



OPERATIONAL GUIDANCE NOTE

INDIA

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1. Introduction

- 1.1** This document provides UK Border Agency caseworkers with guidance on the nature and handling of the most common types of claims received from nationals/residents of India, including whether claims are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Caseworkers must not base decisions on the country of origin information in this guidance; it is included to provide context only and does not purport to be comprehensive. The conclusions in this guidance are based on the totality of the available evidence, not just the brief extracts contained herein, and caseworkers must likewise take into account all available evidence. It is therefore essential that this guidance is read in conjunction with the relevant COI Service country of origin information and any other relevant information.

COI Service information is published on Horizon and on the UK Border Agency website at:

<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

- 1.3** Claims should be considered on an individual basis, but taking full account of the guidance contained in this document. Where a claim for asylum or Humanitarian Protection is being considered, caseworkers must consider any elements of Article 8 of the ECHR in line with the provisions of Appendix FM (Family Life) and paragraphs 276 ADE to 276DH (Private Life) of the Immigration Rules. Where a person is being considered for deportation, caseworkers must consider any elements of Article 8 of the ECHR in line with the provisions of Part 13 of the Immigration Rules. Caseworkers must also consider if the applicant qualifies for Discretionary Leave in accordance with the published policy.
- 1.4** With effect from 15 February 2005 India is a country listed in section 94 of the Nationality, Immigration and Asylum Act 2002 and the prima face evidence is that the current underlying situation in the country remains the same or similar to that considered when the country was first designated. Asylum and human rights claims must be considered on their individual merits. However, if, following consideration, a claim from an applicant who is entitled to reside in India is refused caseworkers must certify the claim as clearly unfounded unless satisfied that it is not. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

2. Country assessment

- 2.1** Caseworkers should refer the relevant COI Service country of origin information material. An overview of the human rights situation in certain countries can also be found in the FCO Annual Report on Human Rights which examines developments in countries where human rights issues are of greatest concern:

<http://fcohrdreport.readandcomment.com/read-and-download-the-report/>

2.2 Actors of protection

- 2.2.1** Caseworkers must refer to section 7 of the Asylum Instruction - [Considering the asylum claim and assessing credibility](#). To qualify for asylum, an individual must have a fear of persecution for a Convention reason and be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to seek protection in their country of origin or habitual residence. Caseworkers must take into account whether or not the applicant has sought the protection of the authorities or the organisation controlling all or a substantial part of the State, any outcome of doing so or the reason for not doing so. Effective protection is generally provided when the authorities (or other organisation controlling all or a substantial part of the State) take reasonable steps to prevent the persecution or suffering of serious harm by for example operating an effective legal system for the detection, prosecution and punishment of acts constituting persecution or serious harm, and the applicant has access to such protection.
- 2.2.2** India has the second largest population in the world and is the world's most populous democracy. A nuclear-armed state, India's economy has grown rapidly in the past two decades and is now the world's twelfth largest. But despite impressive economic growth, poverty is widespread. Mainly due to the lack of development and a feeling of marginalization, the country has several separatist insurgency struggles in the northeast, Kashmir as well the central part of the country where Maoist rebels are waging war. Tension remains between India and neighbouring Pakistan, which India accuses of not doing enough to stop cross border terrorism, and there are reports of near-daily border skirmishes, but military conflict remains only a very slim possibility.

India's influence on the world's political, cultural and religious affairs has been immense.¹

2.2.3 India is a federal state with a parliamentary form of government. The president, the head of state, is elected for a five year term by the federal and state parliaments and has a largely ceremonial role. The head of government is the prime minister who is the head of the majority party in the federal parliament and is appointed by the president. The parliament consists of an upper house, the Council of States or the Rajya Sabha, whose members are elected by state parliaments; and a lower house, the Lok Sabha, whose members are elected by the people every five years. Ministers are members of parliament and responsible to the Lok Sabha. The 28 states are responsible for public order, agriculture, education and health. Their governors are appointed by the president for five year terms.²

2.2.4 The US State Department report for 2012 reported that although the central government provides guidance and support, the 28 states and seven union territories have primary responsibility for maintaining law and order. The Ministry of Home Affairs (MHA) controls most paramilitary forces, the internal intelligence bureaus, and the nationwide police service, and it provides training for senior police officers of the state-organized police forces. According to Human Rights Watch (HRW), cases of arbitrary arrest, torture, and forced confessions by security forces were common. Several laws, including part of the criminal procedure code and the Armed Forces Special Powers Act (AFSPA), were used to provide legal protection for members of security forces who violated human rights.³

2.2.5 The World Police Encyclopaedia (WPE), published by Routledge in 2006, advised that state police forces had two main components: civil police and armed police. The primary function of the civil police was to control crime; the armed police mainly deal with 'law and order' situations. The civil police supplied the staffing of police stations and criminal investigation departments. They were generally unarmed, but might carry a baton or bamboo stick. The state armed police were usually organised along the lines of armed infantry battalions. They were used as reserves to deal with emergency law and order situations. In 2001, there were a total of 372,300 armed police in 307 battalions around the country. District police forces may also have small armed units to act as armed guards and escorts.⁴

2.2.6 The US State Department reported that the effectiveness of law enforcement and security forces varied widely throughout the country. Officers at all levels acted with impunity, and officials rarely held them accountable for illegal actions. Military courts investigated cases of abuse by security officials, both army and paramilitary forces; cases against law enforcement officers were tried in public courts. Authorities sometimes transferred officers after they were found guilty of a crime. The central government wrote to the state governments asking them to implement measures to improve over four dozen functional areas of policing. According to the Ministry of Home Affairs (MHA)'s 2011-12 annual report, 74,918 cases were registered with the National Human Rights Commission (NHRC) nationwide. A total of 45,571 cases

¹ AlertNet. Country Profile. India. (undated accessed March 2013)
<http://www.trust.org/alertnet/country-profiles/india>

² AlertNet. Country Profile. India. (undated accessed March 2013)
<http://www.trust.org/alertnet/country-profiles/india>

³ US State Department, Country Reports on Human Rights Practices for 2012: India. 19 April 2013. Section 1 Role of the Police and Security Apparatus
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204399>

⁴ World Police Encyclopedia. ISBN 0-415-94250-0 Editor: Das, Dilip K. Published in 2006 by Routledge, Taylor and Francis Group. India section, Volume 1, pages 377 to 384

were resolved, including cases brought forward from previous years, and 19,355 cases were transferred to state human rights commissions for resolution. Interim relief payments were made in 420 cases.⁵

- 2.2.7** The US State Department report that although the law prohibits torture, many NGOs alleged that such practices were common, especially in areas of conflict [eg Jammu and Kashmir, north-eastern states, and the Naxalite belt].⁶ The NHRC was the only independent agency to conduct investigations of torture complaints outside of the overloaded legal system.
- 2.2.8** Freedom House's 2012 World report stated that police torture, abuse, and corruption are entrenched in the law enforcement system. The police also suffer from understaffing, as according to a 2009 Human Rights Watch report, there is one officer for every 1,037 civilians, less than a third of the global average. Custodial rape of female detainees continues to be a problem, as does routine abuse of ordinary prisoners, particularly minorities and members of the lower castes. Between 2001 and March 2009, there were 1,184 reported deaths in police custody, nearly all of which were caused by torture, according to the Asian Centre for Human Rights. The group estimated that the actual number of deaths is far greater.⁷
- 2.2.9** Transparency International says the overwhelming number of citizens say the police are corrupt and have direct experience of being asked to pay bribes. The police are often accused of torture or abuse of suspects to extract confessions. The Asian Centre for Human Rights reported that in 2008, 7,468 people died in custody in the previous five years, nearly all the result of torture. The security forces are periodically implicated in extrajudicial killings and torture in Kashmir and several north-eastern states where various separatist insurgencies exist.⁸
- 2.2.10** The National Human Rights Commission (NHRC) is headed by a retired Supreme Court judge and handles roughly 80,000 complaints each year. However, while it monitors abuses, initiates investigations, makes independent assessments, and conducts training sessions for the police and others, its recommendations are often not implemented and it has few enforcement powers. The commission also lacks jurisdiction over the armed forces, one of the principal agents of abuse in several parts of the country, further hampering its effectiveness.⁹
- 2.2.11** The legal system is based on English common law; separate codes of personal law apply to Muslims, Christians and Hindus. The judicial system consists of the Supreme Court, made up of a chief justice and 25 judges appointed by the president, 21 high courts and a large number of local courts.¹⁰

⁵ US State Department, Country Reports on Human Rights Practices for 2012: India. 19 April 2013. Section 1 Role of the Police and Security Apparatus

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204399>

⁶ US State Department, Country Reports on Human Rights Practices for 2012: India. 19 April 2013. Section 1 c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204399>

⁷ Freedom House. Freedom in the World 2012. 10 August 2012.

<http://www.freedomhouse.org/report/freedom-world/2012/india>

⁸ AlertNet. Country Profile. India. (undated accessed March 2013) <http://www.trust.org/alertnet/country-profiles/india>

⁹ Freedom House. Freedom in the World 2012. 10 August 2012.

<http://www.freedomhouse.org/report/freedom-world/2012/india>

¹⁰ AlertNet. Country Profile. India. (undated accessed March 2013) <http://www.trust.org/alertnet/country-profiles/india>

- 2.2.12** The Supreme Court is constitutionally independent, has the power to strike down laws which contravene the constitution and has appellate jurisdiction over high courts. Judicial corruption is rife, particularly at the lower levels, and most citizens have great difficulty in obtaining justice through the courts, says Freedom House.¹¹
- 2.2.13** The 2012 US State Department report recorded that the law provides for an independent judiciary, and the government generally respected judicial independence in practice, although citizens reported that judicial corruption was widespread. The judiciary system is seriously overburdened and lacks modern case management systems, often delaying or denying justice. By October 2012 nearly one-third of sanctioned judges' positions (895 posts) in the country's 21 high courts were vacant. On 14 May 2012, the Ministry of Law and Justice announced that approximately 27.225 billion rupees (£320 million) would be provided to states to set up special courts dedicated to backlog reduction. As of 30 November 2012, there were 65,703 cases pending in the Supreme Court; 22,133 cases were less than one year old.¹²
- 2.2.14** It has been reported that the lower levels of the judiciary in particular have been rife with corruption, and most citizens have great difficulty securing justice through the courts. The system is severely backlogged and understaffed, with millions of civil and criminal cases pending. This leads to lengthy pre-trial detention for a large number of suspects, many of whom remain in jail beyond the duration of any sentence they might receive if convicted.¹³

2.3 Internal relocation

- 2.3.1** Caseworkers must refer to the Asylum Instruction on [Internal Relocation](#) and in the case of a female applicant, the AI on [Gender Issues in the Asylum Claim](#), for guidance on the circumstances in which internal relocation would be a 'reasonable' option, so as to apply the test set out in paragraph 339O of the Immigration Rules. It is important to note that internal relocation can be relevant in both cases of state and non-state agents of persecution, but in the main it is likely to be most relevant in the context of acts of persecution by localised non-state agents. If there is a part of the country of return where the person would not have a well founded fear of being persecuted and the person can reasonably be expected to stay there, then they will not be eligible for a grant of asylum. Similarly, if there is a part of the country of return where the person would not face a real risk of suffering serious harm and they can reasonably be expected to stay there, then they will not be eligible for humanitarian protection. Both the general circumstances prevailing in that part of the country and the personal circumstances of the person concerned including any gender issues should be taken into account. Caseworkers must refer to the Gender Issues in the asylum claim where this is applicable. The fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.
- 2.3.2** Very careful consideration must be given to whether internal relocation would be an effective way to avoid a real risk of ill-treatment/persecution at the hands of, tolerated by, or with the connivance of, state agents. If an applicant who faces a real risk of ill-

¹¹ AlertNet. Country Profile. India. (undated accessed March 2013) <http://www.trust.org/alertnet/country-profiles/india>

¹² US State Department, Country Reports on Human Rights Practices for 2012: India. 19 April 2013. Section 1 Denial of Fair Public Trial
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204399>

¹³ Freedom House. Freedom in the World 2012. 10 August 2012.
<http://www.freedomhouse.org/report/freedom-world/2012/india>

treatment/persecution in their home area would be able to relocate to a part of the country where they would not be at real risk, whether from state or non-state actors, and it would not be unreasonable to expect them to do so, then asylum or humanitarian protection should be refused.

