COUNTRY OF ORIGIN INFORMATION REPORT

INDIA

21 SEPTEMBER 2010

UK Border Agency
COUNTRY OF ORIGIN INFORMATION SERVICE

Contents

The main text of this COI Report contains the most up to date publicly available information as at 16 July 2010.
Further brief information on recent events and reports has been provided in the Latest News section to 16 September 2010.

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Annexes

Preface

i This Country of Origin Information (COI) Report has been produced by the COI Service, United Kingdom Border Agency (UKBA), for use by officials involved in the asylum/human rights determination process. The Report provides general background information about the issues most commonly raised in asylum/human rights claims made in the United Kingdom. The main body of the report includes information available up to 16 July 2010. The 'Latest News' section contains further brief information on events and reports accessed from 17 July to 16 September. The report was issued on 21 September 2010.

ii The Report is compiled wholly from material produced by a wide range of recognised external information sources and does not contain any UKBA opinion or policy. All information in the Report is attributed, throughout the text, to the original source material, which is made available to those working in the asylum/human rights determination process.

iii The Report aims to provide a compilation of extracts from the source material identified, focusing on the main issues raised in asylum and human rights applications. In some sections where the topics covered arise infrequently in asylum/human rights claims only web links are provided. The Report is not intended to be a detailed or comprehensive survey. For a more detailed account, the relevant source documents should be examined directly.

iv The structure and format of the COI Report reflects the way it is used by UKBA decision makers and appeals presenting officers, who require quick electronic access to information on specific issues and use the contents page to go directly to the subject required. Key issues are usually covered in some depth within a dedicated section, but may also be referred to briefly in several other sections. Some repetition is therefore inherent in the structure of the Report.

v The information included in this COI Report is limited to that which can be identified from source documents. While every effort is made to cover all relevant aspects of a particular topic, it is not always possible to obtain the information concerned. For this reason, it is important to note that information included in the Report should not be taken to imply anything beyond what is actually stated. For example, if it is stated that a particular law has been passed, this should not be taken to imply that it has been effectively implemented unless stated. Similarly, the absence of information does not necessarily mean that, for example, a particular event or action did not occur.

vi As noted above, the Report is a compilation of extracts produced by a number of reliable information sources. In compiling the Report, no attempt has been made to resolve discrepancies between information provided in different source documents though COIS will bring the discrepancies together and aim to provide a range of sources, where available, to ensure that a balanced picture is presented. For example, different source documents often contain different versions of names and spellings of individuals, places and political parties, etc. COI Reports do not aim to bring consistency of spelling, but to reflect faithfully the spellings used in the original source documents. Similarly, figures given in different source documents sometimes vary and these are

simply quoted as per the original text. The term 'sic' has been used in this document only to denote incorrect spellings or typographical errors in quoted text; its use is not intended to imply any comment on the content of the material.

vii The Report is based substantially upon source documents issued during the previous two years. However, some older source documents may have been included because they contain relevant information not available in more recent documents. All sources contain information considered relevant at the time this Report was issued.

viii This COI Report and the accompanying source material are public documents. All COI Reports are published on the RDS section of the Home Office website and the great majority of the source material for the Report is readily available in the public domain. Where the source documents identified in the Report are available in electronic form, the relevant web link has been included, together with the date that the link was accessed. Copies of less accessible source documents, such as those provided by government offices or subscription services, are available from the COI Service upon request.

ix COI Reports are published regularly on the top 30 asylum intake countries. Reports on countries outside the top 30 countries may also be published if there is a particular operational need. UKBA officials also have constant access to an information request service for specific enquiries.

x In producing this COI Report, COI Service has sought to provide an accurate, balanced summary of the available source material. Any comments regarding this Report or suggestions for additional source material are very welcome and should be submitted to UKBA as below.

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Website: http://www.homeoffice.gov.uk/rds/country_reports.html

INDEPENDENT ADVISORY GROUP ON COUNTRY INFORMATION

xi The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Chief Inspector of the UK Border Agency to make recommendations to him about the content of the UKBA's COI material. The IAGCI welcomes feedback on UKBA's COI Reports and other country of origin information material. Information about the IAGCI's work can be found on the Chief Inspector's website at http://www.ociukba.homeoffice.gov.uk

xii In the course of its work, the IAGCI reviews the content of selected UKBA COI documents and makes recommendations specific to those documents and of a more general nature. A list of the COI Reports and other documents which have been reviewed by the IAGCI or the Advisory Panel on Country Information (the independent organisation which monitored UKBA's COI

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material from September 2003 to October 2008) is available at http://www.ociukba.homeoffice.gov.uk/

xiii Please note: it is not the function of the IAGCI to endorse any UKBA material or procedures. Some of the material examined by the Group relates to countries designated or proposed for designation to the Non-Suspensive Appeals (NSA) list. In such cases, the Group's work should not be taken to imply any endorsement of the decision or proposal to designate a particular country for NSA, nor of the NSA process itself.

The IAGCI can be contacted at:

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Latest News

This Latest News section provides a non-exhaustive selection of significant events since 28 June 2010. Further information may also be available from the list of sources below.

EVENTS IN INDIA FROM 17 JULY TO 16 SEPTEMBER 2010

13 September — Eighteen people were killed and over 100 were injured in Indian-administered Kashmir on 13 September, as security forces responded to violent street demonstrations by separatists with live ammunition. This brought to at least 88 the number of civilians killed in successive demonstrations since 11 June, when a 17-year-old student died after being hit by a teargas shell fired by police during a protest in Srinagar, thus fuelling further unrest. The government imposed a strict curfew in major towns across Kashmir. The Armed Forces Special Powers Act (AFSPA) gives security forces the power to use lethal force to maintain public order (see Section 13).

BBC News: Police shoot dead 18 during protests in Kashmir, 13 September 2010
http://www.bbc.co.uk/news/world-south-asia-11280132
VOA News: Indian Kishmir under strict curfew, 14 September 2010
http://www.voanews.com/english/news/Indian-Kashmir-Under-Strict-Curfew---102854784.html
Reuters: India Kashmir talks end in deadlock as violence continues, 15 September 2010
http://af.reuters.com/article/worldNews/idAFTRE68E3QE20100915
BBC News: Why Kashmir is again on a knife-edge, 10 August 2010
http://www.bbc.co.uk/news/world-south-asia-10925145

9 September — The Cabinet confirmed that, from June to December 2011 – following fieldwork for the main 2010 Census – a supplementary caste-based census would be carried out, apparently to help the government to target affirmative action benefits. (See paragraph 21.09) Critics of the caste-based survey argued that it would be open to fraud.

BBC News: Indian cabinet approves caste-based census for 2011, 9 September 2010
http://www.bbc.co.uk/news/world-south-asia-11241916

31 August — It was reported that India's economy had grown at its fastest rate in more than two years. In the three months to June 2010, GDP was up 8.8 per cent compared with the same period in 2009, while industrial output had increased by more than 12 per cent.

BBC News: India growth rate rises to 8.8%, 31 August 2010
http://www.bbc.co.uk/news/business-11135197

29 August — At least four policemen were killed during a gunbattle with Maoist rebels in the Indian state of Bihar, bringing to more than 200 the number of security force personnel killed by the insurgents in the first six months of 2010. A major government offensive against the Maoists, also known as *Naxalites*, was launched in October 2009 across five states in central and eastern India.

The Hindu: Five police personnel feared killed in Bihar encounter, 30 August 2010
http://www.hindu.com/2010/08/30/stories/2010083057570100.htm
BBC News: India Maoists kill four policemen in battle in Bihar, 30 August 2010
http://www.bbc.co.uk/news/world-south-asia-11128458

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24 August *The Guardian* reported that Indian environment minister Jairam Ramesh had turned down an application by the Vedanta Resources company to mine bauxite in the Niyamgiri Hills in the state of Orissa, on the grounds that it would violate both environmental laws and the law protecting the rights of local tribal groups; the Niyamgiri Hills are sacred to the Dongria-Kondh tribe. A spokesperson for the Delhi-based Centre for Science and Environment was quoted as saying that "The government has listened to the most powerless people on earth…"

The Guardian: India blocks Vedanta mine on Dongria-Kondh tribe's sacred hill, 24 August 2010
http://www.guardian.co.uk/business/2010/aug/24/vedanta-mining-industry-india

SOURCES FOR FURTHER INFORMATION

A list of sources with weblinks is provided below, which may be useful if additional up to date information is required to supplement that provided in this report. The full list of sources used in this report can be found in Annex G: References to source material.

AlertNet (Thomson Reuters) http://www.alertnet.org/db/cp/india.htm

BBC News online http://www.bbc.co.uk/search/news/india

The Hindu (Archives) http://www.hindu.com/thehindu/archives.htm

The Hindustan Times http://www.hindustantimes.com/

The Times of India http://www.timesofindia.com

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REPORTS ON INDIA PUBLISHED OR FIRST ACCESSED SINCE 16 JULY 2010

Amnesty International
Indian authorities must investigate online video of Kashmir detainee abuse
http://www.amnesty.org/en/news-and-updates/indian-authorities-must-investigate-online-video-kashmir-detainee-abuse-2010-09-13
Published 13 September 2010

Internal Displacement Monitoring Centre (IDMC)
India: National and State Authorities Failing to Protect IDPs
http://www.unhcr.org/refworld/docid/4c8f3a3b2.html
Published 2 September 2010

Amnesty International
India rejection of Vedanta mine a landmark victory for Indigenous rights
http://www.amnesty.org/en/news-and-updates/indian-government-rejection-vedanta-bauxite-mine-landmark-victory-indigenous-rights
Published 24 August 2010

US State Department
Country Reports on Terrorism 2009
http://www.state.gov/s/ct/rls/crt/2009/index.htm
Released 5 August 2010

Human Rights Watch
Back to the Future: India's 2008 Counterterrorism Laws
http://www.hrw.org/en/reports/2010/07/28/back-future
Published 27 July 2010

Reporters Without Borders
Violence, arrests and censorship in all four corners of India
http://en.rsf.org/india-violence-arrests-and-censorship-in-23-07-2010,38006.html
Published 23 July 2010

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Background Information

1. GEOGRAPHY

1.01 The Republic of India covers an area of 3,287,263 sq km including the whole of Jammu and Kashmir, which is divided between India and Pakistan (Europa World Online). **[1] (Area and Population)** Pakistan borders India on the north-west, Burma (Myanmar) on the north-east, and Bangladesh to the east. Tibet, Bhutan and Nepal lie to the north (Europa World Online). **[1] (Location, Climate, Language, Religion, Flag, Capital)**

1.02 The population of India reached 1.17 billion in 2009, according to an estimate in the US State Department's Background Note for India, updated in November 2009. **[2a]** The Economist Intelligence Unit (EIU), in its India Country Profile 2008, dated 10 June 2008, noted that the rate of population growth has been declining: " Population growth averaged 1.5% per year in 2000-07, down from an average of 1.9% in the 1990s, 2.1% in the 1980s, and 2.3% in the 1960s … However, regional differences [in fertility rate] are vast." **[16b] (p11-12)** The same source noted, "India has a relatively low level of urbanisation compared with most other developing countries in Asia: almost 60% of Indians live in villages with a population of less than 5,000. However, the rate of migration from rural to urban areas is increasing. The urban population constituted 28% of the total in 2001, up from just over 25% in the mid-1990s, and is likely to reach 36% around 2025." **[16b] (p11-12)** The United Nations Population Fund (UNFPA) has recorded on its website that "Roughly two-thirds of the population are concentrated in coastal states and along the wide Gangetic plain which stretches from Himachal Pradesh and Haryana States in the west to West Bengal next to Bangladesh in the east. Population densities in these crowded areas exceed 500 per square kilometer." **[10b]**

1.03 The capital is New Delhi (pop.12.8 million, 2001 census). Other major cities are Mumbai, formerly Bombay (16.4 million); Kolkata, formerly Calcutta (13.2 million); Chennai, formerly Madras (6.4 million); Bangalore (5.7 million); Hyderabad (5.5 million); Ahmedabad (5 million) and Pune (4 million) (USSD Background Note, November 2009) **[2a]**

1.04 There are 28 states and seven Union Territories. The states are: Andhra Pradesh, Arunachal Pradesh, Assam, Bihar, Chhattisgarh, Goa, Gujarat, Haryana, Himachal Pradesh, Jammu and Kashmir, Jharkhand, Karnataka, Kerala, Madhya Pradesh, Maharashtra, Manipur, Meghalaya, Mizoram, Nagaland, Orissa, Punjab, Rajasthan, Sikkim, Tamil Nadu, Tripura, Uttar Pradesh, Uttaranchal, and West Bengal. (Government of India website, undated) **[24e]** The Union Territories are: Delhi, Andaman and Nicobar Islands, Chandigarh, Dadra and Nagar Haveli, Daman and Diu, Lakshadweep, and Pondicherry. (Government of India, States and Union Territories, undated) **[24e]**

1.05 India's population is extremely diverse, differentiated by language, religion, caste and class. (EIU Country Profile 2008). **[16b] p12)** According to the EIU Country Profile, "Hindi is the national language and primary tongue of 30% of the population. There are 14 other official languages: Bengali, Telugu, Marathi, Tamil, Urdu, Gujarati, Malayalam, Kannada, Oriya, Punjabi, Assamese, Kashmiri, Sindhi and Sanskrit. English is widespread in business

circles and as a second language. **[16b] (p2)** Article 348 of the Constitution provides that all proceedings of the Supreme Court and High Courts, as well as all bills and acts of Parliament, must be in English. **[24c]** Regarding literacy, the 2001 Census indicated that 61 per cent of people over the age of 15 years – about 73 per cent of men and 48 per cent of women – could read and write. (CIA World Factbook, updated 24 June 2010) **[35]** The adult literacy rate at the time of Independence in 1947 was just 18 per cent. (World Police Encyclopedia) **[110] (p377)**

1.06 The 2001 Census also covered religious adherence and showed that 80.5 per cent of the population identified as Hindu, 13.4 per cent Muslim, 2.3 per cent Christian and 1.9 per cent Sikh; the balance of 1.9 per cent was listed as 'unspecified' or 'other'. It was estimated in 2000 that, ethnically, 72 per cent of the population is Indo Aryan, 25 per cent Dravidian and 3 per cent Mongoloid or other. (CIA World Factbook, 24 June 2010) **[35]**

1.07 India's main mineral reserves are coal, iron ore and bauxite. Most oil and gas is imported. Coal is the primary power source; in 2007 coal-based power plants accounted for 62 per cent of total power generation. (EIU Country Profile 2008) **[16b] (p13, 16)**

1.08 The EIU Country Profile 2008 observed, "Less than one-third of cropland is irrigated, making agricultural output heavily dependent on the annual monsoon … This brings 80% of India's [annual rainfall], usually within a three-month period from June to mid-September. A second, north-east monsoon brings lighter rains to the south of the country from mid-October to December." **[16b] (p20-21)** In 2009 India experienced its weakest monsoon rains in almost four decades; as a result, the prices of essential food items had risen sharply by November 2009. (EIU Country Report, November 2009) **[16a] (p16)**

1.09 The following are the national public holidays in India in 2010. There are also other holidays or festivals which are celebrated in specific regions or states.

