



# OPERATIONAL GUIDANCE NOTE

## INDIA

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### Introduction

- 1.1** This document provides UKBA case owners 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. Case owners must refer to the relevant Asylum Instructions for further details of the policy on these areas.
- 1.2** Case owners *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 case owners 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 internet 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. In considering claims where the main applicant has dependent family members who are a part of his/her claim, account must be taken of the situation of all the dependent family members included in the claim in accordance with the Asylum Instruction on Article 8 ECHR. If, following consideration, a claim is to be refused, case owners should consider whether it can be certified as clearly unfounded under the case by case certification power in section 94(2) of the Nationality Immigration and Asylum Act 2002. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

## **2. Country assessment**

- 2.1** Case owners should refer the relevant COI Service country of origin information material. An overview of the country situation including headline facts and figures about the population, capital city, currency as well as geography, recent history and current politics can also be found in the relevant FCO country profile at:

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/>

- 2.2** 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/wp-content/uploads/2011/02/Cm-8339.pdf>

## **2.3 Actors of protection**

- 2.3.1** Case owners must refer to the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. To qualify for asylum, an individual not only needs to have a fear of persecution for a Convention reason, they must also be able to demonstrate that their fear of persecution is well founded and that they are unable, or unwilling because of their fear, to avail themselves of the protection of their home country. Case owners should also 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.
- 2.3.2** India has a robust parliamentary tradition, an independent judiciary, professional and a political armed forces, a vibrant civil society and free and outspoken media. India has signed and ratified all of the major International Treaties and Covenants on Human Rights except the Convention Against Torture, which it signed in 1997. There has been progress on human rights in a number of areas, including on women's rights and an important recent development for child rights has been the adoption of the 2009 Right to Education Act guaranteeing free, compulsory and quality education for children aged 6-14 years which came into effect on 1 April 2010. Implementation of legislation varies from state to state and awareness of human rights issues is inconsistent. As a result, the rights of women, children, minorities, Scheduled Castes and Scheduled Tribes often suffer. The socially and economically disadvantaged sections are particularly vulnerable. Affirmative action, through reserving government jobs for some groups, has had some impact to empowering them economically.<sup>1</sup>
- 2.3.3** 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.<sup>2</sup>

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<sup>1</sup> FCO , country profile; India <http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/asia-oceania/india?profile=all>

<sup>2</sup> USSD 2011 Section 1 Role of the Police and Security Apparatus

- 2.3.4** The World Police Encyclopedia (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.<sup>3</sup>
- 2.3.5** The effectiveness of law enforcement and security forces varied widely throughout the country. Officers at all levels sometimes acted with impunity, and officials rarely held them accountable for illegal actions. Military courts investigated cases of abuse by security officials; cases against law enforcement officers are tried in public courts. When a court found an officer guilty of a crime, the punishment often was a transfer. The central and state governments took actions to reform the security forces.<sup>4</sup>
- 2.3.6** HRW published a report in August 2009 titled Broken System: Dysfunction, Abuse and Impunity in the Indian Police. The report followed research in the states of Uttar Pradesh, Himachal Pradesh and Karnataka, and incorporated interviews with police officers of varying ranks, victims of police ill-treatment and workers of non-governmental organisations (NGO), lawyers and activists. The report stated that at the level of the civil police station, particularly constables, lived and worked in abysmal conditions. They were often exhausted and demoralised, always on call, working long hours without shifts and necessary equipment, only to return to government-supplied tents or filthy barracks for a few hours' sleep. Junior-ranking officers often faced unrealistic demands from their superiors to solve cases quickly. Even if officially encouraged, their use of professional crime investigation techniques was effectively discouraged by the dearth of time, training and equipment with which they operated. These officers also faced frequent intervention in investigations by local political figures, who sometimes acted to protect known criminals. To get around these systemic problems many officers take 'short-cuts'. Officers told HRW, they often cut their caseloads by refusing to register crime complaints. At other times, they use illegal detention, torture and ill-treatment to punish criminals against whom they lack the time or inclination to build cases, or to elicit confessions, even ones they know are false.<sup>5</sup>
- 2.3.7** The HRW report further observed that there was just one civil police officer for every 1,037 Indian residents which was below Asia's regional average of one police officer for 558 people and the global average of 333 people. Police infrastructure was crumbling. Decaying, colonial-era police stations and posts across India were stocked with antiquated equipment and lack sufficient police vehicles, phones, computers and even stationery. A severe police staffing shortage was compounded by additional demands on an already stretched force and police performance was severely undercut by the inadequacy of training.<sup>6</sup>
- 2.3.8** According to the MHA's most recent annual report (2010-11), citizens in Jammu and Kashmir filed 211 reports of human rights violations against army and central paramilitary personnel. Authorities investigated 208 cases, found 161 false, and judged 47 genuine. The military imposed penalties in the cases that were found to be genuine. The MHA also reported 65,827 cases were registered with the NHRC. A total of 62,551 cases were resolved, including cases brought forward from previous years, and 5,673 cases were

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[http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186463](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186463)

<sup>3</sup> COIS Report March 2012 – Section 9 Paragraph 9.04 <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>4</sup> USSD 2011 Section 1 Role of the Police and Security Apparatus

[http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186463](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186463)

<sup>5</sup> COIS Report March 2012 – Section 9 Paragraph 9.06 <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>6</sup> COIS Report March 2012 – Section 9 Paragraph 9.07 <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

transferred to state human rights commissions for resolution. Interim relief payments were made in 269 cases.<sup>7</sup>

- 2.3.9** 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 legal system was seriously overburdened and lacked modern case management systems, often delaying or denying justice. On August 1, the Ministry of Law and Justice announced that there were 4,217,903 cases pending in the country's high courts, and 27,953,070 cases pending in subordinate courts, as of September 2010. As of April 1, nearly one-third of the sanctioned judges' positions in the country's 21 high courts were vacant. At the end of June, there were 57,179 cases pending in the Supreme Court. In 2010 one official estimated that the courts would require more than 320 years to clear the case backlog.<sup>8</sup>
- 2.3.10** Many citizens reported that they offered bribes to move cases through the court system. In 2010 the minister of law Veerappa Moily reported that the average time for a case to work its way through the court was 15 years. On July 2 2011, Moily announced the launch of the Mission Mode Programme, a nationwide program to reduce the number of pending cases by 40 percent between July 1 and December 31 2011.<sup>9</sup>
- 2.3.11** The Human Rights Law Network (HRLN) noted in their report of August 2009 that there is no external police complaints agency in India, at a national level. A Supreme Court order of 22 September 2006 directed all states to establish a local police complaints commission. By 2009, however, only 18 states had active police complaints authorities. According to HRLN, the mandate of every authority varies from state to state and none complies fully with the Court's directive. HRLN pointed out that, in most instances, the police are responsible for their own internal disciplinary investigations; disciplinary action is usually brought by the officer's superior, who also later assigns the punishment. HRLN added, "While the various police acts [laws] clearly articulate the powers the police forces enjoy, they are...silent, on the processes that can be taken against police misconduct by the aggrieved citizenry."<sup>10</sup>
- 2.3.12** Human rights protection cells within the police are in charge of investigating allegations of human rights violations committed by police officers. Between January 1994 and December 2010, out of the 1,417 human rights-related complaints received against the Indian army personnel and paramilitary forces, 1,388 were investigated, and 1,308 eventually found to be false allegations. In 80 cases where the complaints were found genuine, penalties were imposed on the perpetrators.<sup>11</sup>

## **2.4 Internal relocation**

- 2.4.1** Case owners must refer to the Asylum Policy Instructions on both internal relocation and gender issues in the asylum claim and 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

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<sup>7</sup> USSD 2011 Section 1 Role of the Police and Security Apparatus

[http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186463](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186463)

<sup>8</sup> USSD 2011 Section 1 Denial of Fair Public Trial

[http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186463](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186463)

<sup>9</sup> USSD 2011 Section 1 Denial of Fair Public Trial

[http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186463](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186463)

<sup>10</sup> COIS Report March 2012 – Section 9 Paragraph 9.45 <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>11</sup> COIS Report March 2012 – Section 9 Paragraph 9.46 <http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

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, but the fact that there may be technical obstacles to return, such as re-documentation problems, does not prevent internal relocation from being applied.