- 2.3.3** Consideration must also be given to the relevance and reasonableness of internal relocation taking full account of the individual circumstances of the particular claimant. Caseworkers need to consider the ability of the persecutor to pursue the claimant in the proposed site of relocation, and whether effective protection is available in that area. Caseworkers will also need to consider the age, gender, health, ethnicity, religion, financial circumstances and support network of the claimant, as well as the security, human rights and socio-economic conditions in the proposed area of relocation, including the claimant's ability to sustain themselves.
- 2.3.4** The US State Department report that the law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice. The government generally cooperated with the Office of the UN High Commissioner for Refugees (UNHCR) and other humanitarian organizations in providing protection and assistance to some but not all IDPs, refugees, returning refugees, asylum seekers, stateless persons, and other persons of concern. The central government continued to require special permits for nationals and foreigners to travel to parts of Arunachal Pradesh and Jammu and Kashmir. State governments require nationals to obtain special permits upon arrival for travel to these areas. Security forces often searched and questioned vehicle occupants at checkpoints, mostly in troubled areas in the Kashmir valley, before public events in New Delhi, or after major terrorist attacks.¹⁴
- 2.3.5** The situation as regards internal relocation for single women, divorcees with or without children, and widows may differ from the situation for men. Media sources report that, according to India's census of 2001, there are approximately 36 million women in India who are widowed, divorced or separated from their husbands. The National Forum for Single Women's Rights indicates that these single women are rejected by society and treated with indifference by the federal government. For example, widows are said to face "deep social stigma", "social marginalisation" and "cruel" treatment by in-laws. Media sources similarly note that divorced women face social "stigma" and "ridicule".¹⁵
- 2.3.6** However, media sources also indicate that India's economy is booming, leading to an increase in the number of young, single women working in cities. These women have greater freedoms and opportunities than in the past. It is however reported that women in India are "largely employed at the bottom of the livelihood chain, in unprotected conditions of the unorganized sector."¹⁶
- 2.3.7** According to India's Ministry of Women and Child Development, finding safe housing is one of the "main" problems for women who move to larger cities in search of employment. Media and academic sources also report on the difficulties single women face trying to rent apartments in metropolitan areas. While access to

¹⁴ US State Department, Country Reports on Human Rights Practices for 2012: India. 19 April 2013 Section 2 d. Freedom of Movement, Internally Displaced Persons, Protection of Refugees, and Stateless Persons <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204399>

¹⁵ IRB - Immigration and Refugee Board of Canada: India: Whether women who head their own households without male support can obtain housing and employment in Delhi, Mumbai and Chandigarh IND103726.E 9 May 2011 http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453434&l=e9

¹⁶ IRB - Immigration and Refugee Board of Canada: India: Whether women who head their own households without male support can obtain housing and employment in Delhi, Mumbai and Chandigarh IND103726.E 9 May 2011 http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453434&l=e9

housing is "significantly improving" for middle-class and high-income single women (including divorced and widowed women), there continue to be significant social and cultural barriers around women's sexuality. Women residing alone may be viewed as having suspect reputations and may have to have family members vouch for them in order to gain access to housing.¹⁷

2.3.8 Since 1972, the government has funded NGOs and other organizations engaged in women's welfare or education to build hostels for working women. The hostels are intended to provide safe and affordable housing to single working women; widowed, separated or divorced women; working women living outside their home towns or living without their out-of-town husbands; women undergoing employment training; and women studying in professional programs. There are reportedly 887 working women's hostels throughout India providing accommodation for approximately 65,000 women. Women can stay in the hostels for up to three years, with the possibility of an extension in exceptional circumstances. The hostels have day care centres for residents with children. The Ministry guidelines state that a working mother's children can reside with her at the hostel until they reach a certain age: female children can stay until the age of eighteen, and male children until the age of five. Hostels for middle-class working women generally do not have accommodations for children.¹⁸

2.4 Country guidance caselaw

Supreme Court. RT (Zimbabwe) & others v Secretary of State for the Home Department [2012] UKSC 38 (25 July 2012) The Supreme Court ruled that the rationale of the decision in HJ (Iran) applies to cases concerning imputed political opinion. Under both international and European human rights law, the right to freedom of thought, opinion and expression protects non-believers as well as believers and extends to the freedom not to hold and not to express opinions. Refugee law does not require a person to express false support for an oppressive regime, any more than it requires an agnostic to pretend to be a religious believer in order to avoid persecution. Consequently an individual cannot be expected to modify their political beliefs, deny their opinion (or lack thereof) or feign support for a regime in order to avoid persecution.

Supreme Court. HJ & HT v SSHD [2010] UKSC31 7 July 2010 The Supreme Court hereby established the test which should be applied when assessing a claim based on fear of persecution because of an applicant's sexual orientation which is as follows:

- (i) Is the applicant gay or someone who would be treated as gay by potential persecutors in the country of origin?
- (ii) If yes, would gay people who live openly be liable to persecution in that country of origin?
- (iii) How would the applicant behave on return? If the applicant would live openly and be exposed to a real risk of persecution, he has a well-founded fear of persecution even if he could avoid the risk by living discreetly.

¹⁷ IRB - Immigration and Refugee Board of Canada: India: Whether women who head their own households without male support can obtain housing and employment in Delhi, Mumbai and Chandigarh IND103726.E 9 May 2011 http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453434&l=e9

¹⁸ IRB - Immigration and Refugee Board of Canada: India: Whether women who head their own households without male support can obtain housing and employment in Delhi, Mumbai and Chandigarh IND103726.E 9 May 2011 http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453434&l=e9

- (iv) If the applicant would live discreetly, why would he live discreetly? If the applicant would live discreetly because he wanted to do so, or because of social pressures (e.g. not wanting to distress his parents or embarrass his friends) then he is not a refugee. But if a material reason for living discreetly would be the fear of persecution that would follow if he lived openly, then he is a refugee.

Note: No Upper Tribunal Country Guidance cases on India have been included because those that do exist all date from 2002 and are now over 10 years old and accordingly should no longer be relied upon by caseworkers.

3. Main categories of claims

- 3.1** This Section sets out the main types of asylum claim, humanitarian protection claim and discretionary leave claim on human rights grounds (whether explicit or implied) made by those entitled to reside in India. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant Asylum Instructions, but how these affect particular categories of claim are set out in the instructions below. All Asylum Instructions can be accessed via the Horizon intranet site. The instructions are also published externally on the Home Office internet site at:

<http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/asylumpolicyinstructions/>

- 3.2** Each claim should be assessed to determine whether there are reasonable grounds for believing that the applicant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in the Court of Appeal's judgment in [Karanakaran](#) should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Instruction '[Considering the asylum claim and assessing credibility](#)').
- 3.3** For any asylum cases which involve children either as dependents or as the main applicants, caseworkers must have due regard to Section 55 of the Borders, Citizenship and Immigration Act 2009. The UK Border Agency instruction '[Every Child Matters: Change for Children](#)' sets out the key principles to take into account in all Agency activities.
- 3.4** If the applicant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the applicant does not qualify for asylum, or Humanitarian Protection, consideration must be given to any claim as to whether he/she qualifies for leave to remain on the basis of their family or private life. Caseworkers must also consider if the applicant qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

Consideration of Articles 15(a) and (b) of the Directive/Articles 2 and 3 ECHR

- 3.5** An assessment of protection needs under Article 15(c) of the Directive should only be required if an applicant does not qualify for refugee protection, and is ineligible for subsidiary protection under Articles 15(a) and (b) of the Directive (which broadly reflect Articles 2 and 3 of the ECHR). Caseworkers are reminded that an applicant

who fears a return to a situation of generalised violence may be entitled to a grant of asylum where a connection is made to a Refugee Convention reason or to a grant of Humanitarian Protection because the Article 3 threshold has been met.

Other severe humanitarian conditions and general levels of violence

- 3.6** There may come a point at which the general conditions in the country – for example, absence of water, food or basic shelter – are unacceptable to the point that return in itself could, in extreme cases, constitute inhuman and degrading treatment. Decision makers need to consider how conditions in the country and locality of return, as evidenced in the available country of origin information, would impact upon the individual if they were returned. Factors to be taken into account would include age, gender, health, effects on children, other family circumstances, and available support structures. It should be noted that if the State is withholding these resources it could constitute persecution for a Convention reason and a breach of Article 3 of the ECHR.
- 3.7** As a result of the [Sufi & Elmi v UK](#) judgment in the European Court of Human Rights (ECtHR), where a humanitarian crisis is predominantly due to the direct and indirect actions of the parties to a conflict, regard should be had to an applicant's ability to provide for his or her most basic needs, such as food, hygiene and shelter and his or her vulnerability to ill-treatment. Applicants meeting either of these tests would qualify for Humanitarian Protection.

Credibility

- 3.8** This guidance is not designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. For guidance on credibility see 'Section 4 – Making the Decision in the Asylum Instruction [‘Considering the asylum claim and assessing credibility’](#)'. Caseworkers must also ensure that each asylum application has been checked against previous UK visa applications. Where an asylum application has been biometrically matched to a previous visa application, details should already be in the UK Border Agency file. In all other cases, the caseworker should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matches to visas should be investigated prior to the asylum interview, including obtaining the Visa Application Form (VAF) from the visa post that processed the application.

3.9 Sikh separatism

- 3.9.1** Some Sikh applicants may claim asylum based on a fear of ill treatment by the authorities because the individual has, or is perceived to have harboured or assisted, terrorist groups; or alternatively fear persecution by non-state agents in the Punjab because they have refused to join or assist a terrorist group.
- 3.9.2 Treatment.** Following the partition of India in 1947, some Sikhs in Punjab had actively promoted the idea of a Sikh homeland or sovereign state, referred to as 'Khalistan'. In the early 1980s, actions taken by Sikh militants became increasingly violent and in response, the government deployed 100,000 troops to Punjab.¹⁹ In 1984, anti-Sikh riots erupted following the assassination of Prime Minister Indira Gandhi. Nearly 3,000 Sikhs were killed, allegedly with the support of Congress Party officials. In April 2009, the Congress Party dropped two individuals from its candidate roster for their suspected roles in the riots. In December 2009, the government

¹⁹ Immigration and Refugee Board of Canada. IND102546.E Treatment of Sikhs in Punjab within a contemporary historical context (2005-2007), 11 July 2007
<http://www.unhcr.org/refworld/country,,IRBC,,IND,4562d8cf2,46fa537123,0.html>

amended the Code of Criminal Procedure, making it easier for victims of religious persecution to appeal judgments.²⁰

- 3.9.3** In December 2009 the Ministry of Home Affairs (MHA) reported to Parliament that on the recommendations of the Nanavati Commission investigating the 1984 anti-Sikh riots, the government had announced a victim's rehabilitation package of 7.2 billion rupees that was extended to West Bengal, Tamil Nadu, and Chandigarh in September 2009. The government had disbursed a sum of 4.6 billion rupees to the States. The States informed the central government that they had settled 36,336 claims from migrant families for death, injury and property damage.²¹
- 3.9.4** Although sporadic acts of violence have taken place," there has been "relative peace" in the state since 1995 when an armed secessionist campaign was put down by the government. The most recent assessment of Punjab by the South Asia Terrorism Portal (SATP) – for 2010 -, reported that for the 16th consecutive year the Punjab had remained relatively free of major political violence after the widespread terrorist-secessionist movement for 'Khalistan' was comprehensively defeated in 1993.²² However, some sources indicate that there is still a potential for militancy to come back to the surface.²³
- 3.9.5** According to the South Asia Terrorism Portal (SATP), there are 12 Sikh separatist groups proscribed as terrorist groups in India:
- Babbar Khalsa International (BKI)
 - Khalistan Zindabad Force (KZF)
 - International Sikh Youth Federation (ISYF)
 - Khalistan Commando Force (KCF)
 - All-India Sikh Students Federation (AISSF)
 - Bhindrawala Tigers Force of Khalistan (BTFK)
 - Khalistan Liberation Army (KLA)
 - Khalistan Liberation Front (KLF)
 - Khalistan Armed Force (KAF)
 - Dashmesh Regiment
 - Khalistan Liberation Organisation (KLO)
 - Khalistan National Army (KNA)²⁴
- 3.9.6** The longest-surviving Khalistani militant group, the Babbar Khalsa International (BKI), has been responsible for some of the biggest terrorist strikes including the mid-air bombing of Air India Flight 182 Kanishka in 1985. Presently headed by Wadhawa Singh Babbar alias Chacha from Lahore, Pakistan, the BKI remains the most organised Sikh militant organisation with supporters in North America, Europe, South Asia and Australia.²⁵

²⁰ US Commission on International Religious Freedom, Annual Report 2012 March 2012..