26 January	Republic Day
February/March*	Mahashivratri
26 February	Milad-Un-Nabi (Birth of the Prophet)
2 April	Good Friday
5 April	Easter Monday
April*	Mahavir Jayanthi
28 April	Buddha Purnima
15 August	Independence Day
August*	Janmashtami
10-11September*	Id ul Fitr (End of Ramadan)
2 October	Mahatma Gandhi's Birthday
Sept/October*	Dussehra (Vijaya Dashami)
2 November	Guru Nanak's Birthday
5 November	Deepavali or Diwali (Festival of Lights)
16-17 November	Idu'l Zuha/Bakrid (Feast of the Sacrifice)
7 December	Muharram (Islamic New Year)
25 December	Christmas Day
26 December	Boxing Day

*date to be confirmed (iExplore, accessed 20 December 2009) **[125]**

1.10 The above dates are Government of India holidays, when government offices are closed nationwide. Only the secular holidays of Republic Day, Independence Day and Mahatma Gandhi's Birthday are universally observed; other public holidays in India tend to be observed on a regional basis. In addition, there are numerous festivals and fairs observed in specific states as holidays, the dates of which may change from year to year. As the above calendar shows, the most important Muslim, Christian, Buddhist and Sikh – as well as Hindu – holy days are official public holidays in India. (iExplore website, accessed 20 December 2009) **[125]**

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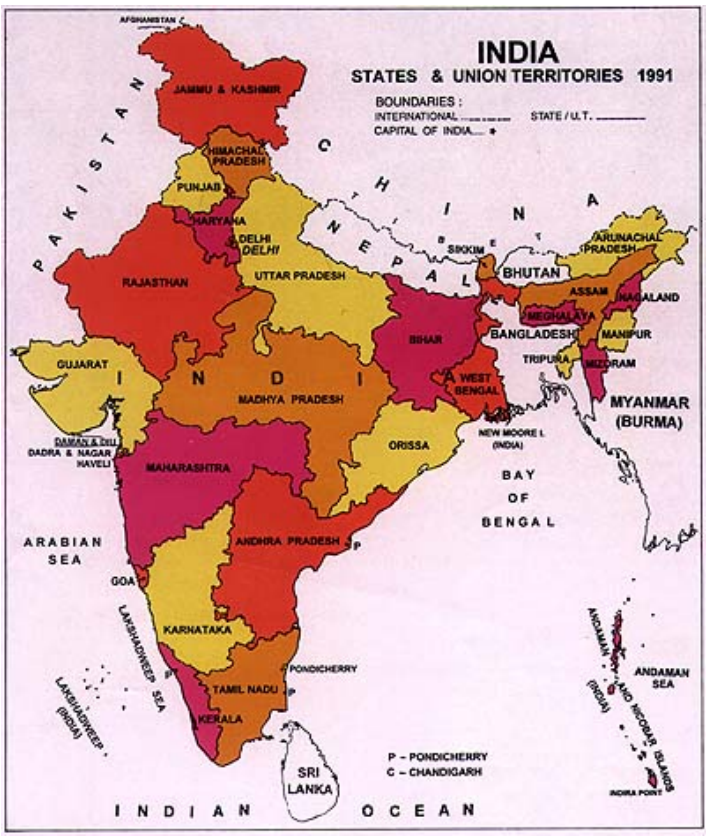
MAPS

1.11

SOUTH ASIA

http://www.un.org/Depts/Cartographic/map/profile/seasia.pdf **[6c]**



"Based upon the Survey map with the permission of the Surveyor General of India." Census of India website.
http://www.censusindia.net/ **[24d]**

Languages and minority religion map:
http://www.lib.utexas.edu/maps/middle_east_and_asia/india_lang_1973.jpg
Source: CIA, via University of Texas Perry-Castañeda Library Map Collection
[107]

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2. ECONOMY

2.01 As noted in the CIA World Factbook, updated on 27 May 2010:

> "India's diverse economy encompasses traditional village farming, modern agriculture, handicrafts, a wide range of modern industries, and a multitude of services. Slightly more than half of the work force is in agriculture, but services are the major source of economic growth, accounting for more than half of India's output, with only one-third of its labor force. India has capitalized on its large educated English-speaking population to become a major exporter of information technology services and software workers. An industrial slowdown early in 2008, followed by the global financial crisis, led annual GDP growth to slow to 6.5% in 2009, still the second highest growth in the world among major economies. India escaped the brunt of the global financial crisis because of cautious banking policies and a relatively low dependence on exports for growth. Domestic demand, driven by purchases of consumer durables and automobiles, has re-emerged as a key driver of growth, as exports have fallen since the global crisis started. India's fiscal deficit increased substantially in 2008 due to fuel and fertilizer subsidies, a debt waiver program for farmers, a job guarantee program for rural workers, and stimulus expenditures. The government abandoned its deficit target and allowed the deficit to reach 6.8% of GDP in FY10. Nevertheless, as shares of GDP, both government spending and taxation are among the lowest in the world. The government has expressed a commitment to fiscal stimulus in FY10, and to deficit reduction the following two years. It has increased the pace of privatization of government-owned companies, partly to offset the deficit. India's long term challenges include widespread poverty, inadequate physical and social infrastructure, limited employment opportunities, and insufficient access to basic and higher education. Over the long-term, a growing population and changing demographics will only exacerbate social, economic, and environmental problems." **[35]**

2.02 The Economist Intelligence Unit (EIU), in its Country Report for June 2010, forecast that the economy (measured in terms of real gross domestic product) would expand by 7.8 per cent in 2010/11 and 8.0 per cent in 2011/12, accelerating from an estimated growth rate of 6.8 per cent in 2009/10. **[16c] (p3)** India's per capita GDP was estimated to be US $3,100 in 2009, compared with $6,600 for China, $2,600 for Pakistan and $35,200 for the United Kingdom. (CIA World Factbook, 27 May 2010) **[35]** Amnesty International commented that, in 2009, economic growth "remained confined to key urban sectors". (AI Report 2010) **[3g]** According to the USSD Backgound Note for India, updated in November 2009, 700 million Indians live on US $2 per day or less. **[2a]**

2.03 The EIU's 2008 Country Profile for India commented, "India is a two-tier economy, with a cutting-edge and globally competitive knowledge-driven services sector that employs the brightest of the middle classes on the one hand, and a sprawling, largely rain-fed agricultural sector that employs the majority of the vast and poorly educated labour force on the other." **[16b] (p17)** The same source noted, "The agricultural sector employs about 60% of the country's workforce but accounts for less than one-fifth of GDP **(p20)** … The services sector is the main driver of economic growth, being both the largest component of the economy [over 60 per cent of GDP in 2007/08) and the

best-performing. The contribution of the information technology (IT) industry to GDP rose from 1.2% in 1998/99 to 5.2% in 2007/08." **(p17,22)** At about 20 per cent of GDP, the industrial sector (including manufacturing) is relatively small, but has been growing rapidly; the government considers this to be the only sector capable of providing enough jobs in the future to absorb the estimated 10 million people entering the workforce every year. **[16b] (p21)**

2.04 Inflation, based on the consumer price index, averaged 10.9 per cent in 2009. The EIU estimated in its June 2010 Report that inflation had risen to 14.9 per cent (year on year) by March 2010, due largely to rising food prices. **[16c] (p8)** The EIU had pointed out in November 2009 that "…the immediate challenge for the government lies in containing food price inflation after the worst monsoon rains in four decades. Higher prices have begun to erode the purchasing power of hundreds of millions of people. However, the government has said that public food stocks are adequate." **[16a] (p4)**

2.05 The EIU estimated the (official) rate of unemployment to have averaged 10.7 per cent in fiscal year 2009. (June 2010 Report) **[16c] (p9]** A report published by the International Labour Organisation (ILO) in 2009 showed that unemployment had been especially acute in the 15-29 age group, and particularly among young women residing in urban areas. The economic slowdown in 2009 was bringing about further large scale job losses. The ILO report also pointed out that the remarkable growth of the Indian economy over the past two and half decades had not effectively percolated down to create employment, or to increase consumer demand by providing more income to the broad population. According to the report, government employment generation and training programmes had not been implemented comprehensively and coherently. **[109]**

2.06 The Finance Minister delivered his budget in parliament on 6 July 2009. BBC News reported that it focussed on rural development and included a raft of new economic and social development plans. The government would more than double spending on its successful rural employment scheme, which guaranteed 100 days of work to everyone who wanted it. At the same time, the government would try to create jobs by expanding and improving the country's road and infrastructure systems. (BBC News, 6 July 2009) **[32aq]**

2.07 Currency: Rupee (Rs) = 100 paise. (EIU, November 2009) **[16a]** The rate of exchange on 28 June 2010 was 69.8 Indian Rupees (INR) to the UK Pound Sterling. (xe.com) **[106a]** For comparison, the exchange rate on 28 June 2005 was 78.9 Rupees to the Pound, so the Rupee has strengthened against the Pound over this five-year period. (xe.com) **[106b]**

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3. HISTORY

3.01 India's history is long, vast, and multicultural; for the purposes of this report, the information provided begins from the time of India's independence from British colonial rule in 1947.

3.02 The US State Department 'Background Note: India', updated 12 November 2009, provided a brief historical review; from 1947 it related as follows:

"On August 15, 1947, India became a dominion within the Commonwealth, with Jawaharlal Nehru as Prime Minister. Strategic colonial considerations, as well as political tensions between Hindus and Muslims, led the British to partition British India into two separate states: India, with a Hindu majority; and Pakistan, which consisted of two 'wings', East and West Pakistan--currently Bangladesh and Pakistan--with Muslim majorities. India became a republic, but chose to continue as a member of the British Commonwealth, after promulgating its constitution on January 26, 1950.

"After independence, the Indian National Congress, the party of Mohandas K. Gandhi and Jawaharlal Nehru, ruled India under the leadership first of Nehru and then his daughter (Indira Gandhi) and grandson (Rajiv Gandhi), with the exception of brief periods in the 1970s and 1980s and during a short period in 1996. From 1998-2004, a coalition led by the Bharatiya Janata Party governed.

"Prime Minister Nehru governed the nation until his death in May 1964. Nehru was succeeded by Lal Bahadur Shastri, who also died in office in January 1966. In one month, power passed to Nehru's daughter, Indira Gandhi, Prime Minister from 1966 to 1977. In June 1975, beset with deepening political and economic problems, Mrs. Gandhi declared a state of emergency and suspended many civil liberties. Seeking a mandate at the polls for her policies, she called for elections in March 1977, only to be defeated by Morarji Desai, who headed the Janata Party, an amalgam of five opposition parties.

"In 1979, Desai's government crumbled. Charan Singh formed an interim government, which was followed by Mrs. Gandhi's return to power in January 1980. On October 31, 1984, Mrs. Gandhi was assassinated by her Sikh bodyguards, which led to the killings of thousands of Sikhs in New Delhi. Her son, Rajiv, was chosen by the Congress (I)--for 'Indira'--Party to take her place. His Congress government was plagued with allegations of corruption resulting in an early call for national elections in November 1989.

"Although Rajiv Gandhi's Congress Party won more seats than any other single party in the 1989 elections, he was unable to form a government with a clear majority. The Janata Dal, a union of opposition parties, then joined with the Hindu-nationalist Bharatiya Janata Party (BJP) on the right and the Communists on the left to form the government. This loose coalition collapsed in November 1990, and the Janata Dal, supported by the Congress (I), came to power for a short period, with Chandra Shekhar as Prime Minister. That alliance also collapsed, resulting in national elections in June 1991.

"While campaigning in Tamil Nadu on behalf of his Congress (I) party, Rajiv Gandhi was assassinated on May 21, 1991 by Tamil extremists from Sri

Lanka unhappy with India's military intervention in that country's civil war. In the elections, Congress (I) won 213 parliamentary seats and returned to power at the head of a coalition, under the leadership of P.V. Narasimha Rao. This Congress-led government, which served a full 5-year term, initiated a gradual process of economic liberalization under then-Finance Minister Manmohan Singh. These reforms opened the Indian economy to global trade and investment. India's domestic politics also took new shape, as the nationalist appeal of the Congress Party gave way to traditional caste, creed, regional, and ethnic alignments, leading to the founding of a plethora of small, regionally based political parties.

"The final months of the Rao-led government in the spring of 1996 were marred by several major corruption scandals, which contributed to the worst electoral performance by the Congress Party in its history. The Hindu-nationalist BJP emerged from the May 1996 national elections as the single-largest party in the Lok Sabha but without a parliamentary majority. Under Prime Minister Atal Bihari Vajpayee, the subsequent BJP coalition lasted only 13 days. With all political parties wishing to avoid another round of elections, a 14-party coalition led by the Janata Dal formed a government known as the United Front, under the former Chief Minister of Karnataka, H.D. Deve Gowda. His government collapsed after less than a year, when the Congress Party withdrew its support in March 1997. Inder Kumar Gujral replaced Deve Gowda as the consensus choice for Prime Minister at the head of a 16-party United Front coalition.

"In November 1997, the Congress Party again withdrew support from the United Front. In new elections in February 1998, the BJP won the largest number of seats in Parliament--182--but fell far short of a majority. On March 20, 1998, the President approved a BJP-led coalition government with Vajpayee again serving as Prime Minister. On May 11 and 13, 1998, this government conducted a series of underground nuclear tests, spurring U.S. President Bill Clinton to impose economic sanctions on India pursuant to the 1994 Nuclear Proliferation Prevention Act.

"In April 1999, the BJP-led coalition government fell apart, leading to fresh elections in September-October. The National Democratic Alliance--a new coalition led by the BJP--won a majority to form the government with Vajpayee a Prime Minister in October 1999. The NDA government was the first coalition in many years to serve a full 5-year term, providing much-needed political stability.

"The Kargil conflict in May-July 1999 and an attack by terrorists on the Indian Parliament in December 2001 led to increased tensions with Pakistan.

"Hindu nationalists supportive of the BJP agitated to build a temple on a disputed site in Ayodhya, destroying a 17th century mosque there in December 1992, and sparking widespread religious riots in which thousands, mostly Muslims, were killed. In February 2002, 57 Hindu volunteers returning from Ayodhya were burnt alive when their train caught fire. Alleging that the fire was caused by Muslim attackers, anti-Muslim rioters throughout the state of Gujarat killed over 2,000 people and left 100,000 homeless. The Gujarat state government and the police were criticized for failing to stop the violence and in some cases for participating in or encouraging it.

"The ruling BJP-led coalition was defeated in a five-stage election held in April and May of 2004. The Congress Party, under the leadership Sonia Gandhi, the widow of Rajiv Gandhi, formed a coalition government, known as the United Progressive Alliance (UPA). It took power on May 22 with Dr. Manmohan Singh as Prime Minister. The UPA's victory was attributed to dissatisfaction among poorer rural voters that the prosperity of the cities had not filtered down to them, and rejection of the BJP's Hindu nationalist agenda.

"The Congress-led UPA government has continued many of the BJP's foreign policies, particularly improving relations with the U.S. Prime Minister Singh and President George W. Bush concluded a landmark U.S.-India strategic partnership framework agreement on July 18, 2005. In March 2006, President Bush visited India to further the many initiatives that underlie the new agreement. The strategic partnership is anchored by a historic civil nuclear cooperation initiative and includes cooperation in the fields of space, high-technology commerce, health issues, democracy promotion, agriculture, and trade and investment.

"In July 2008, the UPA won a confidence motion with 275 votes in its favor and 256 against.

"In late November 2008, terrorists killed at least 164 people in a series of coordinated attacks around Mumbai. (See below)

"The Congress-led UPA coalition gained a more stable majority following the May 2009 elections, riding mainly on the support of rural voters. Manmohan Singh became the first Prime Minister since Jawaharlal Nehru to return to power after completing a full 5-year term." (See below)
[2a]

MUMBAI TERRORIST ATTACKS, NOVEMBER 2008

3.03 On 26 and 27 November 2008 a number of terror attacks took place in Mumbai, India. Mumbai, previously known as Bombay, is a port city in Maharashtra state with an estimated population of just over 12 million. (Europa, accessed 3 April 2009) **[1]**

3.04 The attacks occurred at various locations throughout the city:

Trident Oberoi Hotel (at least 30 dead)
Chabad House Jewish Centre (at least 5 dead)
Leopold Café (at least 20 dead)
Metro cinema
Cama hospital (at least 7 dead)
Chhatrapati Shivaji station (at least 50 dead)
Police HQ
Taj Mahal hotel (at least 50 dead)
GT hospital
Two taxi explosions occurred on Vile Parie and Dockyard Road (*The Independent*, 29 November 2008) **[100a]**

3.05 The trial of Mohammed Ajmal Amir Qasab [also known as Mohammad Ajmal Amir Iman], the only suspect in the attacks, began in April 2009. He was said to belong to Lashkar-e-Taiba, a Pakistani-based Islamist militant group, and faced

86 charges, including waging war on India, murder and possession of explosives. (Aljazeera.net, 15 April 2009) **[62a]** (BBC News, 20 July 2009) **[32ah]** As the trial began, the judge dismissed Qasab's defence lawyer on the grounds that she failed to inform the court about a possible conflict of interests. (Global Security, 15 April 2009) **[4b]** It was reported on 20 July 2009 that Qasab had pleaded guilty. (BBC News, 20 July 2009) **[32ah]** His trial was due to resume on 5 December 2009, following an adjournment. (BBC News, 25 November 2009) **[32ag]**

3.06 BBC News reported on 25 November 2009 that a court in Rawalpindi, Pakistan, had charged seven people in connection with the Mumbai attacks. They included Zaki-ur-Rehman Lakhvi, the apparent head of Lashkar-e-Taiba and alleged mastermind behind the attacks. Lakhvi and the other suspects were charged under Pakistan's anti-terrorism act and criminal code. All seven pleaded not guilty. **[32ag]**

3.07 *The Hindu* noted in an article of 24 November 2009 that the Mumbai attacks had "exacerbated tensions between India and Pakistan and disrupted the ongoing peace process" between the two countries. **[60i]**

GENERAL ELECTION OF APRIL- MAY 2009

3.08 Elections to the 15th Lok Sabha, the directly elected lower house of parliament, were held in April-May 2009. (BBC News, 30 March 2009) **[32ai]**

