

OPERATIONAL GUIDANCE NOTE

INDIA

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1. Introduction

- 1.1 This document evaluates the general, political and human rights situation in India and provides guidance on the nature and handling of the most common types of claims received from nationals/residents of that country, 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 This guidance must also be read in conjunction with any COI Service India Country of Origin Information published on the Horizon intranet site. The material is also published externally on the Home Office internet site at:
- http://www.homeoffice.gov.uk/rds/country_reports.html
- 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 Instructions 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.
- 1.4 With effect from 15 February 2005, India is a country listed in section 94 of the Nationality Immigration and Asylum Act 2002. If, following consideration, a claim made on or after 15 February 2005 by someone who is entitled to reside in India is refused, case owners should certify it as clearly unfounded unless satisfied that it is not. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail.

Guidance on whether certain types of claim are likely to be clearly unfounded is set out below.

Source documents

1.5 A full list of source documents cited in footnotes is at the end of this note.

2. Country assessment

2.1 India is stable multiparty, federal, democratic republic with a parliamentary system of government. Citizens are able to change their government peacefully through periodic, free, and fair elections held on the basis of universal suffrage.¹ The President of India is the Constitutional Head of State, elected for five years by an electoral college comprising elected members of both Houses of Parliament and the State legislatures.² Former finance minister, Manmohan Singh was sworn in as Prime Minister on 22 May 2004, becoming India's first-ever non-Hindu Prime Minister. He leads a coalition government, called the United Progressive Alliance.³

2.2 While the Indian government generally respected the rights of its citizens in 2007, problems still remained. Despite laws protecting human rights and the existence of the government-appointed but independent National Human Rights Commission (NHRC), enforcement was lax and convictions rare.

2.3 Problems reported by the US State Department during 2007 included extrajudicial killings of persons in custody, disappearances and mistreatment by police and security forces. Poor prison conditions, lengthy pre-trial detention without charge, and prolonged detentions while undergoing trial also remained significant issues. Lack of accountability permeated the government and security forces⁴ and individual state police forces were often corrupt and inefficient.⁵ Government officials used special anti-terrorism legislation to justify the excessive use of force while combating terrorism for example during insurgencies in Jammu and Kashmir and several north-eastern states. Furthermore, security force officials who committed human rights abuses generally enjoyed de facto impunity, although there were investigations into individual abuse cases as well as punishment of some perpetrators by the court system. In its 2007 report, Amnesty International stated that perpetrators of human rights violations continued to enjoy impunity, particularly in Gujarat.⁶

2.4 Other issues of concern highlighted by the US State Department during 2007 included attacks against religious minorities and the promulgation of anti-religious conversion laws; continued social acceptance of caste-based discrimination; domestic violence and abuses against women such as dowry-related deaths, honour crimes, female infanticide and feticide; trafficking in persons and indentured, bonded, and child labour.⁷

2.5 Although India has signed and ratified the UN Convention on the Elimination of All Forms of Discrimination against Women and has a number of constitutional safeguards guaranteeing equal rights for women, there is evidence of huge gaps between constitutional guarantees and the daily realities of women's lives. In 2006, domestic violence was reported to be a common and serious problem across all religious, class, and caste boundaries. Offences included beating, slapping, kicking, rape and even murder. Societal violence against women was also a serious problem in 2006. Although

¹ COIS India Country Report January 2008 Section 6

² COIS India Country Report January 2008 Section 6

³ COIS India Country Reports January 2008 Section 3

⁴ USSD Human Rights Report 2008 Section 1

⁵ COIS India Country Report January 2008 Section 8

⁶ USSD Human Rights Report 2008 Section 1

⁷ COIS India Country Report January 2008 Section 7

providing or taking a dowry is illegal, dowries continue to be offered and accepted and dowry disputes are a serious problem. It was reported in 2006 that women do not report the majority of rapes. Women victims of rape were also reported to be at a severe disadvantage within the criminal justice system and the rape of women in custody was reported in 2006.⁸ However, the Protection of Women from Domestic Violence Act came into effect on 26 October 2006 which seeks to protect women from all forms of domestic violence, harassment and exploitation by family members or relatives.⁹

- 2.6** NGOs are able to operate in India free of government restrictions. The main domestic human rights organisation in operation is the government-appointed but independent National Human Rights Commission (NHRC) which was set up under the Protection of Human Rights Act 1993.¹⁰ The NHRC can inquire on its own initiative or on a petition presented to it by a victim or any person on his behalf, into complaints of human rights violations. Institutional and legal weaknesses have reportedly however hampered its effectiveness. For example, it does not have a statutory power to investigate allegations, can only request state governments to submit a report and can only make recommendations in cases against the military which are not binding. State Human Rights Commissions exist in Andhra Pradesh, Assam, Chhattisgarh, Himachal Pradesh, Jammu and Kashmir, Kerala, Madhya Pradesh, Manipur, Maharashtra, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, and West Bengal, Karnataka and Gujarat.¹¹
- 2.7** On 11 July 2006, eight bombs exploded on the suburban rail network in Mumbai at seven locations killing up to 200 people and wounding 700. Hours earlier suspected Islamic militants killed seven people in a series of grenade attacks in Srinagar. BBC News reported on 30 September 2006, that India accused Pakistan's intelligence agency of being behind the Mumbai train blasts and said they were carried out by Lashkar-e-Toiba. Pakistan rejected the allegation.¹² On 18 February 2007, at least 67 people were killed and 50 injured when two firebombs went off on the New Delhi-Wagah Samjhauta (Friendship) Express train travelling to Pakistan. Most of the dead were Pakistani citizens. The attack occurred a day before Pakistani foreign minister, Khurshid Kasuri, was due in Delhi for talks with Indian leaders. The blast was denounced as an act of terrorism aimed at disrupting the India/Pakistan peace process.¹³
- 2.8** It was reported that meaningful progress on a solution to the conflict over the disputed territory of Kashmir, which has killed at least 45,000 civilians, soldiers and militants since 1989, remained elusive throughout 2006, although the November 2003 reciprocal cease-fire between Indian and Pakistani troops was largely upheld during the year. However, it was reported that resolution of the conflict appeared likelier in early April 2007, when Mr Singh responded to pressure from the Congress's coalition partner in the Jammu and Kashmir state government for a reduction in India's military presence in the state.¹⁴

