State Practice of Asian Countries in International Law

India

V.G. Hegde*

HUMAN RIGHTS – RIGHT TO PRIVACY AS A FUNDAMENTAL RIGHT – ANALYSIS OF NATURE OF RIGHT TO PRIVACY IN THE CONTEXT OF RIGHT TO LIFE AND LIBERTY UNDER THE INDIAN CONSTITUTION – INDIAN OBLIGATIONS UNDER THE HUMAN RIGHTS INSTRUMENTS TO GIVE EFFECT TO RIGHT TO PRIVACY

Justice K. S. Puttaswamy (RETD) and Another v. Union of India and Others

Supreme Court of India, 24 August 2017

Facts

The Constitutional validity of *Aadhaar* card scheme¹ of the Indian Government for all its citizens was challenged before the Indian Supreme Court as violating the right to privacy. According to the Indian Government the existence of a fundamental right of privacy was in doubt in view of two earlier decisions of the Indian Supreme Court by a larger bench of eight judges.²

* Professor, Centre for International Legal Studies, School of International Studies, Jawaharlal Nehru University, India.

- ¹ *Aadhaar* card scheme of the Indian Government was with regard to compilation of demographic biometric data by the Government to facilitate implementation of its various schemes. For this purpose, the Indian Government established the Unique Identification Authority of India (UIDAI) as a statutory authority under the provisions of the *Aadhaar* (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016. UIDAI was mandated to issue an easily verifiable 12 digit random number as Unique Identity – *Aadhaar* to all Residents of India. For details, see *About UIDAI*, UNIQUE IDENTIFICATION AUTHORITY OF INDIA, <https://uidai.gov.in/about-uidai/unique-identification-authority-of-india/about.html>.
- ² These two decisions rendered by the bench of eight and six judges respectively were: *M.P. Sharma v. Satish Chandra*, (1954) SCR 1077 (India); *Kharak Singh v. State of Uttar Pradesh*, (1964) 1 SCR 332 (India).

However, in recent years several decisions of the Indian Supreme Court³ delivered by the bench of two or three judges had held that the right to privacy was a constitutionally protected fundamental right. The Indian Supreme Court, faced with this predicament and having due regard to the far-reaching questions of importance involving interpretation of the Constitution, felt that institutional integrity and judicial discipline would require a reference to a larger bench. Accordingly, the issue was referred to a bench of nine judges by the Court itself through its Constitution bench on 18 July 2017.

Judgment

The Court addressed the following questions in its elaborate judgment: (i) whether there was a constitutionally protected right to privacy; (ii) if there was a constitutionally protected right, whether this had the character of an independent fundamental right or whether it arose from within the existing guarantees of protected rights such as life and personal liberty; (iii) the doctrinal foundations of the claim to privacy; (iv) the content of privacy and (v) the nature of the regulatory power of the state.

The Court after examining its own jurisprudence on the subject, also referred to the jurisprudence on right to privacy as a fundamental right as decided by the highest courts of the United Kingdom, United States of America, Canada and South Africa.⁴ Besides this, the Court went into the evaluation of the origins of privacy considering the argument by the Government that the concept which was so amorphous as to defy description. Considering the nature of this right, the Government of India had argued that it would not be possible to recognize a juristic concept which was so vague and uncertain that it failed to withstand constitutional scrutiny. The Court after examining the origins of right to privacy in different jurisdictions, noted:

Conscious as we are of the limitations with which comparative frameworks of law and history should be evaluated, the above account is of significance. It reflects the basic need of every individual to live with dignity. Urbanization and economic development lead to a replacement of

3 These decisions were: *Gobind v. State of Madhya Pradesh*, (1975) 2 SCC 148 (India); *R. Rajagopal v. State of Tamil Nadu*, (1994) 6 SCC 632 (India); *People's Union for Civil Liberties v. Union of India*, (1997) 1 SCC 301 (India).

4 The Court referred to some of the dissenting opinions in the cases of *M.P. Sharma* and *Kharak Singh* and upheld them as well. The main point of contention was about the inter-relationship between the fundamental rights, in particular right to life and liberty (Article 21), right to freedom of speech and expression (Article 19) and others. See *M.P. Sharma*, SCR 1077; *Kharak Singh*, 1 SCR 332.

traditional social structures. Urban ghettos replace the tranquility of self-sufficient rural livelihoods. The need to protect the privacy of the being is no less when development and technological change continuously threaten to place the person into public gaze and portend to submerge the individual into a seamless web of inter-connected lives.

After considering its own jurisprudence, the Court referred to various international conventions to which India was a party and the requirement to implement the same within its jurisdiction. The Court stated:

The right to privacy has been traced in the decisions which have been rendered over more than four decades to the guarantee of life and personal liberty in Article 21 and the freedoms set out in Article 19. In addition, India's commitment to a world order founded on respect for human rights has been noticed along with the specific articles of the UDHR and the ICCPR which embody the right to privacy. In the view of this Court, international law has to be construed as a part of domestic law in the absence of legislation to the contrary and, perhaps more significantly, the meaning of constitutional guarantees must be illuminated by the content of international conventions to which India is a party. Consequently, as new cases brought new issues and problems before the Court, the content of the right to privacy has found elaboration in these diverse contexts.⁵

Further, referring to Article 12 of the Universal Declaration of Human Rights (UDHR) and Article 17 of the International Covenant for Civil and Political Rights (ICCPR), the Court noted that the recognition of privacy as a fundamental constitutional value was part of India's commitment to a global human rights regime. The Court also noted that the Protection of Human Rights Act, 1993 which had been enacted by the Indian Parliament referred to the ICCPR as

5 The Court referring to various cases that were decided by it further noted the contexts that these would include telephone tapping, prior restraints on publication of material on a death row convict, inspection and search of confidential documents involving the banker – customer relationship, disclosure of HIV status, food preferences and animal slaughter, medical termination of pregnancy, scientific tests in criminal investigation, disclosure of bank accounts held overseas and the right of transgenders (in which the Court stated that the sexual orientation was an essential attribution of privacy). Early cases dealt with police regulations authorizing intrusions on liberty, such as surveillance. As Indian society had evolved, the assertion of the right to privacy had been considered by this Court in varying contexts replicating the choices and autonomy of the individual citizen.

a human rights instrument and went on to define in Section 2(1)(d) 'human rights' as the 'rights relating to life, liberty, equality and dignity of the individual guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India'.

The Court quoting General Comments 16 under Article 17 of the ICCPR noted that 'there is universal recognition of the fundamental importance, and enduring relevance, of the right to privacy and of the need to ensure that it is safeguarded, in law and practice'. The Court, accordingly, pointed out:

The ICCPR casts an obligation on States to respect, protect and fulfil its norms. The duty of a State to respect mandates that it must not violate the right. The duty to protect mandates that the government must protect it against interference by private parties. The duty to fulfil postulates that the government must take steps towards realization of a right. . . . [S]ignificantly, while acceding to the ICCPR, India did not file any reservation or declaration to Article 17. While India filed reservations against Articles 1, 9 and 13, there was none to Article 17.