3.09 Polling was held in 543 constituencies, in which there were a total of 828,804 polling stations with 1,368,430 electronic voting machines. Candidates came from 1,055 political parties. There were 714 million registered voters, making this general election the largest democratic exercise in world history. 82 per cent of all registered voters could be identified by photos on the electoral roll. Over six million police and civil personnel were on duty to provide security. (BBC News, 30 March 2009) **[32ai]**

3.10 For logistical reasons polling was staggered, in five phases (in successive regions of the country), from the following dates: 16 April, 23 April, 30 April, 7 May and 13 May. Counting took place on 16 May. (BBC News) **[32aj]**

3.11 The two main political parties led coalitions into the general election: The United Progressive Alliance (UPA) was led by the Indian National Congress (Congress party) and the National Democratic Alliance (NDA) by the Bharatiya Janata Party (BJP) – see paragraph 4.13. A third major coalition, the Third Front, had emerged; it was formed mainly of leftist parties, including the Communist Party of India (CPI) and Communist Party of India – Marxist (CPI-M), The formation of the Third Front was particularly significant because neither of the main party coalitions was expected to gain an overall majority. (BBC News, 30 March 2009) **[32ak]**

3.12 The final results, as published by the Election Commission on 16 May 2009, were as follows:

Coalition/Party	Seats	Total
United Progressive Alliance (UPA):		**262**
Indian National Congress	**206**	
Dravida Munnetra Kazhagam	18	
Nationalist Congress Party	9	
Jharkhand Mukti Morcha	2	
All India Trinamool Congress	19	
Republican Party of India (Athvale)	0	
Jammu and Kashmir National Conference	3	
Assam United Democratic Front	1	
Kerala Congress (M)	1	
Muslim League Kerala State Committee	2	
All India Majlis-E-Ittehadul Muslimeen	1	
National Democratic Alliance (NDA):		**158**
Bharatiya Janata Party (BJP)	**116**	
Janata Dal (United)	20	
Shiv Sena	11	
Shiromani Akali Dal	4	
Indian National Lok Dal	0	
Asam Gana Parishad	1	
Rashtriya Lok Dal	5	
Nagaland People's Front	1	
Third Front:		**76**
Communist Party of India	4	
Communist Party of India (Marxist)	16	
Revolutionary Socialist Party	2	
All India Forward Bloc	2	
Bahujan Samaj Party	21	
AIADMK	9	
Biju Janata Dal	14	
Telugu Desam Party	6	
Telangana Rashtra Samithi	2	
Other major parties		**32**
Samajwadi Party	23	
Rashtriya Janata Dal	4	
Lok Jan Shakti Party	0	
Praja Rajyam Party	0	
Pattali Makkal Katchi	0	
Janata Dal (Secular)	3	
Haryana Janahit Party	1	
Marumalarchi Dravida Munnetra Kazhagam	1	
Other parties		**6**
Independents		**9**
		543

(BBC News, 16 May 2009) **[32al]**

Aggregate voter turnout, over the five phases of the general election, was 58.4 per cent. (Lokniti, 26 May 2009) **[108a]**

3.13 Following the elections, ten political parties which were previously either uncommitted or part of another coalition, agreed to support the United Progressive Alliance government, enabling Prime Minister Manmohan Singh to return to parliament with an overall majority. (*The Hindu*, 19 May 2009) **[60]**

3.14 The Lokniti Programme for Comparative Democracy, a leading research facility of the Centre for the Study of Developing Societies, New Delhi, has prepared – on behalf of *The Hindu* – an analysis of the issues and demographics that influenced the outcome of the 2009 general election. This can be accessed at http://www.lokniti.org/read_how_india_voted_2009.html **[108a]**

3.15 Further information on the history of the country can be obtained from the sources listed below.

BBC News: *Timeline: India*
http://news.bbc.co.uk/1/hi/world/south_asia/1155813.stm

US Library of Congress, Country Studies:
http://lcweb2.loc.gov/frd/cs/intoc.html

See also Annex A: Chronology of Major Events

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4. RECENT DEVELOPMENTS

OVERVIEW OF SIGNIFICANT EVENTS, MAY 2009 TO JULY 2010

4.01 Significant events for the period May 2009 to June 2010 include:

- 22 May **2009** – India's new government, under PM Manmohan Singh, was sworn in. **[32ar]**
- 25 May - The Supreme Court ordered the release on bail of public health specialist and human-rights activist, Dr Binayak Sen. **[32ao]**
- 3 June – The Lok Sabha (lower house of parliament) elected its first woman Speaker, Meira Kumar. She is from a Dalit community. **[32as]**
- 22 June – The government banned the Communist Party of India (Maoist) **[32am]**
- 2 July – The Delhi High Court ruled that Section 377 of the Indian Penal Code (which criminalised same sex consensual sex) violated the Constitution. **[80c]** (See Section 22)
- 26 July – India launched a nuclear submarine, built entirely in the country. **[32aw]**
- 29 July – The Prime Minister said India had no choice but to hold peace talks with Pakistan; relations had become further strained by the Mumbai attacks. **[32ap]**
- 13 August – Schools, colleges and cinemas in Mumbai closed temporarily in a bid to limit the spread of swine flu. **[32av]**
- 27 August – Judges of the Supreme Court agreed to publish details of their personal assets **[32ax]**
- 22 October – Assembly elections were held in the states of Maharashtra, Haryana and Arunachal Pradesh. The Congress Party won in all three states. **[32au]**
- 13 November – The Election Commission announced that *hijras* could register their gender as 'other'. **[32aq]** (See Section 22)
- 24 November – The Liberhan Commission's report on the destruction of the Babri Masjid mosque in 2002 was tabled in parliament; it implicated 68 people, including three senior members of the BJP. **[60f]**
- 25 November - A court in Pakistan indicted seven people in connection with the Mumbai terrorist attacks, including the leader of the Pakistani-based Islamist militant group Lashkar-e-Taiba. **[32ag]**
- 11 December - The Indian Home Secretary confirmed that the Government would support a division of the state of Andhra Pradesh into two parts, creating a new state of 'Telangana' with Hyderabad as its capital. There were mass demonstations and strikes by those opposed to the split. **[32ba]**
- 18 December – The Indian army withdrew 30,000 troops from Jammu and Kashmir, reflecting an improvement in the security situation in the state. **[138a]**
- 22 January **2010** – It was reported that Indian security forces had launched a major new offensive against Maoist (*naxalite*) insurgents. **[32bb]**
- 13 February – A bomb blast in a restaurant in the western city of Pune killed eleven people and injured about 40 others; *Lashkar-e-Taiba al-Almi* claimed responsibility. **[32bc]**
- 9 March – The Constitution (108th Amendment) Bill 2008, popularly known as the Women's Reservation Bill, was passed in the Rajya Sabha (upper house of parliament) to reserve a third of all seats in parliament and state

The main text of this COI Report contains the most up to date publicly available information as at 16 July 2010.
Further brief information on recent events and reports has been provided in the Latest News section to 16 September 2010.

legislative assemblies for women; on 8 March some minority parties had led a disruptive protest in the house against the bill. **[60] [19c]**

- March – The major offensive against India's Maoist (*naxalite*) insurgents, launched in January 2010, was further intensified. **[32bd]**
- 6 April - 76 paramilitary police were killed in an ambush by heavily-armed rebels in the state of Chattisgarh. **[32be]**
- 18 April – Foreign Minister Shashi Tharoor resigned, following allegations of corruption in connection with the Indian Premier Cricket League. **[32bg]**
- 20 April – The government announced that 100 million more Indians were living below the poverty line than had previously been estimated. **[32bf]**
- 17 May – More than 30 people, including civilians and special police officers, were killed in Chhattisgarh when their bus detonated a landmine. **[60q]**
- 27 May - At least 65 people died and 200 were injured when two trains collided in West Bengal after what officials said was an act of sabotage on the track by Maoist insurgents (*naxalites*). **[60r]**
- 11 to 28 June – In Indian-administered Kashmir, at least eleven people – eight civilians and three soldiers – were killed as security forces responded to successive violent street demonstrations with live ammunition. Many activists and police officers were injured in clashes. Major towns were under curfew and the army was called in to restore order. **[32bh] [32bi]**
- July - A study by the Oxford Poverty and Human Development Initiative showed that more people live in poverty in eight (of the 28) Indian states than in 26 of sub-Saharan Africa's poorest countries. This 'Multidimensional Poverty Index' took into account issues such as health and education and whether or not people have access to clean water and electricity. **[146]**

4.02 Further information about recent developments in the country can be obtained from the sources listed below.

BBC News http://news.bbc.co.uk/1/hi/world/south_asia/default.stm

Relief Web: http://www.reliefweb.int/rw/dbc.nsf/doc104?OpenForm&rc=3&cc=ind

South Asian Terrorism Portal, India Timeline http://satp.org/satporgtp/countries/india/timeline/index.html

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5. CONSTITUTION

5.01 The Government of India website, accessed on 15 November 2007, recorded that the Indian Constitution was adopted on 26 November 1949. The Preamble to the Constitution resolved to constitute India into a:

- "Sovereign socialist secular democratic republic and to secure to all its citizens Justice - social, economic and political;
- Liberty of thought, expression, belief, faith and worship;
- Equality of status and opportunity
- and to promote among them all
- Fraternity, assuring the dignity of the individual and the unity and integrity of the nation." **[24c]**

5.02 The Fundamental Rights section of the Constitution of India (Part III, articles 12 to 35), accessed on 25 September 2004, indicated that the rights of the citizen included the:

- Right to Equality: Equality before law, prohibition of discrimination on grounds of religion, race, caste, sex or place of birth, equality of opportunity in matters of public employment and abolition of untouchability and titles
- Right to Freedom: Freedom of speech and expression, protection of life and personal liberty, protection against arrest and detention
- Right against Exploitation: Prohibition of human trafficking, forced labour and child labour
- Right to Freedom of Religion
- Cultural and Educational Rights: protection of interests of minorities
- Right to Constitutional Remedies **[24c]**

5.03 Article 13(2) of the Constitution provides that "The State shall not make any law which takes away or abridges the rights conferred by this Part [Part III-Fundamental Rights] and any law made in contravention of this clause shall, to the extent of the contravention, be void." (Constitution of India, 1 December 2007) **[24c]**

5.04 The Constitution is flexible in character and has been amended many times. By December 2007, there were 94 amendments to the Constitution. (Constitution of India, 1 December 2007) **[24c]**

5.05 A copy of the Constitution of India as at 1 December 2007 (updated to 94th Amendment Act) appears on the Ministry of Law and Justice website: http://lawmin.nic.in/coi/coiason29july08.pdf

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6. POLITICAL SYSTEM

6.01 The Foreign and Commonwealth Office (FCO) Country Profile on India, updated on 17 May 2010, noted that "The Indian constitution provides a system of parliamentary and cabinet government both at the centre and in the states." **[7b]**

6.02 The US State Department *Country Report on Human Rights Practices 2009* (USSD 2009), released 11 March 2010, recorded:

"The constitution provides citizens the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections based on universal suffrage … The country has a longstanding democratic parliamentary system of government, with representatives elected in multiparty elections. The parliament sits for five years unless it is dissolved earlier for new elections, except under constitutionally defined emergency situations. The country held a five-phase national election in April and May [2009] that included 714 million eligible voters. National and local security forces helped to ensure a relatively smooth election, although 65 persons were killed in voting-related violence. The Congress-led United Progress Alliance government, headed by Prime Minister Manmohan Singh, returned to power for a second term in May." **[2c] (Section3)**

6.03 Europa World Online, accessed 28 June 2010, noted:

"Legislative power is vested in Parliament, consisting of the President and two Houses. The Council of States (Rajya Sabha) has 245 members, most of whom are indirectly elected by the state assemblies for six years (one-third retiring every two years), the remainder being nominated by the President for six years. The House of the People (Lok Sabha) has up to 550 elected members, serving for five years (subject to dissolution). A small number of members of the Lok Sabha may be nominated by the President to represent the Anglo-Indian community, while the 550 members are directly elected by universal adult suffrage in single-member constituencies.

"India contains 28 self-governing states, each with a governor (appointed by the President for five years), a legislature (elected for five years) and a council of ministers headed by the chief minister. Bihar, Jammu and Kashmir, Karnataka, Maharashtra and Uttar Pradesh have bicameral legislatures, the other 23 state legislatures being unicameral. Each state has its own legislative, executive and judicial machinery, corresponding to that of the Indian Union. In the event of the failure of constitutional government in a state, presidential rule can be imposed by the Union. There are also six Union Territories and one National Capital Territory, administered by lieutenant-governors or administrators, all of whom are appointed by the President. The territories of Delhi and Puducherry also have elected chief ministers and state assemblies." **[1] (Constitution and Government)**

6.04 The same source noted:

"The President is a constitutional Head of State, elected for five years by an electoral college comprising elected members of both Houses of Parliament and the state legislatures. The President exercises executive power on the

advice of the Council of Ministers, which is responsible to Parliament. The President appoints the Prime Minister and, on the latter's recommendation, other ministers." **[1] (Constitution and Government)**

6.05 The USSD 2009 Report observed, "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] 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." **[2c] (Section 1d)**

6.06 The Commonwealth Secretariat country profile on India, undated, accessed on 1 July 2008, in the section on the Indian constitution, noted:

"Each state has its own legislature (usually unicameral), governor (appointed by the president for five years) and a ministerial council headed by a chief minister. There has been a trend towards devolution of union and state power to local government…Responsibility for enacting laws is set out in three lists: the Union List (for legislation by national parliament), the State List and the Concurrent List (either national or state legislatures). State legislatures make their own laws on such matters as education, health, taxation, public order, lands and forests. Constitutional amendments must be passed by both houses and ratified by at least half the state legislatures." **[56]**

6.07 Referring to corruption and criminality in the political system, Freedom House stated in its report *Freedom in the World – India (2010)*, published on 24 June 2010:

"Government effectiveness and accountability are undermined by criminality in politics, decrepit state institutions, and widespread corruption. India was ranked 84 out of 180 countries surveyed in Transparency International's 2009 Corruption Perceptions Index. The electoral system depends on 'black money' obtained though tax evasion and other means. Politicians and civil servants are regularly caught accepting bribes or engaging in other corrupt behavior, although a great deal of corruption goes unnoticed and unpunished. During the 2009 election campaign there were widespread allegations of vote-buying: police in Andhra Pradesh seized $600,000 in cash that was allegedly set to be used for bribes, while 500 cases of liquor destined for distribution to voters were seized in Karnataka. Despite laws requiring candidates to declare their financial assets, criminal records, and educational backgrounds, those with links to organized crime or whose election victories were at least in part dependent on unreported money continue towin election andserve as lawmakers, as do a number who face serious criminal charges. The 2005 Right to Information Act has reportedly been used heavily and successfully to improve transparency, although many information requests are still denied because of poor record-keeping by government agencies.Those who try to expose bureaucratic corruption often receive threats or are otherwise penalized in terms of career prospects." **[43d]**

6.08 Jane's Security Sentinel, updated in August 2009, observed:

"Corruption is endemic within India and poses a threat not only to the country's economic performance, but also to the political parties, as previous corruption scandals have severely weakened, or even led to the downfall of, a particular

government. The issue of criminality in Indian politics is one that affects many parties. Moreover, under Indian law, a politician can retain his position and privileges in the face of criminal investigations, only losing them if he is found guilty." **[58f]**

See also Section 19: Corruption

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Human Rights

7. INTRODUCTION

7.01 The US State Department *Country Report on Human Rights Practices 2009* (USSD 2009), released 11 March 2010, stated:

> "The government generally respected the rights of its citizens and made progress in reducing incidents of communal violence, expanding efforts against human trafficking, and reducing the exploitation of indentured, bonded, and child workers but serious problems remained. Major problems included reported extrajudicial killings of persons in custody, disappearances, and torture and rape by police and other security forces. Investigations into individual abuses and legal punishment for perpetrators occurred, but for many abuses, a lack of accountability created an atmosphere of impunity. Poor prison conditions and lengthy detentions were significant problems. Some officials used antiterrorism legislation to justify excessive use of force. Corruption existed at all levels of government and police. While there were no large-scale attacks against minorities during the year, there were reports of delays in obtaining legal redress for past incidents. Some states promulgated laws restricting religious conversion. Violence associated with caste-based discrimination occurred. Domestic violence, child marriage, dowry-related deaths, honor crimes, and female feticide remained serious problems. … Separatist insurgents and terrorists in Kashmir, the Northeast, and the Naxalite (Maoist) belt committed numerous serious abuses, including killing armed forces personnel, police, government officials, and civilians. Insurgents engaged in widespread torture, rape, beheadings, kidnapping, and extortion." **[2c] (Introduction)**

