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RACIAL DISCRIMINATION IN INDIA

1. EXECUTIVE SUMMARY

India is a country of many races. Article 15, Article 16 and Article 29 of the Constitution of India prohibit discrimination on grounds of “race”. Section 153A of the Indian Penal Code (IPC) also refers to “race”. India ratified the International Convention on the Elimination of All Forms of Racial Discrimination (ICERD) in 1968 and vide Gazette of India notification No. S.O. 2339(E) dated 21 September 2010, the Ministry of Home Affairs, Government of India made ICERD applicable at domestic level under the Protection of Human Rights Act (PHRA) of 1993.¹

However, India has failed to define, criminalise and penalize racism, racial discrimination and racial violence as on date despite rampant incidents of racism, racial discrimination and racial violence in the country.

This submission highlights three emblematic cases of racial discrimination i.e. (1) racial profiling of the Chakmas and Hajongs of Arunachal Pradesh against which India’s National Human Rights Commission issued notice on 24 January 2022; (2) Racial discrimination faced by people belonging to the Tibeto-Mongoloid origin living in the North Eastern region of the country; and (3) racial violence faced mainly by the African students in India.

This report suggests that India should be recommended the followings:

- Stop racial profiling of the Chakmas and Hajongs of Arunachal Pradesh and ensure compliance with the Supreme Court judgments to confer them citizenship and provide all entitlements; and
- Amend Indian Penal Code to define racism and racial discrimination.

2. RACIAL PROFILING OF THE CHAKMAS AND HAJONGS OF ARUNACHAL PRADESH: THE ACTION OF THE NATIONAL HUMAN RIGHTS COMMISSION IN JANUARY 2022

About 65,000 Chakmas and Hajongs of Arunachal Pradesh have been facing acute racial discrimination because of their origin. A total of 14,888 Chakmas and Hajongs had fled from then East Pakistan, present Bangladesh to escape religious persecution and displacement by the Kaptai Dam in the Chittagong Hill Tracts region during early 1960s. They were settled by the Government of India in present Arunachal Pradesh to beef up its security following the 1962 Indo-China war. Their population has currently increased to about 65,000 persons.

In the last 58 years, they were denied citizenship because of their ethnic origin. In 1994-1995, the State of Arunachal Pradesh sought to forcibly drive out the Chakmas and Hajongs from the State. This forced India's National Human Rights Commission (NHRC) to approach the Supreme Court of India to protect the lives and liberties of the Chakmas and Hajongs in October 1995. On 9th January 1996, the Supreme Court pronounced its celebrated judgment in the case of *National Human Rights Commission (NHRC) Vs State of Arunachal Pradesh* (available at <https://indiankanoon.org/doc/767216/>) by declaring the Chakmas and Hajongs as citizens and directing the Government of India and the State of Arunachal Pradesh to process their citizenship applications.

Copy of the 1996 judgment of the Supreme Court in *National Human Rights Commission (NHRC) Vs State of Arunachal Pradesh* is appended as **ANNEXURE-1**.

However, the citizenship applications of the Chakmas and Hajongs were never processed. Another petition was filed by the Committee for Citizenship Rights of the Chakmas of Arunachal Pradesh (*Committee for C.R. of C.A.P.*) seeking implementation of the Supreme judgment of 9th January 1996. On 17 September 2015, the Supreme Court once again pronounced its judgment in *Committee for C.R. of C.A.P. & Ors vs State Of Arunachal Pradesh & Ors* (available at <https://indiankanoon.org/doc/163542302/>) directing the Government of India and the State of Arunachal Pradesh to confer citizenship preferably within three months. However, not a single application has been processed as on date.

Copy of the 2017 judgment of the Supreme Court in *Committee for C.R. of C.A.P. & Ors vs State Of Arunachal Pradesh & Ors* is appended as **ANNEXURE-2**.

Out of the 65,000 Chakmas and Hajongs, about 60,500 are citizens by birth but they too are not included into the voter list.

Instead of granting citizenship to original migrants of 1964-1969 and enrolment of their descendants into the voter lists, on 15th August 2021, the Chief Minister of Arunachal

Pradesh Mr. Pema Khandu announced that the Chakmas and Hajongs would be relocated outside of the State and it was confirmed by the sitting Law Minister of India, Mr Kiren Rijju. Furthermore, in order to implement the said plan, on 26.11.2021, the Deputy Commissioner of Changlang district of Arunachal Pradesh notified that "Census of Chakmas and Hajongs 2021" be conducted in all the Chakma/Hajong inhabited areas under his jurisdiction for report to the Government on or before 31st December 2021, which is an act of racial profiling.

On a complaint filed by the Chakma Development Foundation of India, on 24 January 2022, the NHRC intervened in the matter and directed the Government of India and the State of Arunachal Pradesh "*to ensure that human rights of the Chakmas and Hajongs are protected by all the ways*".

Copy of the order of the NHRC dated 24.01.2022 against racial profiling of the Chakmas and Hajongs and complaint of the Chakma Development Foundation of India is appended as **ANNEXURE-3**.

3. RACIAL DISCRIMINATION FACED BY TIBETO-MONGOLOID ORIGIN SAW UPSURGE DURING COVID-19 PANDEMIC

The Indian citizens hailing from north eastern region mostly belonging to the Tibeto-Mongoloids racial groups consistently face racial violence and discrimination in other states of India. Tibeto-Mongoloids are distinctly different from other racial groups and they face more racial violence than other groups.