Decision

The Court while rendering its decision noted that privacy was a constitutionally protected right that emerged primarily from the guarantee of life and personal liberty in Article 21 of the Constitution. Elements of privacy also arose in varying contexts from the other facets of freedom and dignity recognised and guaranteed by the fundamental rights contained in Part III (fundamental rights) of the Indian Constitution.

The Court also noted that privacy was the constitutional core of human dignity. Privacy had both a normative and descriptive function. At a normative level, privacy sub-served those eternal values upon which the guarantees of life, liberty and freedom were founded. At a descriptive level, privacy postulated a bundle of entitlements and interests which lie at the foundation of ordered liberty.

Further, it held that privacy included at its core the preservation of personal intimacies, the sanctity of family life, marriage, procreation, the home and sexual orientation. Privacy also connoted a right to be left alone. Privacy safeguarded individual autonomy and recognised the ability of the individual to control vital aspects of his or her life. Personal choices governing a way of life were intrinsic to privacy. Privacy protected heterogeneity and recognised the plurality and diversity of our culture. While the legitimate expectation of privacy might vary from the intimate zone to the private zone and from the private to the public arenas, it was important to underscore that privacy was

not lost or surrendered merely because the individual was in a public place. Privacy attached to the person since it was an essential facet of the dignity of the human being.

The Court also felt that the Constitution must evolve with the felt necessities of time to meet the challenges thrown up in a democratic order governed by the rule of law. The meaning of the Constitution could not be frozen on the perspectives present when it was adopted. Technological change had given rise to concerns which were not present seven decades ago and the rapid growth of technology might render obsolescent many notions of the present. Hence the interpretation of the Constitution must be resilient and flexible to allow future generations to adapt its content bearing in mind its basic or essential features.

The Court also held that the like other rights which form part of the fundamental freedoms protected by Part III, including the right to life and personal liberty under Article 21, privacy was not an absolute right. A law which encroaches upon privacy would have to withstand the touchstone of permissible restrictions on fundamental rights. In the context of Article 21 an invasion of privacy must be justified on the basis of a law which stipulated a procedure which was fair, just and reasonable. The law must also be valid with reference to the encroachment on life and personal liberty under Article 21. An invasion of life or personal liberty must meet the three-fold requirement of (i) legality, which postulates the existence of law; (ii) need, defined in terms of a legitimate state aim and (iii) proportionality which ensured a rational nexus between the objects and the means adopted to achieve them.

**HUMAN RIGHTS – CONSTITUTIONAL VALIDITY OF DIVORCE TO
MUSLIM WOMEN THROUGH TALAQ-E-BIDDAT – SURVEY OF LAWS
AND PRACTICES OF VARIOUS ISLAMIC AND NON-ISLAMIC
COUNTRIES – INDIAN OBLIGATION UNDER VARIOUS
INTERNATIONAL CONVENTIONS – REFERENCE TO INDIAN
RESERVATION TO CEDAW**

**Shayara Bano v. Union of India and Others, Supreme Court of India, 17
August 2017**

Facts

Petitioner approached the Supreme Court challenging the divorce effected by saying three times ‘talak’. This was known as triple talak (talaq-e-biddat) pronounced in the presence of witnesses. The petitioner had sought a declaration

that the 'talaq-e-biddat' pronounced by her husband be declared as *void ab initio*. It was also her contention that such a divorce which abruptly, unilaterally and irrevocably terminated the ties of matrimony, purportedly under Section 2 of the Muslim Personal Law (Shariat) Application Act, 1937 be declared unconstitutional. Besides other grounds, petitioners argued that the practice of 'talaq-e-biddat' was violative of the fundamental rights guaranteed to citizens in India, under Articles 14, 15 and 21 of the Constitution. Further, petitioners also argued that the practice of 'talaq-e-biddat' could not be protected under the rights granted to religious denominations (or any sections thereof) under Articles 25(1), 26(b) and 29 of the Indian Constitution. Petitioners also submitted that the practice of 'talaq-e-biddat' is denounced internationally, and further, a large number of Muslim theocratic countries have forbidden the practice of 'talaq-e-biddat', and as such, the same could not be considered sacrosanct to the tenets of Islam. Respondent had argued that he had pronounced 'talaq' in consonance with the prevalent and valid mode of dissolution of Muslim marriages. It was submitted, that the pronouncement of divorce by him fulfilled all the requirements of a valid divorce, under the Hanafi sect of Sunni Muslims, and was in consonance with 'Shariat' (Muslim 'personal law').

The Court noted that the factual aspect of the case gave rise to several complicated questions relating to Muslim Personal Law in India. The Court, however, decided to limit its consideration to examine the constitutional validity of the 'talaq-e-biddat' as this would also render answer even to the connected issues.

Judgment

The Court examined the validity of the concept of talaq referring to the verses of The Holy Quran. The Court noted:

A perusal of the aforesaid 'verses' reveals, that divorce for the reason of mutual incompatibility is allowed. There is however a recorded word of caution – that the parties could act in haste and then repent, and thereafter again reunite, and yet again, separate. To prevent erratic and fitful repeated separations and reunions, a limit of two divorces is prescribed. In other words, reconciliation after two divorces is allowed. After the second divorce, the parties must definitely make up their mind, either to dissolve their ties permanently, or to live together honourably, in mutual love and forbearance – to hold together on equitable terms. However, if separation is inevitable even on reunion after the second divorce, easy reunion is not permitted. The husband and wife are forbidden from casting aspersions on one another. They are mandated to recognize, what is right and

honourable, on a collective consideration of all circumstances. After the divorce, a husband cannot seek the return of gifts or properties, he may have given to his wife. Such retention by the wife is permitted, only in recognition that the wife is economically weaker. An exception has been carved out in the second part of 'verse' 229, that in situations where the freedom of the wife could suffer on account of the husband refusing to dissolve the marriage, and perhaps, also treat her with cruelty. It is permissible for the wife, in such a situation, to extend some material consideration to the husband. Separation of this kind, at the instance of the wife, is called 'khula'. 'Verse' 230 is in continuation of the first part of 'verse' 229. The instant 'verse' recognizes the permissibility of reunion after two divorces. When divorce is pronounced for the third time, between the same parties, it becomes irreversible, until the woman marries some other man and he divorces her (or is otherwise released from the matrimonial tie, on account of his death). The Quranic expectation in 'verse' 230, requires the husband to restrain himself, from dissolving the matrimonial tie, on a sudden gust of temper or anger. 'Verse' 231 provides, that a man who takes back his wife after two divorces, must not put pressure on her, to prejudice her rights in any way. Remarriage must only be on equitable terms, whereupon, the husband and wife are expected to lead a clean and honourable life, respecting each other's personalities. The Quranic message is, that the husband should either take back the wife on equitable terms, or should set her free with kindness.