7.02 The Human Rights Watch (HRW) *World Report 2010*, covering events of 2009, stated:

> "In its first term in office the Congress [Party]-led coalition made only modest progress on rights. [The government] has not yet addressed some of India's most pressing needs, including better training and reform of its police force; providing health, education, and food security to millions still struggling for subsistence despite the country's economic growth; ending discrimination against Dalits, tribal groups, and religious minorities; and protecting the rights of women and children … India points to its independent judiciary, vibrant media, and active civil society as evidence that it is a thriving, rights-respecting democracy. Yet fundamental, structural problems remain including, most glaringly, widespread impunity for human rights violations. The government routinely fails to hold security forces accountable for abuses." **[26k]**

7.03 The Amnesty International *Report 2010*, released 28 May 2010, referring to events of 2009, highlighted several concerns: Tighter anti-terror and security legislation in the wake of the 2008 Mumbai attacks and reports of arbitrary detention and torture; police using excessive force against protesters from marginalised communities; failure to protect the land and other rights of *adivasis* (indigenous communities) and small farmers; Maoist violence, with local communities being targeted and at least 300 civilians killed; death sentences passed, although no executions were actually carried out; violence

against religious minorities; harassment and arbitrary detention of human rights defenders; extrajudicial killing by the security forces in areas where insurgents were active and widespread impunity. **[3g]**

7.04 The website of the National Human Rights Commission of India has details of the various issues and programmes recently taken up by the commision: http://nhrc.nic.in/

UN CONVENTIONS

7.05 The Foreign and Commonwealth Office noted in its Country Profile on India, updated on 17 May 2010, "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 but the Prevention of Torture Bill (2010) has been approved by the Government in April 2010 for tabling in Parliament." **[7b]**

7.06 Listed below is India's position in relation to the principal UN Conventions (source: UN Treaty Database, accessed 3 July 2010):

- Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (CAT) – Signature only
- International Covenant on Civil and Political Rights (CCPR) – Ratification
- Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) – Ratification
- International Convention on the Elimination of All Forms of Racial Discrimination (CERD) – Ratification
- Convention on the Rights of Persons with Disabilities – Ratification
- Convention on the Rights of the Child – and Protocols (CRC) – Ratification
- International Covenant on Economic, Social and Cultural Rights (CESCR) – Ratification **[6j] (Chapter IV: Human Rights)**

See also section 18: Human Rights Institutions, Organisations and Activists

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8. INTERNAL SECURITY SITUATION

See also Section 28: Humanitarian Issues and Section 11: Non-government armed groups

8.01 In its assessment, dated 15 July 2010, of the security situation in India, Jane's Security Sentinel stated:

"Although India faces a wide variety of serious insurgent and terrorist challenges, these are relatively limited considering its size and demographic mix. Through democratic means and the cautious deployment of security forces, India has successfully managed to prevent separatist and terrorist groups from posing a serious threat to the integrity of the country or to long-term social stability. The authorities have generally followed a consistent strategy of dealing with active and simmering separatist campaigns by starving them of energy, motivation and support, or by supporting rival organisations.

"Nonetheless, many disputes remain unresolved, and there is a sense that these groups are becoming more willing to band together in an attempt to further their individual causes. Furthermore, the ever-increasing population will put additional pressure on resources, infrastructure and the government's ability to provide social welfare and employment, and it is these kinds of issues that drive the marginalised and alienated to support separatist or terrorist organisations. Unless the government begins to tackle developmental issues with greater vigour and purpose, it will have to continue to expend time, energy and resources on such groups.

"With the slew of devastating terrorist attacks through 2008 and 2009, the government has sought to toughen its counter-terrorism stance. This includes the introduction of a National Investigating Agency Bill 2008 and the Unlawful Activities (Prevention) Act (UAPA) Amendment Bill 2008, which allows for the establishment of fast-track courts, tighter bail provisions and an increase in the legal detention without charge from 90 to 180 days; upgrading coastal security with a new coastal command; upgrading the capacity of the elite National Security Guards (NSG); and the establishment of 20 counter-terrorism training schools. However, in 2010, this focus on Islamist terrorism has been overshadowed by a peak in violence by left-wing extremists, particularly the Communist Party of India (Maoist)." **[58e] (Security)**

[See Section 13: Security legislation]

Naxalite (Maoist) violence

8.02 In October 2009, Prime Minister Manmohan Singh termed naxalism "the greatest internal security threat to our country." (*The Hindu*, 12 October 2009) **[60l]** It was estimated in 2009 that the Communist Party of India (Maoist) was active in 231 of the 626 districts of the country and had some 20,000 armed cadres under its control. Its attacks had intensified since 2007 and government sources predicted that naxalite hostilities would continue for several more years. (*Frontline*, 6 November 2009) **[19b]**

See Section 11: Naxalites

Islamist terrorist attacks

8.03 The Mumbai terrorist attacks of November 2008 have been attributed to the Pakistani-based organisation Lashkar-e-Taiba (see Section 4). The International Institute for Strategic Studies has recorded that the group 'Indian Mujahideen' were responsible for four bomb attacks in 2008, in which 150 people were killed and 425 were wounded. These attacks occurred in different parts of the country: Rajasthan, Karnataka, Gujurat and New Delhi. **[124] (Table)**

Jammu and Kashmir

8.04 Commenting on the situation in Jammu and Kashmir, Jane's Security Sentinel noted in July 2010, "The main ongoing issue in Indo-Pakistan relations is the dispute over the Muslim-majority former princely state of Kashmir … Despite three wars in 1947, 1965 and 1971, and limited conflict in 1999, the territorial status of Kashmir remains unchanged." Jane's also pointed out:

"Within Kashmir, violence is practically a daily occurrence, with security forces and civilian politicians targeted by militants, and constant clashes between the military and insurgents. The number of casualties in such fighting is usually limited, although occasionally larger-scale ambushes or conflicts occur … [In] general, violence against civilians and security forces in Indian-administered Kashmir, and incidents of cross-border infiltration, have declined every year since 2003 when India and Pakistan entered into an ongoing peace process.

"Kashmir itself is prone to regional differences as the state is essentially three separate areas, all with their own distinctive cultural identities. This tends to be forgotten in light of the fact that the primary military and diplomatic dispute focuses on the Kashmir Valley (which is 92 per cent Muslim). A majority of citizens in Pakistan-administered Kashmir want full independence (87 per cent according to a survey in 2007), but a sizeable number would prefer to become integrated within Pakistan. In the Hindu-dominated area of Jammu, 95 per cent of those polled supported rule by India. In addition, more Indians than Pakistanis felt that their respective nation should have control of the disputed region (67 per cent as opposed to 48 per cent). However, a large proportion from both countries supported the idea of self-determination." **[58e]**

8.05 Jane's Security Sentinel, updated 15 July 2010, further observed:

"Currently, one of the principal threats to stability comes not from organised militant organisations but general protesters who express their frustration with the huge army presence and lack of political progress by attacking police with stones and other projectiles. These confrontations have led to numerous incidents in which police retaliate by firing on protesters and escalating tensions. The death of two teenagers in such an incident in February 2010 caused widespread strikes, demonstrations and the closing of businesses in Srinigar and other towns that lasted over a fortnight and required a strict curfew and the deployment of thousands of paramilitaries to bring it under control. The pattern repeated itself in June [2010], following the death of three young protesters when police opened fire on a crowd." **[58h]**

Northeastern states

8.06 The South Asia Terrorism Portal, accessed December 2009, reported that militancy-related violence in the north-east of the country, where several separatist/insurgent groups are active, resulted in 1,054 fatalities in 2008 – including 404 civilians and 40 security force members. Casualties from the conflicts in the north east have increased substantially since 2006. **[44m]**

8.07 The website GlobalSecurity.com, accessed in June 2010, obeserved:

> "Extensive, complex patterns of violence continues in the seven states of northeastern India. The main insurgent groups in the northeast include two factions of the National Socialist Council of Nagaland (NSCN) in Nagaland; Meitei extremists in Manipur; and the all Tripura Tiger Force (ATTF) and the National Liberation Front of Tripura (NLFT) in Tripura. The proclaimed object of many of these groups is to break out of the Indian union, creating new, independent nations." **[140a]**

See Section 11: North East States

Further information on the security situation in the country can be obtained from: South Asia Terrorism Portal: http://www.satp.org/ and Reuters : http://www.alertnet.org/db/cp/india.htm

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9. SECURITY FORCES

POLICE

9.01 As noted in the US State Department *Country Report on Human Rights Practices 2009*, released on 11 March 2010 (USSD 2009 Report), there is no national police force as such. Under Article 246 of the Constitution, each of the 28 states and seven union territories has primary responsibility for maintaining law and order and, thus, for supervising its police force. The central government offers guidance and support and provides training for senior officers of the state police forces. **[2c] (Section 1d)**

9.02 The Human Rights Law Network (HRLN), a New Delhi-based NGO, noted in a report of August 2009 that state police forces remain structured and regulated by the Police Act of 1861, or by state statutes that are modelled after the 1861 Act. **[22a]** This Act also sets out the duties to be discharged by police officers. **[110]**

9.03 At the district level (states are divided into districts), there is a level of dual control. There is a high-ranking police officer in charge of the district (District Superintendent of Police), who reports to his superiors within the state police force. At the same time, the District Superintendent is subject to the general direction and control of a District Magistrate. (HRLN, August 2009) **[22a]** In certain cities there are metropolitan police forces which are not subject to such dual control; the Commissioner of Police is instead given magisterial powers. **[110]**

9.04 The World Police Encyclopedia (WPE), published by Routledge in 2006, advised that state police forces have two main components: civil police and armed police. The primary function of the civil police is to control crime; the armed police mainly deal with 'law and order' situations. The civil police provide the staffing of police stations and criminal investigation departments. They are generally unarmed, but might carry a baton or bamboo stick. The state armed police are usually organised along the lines of armed infantry battalions. They are 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. **[110]**

9.05 The Indian Police Service (IPS) is a national institution, under the Ministry of Home Affairs, which provides advanced training to senior officers of the state police forces. Admission to the IPS is at the level of Assistant Superintendent. Most states have police training colleges or academies for ranks from sub-inspector upwards and all states have training schools for constables. (WPE) **[110]**

9.06 Jane's Sentinel Security Assessment, updated 19 May 2010, commented that "…state police are in general corrupt and inefficient … Petty corruption is rife, and few citizens have any respect for the police." **[58a]** (**Security and Foreign Forces, Police)**

9.07 Human Rights Watch (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 included interviews with police officers of varying ranks, victims of police ill-treatment and NGO workers, lawyers and activists. The report stated:

"At the level of the civil police station, where junior and low-ranking police often reside and deal with suspects or victims, we found that civil police, particularly constables, live and work in abysmal conditions. They are often exhausted and demoralized, always on call, working long hours without shifts and necessary equipment, only to return to government-provided tents or filthy barracks for a few hours' sleep. Junior-ranking officers often face unrealistic demands from their superiors to solve cases quickly. Even if officially encouraged, their use of professional crime investigation techniques is effectively discouraged by the dearth of time, training and equipment with which they operate. These officers also face frequent intervention in investigations by local political figures, who sometimes act to protect known criminals … To get around these systemic problems many officers take 'short-cuts'. Officers told Human Rights Watch 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." **[26g] (p5-6)**

9.08 The HRW report further observed:

"There is just one civil police officer for every 1,037 Indian residents, far below Asia's regional average of one police officer for 558 people and the global average of 333 people. **(p7)**

"Police infrastructure is crumbling. Decaying, colonial-era police stations and posts across India are stocked with antiquated equipment and lack sufficient police vehicles, phones, computers, and even stationery. A severe police staffing shortage is compounded by additional demands on an already stretched force. Police are routinely diverted to protect 'VIPs' – usually politicians, businesspeople, and entertainment figures. Senior police officials frequently use low-ranking staff as orderlies and even as personal family servants. **(p7)**

"Police performance is severely undercut by the inadequacy of training. For [non-senior] officers, pre-induction training of six to nine months [is] military in style and dominated by physical fitness, [marching] and ceremonial parades." (One sub-inspector told HRW that the work of crime investigation was largely neglected in his training.) **(p32)**)

"In parts of India, in-service training is extremely infrequent … Even when police are promoted to positions requiring a different skill set, they may not receive additional training." **[26g]** **(p33)**

9.09 The USSD 2009 Report observed:

"Corruption in the police force was pervasive, which several government officials acknowledged, according to a May 4 HRW report on police abuse. Officers at all levels acted with impunity, and officials rarely held them accountable for illegal actions. When a court found an officer guilty of a crime, the punishment often

was a transfer. Human rights activists and NGOs reported that citizens often had to pay bribes to receive police services." **[2c] (Section 1d)**

9.10 According to the Human Rights Law Network (HRLN) report of August 2009:

"Almost all state police commissions and the National Police Commissions have found misuse by politicians for partisan ends. Police officers feel compelled to comply with illegitimate political directives because they know that disobedience might lead to their transfer to a different post. The police are generally heavily dependent on the executive for appointments, disciplinary measures, salaries, tenure, physical conditions, residency transfers, and the like. Thus, not only is the police force politicized, but it adopts the positions of those currently in power to the detriment of political minorities, poor persons, scheduled castes and tribes, and the generally disempowered." **[22a] (p9)**

9.11 The HRW report of August 2009 commented, "In 2006, the Supreme Court handed down a landmark decision, Prakash Singh and Others v. Union of India and Others, that directed the central and state governments to enact new police laws to reduce political interference. Unfortunately, the central government and most state governments have either significantly or completely failed to implement the Court's order." **[26g](p8)**

9.12 The HRLN report of August 2009 cited a 2005 report by Transparency International India, which found that more than one tenth of all households in India reported to have paid bribes that year to the police to get service, and 87% of respondents who interacted with the police perceive it to be corrupt. HRLN also quoted the Asian Human Rights centre as reporting, "Not only is corruption rampant, it is done in the open. 81% of those who paid bribes reported doing so directly to police officers rather than middlemen. This suggests that bribery itself has become institutionalized and that some instances of it are not even perceived as deviant." **[22a]**

See also section 19: Corruption

Paramilitary forces and centralised police organisations subordinate to the Ministry of Home Affairs

9.13 The Ministry of Home Affairs controls several paramilitary forces, as well as internal intelligence bureaus. (USSD 2009) **[2c] (Section 1d)** Paramilitary forces include, for example, the Central Reserve Police Force, Border Security Force, Railway Protection Force, Assam Rifles, Central Industrial Security Force and the Home Guard. Centralised police organisations include the Central Bureau of Investigation, Bureau of Police Research, the Intelligence Bureau and the Indian Police Service, described above. (WPE, 2006) **[110]**

Central Reserve Police Force (CRPF)

9.14 Jane's Sentinel Security Assessment for India, updated 19 May 2010, noted that the Central Reserve Police Force (CRPF), the most prominent of these paramilitary forces, is tasked with internal security duties and is deployable throughout the country. **[58a]** (**Security and Foreign Forces)** According to Jane's, the CRPF consists of 191 battalions, totalling some 180,000 personnel. Of the 191 battalions, 173 are 'executive', namely non-specialist. The main tasks of the force are:

- Assisting states in maintaining internal security;
- Election monitoring;
- Participation in international peacekeeping forces (which have included Sri Lanka, Haiti, Namibia, Kosovo and Somalia);
- Protection of the environment (in the form of the CRPF's; 'Green Force'; and
- Rescue and relief operations." **[58b] (Security and Foreign Forces)**

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ARMED FORCES

9.15 The US Background Note for India, updated January 2009, noted that "The supreme command of the Indian armed forces is vested in the President of India. Policies concerning India's defense, and the armed forces as a whole, are formulated and confirmed by the Cabinet." **[2a] (Defence)**

9.16 The CIA World Factbook, updated 24 June 2010, reported that the military consists of the army, navy (includes naval air arm), air force (Bharatiya Vayu Sena), Coast Guard. **[35]**

9.17 Jane's Sentinel Security Assessment for India (Armed Forces), updated 12 February 2010, recorded that the Indian army is the world's third largest with a current strength of some 1,100,000. There are 300,000 first-line reservists who were former regular soldiers and have five years reserve commitment, and a further 500,000 who have commitment until age 50. The Territorial Army has 40,000 first-line and 160,000 second-line troops. The principal role of the army is to safeguard the territorial integrity of the state against external threats, which is a considerable task as almost half India's 16.500 km land border is disputed by China, Pakistan and Bangladesh. **[58c]**

Paramilitary forces subordinate to the Ministry of Defence

9.18 Such organisations include the Coast Guard Organisation and the Defence Security Force, which guards Ministry of Defence facilities throughout the country. (Country Data.com) **[79b] (Paramilitary and Reserve Forces)**

Other forces

9.19 According to the USSD 2008 Report, "Government agencies funded and directed combat operations of former separatist guerrillas who surrendered to the Jammu and Kashmir government and who used their own weapons as part of police auxiliary units." **[2e] (Section 1a)**