[http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012\(2\).pdf](http://www.uscirf.gov/images/Annual%20Report%20of%20USCIRF%202012(2).pdf)

²¹ U.S 2010 International Religious Freedom Report 13 September 2011

<http://www.state.gov/documents/organization/171754.pdf>

²² The South Asia Terrorism Portal (SATP) Punjab Assessment 2010

<http://www.satp.org/satporgtp/countries/india/states/punjab/index.html>

²³ IRB - Immigration and Refugee Board of Canada: India: Treatment of Sikhs in Punjab (2007-February 2012) [IND103968.E], 02 May 2012 (available at [ecoi.net](http://www.ecoi.net))

http://www.ecoi.net/local_link/218320/325045_en.html

²⁴ South Asia Terrorism Portal (SATP), India - Terrorist, insurgent and extremist groups

<http://www.satp.org/satporgtp/countries/india/terroristoutfits/index.html>

²⁵ India Today A History of Violence 5 November 2011. <http://indiatoday.intoday.in/story/isi-kanishka-bombing-assassination-of-beant-singh-babbar-khalsa-militant-violence/1/158656.html>

- 3.9.7** Institute of Peace and Conflict Studies (IPCS) noted in 2007 that by then while a few groups continued to fight, the movement has lost its popular support both in India and within the Diaspora community.²⁶
- 3.9.8** An Immigration and Refugee Board of Canada response to a request for information on the treatment of Sikhs in Punjab, quotes a representative of the World Sikh Organisation as stating that Sikhs who advocate for and support a separate Sikh state or Khalistan continue to face serious human rights violations in India. Other Sikhs who face issues include those that challenge the power of the state government in religious matters and activists against Deras (cults). Similarly, Sikhs suspected of being militant supporters or Khalistan sympathizers (often amritdhari or initiated Sikhs) are also subject to monitoring and in some cases, detention and torture. The same source continued to say that the Punjab police frequently 'announce the arrest of alleged members of Sikh separatist groups who they accuse of plotting terrorist attacks. Many of these cases languish in the courts for years before a decision is rendered'. According to the WSO representative, since 2005, hundreds of individuals have been arrested and detained as sympathizers or suspected members of Babbar Khalsa and other separatist groups. Arrests of suspected 'Sikh terrorists' take place regularly, not just in Punjab but across India.²⁷ The representative noted that Sikhs accused of being Khalistan sympathizers or militants may be subject to illegal detention and torture. He also stated that "Sikhs who are arrested are, as a matter of routine, tortured" and that "Sikh prisoners continue to die in police custody under suspicious circumstance[s]".²⁸
- 3.9.9** In September 2012, Human Rights Watch reported that "The alleged mistreatment of a suspected Sikh separatist in Punjab highlights the widespread use of torture by Indian security forces".²⁹ Human Rights Watch called for an investigation into allegations that the Punjab police tortured Kulvir Singh Barapind after his arrest on 20 September 2012 on charges of waging war on the state, possession of explosives, and sedition. His lawyer told Human Rights Watch that Barapind had complained to the magistrate that the police "applied electric shocks to his ears, beat him, and humiliated him."³⁰
- 3.9.10** The Asian Centre for Human Rights reports that "on 28 July 2010, Kulwant Singh was allegedly tortured in the custody of the Special Operation Cell (SOC) of Intelligence Wing of Punjab Police in Amritsar. He was arrested on the same day along with four other persons on the suspicion of being members of Babbar Khalsa group. Kulwant Singh was allegedly tortured and subjected to electric shocks on the ears and private parts during interrogation in custody. He was admitted in a serious condition at Guru Nanak Dev Hospital (GNDH), Amritsar. Dr. Saurabh Dhanda of GNDH, stated that 'There were electric shock injuries on his (the victim's) ear and private parts. Kulwant's stomach also had injuries owing to severe beating with batons'.³¹

²⁶Institute of Peace and Conflict Studies (IPCS) The Sikh Diaspora and the Quest for Khalistan: A Search for Statehood or for Self-preservation? 2007.
http://www.ipcs.org/pdf_file/issue/1787132181IPCS-ResearchPaper12-SimratDhillon.pdf

²⁸ IRB - Immigration and Refugee Board of Canada: India: Treatment of Sikhs in Punjab (2007-February 2012) [IND103968.E], 02 May 2012 (available at ecoinet) http://www.ecoi.net/local_link/218320/325045_en.html

²⁹ Human Rights Watch, India: Punjab Case Shows Need for Anti-Torture Law, 27 September 2012
<http://www.hrw.org/news/2012/09/27/india-punjab-case-shows-need-anti-torture-law>

³⁰ Human Rights Watch, India: Punjab Case Shows Need for Anti-Torture Law, 27 September 2012
<http://www.hrw.org/news/2012/09/27/india-punjab-case-shows-need-anti-torture-law>

³¹ Asian Centre for Human Rights, Torture in India 2011, 21 November 2011, i. Individual cases of custodial deaths through torture p. 13; i, Torture to extract confessions
<http://www.achrweb.org/reports/india/torture2011.pdf>

3.9.11 An April 2012 Immigration and Refugee Board of Canada response to a request for information on the treatment of those who call for the creation of Khalistan, quotes a representative of the World Sikh Organisation as stating that those Sikhs who are known to be advocates for Khalistan or suspected sympathizers of the militant movement are regularly monitored. The source added that the police have lists of individuals they believe are at risk of supporting Khalistan militants and when any activity is suspected, these individuals are interrogated and on occasion detained. The source also said that World Sikh Organisation has anecdotal evidence that the monitoring is done through "calls from police officials to inquire about activities, and being called into police stations for questioning. The World Sikh Organisation representative went on to note that human rights groups often indicate that torture is endemic to the Punjab Police and is routinely used. Those seen as being 'anti-national' are particularly subjected to brutal treatment and police are permitted to operate with impunity.³²

See also: [Actors of protection](#) (section 2.2 above)

[Internal relocation](#) (section 2.3 above)

[Caselaw](#) (section 2.4 above)

3.9.12 Conclusion. The present situation in Punjab is generally regarded as peaceful; and the militant Khalistan movement weakened considerably. The Sikh community maintains its own unique identity and is socially assimilated in cosmopolitan areas. India presently has a Sikh Prime Minister Manmohan Singh and a Sikh chief of Indian Army. In India, minor political parties Khalsa Raj Party and Shiromani Akali Dal (Amritsar) seek to establish Khalistan through non-violent means.

3.9.13 The human rights situation for Sikhs in Punjab and India has improved to the extent that it can no longer be said that there is a general risk of ill-treatment on return solely on the basis of believing in the establishment of Khalistan. Only those actively engaged in, or perceived to be engaged in or supporting, militant activity are likely to be of adverse interest to the authorities and are likely to face arrest and detention on return to India.

3.9.14 Caseworkers should note that members of Sikh militant groups – particularly those proscribed as terrorist organisations - have in the past been responsible for serious human rights abuses. If it is accepted that a claimant was an active operational member or combatant for a Sikh militant group and the evidence suggests he/she has been involved in such actions, then caseworkers should consider whether one of the exclusion clauses is applicable. Caseworkers should refer such cases to a Senior Caseworker.

3.9.15 Although some applicants claim to fear persecution by terrorists or other non-state agents, there is no evidence that, following the end of the counter-insurgency period, such persecution takes place in Punjab. Nevertheless, there generally exists the option for those who encounter difficulties to seek national protection or to relocate internally (although, for single women who do not relocate as part of a family unit, relocation may be difficult and unduly harsh). Punjabi Sikhs are able to relocate to another part of India and there are Sikh communities all over India. Citizens are not required to register their faith in India and Sikhs are able to practise their religion

³² IRB - Immigration and Refugee Board of Canada: India: Treatment of those who call for the creation of Khalistan. IND104058.E 30 April 2012 http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453968&l=e

without restriction in every state of India. Therefore, it is unlikely that any such claim would result in a grant of asylum or Humanitarian Protection

3.10 Conflict with insurgent groups (including in Jammu and Kashmir and Maoist/Naxalite belt)

- 3.10.1** Some applicants may seek asylum based on the conflict in for example Jammu and Kashmir or central and eastern parts of the country (Naxalite belt).
- 3.10.2** The US State Department reported that during 2012 the country's armed forces, individual states' security forces, and paramilitary forces continued to engage in armed conflict with insurgent groups in Jammu and Kashmir, in several north eastern states, and with Naxalite insurgents in the central and eastern parts of the country. Army and central security forces continued to be deployed in non-Maoist conflict areas in the Northeast, with major insurgent groups engaged in peace negotiations with the federal government. In West Bengal's Naxalite belt, there was no army presence, although other central and state forces remained deployed. The use of force by all parties to the conflicts caused death and injuries to both conflict participants and civilians. Insurgents reportedly committed attacks on schools, roads, and railways tracks. The central and state governments and the armed forces investigated complaints and punished some violations committed by their own forces, and they arrested and tried insurgents under terrorism-related legislation. There were no examples of prosecution of human rights violations committed by police or paramilitary forces.³³
- 3.10.3** According to the South Asia terrorism Portal (SATP) database, total terrorism or insurgency related fatalities continued to decrease in 2012. The total deaths reported declined from 1,073 in 2011 to 804 in 2012 (252 civilians, 139 security personnel, and 413 militants). The SATP database reported that 368 persons--including 118 militants, 104 security force personnel, and 146 civilians--were killed during the year as a result of Naxalite (Maoist) violence, a decrease from 2011, when 199 militants, 128 security force personnel, and 275 civilians were killed. The Institute for Conflict Management reported that there were 117 fatalities in Jammu and Kashmir during the year, including 84 alleged terrorists, 17 members of the security forces, and 16 civilians.³⁴
- 3.10.4** Pakistan-based Lashkar-e-Taiba (Soldiers of the Pure) (LeT) is one of the most feared groups fighting against Indian control in Kashmir and is blamed for several deadly attacks on Indian soil.³⁵
- 3.10.5** Since LeT's rise to prominence more than 10 years ago, it has often been blamed by India for carrying out armed attacks, not only in Kashmir, but elsewhere in India. LeT was blamed for bomb attacks in the Indian capital Delhi in October 2005 that killed more than 60 people. India also says it was involved in armed raid on India's parliament - allegedly carried out along with another Kashmiri militant group, Jaish-e-Mohammed - brought India and Pakistan to the brink of all-out war. Most recently, India has blamed the militant outfit for the November 2008 attacks in Mumbai which killed 174 people, including nine gunmen.³⁶

³³ US State Department, Country Reports on Human Rights Practices for 2012: India. 19 April 2013. Section 1 a. Arbitrary or Unlawful Deprivation of Life

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204399>

³⁴ US State Department, Country Reports on Human Rights Practices for 2012: India. 19 April 2013. Section 1 a. Arbitrary or Unlawful Deprivation of Life

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204399>

³⁵ BBC News.Profile: Lashkar-e-Taiba.3 May 2010. http://news.bbc.co.uk/1/hi/world/south_asia/3181925.stm

³⁶ BBC News.Profile: Lashkar-e-Taiba.3 May 2010. http://news.bbc.co.uk/1/hi/world/south_asia/3181925.stm

- 3.10.6** The Maoist insurgency in several parts of India has been of serious concern to the government. There were over 600 Maoist-related deaths across nine states in 2011, according to the South Asia Terrorism Portal (SATP), though that represented a sharp decline from the previous year's 1,180. Among other abuses, the rebels have allegedly imposed illegal taxes, seized food and shelter, and engaged in abduction and forced recruitment of children and adults. Local civilians who are perceived to be pro-government have been targeted by the Maoists. Tens of thousands of civilians have been displaced by the violence and live in government-run camps.³⁷
- 3.10.7** Separately, in India's seven north-eastern states, more than 40 insurgent factions—seeking either greater autonomy or complete independence for their ethnic or tribal groups—attack security forces and engage in intertribal violence. Such fighters have been implicated in numerous bombings, killings, abductions, and rapes of civilians, and they also operate extensive extortion networks. However, the number of killings of civilians, security personnel, and militants in the north-eastern insurgencies have fallen sharply in recent years.³⁸
- 3.10.8** Freedom House reports that “Indian security personnel based in Kashmir carry out arbitrary arrests and detentions, torture, forced disappearances, and custodial killings of suspected militants and their alleged civilian sympathizers”.³⁹ The Public Safety Act (PSA), which applies only in Jammu and Kashmir, permits state authorities to detain persons without charge or judicial review for as long as two years.⁴⁰ Amnesty International noted the widespread use of the PSA by authorities in Jammu and Kashmir to detain individuals without charge or trial, including ‘revolving door’ detentions. There have also been continued reports of torture and other ill-treatment in detention and the denial of medical care. In 2011, the chief of police in Kashmir Division acknowledged that “around 15,600 people” were detained under the PSA without charge or trial in the last two decades.⁴¹
- 3.10.9** The International Human Rights Association of American Minorities notes that claims of secret detention centres are consistently reported to the Asian Centre for Human Rights, three of which are said to be in Jammu and Kashmir.⁴² In December 2012, the International People's Tribunal on Human Rights and Justice in Indian-administered Kashmir published a report which examined 214 cases of human rights violations and the role of 500 alleged perpetrators in these crimes. It considers that these cases indicate a pattern in which the armed forces are not properly investigated or prosecuted for human rights violations.⁴³ One frequent accusation is

³⁷ Freedom House. Freedom in the World 2012. <http://www.freedomhouse.org/report/freedom-world/2012/india>

³⁸ Freedom House. Freedom in the World 2012. <http://www.freedomhouse.org/report/freedom-world/2012/india>

³⁹ Freedom House, Freedom in the World: Indian Kashmir, 7 September 2012
<http://www.freedomhouse.org/report/freedom-world/2012/indian-kashmir>

⁴⁰ US State Department, Country Reports on Human Rights Practices for 2011: India. 24 May 2012 Section 1. Respect for the Integrity of the Person. c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dliid=186463>

⁴¹ Amnesty International, Still a ‘Lawless Law’: Detentions under the Jammu and Kashmir Public Safety Act, 1978, 3 October 2012 <http://www.amnesty.org/en/library/asset/ASA20/035/2012/en/807ef797-3994-4d2b-9469-f2e2456d91ef/asa200352012en.pdf>

⁴² International Human Rights Association of American Minorities, Written statement submitted to the UN Human Rights Council by the International Human Rights Association of American Minorities (IHRAAM), a non-governmental organization in on the roster; India's continued record of torture, 19 February 2013 http://www.ecoi.net/file_upload/1930_1361980345_g1311202.pdf

⁴³ International Peoples Tribunal on Human Rights and Justice in Indian-administered Kashmir [IPTK] / Association of parents of disappeared persons [APDP], Press Release of Alleged Perpetrators - Stories of Impunity in Jammu and Kashmir, 6 December 2012
http://www.kashmirprocess.org/press/20121206_ap_pr.html

that Indian security forces in Kashmir have killed innocent civilians in gun battles and passed them off as separatist militants to earn rewards and promotions.⁴⁴