The Court referred to the law and practices of various other countries in this regard, in particular within Arab States, Southeast Asian States and South Asian States.⁶ The Court pointed out, '[w]e have maintained the above

6 The Court further elaborated quoting the submissions made by the Attorney General of India who pointed out the divorce practices that existed in other Islamic foreign jurisdictions or countries with majority Muslim populations. The Court noted:

Last of all, the Attorney General pointed out, the prevailing international trend all around the world, wherein the practice of divorce through 'talaq-e-biddat', has been statutorily done away with (Abrogation of the practice of 'talaq-e-biddat' by legislation, the world over, in Islamic, as well as, non-Islamic States). On the basis of the submissions noticed above, it was contended, that it was extremely significant to note, that a large number of Muslim countries, or countries with a large Muslim populations such as, Pakistan, Bangladesh, Afghanistan, Morocco, Tunisia, Turkey, Indonesia, Egypt, Iran and Sri Lanka had undertaken significant reforms and had regulated divorce law. It was pointed out, that legislation in Pakistan requires a man to obtain the permission of an Arbitration Council. Practices in Bangladesh, it was pointed out, were similar to those in Pakistan. Tunisia and Turkey, it was submitted, also do not recognize extra-judicial divorce, of the nature of

classifications, in order to establish their factual positions. Firstly, to demonstrate that the practice was prevalent across the globe in States having sizeable Muslim populations. And secondly, that the practice has been done away with, by way of legislation, in the countries referred to . . .’.

After referring to various decisions rendered by the Courts within India and also submissions made by the counsels for the petitioners, the Court summarized the assertions of the Indian Government with regard to its implementation obligations under various international conventions that were relevant to the current case. It, thus, stated,

India being a founding member of the United Nations, is bound by its Charter, which embodies the first ever international agreement to proclaiming gender equality, as a human right in its preamble, and reaffirming faith in fundamental human rights, through the dignity of the human person, by guaranteeing equal rights to men and women. It was submitted, that significantly, the United Nations Commission on the Status of Women, first met in February, 1947, with 15 member States – all represented by women, including India (represented through Shareefah Hamid Ali). During its very first session, the Commission declared its guiding principles, including the pledge to raise the status of women, irrespective of nationality, race, language or religion, to the same level as men, in all fields of human enterprise, and to eliminate all discrimination against women in the provisions of statutory law, in legal maxims or rules, or in interpretation of customary law. (United Nations Commission on the Status of Women, First Session, E/281/Rev.1, February 25, 1947). It was submitted, that the Universal Declaration of Human Rights, 1948, the International Covenant of Economic, Social and Cultural Rights, 1966 and the International Covenant of Social and

‘talaq-e-biddat’. In Afghanistan, divorce where three pronouncements are made in one sitting is considered to be invalid. In Morocco and Indonesia, divorce proceedings take place in a secular court, procedures of mediation and reconciliation are encouraged, and men and women are considered equal in matters of family and divorce. In Indonesia, divorce is a judicial process, where those marrying under Islamic Law, can approach the Religious Court for a divorce, while others can approach District Courts for the same. In Iran and Sri Lanka, divorce can be granted by a Qazi and/or a court, only after reconciliation efforts have failed. It was submitted, that even Islamic theocratic States, have undergone reform in this area of the law, and therefore, in a secular republic like India, there is no reason to deny women, the rights available all across the Muslim world. The fact that Muslim countries have undergone extensive reform, it was submitted, also establishes that the practice in question is not an essential religious practice.

Political Rights, 1966, emphasized on equality between men and women.

The Court further noted:

The other relevant international instruments on women which were brought to our notice, included the Convention on the Political Rights of Women (1952), Declaration on the Protection of Women and Children in Emergency and Armed Conflict (1974), Inter-American Convention for the Prevention, Punishment and Elimination of Violence against Women (1955), Universal Declaration on Democracy (1997), and the Optional Protocol to the Convention on the Elimination of All Forms of Discrimination against Women (1999).

The Court referring to the arguments put forth by the Attorney General of India noted that the Government of India ratified the Vienna Declaration and the Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) on 19 June 1993. The preamble of CEDAW, the Court further noted,

[reiterates] that discrimination against women violate[d] the principles of equality of rights and respect for human dignity[. And that, such inequality was] an obstacle to the participation . . . on equal terms with men[] in the political, social, economic and cultural life of their countr[y. It was emphasized that such inequality, also] hamper[ed] the growth of the [personality from] society and family[, and made it] more difficult [for] the full development of potentialities of women[,] in the service of their countries and of humanity.

The Court also recorded the submissions of the Union of India which, *inter alia*, sought to outline the Indian position on some of the other international conventions. The Court noted,

the equality principles were reaffirmed in the Second World Conference on Human Rights, held at Vienna in June 1993, as also, in the Fourth World Conference on Women, held at Beijing in 1995. It was pointed out, that India was a party to this convention and other declarations, and was committed to actualize them. It was asserted, that in the 1993 Conference, gender-based violence and all categories of sexual harassment and exploitation, were condemned.

The Court further referred to the arguments that the 'reliance on International Conventions, particularly on CEDAW was wholly misplaced, since India had expressed a clear reservation to the Conventions in order to support its constitutional policy of non-interference in the personal affairs of any community'. These declarations and reservations, the Court noted,

were first made at the time of signing the aforesaid conventions and thereafter, even at the time of ratification. In this behalf, it was pointed out, that the first declaration was made by India in the following format: 'i) With regard to articles 5(a) and 16(1) of the Convention on the Elimination of All Forms of Discrimination Against Women, the Government of the Republic of India declares that it shall abide by and ensure these provisions in conformity with its policy of non-interference in the personal affairs of any Community without its initiative and consent'.

The Court, outlining its view on this matter, concluded,

In view of the above, we are satisfied, that international conventions and declarations are of utmost importance, and have to be taken into consideration while interpreting domestic laws. But, there is one important exception to the above rule, and that is, that international conventions as are not in conflict with domestic law, alone can be relied upon. We are of the firm opinion, that the dispute in hand falls in the above exception. Insofar as 'personal law' is concerned, the same has constitutional protection. Therefore if 'personal law' is in conflict with international conventions and declarations, 'personal law' will prevail. The contention advanced on behalf of the petitioners to hold the practice of 'talaq-e-biddat', on account it being in conflict with conventions and declarations to which India is a signatory can therefore not be acceded to.

Decision

The Court, while deciding the matter, directed the Indian Government to consider appropriate legislation, particularly with reference to 'talaq-e-biddat'. The Court also hoped and expected that the 'contemplated legislation will also take into consideration advances in Muslim "personal law" – "Shariat", as have been corrected by legislation the world over even by theocratic Islamic States'.

LAW OF THE SEA

Statement by India on Agenda Item 77 – ‘Oceans and Law the Sea’ at the Sixth Committee of the 72nd Session of the United Nations General Assembly on 5 December 2017⁷

India, referring to the current year as a ‘landmark year in the global engagement on Oceans and the Law of the Sea’, noted the inter-dependence of Oceans, the global climate and weather patterns and the prospects for sustainable development. While thanking the Secretary General for his Report on the topic (A/72/70), India referred to The UN Oceans Conference held in June 2017 with its focus on the various inter-linked aspects of the condition of the oceans and its impact on sustainability of life itself. India also welcomed the comprehensive Call for Action issued by the Conference as also the Voluntary Registry of commitments, to which it had also contributed. India also referred to its initiatives to establish the India-UN Development Partnership Fund on the World Oceans Day to focus on climate resilience for Pacific Island states.

