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Evaluating India's Engagement with the Universal Periodic Review: A Focus on Women's Rights

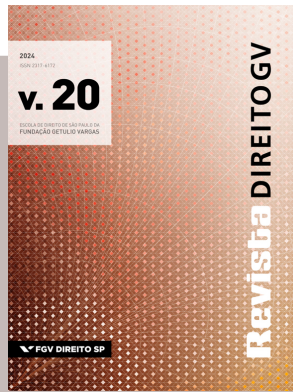
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Evaluating India's Engagement with the Universal Periodic Review: A Focus on Women's Rights

*AVALIANDO O ENGAJAMENTO DA ÍNDIA COM A REVISÃO PERIÓDICA
UNIVERSAL: UM FOCO NOS DIREITOS DAS MULHERES*

*EVALUAR LA PARTICIPACIÓN DE INDIA EN LA REVISIÓN PERIÓDICA
UNIVERSAL: UN ENFOQUE EN LOS DERECHOS DE LAS MUJERES*

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Evaluating India's Engagement with The Universal Periodic Review: A Focus on Women's Rights

Avaliando o Engajamento da Índia com A Revisão Periódica Universal: Um Foco Nos Direitos Das Mulheres

Evaluar la Participación De India en La Revisión Periódica Universal: Un Enfoque En Los Derechos De Las Mujeres

ABSTRACT

The Universal Periodic Review (UPR) of the United Nations Human Rights Council serves as a crucial mechanism for monitoring and promoting human rights globally. It provides a platform for member states to report on their human rights practices and receive recommendations. This study evaluates India's engagement with the UPR, focusing on its commitments and actions concerning women's rights across the first three review cycles. Key issues such as violence against women, gender equality, and health and reproductive rights are critically analysed to understand progress and persisting challenges. The paper assesses India's implementation of UPR recommendations in depth; pointing out noteworthy accomplishments and persisting hurdles while offering insights into socio-cultural, legal and policy dimensions affecting women's rights in India. However, there is still a huge gap between international commitments and the lived realities despite some progress having been made. Consequently, these findings call for continuous efforts together with international support toward improving women's status in India. This paper concludes with recommendations for enhancing India's future engagements with the UPR and strengthening its framework for protecting and promoting women's rights.

Keywords: human rights, UPR, India, Women Rights, United Nations

RESUMO

A Revisão Periódica Universal (UPR) do Conselho de Direitos Humanos das Nações Unidas serve como um mecanismo crucial para monitorar e promover os direitos humanos globalmente. Ela proporciona uma plataforma para que os estados-membros relatem suas práticas de direitos humanos e recebam recomendações. Este estudo avalia o engajamento da Índia com a UPR, focando em seus compromissos e ações relativos aos direitos das mulheres nos primeiros três ciclos de revisão. Questões-chave como violência contra as mulheres,

igualdade de gênero e direitos à saúde e reprodutivos são analisadas criticamente para entender o progresso e os desafios persistentes. O artigo avalia em profundidade a implementação das recomendações da UPR pela Índia, destacando realizações significativas e obstáculos contínuos, oferecendo insights sobre as dimensões socio-culturais, legais e políticas que afetam os direitos das mulheres na Índia. No entanto, ainda há uma grande lacuna entre os compromissos internacionais e as realidades vividas, apesar de alguns progressos terem sido feitos. Consequentemente, esses achados exigem esforços contínuos juntamente com o apoio internacional para melhorar a condição das mulheres na Índia. Este artigo conclui com recomendações para aprimorar os futuros engajamentos da Índia com a UPR e fortalecer seu quadro para proteger e promover os direitos das mulheres.

Palavras-chave: direitos humanos, UPR, Índia, Direitos das mulheres, Nações Unidas