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

⁸ COIS India Country Report January 2008 Section 23

⁹ COIS India Country Report January 2008 Section 23

¹⁰ COIS India Country Report January 2008 Section 17 & Home Office India FFMR paras 7.49 & 7.50

¹¹ COIS India Country Report January 2008 Section 8 & National Human Rights Commission, New Delhi, India

¹² COIS India Country Report January 2008 Section 4

¹³ COIS India Country Report January 2008 Section 4

¹⁴ COIS India Country Report January 2008 Section 3

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 Instructions on Considering the Asylum Claim).
- 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** 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 paragraph 11 of the Asylum Instructions on Considering the Asylum Claim)
- 3.5** All Asylum Instructions can be accessed on the Horizon intranet site. The instructions are also published externally on the Home Office internet site at: <http://www.ind.homeoffice.gov.uk/documents/asylumpolicyinstructions>

3.6. Sikhs in fear of state persecution

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 of their membership of groups such as Shiromani Akali Dal (SAD) or All India Sikh Students Federation (AISSF).
- 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.

3.6.2 **Treatment.** Sikhs are a majority in the state of Punjab and according to the 2001 Census constituted 1.9 per cent of the population in India. A 2000 Danish Immigration Service Fact Finding Mission reported that Sikhs were not subjected to torture just because they were Sikhs or because of the general political situation and in general were not being persecuted. The problems were of a different nature than before and were often due to problems in local society, e.g. disputes over land, etc.¹⁵

3.6.3 Since the late 1990s there had been no significant recurrences of Sikh militancy until the Delhi cinema bombs of May 2005. In June 2005, police arrested a top Sikh militant, Jagtar Singh Hawara, and two others. Hawara was accused of killing Punjab chief minister Beant Singh in 1995 and escaped from prison in 2004. Hawara was also accused of leading the outlawed militant Sikh separatist organisation Babbar Khalsa

¹⁵ Danish Immigration Service: Report on fact-finding mission to Punjab, India: 21 March – 5 April 2000

International.¹⁶ Police claimed in 2005, to have 'neutralised' Sikh separatist militants who had recently become active in the state and ruled out the possibility of a full-scale resumption of Sikh militancy in Punjab, although there had been a 'concerted effort' to reactivate Sikh separatist groups such as the Babbar Khalsa¹⁷. It was reported in July 2007 that Hawara and another man, Balwant Singh, were sentenced to death for the murder of Beant Singh.¹⁸

- 3.6.4** An article entitled "The fading of Sikh militancy", published by the BBC in March 2005 also reported that over two decades after the militancy period began in Punjab, the divide between Sikhs and Hindus had been bridged. The antagonism with the Congress party had largely disappeared and the elevation of Manmohan Singh as India's first Sikh prime minister was "the culmination in the changing relations".¹⁹
- 3.6.5** In its' 2007 report, the Asian Centre for Human Rights (ACHR) stated that Punjab continued to be engulfed in serious human rights violations including several cases of extrajudicial and custodial killing of civilians during 2006 and that law enforcement personnel were responsible for extrajudicial killings and the shooting of civilians. However, the US Citizenship and Immigration Services also noted that while the Punjab police may be serious about pursuing Sikhs anywhere in India whom they view as hard-core militants, in practice only a handful of militants are likely to be targeted for such long-arm law enforcement.²⁰
- 3.6.6** Following a visit to Punjab in April 2007, the Co-Director of Ensaaf claimed that Sikhs who continued to advocate support for their cause were still being monitored by the authorities and, in some cases, risked detention and physical harm.²¹ In its' Punjab Assessment of 2008, however, the South Asia Terrorism Portal (SATP) recorded that the Punjab remained peaceful throughout 2007 though it was marred by a single and significant terrorist strike at Ludhiana in October 2007. The SATP reported that 2007 was the fourteenth consecutive year that the Punjab had remained relatively free of major political violence after the widespread terrorist movement for "Khalistan" was comprehensively defeated in 1993, though some intelligence indicated that there was a concerted attempt to revive militancy in the State.²²
- 3.6.7** NGOs investigate allegations of human rights abuses and can make recommendations for redress to the relevant local or central government authorities which are generally followed, although they do not have the force of law. In respect of Punjab, the Punjab State Human Rights Commission was set up in July 1997 to investigate complaints of human rights violations in the area. It was reported to have received 17,144 complaints relating to violations of human rights in 2005. The PSHRC had disposed of 14,329 complaints, while 2815 remained pending by the end of 2005.²³
- 3.6.8** There are no reports that members of either Akali Dal or the SSF are specifically targeted or discriminated against as a result of their membership. Akali Dal, a Sikh party also called Shiromani Akali Dal (SAD) is now a recognised and legal political party in India which preaches a return to the roots of the Sikh religion. Demands for an independent Sikh state were dropped by the party following the Punjab peace accord of 1985. Having formed an alliance with the Bharatiya Janata Party (BJP) in 1997, Akali Dal performed strongly in the 2004 elections, winning 10 out of 13 seats in Punjab and is now a