India viewed the first World Ocean Assessment Report presented in April 2017 as very useful in contributing to the science-policy interface. This Report, India noted, formed the basis for the meetings of the Ad Hoc Working Group of the Whole on the Regular Process for Global Reporting and Assessment of the State of the Marine Environment, including its Socio-economic Aspects. India also supported the deliberations held in May at the 18th meeting of the UN Open-ended Informal Consultative Process on Oceans and the Law of the Sea.

According to India, while the 1982 UN Convention on Law of the Sea that was adopted after decades-long negotiations laid down the basic framework of international law governing jurisdiction of coastal States over adjacent maritime areas, what happened to the governance of areas beyond such jurisdiction was becoming increasingly important, especially in view of the rapid advancement in technology and our scientific understanding.

India further noted that it would be important that the Preparatory Committee discussing elements of a draft International instrument on the conservation and sustainable use of marine Biodiversity of Areas Beyond National

⁷ For the text of the statement delivered by India at the United Nations General Assembly, see *General Assembly, Statements*, PERMANENT MISSION OF INDIA TO THE UN, <https://www.pminewyork.gov.in/statementgeneral?id=eyJpdil6llwvUzE3dFcrUUlRSHdFQ1pwb2dxMzR3PToiLCJ2YWx1ZSI6IkVmZEpoc3o5ZkZwZGRURnhvaUF2NlEgPSlslmhYyI6IjhhMjdmODZjOGY1OTVlODQ5ZjcyYjcoM2Q5Y2I5NzI0Zjg5MmQxZTU2NjFlZjBjNTYzYTE1ZmVkMTAiYjUxZDcifQ>.

Jurisdiction (BBNJ) also reached consensus on a recommendation to convening of an Inter-Governmental Conference. India viewed the BBNJ as an important process that was expected to give shape to global governance of an aspect that was of importance to everyone.

Being a country with a vast coastline of more than 7,500 km and over 1,000 islands whose one-third population lived along the coast, India expressed its commitment to a longstanding maritime tradition and abiding interest in ocean affairs. It also noted that it was the world's third largest producer of fish and second largest producer of inland fish and that it had 12 major ports besides nearly 150 smaller ones.

Listing the challenges and opportunities that oceans represented for it, India identified them as: (a) from sustainable fisheries to prevention and control of marine litter and plastic pollution; (b) from affordable renewable energy to eco-tourism; and (c) early warning systems for disaster risk reduction and management, building resilience and adaptation to climate change. India also noted that it would be important to work towards innovative technologies for offshore renewable energy, aquaculture, deep seabed mining and marine biotechnology as these provided new source of jobs and competitive advantage. Referring to the first Summit of the Indian Ocean Rim Association, where India was an active member, it recognized the Blue Economy as a driver of inclusive and sustainable economic growth and development. It also emphasized the need for 'greening' the ocean economy.

Noting its role in the negotiations of the 1982 UN Convention on the Law of the Sea, India pointed out that it was a party to the Agreement relating to the implementation of Part XI of the Convention of 10 December 1982, Fish Stocks Convention 1995, MARPOL 73/78, the International Ballast Water Convention 2004 that protected invasive aquatic Alien species, the London Convention 1972 and other agreements that regulated various activities of the oceans, especially the conservation and sustainable use of ocean resources.

India also pointed out that it cooperated with its partners in the region through its membership of the South Asian Seas Action Plan (SASAP) 1995, which was serviced by the secretariat of the South Asia Cooperative Environment Programme (SACEP). The main focus of the South Asian Seas Action Plan, India noted, was on Integrated Coastal Zone Management (ICZM), oil-spill contingency planning, human resource development and the environmental effects of land-based activities.

According to India, the smooth functioning of the institutions established under the Convention, namely the International Sea-bed Authority, the International Tribunal for the Law of the Sea and the Commission on the Limits of the Continental Shelf, held the key to the proper implementation of the

provisions of the Convention and to the realization of the desired benefits from the uses of the seas. India also noted that it was the first country three decades ago to receive the status of a Pioneer Investor in the Indian Ocean; that its scientists today collaborated in research stations on the Arctic Ocean studying its links with climate in its own region; that its Indian hydrographers partner in capacity building efforts with its maritime neighbours; that its institutions worked closely with regional partners in improving early warning systems for tsunamis and cyclones and that its naval ships were deployed in delivery of humanitarian assistance and emergency evacuation as also in patrolling sea-lanes against pirates.

India concluded by stating that it remained committed to a sustainable development of its Blue Economy partnership for the 2030 Agenda, including the SDG14.

Statement by India on Agenda Item 81 – on the Report of the International Law Commission of its Sixty-Ninth Session – Cluster III (VIII); Peremptory Norms of General International Law; (IX); Succession of States in Respect of State Responsibility; (X) Protection of the Environment in Relation to Armed Conflicts at the Sixth Committee of the 72nd Session of the United Nations General Assembly on 31 October 2017⁸

On the topic 'Peremptory norms of general international law (*jus cogens*)' and referring to the second report of the Special Rapporteur, India agreed with his general understanding that Article 53 of the Vienna Convention on the Law of Treaties, 1969 was the starting point for identifying the criteria of *jus cogens*. India further noted that the customary international law was the first step to search the common basis for the formation of *jus cogens* norms and the norms should have developed to a sufficient degree in all three sources of law, i.e., custom, treaties and general principles of law. According to India, all these sources had important roles with regard to the identification of *jus cogens* as a norm. India, while taking note of the draft conclusions presented by the Special Rapporteur that concerned the criteria for *jus cogens*, acceptance and recognition by the international community and the evidence for such acceptance and recognition, said that it would wait till the drafting related formalities were completed before presenting any comments and that it would look forward to the outcome of the envisaged future work concerning the concept of *jus cogens* including the effects, consequences and the illustrative list of *jus cogens* norms.

⁸ For the text of the Statement delivered by India at the UN Central Assembly, *see id.*

As regards the new topic 'Succession of States in respect of State responsibility' that had been included, during the current session, India noted that The Commission had earlier dealt with the subject of succession in different contexts and the State Responsibility. Referring to four draft articles proposed by the Special Rapporteur in the first report, India noted that the proposed draft Article 1 reflected on the scope of the topic, and related the subject matter and context of the topic to the responsibility of States for internationally wrongful acts. India also noted that the principle of 'responsibility' which would hold a state or organization responsible for the commission of an internationally wrongful act, was not favoured to be a part of succession in earlier attempts. For instance, in 1963, India further noted, Manfred Lachs, the Chairman of the Sub-Committee on Succession of States and Governments of the Commission, had proposed including succession in respect of responsibility for torts as one of possible subtopics to be examined in relation to the work of the Commission on the question of succession of States. Similarly, the 1998 report of the Special Rapporteur, India recalled, Mr. James Crawford on state responsibility, had indicated about a widely held view that a new State did not, in general, succeed to any State responsibility of the Predecessor State. According to India, the Commission's commentary to the 2001 draft articles on responsibility of States for internationally wrongful acts took a more nuanced view stating: 'In the context of State succession, India felt that it was "unclear" whether a new State succeeds to any State responsibility of the Predecessor State with respect to its territory'(emphasis added).