- 2.4.2** 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-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 unduly harsh to expect them to do so, then asylum or humanitarian protection should be refused.
- 2.4.3** The law provides for freedom of movement within the country, 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. In 2010 the government lifted the requirement for nationals and foreigners, except persons from Pakistan and China, to apply for a special permit to travel to Manipur, Mizoram, or Nagaland; however, it continued to require special permits to travel to Arunachal Pradesh and Jammu and Kashmir. 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. The government maintained a 330-mile security fence along the Line of Control in Jammu and Kashmir, causing difficulties for residents because the fence cuts through some villages and agricultural lands.<sup>12</sup>
- 2.4.4** The situation as regards internal relocation for single women, divorcees with or without children, and widows may differ from the situation for men as it may be difficult for women on their own to find secure accommodation. Although rents are high and landlords are often unwilling to rent to single women, there are hostels particularly in urban areas where a large number of call centres provide employment<sup>13</sup> The situation for women with children is likely to be more difficult as children may not be accepted in hostels.<sup>14</sup> Illiterate women from rural areas are likely to find it particularly difficult to obtain accommodation as a lone woman<sup>15</sup> 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 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.

## **2.5 Country guidance caselaw**

**[S v Secretary of State for the Home Department \(India\) \[2003\] UKIAT 00098](#)**. The Tribunal found that a Sikh ex-army Sergeant, who was frequently arrested by local police and mistreated (and released after payment of a bribe on each occasion), would be able to relocate to an area where he would face neither persecution nor a breach of his Article 3 rights. The IAT held that his problems

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<sup>12</sup> USSD 2011 Section 2

[http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186463f](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186463f)

<sup>13</sup> Home Office CIPU India FFMR (Paragraphs 9.1 – 9.16)

[www.homeoffice.gov.uk/rds/pdfs06/india\\_ffm0704\\_250106.doc](http://www.homeoffice.gov.uk/rds/pdfs06/india_ffm0704_250106.doc)

<sup>14</sup> Home Office CIPU India FFMR (Paragraphs 7.17, 7.25, 7.27 & 9.5)

[www.homeoffice.gov.uk/rds/pdfs06/india\\_ffm0704\\_250106.doc](http://www.homeoffice.gov.uk/rds/pdfs06/india_ffm0704_250106.doc)

<sup>15</sup> Home Office CIPU India FFMR (Paragraphs 9.1 – 9.16)

[www.homeoffice.gov.uk/rds/pdfs06/india\\_ffm0704\\_250106.doc](http://www.homeoffice.gov.uk/rds/pdfs06/india_ffm0704_250106.doc)



with the police were localised and he was not of interest to the central authorities if he did not volunteer his past associations and that whilst he might face difficulties in another area accessing employment and accommodation because of language differences and lack of family ties this was not sufficient to make relocation unduly harsh.

**BK (Risk, Adultery, PSG) India CG [2002] UKIAT 03387.** The Tribunal found that it would be unduly harsh to expect a woman from a rural background to relocate to another part of India because in reality she would be destitute, without accommodation, without housing and with no one to turn to.

**WF (Internal Relocation, Christian) India CG [2002] UKIAT 04874.** The Tribunal agreed with the Adjudicator that this Christian appellant was personally at risk of persecution in Gujarat on account of his religious beliefs. However, it was held that it would not be unduly harsh for the appellant to relocate to another area of India where sentiment against Christians was not so strong and therefore internal relocation was a viable option.

### **3. Main categories of claims**

**3.1** This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in India. It also contains any common claims that may raise issues covered by the Asylum Instructions on Discretionary Leave. 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.

**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 *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility).

**3.3** 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 qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

**3.4** All Asylum Instructions can be accessed via the on 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/>

### **3.5 Credibility**

**3.5.1** This guidance is **not** designed to cover issues of credibility. Case owners will need to consider credibility issues based on all the information available to them. For guidance on credibility see the Asylum Policy Instruction on considering the protection (asylum) claim and assessing credibility. Case owners 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 Home Office file. In all other cases, the case owner should satisfy themselves through CRS database checks that there is no match to a non-biometric visa. Asylum applications matched 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.

### 3.6. Sikhs from Punjab

3.6.1 The majority of asylum claims made by Indian nationals in the United Kingdom are from young male Sikhs from Punjab.

- Some claim they have been victims of harassment and fear further harassment by the Indian authorities because they are Sikh.
- Some claim a fear of persecution by the Indian authorities because the individual has, or is perceived to have, harboured or assisted, terrorists. Such claims may otherwise cite association with Sikh (Khalistan) separatist groups, including proscribed terrorist groups.
- Some claim a fear of persecution by non-state agents in the Punjab because they have refused to join a terrorist group, or may claim to fear SAD because of their involvement with the Congress party.

3.6.2 **Treatment.** Sikhs represent approximately 2% of the overall population in India. Most Sikhs in India live in the state of Punjab where they account for roughly 60% of the state's population.<sup>16</sup> Sikhism was born in the Punjab area of South Asia, which now falls into the present day states of India and Pakistan. The main religions of the area were Hinduism and Islam. The Sikh faith began around 1500 CE, when Guru Nanak began teaching a faith that was quite different from Hinduism and Islam. Nine Gurus followed Nanak and developed the Sikh faith and community over the next centuries.<sup>17</sup>

3.6.3 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.<sup>18</sup>

3.6.4 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 amended the Code of Criminal Procedure, making it easier for victims of religious persecution to appeal judgments.<sup>19</sup>

3.6.5 On 22-23 June 1985 Air India Flight 182, which was en route from Montréal to London, was blown up by a bomb off the coast of Ireland with all 329 people on board died. The main suspects in the bombing were members and associates of the Sikh separatist group Babbar Khalsa, who apparently acted in revenge for the Indian government's storming of the Golden Temple in Amritsar in 1984. In March 2005, after a 20-year investigation and a 19-month long trial, two individuals suspected of involvement in the bombing were acquitted in a Canadian Court.<sup>20</sup>

3.6.6 In December 2009 the 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

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<sup>16</sup> COIS Report March 2012 – Section 20 Paragraph 20.49

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

<sup>17</sup> COIS Report March 2012 – Section 20 Paragraph 20.50

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

<sup>18</sup> COIS Report March 2012 – Section 20 Paragraph 20.53

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

<sup>19</sup> US Commission on International Religious Freedom, Annual Report 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)

<sup>20</sup> COI Service India: Country of Origin Report – 30 March 2012 – Paragraph 20.56 and 20.57

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

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.<sup>21</sup>

**3.6.7** In its Punjab Assessment 2010, the South Asia Terrorism Portal reported that for the 16<sup>th</sup> 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. Central intelligence sources, however, indicate that a concerted attempt to revive militancy in the State was under way. The Inter-Services Intelligence (ISI), Pakistan's external intelligence agency, continued to give support to the Khalistani terrorist groups. The Director General of Punjab Police, Paramdeep Singh Gill, said on 17 August 2009 that the ISI was actively engaged in reviving militancy in the State by providing arms and money to Sikh extremists.<sup>22</sup>

**3.6.8** There have been few developments in the past year relating to the 1984 violence. However, in a case currently pending in a New Delhi court, Resham Singh, a Sikh, alleges that he witnessed Congress Party leader Jagdish Tytler leading rioters. Singh has requested to testify before the court gives its final decision.<sup>23</sup>