RESUMEN

La Revisión Periódica Universal (UPR) del Consejo de Derechos Humanos de las Naciones Unidas sirve como un mecanismo crucial para monitorear y promover los derechos humanos a nivel mundial. Proporciona una plataforma para que los estados miembros informen sobre sus prácticas de derechos humanos y reciban recomendaciones. Este estudio evalúa la participación de India en la UPR, enfocándose en sus compromisos y acciones con respecto a los derechos de las mujeres a lo largo de los primeros tres ciclos de revisión. Se analizan críticamente cuestiones clave como la violencia contra las mujeres, la igualdad de género y los derechos de salud y reproductivos para comprender el progreso y los desafíos persistentes. El documento evalúa en profundidad la implementación de las recomendaciones de la UPR por parte de India, señalando logros notables y obstáculos persistentes, al tiempo que ofrece perspectivas sobre las dimensiones socio-culturales, legales y políticas que afectan los derechos de las mujeres en India. Sin embargo, a pesar de algunos avances, sigue existiendo una gran brecha entre los compromisos internacionales y las realidades vividas. En consecuencia, estos hallazgos llaman a esfuerzos continuos junto con el apoyo internacional para mejorar la situación de las mujeres en India. Este documento concluye con recomendaciones para mejorar las futuras participaciones de India en la UPR y fortalecer su marco para proteger y promover los derechos de las mujeres.

Palabras clave: Derechos Humanos, UPR, India, Mujeres, Naciones Unidas

INTRODUCTION

By replacing the Commission on Human Rights in 2006, the newly constituted United Nations Human Rights Council (Council) devised a new mechanism to comprehensively assess state members' adherence to human rights commitments. Instead of piecemeal evaluations by treaty monitoring, the Universal Periodic Review (UPR) aims to monitor human rights holistically. Every state must undergo the review once every four years (The UN Human Rights Council Resolution No. 16/21 of 2011: Para 5). Thus, it takes about five to six years to complete one cycle for all 193 member states. To review forty two countries in one year, the Council holds three UPR Working Group Sessions reviewing fourteen states each.

In each cycle, first, the State under Review (SuR) sends its report to the Council. Parallely, the Office of the High Commissioner for Human Rights (OHCHR) sends two separate reports of that State to the Council: One is a compilation of all information contained in treaty bodies and the other is a summary of contributions received from various stakeholders. These three reports, namely the National Report, UN Compilation and Stakeholder Report, are shared with all member states so that they can give recommendations to the SuR. After receiving the recommendations, the SuR indicates its position on each and chooses which ones to implement. In the next review cycle, the national report also specifies how far earlier recommendations have been implemented.

In the context of human rights, women's rights are often marginalized or overlooked, despite being integral to the overall advancement of human rights principles. Addressing women's rights strengthens societies by promoting social justice, reducing poverty, and fostering sustainable development. Therefore, highlighting the importance of women's rights within the broader human rights framework underscores their foundational role in achieving a more just, equitable, and inclusive society for all individuals. This recognition is essential for shaping policies, implementing effective interventions, and advancing global efforts towards gender equality and women's empowerment.

India has the highest population of women in the world, with an estimated 743 million women. The country's socio-cultural diversity intersects with various factors such as caste, religion, ethnicity, and economic status, creating unique challenges and opportunities for advancing women's rights. Understanding how India navigates its complex socio-cultural dynamics while engaging with international human rights mechanisms provides critical insights

into the challenges and opportunities of promoting gender equality and women's rights in diverse societies.

India underwent three UPR cycles in 2008, 2012, and 2017 and has accepted a significant number of recommendations in each cycle. As required by the UPR process, the country has also reported on their implementation in next cycle. However, despite such a proactive participation, the persistent socio-cultural and legal challenges prevent significant progress in key issue areas of women's rights, emphasizing the need for sustained efforts and culturally informed policies to bridge the gap between commitments and realities. Thus, the main objective of this study is to present a thorough examination of the conversations held on the rights of the women across the three cycles. For this purpose, thirty-four reports produced for the review of India between 2008 and 2021, as a UN member state, under the first three UPR cycles are analysed. Including all annexures, addendums and corrigendum, there are 7 national reports, 4 UN Compilations, 4 summaries of Stakeholders' information and 6 reports for questions submitted in advance for India. Additionally, working groups' findings have been analysed, including addenda, the decision on the conclusion, the report from the HRC session, and its matrix of recommendations for India. All these reports are open resource documents available online on the OHCHR website.

There are four main sections to this study. The *first* section provides a brief review of the UPR process and its significance in the protection and promotion of human rights. The *second* section details India's participation in the first three cycles of UPR with a focus on women's rights. The *third* section outlines the key issues relating to women rights and how India has implemented the recommendations made. Socio-cultural barriers such as traditions, practices and attitudes that impact the implementation of women's rights initiatives in India are also examined in the third section. *Next* section highlights areas where India has made significant progress in addressing women's rights and identifies the main challenges that remain. Finally, the importance of understanding and integrating cultural contexts into policy implementation is discussed in a bid to offer specific recommendations for how India can develop and implement culturally informed policies to address women's rights issues.