India, however, was inclined to support the approach of examining the question of whether there were rules of international law governing both the transfer of obligations and the transfer of rights arising from international responsibility of States for internationally wrongful acts. India noting that the topic at hand dealt with a complex and sensitive subject, supported the continuing work of the Commission. India also noted that as the practice of States on the topic was limited or still evolving, it believed more time and an in-depth study would be required for providing detailed comments. Further, India stated that it would look forward with interest the second report of the Special Rapporteur which would address the issues of transfer of the obligations arising from the internationally wrongful acts of the Predecessor State. It should, India further noted, distinguish cases where the original State had disappeared (in the case of dissolution and unification) and cases where the Predecessor State remained (territorial transfer, secession and newly independent States).

Statement by India on Agenda Item 81 – on the Report of the International Law Commission of Its Sixty-Ninth Session – Cluster II (VII); Protection of the Atmosphere; (VI); Immunity of State Officials from Foreign Criminal Jurisdiction at the Sixth Committee of the 72nd Session of the United Nations General Assembly on 26 October 2017⁹

India, welcoming the fourth Report on the topic 'Protection of the atmosphere' by the Special Rapporteur, noted that it required further work taking into account the inter-relationship of this topic with other fields of international law like: law of the sea, international trade and international human rights law. According to India, each field of international law had its own subject matter, scope, conditions and the legal regime through treaties to regulate the activities in that field and the issues related thereto. Therefore, India felt that an in-depth study was required to find the relevant and common factors between the protection of atmosphere and such other fields of international law. In this process, India further noted, remit of established treaty regimes in the other fields of international law including their core objective would have to be taken care and respected before linking to any other field. As a general comment, India pointed out, there was no denying that the atmosphere we live in is a common resource which all states had a duty to protect for present and future generations, which was even more significant for the developing, less developed and especially the island states that faced the risk due to continuing sea rise.

On the topic 'Immunity of State Officials from Foreign Criminal Jurisdiction', while commending the work of the Special Rapporteur India noted that the Commission continued to consider the question of limitations and exceptions to the immunity of State officials from foreign criminal jurisdiction. India also noted that draft Article 7 proposed by the Special Rapporteur listed out the crimes under international law in respect of which immunity from foreign criminal jurisdiction *ratione materiae* should not apply. India also pointed out that the list included: crime of genocide, crimes against humanity, war crimes, crime of apartheid, torture and enforced disappearance.

While appreciating the methodology adopted in the Report, India viewed this as providing less treaty practice with regard to limitations and exceptions to immunity. India placed emphasis on the widely accepted – Vienna Conventions on Diplomatic and Consular Relations which expressly contained provisions on immunity for certain categories of State officials in the

⁹ For the text of the Statement delivered by India at the UN General Assembly, *see id.*

context of allegations of criminal conduct, but contain no such exceptions to immunity.

According to India, the issues involved in the draft articles were highly complex and politically sensitive for the States and therefore, diligence, prudence and caution was needed to decide whether the Commission should focus on the codification aspect or progressive development of international law (*lex lata* or *lex ferenda*). India felt that this would be clear only when the Commission would be able to show consistent State and treaty practice to support the exceptions asserted in draft Article 7. Any new system, if not agreed, India further noted, would be likely to harm inter-State relations and also undermine the very objective of ending impunity of most serious international crimes.

On the substantive aspects India pointed out,

The status of and the nature of duty being performed by persons claiming immunity is a factor of core importance at the time of the commission of offence. There could be a situation where certain persons, who though technically belonging to the category of officials immune by domestic law of a country from acts done during the course of official duty as State officials, may undertake certain contractual assignment other than or in addition to the original State official duty. In such situations, factors such as status of such officials at the time of the commission of offence, nature of their functions, the gravity of offence, position of international law concerning immunity, victims' interests, and the totality of circumstances, should be taken into account in determining immunity.

India concluded by stating that it would look forward to the next Session of the Commission, when the Special Rapporteur would introduce procedural aspects of immunity of State officials from foreign criminal jurisdiction. India also supported the consideration by the Commission of the newly proposed topic 'Evidence before international courts and tribunals'.

Statement by India on Agenda Item 85 – 'The Scope and Application of the Principle of Universal Jurisdiction' at the Sixth Committee of the 72nd Session of the United Nations General Assembly on 12 October, 2017¹⁰

India thanked the Secretary-General for his report A/72/112 on '[t]he scope and application of the principle of universal jurisdiction' and noted that the

¹⁰ For the text of the Statement delivered by India at the UN General Assembly, see *id.*

information provided in the Report on the laws and practice of certain States concerning the exercise of universal jurisdiction in their domestic legal systems and their understanding of the concept of universal jurisdiction was useful.

India pointed out that its position on this matter was governed by its firm belief that those who committed crimes must be brought to justice and punished. Further, it stated that a fugitive criminal should not be allowed to go unpunished because of procedural technicalities, including lack of jurisdiction. India, however, noted that the exercise of 'universal jurisdiction', in itself, remained a unique and complex legal subject.

According to India, the exercise of criminal jurisdiction was widely based on: 'territoriality' and 'nationality', which were based on the place of the commission of offence, and the nationality of the accused. Further, it noted that some States also recognised the nationality of victim as a basis for exercising jurisdiction based on the 'protective principle'. India reiterated that these concepts of state jurisdiction were based on the link between the State asserting jurisdiction and the crime committed. It also noted that under the concept of universal jurisdiction, a State claimed jurisdiction over an offence irrespective of the place of its commission or nationality of the offender or victim, and thus without any link whatsoever between that State and the offence/offender. India referring to the justification for such universal jurisdiction noted that it was in the nature of certain offences that affected the interests of all States even when they were unrelated to the State assuming jurisdiction.

India also made a reference to the principle of universal jurisdiction in relation to piracy that had been codified in the UN Convention on the Law of the Sea, 1982, making piracy on the high seas the only one crime, over which claims of universal jurisdiction were undisputed under general international law. In respect of certain serious crimes like genocide, war crimes, crimes against humanity and torture, etc., India pointed out, international treaties had provided basis for the exercise of universal jurisdiction, which was applicable as between the States parties to those treaties. Accordingly, to India they included, among others, the Four Geneva Conventions of 1949 and the Convention on the Suppression and Punishment of the Crime of Apartheid, 1973.

Further, according to India, the question that arose was whether the jurisdiction provided for specific serious international crimes under certain treaties could be converted into a commonly exercisable jurisdiction, irrespective of the fact whether or not the other State or States were a party to those treaties. In this regard, India pointed out, several issues remained unanswered, including those related to the basis of extending such jurisdiction, the relationship with the laws relating to immunity, pardoning and amnesty and harmonization with the domestic laws.