**3.6.9** According to 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)<sup>24</sup>

**3.6.10** Non-governmental organisations investigate allegations of human rights abuses and can make recommendations for rectification to the relevant local or central government authorities which are generally followed, although they do not have the force of law. In addition to the National Human Rights Commission (NHRC), there is the Punjab State Human Rights Commission which was set up in July 1997 to investigate complaints of human rights violations in the area. It was reported to have received 15,700 complaints relating to violations of human rights in 2007.<sup>25</sup>

**See also:** [Actors of protection](#) (section 2.3 above)

[Internal relocation](#) (section 2.4 above)

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<sup>21</sup> U.S 2010 International Religious Freedom Report 13 September 2011

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

<sup>22</sup> The South Asia Terrorism Portal (SATP) Punjab Assessment 2010

[www.satp.org/satporgtp/countries/india/states/punjab/index/html](http://www.satp.org/satporgtp/countries/india/states/punjab/index/html)

<sup>23</sup> US Commission on International Religious Freedom, Annual Report 2012

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

<sup>24</sup> COI Service India: Country of Origin Report – 30 March 2012 – Paragraph 20.59

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

<sup>25</sup> Asian Centre for Human Rights – 2009 India Human Rights Report – May 2009

[www.achrweb.org/reports/india/AR09/AR2009.pdf](http://www.achrweb.org/reports/india/AR09/AR2009.pdf)



**Caselaw (section 2.5 above)**

- 3.6.11 Conclusion.** There has been a significant decline in Sikh separatism in recent years; and gaps between Sikhs and Hindus have been bridged and antagonisms have generally disappeared. Applicants would be unlikely therefore to demonstrate a well-founded fear of persecution based solely on their religion.
- 3.6.12** 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 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
- 3.6.13** Members of Sikh militant groups – particularly those proscribed as terrorist organisations - are likely to face prosecution rather than persecution on return to India. It is therefore unlikely that individuals associated with Sikh separatist groups would be able to establish a claim to asylum. In respect of those claimants who can demonstrate a well founded fear of persecution, case owners should note that members of Sikh militant 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 a Sikh militant group and the evidence suggests he/she has been involved in such actions, then case owners should consider whether one of the exclusion clauses is applicable. Case owners should refer such cases to a Senior Caseworker.

**3.7 Ill-treatment of Religious Groups**

- 3.7.1** Some applicants may seek asylum based on a fear of persecution by non-state agents because of their Christian, Muslim or Hindu religious faith.
- 3.7.2 Treatment in general.** According to the 2001 Government census, Christians constitute 2.3% of the population of India and Muslims 13.4%. Hindus, the major religion in India, constitute 80.5% of the population. Muslims and Christians were therefore respectively the first and second largest minority religious groups in India.<sup>26</sup>
- 3.7.3** The constitution and other laws and policies protect religious freedom and, in practice, the Government generally respected religious freedom, however, some state-level laws and policies restricted this freedom. There was no change in the status of respect for religious freedom by the Government during July to December 2010. Some state Governments enforced existing "anticonversion" laws, and some local police and enforcement agencies in certain instances were not swift to defy communal attacks, including attacks against religious minorities. Law enforcement and prosecution continued to be weak. This shortcoming was exacerbated by a low police to population ratio, corruption, and an overburdened, antiquated Court System. There were cases of communal attacks on religious minorities and their property and allegations of police brutality. In several instances those attacked were reportedly arrested.<sup>27</sup>
- 3.7.4** The vast majority of citizens of all religious groups lived in peaceful coexistence and were conscious of religious freedom and minority rights, however, at times, violence between religious groups and organised communal attacks against religious minorities occurred

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<sup>26</sup> U.S 2010 International Religious Freedom Report – Section 1 - 13 September 2011  
[www.state.gov/j/drl/rls/irf/2010\\_5/168245.htm](http://www.state.gov/j/drl/rls/irf/2010_5/168245.htm)

<sup>27</sup> U.S 2010 International Religious Freedom Report – Section 1 - 13 September 2011  
[www.state.gov/j/drl/rls/irf/2010\\_5/168245.htm](http://www.state.gov/j/drl/rls/irf/2010_5/168245.htm)

during July to December 2010. The MHA published in its Annual Report 2009-10 that 826 communal incidents occurred in 2009, in which 125 persons died, compared to 943 incidents in 2008 in which 167 persons died. State Governments also reported communal incidents. 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.<sup>28</sup>

- 3.7.5** The law generally offered remedies for violations of 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 some cases pertaining to religiously orientated violence. Legal protections existed to cover discrimination or persecution by private actors.<sup>29</sup>
- 3.7.6** The national government, led by the United Progressive Alliance (UPA), continued to implement an inclusive and secular platform that incorporated respect for the right to religious freedom. There were different personal laws for the various religious communities in matters of marriage, divorce, adoption and inheritance. The government granted a significant amount of autonomy to personal status law boards in crafting these laws. There was Hindu law, Christian law, Parsi law and Islamic law, all were legally recognised and judicially enforceable. None were exempt from national and state level legislative powers or social reform obligations as laid down in the constitution. The government observed numerous religious holidays as national holidays, including Good Friday and Christmas (Christian); the two Eids (Islamic); Lord Buddha's Birthday (Buddhist); Guru Nanak's Birthday (Sikh); Dussehra, Diwali, and Holi (Hindu) and the Birthday of Lord Mahavir (Jain).<sup>30</sup>
- 3.7.7** While there had been no large-scale communal violence against religious minorities since 2008, India's progress in protecting and promoting religious freedom during 2010 continued to be mixed. The Indian government at various levels has recognised past problems of communal violence and had created some structures to address these issues. Also, the national government and several state governments had taken positive steps to improving religious freedom. However, as a whole, justice for the victims of large-scale communal violence that took place in Orissa in 2007-2008, in Gujarat in 2002 and against Sikhs in 1984 remained slow and often ineffective.<sup>31</sup>
- 3.7.8** The infrastructure for investigating and prosecuting cases of religiously-motivated violence or harassment existed, such as Fast Track Courts and Special Investigative Teams (SITs), in India, but its capacity was severely limited. It was utilised inconsistently and it was hampered by political corruption and religious bias, particularly at the state and local levels. These deficiencies had resulted in a culture of impunity that gave members of vulnerable minority communities few assurances of their safety, particularly in areas with a history of communal violence and little chance of perpetrator accountability.<sup>32</sup>
- 3.7.9** The country's political system was federal and gave state government primary jurisdiction over law enforcement and the maintenance of order, which limited 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), could not investigate a crime committed in a state without the state government's

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<sup>28</sup> U.S. 2010 International Religious Freedom Report – Section 1 - 13 September 2011  
[www.state.gov/j/drl/rls/irf/2010\\_5/168245.htm](http://www.state.gov/j/drl/rls/irf/2010_5/168245.htm)

<sup>29</sup> U.S. 2010 International Religious Freedom Report – Section 2 - 13 September 2011  
[www.state.gov/j/drl/rls/irf/2010\\_5/168245.htm](http://www.state.gov/j/drl/rls/irf/2010_5/168245.htm)

<sup>30</sup> COIS Report March 2012 – Section 20 Paragraph 20.02  
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>31</sup> COIS Report March 2012 – Section 20 Paragraph 20.08  
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>32</sup> COIS Report March 2012 – Section 20 Paragraph 20.08  
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

permission, however, in some instances, the national government's law enforcement authorities had intervened to maintain order when state governments were reluctant or unwilling to do so.<sup>33</sup>