- 3.10.10** Thousands of Kashmiris had allegedly forcibly disappeared during two decades of conflict in the region and their whereabouts was unknown. A police investigation in 2011 by the Jammu and Kashmir State Human Rights Commission (SHRC) found 2,730 bodies dumped into unmarked graves at 38 sites in north Kashmir. At least 574 were identified as the bodies of local Kashmiris. The government had previously said that the graves held unidentified militants, most of them Pakistanis whose bodies had been passed over to village authorities for burial. Many Kashmiris believe that some graves contained the bodies of victims of enforced disappearances. The government of Jammu and Kashmir had promised an investigation, but the identification and prosecution of perpetrators would require the co-operation of army and federal paramilitary forces. These forces in the past had resisted fair investigations and prosecutions, claiming immunity under the Armed Forces Special Powers Act (AFSPA) and section 197 of the Criminal Procedure Code.⁴⁵
- 3.10.11** In 2011, the government's response to the ongoing conflict with the Maoist movement, known as the Naxalites, continued to be a major human rights issue. By the end of the year, the government claimed an 'historic low' in Maoist-related violence. Officials said the number of civilians who died as a result of the conflict was at its lowest level in two decades. Yet violence continued to blight 2011. In May, rebels killed and dismembered the bodies of 10 policemen. In July, Maoists in central India blew up a bridge, resulting in the deaths of four people. At the same time, government forces also bear responsibility for deadly violence. Amnesty also deplored the killings of 25 Maoist suspects, including 10 indigenous people, in Odisha during the early part of the year. Police have claimed the suspects were armed combatants, though rights activists dispute this.⁴⁶
- 3.10.12** The government's handling of the Maoist insurgency is critical to minority rights. While the rebels claim to represent some of India's most marginalized, including Dalits and indigenous people, it is often these communities that get caught up in the violence. A positive move came in 2011, when the Supreme Court declared that the Chhattisgarh state authorities should disarm and disband the notorious Special Police Officers (SPOs), also known as 'Salwa Judum' or 'Koya Commandos'. The poorly trained militias are alleged to have committed serious human rights violations.
- 3.10.13** In 2013, Human Rights Watch reported that "Impunity remains a serious problem, particularly for abuses committed by security forces in Jammu and Kashmir, the northeast, and areas in central and eastern India facing a Maoist insurgency."⁴⁷ It further reports that "The Maoists have committed numerous serious abuses, such as targeted killings of police, political figures, and landlords. In some cases the Maoists bring alleged "enemies" before their self-declared jan adalat, or people's court, where the Maoists conduct public show trials. Penalties are harsh: suspected informers are beheaded or shot. The Maoists have also abducted public officials and ordinary villagers. The security response of the government to the Maoist threat has resulted in serious human rights violations. State security forces—typically police and

⁴⁴ Guardian, Indian officers named in report on Kashmir abuses, 6 December 2012 <http://www.guardian.co.uk/world/2012/dec/06/indian-soldiers-report-kashmir-abuses>

⁴⁵ Human Rights Watch World Report 2012 – India 31 January 2013 <http://www.unhcr.org/refworld/docid/4f2007d6c.html>

⁴⁶ Minority Rights Group International, State of the World's Minorities and Indigenous Peoples 2012 - India, 28 June 2012 <http://www.minorityrights.org/11374/state-of-the-worlds-minorities/state-of-the-worlds-minorities-and-indigenous-peoples-2012.html>

⁴⁷ Human Rights Watch, World Report 2013 - India, 31 January 2013 <http://www.hrw.org/world-report/2013/country-chapters/india>

paramilitary forces— have arbitrarily arrested, detained, and tortured villagers, who are mostly from disaffected tribal communities. Unable to locate the Maoist fighters who deploy hidden in the forests and ambush soldiers on patrol, the security forces have frequently gone after the “soft target” of civilians suspected of being Maoist supporters. After Maoist ambushes, government security forces have at times assaulted villagers and burned down their homes in retaliation. At particular risk are grassroots civil society activists who struggle to put an end to these abuses. The Maoists frequently accuse them of being informers, and warn them against implementing government programs. The police, meanwhile, demand that the activists serve as informers, and those who refuse risk, being labelled Maoist sympathizers”⁴⁸

See also: [Actors of protection](#) (section 2.2 above)

[Internal relocation](#) (section 2.3 above)

[Caselaw](#) (section 2.4 above)

3.10.14 Conclusion. Perceived members of insurgent groups – particularly those proscribed as terrorist organisations - face arbitrary arrest, detention, assault and extra-judicial killings. Given the length of pre-trial detention, use of torture and poor detention conditions, it is therefore possible that individuals associated with such groups would be able to establish a claim to asylum. In respect of those claimants who can demonstrate a well founded fear of persecution, caseworkers should note that members of these groups have in the past been responsible for serious human rights abuses. If it is accepted that a claimant was an active operational member or combatant for an insurgent militant group and the evidence suggests he/she has been involved in such actions, then caseworkers should consider whether one of the exclusion clauses is applicable. Caseworkers should refer such cases to a Senior Caseworker.

3.10.15 Some applicants claim to fear persecution by terrorists or other non-state agents and there is evidence that suspected government informers have been abducted, beheaded or shot by Maoists. Individuals in this situation are unlikely to be able to access effective protection, but there generally exists the option for those who encounter difficulties to relocate internally (although, for single women who do not relocate as part of a family unit, relocation may be difficult and unduly harsh).

3.11 Ill-treatment of Religious Groups

3.11.1 Some applicants may seek asylum based on a fear of persecution by non-state agents because of their religious faith.

3.11.2 Treatment. According to the 2001 census, Hindus constitute 80.5% of the population, Muslims 13.4%, Christians 2.3%, and Sikhs 1.9%. Groups that together constitute less than 1.1% of the population include Buddhists, Jains, Parsis (Zoroastrians), Jews, and Baha'is. Tribal groups, indigenous groups historically outside the caste system and generally included among Hindus in government statistics, often practice traditional indigenous religious beliefs (animism). There are large Muslim populations in the states of Uttar Pradesh, Bihar, Maharashtra, West Bengal, Andhra Pradesh, Karnataka, and Kerala; Muslims are the majority in Jammu and Kashmir. Although Muslims are a minority nationally, the country has the world's third-largest Muslim population. Slightly more than 85% of Muslims are Sunni; the

⁴⁸ Human Rights Watch, “Between Two Sets of Guns”; Attacks on Civil Society Activists in India’s Maoist Conflict, 30 July 2012, Summary <http://www.hrw.org/sites/default/files/reports/india0712ForUpload.pdf>

rest are Shia. Christian populations are found across the country but in greater concentrations in the northeast, as well as in the southern states of Kerala, Tamil Nadu, and Goa. Three small north-eastern states (Nagaland, Mizoram, and Meghalaya) have large Christian majorities. Sikhs are the majority in the state of Punjab.⁴⁹

- 3.11.3** The US Department of State's International Religious Freedom Report covering 2011 noted that the constitution and other laws and policies protect religious freedom; however, some state and local governments, which hold responsibility under the constitution for law and order, limit this freedom by maintaining or enforcing existing state-level "anti-conversion" legislation and other laws that infringe on the rights of minorities. The country has a federal political system and gives states primary jurisdiction over law enforcement and the maintenance of order, which limits the national government's capacity to deal directly with state-level issues, including abuses of religious freedom. The national law enforcement agency, the Central Bureau of Investigation (CBI), cannot investigate a crime committed in a state without the state government's permission; however, in some instances, the national government's law enforcement authorities have intervened to maintain order when state governments were reluctant or unwilling to do so.⁵⁰
- 3.11.4** The government provides minorities strong official legal protection, although at times its weak law enforcement, lack of trained police, and overburdened court system play a role in not addressing communal tensions as swiftly as possible. The law generally provides remedies for violations of religious freedom and legal protections exist to address discrimination or persecution by private actors.⁵¹
- 3.11.5** The Ministry for Minority Affairs (MMA), the National Human Rights Commission (NHRC), and the National Commission for Minorities (NCM) are governmental bodies created to investigate allegations of religious and other forms of discrimination and make recommendations for redress to the relevant local or national government authorities. Although NHRC recommendations do not have the force of law, central and local authorities generally follow them. The NCM and NHRC have intervened in several instances of communal tension and incidents of harassment and violence against minorities. Such intervention includes high profile cases, such as the 2002 violence in Gujarat and the 2008 attacks against Christians in Odisha (formerly Orissa). The national government earmarked approximately 28 billion rupees [£375m] for 2011-12 - an increase of 14% from the prior year - for the MMA. Under the 1992 National Commission for Minorities Act, five religious communities--Muslims, Sikhs, Christians, Parsis, and Buddhists - are considered minority communities.⁵²
- 3.11.6** The country has a National Commission for Minority Education Institutions which is empowered to resolve disputes and investigate complaints regarding violations of minority rights in the education system, including the right to establish and administer educational institutions.⁵³

⁴⁹ US Department of State: 2011 International Religious Freedom Report - India, 30 July 2012 Section I. Religious Demography <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?dliid=192923#wrapper>

⁵⁰ US Department of State: 2011 International Religious Freedom Report - India, 30 July 2012 Section 11 Legal/Policy Framework <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?dliid=192923>

⁵¹ US Department of State: 2011 International Religious Freedom Report - India, 30 July 2012 Section 11 Legal/Policy Framework <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?dliid=192923>

⁵² US Department of State: 2011 International Religious Freedom Report - India, 30 July 2012 Section 11 Legal/Policy Framework <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?dliid=192923>

⁵³ US Department of State: 2011 International Religious Freedom Report - India, 30 July 2012 Section 11 Legal/Policy Framework <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?dliid=192923>

- 3.11.7** There were reports of abuses of religious freedom, although none claimed national government involvement. The national government generally respected religious freedom in law and in practice; there was no change in the status of respect for religious freedom by the government. The national government generally enforced legal protections for religious freedom; however, human rights activists criticised it for alleged inaction regarding abuses committed by state and local authorities and private citizens. State governments limited religious freedom by implementing some restrictive laws and by not efficiently or effectively prosecuting those who attacked religious minorities. There were reports of arrests but no convictions under the “anti-conversion laws” during 2011. There were no reports of district magistrates denying permission for religious conversions.⁵⁴
- 3.11.8** The vast majority of citizens of all religious groups lived in peaceful coexistence and was conscious of religious freedom and minority rights; however, at times, violence between religious groups and organised communal attacks against religious minorities occurred. However, the Ministry of Home Affairs (MHA) reported that incidents of communal violence decreased during 2011 compared to 2010. The country’s democratic system, open society, independent legal institutions, vibrant civil society, and free press actively provided mechanisms to address violations of religious freedom when they occurred.⁵⁵ The MHA reported to parliament that from January to October 2011 there were 485 instances of communal violence or violence along religious lines, in which 90 people were killed and 1,637 injured. The national government, led by the United Progressive Alliance (UPA), continued to implement an inclusive and secular platform that included respect for the right to religious freedom. However, due to a lack of sufficiently trained police and elements of corruption, the law was not always enforced rigorously or effectively in cases pertaining to religiously oriented violence, and prosecution continued to be weak. These shortcomings were exacerbated by a low police-to-population ratio, corruption, and an overburdened, antiquated court system.⁵⁶
- 3.11.9** There were cases of communal attacks on religious minorities and their property, and allegations of police brutality. In several instances those who had been attacked reportedly were arrested, and there were allegations that the police protected the attackers, not the victims.⁵⁷
- 3.11.10** In 2013, Human Rights Watch noted that religious minorities remain marginalized and continue to suffer discrimination because of government failure to train public officials in stopping discriminatory behaviour.⁵⁸ According to the Jubilee Campaign, “the majority of instances of communal violence have been perpetrated by Hindu extremists against Muslims, including notoriously in Gujarat in 2002 and in numerous episodes since. Christians have been targeted repeatedly, although attacks on this community usually take the form of frequent, individual attacks, most numerous in Karnataka. Absent, ineffective or partisan police responses reinforce a culture of impunity”.⁵⁹

⁵⁴ US Department of State: 2011 International Religious Freedom Report - India, 30 July 2012 Section 11 Government Practices <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?dliid=192923>

⁵⁵ US Department of State: 2011 International Religious Freedom Report - India, 30 July 2012 Executive Summary <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?dliid=192923>

⁵⁶ US Department of State: 2011 International Religious Freedom Report - India, 30 July 2012 <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?dliid=192923>

⁵⁷ US Department of State: 2011 International Religious Freedom Report - India, 30 July 2012 <http://www.state.gov/j/drl/rls/irf/religiousfreedom/index.htm?dliid=192923>

⁵⁸ Human Rights Watch, World Report 2013 - India, 31 January 2013 <http://www.hrw.org/world-report/2013/country-chapters/india>

⁵⁹ Jubilee Campaign, Written statement to the UN Human Rights Council submitted by The Jubilee Campaign, anon-governmental organization in special consultative status, 22 February 2012

3.11.11 The International Association for Religious Freedom submitted that it is “very concerned by the fact that in many states of India, religious minorities especially Muslim and Christian but including indigenous and tribal peoples and Dalits have come under serious attack in recent years. It is reported that Hindu fundamentalist groups have distributed malicious propaganda and carried out violent attacks on various religious minorities in several states. In the states of Gujarat, Rajasthan and Madhya Pradesh, and in parts of the states of Maharashtra and Karnataka, state police and other security agencies allegedly victimise members of Muslim communities because most of them are seen as “terrorists”. In the past five years there has been an increasing number of violent attacks on Christians reported from different parts of India, especially the North East and the states of Gujarat and Karnataka. These have included: sexual assault on religious women’s orders; burning of churches; vandalism of church property; desecration of religious symbols; illegal detention and abduction”.⁶⁰

3.11.12 Christian Solidarity Worldwide reported in January 2013 that human rights monitors regard sexual violence as an endemic feature of targeted violence against religious minorities.⁶¹ Amnesty International considers that “Discriminatory attitudes on the part of police and other officials contribute to denial of justice for survivors of sexual violence. Gender-based discrimination combined with discrimination on the basis of caste, ethnicity or religion increases the likelihood that women and girls from Dalit or Adivasi communities or religious minorities will be denied justice”.⁶²

See also: [Actors of protection](#) (section 2.2 above)

[Internal relocation](#) (section 2.3 above)

[Caselaw](#) (section 2.4 above)

3.11.13 Conclusion. The Indian constitution guarantees the rights of religious minorities and there are avenues open for individuals to seek protection from the authorities where they experience ill-treatment on account of their religious beliefs. As evidenced by the NHRC findings in respect of the extreme violence in February 2002 in Gujarat, there is monitoring, investigation and redress for those who are victim to religious violence even in the most extreme circumstances. Perpetrators of religious violence against Christians, Muslims and Hindus have been prosecuted for their actions. However, given that the government has been criticised for weak law enforcement and inaction regarding abuses committed by state and local authorities and private citizens, each case should be carefully considered on its own merits.