¹⁶ BBC News "Wanted Sikh held over Delhi Bombs" dated 8 June 2005

¹⁷ BBC News "Sikh militant cells 'neutralised' dated 20 June 2005

¹⁸ BBC News "Two to die for Beant Singh murder" dated 31 July 2007

¹⁹ COIS India Country Report January 2008 Section 19

²⁰ COIS India Country Report January 2008 Section 19

²¹ Canadian Immigration and Refugee Board, COI Research 11 July 2007: India: Treatment of Sikhs in Punjab within a contemporary historical context (2005-2007)

²² SATP Punjab Assessment 2008

²³ COIS India Country Report January 2008 Section 19

major player in the northern state of Punjab where it is currently in opposition.²⁴ The All India Sikh Students Federation (AISSF) was banned in 1984, but this ban was lifted in 1985. It has since split into various factions and is believed to be active in various universities in Punjab. It currently operates under the name of Sikh Students Federation (SSF).²⁵

3.6.9 Sufficiency of protection. As this category of applicants' fear is of ill treatment/persecution by the state authorities they cannot apply to the authorities for protection.

3.6.10 Internal relocation. Where the applicant's fear is of ill treatment/persecution by the central authorities, relocation to a different area of the country to escape this threat is not feasible, though it is feasible where the applicant's fear is of local police and the individual is not of interest to the central authorities.

3.6.11 The law provides for freedom of movement and the government generally respects this in practice, however, in certain border areas the government requires special permits.²⁶ 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.²⁷

3.6.12 There are no checks on a newcomer to any part of India arriving from another part of India, including if the person is a Punjabi Sikh. Local police forces have neither the resources nor the language abilities to perform background checks on people arriving from other parts of India. There is no system of registration of citizens, and often people have no identity cards, which in any event can be easily forged.²⁸

3.6.13 Sikhs from the Punjab are able to move freely within India and internal relocation to escape the attentions of local police in their home area would not be unduly harsh. Therefore, where the fear is of local police and the individual is not of interest to the central authorities, internal relocation is feasible. 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.²⁹ The situation for women with children is likely to be more difficult as children may not be accepted in hostels.³⁰ Illiterate women from rural areas are likely to find it particularly difficult to obtain accommodation as a lone woman.³¹ 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.

3.6.14 Caselaw.

S (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 with the

²⁴ COIS India Country Report January 2008 Section 3, Section 19 and Annex B

²⁵ COIS India Country Report January 2008 Annex B

²⁶ COIS India Country Report January 2008 Section 28

²⁷ COIS India Country Report January 2008 Section 19

²⁸ COIS India Country Report January 2008 Section 19

²⁹ Home Office CIPU India FFMR (paras 9.1 - 9.16)

³⁰ Home Office CIPU India FFMR (paras 7.17, 7.25, 7.27 & 9.5)

³¹ Home Office CIPU India FFMR (paras 9.1 - 9.16)

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 [2002] UKIAT03387 CG. 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.

3.6.15 Conclusion. It is not likely that anyone claiming harassment based solely on being a Sikh or previous involvement with SAD or AISSF would be able to demonstrate a well-founded fear of persecution within the terms of the 1951 Convention on the basis of their activities alone. Both groups are able to operate freely without any restrictions. Sikh-only and SAD/AISSF activist claims should be certified as clearly unfounded.

3.6.16 Sikh separatist groups such as Babbar Khalsa are proscribed in India and rank and file members are likely to fear prosecution rather than persecution. There is also no evidence to the effect that rank and file members of other Sikh separatist groups are significantly active or are capable of actions which would bring them to the adverse attention of the authorities. It is therefore unlikely that individuals associated at a low or medium level with Sikh militant groups would be able to establish a well-founded fear of persecution. The grant of asylum in such cases is therefore not likely to be appropriate.

3.6.17 The authorities are nevertheless still alert to the potential threat posed by Sikh militant groups, in particular Babbar Khalsa, and as such high-profile leading members of these organisations are likely to face a real risk of persecution. The grant of asylum in such cases is therefore likely to be appropriate.

3.6.18 Case owners should note that members of Sikh militant groups, in particular Babbar Khalsa, have in the past been responsible for numerous 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 in the first instance.

3.7 Sikhs in fear of non-state agents

3.7.1 Applicants fear persecution by non-state agents in the Punjab because they have refused to join a terrorist group, or may claim to fear the Akali Dal because of their involvement with the Congress party.

3.7.2 Treatment. 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. In its' weekly Punjab assessment of 13 June 2005, the South Asia Terrorism Portal's noted that there had been a continuous pattern of arrests and seizures of arms and explosives which was linked to Sikh militancy, however unrelenting efforts to resuscitate the terror were stifled, on each occasion, by the complete absence of public support, and the immensely improved intelligence capabilities of the Punjab Police.³² In its' India Assessment of 2007, covering events in 2006, however, the SATP recorded no terrorist related incidents in Punjab.