- 3.7.10** The Ministry for Minority Affairs, the 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 did not have the force of law, central and local authorities generally followed them. The NCM and NHRC intervened in several instances of communal tension, the enactment of "anticonversion" legislation in several states and incidents of harassment and violence against minorities. Such intervention incorporated high profile cases, such as the 2002 anti-Muslim violence in Gujarat and the 2008 attacks against Christians in Orissa. The national Government allocated approximately 26 billion rupees for 2010-11 which was an increase of 50 percent from the previous year for the Ministry of Minority Affairs.<sup>34</sup>
- 3.7.11** There were active "anticonversion" laws in five of the 28 states: Gujarat, Orissa, Chhattisgarh, Madhya Pradesh, and Himachal Pradesh. Although Arunachal Pradesh enacted its law in 1978, the government has yet to frame the rules required for enforcement. Gujarat had a Freedom of Religion Act (2003) and Rules (2008) that proscribed religious conversions by means of allurements, force or fraud. At the end of 2010, no court date had been set for the challenge by civic groups of the constitutional validity of the Gujarat legislation. There were reports of arrests but no convictions under these laws during 2010.<sup>35</sup>
- 3.7.12** The country's democratic system, open society, independent legal institutions, vibrant civil society, and free press actively provide mechanisms to address violations of religious freedom when they occur.<sup>36</sup>
- 3.7.13** The government continues to implement an elaborate affirmative action system that reserved government jobs and places in higher education institutions for Scheduled Castes/Scheduled Tribes members belonging to the Hindu, Sikh, and Buddhist religious groups. On 9 July 2009, the Ministry of Minority Affairs informed the parliament about the Prime Minister's New 15 Point Program for the Welfare of Minorities to provide special consideration to minorities in recruitment in all sectors of government employment.<sup>37</sup>

### ***Muslims***

- 3.7.14** The Indian authorities did not restrict the religious activities of Muslims, who had freedom of religious practice and freedom to organize their services according to their codes, religious teachings and customs. Muslims in India had their own educational establishments including madrasa religious schools responsible for disseminating the teachings of Islam and a large number of places of worship.<sup>38</sup> Muslims were under-represented in some sectors of society and this was a matter of concern, however Prime Minister Singh pledged to 'address the imbalances' and has put forward 22 recommendations for implementation.<sup>39</sup>

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<sup>33</sup> U.S 2010 International Religious Freedom Report – Section 2 - 13 September 2011  
[www.state.gov/j/drl/rls/irf/2010\\_5/168245.htm](http://www.state.gov/j/drl/rls/irf/2010_5/168245.htm)

<sup>34</sup> U.S 2010 International Religious Freedom Report – Section 1 - 13 September 2011  
[www.state.gov/j/drl/rls/irf/2010\\_5/168245.htm](http://www.state.gov/j/drl/rls/irf/2010_5/168245.htm)

<sup>35</sup> U.S 2010 International Religious Freedom Report – Section 2 - 13 September 2011  
[www.state.gov/j/drl/rls/irf/2010\\_5/168245.htm](http://www.state.gov/j/drl/rls/irf/2010_5/168245.htm)

<sup>36</sup> U.S 2010 International Religious Freedom Report – Introduction – 17 November 2010  
<http://www.state.gov/j/drl/rls/irf/2010/148792.htm>

<sup>37</sup> U.S 2010 International Religious Freedom Report 17 November 2010  
<http://www.state.gov/j/drl/rls/irf/2010/148792.htm>

<sup>38</sup> U.S 2010 International Religious Freedom Report – Section 1 – 17 November 2010  
<http://www.state.gov/j/drl/rls/irf/2010/148792.htm>

<sup>39</sup> COI Report September 2010 Section 20 Paragraph 20.32

**3.7.15** A court in India has convicted nine people of burning three people to death in their home during the religious riots in Gujarat state 10 years ago. Thirty-two others were acquitted of the crime which took place in Ode village in Anand district. More than 1,000 people, mostly Muslims, were killed when riots erupted after 60 Hindu pilgrims died in a train fire in 2002. It was one of India's worst outbreaks of religious violence in recent years. Muslims were blamed for starting the train fire and Hindu mobs eager for revenge went on the rampage through Muslim neighbourhoods in towns and villages across Gujarat in three days of violence following the incident. In April 2012 the court sentenced 18 people to life imprisonment for the murder of 23 Muslims in the same village. Five others were given seven years and another 23 were acquitted. The cause of the Godhra train fire is still a matter of fierce debate. A commission of inquiry set up in 2008 by the Gujarat state government determined that it was the result of a conspiracy but a 2005 federal government inquiry concluded that the fire had been an accident and was probably started by people cooking in one of the carriages and was not the result of an attack. Gujarat's authorities have been accused of not doing enough to stop the riots.<sup>40</sup>

**3.7.16** There were large Muslim populations in the states of Uttar Pradesh (UP), Bihar, Maharashtra, West Bengal, Andhra Pradesh, Karnataka, and Kerala and Muslims were the majority in Jammu and Kashmir. Although Muslims were a minority, the country had the world's second-largest Muslim population. Under the 1992 National Commission for Minorities Act, five religious communities – Muslims, Sikhs, Christians, Parsis and Buddhists – were considered minority communities.<sup>41</sup>

**3.7.17** Indian Muslims were disproportionately more likely to be poor and illiterate and less likely to have access to government employment, medical care or loans.<sup>42</sup>

### ***Christians***

**3.7.18** Christians are mainly concentrated in the northeast of India, with large Christian majorities in the north-eastern states of Nagaland, Mizoram and Meghalaya in addition to the southern states of Kerala, Tamil Nadu and Goa.<sup>43</sup>

**3.7.19** The 2011 Annual Report of the US Commission on International Religious Freedom stated that attacks on Christian churches and individuals, largely perpetrated by individuals associated with extremist Hindu nationalist groups, continued to occur and perpetrators were rarely held to account by the state legal apparatus.<sup>44</sup>

**3.7.20** According to All India Christian Council, attacks on Christians occurred in the states of Orissa, Chhattisgarh, Karnataka, Andhra Pradesh, Madhya Pradesh, and Maharashtra. In these incidents Christians alleged Hindu extremists, such as members from Dharma Sena or Dharm Raksha Sena (Religion Protection Army) (DRS), disrupted prayer meetings, destroyed or damaged places of worship, vandalized property, assaulted Pastors and lay persons, confiscated and destroyed religious material and attempted to intimidate Christians from attending religious services, sometimes in the presence of police. In the Andrah Pradesh, local media reported nearly 30 cases of violence and vandalism against churches during 2010.<sup>45</sup>

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

<sup>40</sup> BBC News – India Riots – Nine Convicted Over Gujarat Killings – 4 May 2012

<http://www.bbc.co.uk/news/world-asia-india-17951605>

<sup>41</sup> U.S 2010 International Religious Freedom Report – Section 2 - 13 September 2011

[www.state.gov/j/drl/rls/irf/2010\\_5/168245.htm](http://www.state.gov/j/drl/rls/irf/2010_5/168245.htm)

<sup>42</sup> Freedom House in the World – Country Report 2011

<http://old.freedomhouse.org/template.cfm?page=22&country=8055&year=2011>

<sup>43</sup> U.S 2010 International Religious Freedom Report – Section 1 - 17 November 2010

<http://www.state.gov/j/drl/rls/irf/2010/148792.htm>

<sup>44</sup> COIS Report March 2012 – Section 20 Paragraph 20.43

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

<sup>45</sup> U.S 2010 International Religious Freedom Report – Section 3 - 13 September 2011