3.11.14 Furthermore, there exists the option for those who encounter such difficulties to relocate internally although, for single women who do not relocate as part of a family unit, relocation may be difficult and unduly harsh. Another exception to this may be high-profile religious leaders in very specific and individual circumstances for whom there may not be a sufficiency of protection as detailed above, though these cases

http://www.ecoi.net/file_upload/1930_1337788595_g1210712.pdf

⁶⁰International Association for Religious Freedom, Written statement to the UN Human Rights Council submitted by the International Association for Religious Freedom, a non-governmental organization in general consultative status, 28 February 2013 http://www.ecoi.net/file_upload/1930_1334580606_g1210922.pdf

⁶¹ Christian Solidarity Worldwide, CSW urges fresh attention to rape as an endemic feature of communal violence, 8 January 2013 <http://dynamic.csw.org.uk/article.asp?t=press&id=1475&search=>

⁶² Amnesty International, Amnesty International submission to the Justice Verma Committee, 4 January 2013, D. Implementation of laws and accountability <http://www.amnesty.org/en/library/asset/ASA20/002/2013/en/26fed035-db4a-4873-afbd-b23eceb11fd0/asa200022013en.pdf>

are likely to be extremely rare. Such cases may result in a grant of asylum or Humanitarian Protection.

3.12 Land disputes

- 3.12.1** Some applicants may claim asylum on the grounds that they fear persecution after having become involved in a dispute over land typically with a family member.
- 3.12.2 Treatment.** Land records are vital documents for both farmers and the government, used to prove ownership and required for numerous administrative functions as well. Land records are needed three times a year to secure crop loans; they are also used for verification and for access to pensions and various other government programs.⁶³ The computerisation of land records in India were advocated in 1985 and a centrally sponsored scheme was started in 1988.⁶⁴
- 3.12.3** Transfers of land are currently controlled by a land acquisition act dating from 1894. According to the act, the authorities could enforce the sale of land for projects in the "public interest". Originally this meant roads, dams, hospitals and other such projects, say experts. But, increasingly, the authorities have used the law to force farmers to sell land for all manner of projects. Many of the disputes about land acquisition by the authorities have taken place close to the nation's cities, which were continuously growing and where new townships were springing up on the peripheries. In the aftermath of protests over a land dispute in Bhatta-Parsaul, police reportedly set light to hayricks, destroyed property and beat people. Several villagers displayed washing machines and radios that had been smashed and broken. Dozens of local men are apparently on the run, fearful of being arrested.⁶⁵
- 3.12.4** According to Forbes India in the report "The Law of the Land" published in June 2010, there were large numbers of cases in India's courts over disputed land ownerships. The underlying issue had been the lack of a clear and conclusive system of land titles, which opened up avenues for manipulation of records and stealing of property.⁶⁶
- 3.12.5** The same report noted that In conjunction, with the computerisation of land records, the government's Land Titling Bill would bring about a fundamental shift in the way land records were made, kept and used in India. The old presumptive system would go, and with it, all the complex documentation about past transfers and encumbrance would vanish. It would be replaced by a single register of land titles for the entire country, conclusively establishing the names of current owners. Most importantly, it would come with explicit guarantee of the ownership which meant casual and infructuous disputes that the old system encouraged would not be possible anymore. Genuine disputes could still be pursued but not before they have been considered by a tribunal to be set up by a new Land Titling Authority. This will make the process of understanding titles much easier and eliminate property frauds.⁶⁷

⁶³ World Bank: News & Broadcast – India: Land Records Online. Updated 2004
<http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0,,contentMDK:20511729~menuPK:141311~pagePK:34370~piPK:34424~theSitePK:4607,00.html>

⁶⁴ Kuldip Rai and D.K. Bhalla, Computerisation of Land Records in India, updated (accessed March 2013)
www.gisdevelopment.net/application/lis/overview/lisrp0015a.htm

⁶⁵ The Independent. Death toll grows as India goes to war over cut-price land deals 25 May 2011.
www.independent.co.uk/news/world/asia/death-toll-grows-as-india-goes-to-war-over-cutprice-land-deals-2286525.html

⁶⁶ Forbes – India – The Law of the Land 23 June 2010 <http://forbesindia.com/printcontent/14382>

⁶⁷ Forbes – India – The Law of the Land 23 June 2010 <http://forbesindia.com/printcontent/14382>

- 3.12.6** Land acquisition has become a controversial issue and in recent years, farmers have clashed with the police while resisting efforts by the government to take over their land for factories and housing, challenging the setting up of vast special economic zones and even defeated a car factory being built on farmland acquired by the government. In an effort to gain votes, politicians rushed in to commiserate with irate farmers protesting at the takeover of their land. Farm productivity and revenues have been declining for years. Agriculture contributes less than a quarter to India's GDP but India has the second largest arable area in the world after the US and, more importantly, more than 70% of Indians continue to live off the land. They have primordial and cultural links with land and it gives them dignity and security.⁶⁸
- 3.12.7** It has been reported that the government of India has not been a great help. Using a 117-year-old colonial law called the Land Acquisition Act, aptly called the Indian Expropriation Act in its early days it has, for decades, forcibly obtained land without the consent of owners to build roads, bridges, factories, highways and homes - all in the name of 'public interest'. The law been adjusted over the years, but it still essentially remained an unfair and antiquated one. The new Land Acquisition and Amendment Bill which is to be tabled in Parliament in July - has become the talking point in India. It proposes a fairer deal for land owners by giving them better compensation, expanding the rights of those displaced and limits acquisitions to "public purposes". Two examples of how the radical new law would work is it proposes to pay farmers up to six times more than the market rate for land; and contains a key stipulation requiring the consent of 80% of land owners for their land to be sold for industry. The proposed new law also says social impact studies must be conducted for large scale displacement - 4,000 families in the plains or 200 families in hill and tribal areas - when land is being acquired. Some 40 million people in India have been displaced by land takeovers for developmental projects since 1950. By one estimate, an alarming 75% of them are still awaiting rehabilitation. The proposed law also talks about compensation for tribal people, forest dwellers and non-land owning farm workers. It prohibits changing the use of land after it is acquired for a specific purpose. Most agree that India needs a fairer land acquisition law. At the same time few would disagree that the country needs more industries to spur growth and create more jobs - and to set up more industries you need more land.⁶⁹
- 3.12.8** Across the north-east, including Assam and Meghalaya States, a worrying scarcity of communal land in the area is one of the drivers of what has become a rarely reported ethnic conflict. According to a report by the Internal Displacement Monitoring Centre and the Norwegian Refugee Council, almost 50,000 people were displaced during violent clashes between the Rabha and Garo peoples as the year began. Monitors say at least 76,000 remained homeless as of November 2011.⁷⁰ The Austrian Centre for Country of Origin and Asylum Research and Documentation details a number of violent inter-communal land disputes between March and June 2012 resulting in deaths and injuries.⁷¹ For example, in June 2012 four villagers were

⁶⁸ BBC News – Land bill: A New Deal For Farmers – 14 September 2011 <http://www.bbc.co.uk/news/world-south-asia-14877704>

⁶⁹ BBC News – Land bill: A New Deal For Farmers – 14 September 2011 <http://www.bbc.co.uk/news/world-south-asia-14877704>

⁷⁰ Minority Rights Group International, State of the World's Minorities and Indigenous Peoples 2012 - India, 28 June 2012 <http://www.minorityrights.org/11374/state-of-the-worlds-minorities/state-of-the-worlds-minorities-and-indigenous-peoples-2012.html>

⁷¹ ACCORD - Austrian Centre for Country of Origin and Asylum Research and Documentation: Query response on land disputes in India, 14 June 2012 http://www.ecoi.net/local_link/220539/327757_en.html

killed and 18 others injured when two groups attacked each other with crude bombs and sharp weapons over a land dispute in Vangara mandal.⁷²

3.12.9 According to sources consulted by the Australian Refugee Review Tribunal, those facing pressure to give up their land are often the victims of the “land mafia” – a group of unscrupulous real estate agents and hired thugs who engage in land grabs and illegal sales of land. While there have been reports of successful prosecutions of members of the land mafia, there are allegations of collusion between the land mafia and the police and the ability of land-grab victims to obtain state protection is also reported to be inhibited by corruption in the police force and the ability of the victims to pay bribes.⁷³

See also: [Actors of protection](#) (section 2.2 above)

[Internal relocation](#) (section 2.3 above)

[Caselaw](#) (section 2.4 above)

3.12.10 Conclusion. Sufficient protection is likely to be available in all parts of India for persons involved in inter-communal land disputes, apart from cases where there is evidence that the police collude with the group involved. Protection will not be available when the State is the agent of persecution. Those who are unable or, owing to fear, unwilling to avail themselves of the protection of the authorities, may be able to relocate to another part of India (although, for single women who do not relocate as part of a family unit, relocation may be difficult and unduly harsh).

3.13 Violence against women

3.13.1 Applicants may claim asylum on the basis of their fear of domestic or other forms of violence.

3.13.2 Treatment. The law provides for protection from all forms of abuse against women in the home, including physical, sexual, verbal, emotional, or economic abuse, as well as threat of abuse; however, domestic abuse remained a serious problem. Lack of law enforcement safeguards and pervasive corruption limited the effectiveness of the law. The law recognizes the right of a woman to reside in a shared household with her spouse or partner while the dispute continues, although a woman can be provided with alternative accommodations at the partner’s expense. The law also provides women with the right to police assistance, legal aid, shelter, and access to medical care. While the Ministry of Women and Child Development (MWCD) has guidelines for the establishment of these social services, lack of funding, personnel, and proper training resulted in limited services, primarily available only in metropolitan areas. The MWCD reported that there were only 6,483 protection officers appointed in police forces across the country.⁷⁴

3.13.3 The US State Department report that domestic violence continued to be a problem, and the National Family Health Survey revealed that more than 50 percent of women reported experiencing some form of violence in their home. The NCRB reported that

⁷² ACCORD - Austrian Centre for Country of Origin and Asylum Research and Documentation: Query response on land disputes in India, 14 June 2012 http://www.ecoi.net/local_link/220539/327757_en.html

⁷³ Australia: Refugee Review Tribunal, India: 1. Is the BJP in power in Punjab? 2. Do authorities in Punjab protect those facing harassment from the BJP? 4. Are those in Punjab who face pressure to give up their land able to obtain state protection? , 12 April 2011 <http://www.unhcr.org/refworld/docid/4f460c1e2.html>

⁷⁴ US State Department, Country Reports on Human Rights Practices for 2012: India. 19 April 2013. Section 6. Discrimination, Societal Abuses, and Trafficking in Persons <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204399>

in 2011 there were 99,135 reported cases of “cruelty by husband and relatives,” an increase of 5.4 percent from the previous year. Advocates reported that many women refrained from reporting domestic abuses due to social pressures.⁷⁵

3.13.4 The law forbids the provision or acceptance of a dowry, but families continued to offer and accept dowries, and dowry disputes remained a serious problem. The law also bans harassment in the form of dowry demands and empowers magistrates to issue protection orders. Deaths associated with the non payment of dowries rose in the past several years. According to the NCRB, in 2011 there were 8,618 reported dowry deaths, mostly bridal deaths at the hand of in-laws for failure to produce a dowry. Uttar Pradesh had the highest number of dowry deaths with 2,322 cases, followed by 1,413 cases in Bihar. However, since many cases were not reported or monitored, statistics were incomplete. The NCRB reported that 23,280 persons were arrested and 6,503 persons were convicted for dowry death in 2011.⁷⁶