3.7.3 A significant decline in Sikh militancy has been corroborated in other reports. In 2005 Punjabi police claimed to have 'neutralised' Sikh separatist militants who had recently become active in the state and ruled out the possibility of a full-scale resumption of Sikh militancy in Punjab.³³ An article entitled "The fading of Sikh militancy", published by the BBC in March 2005 also reported that over two decades after the militancy period began

³² COIS India Country Report January 2008 Section 19

³³ COIS India Country Report January 2008 Section 19

in Punjab, the divide between Sikhs and Hindus had been bridged. The antagonism with the Congress party had largely disappeared and the elevation of Manmohan Singh as India's first Sikh prime minister was "the culmination in the changing relations".³⁴

3.7.4 Sufficiency of protection. The governments of 28 states and 7 union territories have primary responsibility for maintaining law and order, with the central government providing guidance and support. The Ministry for Home Affairs controls most paramilitary forces, the internal intelligence bureaus, and the nationwide police service. The civilian authorities maintained effective control of the security forces. It was reported in 2006 that some members of the security forces committed human rights abuses and that corruption in the police force was pervasive and acknowledged by many government officials. It was also reported that police officers at all levels acted with relative impunity and were rarely held accountable for illegal actions. However, the evidence also indicates that targeting terrorist elements within Indian society has been and still is a key priority for the Indian police. There is no information to suggest that the police would systematically fail to investigate effectively any complaints made by individuals threatened by terrorist groups. In addition, there is no evidence to suggest that the police would systematically fail to investigate complaints made by individuals that they had been targeted by the Akali Dal on the basis of their association with the Congress Party. In addition, a wide variety of domestic and international human rights groups generally operate without government restriction in India.³⁵ Those experiencing persecution from militant groups can reasonably seek protection from the Indian authorities and there is no evidence to suggest that such protection is not provided.

3.7.5 Internal relocation. The law provides for freedom of movement and the government generally respects this in practice, however, in certain border areas the government requires special permits.³⁶ 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.³⁷

3.7.6 There are no checks on a newcomer to any part of India arriving from another part of India, including if the person is a Punjabi Sikh. Local police forces have neither the resources nor the language abilities to perform background checks on people arriving from other parts of India. There is no system of registration of citizens, and often people have no identity cards, which in any event can be easily forged.³⁸

3.7.7 Sikhs from the Punjab are able to move freely within India and internal relocation to escape the attentions of individuals in their home area would not be unduly harsh. 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.³⁹ The situation for women with children is likely to be more difficult as children may not be accepted in hostels.⁴⁰ Illiterate women from rural areas are likely to find it particularly difficult to obtain accommodation as a lone woman.⁴¹ 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

³⁴ COIS India Country Report January 2008 Section 19

³⁵ COIS India Country Report January 2008 Section 17

³⁶ COIS India Country Report January 2008 Section 28

³⁷ COIS India Country Report January 2008 Section 19

³⁸ COIS India Country Report January 2008 Section 19

³⁹ Home Office CIPU India FFMR (paras 9.1 - 9.16)

⁴⁰ Home Office CIPU India FFMR (paras 7.17, 7.25, 7.27 & 9.5)

⁴¹ Home Office CIPU India FFMR (paras 9.1 - 9.16)

relocate to live with extended family or friends in other parts of the country. However, where these circumstances do not apply internal relocation is likely to be unduly harsh.

3.7.8 *Caselaw.*

BK [2002] UKIAT03387 CG. 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.

3.7.9 *Conclusion.* Following the end of the counter-insurgency period there is no evidence of persecution of Sikhs by non state agents. The general indication is that there has been a significant decline in Sikh militarism in recent years. In addition, gaps between Sikhs and Hindus have been bridged and any antagonisms with the Congress Party have generally disappeared. Therefore applicants would be unlikely to demonstrate a well-founded fear of persecution, or torture or degrading or inhuman treatment, amounting to a breach of Article 3 ECHR. In addition, 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). Therefore, it is unlikely that any such claim would result in a grant of asylum or Humanitarian Protection and such claims are likely to be clearly unfounded.

3.8 **Christians, Muslims and Hindus**

3.8.1 Applicants fear persecution from non-state agents as a consequence of their Christian, Muslim or Hindu religious faith.

3.8.2 *Treatment in general.* According to the 2001 government census, Christians constitute 2.3% of the population of India and Muslims 13.4% (of which just over 90% are Sunni and the remainder Shi'a). Hindus, the major religion in India, constitute 80.5% of the population. Muslims and Christians are therefore respectively the first and second largest minority religious groups in India.⁴²

3.8.3 India is a secular state with no official religion. Its' Constitution guarantees all citizens freedom of religion and belief as well as the right to practise religion freely.⁴³ While government policy continues to contribute to the generally free practice of religion, according to the USIRF 2007 report, problems remained in some areas. Some state governments enacted and amended 'anti-conversion' laws and police and enforcement agencies often did not act swiftly enough to effectively counter societal attacks, including attacks against religious minorities. Despite government efforts to foster communal harmony, some extremists continued to view ineffective investigation and prosecution of attacks on religious minorities, particularly at the state and local level, as a signal that they could commit such violence with impunity, although numerous cases were in the courts at the end of the reporting period.⁴⁴

3.8.4 The USIRF Report 2007 noted instances of societal discrimination and violence based in whole or in part on religion. Many such incidents were linked to politics, conversion, retaliation and economic competition between different religious communities also played an important role in such conflicts. According to the Ministry of Home Affairs' 2006 Annual Report, there were 698 instances of communal violence or violence along religious lines in which 133 persons were killed and 2,170 injured. However, the same report noted that efforts at ecumenical understanding brought religious leaders together to defuse religious tensions and that prominent secularists of all religions reportedly made public efforts to show respect for other religion groups by celebrating their holidays and attending social events such as weddings. Muslim groups reportedly protested