9.20 Amnesty International's annual report, published in May 2009, covering events of 2008, noted:

"In Chhattisgarh, clashes continued between Maoist armed groups and state forces supported by Salwa Judum, a militia widely believed to be state-sponsored. Both sides targeted civilians, mainly adivasis who reported killings, abductions and torture and other ill-treatment … In November [2008], India's

National Human Rights Commission (NHRC) submitted its findings of a month-long inquiry to verify reports of human rights abuses by Salwa Judum and the Maoist armed groups. The NHRC found that both sides were responsible for abuses. Human rights organizations criticized the findings, stating that the NHRC had failed to fully investigate abuses committed by the Salwa Judum." **[3e]**

HUMAN RIGHTS VIOLATIONS BY SECURITY FORCES

9.21 The August 2009 Human Rights Watch report, *Broken System: Dysfunction, Abuse and Impunity in the Indian Police*, stated:

"While allegations of police abuses are frequently reported in the Indian media, only 28 percent of the 282, 384 complaints filed against police between 2003 and 2007 resulted in police department, magisterial or judicial inquiries, according to the Indian government. During the same period, prosecutions of 8,736 officers were initiated, but only 1,070 trials were completed and 264 officers convicted. While not conclusive, this data suggests that despite high-profile and successful prosecutions of some abusive officers, many police operate in an environment where impunity is still the norm." **[26g] (p100)**

9.22 The Asian Centre for Human Rights (ACHR), an NGO, noted in their India Human Rights Report 2008 that there are no official statistics on crimes (human rights violations) committed by the Army in tackling insurgency: "The National Crime Records Bureau (NCRB) of the Ministry of Home Affairs is responsible for collecting crime statistics. Yet, it has no mandate to collate Army related crimes. The same is true with regard to the National Human Rights Commission." The same source asserted that India's human rights problems are generally grossly under-reported. **[18a] (pVI)** The ACHR stated in the South Asia Human Rights Index 2008 that, in order to investigate the armed forces deployed in conflict situations, prior permission from the Central Government is mandatory (under Section 197 of the Criminal Procedure Code and Section 6 of the Armed Forces Special Powers Act of 1958). Prior permission has seldom been granted or requested. Even in cases where the Government's Central Bureau of Investigation has found compelling evidence of violation by the security forces, permission to prosecute has been denied. **[18f]**

9.23 The Indian news magazine *Frontline*, in its issue of 6 November 2009, noted that the security forces had begun to reform their tactics by the late 1990s:

"The dreaded 'cordon-and-search' operations, which meant torturing and foisting cases on all those suspected to be supporting naxalites, were called off. There were no more instances of midnight arrests, no more destruction of property and displacement of the kith and kin of underground naxalites … These measures were initiated even while selectively using the most notorious tool – killing … Large sections of society did not approve of the extrajudicial killings, euphemistically called encounter deaths. Similarly, they were opposed to the killings by the Maoists.

"The police top brass had become acutely aware that it was the indiscriminate use of this that was distancing them from the people, whose participation was essential for changing the conditions on the battleground." **[19b] (p18-19)**

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Extra-judicial killings

9.24 The USSD 2009 Report noted:

"There were credible reports that the government and its agents committed arbitrary or unlawful killings, including extrajudicial killings of suspected criminals and insurgents. A high rate of extrajudicial killings, in which security forces shot and killed alleged criminals or insurgents in staged encounters, occurred in the Northeast, particularly in the states of Assam and Manipur. Sources also reported encounter killings in Jammu and Kashmir, Maharashtra, and Chhattisgarh. Custodial deaths, in which prisoners were killed or died in police custody, remained a serious problem, and authorities often delayed prosecutions. Despite the National Human Rights Commission (NHRC) recommendations that the Criminal Investigations Department (CID) investigate all police encounter deaths, many states conducted internal reviews only at the discretion of senior officers." **[2c] (Section 1a)**

9.25 According to the Human Rights Watch report of August 2009, *Broken System: Dysfunction, Abuse and Impunity in the Indian Police* **[26g]**,:

"The Indian police can be broadly categorized as committing two types of unlawful killings. In the first, suspects die during custodial torture or by execution and police deny all responsibility, claiming instead that there were other causes for the deaths. In the second, known as 'fake encounter' killings, the police acknowledge the killings but falsely claim they acted in self-defense or to prevent victims from fleeing arrest … In parts of India, police commit both kinds of killings with impunity. **(p86)**

"The frequency of fake encounter killings, characterized by police acknowledgment of involvement but false denial of malfeasance, is unclear. The Indian government reports that in 2007, police killed 250 individuals designated as civilians and injured 616; in 2006, police killed 472 and injured 432. **(p91)** … The National Human Rights Commission has not released nationwide data on killings by police fire since 2005; that year, it reported receiving 84 complaints of fake encounter deaths. **(p91-92)**

"Human Rights Watch is not in a position to determine how many incidents are genuine police shootings in self-defense rather than shoot-outs staged or falsely reported by police. Half of the shootings reportedly occurred in anti-dacoity, or armed robbery, operations or those 'against others', circumstances unlikely to involve impartial witnesses who can confirm or contradict police accounts.[313] That the Indian police also suffered a high number of fatalities from shootings—59 police died in 2007 and 64 died in 2006, mostly in 'extremist/terrorist' operations—suggests a significant proportion did involve an exchange of fire." **[26g] (p91)**

9.26 The Indian news magazine *Frontline*, in a special feature in its issue of 9 October 2009 on extrajudicial killing by the security forces, observed, "At the heart of the debate on fake encounters is the legitimacy of the term encounter deaths. Those who suggest that only fake encounters are illegitimate appear to endorse the public perception that encounter killings by the police are not anathema to civilised society. Not many appreciate the fact that the so-called genuine encounter killings are as illegitimate as the faked ones." **[19a]**

9.27 The Asian Centre for Human Rights (ACHR) in its report, *Torture in India 2008: A State of Denial*, published on 25 June 2008, stated, "7,468 persons…have died and/or been killed in prison and police custody during 2002 to 2007. An equal number of persons, if not more, have been killed in the custody of the army, Central armed forces and States' paramilitary forces in insurgency affected areas. A large number of these deaths are as a result of torture." **[18c]**

9.28 The USSD 2008 Report stated, "According to human rights groups, security forces in Jammu and Kashmir targeted suspected terrorists, insurgents, and their supporters, but there were no widely accepted data on the magnitude of extrajudicial killings and custodial deaths … According to an NGO in Kashmir, security forces were responsible for seven extrajudicial killings in Jammu and Kashmir during the year [2008]." **[2e] (Section 1a)** The USSD 2009 Report noted, "On March 20 [2009], the army stated that three soldiers were guilty of killing two civilians on February 22 in Bumai, in Jammu and Kashmir. Authorities initially claimed the victims died in crossfire between militants and security forces. The army ordered disciplinary action against the soldiers." **[2c] (Section 1a)**

9.29 The Freedom House report, *Freedom in the World 2008, Kashmir (India)*, covering events in 2007, stated:

"Approximately 600,000 Indian security personnel based in Kashmir carry out arbitrary arrests and detentions, torture, 'disappearances,' and custodial killings of suspected militants and alleged civilian sympathizers. As part of the counterinsurgency effort, the government has organized and armed pro-government militias composed of former militants. Members of these groups act with impunity and have reportedly carried out a wide range of human rights abuses against pro-Pakistani militants and civilians." **[43b]**

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Arbitrary arrest and detention

9.30 The Human Rights Watch (HRW) report of August 2009, *Broken System: Dysfunction, Abuse and Impunity in the Indian Police*, stated:

"Police have broad authority to arrest without a warrant any individual for whom they have a 'reasonable suspicion' of having a connection to (the law uses the phrase 'concerned' in) certain types of criminal offenses, or against whom they have received either a 'reasonable complaint' or 'credible information' of such involvement. This includes individuals found to posses goods that can 'reasonably be suspected to be stolen property.' Police can also arrest without a warrant any individual they know is planning to commit certain types of offenses … The [Code of Criminal Procedure] requires that arrest and detention be conducted in accordance with procedures established by law. Arrest and detention are prohibited if they are arbitrary, that is, if they are carried out unlawfully or are manifestly disproportionate, unjust, discriminatory or unpredictable.

"The Law Commission of India has noted that domestic law confers 'a vast, sometimes absolute and on some other occasions, an unguided and arbitrary

power of arrest upon police officers.' (Amendments to the Criminal Procedure Code in 2008 that reduce police authority to make warrantless arrests are not yet in force.) Several studies have shown that many police abuse this power, arresting suspects without sufficient evidence and detaining them without sufficient due process.

"Human rights groups say that the police frequently arrest and detain individuals on false charges at the behest of powerful local figures or due to other forms of corruption. In the cases documented by Human Rights Watch …the accounts of the accused suggest that police fabricated charges or informal accusations, making the arrest and detention of these individuals illegal under international and domestic law." **[26g] (p57-59)**

9.31 The USSD 2009 Report noted:

"The law requires officials to inform detainees of the grounds for arrest and of the right to legal counsel. Arraignment of a detainee must occur within 24 hours, unless the suspect is held under a preventive detention law. In practice many suspects were detained without charge, mostly in terrorism-related cases. [Amnesty International] reported: 'More than 70 persons were detained without charge, for periods ranging from one week to two months in connection with bomb blasts in several states throughout the year [2009]'." **[2c] (Section 1d)**

9.32 The Freedom House *Freedom in the World Kashmir (India) 2008* report stated:

"…the government and security forces frequently disregard court orders, including those quashing detentions. Two other broadly written laws – the Armed Forces Special Powers Act and the Disturbed Areas Act – allow Indian forces to search homes and arrest suspects without a warrant, shoot suspects on sight, and destroy buildings believed to house militants or arms… Impunity for rights abuses by Indian forces has been the norm, in part because under the Special Powers Act New Delhi is required to approve any prosecutions. However, several prosecutions were launched in 2007. The discovery of apparent victims of fake encounter killings in February 2007 prompted an unusually thorough investigation, and at least 18 policemen were charged, including a number of senior officers and a former superintendent. In another positive development, the state government appointed a commission of inquiry in April to probe custodial killings and fake encounter deaths. Nevertheless, impunity surrounding thousands of other cases continued, and rights groups expressed doubts as to whether the latest investigations represented a genuine change in policy. While the state human rights commission examines several dozen complaints a year (it has received hundreds since its inception), it is hampered by inadequate resources and infrastructure. In addition, it cannot directly investigate abuses by the army or other federal security forces, nor can it take action against those found to have committed violations." **[43b]**

9.33 A Human Rights Watch document of 20 November 2007, entitled 'India: Repeal the Armed Forces Special Powers Act', stated:

"The Armed Forces Special Powers Act (AFSPA) grants the military wide powers of arrest, the right to shoot to kill, and to occupy or destroy property in counterinsurgency operations. Indian officials claim that troops need such

powers because the army is only deployed when national security is at serious risk from armed combatants. Such circumstances, they say, call for extraordinary measures. The AFSPA, which has been in force for decades in Jammu and Kashmir state and the seven north-eastern states, has provided immunity for killings and other serious human rights violations committed by the army…Clauses in the AFSPA state that no prosecutions can be initiated without permission from the central government. Such permission is rarely granted, providing troops with de facto immunity from prosecutions for human rights abuses." **[26c]**

(See Section 13, Arrest and detention – legal rights

Torture

9.34 The USSD 2009 Report stated, "The law prohibits torture and generally does not allow authorities to admit coerced confessions in court; NGOs and citizens alleged that authorities used torture to extort money, as summary punishment and to coerce confessions. In some instances authorities used the confessions as evidentiary support for death sentences." **[2c] (Section 1c)** The Freedom House report *Freedom in the World - India (2010)*, published on 24 June 2010, stated, "Police often torture or abuse suspects to extract confessions or bribes. Custodial rape of female detainees continues to be a problem, as does routine abuse of ordinary prisoners, particularly minorities and members of the lower castes." **[43d]**

9.35 The report published by the Human Rights Law Network in August 2009 stated:

"According to one estimate, there are 1.8 million cases of torture, ill treatment, and inhuman behavior in India every year. The number of actual prosecutions from these numbers is staggeringly low. Despite having about 1,500 cases of (reported) custodial deaths per year, only 4 police officers were convicted in 2004 and 3 officers were convicted in 2005. The number of indictments was equally low: only 37 officers in 2004 and 25 officers in 2005." **[22a] (p12)**

9.36 Human Rights Watch (HRW) stated in their report of August 2009, on the Indian police, that the most common form of abuse described in interviews with victims was beatings with batons or *lathis* (bamboo sticks). Other forms of ill treatment ascribed to the security services included electric shock treatment, sleep deprivation, beatings on the soles of feet and forcing victims to remain in painful positions. **[26g] (p68-69]** Socially marginalised communities were particularly vulnerable to being beaten in the street. **(p74)** The HRW report also reported that a common reason police beat criminal suspects was to obtain confessions or other information, in order to 'solve crimes' and support prosecutions – even though confessions made in police custody are ordinarily not admissible as proof of guilt. **(p81)** Police also told HRW that they 'beat criminals' to punish them and deter them from committing crime again. **(p85)**

9.37 HRLN has noted that the figure of 7,468 deaths was derived from National Human Rights Commission statistics, but observed also that the NHRC data did not distinguish between 'normal' custodial deaths, such as from old age or sickness, and deaths resulting from other causes, such as torture. **[22a] (p12)**

9.38 The Asian Centre for Human Rights stated in its report of 25 June 2008, "A pervasive regime of impunity is the single most important factor for institutionalising widespread use of torture even in areas where there are no armed conflicts. Only 4 police personnel were convicted in 2004 and 3 in 2005 for custodial deaths…India has failed to ratify the Convention Against Torture after signing it in 1997." **[18c]**

9.39 On 26 April 2010 the Prevention of Torture Bill was introduced in the Lok Sabha, in order "to provide punishment for torture inflicted by public servants or torture inflicted by someone with the consent of public servants". Home Minister P. Chidambaram was quoted as saying that the new legislation was necessary for India to ratify the United Nations Convention against Torture and other Cruel, Inhuman and Degrading Treatment. (*Thaindian News*, 26 April 2010) **[46e]** *The Hindu* commented in an editorial of 19 May 2010:

"Clause 3 of the Bill defines 'torture' as an intentional act which causes 'grievous hurt' or 'danger to life, limb or health' … In other words, a very high threshold has been set for an act to qualify as 'torture' … Even the 'danger to (mental or physical) health' provision is not very helpful … Thus, many cases of water-boarding, sexual assault, deprivation of food, water or sleep, whipping, rubbing chillies on sensitive body parts and other such barbaric acts readily condemned by most reasonable people may not amount to 'torture' under the proposed Bill.

"Clause 4 of the Bill lays down that even if an act qualifies as 'torture', it will be punishable only if it was committed 'for the purpose of extorting...any confession or any information which may lead to the detection of an offence...; and on the ground of [a person's] religion, race, place of birth, residence, language, caste or community or any other ground...'. So, if a police officer breaks a few bones in order to intimidate a person, to extort money, to 'teach her a lesson', or for no reason whatsoever, he cannot be punished…

"…the victim must, in addition, show that the torture was based on some form of discrimination.

"…Clause 5…requires that a court can entertain a complaint only if it is made within six months of the date of the offence.

"Clause 6 prohibits a court from taking cognisance of a complaint without the ever-elusive prior sanction to prosecute from the government.

"[The Bill] fails to meet the minimum standards laid down in international law." **[60n]**

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AVENUES OF COMPLAINT

9.40 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." **[22a]**

9.41 The Commonwealth Human Rights Initiative (CHRI) published a report in 2009, assessing the operation of the Police Complaints Authorities in the states of Uttarakhand, Goa, Assam, Tripura and Kerala – which were then the only states in which police complaints authorities were fully functional. CHRI concluded that:

"In the majority of cases, even after a year of being established, the functioning Authorities are choked due to a severe lack of funds. Most do not have permanent offices, are critically under-resourced, and none have been able to employ independent investigators. None of the Authorities have been guaranteed a fixed allocated budget. Across the board, the members of the Authorities are almost exclusively either retired government servants and police officers, or serving government servants and police officers. This is in blatant defiance of the Court's demand for independent members, and a serious impediment to the development of truly empowered police complaints bodies. The public has not been properly informed of the existence and mandate of the Authorities, much less provided guidance on how to use the Authorities suitably. With the exception of minor innovations, the Authorities themselves have not yet established clear procedures for their functioning. This has a serious impact on the outcome of complaints, and more largely, on the degree of accountability assured to complainants.