India, reiterating its earlier views, further pointed out that several treaties obliged the States parties either to try a criminal or handover for trial to a party willing to do so. This, India noted, was the obligation of *aut dedere, aut judicare* ('either extradite or prosecute'). This widely recognised principle, applied by the International Court of Justice in its decision in the *Belgium v. Senegal* case, 2012, India pointed out, should not be confused with the principle of universal jurisdiction.

India reiterated its position that the universal jurisdiction was applicable in the case of limited set of crimes, like piracy on high seas and other specific serious crimes under the relevant treaties/conventions that had been adopted and agreed to by the States. It, therefore, stressed the need to avoid any misuse of the principle of universal jurisdiction in both criminal and civil matters, the concept and definition of which were not yet clear and agreed to.

Statement by India on Agenda Item 83 – 'Report of the Special Committee on the Charter of the United Nations and on the Strengthening of the Role of the Organization' at the Sixth Committee of the 72nd Session of the United Nations General Assembly on 10 October 2017

India, while aligning with the statement made on behalf of Non-Aligned Movement, noted that the Special Committee's mandate was well placed to play an important role in the interpretation of the provisions of the Charter. India also took note of the Secretary-General report A/72/136 on Implementation of the provisions of the Charter of the United Nations related to assistance to third States affected by the application of sanctions pursuant to the General Assembly resolution A/71/146. India addressed three specific issues which were under consideration of the Special Committee. These were: peaceful settlement of disputes, maintenance of international peace and security and assistance to third States affected by the application of sanctions.

India noted that the United Nations represented collective recognition of all States that only cooperative and effective multilateralism could enable peace and prosperity in the context of the range of inter-connected challenges that States faced in the inter-dependent world. India asserted that it strongly believed in multilateralism and peaceful settlement of disputes according to laid down international laws. India further noted that the States were obliged to settle their disputes by peaceful means, which was one of the fundamental principles under paragraph 3 of Article 2 of the UN Charter. Further, India pointed out, Article 33 of the Charter further strengthened this duty and provided the means which the parties to a dispute could choose freely. India also reiterated that the International Court of Justice, the principal judicial organ of

the United Nations, played an important role in the peaceful settlement of disputes. Accordingly, India supported the retention of the 'Peaceful Settlement of Disputes between States' on the agenda of the Special Committee. It also believed that the revised proposal by the Non-Aligned Movement on 'the peaceful settlement of disputes and its impact on the maintenance of peace' was an important one and hoped that the member states will engage constructively on this proposal.

According to the UN Charter, India pointed out, maintenance of international peace and security was the primary responsibility of the Security Council, which had to act on behalf of all the UN member States in the discharge of its duties. In certain situations, India further pointed out, the Security Council authorises sanctions under Chapter VII of the UN Charter. In such cases, according to India, it was important to ensure that sanctions were issued in accordance with the provisions of the UN Charter and do not violate the principles of international law.

Referring to Article 50 of the UN Charter, India noted that it conferred the right on third States confronted with special economic problems, which might arise because of the Security Council sanctions, to consult the Security Council for solution. This obliged, India stated, the Security Council to find definitive solutions to the problems of the affected third States.

Concluding, India commended the continuing efforts of the Secretariat and the Secretary-General to update the Repertory of Practice of United Nations Organs and the Repertoire of the Practice of the Security Council and to eliminate the backlog in their preparation.

Statement by India on Agenda Item 68 (a.b) – 'Rights of the Child' at the Third Committee of the 72nd Session of the United Nations General Assembly on 10 October 2017

India, thanking the Secretary General and his Special Representatives for presenting various reports noted that these reports provided useful snapshots of the measures undertaken by various governments to promote the rights of children and the challenges still being faced in this regard. India further noted that in a world riven by poverty, stark inequalities and underdevelopment, disparities in living standards and opportunity, situations of armed conflict, terrorism and other humanitarian crises, children were among the most vulnerable and suffer the most.

India pointed out that its Constitution guaranteed fundamental rights to all children in the country and empowered the State to make special provisions for children. It also pointed out that elementary education was a fundamental

right in India. After referring to various measures and schemes undertaken by it to eradicate child labour, India referred to various international conventions to which it had become party. India noted that it had recently ratified two core International Labour Organisation (ILO) conventions 138 and 182 on Child Labour to fight against the menace and achieve the objective of child labour-free nation. India also noted that its Child Labour (Prohibition and Regulation) Amendment Act, 2016 and Child Labour (Prohibition and Regulation) Rules of 2017 strike a balance between prohibition of employment of children below 14 years and livelihood security for economically disadvantaged sections through the provision for children to assist in family enterprises beyond school hours and employment of adolescents in non-hazardous occupations. India also pointed out that the policy and legal framework to deal with emerging threats such as online offences against children, including child pornography and grooming were also under finalisation in India.

Statement by India on Agenda Item 79 – ‘Report of the United Nations Commission on International Trade Law (UNCITRAL) on the work of its 50th Session’ at the Sixth Committee of the 72nd Session of the United Nations General Assembly on 9 October 2017

India while appreciating the work of the UNCITRAL, noted that the legal texts and model laws developed by the Commission were directly relevant to commercial transactions of the individuals, corporations and States and thus had practical value for all. It also commended UNCITRAL for the finalization and adoption of a model law on electronic transferable records and explanatory notes, and finalization and adoption of a guide to enactment of the UNCITRAL Model Law on Secured Transactions. India felt that the UNCITRAL Model Law on Secured Transactions would increase the availability of secured credit across national borders and in turn contribute to the development of international trade which, if achieved on the basis of equality and mutual benefit to all States, was an important element in promoting friendly relations among States. Likewise, India noted, the model law on electronic transferable records and explanatory notes would contribute to the development of systems to enable the progress in the field of paperless trade, including the legal aspects of electronic single-window facilities.

India welcomed and also noted the general support on the proposed reforms to Investor-State Dispute Settlement. India suggested that the proposed reforms to investor-State dispute settlement could possibly go a long way in enhancing consistency in treaty interpretation and application and therefore the work by UNCITRAL should not rush to hasty conclusions.

India appreciated the efforts of the Commission towards promoting the uniform interpretation and application of its legal instruments, including the New York Convention on the enforcement of Arbitral Awards, and agreed that CLOUT (Case Law of UNCITRAL Texts) and the digests were pivotal tools in this regard. India reiterated the importance of technical cooperation and assistance to the developing countries, specifically in matters relating to the adoption and use of texts, adopted by the Commission, at the national level.

Statement by India on Agenda Item 78 – ‘Criminal Accountability of UN Officials and Expert Missions’ at the Sixth Committee of the 72nd Session of the United Nations General Assembly on 6 October 2017

According to India, the issue of accountability of UN personnel for any crimes committed by them during their work for the UN was an important one. It noted that even a few of such instances or allegations of crimes committed by UN personnel was highly damaging for the image and credibility of the United Nations system and its work around the world.