⁴² COIS India Country Report January 2008 Section 19

⁴³ COIS India Country Report January 2008 Section 19

⁴⁴ USIRF Report 2007 (Introduction)

against the mistreatment of Christians by Hindu extremists, and Christian clergy and spokespersons for Christian organizations issued public statements condemning anti-Muslim violence in places such as Gujarat.⁴⁵

- 3.8.5 Treatment of Muslims.** The Indian authorities do not restrict the religious activities of Muslims, who have freedom of religious practice and freedom to organise their services according to their codes, religious teachings and customs. Muslims in India have their own educational establishments including madrasa religious schools responsible for disseminating the teachings of Islam and a large number of places of worship. Though under-represented in some sectors of society, it was reported in 2005 that the government in the southern state of Andhra Pradesh was to reserve five per cent of jobs in education and government for the Muslim minority. A number of other states in India also had a percentage of Muslim-reserved jobs.⁴⁶
- 3.8.6** The USIRF 2007 report noted that during 2006, the Nanavati-Shah commission, continued its hearings into the Gujarat 2002 violence that was triggered following a campaign of general sectarian violence in February 2002 which left thousands of Muslims killed and homeless. In its February 2006 response to the Supreme Court, the Gujarat police reportedly said that they would re-examine 1,600 of the 2,108 cases that were closed after the riots because of the unavailability of witnesses. Only 6 cases relating to 2002 violence were reported to have resulted in convictions, whereas 182 cases resulted in acquittals.⁴⁷
- 3.8.7 Treatment of Christians.** It is reported that the Indian authorities do not interfere with the internal religious activities of Christians, that their activities are conducted freely and that they are well integrated into Indian society. Christians can establish their own schools offering religious instruction as well as a general education and religious instruction can be provided at seminaries. It was reported in 2007 that Christians were 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.⁴⁸
- 3.8.8** Despite tolerance towards Christians by the Indian authorities, some societal problems remain. It was reported in 2007 that attacks on Christian churches and individuals, largely perpetrated by individuals associated with extremist Hindu nationalist groups, continue to occur, and that perpetrators were rarely held to account by the state legal apparatus. In some instances, police provided protection from the attackers but in others reportedly failed to intervene.⁴⁹ On 24 December 2007, violence broke out in Orissa state during an altercation between Hindus and Christians. The state government failed to act quickly, leaving vulnerable groups at risk, which enabled the violence to escalate, reportedly leaving at least eight people dead.⁵⁰
- 3.8.9** Those involved in missionary work have sometimes been victims of human rights abuses, where their actions have involved or been perceived to involve religious conversions. It was noted in 2007 that the issue of conversion of Hindus or members of lower castes to Christianity remained highly sensitive and resulted in assaults and/or arrests of Christians. However, perpetrators of some of these acts of violence have been traced and prosecuted. Furthermore, Christians often held large public prayer meetings without violence or protests.⁵¹

⁴⁵ USIRF Report 2007 (Section 3)

⁴⁶ COIS India Country Report January 2008 Section 19

⁴⁷ COIS India Country Report January 2008 Section 19

⁴⁸ COIS India Country Report January 2008 Section 19

⁴⁹ COIS India Country Report January 2008 Section 19

⁵⁰ COIS India Country Report January 2008 Section 19

⁵¹ USIRF 2007 (Section III)

- 3.8.10 Treatment of Hindus.** As noted above, Hindus are the major religion in India accounting for some 80% of the population. Skirmishes between Hindus and Muslims have occasionally occurred, for example, in February 2002, it was reported that a mob of Muslims attacked a train carrying Hindu volunteers returning from Ayodhya to the state of Gujarat. The train caught fire and at least 58 people were burnt provoking deadly religious riots in which at least 1,000 people died, most of them Muslim. Following the incident accusations were made against the state government that it had not done enough to contain the riots, or arrest and prosecute the rioters. Other minor Hindu-Muslim skirmishes were reported: in Gujarat in Vadodara (September 2003 and February 2004), Viramgam (November 2003), Ahmedabad (November 2003 and January 2004), and Godhra (September 2003 and February 2004) as a result of which seven people, three Hindus and four Muslims, were killed.⁵² However, there have not been any reports of recent skirmishes between the two religious communities.
- 3.8.11 Sufficiency of protection.** The Penal Code prohibits and punishes any violation of tolerance and non-discrimination based on religion or belief. However in May 2007, the United States Commission on International Religious Freedom reported that the government did not do all in its power to pursue the perpetrators of attacks on religious minorities and to counteract the "prevailing climate of hostility" towards them⁵³
- 3.8.12** The appointed members of the National Commission for Minorities (NCM) and the National Human Rights Commission (NHRC) are tasked respectively with protecting the rights of minorities and protecting human rights. These governmental bodies investigate allegations of discrimination and bias and can make recommendations for redress to the relevant local or central government authorities. These recommendations are generally followed, although they do not have the force of law.⁵⁴
- 3.8.13** Following a spate of anti-Christian violence in 2000, including the burning of an Australian missionary and his two young sons, the former BJP Prime Minister, Atal Behari Vajpayee, spoke out strongly about these incidents. He called on state governments to "firmly and impartially investigate all incidents of violence against Christians in India", and commenting on the spate of attacks he called them an "aberration and an exception to the general texture of peaceful and cordial relations between the various communities".⁵⁵
- 3.8.14** As noted above, the Gujarat government has been criticised for its failure to bring to justice those responsible for the riots in 2002. However, the Supreme Court and the National Human Rights Commission have taken steps to secure justice for the victims of the riots. Compensation of up to Rs2.4 billion was paid by the Gujarat government to the families of those killed and injured⁵⁶ and in its February 2006 response to the Supreme Court, the Gujarat police reportedly said that they would re-examine 1,600 of the 2,108 cases that were closed after the riots because of the unavailability of witnesses.
- 3.8.15** Those experiencing religious intolerance can 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. As detailed, perpetrators of religious violence against Christians, Muslims and Hindus have been prosecuted for their actions.
- 3.8.16** In the cases of high profile religious leaders whose actions have made them a particular target, the Indian State may not however be able to provide a sufficiency of protection.