In the wake of COVID-19 outbreak, there have been massive and unprecedented upsurge of acts of racism and racial discrimination against north east Indian living across length and breadth of the country. Apart from being called "Corona", "Chinese", "Chinki", glaring/staring/ogling while walking in the streets or shopping or sitting in public transport, people from the north east were spat on and called "coronavirus", forcibly quarantined despite showing no COVID-19 symptoms, denied entry into apartment complex or grocery stores, forced to leave apartment, threatened with eviction from their apartment, forced to leave restaurant to make others comfortable, none wanting to share transport etc.²

These incidents have taken place in upscale restaurants and campuses of prestigious institutions like Kirorimal College of Delhi University, Tata Institute of Social Sciences and the National Council of Educational Research and Training (NCERT), autonomous organisation of the government of India, which prepares school syllabus for students upto 12th Standards appearing for the Central Board of Secondary Education. The incidents had taken place across the length and breadth of the country such as Gujarat, Delhi, Tamil Nadu, Punjab, West Bengal and Maharashtra, showing that prejudices and acts of racism are not confined in particular areas.³

Following the murder of Nido Tania, a student from North East region of India on 5 February 2014 the Ministry of Home Affairs, Government of India also set up a committee under the Chairmanship of Shri M.P. Bezbaruah to look into the various kinds of the concerns of the people hailing from the North-Eastern States of India who are living in different parts of the country especially Metropolitan Cities and to suggest suitable remedial measures. The [Bezbaruah Committee submitted its report on 11 July 2014](#) and it, *inter alia*, recommended amendments in the Indian Penal Code and Criminal Procedure Code (CrPC). On numerous occasions, the Ministry of Home Affairs assured the parliament of India to criminalise and penalize racial attacks by amending the IPC. In a written reply dated 18 March 2015 in the Rajya Sabha, Kiren Rijiju, then Minister of State in the Ministry of Home Affairs stated that on the basis of the Bezbaruah Committee recommendations the Central government was considering to amend IPC and CrPC to deal more sternly with racial attacks against people from North Eastern Region.⁴ In another written reply dated 26 July 2017 in the Rajya Sabha, Kiren Rijiju further stated that a proposal was under examination by the Ministry for amendment of the IPC by insertion of two new provisions – Section 153C and Section 509A.⁵ In a written reply on 08.02.2022 in the Lokh Sabha, Minister of State for Home Affairs Nityananda Rai stated that a few such cases of racial discrimination against the North-eastern Indian community were reported to the Home Ministry.⁶ Once again, these promises made in the parliament have not been kept.

Copy of the Bezbaruah Committee Report is appended as **ANNEXRE-4**.

4. RACIAL VIOLENCE AGAINST AFRICAN STUDENTS IN INDIA

African origin people, mostly students studying in India, face racial discrimination and acts of racial violence in India regularly.

On 12 June 2020 a single-judge bench of Justice Rajiv Narain Raina of the Punjab and Haryana High Court pulled up the Punjab Police for using a racist slur while referring to an African national in official documents. The court said the use of the term ‘n****’ in the challan papers presented before the trial court in a narcotics case “*is a highly offensive word across the globe and no one has any business to use it, and much less the police.*”⁷

The attacks on the African students have been so serious that on 4 February 2016, African diplomats in New Delhi issued a protest note following incidents in which African students in India were attacked by mobs.⁸ Thereafter, the heads of mission of 42 African countries threatened to boycott Africa Day celebrations in New Delhi to protest against the continued racist attacks on their citizens in India following the murder of a Congolese national in Delhi.⁹

Africans continue to face racial discrimination and racial violence in the absence of any law criminalising racism and racial discrimination.

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1. See Supreme Court judgment in WRIT PETITION (CIVIL) No.103 of 2014 titled Karma Dorjee & Ors vs U.O.I & Ors on 14 December, 2016, <https://indiankanoon.org/doc/14709267/#:~:text=Karma%20Dorjee%20%26%20Ors%20vs%20U.O.I%20%26%20Ors%20on%2014%20December%2C%202016&text=Dr%20D%20Y%20CHANDRACHUD%2C%20J%20The,from%20the%20north%2D%20eastern%20states>
 2. Coronavirus Pandemic: India's Mongoloid Looking People Face Upsurge Of Racism, Rights and Risks Analysis Group, 26 March 2020, <http://www.rightsrisks.org/by-country/india/coronavirus-pandemic-indias-mongoloid-looking-people-face-upsurge-of-racism/>
 3. Coronavirus Pandemic: India's Mongoloid Looking People Face Upsurge Of Racism, Rights and Risks Analysis Group, 26 March 2020, <http://www.rightsrisks.org/by-country/india/coronavirus-pandemic-indias-mongoloid-looking-people-face-upsurge-of-racism/>
 4. Reply dated 18 March 2015 by Minister of State in Ministry of Home Affairs Kiren Rijiju in the Rajya Sabha in Response to Unstarred Question No.2300
 5. Reply dated 26 July 2017 by Minister of State in Ministry of Home Affairs Kiren Rijiju in the Rajya Sabha in Response to Starred Question No.107
 6. Written reply dated 08.02.2022 given in the Lok Sabha by Minister of State for Home Affairs Nityananda Rai in response to Unstarred question No. 1045
 7. HC Rebukes Punjab Police for Racist Slur Against African National, The Quint, 15 June 2020, <https://www.thequint.com/news/india/high-court-rebukes-punjab-police-for-racist-slur-against-african-national>
 8. Diplomats protest over attack on Africans in India, Daily Nation, 4 February 2016, <https://www.nation.co.ke/kenya/news/diplomats-protest-over-attack-on-africans-in-india-1166954>
 9. Murder of Congolese national in Delhi: Envoys allege 'Afro-phobia', MEA rushes in, Indian Express, 26 May 2016, <https://indianexpress.com/article/india/india-news-india/india-assures-safety-of-africans-singh-meets-their-envoys-2819102/>