognizes the necessity of substantive equality and legally ensures women’s position within local governing bodies, yet it does not ensure women’s effectiveness in addressing issues or the effectiveness of the institution overall.

21. There are serious barriers to women’s empowerment, both institutional as well as social, that are preventing women from actualizing their potential as political leaders of their respective communities.³⁴ Institutional failures such as “the capacity of governance structures to implement reforms, [the lack of] institutionalized accountability systems, [and the lack of] facilitation of women’s active engagement [all] play a role in determining whether women are able to emerge as political agents and actors.”³⁵ Institutional failures are often the result of “fragile governance structures” and “ineffective delivery mechanisms”, especially “the ineffective delivery systems of the local state institutions like the municipalities and Panchayats.”³⁶ They are also the result of a lack of training programs, which are considered a necessity, as women leaders need to “understand their roles and responsibilities and develop administrative, technical, and financial knowledge for more effective functioning.”³⁷ A national study commissioned by the Ministry of Panchayati Raj in 2008 revealed that 50 percent of women did not receive any sort of training after being elected. A percentage so large constitutes systemic institutional failure, a failure that is leading to a decrease in the overall effectiveness of women’s leadership and participation.

22. When institutional failures are compounded with social barriers, the complexity of issues that women face in the leadership positions increase dramatically. Affirmative action may ensure a women’s position in Central Government jobs, as was the purpose of the GOI’s 100 days action plan in 2009, but if women are subject to disrespect, physical violence, and oppressive attitudes as a result

³³ Discussion Paper Series on Women’s Political Leadership: Local Governance for Gender Equality – A study in select districts of India, ICRW-UN Women, 2012, xiii.

³⁴ Post-2015 Development Agenda-India: National Consultation Report of the Women’s Association Constituency, 2012, page 5.

³⁵ Discussion Paper Series on Women’s Political Leadership: Local Governance for Gender Equality – A study in select districts of India, ICRW-UN Women, 2012, page 2.

³⁶ Post-2015 Development Agenda-India: National Consultation Report of the Women’s Association Constituency, 2012, page 5.

³⁷ Discussion Paper Series on Women’s Political Leadership: Local Governance for Gender Equality – A study in select districts of India, ICRW-UN Women, 2012, page 2.

of a patriarchal Caste structure³⁸, their effectiveness in implementing change is limited. The GOI should be commended in its progress in increasing the representation of women in “All India and Central Services, the Indian Foreign Service, and the Indian defense forces.”³⁹ However, numbers alone are not changing the patriarchal mind-sets of communities, especially with issues faced by women representatives on Panchayats. “Examples of Panchayats being forums that address and challenge the violation of women’s rights, gender equalities and different forms of violence and discrimination are few.”⁴⁰

23. Recommendations

1. *Adopt* measures to ensure that women who are elected to positions on PRIs receive the training guaranteed to them.

2. *Adopt* measures to ensure the capacity of governance bodies to implement reforms and the formation of institutionalized accountability systems.

3. (*Establish* a national entity that monitors the performance of women in Central Government Jobs, to identify gaps in capacity and provide the necessary training to improve their effectiveness.

Article: 8 Rights of the Informal/Unorganized Sector

24. There were approximately 484 million labor force workers in India between 2009 - 2013,⁴¹ principally in the informal sector. Working people includes all workers -urban or rural, formal or informal sector, wage employment, self employment, home-based and most importantly domestic workers, and includes all socially oppressed and excluded. The Constitution of India prohibits discrimination based on caste or religion. The percentage of the population from the Scheduled Caste (SC) and Scheduled Tribes (ST) is around 24 %, while religious minorities count for 18 %. Measuring economic wellbeing by using average consumption expenditure, one can, however, argue that the ST population is at the bottom of the ladder, followed by SC and Other Backward Caste (OBC-Hindus).⁴² There is a the convergence of both traditional identities (like gender, caste, and community) along with no job security, no social security and deplorable working and living conditions making them amongst the most vulnerable sections excluded from the fruits of the ‘remarkable economic growth’ story of India. This growth story overshadows the prevailing crisis in the pattern of jobless growth, distress migration, and new and old forms of discrimination in the workplace and gradual denigration of all forms of labor legislation. In this context, it is the duty of the state to recognize this vulnerability and act up on it by passing comprehensive legislations in favor of them.

25. From the gender perspective, the Constitution of India prohibits discrimination, and recognizes the principle of equality for all before the law and of opportunity in matters relating to employment (Article 14 and 16 of Indian Constitution). However, women in India are still vulnerable to discrimination in their workplace, including sexual harassment. In April 2013, the Government of India adopted ‘The sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.’ This Act needs to be translated into concrete policy measures at all levels in the country. Equally, it is important for law enforcement officers to have a comprehensive

³⁸ Discussion Paper Series on Women’s Political Leadership: Local Governance for Gender Equality – A study in select districts of India, ICRW-UN Women, 2012, page 2.

³⁹ Indian State Report to CEDAW, 2012, Section (II), Article 11, Paragraph 41-42.

⁴⁰ Discussion Paper Series on Women’s Political Leadership: Local Governance for Gender Equality – A study in select districts of India, ICRW-UN Women, 2012, page 3.

⁴¹ This is the number according to the World Bank, see <http://data.worldbank.org/indicator/SL.TLF.TOTL.IN>

⁴² OECD Paper on Employment and Equalities Outcomes in India, p.10 see <https://www1.oecd.org/els/emp/42546020.pdf>

understanding of its implementation. In order to receive and process cases of allegation of harassment, there is a need to establish a complaint mechanism at state and district levels.

26. The Constitution of India lays down multiple ways and means to ensure that the values of the preamble are respected and made available to all citizens of India and especially so for all working people of this country.

27. Recommendations

1. *Adopt* measures to ensure ratification of ILO Convention 189 on Domestic Workers and ensure Social Security such as old-age pension and health benefits along with employer liability, contribution towards a provident fund, compensation for workplace related injuries and hazards, pension and gratuity, maternity benefits and crèche facilities.
2. *Adopt* measures to ensure the right to a livelihood, safe and decent work: right to work anywhere as per article 19 of the Constitution of India; provision of portable identity cards by the labor department for migrant workers, including interstate workers, valid anywhere in the country.
3. *Adopt* measures to ensure safety and good conditions at work place and ensure the effective implementation of “The sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013” by constituting Local Complaint Committees and District level Committees in all states throughout India.