- 3.7.21** Conversion of Hindus or members of lower castes to Christianity remained highly sensitive and occasionally resulted in assaults and/or arrests of Christians. Even so Christians often held large public prayer meetings without violence or protests. There were also instances of large scale "reconversion" ceremonies of Christians to Hinduism.<sup>46</sup>
- 3.7.22** There were unconfirmed reports of forced religious conversion. For example, authorities in some states arrested Christians under state level "anticonversion" laws for allegedly engaging in conversions by force, allurement or fraud. Authorities granted bail to those charged and there were no reports of convictions under these laws. Hindu nationalist organisations frequently alleged that Christian missionaries lured low caste Hindus in impoverished areas with offers of free education and health care and these organisations equated such actions with forced conversions. Christians claimed that low caste Hindus converted of their own free will and that efforts by Hindu groups to "reconvert" these new Christians to Hinduism were accompanied by offers of remuneration and therefore fraudulent.<sup>47</sup>
- 3.7.23** A number of Indian states have adopted specific laws which sought to govern religious conversion and renunciation. Orissa, Madhya Pradesh, Chhattisgarh, Gujarat and Himachal Pradesh had passed and implemented the Freedom of Religion Acts. Similar laws had been passed but not yet implemented in Arunachal Pradesh and Rajasthan. All of the laws stipulated that 'no person shall convert or attempt to convert, either directly or otherwise, any person from one religious faith to another by the use of force or inducement or by any fraudulent means or shall any person abet any such conversion'. These laws carried penalties of imprisonment and fines with harsher penalties.<sup>48</sup>
- 3.7.24** During 2010 the Andhra Pradesh Government continued to fund welfare and development schemes for minorities and allotted the State Minorities Financial Corporation 175 crore rupees. The government also allocated approximately 26.48 crore rupees to the Andhra Pradesh Christian Finance Corporation (APCFC), which was initiated in 2008 to assist the Christians in the state on educational and economic development. The APCFC received fifteen percent of the 2010 Andhra Pradesh welfare budget for minorities.<sup>49</sup>
- 3.7.25** The NHRC and NCM continued to promote freedom of religion during 2010 and through their annual reports and investigations, they focused attention on human rights problems and, where possible, encouraged judicial resolutions.<sup>50</sup>

### ***Hindus***

- 3.7.26** Hindus constitute 80.5 percent of the population of India.
- 3.7.27** The national Government, led by the United Progressive Alliance (UPA), continued to implement an inclusive and secular platform that comprised of respect for the right to religious freedom. Despite the national government's rejection of Hindutva (Hindu nationalism), a few state and local governments continued to be influenced by Hindutva.<sup>51</sup>

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[www.state.gov/j/drl/rls/irf/2010\\_5/168245.htm](http://www.state.gov/j/drl/rls/irf/2010_5/168245.htm)

<sup>46</sup> COIS Report March 2012 – Section 20 Paragraph 20.46

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

<sup>47</sup> U.S 2010 International Religious Freedom Report – Section 2 - 13 September 2011

[www.state.gov/j/drl/rls/irf/2010\\_5/168245.htm](http://www.state.gov/j/drl/rls/irf/2010_5/168245.htm)

<sup>48</sup> COIS Report March 2012 – Section 20 Paragraph 20.30

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

<sup>49</sup> U.S 2010 International Religious Freedom Report – Section 2 - 13 September 2011

[www.state.gov/j/drl/rls/irf/2010\\_5/168245.htm](http://www.state.gov/j/drl/rls/irf/2010_5/168245.htm)

<sup>50</sup> U.S 2010 International Religious Freedom Report – Section 2 - 13 September 2011

[www.state.gov/j/drl/rls/irf/2010\\_5/168245.htm](http://www.state.gov/j/drl/rls/irf/2010_5/168245.htm)

<sup>51</sup> U.S 2010 International Religious Freedom Report – Section 2 - 13 September 2011



- 3.7.28** There were different personal laws for the various religious communities in matters of marriage, divorce, adoption, and inheritance. The government granted a significant amount of autonomy to personal status law boards in crafting these laws. There was Hindu law, Christian law, Parsi law, and Islamic law; all were legally recognised and judicially enforceable. They were not exempt from national and state level legislative powers or social reform obligations as laid down in the constitution.<sup>52</sup>
- 3.7.29** The Bharatiya Janata Party (BJP), the Rashtriya Swayamsevak Sangh (RSS), and other affiliated organisations, who were collectively known as the Sangh Parivar publicly claimed to respect and tolerate other religious groups, however, the RSS opposed coerced conversions from Hinduism and expressed the view that all citizens, regardless of their religious affiliation, should adhere to Hindu cultural values, which they claimed were the country's values.<sup>53</sup>
- 3.7.30** There were no updates on the September 2009 petition against compulsory recitation under a Madhya Pradesh state law of Hindu religious prayers before serving government-funded mid-day meals in schools. A group of religious organisations in Madhya Pradesh had filed the petition because they believed the practice infringed upon the religious freedom of minorities in the state. The case was still pending before the High Court.<sup>54</sup>
- 3.7.31** The Government observed numerous religious holidays as national holidays, including: Good Friday and Christmas (Christian); the two Eids (Islamic); Lord Buddha's Birthday (Buddhist); Guru Nanak's Birthday (Sikh); Dussehra, Diwali, and Holi (Hindu); and the Birthday of Lord Mahavir (Jain).<sup>55</sup>
- 3.7.32** According to the Global Council of Indian Christians, the Tamil Nadu police in Theni detained eight Christians, including evangelist V.K. Williams, after several Hindu activists disrupted their religious meeting. The Hindu activists filed a complaint against the Christians of "forceful conversion" and pressured police to arrest them. Officers took the Christians to the police station for questioning and subsequently released them.<sup>56</sup>
- 3.7.33** There were no reports of attacks against the Hindu community in Jammu and Kashmir by rebel forces, foreign forces, or terrorist organisations during 2010.<sup>57</sup>
- 3.7.34** On 27 March 2010, the Jammu and Kashmir Government told the state assembly that 170 Hindu temples had been damaged by militants in the valley in the past 20 years. Ninety temples had been renovated and the government had allocated funds for the renovation of other temples.<sup>58</sup>
- 3.7.35** There were also instances of Hindu-Muslim clashes or communal violence during 2010. According to the MHA 2009-10 Annual Report, there were 750 incidents of Hindu-Muslim

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[www.state.gov/j/drl/rls/irf/2010\\_5/168245.htm](http://www.state.gov/j/drl/rls/irf/2010_5/168245.htm)

<sup>52</sup> U.S 2010 International Religious Freedom Report – Section 2 - 13 September 2011

[www.state.gov/j/drl/rls/irf/2010\\_5/168245.htm](http://www.state.gov/j/drl/rls/irf/2010_5/168245.htm)

<sup>53</sup> U.S 2010 International Religious Freedom Report – Section 2 - 13 September 2011

[www.state.gov/j/drl/rls/irf/2010\\_5/168245.htm](http://www.state.gov/j/drl/rls/irf/2010_5/168245.htm)

<sup>54</sup> U.S 2010 International Religious Freedom Report – Section 2 - 13 September 2011

[www.state.gov/j/drl/rls/irf/2010\\_5/168245.htm](http://www.state.gov/j/drl/rls/irf/2010_5/168245.htm)

<sup>55</sup> U.S 2010 International Religious Freedom Report – Section 2 - 13 September 2011

[www.state.gov/j/drl/rls/irf/2010\\_5/168245.htm](http://www.state.gov/j/drl/rls/irf/2010_5/168245.htm)

<sup>56</sup> U.S 2010 International Religious Freedom Report – Section 2 - 13 September 2011

[www.state.gov/j/drl/rls/irf/2010\\_5/168245.htm](http://www.state.gov/j/drl/rls/irf/2010_5/168245.htm)

<sup>57</sup> U.S 2010 International Religious Freedom Report – Section 2 - 13 September 2011

[www.state.gov/j/drl/rls/irf/2010\\_5/168245.htm](http://www.state.gov/j/drl/rls/irf/2010_5/168245.htm)

<sup>58</sup> U.S 2010 International Religious Freedom Report – Section 2 - 13 September 2011

[www.state.gov/j/drl/rls/irf/2010\\_5/168245.htm](http://www.state.gov/j/drl/rls/irf/2010_5/168245.htm)

violence throughout the country in 2009 resulting in 123 deaths and 2,380 injuries, compared with 656 incidents, including four riots, in 2008 resulting in 123 deaths and 2,272 injuries.<sup>59</sup>

- 3.7.36** By the end of January 2010, the Gujarat Government had paid additional compensation to the next of kin to all victims, including those of 228 missing persons declared dead in February 2009. However, the amount disbursed to persons was disputed between the state and central government. A case filed by a non-governmental organisation for full housing compensation was pending in the Gujarat High Court at the end of the reporting period.<sup>60</sup>