"In sum, the first year of operation of these newly created Complaints Authorities has produced serious failings. The record of implementation is virtually nil; and the quality of implementation is so poor that the Authorities are struggling to just live up to their mandates, much less deliver their mandates. These Authorities are under the care of state governments, who have the obligation to fund and resource these bodies to equip them to carry out their legal mandate." **[141b] (p54)**

National and state human rights commissions

See also Section 18: Human Rights Institutions

9.42 The USSD 2009 Report stated:

"The main domestic human rights organization was the government-appointed NHRC [National Human Rights Commission]. Although the NHRC generally acted independently, some human rights groups claimed institutional and legal weaknesses hampered the NHRC.

"From March 2008 to March 31 [2009], the NHRC received 9,090,954 complaints of human rights abuses. The NHRC closed 9,595,258 cases, including those from previous years. The NHRC transferred 5,925 cases to the State Human Rights Commission. It recommended interim relief in 137 cases of custodial deaths, amounting to 19,775,000 rupees (approximately

$396,000). The NHRC did not have the statutory power to investigate allegations and could only request that a state government submit a report, a request that state governments often ignored. Human rights groups claimed the NHRC did not register all complaints, dismissed cases on frivolous grounds, did not adequately protect complainants, and failed to investigate cases thoroughly." **[2c] (Section 4)**

9.43 The Protection of Human Rights Act, 1993, established the National Human Rights Commission as an autonomous body to be chaired by a former Chief Justice of the Supreme Court; the NHRC has its own investigating staff, headed by an officer with the rank of Director General of Police, to investigate complaints of human rights violations (or negligence in the prevention of such violation by a public servant). It has the right to use the services of any officer or investigation agency of the Central Government or any state government. The Commission has all the powers of a civil court trying a case under the Code of Civil Procedure, including summoning and enforcing the attendance of witnesses and examining them on oath, and requisitioning any public record from any court or office. **[47e]** However, as noted in Section 18, there are certain limitations to the mandate of the NHRC.

9.44 The *Frontline* magazine report on extrajudicial killings, in its issue of 9 October 2009, questioned the NHRC's record on inquiring into such crimes. It noted:

"Out of 1,502 encounter cases that the police have reported to the NHRC since its inception in 1993, only in 12 did it find the police claims to be wrong and award compensation to the victims' families … Out of 1,262 complaints of fake encounters received from the public during the same period, the NHRC found substance only in 11 and awarded compensation to the families of the victims … Thus, the NHRC's data suggest that there have been just 23 fake encounters since 1993. It is indeed surprising that the NHRC found substance only in three cases of encounter deaths in Andhra Pradesh during this period…" **[19a]**

9.45 The HRLN report of August 2009 commented, "State human rights commissions are…considerably overtaxed. Their purpose is to deal with a variety of human rights abuses and they simply do not have the capacity and resources to focus on police issues." **[22a] (p10)**

The Courts

9.46 Complainants can directly sue police officers for harms caused to them by the police. Prosecutions can be brought by the state against police officers. Public interest litigation is available. Judges can refuse to convict persons if the evidence was obtained illegally, for example through warrantless searches and coerced confessions. However, legal costs and a backlog of cases in the courts are deterrents, as is Section 197 of the Code of Criminal Procedure, which is invoked by officers seeking immunity for their acts. (HRLN, August 2009) **[22a]**

See also Section 12: Judiciary

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Complaints at police stations

9.47 According to the Human Rights Watch report, *Broken System: Dysfunction, Abuse and Impunity in the Indian Police*, published in August 2009:

> "The potential for police intimidation or harassment of individuals complaining of abuse is high because registration of the FIR [First Information Report – the initial record of a criminal case] may require a visit to the very station where the abuse occurred, or interaction with the offending officer. Police motivated to cover-up an abuse can refuse to register an FIR or inaccurately record it and witness statements. In a custodial death case, police can delay registering the FIR until after the body is cremated so that a post-mortem examination cannot be ordered." **[26g] (p102)**

9.48 The same source stated, "In the cases we documented, some victims of police abuse did not pursue criminal cases against police because they feared retaliation. Many described to Human Rights Watch harassment and intimidation by police and others in their community." **[26g] (p102)**

See also Section 7: National and state human rights commissions and Section 18: Human rights institutions, organisations and activists

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10. MILITARY SERVICE

10.01 There is currently no conscription or compulsory military service in India. (*The Hindu*, 20 January 2008) **[60e]**; (War Resisters' International, February 2008) **[21b]**

10.02 The Child Soldiers Global Report 2008 stated:

> "The minimum age for recruitment into the armed forces was raised from 16 to 17 years and 6 months in mid-2004, although legislation governing the armed forces did not stipulate a minimum recruitment age. However, India's November 2005 declaration on ratifying the Optional Protocol did not reflect the rise in minimum age, stating that the minimum age of recruitment was 16. The declaration did, however, contain a clear statement reiterating the government's position that after enrolment and a requisite training period, personnel were sent to operational areas only after reaching the age of 18." **[78a]**

Desertion and Absence without leave

10.03 Section 39 of the Army Act 1950 (as amended in 1992) provides that a serviceman/woman who goes absent without leave may be liable to court martial and a prison sentence of up to three years. **[111]** (The Navy Act 1957 and the Air Force Act 1950 contain similar provisions applicable to those services.) Following an enquiry under Section 106 of the Army Act, a serviceman may be deemed to have deserted if he has been absent without leave for over 30 days; according to the Principal Registrar of the Armed Forces Tribunal, "the essence of desertion lies in the intention of the person not to return to the service." **[137b]**

10.04 It states under section 38 of the same Act that the maximum penalty for desertion while on 'active service' (i.e. engaged in operations against an enemy), or under orders for active service, is the death sentence. Desertion under other circumstances carries a penalty of up to seven years imprisonment. In addition to sections 38 and 39 of the Act, sections 105, 106 and 122 may be applicable in specific cases of desertion or absence without leave. A copy of the Army Act 1950 can be accessed at:
http://www.commonlii.org/in/legis/num_act/aa195074/ **[111]**

10.05 'Active service' has been defined under Section 3(i) Army Act 1950 as meaning the time during which such person:

a) is attached to, or forms part of, a force which is engaged in operations against an enemy, or
b) is engaged in military operations in, or is on the line of march to, a country or place wholly or partly occupied by an enemy, or
c) is attached to or forms part of a force which is in military occupation of a foreign country **[111]**

Individuals in units which are engaged in counter insurgency military operations can be said to be on 'active service' within the meaning of S. 3(i) of the Act. **[137b]**

10.06 A person charged with desertion would normally be tried by court martial. (Section 122-2 of the Army Act, which sets a time limit on holding courts martial, does not apply to desertion). If the court martial hands down a disproportionate sentence, the individual has a right of appeal to the Armed Forces Tribunal. **[137b]** For example, in the case of serviceman R.K. who was found guilty of desertion while on 'active service' (in Jammu and Kashmir) and returning to his unit after four years absence, the court martial sentenced him to a term of one year rigorous imprisonment and dismissal from service; in an appeal hearing which took place on 21 January 2010 the Armed Forces Tribunal, partly for procedural reasons, reduced that sentence to time already served and dismissal from service. **[137c]**

Courts Martial and the Armed Forces Tribunal

10.07 The Army Act 1950 sets out the basic rules pertaining to courts martial, including some of the rights of the accused. **[111]** Individuals tried in a court martial have a right to a defending officer as provided for under Rules 95 to 107 of the Army Rules 1954. **[137b]**

10.08 The Armed Forces Tribunal (AFT), which was established in 2009, hears appeals arising out of sentences, orders or findings of courts martial, and also adjudicates in disputes regarding conditions of service. Whereas courts martial are headed by army officers, the AFT in each region is headed by a High Court judge. Judgments of the AFT are published on its website. **[137a]**

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11. NON-GOVERNMENT ARMED GROUPS

OVERVIEW OF ARMED GROUPS

11.01 The Human Rights Watch Report 2008, released in January 2008, observed that "India's diverse ethnic and regional identities, coupled with deeply rooted economic and social grievances, have fuelled violent insurgencies and armed campaigns. Militants often target civilians and engage in torture and extortion." **[26b]**

Naxalites (Maoists)

11.02 Jane's Sentinel Risk Assessment of India, Non-State Armed Groups, updated on 11 January 2010, noted as follows:

"Communist Party of India-Maoist (CPI-M): The group's military wing is the People's Liberation Guerrilla Army (PLGA), however reports rarely distinguish between the CPI-M and the PLGA. The CPI-M is an amalgamation of two pre-existing groups: the Maoist Communist Centre (MCC) and the People's War Group (PWG), with the latter known officially as the Communist Party of India-Marxist Leninist (People's War) or CPI-ML (PW). Within India, CPI-M cadres are commonly referred to as Naxalites, or Naxals - a name derived from the town of Naxalbari in West Bengal where the Maoist uprising first began.

"The group's objective is to overthrow perceived repressive state governments and replace them with communist administrations. The group aims to achieve this objective through peasant-based guerrilla warfare based on the Maoist model of people's war.

"The formal leadership of the CPI-M is difficult to classify given the relatively recent amalgamation of the PWG and the MCC." **[58d]**

According to Jane's Sentinel Risk Assessment of India, Internal Affairs, updated 25 June 2010, the Communist Party of India-Maoist was proscribed under the Unlawful Activities Prevention Act in June 2009. **[58g]**

11.03 The Indian news magazine, *Frontline*, in its issue of 6 November 2009, noted that the Communist Party of India (Maoist) – which was active in 231 of the 626 districts of the country – was estimated to have some 20,000 armed cadres under its control. The publication stated:

"Historically, the battle with the Maoists has raged since 1967 when the first Maoist rebellion erupted. The battle intensified over the last five years following the formation of the CPI (Maoist), in 2004, through the merger of two prominent naxalite groups [in October 2004].

"[Maoists] point out that, by and large, their activities have received greater acceptance among the poorest of the poor." **[19b] (p4-8)** "[They] ignite the passions of the downtrodden against the oppressive features of society – the atrocities perpetrated by upper-caste landlords, insensitive public officials, and so on. **[19b] (p16)**

"The CPI (Maoist) [through its 'People's Liberation Guerilla Army'] has intensified its attacks in different parts of the country. They include Jharkhand, Chhattisgarh and Orissa, which are the organisation's strongholds, the Gadchiroli region in Maharashtra, where it is apparently recapturing lost space, and parts of West Bengal, where it has made forays in the past two years.

"[The] CPI (Maoist) has more than 20,000 armed cadre, apart from lakhs of supporters. [A *lakh* is 100,000.] The number of armed cadre is supposed to have doubled in the past five years. Home Ministry officials say this is an unprecedented number for an insurgency and point out that the militant groups in Jammu and Kashmir had only 3,000 armed cadre even at the peak of the militancy." **[19b]**

11.04 In October 2009, Prime Minister Manmohan Singh termed *naxalism* "the greatest internal security threat to our country." (*The Hindu*, 12 October 2009) **[60l]**

11.05 Human Rights Watch, commenting on government, vigilante and naxalite abuses in Chhattisgarh State in its report *Being Neutral is Our Biggest Crime* dated July 2008, stated:

"In Chhattisgarh state in central India, a dramatic escalation of a little-known conflict since June 2005 has destroyed hundreds of villages and uprooted tens of thousands of people from their homes. Caught in a deadly tug-of-war between an armed Maoist movement on one side, and government security forces and a vigilante group called Salwa Judum on the other, civilians have suffered a host of human rights abuses, including killings, torture, and forced displacement… The armed movement by Maoist groups often called Naxalites spans four decades and 13 states in India… popular protests against Naxalites in…southern Chhattisgarh sparked the creation of Salwa Judum, a state-supported vigilante group aimed at eliminating Naxalites. Salwa Judum's activities quickly spread to hundreds of villages… With the active support of government security forces, Salwa Judum members conducted violent raids on hundreds of villages suspected of being pro-Naxalite, forcibly recruited civilians for its vigilante activities, and relocated tens of thousands of people to government-run Salwa Judum camps... Naxalites have retaliated against this aggressive government-supported campaign by attacking residents of Salwa judum camps, and abducting and executing individuals they identified as Salwa Judum leaders or supporters, police informers, or camp residents appointed as auxiliary police." **[26e]**

11.06 Jane's Sentinel Security Assessment, 'South Asia: Terrorism and Insurgency', updated 15 July 2010, noted that "The Ministry of Home Affairs recorded 908 deaths related to the conflict in 2009, up from 721 the previous year. Figures from the Institute of Conflict Resolution, a New Delhi think tank, indicate that 2010 may be even more violent, with 661 deaths recorded in the first six months of the year." **[58h]**

11.07 The same source recorded that the government launched intensified counter-insurgency operations in late 2009, utilising an estimated 50,000 extra troops. Since then:

"…the Maoists have carried out a number of high-profile attacks that have raised serious questions about the government's strategy. On 15 February 2010, 24 paramilitaries were killed when Maoists stormed a police camp at Silda in West Bengal; on 8 May, 75 members of the Central Reserve Police Force and one local officer were ambushed and killed in the jungles of Dantewada, Chhattisgarh; on 18 May, the bombing of a bus in the same region killed 16 police officers and 19 civilians; on 29 June, 26 police officers were killed in an ambush, again in Chhattisgarh. This string of high-profile attacks is supplemented by daily reports of low-level violence, gun battles and assassinations that have brought the Naxalite insurgency to the front pages of Indian newspapers..." (Jane's, 'South Asia, Terrorism and Insurgency', updated 15 July 2010) **[58h]**

See Section 8: Internal security situation

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Jammu and Kashmir

11.08 Jane's Sentinel Risk Assessment, updated 11 January 2010, observed that:

"Militant activity first started in the Kashmir Valley and subsequently spread to the Jammu region during the 1990s. Begun by a nationalist armed group called the Jammu and Kashmir Liberation Front (JKLF), the armed revolt grew as groups seeking union with Pakistan joined the conflict.

"…a closer look at the spread of violence and the changing nature of the insurgency reveals that while the security situation in the Jammu region is likely to continue to improve, there is a high risk that militancy will worsen in the Kashmir Valley. The Hizb-ul-Mujahideen's (HM) loss of influence and credibility in the valley has created a void that is increasingly been filled by the LeT [Lashkar-e-Tayyiba]. The HM and the LeT fall under two distinct categories of militant organisations operating in Indian-administered Kashmir. The first category consists of organisations that are fighting for a limited political objective, such as the HM, whose primary aim is to achieve an independent state of Kashmir or an irredenta state that could subsequently merge with Pakistan. The second category consists of groups, such as LeT and JeM [Jaish-e-Mohammad], which harbour broader religious and anti-Indian objectives. Such organisations perceive their militancy in Indian-administered Kashmir as a means towards fulfilling their larger purpose of destabilising the Indian state. The HM primarily comprises Kashmiri militants, whose aims and area of operations remain confined to the disputed state, while LeT and JeM are made up largely of Pakistanis, particularly Sindhi- and Punjabi-speaking members, who have wider pan-Islamic goals. The influence of the second category of groups has increased significantly since the late 1990s and early 2000s." **[58d]**

11.09 The website of the South Asia Terrorism Portal (SATP) provides details of the several insurgent and extremist groups active in Jammu and Kashmir: http://www.satp.org/satporgtp/countries/india/states/jandk/terrorist_outfits/index.html

Northeastern states

11.10 Jane's Sentinel Risk Assessment, updated 11 January 2010, stated:

> "Several insurgencies have also been waged in the northeast since the 1950s. The seven northeastern Indian states ("seven sisters"), which are connected to the rest of India via the 20 km-wide Siliguri corridor north of Bangladesh, are rich in resources but the peoples (largely of Naga, Bodo, Asomese, Manipuri and Tripuran ethnicity) consider themselves to be exploited by the central government which, many sections of the various communities claim, fails to provide the economic rewards they consider their due. The continuing flow of economic refugees from Bangladesh, seeking and generally obtaining land, is threatening the livelihoods of tribes and farmers in addition to being socially disruptive. There is much resentment concerning the alleged failure of successive governments in the states and in New Delhi to deal with the situation. The region is therefore not only productive in agricultural and minerals' terms, but also a fertile breeding ground for dissidents only too prepared to take advantage of ethnic nationalist tendencies that have been evident since the first revolts by Naga tribesmen against the central Indian government immediately after independence in 1947. Although less of a threat to India than the Kashmiri insurgency, a successful political solution remains difficult owing to the autonomy and intense local support felt by the groups." **[58d]**

11.11 As stated in the Freedom House *Freedom in the World - India (2010)* report, "In India's seven northeastern states, more than 40 insurgent factions – seeking either greater autonomy or complete independence for their ethnic or tribal groups – attack security forces and engage in intertribal violence. The rebels have been implicated in numerous bombings, killings, abductions, and rapes of civilians, and they also operate extensive extortion networks." **[43d]** The website GlobalSecurity.com, accessed in June 2010, noted, "The main insurgent groups in the northeast include two factions of the National Socialist Council of Nagaland (NSCN) in Nagaland; Meitei extremists in Manipur; and the all Tripura Tiger Force (ATTF) and the National Liberation Front of Tripura (NLFT) in Tripura. The proclaimed object of many of these groups is to break out of the Indian union, creating new, independent nations." **[140a]**

Islamists

11.12 The International Institute for Strategic Studies (IISS), in an article titled *Islamic Extremism in India* dated April 2009, noted that "several Indian Muslim organisations have conducted jihadi terror campaigns:

- Al-Umma, formed in the southern state of Kerala, has carried out terror acts in southern India. Leader Syed Ahmed Basha was sentenced to life imprisonment in 2007. The organisation was banned and is now believed defunct.
- The long-standing Deendar Anjuman ('religious association') Sufi sect became radicalised after the Babri mosque demolition. After a bombing campaign in 2000 it was banned.
- The Students' Islamic Movement of India (SIMI) was established in Uttar Pradesh. Becoming increasingly radicalised, it has repeatedly been banned over the past eight years. Its chief, Safdar Nagori, a 39-year-old mechanical- engineer-cum-journalist, was arrested in 2008. SIMI has had

alleged links with the LeT. Before being banned, it was reported to have 400 full-time cadres and 20,000 members below the age of 30.