While thanking the UN Secretary General for the Reports A/72/121, 126, 134 and 205 on this issue submitted pursuant to the General Assembly resolution 71/134 of December 2016, India noted that there had been considerable focus on addressing the concerns over incidents of Sexual Exploitation and Abuse reported committed by certain individuals involved with UN peacekeeping operations. India also noted that it was the first country to have contributed to the Secretary General's Trust Fund set up last year to assist the victims of Sexual Exploitation and Abuse and that it had made such a contribution this year also.

India further noted that at a broader level, the issue of accountability had remained elusive in some cases because of the complexities of legal aspects relating to sovereignty and jurisdiction of member states; the ‘legal personality’ of the United Nations that may bestow some immunity or privileges that may be necessary for UN operations in a country and the functional capacity or the willingness of member states to investigate and prosecute the accused. According to India, the UN itself could take some disciplinary measures only and does not exercise any criminal jurisdiction. It was unclear, India further pointed out, whether investigations conducted by the UN might be accepted as evidence in criminal law proceedings in the courts of a member state.

India sought more factual information on the issue such as: (a) registered cases; (b) cases of waiver of immunity; (c) UN asking host States to prosecute and others. India also pointed out that the UN system itself might be reluctant

to waive immunity even for serious misconduct carried out by its personnel while serving on its missions, so that such cases could be prosecuted by the host governments.

According to India, in cases of member states that did not assert extra-territorial jurisdiction over crimes committed abroad by their national, it was necessary to encourage and provide appropriate assistance to those member states to update their national laws to provide for such jurisdiction, laws and regulations to prosecute any such misconduct of their nationals serving as UN officials on mission abroad. India also felt that such laws should also provide for international assistance for the investigation and prosecution of the crimes committed.

Referring to its own laws and regulations, India noted that the Indian Penal Code and the Code of Criminal Procedure of India had provisions to deal with extra-territorial offences committed by Indian nationals and for seeking and providing assistance in criminal matters. The Indian Extradition Act 1962, India noted, dealt with extradition of fugitive criminals and related issues. The Act, India further noted, allowed for extradition in respect of extraditable offences in terms of an Extradition Treaty with another State. In the absence of a bilateral treaty, this Act also allowed an international convention as the legal basis for considering an extradition request.

India stressed on the need to implement a policy of zero tolerance against any criminal acts committed by UN personnel and hoped that the UN system and the member states would further strengthen provisions to enforce accountability so that no such crimes went unpunished and the image and the work of the United Nations was not tarnished.

Statement by India on Agenda Item 84 – ‘The Rule of Law at the National and International Levels’ at the Sixth Committee of the 72nd Session of the United Nations General Assembly on 5 October 2017

India, thanking the UN Secretary General for the Report A/71/169 on Strengthening and coordinating United Nations Rule of Law activities, noted that multilateralism was based on laws that govern interaction between states for greater collective welfare. However, it further noted, the uneven impacts of globalisation, both within and among nations, were leading to a situation where the spirit of multilateralism appeared to be in retreat today, although the list of inter-connected global challenges requiring collective action continued to grow.

According to India, [the] Rule of Law defines modern societies and nation states. It is a way of living together that respects equality in terms of

rights of individuals and states. The legitimacy of Laws is derived from the representativeness and acceptance of the body that frames them. Laws based on the principles of justice and fairness reduce conflict and provide for predictability of interactions, if enforced well.

India also noted that this was applicable both at the national and international levels. The rule of law, according to India, implied a certain dilution of individual freedom or national sovereignty. India further noted that while at the national level rule of law was enforced by a State by legal use of force, this dichotomy was fundamental to many of the enforcement difficulties at an international level. A related aspect was the requirement of alignment of national laws with international obligations.

Referring to the evolution of this idea, India pointed out that at the international level, as better transport and communication technologies began to connect distant societies and economies, the international aspect of rule of law began to crystallize. India also referred to harmonization of practices relating to technical aspects such as postal services, shipping, telecommunication, aviation; issues relating to customs and trade and even norms about conduct during warfare were among the first to be laid down among countries. The United Nations itself, India noted, was established to prevent conflict among competing powers and bring about a greater rule of law to govern the behaviour of nation states. The UN Charter served as its ultimate guide, even prescribes use of force under specific conditions.

Pointing towards increasing globalisation in recent decades India noted that this required nation states coming together to define rules of cooperation to prevent chaos. India also listed the range of areas where rule of law governed the actions of nation states to a large measure. According to India, this included, among others, trade, investment and intellectual property; transport and communications through maritime and aviation laws; telecommunications; use of global commons such as seas and oceans, environment, climate change, and outer space; and even normative frameworks on human rights and related issues. India also pointed out the complexities involved within domestic jurisdictions and noted that just as rights and duties of citizens had different force of law in a national context, the nature of obligations and commitments, enforcement, and dispute settlement mechanisms varied across the different types of areas of international engagement.

India also referred to areas where it had not been possible to develop international rule of law such as terrorism which needed effective international collaboration. India also noted that law making on this issue continued to falter in view of narrow geopolitical interests. Ironically, India pointed out, often states hid behind legal concepts, designed for different contexts, to stop progress on

this vital issue, including at the UN in the context of a draft Comprehensive Convention on International Terrorism. According to India, the issue continued to remain unaddressed satisfactorily even at the Security Council Sanctions Committee.

India also referred to some of the emerging areas such as artificial intelligence, cyber security or maritime piracy where the technology or activities of entities outpaces law, and the situation was complicated by the involvement of non-state actors and cross border implications. India also noted that strategic and competitive concerns made progress difficult on development or enforcement of rules and laws on issues such as law of the sea or other global commons. It also referred to present engagement of States in developing norms relating to the emerging complex areas of Marine Biodiversity Beyond National Jurisdiction (BBNJ) and Global Geospatial Information Management (GGIM). India also felt that there were other more complex areas such as trans-boundary aspects of waterways, where it was much more difficult to achieve consensus on general principles in view of strong sovereignty and situation specific strategic concerns. Referring to another areas concern, India referred to the complexity of issues relating to extraterritorial jurisdiction to plug any gaps in accountability for crimes committed in third countries.

Referring to its own initiatives and problems faced by it in terms of its population and diversity, India laid emphasis on cooperative and effective multilateralism. It also referred to its commitment to develop norms, standards and laws governing global interactions across various sectors. India also referred to its efforts to bring its national laws in consonance with its international obligations. As an example, it mentioned that it had ratified the Paris Agreement on Climate Change under UNFCCC and had acceded to the Doha Amendment of the Kyoto Protocol. That it had also acceded to the UN Customs Convention on International Transport Goods under cover of TIR carnets. To give effect to some of these, India noted that in the last one year it had enacted nearly 20 new acts, ranging from legislations on Mental Health, Rights of persons with disabilities, Goods and Services Tax, National Waterways, Anti-Hijacking, etc. India concluded by supporting the idea of reforming and transforming the United Nations System and also the domestic legal system.