⁵² USIRFR 2004 (Section II)

⁵³ COIS India Country Report January 2008 Section 19

⁵⁴ USIRFR 2005 (Section II)

⁵⁵ BBC News. 'India condemns attacks on Christians' dated 24 June 2000

⁵⁶ COIS India Country Report January 2008 Section 19 & HRW: World Report 2006: India

3.8.17 Internal relocation. The law provides for freedom of movement and the government generally respects this in practice, however, in certain border areas the government requires special permits.⁵⁷ Therefore, as a general rule, an internal relocation option exists from one Indian State to another. 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.⁵⁸ The situation for women with children is likely to be more difficult as children may not be accepted in hostels.⁵⁹ Illiterate women from rural areas are likely to find it particularly difficult to obtain accommodation as a lone woman.⁶⁰ 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.

3.8.18 Caselaw.

WF [2002] UKIAT 04874 CG. 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.

3.8.19 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. 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 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.

3.9 Land disputes

3.9.1 Typically an applicant may claim that he is in dispute with either an uncle or another family member over a piece of land. The protagonist violently abuses the applicant, and is influential so either the applicant does not report the problems to the police or has not had an investigation by the police. The violence escalates and the applicant flees the country.

3.9.2 Treatment. In a country where nearly two thirds of the population relies on agriculture for their livelihoods,⁶¹ the ownership and acquisition of land is clearly an important issue. Land records are vital documents for farmers and the government, used to prove ownership and for administrative functions as well.⁶² The computerisation of land records in India was advocated in 1985 and a centrally sponsored scheme was started in 1988. The scheme continued to develop and by 1999 was being implemented in 544

⁵⁷ COIS India Country Report January 2008 Section 28

⁵⁸ Home Office CIPU India FFMR (paras 9.1 - 9.16)

⁵⁹ Home Office CIPU India FFMR (paras 7.17, 7.25, 7.27 & 9.5)

⁶⁰ Home Office CIPU India FFMR (paras 9.1 - 9.16)

⁶¹ COIS India Country Report January 2008 Section 2

⁶² World Bank: News and Broadcast. 'India: Land Records Online' updated May 2004

districts of the country, leaving only those where there were no land records.⁶³ It is reported that computerised land ownership records in India are now providing millions of farmers with a measure of security and peace of mind they did not previously have.⁶⁴ However, another report notes that current land ownership records provide only “presumptive title” rather than “guaranteed title” suggesting that the absence of guaranteed title has far-reaching implications in the country.⁶⁵ Land disputes in India can occasionally end in violence as noted in a 2001 report in *The Tribune* newspaper, when four people were hurt in a firing incident over a land dispute. The report notes that the police were deployed in the tense situation in the village, three people were arrested and the gun used seized.⁶⁶

- 3.9.3 Sufficiency of protection.** The law provides for an independent judiciary and, during 2006, the government generally respected this provision in practice, however, serious problems remained. It was reported in 2004 that the judiciary was overburdened generally, but in 2006, unlike in previous years, the court was regularly in session and the judicial system began to normalise in Jammu and Kashmir. Nevertheless, persistent inefficiencies in the judicial system were reported for example it was reported that the judicial system was hindered because of judicial tolerance of the government's anti-insurgent actions and because of the frequent refusal by security forces to obey court orders.⁶⁷
- 3.9.4** A wide variety of domestic and international human rights groups generally operate without government restriction in India to whom individuals can provide support in seeking redress against human rights abuses⁶⁸ There are therefore institutions in place in India to protect those in land disputes and there are some organisations both governmental and non-governmental to whom individuals can turn for help and assistance.
- 3.9.5 Internal relocation.** The law provides for freedom of movement and the government generally respects this in practice, however, in certain border areas the government requires special permits.⁶⁹ Therefore, as a general rule, an applicant who fears retribution as a result of a land dispute could move from one state to another. 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.⁷⁰ The situation for women with children is likely to be more difficult as children may not be accepted in hostels.⁷¹ Illiterate women from rural areas are likely to find it particularly difficult to obtain accommodation as a lone woman.⁷² 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.
- 3.9.6 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

⁶³ GIS Development. ‘Computerisation of Land Records in India’ (page 2)

⁶⁴ World Bank: News and Broadcast. ‘India: Land Records Online’ updated May 2004

⁶⁵ India Together. ‘A credible low-income housing policy’ dated 24 February 2005

⁶⁶ *The Tribune*: Online Edition. ‘Land dispute: 4 hurt in firing’ dated 19 April 2001

⁶⁷ COIS India Country Report January 2008 Section 11

⁶⁸ COIS India Country Report January 2008 Section 17

⁶⁹ COIS India Country Report January 2008 Section 28

⁷⁰ Home Office CIPU India FFMR (paras 9.1 - 9.16)

⁷¹ Home Office CIPU India FFMR (paras 7.17, 7.25, 7.27 & 9.5)

⁷² Home Office CIPU India FFMR (paras 9.1 - 9.16)

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.