- The Indian Mujahideen (IM) is the most active, claiming responsibility for several deadly bombings since 2006. After five near-simultaneous blasts at courts in Uttar Pradesh in November 2007, it sent an email to television stations protesting 'violence against Muslims', mentioning the destruction of the Babri mosque and the Gujarat riots. Following attacks in Jaipur in May 2008, it sent an email with a video of a bicycle used in a bombing. The message expressed anger against 'infidel' Hindus, said the group aimed to destroy India's economic and social structure, and threatened Britons and Americans with suicide attacks." **[124]**

For more information about acts of violence committed by insurgent groups see section 8: Internal Security situation

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HUMAN RIGHTS ABUSES

11.13 The HRW World Report 2008, India, released January 2008, noted, "India faces serious insurgencies and armed political movements in several states. Armed groups have been responsible for attacks on civilians, killings, torture, and extortion." **[26b]** The USSD 2009 Report stated, "Insurgent groups killed members of rival factions, government security forces, government officials, and civilians in Jammu and Kashmir, in several northeastern states, and in the Naxalite belt in the eastern part of the country." **[2c] (Section 1g)**

11.14 The Freedom House report, *Freedom in the World – India (2010)*, published on 24 June 2010, observed:

"The recent spread and influence of the Naxalites is cause for serious concern … Focusing on the tribal areas in states such as Andhra Pradesh, Orissa, Bihar, Chhattisgarh, and Jharkhand, their stated aim is to establish a Communist state on behalf of marginalized groups, including tribal peoples, lower castes, and the landless poor. According to a 2008 Human Rights Watch report, they have imposed illegal taxes; requisitioned food and shelter from villagers; engaged in abduction and forced recruitment, including recruitment of child soldiers; hampered aid deliveries; and planted land mines that have caused several civilian casualties." **[43d]**

11.15 Amnesty International's annual report published in May 2009, covering events of 2008, reported:

"In Chhattisgarh, clashes continued between Maoist [naxalite] armed groups and state forces supported by Salwa Judum, a militia widely believed to be state-sponsored. Both sides targeted civilians, mainly adivasis who reported killings, abductions and torture and other ill-treatment … In November [2008], India's National Human Rights Commission (NHRC) submitted its findings of a month-long inquiry to verify reports of human rights abuses by Salwa Judum and the Maoist armed groups. The NHRC found that both sides were responsible for abuses. Human rights organizations criticized the findings, stating that the NHRC had failed to fully investigate abuses committed by the Salwa Judum. **[3e]**

11.16 *Frontline* magazine, in its feature of 4 November 2009 on the naxalite conflict, described the situation in Chhattisgarh state:

"Since 2005…the tribal-dominated forested areas of Chhattisgarh have resembled a battlefield, with security personnel and naxalites engaged in pitched battles … The violence has so far claimed over 1,000 lives and led to a massive exodus of tribal people from over 644 villages. Of the 3.5 lakh [350,000] displaced tribal people, around 70,000 took shelter in the Salwa Judum camps of the government, while the rest went deeper into the jungle or to Andhra Pradesh or Orissa to escape police repression. Even in the camps they were not safe, as borne out by the July 2006 massacre by naxalites at the Errabore camp." **[19b] (p12-13)**

11.17 *Frontline* noted that naxalite cadres have, in the past, generally avoided attacking women or children and refrained from targeting educational institutions or "making a gory display of their victims". However, there were recent indications that attacks had become more indiscriminate. In Bihar and Jharkland, there were recent reports of attacks on schools. On 6 October 2009, the CPI (Maoist) carried out a 'Taliban-style' execution of a police officer after they had abducted and held him for ransom, demanding the release from custody of captured Maoist leaders. **[19b] (p10-11)**

11.18 The Freedom House *Freedom in the World - Kashmir (India)* Report for 2009 noted:

"[In Kashmir], Armed with increasingly sophisticated and powerful weapons, and relying to a greater degree on the deployment of suicide squads, militant groups backed by Pakistan continue to kill pro-India politicians, public employees, suspected informers, members of rival factions, soldiers, and civilians. The roughly 1,400 active militants also engage in kidnapping, rape, extortion, and other forms of intimidation … Violence targeting Pandits, or Kashmiri Hindus, is part of a pattern dating to 1990 that has forced several hundred thousand Hindus to flee the region; many continue to reside in refugee camps near Jammu. Other religious and ethnic minorities such as Sikhs and Gujjars have also been targeted.... Female civilians continue to be subjected to harassment, intimidation, and violent attack, including rape and murder, at the hands of both the security forces and militant groups." **[43b]**

For further information also see section 17.01: Human rights institutions, organisations, activists; Annex B Political Organisations

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12. JUDICIARY

ORGANISATION

12.01 The US State Department *Country Report on Human Rights Practices 2009* (USSD 2009), released 11 March 2010, observed that "The Supreme Court heads the judicial system and has jurisdiction over constitutional matters and the decisions of state high courts, state lower courts, and special tribunals. Lower courts hear criminal and civil cases, and appeals go to state high courts. The president appoints judges, who may serve until the age of 62 on state high courts and 65 on the Supreme Court." **[2c] (Section 1e)**

Supreme Court

12.02 Europa World online, accessed 28 June 2010, stated:

"The Supreme Court, consisting of a Chief Justice and not more than 25 judges appointed by the President, exercises exclusive jurisdiction in any dispute between the Union and the states (although there are certain restrictions where an acceding state is involved). It has appellate jurisdiction over any judgment, decree or order of the High Court where that Court certifies that either a substantial question of law or the interpretation of the Constitution is involved. The Supreme Court can enforce fundamental rights and issue writs covering habeas corpus, mandamus, prohibition, quo warranto and certiorari. The Supreme Court is a court of record and has the power to punish for its contempt.

"Provision is made for the appointment by the Chief Justice of India of judges of High Courts as ad hoc judges at sittings of the Supreme Court for specified periods, and for the attendance of retired judges at sittings of the Supreme Court. The Supreme Court has advisory jurisdiction in respect of questions which may be referred to it by the President for opinion. The Supreme Court is also empowered to hear appeals against a sentence of death passed by a State High Court in reversal of an order of acquittal by a lower court, and in a case in which a High Court has granted a certificate of fitness.

"The Supreme Court also hears appeals which are certified by High Courts to be fit to be heard, subject to rules made by the Court. Parliament may, by law, confer on the Supreme Court any further powers of appeal.

"The judges hold office until the age of 65 years." **[1] (The Supreme Court)**

See also 'Corruption in the Judiciary'

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High Court

12.03 The website of the Supreme Court of India in the section titled 'Jurisdiction of the Supreme Court', undated, accessed on 30 May 2008, stated:

"The High Court stands at the head of a State's judicial administration. There are 18 High Courts in the country, three having jurisdiction over more than one State. Among the Union Territories Delhi alone has a High Court of its own.

Other six [sic] Union Territories come under the jurisdiction of different State High Courts. Each High Court comprises of a Chief Justice and such other Judges as the President may, from time to time, appoint…They hold office until the age of 62 years and are removable in the same manner as a Judge of the Supreme Court. To be eligible for appointment as a Judge one must be a citizen of India and have held a judicial office in India for ten years or must have practised as an Advocate of a High Court or two or more such Courts in succession for a similar period.

"Each High Court has power to issue to any person within its jurisdiction directions, orders, or writs including writs which are in the nature of habeas corpus, mandamus, prohibition, quo warranto and certiorari for enforcement of Fundamental Rights and for any other purpose… Each High Court has powers of superintendence over all Courts within its jurisdiction…" **[73] (High Courts)**

12.04 Europa World Online, undated, accessed 28 June 2010, stated, "The High Courts are the Courts of Appeal from the lower courts, and their decisions are final except in cases where appeal lies to the Supreme Court." **[1] (High Courts)** Lower criminal courts are the courts of Session which are competent to try all persons committed for trial and inflict any punishment authorised by the law. The President and the local government concerned exercise the prerogative of mercy. (Europa World Online, accessed 1 June 2008) **[1] (Lower Courts)**

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Fast Track Courts

12.05 The Asian Centre for Human Rights reported in their Human Rights Report 2006, "As many as 1,734 fast track courts (FTCs) have been operational across India since 1 April 2001. The…tenure of FTCs expired on 31 March 2005. However…the Central government decided to continue the functioning of the FTCs across the country…for another 5 years." **[18d]** The USSD 2008 Report noted that central and state governments had jointly funded fast track courts, which generally concentrated on a specific type of case, allowing judges to develop expertise in a given area. Preference was given to cases pending for extended periods. Legal fees were generally lower, since trials were shorter. Most fast track cases were civil. **[2e] (Section 1e)** The USSD 2009 Report provided an update: "In July [2009] the Ministry of Law and Justice informed parliament that 1,563 fast track courts were operational in the country. In November [2009] the Ministry of Law and Justice informed parliament that fast-track courts had adjudicated 2,594,231 of the 3,208,911 cases that state high courts had transferred to them [since April 2001]". **[2c] (Section 1e)**

See also 'Case Backlogs', below

Lok Adalats ('People's Courts')

12.06 The Supreme Court of India website, Jurisdiction of the Supreme Court, accessed on 30 May 2008, advised:

"Lok Adalats, which are voluntary agencies, are monitored by the State Legal Aid and Advice Boards. They have proved to be a successful alternative forum for resolving of disputes through the conciliatory method.

"The Legal Services Authorities Act, 1987 provides statutory status to the legal aid movement and it also provides for setting up of Legal Services Authorities at the Central, State and District levels … Every award of Lok Adalats shall be deemed to be a decree of a civil court or order of a Tribunal and shall be final and binding on the parties to the dispute." **[73] (Lok Adalats)**

12.07 In an article for Legal Service India.com (undated), Karthyaeni.V and Vidhi Bhatt noted:

"The institution of Lok Adalat in India, as the very name suggests, means, People's Court … India has a long tradition and history of such methods being practiced in the society at grass roots level. These are called *panchayat* and in the legal terminology, these are called arbitration. These are widely used in India for resolution of disputes, both commercial and non-commercial … [J]ustice is dispensed summarily without too much emphasis on legal technicalities. It has been proved to be a very effective alternative to litigation … The large population of India and the illiterate masses have found the regular dispensation of justice through regular courts very cumbersome and ineffective.

"The advent of Legal Services Authorities Act, 1987 gave a statutory status to Lok Adalats, pursuant to the constitutional mandate in Article 39-A of the Constitution of India … The [recent] evolution of [Lok Adalats] was a part of the strategy to relieve heavy burden on the Courts with pending cases and to give relief to the litigants who were in a queue to get justice … The Lok Adalat is presided over by a sitting or retired judicial officer as the chairman, with two other members, usually a lawyer and a social worker … One important condition is that both parties in dispute should agree for settlement through Lok Adalat and abide by its decision. A Lok Adalat has the jurisdiction to settle, by way of effecting compromise between the parties, any matter which may be pending before any court … Such matters may be civil or criminal in nature, but any matter relating to an offence not compoundable under any law cannot be decided by the Lok Adalat … If no compromise or settlement is or could be arrived at, no order can be passed by the Lok Adalat.

"In every respect the scheme of Lok Adalat is a boon to the litigant public, where they can get their disputes settled fast and free of cost. The major defect of the mechanism of Lok Adalat is that it cannot take a decision if one of the parties is not willing for a settlement… The adamant attitude shown by one [party] will render the entire process futile … [However, following an amendment of 2002 to the Legal Services Authorities Act, if judges of the Lok Adalats are satisfied that one of the parties is unreasonably opposing a reasonable settlement, they may pass an award on the basis of the materials before them without the consent of that party.]" **[127]**

12.08 Other criticisms of the Lok Adalat process have included the fact that the protective provisions of the Code of Civil Procedure and the Indian Evidence Act do not apply; and that there is no avenue of appeal to a higher court (though disputes are ordinarily settled on consent of the parties). **[127]**

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INDEPENDENCE OF THE JUDICIARY

12.09 The USSD 2009 Report stated that "The law provides for an independent judiciary, and the government generally respected this provision." **[2c] (Section 1e)**

12.10 The Constitution provides for the independence of the judiciary. Article 50 reads: "The State shall take steps to separate the judiciary from the executive in the public services of the State." Article 124(4) of the Constitution states, "A Judge of the Supreme Court shall not be removed from his office except by an order of the President passed after an address by each House of Parliament supported by a majority of the total membership of that House and by a majority of not less than two thirds of the members of that House present and voting has been presented to the President in the same session for such removal on the ground of proved misbehaviour or incapacity." Article 131 provides, "Subject to the provisions of this Constitution, the Supreme Court shall, to the exclusion of any other court, have original jurisdiction in any dispute, (*a*) between the Government of India and one or more States; or (*b*) between the Government of India and any State or States on one side and one or more other States on the other; or (*c*) between two or more States…" **[24c]**

12.11 The Immigration and Refugee Board (IRB) of Canada, in a document dated 23 April 2009 (citing articles in the *Times of India*, *India Today* and *Daily News & Analysis*), noted that no Supreme Court or High Court judge in India had thus far been impeached and removed from office. In 1991 there was an attempt to impeach Supreme Court Justice V. Ramaswami for 'misuse of office', but the motion did not pass in the Lok Sabha. It was reported in March 2009 that a 'charge sheet' detailing accusations against High Court Justice Soumitra Sen of the Kolkata High Court, as well as his defence, had been prepared by a panel of judges, to enable members of parliament to debate a motion to impeach him for 'misconduct' in connection with an alleged misappropriation of funds six years earlier. **[97h]**

12.12 In 1993 the Supreme Court developed a new system for the appointment of judges, which established a 'collegium' of senior judges of the Supreme Court to select candidates and make recommendations to the government regarding appointments. The Canadian IRB has quoted a former law minister as saying that the recommendations of the collegium were "binding" on the government. The government could "return the recommendation [of the collegium] once, but subsequently if it was unanimously reiterated by the collegium, it would have to be implemented." **[97h]** Under Article 146 of the Constitution, all 'officers and servants' of the Supreme Court are appointed by the Chief Justice. **[24c]**

CORRUPTION IN THE JUDICIARY

12.13 Transparency International (TI), in their Global Corruption Report 2007, focussed on corruption in judicial systems. TI commented that corruption in the Indian judiciary "is increasingly apparent". **[72b] (p215)** The report stated:

"Corruption has two manifestations: one is the corruption of judicial officers and the other is corruption in the broader justice system. In India, the upper

judiciary is relatively clean, though there are obviously exceptions. Proceedings are in open court and documents are available for nominal payment. The accused is entitled to copies of all documents relied on by the prosecution free of charge. Copies of authenticated orders can also be made. There is an effective system of correction in the form of reviews and appeals.

"In the broader justice institutions corruption is systemic. There is a high level of discretion in the processing of paperwork during a trial and multiple points when court clerks, prosecutors and police investigators can misuse their power without discovery.