Statement by India on Agenda Item 109 – ‘Measures to Eliminate International Terrorism’ at the Sixth Committee of the 72nd Session of the United Nations General Assembly on 2 October 2017

India condemned terrorism in all its forms and manifestations, and no cause whatsoever or grievance can justify terrorism, including state-sponsored cross-border terrorism. India noted that a ‘terrorist’ activity did not merely cause

disturbance to law and order and that its impact was felt beyond the capacity of the ordinary law enforcement agencies to tackle it under ordinary criminal law. India further noted that no State is immune to the threat of terrorism as continuing terrorist attacks across the world, many of them with links beyond the borders of the affected state, continue to demonstrate.

India welcomed the creation of the UN Office of Counter-Terrorism that would aim to have a close relationship with Security Council bodies and Member States, strengthening existing and developing new partnerships. It hoped this would help in strengthening the delivery of United Nations counter-terrorism capacity building assistance to Member States. According to India, while the Security Council engaged with issues relating to maintenance of international peace and security, the General Assembly also had an important role to play in the fight against international terrorism.

In this context, India also noted the work done by the Ad-Hoc Committee established by the UN General Assembly for formulating international instruments against terrorism. Since its establishment 20 years ago in 1996, India further noted, this Ad Hoc Committee had negotiated texts resulting in the adoption of three sectoral treaties: 1997 International Convention for the Suppression of Terrorist Bombings, the 1999 International Convention for the Suppression of Financing of Terrorism and the 2005 International Convention for the Suppression of Acts of Nuclear Terrorism. India also referred to its proposal in 1996 of a Comprehensive Convention against Terrorism (CCIT). India also regretted that despite global threat from terrorism, CCIT could not be adopted within the UN framework due to differences over the definitional issues concerning the term 'terrorist'. India pointed out that the narrow geopolitical interests continued to stand in the way of making meaningful progress on the discussions regarding the CCIT.

Despite the above difficulties, India appreciated the work done by this Ad Hoc Committee. It also took this opportunity to reiterate its support to the draft text of the Convention as proposed by the Coordinator of the Ad Hoc Committee in 2007. It also recalled that UNGA resolution 71/151 of 20 December 2016, in its paragraph 24 recommended that the Sixth Committee should continue the efforts of finalising the process on the draft CCIT through its Working Group in the 72nd Session. India further stated that it looked forward to the discussions in the Working Group in the present session to finalize the text of the CCIT.

While thanking the Secretary General for his report in doc. A/72/111 dated 20 June 2017 and its addendums, entitled: 'Measures to eliminate international terrorism' containing information provided by 23 States and eight intergovernmental organisations, India pointed out that it attached particular importance to counter-terrorism cooperation and exchange of information at the

international, regional and sub-regional level. India also noted that it was party to 14 universal instruments relating to the prevention and suppression of international terrorism identified by the Secretary-General in his report.

India further pointed out that it remained deeply concerned about the issue of financing terrorism, and strongly condemned direct or indirect financial assistance given to terrorist groups or individual members thereof by States or its machineries, to pursue their activities, including in defending the criminal cases involving terrorist acts against them. India supported all major global initiatives, including the Financial Action Task Force (FATF).

India also referred to number of Security Council resolutions dealing with the issue of counter-terrorism. It noted that Resolutions 1267 (1999), 1373 (2001), 1988 (2011), 1989 (2011), 2170 (2014), 2178 (2014), 2199 (2015), 2214 (2015), 2253 (2015) and 2309 (2016) mandated States to take action to prevent and suppress terrorist acts and refrain from providing any form of support, active or passive, to entities or persons involved in terrorist acts, including by suppressing recruitment of members of terrorist groups and eliminating the supply of weapons to terrorists.

India called for the stepping up of collective efforts with realtime cooperation among Member States to confront the scourge of terrorism squarely and decisively. India asserted that the use of terrorism as an instrument of State Policy cannot be tolerated.

Statement by India at the 10th Session of Conference of State Parties to the UN Convention on the Rights of Persons with Disabilities: CRPD Article 12 Implementation – Realising the Rights to Legal Capacity of Persons with Disabilities, 14 June 2017

India noted that it was a collective responsibility of Governments to uphold the principles of human dignity, equality and equity, including for persons with disabilities, at all levels, local, national and global. India also noted that Article 12 of the UN Convention on the Rights of Persons with Disabilities was at the heart of the landmark convention adopted in 2007. The provisions of Article 12, India further noted, aim to address the right to equality before the law and the issue of legal capacity, which was the law's recognition of the decisions a person makes.

India referring to its own legal framework pointed out that Article 14 of its Constitution guaranteed right to equality and it mandated the State not deny to any person (including Persons with Disabilities) the right to equality before the law or the equal protection of the law. This, according to India, met the

objective of Article 12(1) of UNCRPD. It was further noted that to recognise the need for specific policy intervention to support persons with disabilities, India had enacted the Persons with Disabilities (Equal Opportunities, Protection of Rights and Full Participation) Act in 1995. Several institutions and infrastructure had been established to facilitate delivery of services to persons with disabilities for their empowerment and to ensure them a life of dignity and well-being. India also mentioned that it had recently enacted the Rights of Persons with Disabilities (RPwD) Act 2016 which came into force on 19 April 2017. This Act, India pointed out, was in line with the spirit of the UNCRPD and was a significant stride towards the full realisation of the human rights and fundamental freedoms of persons with disabilities.

The new law, according to India, provided various rights and entitlements to persons with disabilities such as right to equality and non-discrimination, community life, protection from cruelty, abuse, violence and inhuman treatment, access to justice, home and family and reproductive rights. The RPwD Act 2016, India noted, laid special focus on the creation of a barrier free environment for persons with disabilities. India also pointed out that Section 13 of the RPwD Act which exclusively deals with legal capacity of persons with disabilities was commensurate with provision of Article 12 of the CRPD. Section 13(2), *inter alia*, stated that appropriate Government should ensure that persons with disabilities enjoyed legal capacity on an equal basis with others in all aspects of life and had the right to equal recognition everywhere as any other person before the law. In addition, Sections 13 (1, 3, 4 and 5) of the new disabilities law equate with the sub provisions of Article 12 of the CRPD.

Similarly, India further noted, Section 14 provided for a mechanism of support in the form of limited guardianship to enable the persons with disabilities to exercise their legal capacity. India pointed out that the new law provided a boost to the 'Accessible India Campaign' launched in 2015 for achieving universal accessibility, barrier free environments and a supportive ecosystem for persons with disabilities. The campaign, according to India, aimed to fulfil India's commitments under the Incheon strategy, as well as facilitate access to rights under the Convention on Rights of Persons with Disabilities to which India was a party.

The immediate steps also involve sensitization of the administrators, judiciary and other public functionaries about the provisions of new Act to enable effective implementation of the provisions and ensure better exercise of legal capacities by persons with disabilities. India also pointed out that the subordinate legislations, policy and programmes in accordance with the provisions of the Act were now at various stages of formulation. Once the

implementation process stabilized, India stated, there would be a comprehensive mechanism available for persons with disabilities to exercise their legal capacity equally with others.

In conclusion, India believed that mainstreaming the rights, participation, perspectives, needs and well-being of persons with disabilities into all relevant strategies and programmes for sustainable development is the key to the achievement of the vision of 2030 Agenda for sustainable development.