3.10 Women who fear domestic violence

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

3.10.2 *Treatment.* India ratified the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 9 July 1993. Although this contains a number of constitutional safeguards guaranteeing equal rights for women, there is evidence of huge gaps between constitutional guarantees and the daily realities of women's lives. It was reported in 2006 that the forms of gender-based violence prevalent in India include domestic violence, dowry-linked violence, sexual assault, sexual harassment and sex-selective abortion, violence against dalit women, and violence through the medium of the law on grounds of sexual orientation. 'Bride-burning' was reported to be a common and serious problem across all religious, class, and caste boundaries.⁷³ It was reported that in 2007 the law provided extensive powers to magistrates to issue protection orders to deal with dowry-related harassment and murder. Madhya Pradesh, Kerala, Bihar, and several other states had a chief dowry prevention officer, although it was unclear how effective these officers were. Madhya Pradesh also required that all government servants seeking to marry produce a sworn affidavit by the bride, the groom, and his father that no dowry exchanged hands.⁷⁴

3.10.3 According to a 2004 National Commission for Women Survey, 60 to 80 percent of women were abused in some way by their spouses, 42 percent were beaten physically, and 22 percent were expelled from their homes for at least a day. The women's group Majlis has said that many women are forced to remain in abusive relationships because of social and parental pressure and to protect their children. A survey conducted during 2005 by the International Institute for Population Studies states that 56 percent of women believed wife beating was justified in certain circumstances.⁷⁵

3.10.4 *Sufficiency of protection.* Numerous laws exist to protect women's rights, including the Equal Remuneration Act of 1976, the Prevention of Immoral Traffic Act of 1956, the sati Prevention Act of 1987, and the Dowry Prohibition Act of 1961. However, the government often was unable to enforce these laws, especially in rural areas where traditions were deeply rooted. As noted in Amnesty International's report in May 2001 (The battle against fear and discrimination): "Attempts by women to seek justice through the criminal justice system are regularly forestalled...Unless supported by male relatives or a strong social group, women victims of crime are at a severe disadvantage within the criminal justice system". However, the Indian government has advised state governments to undertake a number of measures for the prevention of crime against women. This includes the registration of First Instance Reports (FIRs) in all cases of crime against women, the prominent exhibition of help-line numbers of the crime against women cells at public places, the setting up of women police cells in the police stations and exclusive women police stations where necessary, and adequate training of police personnel in special laws who deal with crime against women. Other steps the government reportedly took include providing telephone help lines, creating short-stay homes, counselling, occupational training, medical aid and rehabilitation.⁷⁶

3.10.5 The Protection of Women from Domestic Violence Act, passed in October 2006, recognizes all forms of abuse against women in the home, including physical, sexual,

⁷³ COIS India Country Report January 2008 Section 23

⁷⁴ USSD Human Rights Report 2008 Section 5

⁷⁵ COIS India Country Report January 2008 Section 23

⁷⁶ COIS India Country Report January 2008 Section 23

verbal, emotional, and/or economic abuse. Domestic violence includes actual abuse or the threat of abuse. The law recognizes the right of women to reside in a shared household with her spouse or partner even while the dispute continues, although women can be provided with alternative accommodations, to be paid for by the spouse or partner. The law also provides women with the right to police assistance, legal aid, shelter, and access to medical care. The new law bans harassment by way of dowry demands and empowers magistrates to issue protection orders where needed. Under the new Act, spousal rape is also criminalized. Punishment ranges from jail terms of up to one year and/or a fine of approximately \$450 (19,800 rupees). As of November the Act had been ratified by four of 28 state governments: Andhra Pradesh, Tamil Nadu, Uttar Pradesh, and Orissa. Citizens registered 8,000 nationwide criminal cases under the Act since it was brought into force.⁷⁷

3.10.6 Those experiencing domestic violence at the hands of their husbands or other family members can therefore reasonably seek protection from the Indian authorities. However, the provision of this assistance may be inadequate to ensure that every individual woman who 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.

3.10.7 *Internal relocation.* The law provides for freedom of movement and the government generally respects this in practice, however, in certain border areas the government requires special permits.⁷⁸ 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.⁷⁹ The situation for women with children is likely to be more difficult as children may not be accepted in hostels.⁸⁰ Illiterate women from rural areas are likely to find it particularly difficult to obtain accommodation as a lone woman.⁸¹ 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.

3.10.8 Caselaw

BK [2002] UKIAT03387 CG. 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.

3.10.9 *Conclusion.* The position and treatment of women within the family in India is such that a significant percentage of women may be the victims of some kind of domestic violence. Women can seek protection from the authorities and legislation has been introduced to persecute perpetrators. However, some Indian women, such as those from rural areas or those who are illiterate, may be unable to access this assistance. The most recent information available on the situation of women in India does not support the view that women in India are a particular social group, in particular there is no evidence that the Indian government supports or condones the ill-treatment of women therefore a

⁷⁷ USSD Human Rights Report 2007 Section 5

⁷⁸ COIS India Country Report January 2008 Section 28

⁷⁹ Home Office CIPU India FFMR (paras 9.1 - 9.16)

⁸⁰ Home Office CIPU India FFMR (paras 7.17, 7.25, 7.27 & 9.5)

⁸¹ Home Office CIPU India FFMR (paras 9.1 - 9.16)

grant of asylum will not be appropriate. 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 where it is unarguable that internal relocation is unduly harsh in the individual case.