3.13.5 So-called honour killings continued to be a problem, especially in Punjab and Haryana, where as many as 10 % of all killings were honour killings. In some cases the killings were the result of extrajudicial decisions by traditional community elders such as “khap panchayats,” unelected caste-based village assemblies that have no legal authority. Statistics for honour killings were difficult to verify, since many were unreported or passed off as suicide or natural deaths by family members. NGOs estimated that at least 900 such murders occurred every year in Haryana, Punjab, and Uttar Pradesh alone. The most common justification for the killings offered by those accused or by their relatives was that the victim married against her family’s wishes.⁷⁷

3.13.6 In February 2013, UNIFEM published the results of a survey in Delhi which found that 95 % of women and girls feel unsafe in public spaces. Nearly 73% of women also said they do not feel safe in their own surroundings as well and reported feeling unsafe all the time.⁷⁸ In cases of sexual violence, many men blamed women for their behaviour. In the study, three out of four agreed with the statement ‘Women provoke men by the way they dress’ and two men out of five fully or partially agreed that ‘Women moving around at night deserve to be sexually harassed’.⁷⁹

3.13.7 The Indian Penal Code, under Section 498-A, criminalised domestic cruelty and unlawful harassment, whether committed by the husband himself or by a relative of his. It carried a maximum sentence of three years imprisonment and a fine.⁸⁰

⁷⁵ US State Department, Country Reports on Human Rights Practices for 2012: India. 19 April 2013. Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204399>

⁷⁶ US State Department, Country Reports on Human Rights Practices for 2012: India. 19 April 2013. Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204399>

⁷⁷ US State Department, Country Reports on Human Rights Practices for 2012: India. 19 April 2013. Section 6. Discrimination, Societal Abuses, and Trafficking in Persons

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204399>

⁷⁸ UNIFEM, UN Women supported survey in Delhi shows 95 per cent of women and girls feel unsafe in public spaces, 20 February 2013

<http://www.unwomen.org/2013/02/un-women-supported-survey-in-delhi-shows-95-per-cent-of-women-and-girls-feel-unsafe-in-public-spaces/>

⁷⁹ UNIFEM, UN Women supported survey in Delhi shows 95 per cent of women and girls feel unsafe in public spaces, 20 February 2013

<http://www.unwomen.org/2013/02/un-women-supported-survey-in-delhi-shows-95-per-cent-of-women-and-girls-feel-unsafe-in-public-spaces/>

⁸⁰ The Net Lawman Indian Penal Code (Act No.45 of Year 1860) <http://www.netlawman.co.in/acts/indian-penal-code-1860.php>

- 3.13.8** The Protection of Women from Domestic Violence Act 2005 (PWDVA) came into force in October 2006. It enables victims of domestic violence to seek interim protection and residence orders, as well as compensation and maintenance. The Act protected women not only from abuse by a spouse, but also members of the spouse's family. Its definition of violence against women includes physical, sexual, psychological, verbal, and economic abuse. Evidence proving abuse was tested on a balance of probabilities; proof beyond reasonable doubt was not required. In the absence of eye witnesses, circumstantial evidence was considered. The victim of domestic violence dealt primarily with a Protection Officer, rather than the police.⁸¹ Protection officers facilitate access to court and support systems and take action to prevent further domestic violence. On behalf of a woman, protection officers can also file domestic incident reports (DIRs) with the police and relevant magistrate. In essence protection officers, who are predominantly women, act as a link between the judicial machinery and the society and perform a variety of important tasks necessary to bring the relief available under the Act.⁸²
- 3.13.9** In January 2013, the 6th monitoring report of the Protection of Women from Domestic Violence Act (PWDVA) was launched. During the conference, many noted that despite the progress made, there are a range of areas in which improvements are still necessary. Patriarchal beliefs and biases still affect service delivery in the justice system. Other challenges include the employment of under-skilled Protection-Officers. Many women still remain unaware of the existence of the PWDVA and the services that exist to support women through domestic violence. Others criticized the insufficient budget proposed for the PWDVA in the draft Twelfth Five Year Plan.⁸³
- 3.13.10** The Human Rights watch World Report 2013 noted that violence against women and girls continued in 2012, with increased reports of sexual assault, including against those with disabilities. The government had yet to properly investigate and prosecute sexual abuse in police custody. The report continued that India has yet to enact amendments to reform its penal laws to recognize a wide range of sexual offenses. While the central government modified its protocols for handling rape investigations, removing questions on the degrading "two-finger test," the changes still fall short of World Health Organization (WHO) guidelines on sexual assault, especially regarding medical treatment for victims.⁸⁴
- 3.13.11** India has a strong law to curb child marriages but the government also pursues discriminatory policies. In central India's Madhya Pradesh state, for example, adult candidates are barred from taking state civil service exams if they were forced to marry as children. The government continued to limit its nutrition programs for pregnant mothers in many states to women ages 19 and older, and up to two live births only, excluding many young mothers from benefits.⁸⁵
- 3.13.12** When rape is reported, the problem is not that India does not have enough laws to adequately punish those convicted (at least for penile penetrative rape). Instead, the lack of certainty in prompt police response coupled with poor investigation and

⁸¹ UNIFEM South Asia Staying Alive: Third Monitoring and Evaluation Report 2009 on the Protection of Women from Domestic Violence Act, 2005

[http://www.unifem.org.in/PDF/Staying%20Alive%20Third%20M&E%20Report%202009%20\(final\).pdf](http://www.unifem.org.in/PDF/Staying%20Alive%20Third%20M&E%20Report%202009%20(final).pdf)

⁸² IRB - Immigration and Refugee Board of Canada: India: Domestic Violence. IND103450.E 13 May 2010

http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=452952&l=e

⁸³ UN Women, 6 Years after introducing domestic violence laws: How are we faring? 21 January 2013

<http://www.unwomensouthasia.org/2013/6-years-after-introducing-domestic-violence-laws-how-are-we-faring/>

⁸⁴ Human Rights Watch, World Report 2013 - India, Women's Rights. 31 January 2013

<http://www.hrw.org/world-report/2013/country-chapters/india>

⁸⁵ Human Rights Watch, World Report 2013 - India, Women's Rights. 31 January 2013

<http://www.hrw.org/world-report/2013/country-chapters/india>

evidence collection hampers prosecutions. Sexual assault is a serious problem in India. Even the underreported official data for rape from the National Crime Records Bureau shows a steady rise in registered cases. In 2011, 24,206 cases were registered. The average conviction rate for rape in India was 26 %.⁸⁶

3.13.13 Among the most contested evidence during rape investigation and trial is the medical examination report of the victim. This report can have a crucial impact on the case's outcome, at most providing corroboration of the victim's claims by documenting injuries and other evidence of rape. Poorly written or interpreted, it can undermine a victim's credibility. India has no uniform format for compiling medical reports. This allows doctors in different parts to conduct examinations using differing or no standards; wrongly conclude that the complaint is unsupported by medical evidence when the evidence in many cases is inconclusive; reach damaging conclusions unsupported by the evidence; or even rely on outdated stereotypes about rape.⁸⁷

3.13.14 In January 2013, UN High Commissioner for Human Rights welcomed a new report proposing ways to tackle violence against women in India saying it represented a groundbreaking basis for action. The report was produced by the Verma Committee was set up in the wake of the death of a 23-year-old woman whose gang-rape in New Delhi in December 2012 sparked nationwide protests. The report recommends a number of far-reaching changes, including punishment for marital rape, domestic rape and rape in same-sex relationships; requiring police officers to register every case of reported rape and ensuring that those who fail to do so face serious repercussions; ensuring accountability of police or armed forces personnel for sexual violence; and punishing offences such as stalking and voyeurism with prison terms. UN High Commissioner for Human Rights acknowledged some steps already taken by the Government, including the establishment of fast-track courts, and urged all political leaders of the country to rally around the Verma report and make it a national priority to execute its recommendations.⁸⁸

3.13.15 On 3 February 2013 Criminal Law (Amendment) Ordinance, 2013 was promulgated by the President of India, Pranab Mukherjee and provides for amendment of the Indian Penal Code, Indian Evidence Act, and Code of Criminal Procedure, 1973 on laws related to sexual offences.⁸⁹ The Ordinance, based in part on, but beyond the recommendations of the Verma Committee proposes to provide the death penalty in cases of rape that leads to death of the victim or leaving her in a vegetative state. It also seeks to replace the word 'rape' with 'sexual assault' to expand the definition of all types sexual crimes against women. The Ordinance also proposed enhanced punishment for other crimes against women like stalking, voyeurism, acid attacks, indecent gestures like words and inappropriate touch and brings into its ambit 'marital rape'.⁹⁰

3.13.16 External affairs minister Salman Khurshid, apparently taking cognizance of complaints about the amendments incorporated in the ordinance not being tough

⁸⁶ Human Rights Watch, What ails rape investigation in India?, 19 December 2012.

<http://www.hrw.org/news/2012/12/19/what-ails-rape-investigation-india>

⁸⁷ Human Rights Watch, What ails rape investigation in India?, 19 December 2012.

<http://www.hrw.org/news/2012/12/19/what-ails-rape-investigation-india>

⁸⁸ UN News Centre. UN rights chief praises groundbreaking report on violence against women in India. 25 January 2013. <http://www.un.org/apps/news/story.asp?NewsID=44000&Cr=india&Cr1=rights>

⁸⁹ Press Information Bureau, Government of India 3 February 2013

<http://pib.nic.in/newsite/erelease.aspx?relid=91979>

⁹⁰ Zee News. Ordinance on crime against women comes before Parliament . 21 February 2013.

http://zeenews.india.com/news/nation/ordinance-on-crime-against-women-comes-before-parliament_830610.html

enough, said there was room for widespread consultation when the Criminal Laws Amendment Bill seeking to replace the ordinance is brought before Parliament. He said bringing the ordinance was necessary in order to address the urgency that people wanted to see from the government on the issue. "All you can do is when Parliament is not in the session is to bring an ordinance, which is what we have done... It does not mean that widespread consultation cannot take place when the actual Bill is brought to Parliament."^{91 92} According to Amnesty International and Human Rights Watch "the ordinance falls short of international human rights standards in several ways, by failing to criminalise the full range of sexual violence with appropriate punishments in accordance with international human rights law. It includes vague and discriminatory provisions, and introduces capital punishment in some cases of sexual assault. The ordinance also retains effective legal immunity for members of state security forces accused of sexual violence, harms rather than helps teenagers by increasing the age of consent to sex, and defines "trafficking" in a way that might conflate it with adult consensual sex work".⁹³

3.13.17 Amnesty International submitted to the Verma Committee that "There are many gaps in the implementation of current laws and any law reform will not be effective unless mechanisms are adopted to ensure the proper implementation of the existing, and any amended laws on crimes of sexual violence. Numerous failures in implementation of existing laws result in denial of justice to survivors of sexual violence at the very first stage of the process. These include police refusal to register a First Information Report (FIR) (which records the initial information/ complaint of offences reported to be committed), police registering the case under incorrect (usually lesser) sections of the IPC, delays to registration of the FIR and failure to conduct an effective, impartial investigation. The police force and the criminal justice system in general must be held accountable for the administration of the law, including the proper registration and prompt investigation of all reported rapes and other crimes of sexual violence. There must be an effective independent complaints mechanism for holding officials to account for failing in their duties. Discriminatory attitudes on the part of police and other officials contribute to denial of justice for survivors of sexual violence. Gender-based discrimination combined with discrimination on the basis of caste, ethnicity or religion increases the likelihood that women and girls from Dalit or Adivasi communities or religious minorities will be denied justice".⁹⁴

3.13.18 According to sources consulted by the Immigration and Refugee Board of Canada, police are reluctant to register complaints of violence against women and sources also report that police have been the perpetrators of sexual abuse.⁹⁵ A representative of Swayam, a Kolkata-based women's rights organization noted that "crimes against women are not given the same importance as... crimes against

⁹¹ Times of India. Open to revisions in anti-rape bill: Govt. 3 February 2013.

http://articles.timesofindia.indiatimes.com/2013-02-03/india/36720889_1_ordinance-route-salman-khurshid-political-parties

⁹² Times of India. Open to revisions in anti-rape bill: Govt. 3 February 2013.

http://articles.timesofindia.indiatimes.com/2013-02-03/india/36720889_1_ordinance-route-salman-khurshid-political-parties

⁹³ Human Rights Watch, India: Reject New Sexual Violence Ordinance, 12 February 2013

<http://www.hrw.org/news/2013/02/11/india-reject-new-sexual-violence-ordinance>

⁹⁴ Amnesty International, Amnesty International submission to the Justice Verma Committee, 4 January 2013, D. Implementation of laws and accountability

<http://www.amnesty.org/en/library/asset/ASA20/002/2013/en/26fed035-db4a-4873-afbd-b23eceb11fd0/asa200022013en.pdf>

⁹⁵ Immigration and Refugee Board of Canada, Rates of women lodging complaints with police for violent crimes; police response to female victims of violence [IND104059.E] 9 May 2012

http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453974&l=e

men". The representative also noted that few officers took complaints of domestic violence seriously and that the "majority of them consider it a 'family problem', which should be sorted at home", sometimes refusing to register complaints, particularly if there are no "serious physical injuries."⁹⁶

See also: [Actors of protection](#) (section 2.2 above)

[Internal relocation](#) (section 2.3 above)

[Caselaw](#) (section 2.4 above)

3.13.19 Conclusion. Those experiencing or fearing domestic violence, or other forms of gender based violence are able to seek protection from the Indian authorities. However, given the lack of law enforcement safeguards, including the refusal to register domestic violence complaints, discriminatory attitudes held by the police, failures in conducting effective investigations and corruption, each case should be considered on its individual merits to assess whether effective protection will be provided. Additionally, some women's ability to access this help and assistance may be further limited by such factors as their location, lack of literacy and lack of awareness of their rights in what remains a patriarchal society

3.13.20 For some women in India relocation will not be unduly harsh but this is only likely to be the case where the individual is single, without children to support, able to access safe accommodation and is educated enough to be able to support herself. Some single women may also be able to relocate to live with extended family or friends in other parts of the country. However, where these circumstances do not apply internal relocation is likely to be unduly harsh

3.13.21 Where an Indian woman is able to show that she faces a real risk of domestic or other form of gender based violence amounting to torture or inhuman or degrading treatment, is unable, or unwilling through fear, to access protection and where internal relocation is unduly harsh, a grant of Humanitarian Protection will be appropriate.