### ***Jammu and Kashmir***

- 3.7.37** The status of Kashmir and the history of events leading to its division have long been contested and led to at least three wars between India and Pakistan. India claimed that the former princely state of Jammu and Kashmir legally attained it in 1947. Pakistan claimed that Kashmiris were denied their choice of which state to join and had since held that the status of Kashmir could only be resolved by a plebiscite in line with UN Resolutions passed in 1948. Kashmir had been divided since 1948 by a cease-fire line, known since 1972 as the Line of Control (LoC). Pakistani-administered Kashmir was almost exclusively Muslim, divided between so-called Azad ("Free") Kashmir and the more remote Gilgit-Baltistan, (formerly known as the Federally Administered Northern Areas). Indian-administered Kashmir was split into three main and very different sectors: the Kashmir Valley which was mostly Muslim, Jammu which had a small majority of Hindus and Ladakh, which were sparsely populated and half Buddhist. Political orientations of people in Indian-administered Kashmir were not governed by religious identity alone. Each of these regions were internally differentiated on linguistic, religious and cultural lines.<sup>61</sup>
- 3.7.38** There had been continued violence in the Kashmir Valley between armed groups and the Indian security forces since the insurgency began in 1988-9. Levels of violence had fallen in recent years from a total of around 4,500 deaths in 2001, including over 1,000 civilians to around 381 in 2009, including 78 civilian deaths to over 100 in 2010. This decrease in violence continued in 2011, which was largely peaceful. However, the Indian security force presence in Indian-administered Kashmir remained high and there continued to be allegations of serious human rights violations by both militants and security forces. The Pakistani security force presence in Pakistani-administered Kashmir also remained high with strong controls on freedom of expression and constant security surveillance. There were reports of militant camps in Pakistani-administered Kashmir and the Indian Government had said that levels of militant infiltration across the LoC had begun to rise since 2009 after showing a decline since 2005.<sup>62</sup>
- 3.7.39** Since 2005, both countries have agreed to a range of confidence building measures including the introduction of bus services on the Srinagar-Muzaffarabad and Poonch-Rawalkot routes to connect Kashmiris on both sides of the LoC. Five crossing points on the LoC had been opened to enable movement of people between both sides. India and Pakistan also opened up trade on select items across the LoC in October 2008. These were significant symbolic advances for both India-Pakistan relations and for the people of Kashmir.<sup>63</sup>

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<sup>59</sup> U.S 2010 International Religious Freedom Report – Section 2 - 13 September 2011

[www.state.gov/j/drl/rls/irf/2010\\_5/168245.htm](http://www.state.gov/j/drl/rls/irf/2010_5/168245.htm)

<sup>60</sup> U.S Department of State – International Religious Freedom Report 2010

[www.state.gov/j/drl/rls/irf/2010\\_5/168245.htm](http://www.state.gov/j/drl/rls/irf/2010_5/168245.htm)

<sup>61</sup> Country Profile – India – Accessed on February 2012

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/asia-oceania/india?profile=all>

<sup>62</sup> Country Profile – India – Accessed on February 2012

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/asia-oceania/india?profile=all>

<sup>63</sup> Country Profile – India – Accessed on February 2012

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/asia-oceania/india?profile=all>

- 3.7.40** The Prime Ministers Singh and Gilani met in April 2010 and announced their aim to build trust and confidence in order to clear the way for substantive dialogue. In February 2011, the Indian and Pakistani Foreign Secretaries met in Bhutan and announced that they would take forward dialogue on a range of bilateral subjects. Prime Ministers Singh and Gilani met twice in 2011, during the India-Pakistan World Cup Cricket Match in March and during the SAARC Summit in November.<sup>64</sup>
- 3.7.41** Referring to Jammu and Kashmir, the UN Special Rapporteur stated in her report that, while she understood that tensions in that state had decreased as a result of the de-escalation of violence in recent years, there still remained deep bitterness among members of the Muslim and Hindu communities, both against each other and against the Government.<sup>65</sup>
- 3.7.42** There were no reports of attacks against the Hindu community in Jammu and Kashmir by rebel forces, foreign forces or terrorist organisations during July to December 2010. On 27 March 2010 the Jammu and Kashmir government told the state assembly that 170 Hindu temples had been damaged by militants in the valley in the past 20 years. Ninety temples had been renovated and the government had allocated funds for the renovation of other temples.<sup>66</sup>
- 3.7.43** 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.<sup>67</sup>
- 3.7.44 *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. Those experiencing religious intolerance can therefore reasonably seek protection from the Indian authorities and there is no evidence to suggest that such protection is not provided. 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.
- 3.7.45** Furthermore, there exists the option for those who encounter such difficulties to relocate internally. Therefore, it is unlikely that claimants in this category would qualify for asylum or Humanitarian Protection and such claims are likely to be clearly unfounded. An 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

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<sup>64</sup> Country Profile – India – Accessed on February 2012

<http://www.fco.gov.uk/en/travel-and-living-abroad/travel-advice-by-country/country-profile/asia-oceania/india?profile=all>

<sup>65</sup> COIS Report March 2012 – Section 20 Paragraph 20.12

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

<sup>66</sup> COIS Report March 2012 – Section 20 Paragraph 20.13

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

<sup>67</sup> Human Rights Watch World Report 2012 – India <http://www.unhcr.org/refworld/docid/4f2007d6c.html>

are likely to be extremely rare. Such cases may result in a grant of asylum or Humanitarian Protection but if refused are unlikely to be clearly unfounded.

### 3.8 Land disputes

- 3.8.1** 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.
- 3.8.2** *Treatment.* In a country where the agricultural sector employed about 60% of the country's workforce<sup>68</sup> the ownership and acquisition of land was an important issue. Land records were vital documents for both farmers and the government, and were used to prove ownership and for administrative functions.<sup>69</sup> The computerisation of land records in India were advocated in 1985 and a centrally sponsored scheme was started in 1988.<sup>70</sup>
- 3.8.3** Transfers of land were 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.<sup>71</sup>
- 3.8.4** 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.<sup>72</sup>
- 3.8.5** 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

<sup>68</sup> COI Service India Country of Origin Information Report September 2010

<sup>69</sup> World Bank: News & Broadcast – India: Land Records Online

<http://web.worldbank.org/WBSITE/EXTERNAL/NEWS/0..contentMDK:20511729~menuPK:141311~pagePK:34370~piPK:34424~theSitePK:4607,00.html>

<sup>70</sup> Computerisation of Land Records in India [www.gisdevelopment.net/application/lis/overview/lisrp0015a.htm](http://www.gisdevelopment.net/application/lis/overview/lisrp0015a.htm)

<sup>71</sup> 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-cut-price-land-deals-2286525.html](http://www.independent.co.uk/news/world/asia/death-toll-grows-as-india-goes-to-war-over-cut-price-land-deals-2286525.html)

<sup>72</sup> BBC News – Land bill: A New Deal For Farmers – 14 September 2011 <http://www.bbc.co.uk/news/world-south-asia-14877704>