3.11 Prison conditions

- 3.11.1** 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.
- 3.11.2** 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 claim should be considered as a whole but it is not necessary for prison conditions to breach Article 3 in order to justify a grant of asylum.
- 3.11.3** It was reported in 2006 that prison conditions were sometimes harsh and life threatening. Prisons were reportedly severely overcrowded and the provision of food and medical care was frequently inadequate. In March 2006 a National Human Rights Commission (NHRC) report indicated that the country's prisons were overcrowded on average by 38.5 per cent.⁸²
- 3.11.4** The NHRC reported that it requested the Chief Justices of High Courts to determine how to resolve the problem of overcrowded prisons. In 2006 the government introduced a plea bargain option for prisoners to reduce the pending time of cases in trial courts and overcrowded prisons. For disposal of long pending sessions and other cases, the government set up 1,562 Fast Track Courts during the year.⁸³
- 3.11.5** By law, juveniles must be detained in rehabilitative facilities, however, it was reported that they were at times detained in prison, especially in rural areas. In addition, pre-trial detainees were not separated from the general prison population.⁸⁴
- 3.11.6** One NHRC report notes that a large proportion of deaths in judicial custody were from natural causes, in some cases aggravated by poor prison conditions. The NHRC assigned its Special Rapporteur and the Chief Co-ordinator of Custodial Justice to ensure that state prison authorities performed medical check-ups on all inmates. By the end of 2006 only a few examinations had been performed. According to data available there were 121 custodial deaths in 2003, 94 in 2004, and 144 in 2005. On December 15 2006, a court convicted three former Delhi police officers for their role in a 1987 custodial death.⁸⁵
- 3.11.7** Some NGOs were allowed to work in prisons in 2006, within specific guidelines, but their findings remained largely confidential as a result of agreements made with the government. Although custodial abuse was deeply rooted in police practices, increased press reporting and parliamentary questioning provided evidence of growing public awareness of the problem. The NHRC identified torture and deaths in detention as one of its priority concerns.⁸⁶

⁸² COIS India Country Report January 2008 Section 13

⁸³ USSD Human Rights Report 2007 Section 1

⁸⁴ COIS India Country Report January 2008 Section 13

⁸⁵ COIS India Country Report January 2008 Section 13

⁸⁶ COIS India Country Report January 2008 Section 13

- 3.11.8** According to human rights activists, press reports, and anecdotal accounts in 2006, the bodies of persons suspected of terrorism and detained by security forces in Jammu and Kashmir often had bullet wounds or marks of torture, although according to the South Asian Human Rights Documentation Center (SAHRDC) and ACHR, the number of such incidents had declined in recent years in Jammu and Kashmir.⁸⁷
- 3.11.9** It was reported in 2006 that the International Committee of the Red Cross (ICRC) visited 61 detention centres and more than 9,000 detainees during 2005, including all 25 acknowledged detention centres in Jammu and Kashmir, and all facilities where Kashmiris were held elsewhere in the country. The ICRC was reportedly not authorized to visit interrogation or transit centres, nor did it have access to regular detention centres in the north-eastern states.⁸⁸
- 3.11.10 Conclusion.** Whilst prison conditions in India are poor, with overcrowding and the inadequate provision of health care being particular problems, conditions are unlikely to reach the Article 3 threshold. Therefore, even where applicants can demonstrate a real risk of imprisonment on return to India a grant of Humanitarian Protection will not generally be appropriate. Similarly, where the risk of imprisonment is related to one of the five Refugee Convention grounds, a grant of asylum will generally not be appropriate.

4. Discretionary Leave

- 4.1** Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See Asylum 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 they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place for minors with no family in India.
- 4.3.2** Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, 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.

⁸⁷ COIS India Country Report January 2008 Section 13

⁸⁸ COIS India Country Report January 2008 Section 13

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 Medical care in India is free to all citizens, but most care is provided in the private sector. Private health care costs are less than in the UK, and there is a good availability of medications, many cheaper than in the UK. In the larger cities, particularly the State capitals, there are hospitals offering care in a wide range of medical specialities. These include: general medicine and surgery, obstetrics and gynaecology, paediatrics, neurology, gastro-enterology, cardiology, cardiothoracic surgery, neurosurgery, dental surgery, dermatology, ENT surgery, endocrinology, renal and liver transplant, orthopaedic surgery, nephrology, nuclear medicine, oncology, ophthalmology, plastic surgery, psychiatry, respiratory medicine, rheumatology and urology. Outside these cities medical care can be more variable, but most districts are served by referral hospitals.⁸⁹

4.4.3 The national mental health programme in India was reviewed in 1995 by the Central Council, which led to the launch of the District Mental Health Programme, covering 24 districts currently, with plans for expansion to 100 districts in the near future and all districts by 2020. Mental health care as primary care was available in 22 districts out of about 600 districts in 2005.⁹⁰

4.4.4 A large, mostly indigenous, pharmaceutical industry ensures that most psychotropic drugs are available often at a fraction of their cost in high-income countries.⁹¹

4.4.5 The Article 3 threshold will not be reached in the great majority of medical cases and a grant of Discretionary Leave will usually not 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 Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim. Where the claim includes dependent family members their situation on return should however be considered in line with the Immigration Rules, 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.

5.2 Indian nationals may return voluntarily to any region of India at any time by way of the Voluntary Assisted Return and Reintegration Programme (VARRP) implemented on behalf of the Border and Immigration Agency by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining 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 the IOM offices in London on 0800 783 2332 or www.iomlondon.org.

⁸⁹ COIS India Country Report January 2008 Section 26

⁹⁰ COIS India Country Report January 2008 Section 26

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