3.14 Gay men, lesbians, bisexual and transgender persons

3.14.1 Some applicants may make an asylum and/or human rights claim based on ill-treatment amounting to persecution as a consequence of their sexual orientation.

3.14.2 Treatment. In 2009 the Delhi High Court overturned a portion of Section 377 of the Penal Code, which prohibited same-sex sexual activity. During 2012 the Supreme Court heard appeals from groups and individuals opposed to the ruling. The government clarified that it supported the legalisation of homosexuality and abolishment of section 377, The Supreme Court has not yet given a judgment on the appeal.⁹⁷

3.14.3 Reports suggest that even before the 2009 High Court ruling, homosexuality had become more tolerated in large cities and that there was an emerging gay movement. Advice dated July 2003 from the Australian Department of Foreign Affairs and Trade, as quoted in a Refugee Review Tribunal (Australia) case of

⁹⁶ Immigration and Refugee Board of Canada, Rates of women lodging complaints with police for violent crimes; police response to female victims of violence [IND104059.E] 9 May 2012

http://www.irb-cisr.gc.ca:8080/RIR_RDI/RIR_RDI.aspx?id=453974&l=e

⁹⁷ US State Department, Country Reports on Human Rights Practices for 2012: India. 19 April 2013. Section 6 Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204399>

September 2007, said: “It is true that homosexuality is more tolerated in large cities than it is in other areas of India. In those cities (particularly Mumbai and Delhi, but also in other cities such as Bangalore and Kolkata) it is possible for gay men and lesbian women to live in a publicly acknowledged homosexual relationship. The likelihood of a person being open about their homosexuality is much greater among the more affluent and educated sections of society (these sections of society are often more accepting or tolerant of lifestyles and behaviour that do not conform to traditional or conservative Indian custom). Some of the NGO representatives with whom we spoke told us that while it might be possible to live in a publicly acknowledged homosexual relationship, it certainly is not easy. For these reasons the majority of gay people prefer to keep their sexuality a private matter...” “There is an emerging gay movement in India, restricted largely to urban areas. Mumbai and Delhi appear to be the cities with a more active and open gay culture. While there are no ‘gay’ nightclubs, there are some clubs (one in Delhi and perhaps two in Mumbai) which have gay and lesbian nights one night per week. These clubs are currently operating without police harassment. Large parties advertised on websites such as gay Delhi are held each month in Delhi and Mumbai at private venues. They generally operate free from police harassment, though this is not always the case.”⁹⁸

- 3.14.4** An article published in The Times of India on 3 July 2010 noted some significant changes affecting the LGBT community in the 12 months since the Delhi High Court ruling. “The change may be slow in coming, but it is undoubtedly on the way. In the last year, activists say there has been a spurt of gay activity in the open, not just in the overhang ... It has also taken away some of the stigma associated with being gay ... ‘One of the upsides to the verdict is that we can no longer sweep homosexuality under the carpet saying it’s a western phenomenon,’ says Anjali Gopalan, executive director of Naz Foundation which brought the challenge to the gay sex law. ‘Still, the judgment didn’t automatically bring with it a change in social attitudes. For those to change, it’s important to engage society as a whole’ ... In cosmopolitan cauldrons like Mumbai, Delhi and Chennai, queer India is being seen and heard.”⁹⁹ A report in the Hindustan Times of 2 July 2010 reached similar conclusions, quoting a gay activist: “The situation is changing drastically. As you can see that the police and the public are not concerned with what we are doing...”¹⁰⁰
- 3.14.5** In similar vein the Economic Times commented in an article on 2 July 2010 that LGBT persons are often doing well and secure in their jobs, liked and respected by colleagues, with decent career paths ahead of them, and sometimes supportive bosses. Having a good job and salary is also vital in giving them more options in their private lives. And yet they often find themselves constrained in the workplace and unable to be as open as their fellow employees.¹⁰¹
- 3.14.6** However it has been reported that even if the 2009 High Court decision is upheld by the Supreme Court - as gay-rights groups and legal experts think it will be - India’s gays and lesbians will still not have the same rights as heterosexuals. They will have no protection against discrimination at work or school, or when buying or renting a house. Same-sex marriage will still not be legal, nor will adoption. Such advances

⁹⁸ Australia: Department of Foreign Affairs and Trade. Advice on the treatment of LGBT persons in India (July 2003), as quoted in Refugee Review Tribunal (Australia) case 071494945 [2007] RRTA 276, 19 September 2007. <http://www.unhcr.org/refworld/pdfid/47ea2e4e2.pdf>

⁹⁹ The Times of India. Pink India tiptoes out of the closet. 3 July 2010

<http://timesofindia.indiatimes.com/india/Pink-India-tiptoes-out-of-the-closet/articleshow/6123358.cms>

¹⁰⁰ Hindustan Times. Gays celebrate one year of Delhi High Court judgment, 2 July 2010.

<http://www.hindustantimes.com/Gays-celebrate-one-year-of-Delhi-High-Court-judgment/Article1-566604.aspx>

¹⁰¹ Economic Times. ‘How things are finally changing for gays in the workplace’: 2 July 2010

<http://economictimes.indiatimes.com/features/corporate-dossier/How-things-are-finally-changing-for-gays-in-the-workplace/articleshow/6115938.cms>

will require new laws from India's parliament - and no one expects that to happen any time soon.¹⁰²

- 3.14.7** The US State Department have reported that although LGBT groups were active throughout the country, sponsoring events and activities including rallies, gay pride marches, film series, and speeches, it is reported that they faced discrimination and violence throughout society, particularly in rural areas.¹⁰³
- 3.14.8** Still, after more than a century of being spurned by their families, reviled in public and harassed by police, India's gays and their supporters say the Section 377 ruling is encouraging a gradual emergence from the shadows. "They're not so open with their families yet, but they feel relatively more free now," said Anand Grover, lawyer and director of the Lawyers Collective HIV/AIDS Unit. While the situation remains difficult for many homosexuals, particularly in rural areas, Grover points to the new gay tourism market, the spread of "queer parties" at nightclubs, and the rising divorce rate among gay men who had previously been pressured to marry women.¹⁰⁴
- 3.14.9** There are indeed signs of a transition underway in India. Gay-themed businesses are opening in areas where they once would not have dared to flaunt their sexuality. In 2011, the soap opera *Maryada: Lekin Kab Tak?* (Honor: But at What Cost?) became the first TV serial to feature an openly gay character. Gay protesters have jettisoned the masks they used to protect their identities during equal-rights marches. Talk shows feature questions about homosexuality and venues host events explicitly marketed for gays and lesbians.¹⁰⁵ In some big cities, homosexuality is slowly gaining acceptance, and a few high-profile Bollywood films have dealt with gay issues.¹⁰⁶
- 3.14.10** However in May 2012 Anjali Gopalan, head of The Naz Foundation, is reported as saying that legalising homosexuality has had little impact on the deeply entrenched homophobia in India, where thousands of gays still face discrimination and a lack of basic rights. India has moved faster than other countries in South Asia in legalizing homosexuality, and there are more young people coming out. The country staged its first "Queer Pride Parade" in the capital in 2008, and has done so every year since.¹⁰⁷ The November 2012 Pride parade in New Delhi was reported as being one of the largest seen in the event's five-year history.¹⁰⁸ But for most of the country's 2.5 million gays, social stigma is a daily reality. Many are unwilling to openly admit their sexual preferences and even forced to try reverse them.¹⁰⁹
- 3.14.11** The January 2013 report of the Verma Committee (which was set up in the wake of the death of a 23-year-old woman whose gang-rape in New Delhi in December

¹⁰² The Daily Beast. India's Gay Community Comes Out of the Closet. 26 November 2012.

<http://www.thedailybeast.com/newsweek/2012/11/25/india-s-gay-community-comes-out-of-the-closet.html>

¹⁰³ US State Department, Country Reports on Human Rights Practices for 2012: India. 19 April 2013. Section 6 Societal Abuses, Discrimination, and Acts of Violence Based on Sexual Orientation and Gender Identity
<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204399>

¹⁰⁴ The Daily Beast. India's Gay Community Comes Out of the Closet. 26 November 2012.

<http://www.thedailybeast.com/newsweek/2012/11/25/india-s-gay-community-comes-out-of-the-closet.html>

¹⁰⁵ The Daily Beast. India's Gay Community Comes Out of the Closet. 26 November 2012.

<http://www.thedailybeast.com/newsweek/2012/11/25/india-s-gay-community-comes-out-of-the-closet.html>

¹⁰⁶ Dawn.com. Indian gay rights parade demands greater tolerance. 25th November 2012.

<http://dawn.com/2012/11/25/indian-gay-rights-parade-demands-greater-tolerance/>

¹⁰⁷ Reuters. Indian society struggling with gay rights: activist. 10 May 2012.

<http://www.reuters.com/article/2012/05/10/us-india-gay-activist-idUSBRE8490PO20120510>

¹⁰⁸ Pink News. India: Gay pride parade takes place in New Delhi. 25 November 2012.

<http://www.pinknews.co.uk/2012/11/25/india-gay-pride-parade-takes-place-in-new-delhi/>

¹⁰⁹ Reuters. Indian society struggling with gay rights: activist. 10 May 2012.

<http://www.reuters.com/article/2012/05/10/us-india-gay-activist-idUSBRE8490PO20120510>

2012) encompassed all kinds of sexual violence, as well as the difficulty of reporting such crimes to the police, and included recommendations to protect LGBT people. The report declares that all sexual identities are deserving of protection: "If human rights of freedom mean anything, India cannot deny the citizens the right to be different. The state must not use oppressive and repressive labelling of despised sexuality. Thus, the right to sexual orientation is a human right guaranteed by the fundamental principles of equality."... "We must add that transgender communities are also entitled to an affirmation of gender autonomy. Our cultural prejudices must yield to Constitutional principles of equality, empathy and respect." The report continues to say that LGBT identities are part of "human reality".¹¹⁰

See also: [Actors of protection](#) (section 2.2 above)

[Internal relocation](#) (section 2.3 above)

[Caselaw](#) (section 2.4 above)

3.14.12 Conclusion. Although same sex relationships have been decriminalised since 2009, social stigma and discrimination against LGBT persons continue to exist particularly in rural areas. However concrete examples of ill-treatment are few and there is no evidence to show that in general it would amount to persecution or reach the threshold to engage UK's obligations under Article 3 of the European Convention on Human Rights.

3.14.13 Each case must however be carefully examined on its own merits. Where in individual cases a gay man or lesbian demonstrates that they will on return encounter a level of social hostility which puts them at real risk, the individual may be able to seek effective protection from the police who it is reported have in several states received relevant additional education and sensitivity training in LGBT issues. Caseworkers should also consider whether the claimant could avoid the risk by relocating elsewhere in India, for example to a big city where generally homosexuality is accepted. Caseworkers must however take into account that the Supreme Court in the case of [HJ \(Iran\)](#) made the point that individuals cannot be expected to modify their behaviour and that internal relocation is not the answer if it depends on the person concealing their sexual orientation in the proposed new location for fear of persecution.

3.14.14 Where caseworkers conclude that a claimant's sexual orientation and personal circumstances places them at real risk – and effective protection or internal relocation is not available - then they should be granted asylum because gay men, lesbians, bisexuals and transgender persons in India may be considered to be members of a particular social group.

3.14.15 If an individual chooses to live discreetly because he/she wants to avoid embarrassment or distress to her or his family and friends he/she will not be deemed to have a well founded fear of persecution and will not qualify for asylum. This is because he/she has adopted a lifestyle to cope with social pressures and not because he/she fears persecution due to her or his sexual orientation

3.14.16 If an individual chooses to live discreetly because he/she fears persecution if he/she were to live as openly gay, lesbian or bisexual then he/she will have a well founded fear and should be granted asylum. It is important that gay, lesbian and bisexual people enjoy the right to live openly without fear of persecution. They

¹¹⁰ Pink News. India: Report declares that 'all sexual identities deserve protection'. 26 Jan 2013. <http://www.pinknews.co.uk/2013/01/26/india-report-declares-that-all-sexual-identities-deserve-protection/>

should not be asked or be expected to live discreetly because of their well founded fear of persecution due to their sexual orientation.

3.15 Prison conditions

3.15.1 Applicants may claim that they cannot return to India due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in India are so poor as to amount to torture or inhuman treatment or punishment.