I. UPR Process: A brief Introduction

UPR “provides a unique form for all stakeholders to examine, criticize, support and suggest the promotion and protection of human rights on the ground” (Gomez and Ramcharan

2017: 4). Each state's record on human rights is evaluated as part of the UPR process as per its UN Charter obligations and the Universal Declaration of Human Rights. More specifically, the country's compliance with UN human rights treaties, basic principles of international humanitarian law, and any voluntary promises made during the last review cycle are all closely examined.

The process begins when the country being reviewed submits a national report "of its own assessment of the human rights situation" (Patel 2017: 312). The national report offers a self-evaluation of its human rights status and the actions taken to uphold its commitments under the law (Patel 2017: 313). Usually, it contains details on laws, regulations, and procedures pertaining to human rights. Parallely, the OHCHR compiles "information contained in the reports of treaty bodies" and a summary report of "credible and reliable information provided by other relevant stakeholders" (The Human Rights Council Resolution No. 5/1 of 2007: Section 15 (b) & (c), Annex 1). These reports aim to offer a clear picture of the condition of human rights in that country as besides UN agencies, civil society organisations and non-governmental organisations also get the opportunity to submit their own reports and assessments of the human rights situation in the country being reviewed (Gomez and Ramcharan 2017: 26).

After submission of these three documents viz. the National Report, Compilation of Information and Stakeholder Submission, the stage sets for the most important feature of the UPR process - interactive dialogue. The interactive session at the UNHRC in Geneva is attended by the representatives from all the nations being reviewed. Other UN members also attend and participate in the session. It is also telecasted live for public consumption. Each state is formally evaluated by the designate Working Group made up of 47 member states of the HRC. During the session, questions, remarks, and suggestions from other states on the condition of human rights in the nation are also invited:

any member of the United Nations can take the stage to comment, ask a question or issue a recommendation to the state under review. In response, the state under review is obligated to provide an instantaneous reply...Following the discussions, a Final Outcome Report is produced, which consists of all the comments, recommendations and responses issued during the interactive dialogue stage of the review (A/HRC/RES/5/1, Annex 1, section 27). (Patel 2017: 313).

A report is put together after the interactive discourse that contains a synopsis of the conversation and suggestions from other Member States. These comments generally contain ideas for enhancing the status quo and can address a spectrum of concerns. It is expected that the nation being evaluated would take into account the suggestions and address each one. The

recommendations accepted by the State under review are called “supported” while others are called “noted” (Human Rights Council 2011: Para 32). In the first round of review “accepted” was used but from the second cycle onwards, it was an intentional choice to adopt supported instead. Usage of an inclusive and non-confrontational language helps the Council in encouraging states for their gradual compliance of human rights commitments (Carraro 2019: 1089). Each recommendation might be supported or noted by the country under review. However, once approved, the state is required to put the suggested policies into action to strengthen its record on human rights.

This three-and-a-half-hour conversation is an important step in the review process “as the commitments and explanations provided by the state representatives at the dialogue sessions” may be used to hold them responsible in domestic and other international fora at the UN (Patel 2017: 310). Once the review process is completed, a final outcome report is issued, detailing all comments made. The UPR, however, is a continuing process as it keeps monitoring the implementation of accepted proposals in the successive cycles, which occur every four to five years.

II. Overview of India's Periodic Review on Women's rights

India was among the first set of countries that underwent UPR. It has thrice undergone the UPR in 2008, 2012, and 2017. The fourth cycle began in 2022 and will end by 2027. The percentage of total recommendations accepted has continuously doubled in each cycle (*See* Table 1). The first cycle's national report gave a descriptive overview of country's institutional and normative framework for defending and advancing human rights. The recommendations accepted in the first cycle and the advancements made in human rights since 2008 became the main issues for second review. One interesting aspect of the national report submitted by India in the second cycle was the annexure that listed the judiciary's contributions to the progress of human rights. Following the OHCHR guideline note (OHCHR Decision No. 6/102 of 2007, adopted by the Council), the third round of evaluation largely concentrated on how far the recommendations that were accepted in previous cycles were actually implemented.