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.<sup>73</sup>

- 3.8.6** There had been violent clashes between local villagers and the police in a dispute over land in the northern Indian state of Uttar Pradesh. Mohammed Mameen, 23, had lost his home because his farming land was taken away to build a new real-estate development Mr Mameen's family had been farming for generations in the same land, located in the fertile upper Yamuna basin. The government in Uttar Pradesh had acquired thousands of acres of land along the Yamuna River to build housing blocks, highways, airport and even a Formula 1 track. Mr Mameen and other farmers from the Sahberi village decided to fight back and filed a case in the High Court. Now their victory in the land acquisition case has inspired other villagers to take to the Courts to demand their land back. While most villagers who had to give up land were angry their livelihood was taken away, many say the main cause of their anger was the paltry compensation offered which then put poor farmers in direct conflict with the wealthy middle classes across the country.<sup>74</sup>
- 3.8.7** While the land dispute in Sahberi is being fought in the courts, a similar dispute in the nearby village of Bhatta Parsaul turned into a bloody battle between angry villagers and the local police. This agitation triggered angry reactions from across the country.<sup>75</sup>
- 3.8.8** 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.<sup>76</sup>
- 3.8.9** The early clues of how to resolve this mountain of conflicts was coming from Kurukshetra. It was the first district in the country to prepare for ushering in the Torrens system of land titling that the central government plans to implement all over the country. A new law would replace the multitude of ancient and inefficient land record systems with a uniform, nationwide system of computerised records. District officials in Kurukshetra had taken the first step by integrating the databases of the government's revenue and land administration departments, which was a crucial requirement before the Torrens system could replace it.<sup>77</sup>
- 3.8.10** In Kurukshetra experience of the new model had seen complaints over land frauds, typically selling the same plot to several buyers, had come down drastically after land records were streamlined and put online, says the local magistrate, Pankaj Aggarwal. District officials had scanned about 200,000 documents covering 416 villages, collected maps showing all the land parcels and put the whole thing on a digital platform. Transactions were recorded with biometric security eliminating chances of identity theft.<sup>78</sup>
- 3.8.11** 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

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<sup>73</sup> BBC News – Land bill: A New Deal For Farmers – 14 September 2011 <http://www.bbc.co.uk/news/world-south-asia-14877704>

<sup>74</sup> BBC News – India Land Disputes Pit Farmers Against Middle Class – 1 June 2011 <http://www.bbc.co.uk/news/business-13611850>

<sup>75</sup> BBC News – India Land Disputes Pit Farmers Against Middle Class – 1 June 2011 <http://www.bbc.co.uk/news/business-13611850>

<sup>76</sup> Forbes – India – The Law of the Land 2010 [business.in.com/printcontent/14382](http://business.in.com/printcontent/14382)

<sup>77</sup> Forbes – India – The Law of the Land 2010 [business.in.com/printcontent/14382](http://business.in.com/printcontent/14382)

<sup>78</sup> Forbes – India – The Law of the Land 2010 [business.in.com/printcontent/14382](http://business.in.com/printcontent/14382)



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.<sup>79</sup>

**3.8.12 Conclusion.** Sufficient protection is available in all parts of India and applicants can seek assistance from the national or local human rights commissions, if required. Those who are unable or, owing to fear, unwilling to avail themselves of the protection of the authorities, can 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). Therefore, grants of asylum or Humanitarian Protection will not be appropriate and such claims are likely to be clearly unfounded.

### **3.9 Women who fear domestic violence**

**3.9.1** Applicants may state that they face domestic violence at the hands of their husbands or other family members.

**3.9.2 Treatment.** India ratified the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 9 July 1993. There still existed a wide gap between the goals enunciated in the Constitution, legislation, policies, plans, programmes, and related mechanisms on the one hand and the situational reality of the status of women in India on the other hand. The underlying causes of gender inequality were related to social and economic structure, which was based on informal and formal norms and practices. The access of women particularly those belonging to weaker sections including Scheduled Castes/Scheduled Tribes/Other backward Classes and minorities, the majority of whom were in the rural areas and in the informal, unorganised sector – to education, health and productive resources, among others, was inadequate. Therefore, they remained largely marginalised, poor and socially rejected.<sup>80</sup>

**3.9.3** The law requires one-third of the seats in local bodies (panchayats and municipal councils) to be reserved for women. In addition, the country has no cultural or traditional practices that prevented women from participating in political life on the same basis as men, and women held many high-level political offices. Women participated in politics throughout the country at all levels.<sup>81</sup>

**3.9.4** 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.<sup>82</sup>

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<sup>79</sup> Forbes – India – The Law of the Land 2010 [business.in.com/printcontent/14382](http://business.in.com/printcontent/14382)

<sup>80</sup> COIS Report March 2012 – Section 24 Paragraph 24.03

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

<sup>81</sup> USSD 2011 Section 3

[http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186463f](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186463f)

<sup>82</sup> USSD 2011 Section 6

[http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186463f](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186463f)

- 3.9.5** 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 in 2010 there were 94,041 cases reported of “cruelty by husband and relatives”. The Ministry of Women and Child Development (MWCD) reported that there were 6,483 protection officers appointed across the country.<sup>83</sup>
- 3.9.6** 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 2010 there were 8,391 reported dowry deaths. Delhi had the highest incidence of dowry deaths with 112, followed by 92 deaths in Kanpur, Uttar Pradesh. However, since many cases were not reported and not properly monitored, statistics were not complete. On August 4, the MWCD told parliament that 5,650 cases of dowry were reported in 2009. The NCRB reported 2,917 criminal cases related to dowries, with a conviction rate of 21 percent.<sup>84</sup>
- 3.9.7** According to Freedom House despite the criminalisation of dowry demands and hundreds of convictions each year, the practice continued. A 2006 law banned dowry-related harassment, widened the definition of domestic violence to include emotional or verbal abuse, and criminalised spousal rape. However, reports released in 2009 by the Delhi-based Lawyers’ Collective indicated that enforcement of the law was inadequate in many states.<sup>85</sup>
- 3.9.8** 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. Whilst each of the 28 states had its own police force and courts system, clear steps had been taken to assist enforcement, such as ‘gender sensitisation’ and domestic violence awareness training for police officers and magistrates and liaison with non-governmental organisations.<sup>86</sup>
- 3.9.9** 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. The implementation of the PWDVA had been monitored and evaluated by the Lawyers Collective Women’s Rights Initiative (in collaboration with the International Centre for Research on Women), who had published three detailed reports since the Act came into operation.<sup>87</sup>
- 3.9.10 Conclusion.** Those experiencing domestic violence at the hands of their husbands or other family members can reasonably seek protection from the Indian authorities. However, the provision of this assistance may be inadequate to ensure that every individual woman who

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<sup>83</sup> USSD 2011 Section 6

[http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186463f](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186463f)

<sup>84</sup> USSD 2011 Section 6

[http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186463f](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186463f)

<sup>85</sup> Freedom House: Freedom in the World Country Report 2011

<http://old.freedomhouse.org/template.cfm?page=22&country=8055&year=2011>

<sup>86</sup> COIS Report March 2012 – Section 24 Paragraph 24.33

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

<sup>87</sup> COIS Report March 2012 – Section 24 Paragraph 24.34

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

needs assistance and protection is able to access it. Additionally, some women's ability to access this help and assistance may be limited by such factors as their location, lack of literacy and lack of awareness of their rights in what remains a patriarchal society.

**3.9.11** Where an Indian woman is able to show that she faces a real risk of domestic 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. Cases in this category should only be certified as clearly unfounded where;

- it is unarguable that there is not a sufficiency of protection in the individual case or
- it is unarguable that internal relocation is unduly harsh in the individual case.