3.15.2 The guidance in this section is concerned solely with whether prison conditions are such that they breach Article 3 of ECHR and warrant a grant of Humanitarian Protection. If imprisonment would be for a Refugee Convention reason or in cases where for a Convention reason a prison sentence is extended above the norm, the asylum claim should be considered first before going on to consider whether prison conditions breach Article 3 if the asylum claim is refused.

3.15.3 Treatment. Each of the 28 states and seven union territories has its own prisons department and its own laws, rules and regulations. Prisons in India continue to be governed by the Prisons Act, 1894, which has been adopted by most of the states. Those that have enacted their own laws have modelled these closely on this Act. . This law does not contain any provisions on prisoners' rights, their rehabilitation or for their reintroduction into society on completion of sentence. About 65% of the prisoners are not convicted of any offence but are just awaiting trial. They may continue to be held in prisons for years. A huge majority of these under-trial prisoners are poor and are denied bail for want of monetary security. Often, they have no lawyers, live in pathetic conditions, do not have access to adequate medical care, and are likely to be tortured or exploited.¹¹¹

3.15.4 According to the US State Department, prison conditions were frequently life threatening and did not meet international standards. Prisons were severely overcrowded and food, medical care, sanitation, and environmental conditions were often inadequate. Potable water was only occasionally available. According to the National Crime Records Bureau (NCRB) Prison Statistics India 2011 report, there were 1,392 prisons in the country with an authorized capacity of 332,782 persons; however, the actual jail population was 372,929. Persons awaiting trial accounted for two-thirds of the prison population. There were 16,024 female prisoners, approximately 4 % of the total prison population, while juveniles constituted less than 1 percent. Authorities held men and women separately. The law requires juveniles to be detained in rehabilitative facilities, although at times they were detained in prison, especially in rural areas. Officials held many pretrial detainees with convicted prisoners.¹¹²

3.15.5 It also noted that "the law prohibits torture, but many NGOs alleged that such practices were common, especially in areas of conflict. The law generally does not permit authorities to admit into evidence confessions that have been coerced, but NGOs and citizens alleged that authorities used torture to coerce confessions, which in some instances were submitted as evidentiary support for death sentences.

¹¹¹ Commonwealth Human Rights Initiative (CHRI). Rights behind Bars: Landmark Judicial Announcements and National Human Rights Commission Guidelines. 2009

http://www.humanrightsinitiative.org/publications/prisons/rights_behind_bars.pdf

¹¹² US State Department, Country Reports on Human Rights Practices for 2012: India. 19 April 2013 Section 1. Respect for the Integrity of the Person. c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204399>

Authorities allegedly also used torture to extort money or as summary punishment.”¹¹³

- 3.15.6** Freedom House considers that “Police torture, abuse, and corruption are entrenched in the law enforcement system”.¹¹⁴ In the summary prepared by the OHCHR for the Universal Periodic Review, the Asian Legal resource Centre “stated that the practice of torture was widespread; perpetrated in all forms of custody; condoned in conflict areas; and was a common technique for criminal investigations. Successful prosecution for torture was extremely low”.¹¹⁵ It further noted that “Custodial justice remained a problem. Jails were overcrowded and unhygienic, disease rampant and treatment poor. The National Human Rights Commission of India indicated that 67% of prisoners were pre-trial, unable to raise bail or confined far longer than they should be because of the huge backlog of cases”.¹¹⁶
- 3.15.7** The Asian Human Rights Commission (AHRC) reports that during 2012 it “documented more than four dozen cases of custodial violence from India this year, of which the state police have been, in almost all cases documented, found to be responsible for violating fundamental human rights of the people, and shameful brutality in the form of custodial torture and extrajudicial executions”.¹¹⁷ The AHRC reports that deaths in police custody resulting from the practice of torture are not new or rare occurrences in India and that it has documented many cases from India in the past eight years that collectively show consistent and widespread use of torture to intimidate and extract information or confession.¹¹⁸ The National Human Rights Commission has documented 14,231 custodial deaths from 2001 to 2010, the majority of which were as a result of torture and which the Asian Centre for Human Rights considers to only be a fraction of the actual number of cases .¹¹⁹
- 3.15.8** The Ministry Of Home affairs (MHA) acknowledged in its 2011-12 annual report that prison and detention centre conditions were extremely poor and severely overcrowded, understaffed, and lacked adequate medical care and infrastructure. The MHA also noted that prisoners were physically mistreated, faced long detention before and during trial, and had inadequate opportunity to communicate with legal counsel, authorities, and family members. NHRC Director General (Investigation) Sri Sunil Krishna stated that the main areas for improvement were prisoners’ rights, general transparency and accountability, monitoring of prison conditions, modernisation of prison administration, and sensitization and expansion of staff.¹²⁰

¹¹³ US State Department, Country Reports on Human Rights Practices for 2012: India. 10 April 2013 Section 1.c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204399>

¹¹⁴ Freedom House, Freedom in the World 2012 – India, May 2012

<http://www.freedomhouse.org/report/freedom-world/2012/india>

¹¹⁵ UN Human Rights Council, Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, 12 March 2012, paragraph 54 http://ap.ohchr.org/documents/alldocs.aspx?doc_id=19960

¹¹⁶ UN Human Rights Council, Summary prepared by the Office of the High Commissioner for Human Rights in accordance with paragraph 5 of the annex to Human Rights Council resolution 16/21, 12 March 2012, paragraph 14 http://ap.ohchr.org/documents/alldocs.aspx?doc_id=19960

¹¹⁷ Asian Human Rights Commission, The State of Human Rights in India in 2012, 10 December 2012, Introduction http://www.humanrights.asia/resources/hrreport/2012/ahrc-spr-005-2012.pdf/at_download/file

¹¹⁸ Asian Human Rights Commission, The State of Human Rights in India in 2012, 10 December 2012, Custodial torture and institutional bliss http://www.humanrights.asia/resources/hrreport/2012/ahrc-spr-005-2012.pdf/at_download/file

¹¹⁹ Asian Centre for Human Rights, Torture in India 2011, 21 November 2011. Chapter 1 <http://www.achrweb.org/reports/india/torture2011.pdf>

¹²⁰ US State Department, Country Reports on Human Rights Practices for 2012: India. 10 April 2013 Section 1. Respect for the Integrity of the Person. Prison and Detention Center Conditions

<http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204399>

- 3.15.9** Prisoners are permitted some access to visitors, although some family members stated that they were denied access to relatives held in detention, particularly in areas of conflict, including Jammu and Kashmir. Prisoners have the right to engage in religious observances, and in most cases that right was respected. The government have allowed some NGOs to provide assistance to prisoners, within specific guidelines. Prison officials kept extensive records. There is no ombudsman for detention facilities, but prisoners can submit complaints to judicial authorities.¹²¹
- 3.15.10** The NHRC receive and investigate prisoner complaints of human rights, but some activists have indicated that many complaints were not filed due to fear of retribution from prison guards or officials. Most NHRC findings and recommendations are published on the NHRC Web site; however, there have been allegations by NGOs that investigations and recommendations dealing with controversial issues were not disclosed. Prisoners can register complaints with state and national human rights commissions, but these commissions can only recommend that authorities redress grievances. The Supreme Court have ordered the central government and local authorities to conduct regular checks on police stations to monitor custodial violence, but government officials often failed to comply with the order.¹²²
- 3.15.11** Most state governments permit prison monitoring by independent groups, such as the International Committee of the Red Cross (ICRC) and the NHRC, but the states of Manipur and Nagaland required visitors to obtain special permits. In many states the NHRC have made surprise visits to state prisons but not to military detention centres. The NHRC lacks jurisdiction over the armed forces and their detention centres.¹²³
- 3.15.12 Conclusion.** Prison conditions in India are severe and taking into account the use of torture, extensive pre-trial detention, as well as the levels of overcrowding and inadequate food and medical care, have the potential to reach the Article 3 threshold in individual cases. The individual factors of each case should be carefully considered to determine whether detention will cause a particular individual in his or her particular circumstances to suffer treatment contrary to Article 3, relevant factors being the reasons for detention, the likely length of detention, the likely type of detention facility, and the individual's gender, age and state of health. Where in an individual case treatment does reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate.

4. Discretionary Leave

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum Instruction on [Discretionary Leave](#))
- 4.2** With particular reference to India the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should not imply an automatic grant of DL. There may be

¹²¹ US State Department, Country Reports on Human Rights Practices for 2012: India. 10 April 2013 Section 1. Respect for the Integrity of the Person. Prison and Detention Center Conditions <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204399>

¹²² US State Department, Country Reports on Human Rights Practices for 2012: India. 10 April 2013 Section 1. Respect for the Integrity of the Person. Prison and Detention Center Conditions <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204399>

¹²³ US State Department, Country Reports on Human Rights Practices for 2012: India. 10 April 2013 Section 1. Respect for the Integrity of the Person. Prison and Detention Center Conditions <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2012&dliid=204399>

other specific circumstances related to the applicant, or dependent family members who are part of the claim, not covered by the categories below which warrant a grant of DL - see the Asylum Instruction on [Discretionary Leave](#).

4.3 Minors claiming in their own right

4.3.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where (a) they have family to return to; or (b) there are adequate reception and care arrangements. Caseworkers should refer to the Agency's guidance on Family Tracing following the Court of Appeal's conclusions in the case of [KA \(Afghanistan\) & Others \[2012\] EWCA civ1014](#). In this case the Court found that Regulation 6 of the Asylum Seekers (Reception Conditions) Regulations 2005 imposes a duty on the Secretary of State to endeavour to trace the families of Unaccompanied Asylum Seeking Children (UASCs).

4.3.2 At present there is insufficient information to be satisfied that there are adequate reception, support and care arrangements in place for minors with no family in India. Those who cannot be returned should, if they do not qualify for leave on any more favourable grounds, be granted Discretionary Leave for a period as set out in the relevant [Asylum Instructions](#)

4.4 Medical treatment

4.4.1 Individuals whose asylum claims have been refused and who seek to remain on the grounds that they require medical treatment which is either unavailable or difficult to access in their countries of origin, will not be removed to those countries if this would be inconsistent with our obligations under the ECHR. Caseworkers should give due consideration to the individual factors of each case and refer to the latest available country of origin information concerning the availability of medical treatment in the country concerned. If the information is not readily available, an information request should be submitted to the COI Service (COIS).

4.4.2 The threshold set by Article 3 ECHR is a high one. It is not simply a question of whether the treatment required is unavailable or not easily accessible in the country of origin. According to the House of Lords' judgment in the case of [N \(FC\) v SSHD \[2005\] UKHL31](#), it is "whether the applicant's illness has reached such a critical stage (i.e. he is dying) that it would be inhuman treatment to deprive him of the care which he is currently receiving and send him home to an early death unless there is care available there to enable him to meet that fate with dignity". That judgment was upheld in May 2008 by the European Court of Human Rights.

4.4.3 That standard continues to be followed in the Upper Tribunal (UT) where, in the case of [GS and EO \(Article 3 – health cases\) India \[2012\] UKUT 00397\(IAC\)](#) the UT held that a dramatic shortening of life expectancy by the withdrawal of medical treatment as a result of removal cannot amount to the highly exceptional case that engages the Article 3 duty. But the UT also accepted that there are recognised departures from the high threshold approach in cases concerning children, discriminatory denial of treatment, the absence of resources through civil war or similar human agency.

4.4.4 The improvement or stabilisation in an applicant's medical condition resulting from treatment in the UK and the prospect of serious or fatal relapse on expulsion will therefore not in itself render expulsion inhuman treatment contrary to Article 3 ECHR. All cases must be considered individually, in the light of the conditions in the country of origin, but an applicant will normally need to show exceptional circumstances that prevent return, namely that there are compelling humanitarian considerations, such as the applicant being in the final stages of a terminal illness without prospect of medical care or family support on return.

4.4.5 Where a caseworker considers that the circumstances of the individual applicant and the situation in the country would make removal contrary to Article 3 or 8 a grant of Discretionary Leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave. Caseworkers must refer to the Asylum Instruction on [Discretionary Leave](#) for the appropriate period of leave to grant.

5. Returns

5.1 There is no policy which precludes the enforced return to India of failed asylum seekers who have no legal basis of stay in the United Kingdom.

5.2 Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules.

5.3 Any medical conditions put forward by the person as a reason not to remove them and which have not previously been considered, must be fully investigated against the background of the latest available country of origin information and the specific facts of the case. A decision should then be made as to whether removal remains the correct course of action, in accordance with [chapter 53.8 of the Enforcement Instructions and Guidance](#).

5.4 Indian nationals may return voluntarily to any region of India at any time in one of three ways: (a) leaving the UK by themselves, where the applicant makes their own arrangements to leave the UK, (b) leaving the UK through the voluntary departure procedure, arranged through the UK Immigration service, or (c) leaving the UK under one of the Assisted Voluntary Return (AVR) schemes.

5.5 The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action which will provide advice and help with obtaining any travel documents and booking flights, as well as organising reintegration assistance in India. The programme was established in 1999, and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Indian nationals wishing to avail themselves of this opportunity for assisted return to India should be put in contact with Refugee Action Details can be found on Refugee Action's web site at: www.choices-avr.org.uk.

Country Specific Litigation Team
Operational Policy & Rules Unit
Strategy & Assurance Group
Home Office

May 2013