India's Participation

Out of the total recommendations, more than one hundred recommendations have been made on issues relating to women in India. In the first cycle, India accepted only 1 of the 4 recommendations on women. This figure has progressively increased ever since, as seen by an upward going graph below (*See Figure 1*). In the second cycle, India accepted 18 out of 38 recommendations and in the third cycle, it accepted 45 recommendations out of 69. Cumulatively, it can be gathered from the reports that India has accepted more than half of the state recommendations on women rights issues. The analysis also provides insights as to when, how many times and by whom such issues have been raised (*See Table 2*). The maximum number of recommendations have been made by countries belonging to the 'Western European and North American' group, followed by the 'Latin American & Caribbean' group. Notably, no country from Africa and Asia made any recommendations to India in the first cycle but this output has been progressively increasing. However, countries from the eastern part of Europe have shown the least interest in such recommendations.

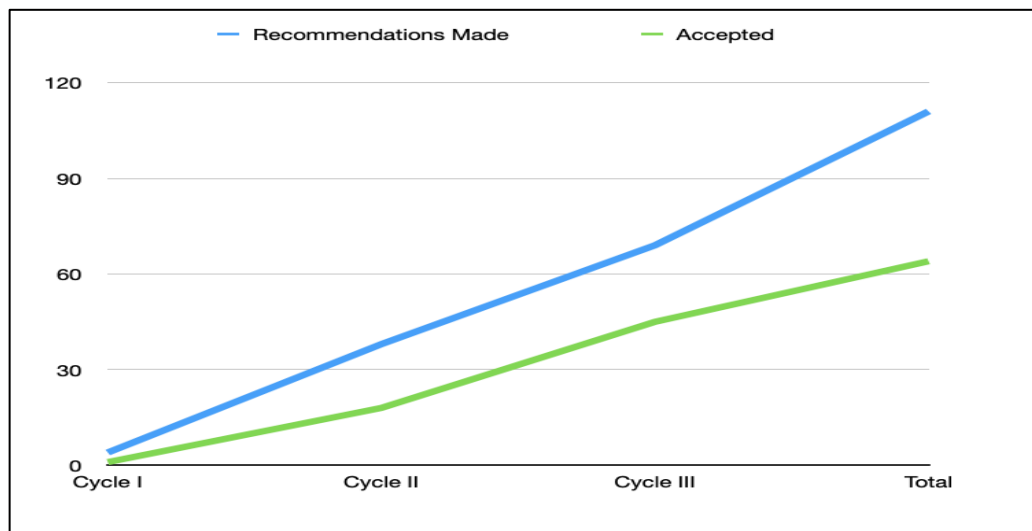
Thus, the progressive acceptance of recommendations by India demonstrates a commitment to improving women's rights. The fact that no countries from Africa and Asia made recommendations to India in the first cycle, but later did so, might reflect a growing acceptance of international human rights norms within these regions over time. This shift suggests that while cultural relativism plays a role, there is potential for alignment with universal standards through dialogue and engagement. The UPR process itself embodies a balance between universalism and cultural relativism. It allows for peer review by other states, which can bring diverse cultural perspectives to the table while aiming to uphold universal human rights standards.

Table 1: Total Recommendations made to India in first three UPR Cycle

UPR	Cycle I	Cycle II	Cycle III
Recommendations made to India	30	170	263
Supported by India (Accepted)	5 (~16%)	56 (~32%)	162 (~62%)
Noted by India (Rejected)	25 (~84 %)	114 (~68%)	101 (~38%)

Table 2: Region-wise total recommendations made by the member states to India on issues of women

Grouping	Cycle I	Cycle II	Cycle III	Total
Western Europe & North America	1	12	27	40
Asia	0	10	12	22
Latin America & Caribbean	1	8	13	22
Africa	0	5	13	18
Eastern Europe	2	2	3	7
Observer	0	1	1	2
Total	4	38	69	111
Supported (Accepted)	1	18	45	64

Figure 1: Total percentage of recommendations implemented by India on women's issues

The data showing recommendations primarily from Western European and North American countries initially, with increasing participation from other regions, suggests a dynamic interaction where global standards are negotiated and gradually accepted by different cultures. This interplay can lead to a more nuanced and context-sensitive implementation of human rights. However, it is important to first examine the content and impact of these