### **3.10 Prison conditions**

**3.10.1** 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.

**3.10.2** 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.

**3.10.3 *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.<sup>88</sup>

**3.10.4** 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 sometimes available.<sup>89</sup>

**3.10.5** According to the NCRB Prison Statistics India 2010 report, the jail population was 368, 998, and there were 1,393 prisons in the country with an authorised capacity of 320,450 persons. Persons awaiting trial accounted for two-thirds of the prison population. There were 15,037 female prisoners, approximately 4 percent of the total prison population, while juveniles were less than 1 percent. Men and women were held separately. The law requires juveniles to be detained in rehabilitative facilities, although at times they were detained in prison, especially in rural areas. Large numbers of pretrial detainees were held with convicted prisoners.<sup>90</sup>

**3.10.6** Prisoners were permitted reasonable 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

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<sup>88</sup> COIS Report March 2012 – Section 24 Paragraph 14.01

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

<sup>89</sup> USSD 2011 Section 1

[http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186463f](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186463f)

<sup>90</sup> USSD 2011 Section 1

[http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186463f](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186463f)

observances, and in most cases that right was respected in practice. The government allowed some NGOs to provide assistance to prisoners, within specific guidelines.<sup>91</sup>

- 3.10.7** Investigations of prisoner complaints were within the purview of the NHRC, which received and investigated prisoner complaints of human right violations throughout the year, but some activists indicated that many complaints were not filed due to fear of retribution from prison guards or officials. Most investigation findings and NHRC recommendations were published on the NHRC Web site; however, there were allegations by NGOs that investigations and recommendations dealing with controversial issues were not disclosed. State and national human rights commissions can receive complaints on behalf of prisoners but have only recommendatory power.<sup>92</sup>
- 3.10.8** Most state governments permitted 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 made surprise visits to state prisons but not to military detention centres. The NHRC lacks jurisdiction over the armed forces and their detention centres.<sup>93</sup>
- 3.10.9** In 2010 the ICRC visited 784 detainees and interviewed 577 individually during 37 visits to 24 detention centres. The ICRC did not ask to visit interrogation or transit centres in the north-eastern states of Manipur, Mizoram, and Nagaland. NGOs' observations of prison conditions often remained confidential due to agreements with the government.<sup>94</sup>
- 3.10.10** The NHRC had a special rapporteur to ensure that state prison authorities performed medical checkups on all inmates. The rapporteur visited prisons on a regular basis throughout the year. The National Commission of Women continued visiting jails during the year to assess the living conditions of women.
- 3.10.11** The MHA acknowledged in its 2009-10 annual report that prisons were overcrowded and required repairs and renovations, including improvements in sanitation and water supply. During the year the central government began implementing a plan to modernize the prisons. According to the MHA 2009-10 annual report, the plan had been implemented in 27 states and resulted in the construction of 99 new jails and 1,365 additional barracks in existing prisons. The government's Modernization of Prisons scheme has allotted 1,800 crore (approximately \$390 million) to construct new jails, reduce overcrowding, and improve water and sanitation in prisons, but most states were not able to meet the targets.
- 3.10.12 Conclusion.** Prison conditions in India are severe and taking into account 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**

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<sup>91</sup> USSD 2011 Section 1

[http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186463f](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186463f)

<sup>92</sup> USSD 2011 Section 1

[http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186463f](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186463f)

<sup>93</sup> USSD 2011 Section 1

[http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186463f](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186463f)

<sup>94</sup> USSD 2011 Section 1

[http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic\\_load\\_id=186463f](http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?dynamic_load_id=186463f)

- 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 Instructions on Discretionary Leave) Where the claim includes dependent family members consideration must also be given to the particular situation of those dependants in accordance with the Asylum Instructions on Article 8 ECHR.
- 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 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 Instructions on Discretionary Leave and on Article 8 ECHR.
- 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. 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** Applicants may claim they cannot return to India due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.
- 4.4.2** The US Department of State, Bureau of Consular Affairs, Consular Information Sheet for India, accessed on 30 July 2011, noted that the quality of medical care in India varied considerably. Medical care was available in the major population centres that approached and occasionally meets Western standards, but adequate medical care was usually very limited or unavailable in rural areas.<sup>95</sup>
- 4.4.3** There was immense unevenness in the provision of healthcare across the country. Staff vacancies remained unfilled and absenteeism was high, forcing patients to revert to private treatment which they could not afford.<sup>96</sup> Medical care was available in the major population centres but adequate medical care was usually limited or unavailable in rural areas. In the major cities private medical care was available, but was expensive. In the case of psychiatric illness, specialised treatment may not be available outside major cities. Government funding for health services were offered both by the states and the centre. Services supplied at government health centres were free. Certain industrial/governmental organisations provide health care schemes for their employees.<sup>97</sup>
- 4.4.4** According to Human Rights Watch World Report 2012, hundreds of thousands of persons with incurable diseases suffered unnecessarily from severe pain because the Indian government had failed to ensure access to safe, effective and inexpensive pain drugs. In an important step forward, the Medical Council of India recognised palliative care as a medical speciality but more than half of government-supported regional cancer centres still do not offer palliative care or pain management, even though more than 70 percent of their patients required it, resulting in severe but unnecessary suffering for tens of thousands.<sup>98</sup>

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<sup>95</sup> COIS Report March 2012 – Section 27 Paragraph 27.02

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

<sup>96</sup> COIS Report March 2012 – Section 27 Paragraph 27.03

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

<sup>97</sup> COIS Report September 2010 – Section 27 Paragraph 27.03

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

<sup>98</sup> Human Rights Watch - World Report 2012 <http://www.hrw.org/sites/default/files/reports/wr2012.pdf>



- 4.4.5** Government funding for mental health services were offered both by the states and the centre. Services offered at Government health centres were free. In the 10th Five Year Plan estimates, mental health constituted 2.05% of the total plan outlay for health. The country had disability benefits for persons with mental disorders. Details about disability benefits for mental health were not available. Disability benefits had become available recently and in a limited way.<sup>99</sup>
- 4.4.6** As noted in the World Health Organization (WHO) Project Atlas Country Profile for India, 2005, Mental health care in primary care was available in 22 districts out of about 600 districts. It would be extended to over 100 districts in the next few years. Regular training of primary care professionals in the field of mental health was present. Community care facilities in mental health were present. Mental health facilities in community care were available in some designated districts. In addition, various non-governmental organisations supplied different types of services ranging from telephone hotlines to residential rehabilitative services.<sup>100</sup>
- 4.4.7** In 2008, an estimated 2.27 million people between the ages of 15-49 years of India's 1160 million population were living with HIV (PLHIV). India carried the largest burden of HIV behind South Africa and Nigeria. The epidemic in India showed a declining trend overall. HIV prevalence among the adult population in 2007 was 0.34 percent and in 2008 was 0.29 percent. There was also a declining number of PLHIV in the country, with an estimated 2.27 million PLHIV in 2008 vis-à-vis 2.31 million in 2007.<sup>101</sup>
- 4.4.8** The implementation of the Anti-Retroviral Treatment (ART) programme had been very successful and a significant number of NGO offered care, support and treatment (CST) services and other support to people living with HIV and AIDS. In response to limited or poor access to ART centres, 208 Link ART Centres (LAC) were established and fully functional. In addition to addressing accessibility constraints, the LAC were expected to decongest ART centres and provide decentralised replenishment of treatment supplies to stable patients on prescription. The ART centres were linked to Community Care Centres (CCC) which were set up with the mandate of providing a comprehensive package of CST services. These were set up in the NGO sector with the main objective of providing psycho-social support, ensuring drug adherence and providing home-based care. At present, 266 CCC were fully functional.<sup>102</sup>
- 4.4.9** The Article 3 threshold will not be reached in the majority of medical cases and a grant of Discretionary Leave will not usually be appropriate. Where a case owner considers that the circumstances of the individual applicant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making 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.

## **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

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<sup>99</sup> COIS Report March 2012 – Section 27 Paragraph 27.12  
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>100</sup> COIS Report March 2012 – Section 27 Paragraph 27.10  
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>101</sup> COIS Report March 2012 – Section 27 Paragraph 27.04  
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

<sup>102</sup> COIS Report March 2012 – Section 27 Paragraph 27.04  
<http://www.ukba.homeoffice.gov.uk/policyandlaw/guidance/coi/>

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, in particular paragraph 395C requires the consideration of all relevant factors known to the Secretary of State, and with regard to family members refers also to the factors listed in paragraphs 365-368 of the Immigration Rules.

- 5.3** 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.
- 5.4** The AVR scheme is implemented on behalf of the UK Border Agency by Refugee Action and co-funded by the European Refugee Fund. Refugee Action 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.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx](http://www.refugee-action.org/ourwork/assistedvoluntaryreturn.aspx)

**Country Specific Litigation Team  
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