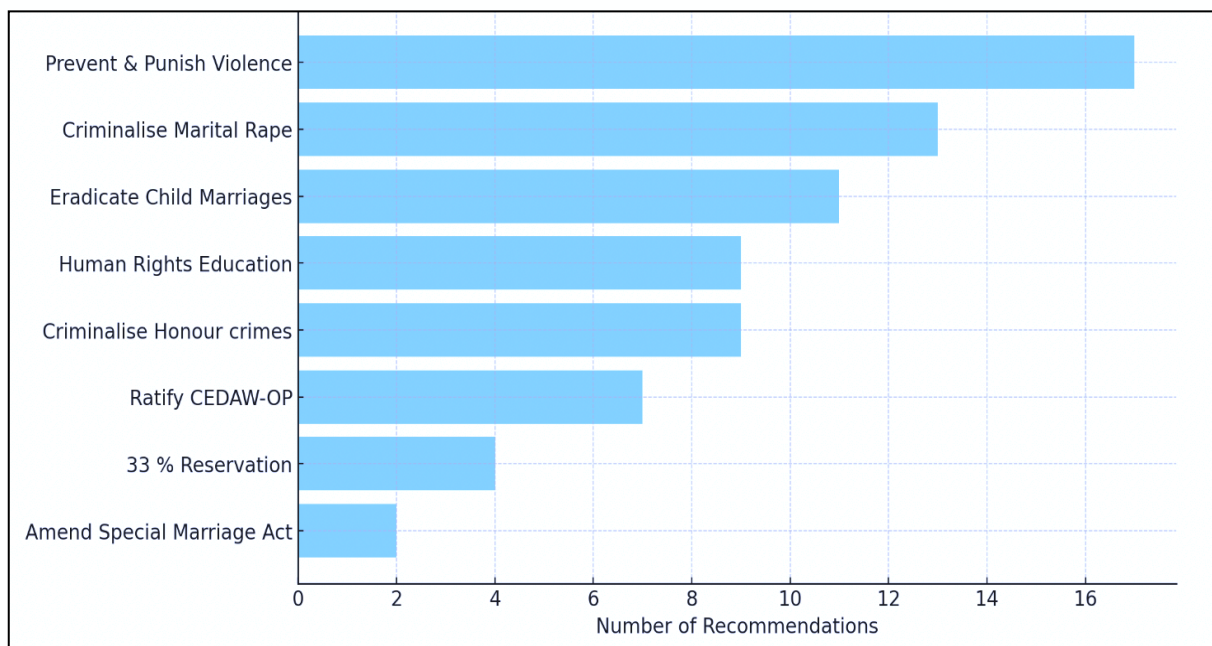
recommendations, assess the progress made in implementing them, and identify the challenges faced during implementation.

Recommendations on Women's rights

India has the highest population of women in the world, with an estimated 743 million women. Major issues raised regarding this significant population in 21st century are also basic human rights such as right to be born, right against discrimination, right to marry person of own choice, right against violence, criminalisation of honour crimes and rape by husband. However, these human rights are yet to be realised as the country has consistently rejected recommendations on all main concerns (*See Table 3*). The third table indicates India's responses to major UPR recommendations across three cycles. Most of the recommendations have been noted, that is, acknowledged but not accepted. Over time, only few issues have been found acceptable for taking action such as recommendations to eradicate child marriages and address violence against women. However, some recommendations, such as ratifying the optional protocol of the Convention on elimination of all forms of discrimination against women (CEDAW-OP) and amending the Special Marriage Act, have consistently been noted without implementation. There are also inconsistencies, such as the fluctuating commitment to addressing female foeticide.

Table 3: Comparative Table to show India's stand on key women rights issues in the three UPR cycles

Major Recommendations	Cycle I	Cycle II	Cycle III
Ratify CEDAW-OP	Noted	Noted	Noted
Amend Special Marriage Act	Noted	Noted	Noted
Sensitise	Noted	Noted	Noted
Criminalise Honour Crimes	Not Recommended	Noted	Noted
33 % Reservation	Not Recommended	Noted	Noted
Eradicate Child Marriages	Not Recommended	Noted	Supported
Violence	Not Recommended	Noted	Supported
Female Foeticide	Not Recommended	Supported	Noted
Criminalise Marital Rape	Not Recommended	Not Recommended	Noted

Figure 2: Number of Recommendations made to India by the Member States on Issues of Women

It is seen that two recommendations have been consistently made by the member states in all three cycles for women rights in India (See Figure 2). The first one is regarding educating the masses about human rights, that is, to sensitise people towards gender equity in order to eradicate societal prejudices from the root. The other recommendation is regarding ratification of the optional protocol to the CEDAW. However, the recommendations made most of times the enjoins India to take affirmative action to prevention violence against women and to end impunity for offenders by punishing them (Singh & Chandra 2017). This recommendation has been echoed in the last two cycles, particularly in the context of marginalised women belonging to lower castes such as Dalit and Scheduled Caste. Notably, the demand for criminalising marital rape has been made for the first time in 2017 by more than a dozen member states. The next section discusses key issues relating to women's rights, as highlighted in the first three UPR cycles for India.

III. Key Issues Relating to Women Highlighted in UPR

The Universal Periodic Review (UPR) has highlighted India's numerous obstacles in attaining gender equality and addressing women's rights. Key challenges include gender discrimination, ongoing violence against women, and socio-cultural practices that influence women's health and reproductive rights. Despite legislative measures and initiatives aimed at empowering

women, implementation challenges and societal attitudes continue to impede progress. The UPR recommendations emphasise the need for stronger legal frameworks, affirmative actions, and improved access to healthcare and reproductive rights.

CONCLUSION AND RECOMMENDATIONS

India's proactive participation in the Universal Periodic Review (UPR) process of the United Nations Human Rights Council (UNHRC) showcases its commitment to improving women's rights. However, significant socio-cultural and legal challenges persist, impeding the full realisation of these rights. These challenges highlight the complexity of translating international commitments into domestic realities. To address these issues effectively, sustained efforts and culturally informed policies are essential. Considering India's unique socio-cultural landscape engages local communities and implements comprehensive legal reforms, a multi-faceted approach is crucial.

Despite its flaws, the UN Human Rights Council system remains a vital peer review mechanism for the public and international evaluation of a nation's human rights record. The risk of being named and shamed globally can motivate states to modify their behaviour and empower stakeholders to hold governments accountable for their promises. However, for the UPR mechanism to effectively enforce human rights obligations, states must domestically align their operational protocols with stated goals and principles. Enhancing the UPR's effectiveness requires detailed, accurate, and tangible suggestions from governments and justifications for any recommendations they reject. Establishing institutional structures to carry out approved recommendations and mandating regular follow-ups with the HRC is also crucial.

Conducting a thorough review of existing laws related to women's rights can identify and address gaps and inconsistencies. Robust enforcement of these laws, including stricter penalties for violations and better support for victims, is essential to protect women's rights effectively. Investing in training programs for law enforcement, the judiciary, and healthcare providers ensures they can handle women's rights issues sensitively and effectively. Increasing funding and resources for institutions dedicated to protecting women's rights, such as shelters, legal aid centres, and health clinics, is crucial for their sustained impact.

Engaging local communities, women's groups and cultural leaders in policy-making processes ensures that initiatives are culturally sensitive, increasing their acceptance and effectiveness. Tailored awareness campaigns can educate communities about women's rights and the importance of gender equality, fostering a more supportive environment for change.

Promoting female entrepreneurship, providing vocational training, and improving access to education and employment opportunities are essential. Policies ensuring equal pay for equal work and support for working mothers, such as affordable childcare services and parental leave, are also necessary.

Fostering stronger partnerships with international organizations, other countries, and non-governmental organizations allows for sharing of best practices and resources. Technical assistance and funding from international bodies can further support initiatives to improve women's rights in India. Independent bodies should be set up to monitor the implementation of UPR recommendations and the progress of women's rights initiatives. Ensuring transparency and accountability through regular reporting and public dissemination of information on the status of women's rights is essential. By implementing these recommendations, India can make significant strides in bridging the gap between international commitments and domestic realities, ensuring that women's rights are fully realized across the country. Sustained efforts and culturally informed policies can be vital in overcoming persistent socio-cultural and legal challenges, fostering a society where women are afforded equal opportunities to realize their full potential.

In conclusion, India's response to the critical issues highlighted in the UPR shows a commitment to addressing violence against women, promoting gender equality, and improving women's health and reproductive rights. However, the effectiveness of these measures depends on overcoming implementation challenges and transforming societal attitudes towards women. Continued efforts and a holistic approach are essential to achieving substantial and lasting improvements in the status of women in India.

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