"The Center for Media Studies conducted a countrywide survey in 2005 on public perceptions and experiences of corruption in the lower judiciary and found that bribes seem to be solicited as the price of getting things done. … Money was paid to the officials in the following proportions: 61 per cent to lawyers; 29 per cent to court officials; 5 per cent to judges; and 5 per cent to middlemen." **[72b] (p215)**

12.14 The Canadian Immigration and Refugee Board (IRB), in a paper dated 23 April 2009, cited various sources in stating:

"In October 2008, the Union Cabinet announced that it would introduce the Judges Inquiry Amendment Bill 2008 in parliament … A 20 December 2008 article in The Statesman reports that 'increasing charges of corruption against the judiciary' precipitated the need to amend the Judges Inquiry Act of 1968. Sources indicate that the Bill carries provisions for a National Judicial Council that would function to investigate allegations of corruption and misconduct of judges from the higher judiciary … the Judges Inquiry Amendment Bill 2008 had not been passed as of February 2009." **[97h]**

12.15 BBC News reported on 27 August 2009 that Judges of the Supreme Court had agreed to make public details about their financial assets and to publish the information on the court's website. The BBC noted, "The landmark decision follows intense public debate about the importance of judicial accountability in India. It was taken at a meeting between the 23 judges of the country's highest court and presided over by Chief Justice KG Balakrishnan. The decision is likely to lead some 600 high court judges to follow suit." **[32ax]**

CASE BACKLOGS

12.16 The Transparency International 'Global Corruption Report 2007' noted that "As of February 2006, 33,635 cases were pending in the Supreme Court with 26 judges; 3,341,040 cases in the high courts with 670 judges; and 25,306,458 cases in the 13,204 subordinate courts. This vast backlog leads to long adjournments and prompts people to pay [court officials] to speed up the process." **[72b] (p215-216)**

12.17 The same source noted, "The ratio of judges is abysmally low at 12-13 per one million persons, compared to 107 in the United States, 75 in Canada and 51 in the United Kingdom." **[72b] (p215-216)**

12.18 The Canadian IRB report of 23 April 2009 indicated that judicial records were being computerised, as one means of dealing with the case backlog. **[97h]**

12.19 *Forbes India* noted in an article published on 22 January 2010:

"In October [2009] [Union law minister M. Veerappa Moily] unveiled an ambitious road map for judicial reforms to reduce the average life of litigation from 15 to only 3 years – a task he wants accomplished by December 2011.

"Moily's plan targets reducing court congestion by placing 700 judges on contract in select high courts having greater pendency. Their target would be to clear at least 2,500 cases per year. In addition, Moily wants to set up 5,000 supplementary courts in the next three years, to be serviced by requisitioning more than 15,000 retired judges for a two-year term. In October the government also launched Gram Nyayalayas, or village courts, across 200 villages. The plan is to increase that number to 5,000 in the next two years.

"Many lawyers are questioning the plan's focus on quantity instead of quality." **[145a]**

FAIR TRIAL

12.20 The USSD 2009 Report noted:

"The criminal procedure code provides for public trials, except in proceedings that involve official secrets, trials in which someone might make statements prejudicial to the safety of the state, or under provisions of special security legislation. Defendants enjoy the presumption of innocence and can choose their counsel. Courts must announce sentences publicly and there are effective channels for appeal at most levels of the judicial system. The state provides free legal counsel to indigent defendants, but in practice access to competent counsel often was limited, especially for the poor, and the overburdened justice system usually resulted in major delays in court cases. The law allows defendants access to relevant government evidence in most civil and criminal cases; the government reserved the right to withhold information and did so in cases it considered sensitive." **[2c] (Section 1d)**

12.21 Jury trials were abolished in 1960 on the grounds that they would be susceptible to media and public influence. (IndianExpress, 21 December 2009) **[96c]**

12.22 According to the Freedom House report, *Freedom in the World – India (2010)*, published on 24 June 2010:

"The lower levels of the judiciary in particular are reportedly rife with corruption, and most citizens have great difficulty securing justice through the courts … The court system is severely backlogged and understaffed, with about 38 million civil and criminal cases pending. This leads to lengthy pretrial detention for a large number of suspects, many of whom remain in jail beyond the duration of any sentence they might receive if convicted … Despite legal reforms in recent years, the criminal justice system still generally fails to provide equal protection to minorities, lower castes, and tribal members." **[43d]**

See also 'Corruption in the Judiciary' and 'Case Backlogs', above

Provision of Legal Aid

12.23 An article in *The Hindu,* dated 14 January 2003, reported that the Legal Services Authorities Act was promulgated in 1987 and amended in 2002 when national and state legal services authorities were created to provide free and competent legal services to the weaker sections of society. It provides that persons in specified categories are entitled to legal advice, legal representation and legal adjudication free of cost. **[60a]**

12.24 The Constitution, under Article 39A, mandates free legal aid to the poor and weaker sections of society. **[24c]** Section 12 of the Legal Services Authorities Act, 1987 (enforced from 1995) prescribes the criteria for granting legal services to eligible persons:

"Every person who has to file or defend a case shall be entitled to legal services under this Act if that person is:

- a member of a Scheduled Caste or Scheduled Tribe;
- a victim of trafficking in human beings or begar [sic] as referred to in Article 23 of the Constitution;
- a woman or a child;
- a mentally ill or otherwise disabled person;
- a person under circumstances of undeserved want such as being a victim of a mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake or industrial disaster; or
- an industrial workman; or
- in custody, including custody in a protective home within the meaning of clause (g) of section 2 of the Immoral Traffic (Prevention) Act, 1956 (104 of 1956); or in a juvenile home within the meaning of clause
- of section 2 of the Juvenile Justice Act, 1986 (53 of 1986) or in a psychiatric hospital or psychiatric nursing home within the meaning of clause (g) of section 2 of the Mental Health Act, 1987 (14 of 1987); or
- in receipt of annual income less than rupees nine thousand or such other higher amount as may be prescribed by the State Govt., if the case is before a court other than the Supreme Court, and less than rupees twelve thousand or such other higher amount as may be prescribed by the Central Govt., if the case is before the Supreme Court." [Rules have been amended to enhance this income ceiling].

(National Legal Services Authority, undated, accessed December 2009) **[128]**

12.25 The National Legal Services Authority (NLSA), constituted in December 1995, is the statutory body responsible for implementing and monitoring legal aid programs in India. Each state or union territory has a Legal Services Authority, which directly administers the provision of legal aid in its courts. According to the NLSA website, 2.4 million people had benefited from legal aid and advice by 31 December 1999. (NLSA) **[128]**

12.26 The Supreme Court has stated in various judgments that it is a fundamental right of an accused to seek free legal aid. However, in an article posted by Legal Service India on 22 July 2009, Swati Vijayvergiya commented that the major obstacle to the legal aid movement in India has been a lack of legal awareness among poor and illiterate people involved in court proceedings; many are unaware of their right to legal aid. **[127b]**

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PENAL CODE

12.27 The Indian Penal Code of 1860 is applicable to the whole of India except the state of Jammu and Kashmir. (The Net Lawman, accessed 1 June 2008) **[74]**

12.28 As stated by the Country data.com service of the Federal Research Division of the Library of Congress, listed September 1995:

"The prevailing law on crime prevention and punishment is embodied in two principal statutes: the Indian Penal Code [1860] and the Code of Criminal Procedure of 1973. These laws take precedence over any state legislation, and the states cannot alter or amend them. Separate legislation enacted by both the states and the central government also has established criminal liability for acts such as smuggling, illegal use of arms and ammunition, and corruption. All legislation, however, remains subordinate to the constitution.

"The Indian Penal Code came into force in 1862; as amended, it continued in force in 1993. Based on British criminal law, the code defines basic crimes and punishments, applies to resident foreigners and citizens alike, and recognizes offenses committed abroad by Indian nationals." **[79a]**

12.29 The same report continued:

"The penal code classifies crimes under various categories: crimes against the state, the armed forces, public order, the human body, and property; and crimes relating to elections, religion, marriage, and health, safety, decency, and morals. Crimes are cognizable [referring to a more serious offence] or noncognizable, comparable to the distinction between felonies and misdemeanors in legal use in the United States. Six categories of punishment include fines, forfeiture of property, simple imprisonment, rigorous imprisonment with hard labor, life imprisonment, and death. An individual can be imprisoned for failure to pay fines, and up to three months' solitary confinement can occur during rare rigorous imprisonment sentences." **[79a]**

CODE OF CRIMINAL PROCEDURE

12.30 The Code of Criminal Procedure 1973 was enacted on 25 January 1974 and has been amended several times since then. Its purpose was to amend and consolidate the law relating to criminal procedure; it extends to the whole of India, except Jammu and Kashmir. (Asset Recovery, accessed 1 June 2008) **[75]**

12.31 Information published by the Immigration and Refugee Board of Canada on 12 January 2006 noted that offences in India are categorised in the Code of Criminal Procedure as "cognizable" and "non-cognizable":

"While police are required to obtain a court-issued arrest warrant for those individuals implicated in non-cognizable offences, they are not required to do so for those implicated in cognizable offenses. A 'cognizable offence' means an offence for which, and 'cognizable case' means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant. 'Non-cognizable offence' means an offence for which, and 'non-cognizable case' means a case in

which, a police officer has no authority to arrest without warrant. A New Delhi based lawyer stated that those arrested without a warrant must be produced before the court within 24 hours of the arrest." **[97f]**

12.32 The same response stated that all warrants of arrest issued by a Court under this code shall be in writing and signed by the presiding officer of the Court and should bear the court seal. **[97f]**

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13. ARREST AND DETENTION – LEGAL RIGHTS

GENERAL PROVISIONS

(For information on violations of the law by the police and other security forces, see Arbitrary arrest and detention.)

13.01 The US State Department *Country Report on Human Rights Practices 2009* (USSD 2009), released on 11 March 2010, noted:

"The law requires officials to inform detainees of the grounds for arrest and of the right to legal counsel. Arraignment of a detainee must occur within 24 hours, unless the suspect is held under a preventive detention law. In practice many suspects were detained without charge, mostly in terrorism-related cases … Individuals under arrest also have the right to bail and prompt access to a lawyer; those arrested under special security legislation often received neither. By law authorities must allow family members to have access to detainees. In practice authorities granted access only occasionally." **[2c] (Section 1d)**

13.02 In the case of D.K. Basu v. West Bengal (1997), the Supreme Court established mandatory procedures for police detention. These included the following:

- Police are required to document an arrest in a diary entry and a memo that states the time and place of arrest, is attested by a witness, and is counter-signed by the arrested person; (HRW, August 2009)
- Police stations must post arrest information and send copies of related documents to the area magistrate; (HRW, August 2009)
- The arrestee must be permitted to meet their lawyer during interrogation; (HRW, August 2009) **[26g] (p59)**
- Police personnel carrying out an arrest must wear clear, visible, identifiable nametags; (World Police Encyclopedia, 2006)
- The arrestee, if he/she requests, should be medically examined at the time of arrest, and thereafter by a trained doctor every 48 hours of their detention in custody. (World Police Encyclopedia)
- The person arrested and detained is entitled to have a friend, relative or other chosen person informed of their arrest as soon as practicable. (World Police Encyclopedia) **[110]**

According to the Human Rights Watch report of August 2009, *Broken System: Dysfunction, Abuse and Impunity in the Indian Police*: "Despite the procedural safeguards mandated by the Supreme Court in D.K. Basu, police frequently hold individuals without charge or opportunity to notify outsiders." **[26g](p64)** The report noted also, "Police frequently fail to produce suspects before a magistrate within 24 hours, and do not permit suspects to inform their families of their detention or consult an attorney." **[26g](p65)**

SECURITY LEGISLATION

Armed Forces Special Powers Act (AFSPA)

13.03 A paper published in 2001 by the International Commission of Jurists (ICJ) stated:

"The Armed Forces (Special Powers) Act of 1958 (AFSPA)…gives the army and army officers sweeping powers over the regions where it is applied. It confers on officers the right to use lethal force in response to a suspicion of, or the commission of, an offence against a law prohibiting freedom of assembly or the carrying of weapons or objects capable of being used as weapons. Such force can be used after the issuance of such prior warning as is considered necessary by the officer in order to maintain public order. The AFSPA also allows the army to arrest without a warrant, using such force as is necessary, anyone suspected of, or who has committed or is about to commit, any offence. Where prior consent has not been given by the government, section 6 of the AFSPA restricts the commencement of proceedings against members of the armed forces acting under AFSPA." **[117] (p176)**

13.04 AFSPA provides that, in an area that is proclaimed as "disturbed", an officer of the armed forces has powers to:

- "Fire upon or otherwise use force" against any person who is acting in contravention of any law …if the officer "is of opinion that it is necessary so to do for the maintenance of public order, after giving such due warning…";

- Arrest, without warrant, any person who has committed certain offences or against whom a reasonable suspicion exists that he "has committed or is about to commit" such an offence;

- "Enter and search any premise in order to make such arrests."

(Vakilno1.com: Laws in India) **[130a]**

13.05 A Human Rights Watch document of 20 November 2007 commented:

"Enacted on August 18, 1958 as a short-term measure to allow deployment of the army against an armed separatist movement in India's northeastern Naga Hills, the AFSPA has been invoked for five decades. It has since been used throughout the northeast, particularly in Assam, Nagaland, Tripura and Manipur. A variant of the law was also used in Punjab during a separatist movement in the 1980s and 90s, and has been in force in Jammu and Kashmir since 1990. Indian officials have long sought to justify use of the law by citing the need for the armed forces to have extraordinary powers to combat armed insurgents … [The] abuses facilitated by the AFSPA, especially extrajudicial killings, torture, rape and 'disappearances,' have fed public anger and disillusionment with the Indian state. This has permitted militant groups to flourish in the northeast and Jammu and Kashmir.

"The AFSPA has not only led to human rights violations, but it has allowed members of the armed forces to perpetrate abuses with impunity. They have been shielded by clauses in the AFSPA that prohibit prosecutions from being initiated without permission from the central government. Such permission is rarely granted.

"The Supreme Court has issued guidelines to prevent human rights violations, but these are routinely ignored." **[26c]**

13.06 Amnesty International's Annual Report 2010 noted, "Despite ongoing protests in the north-east and Kashmir, the authorities refused to repeal the Armed Forces Special Powers Act, 1958. The UN Special Rapporteur on extrajudicial, summary or arbitrary executions stated that the Act facilitated extrajudicial executions by allowing security forces to shoot to kill in circumstances where they were not necessarily at imminent risk." **[3g]**

For the impact of the AFPSA in Jammu and Kashmir see below

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National Security Act (NSA)

13.07 The National Security Act (NSA), enacted in December 1980, allows for 'preventative' detention. Section 3(2) states:

"The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of Public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained." **[44l]**

13.08 The US State Department *Country Report on Human Rights Practices 2009*, released on 11 March 2010, (USSD 2009) noted:

"The National Security Act (NSA) allows police to detain persons considered security risks anywhere in the country, except Jammu and Kashmir, without charge or trial for as long as one year. The law stipulates that family members and lawyers can visit NSA detainees and that authorities must inform a detainee of the grounds for detention within five days (10 to 15 days in exceptional circumstances). In practice these rights sometimes were not enforced." **[2c] (Section 1d)**

13.09 *The Hindu* commented in September 2004, "India is one of the few countries in the world where laws allowing preventive detention enjoy constitutional validity even during peacetime." **[60k]**

13.10 A copy of the National Security Act can be accessed at http://www.satp.org/satporgtp/countries/india/document/actandordinances/NationalSecurityact.htm **[44l]**

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Prevention of Terrorism Act (POTA) / Unlawful Activities Prevention Act (UAPA)

13.11 The USSD 2009 Report observed:

"In 2004 the government repealed the Prevention of Terrorism Act (POTA) and replaced it with the Unlawful Activities Prevention Act (UAPA). The revised UAPA [it was originally enacted in 1967] was intended to provide broader protection for human rights.

"The South Asia Human Rights Documentation Centre (SAHRDC) reported that more than 1,000 persons remained in detention under POTA. In December 2008 Union Minister Kapil Sibal announced that there were 90 to 100 pending POTA cases … Despite the parliament's 2004 repeal of POTA and the introduction of UAPA, [certain] state governments held persons without bail for extended periods before filing formal charges." **[2c] (Section 1d)**

13.12 The Asia Pacific Human Rights Network commented in an article dated 12 October 2004:

"In certain areas…the [Unlawful Activities Prevention Act - UAPA] is an improvement on POTA. Under POTA suspects could be detained for up to 180 days without charge. The [UAPA] has done away with this provision to bring the period of allowable detention in line with Section 167(2) (a) of the Code of Criminal Procedure, which stipulates that all arrested persons have to be produced within 24 hours. Suspects are now also entitled to apply for bail, in accordance with the Code.

"The provisions under POTA had been the cause of egregious misuse by way of interrogations that amounted to torture, or cruel, inhuman or degrading treatment … The obligation to furnish any information to 'any officer' under POTA has also been revoked … The reversal of the burden of proof to rest on the prosecution is equally significant … However, the [UAPA] has not yet fully restored the presumption of innocence.

"The independence of the judiciary has also been restored with the disposal of POTA's Special Courts.

"[The] vague definition of terrorist acts taken from TADA to POTA remains. This was the primary cause of misapplication of both TADA and POTA, and there is no reason to suspect that the [UAPA] will be any different … Under Section 15 of the [UAPA], as with POTA, the definition of a 'terrorist act' is so broad that ordinary cases of murder, robbery, and theft might be included.

"The [UAPA] has done away with [safeguards to prevent telephone tapping and other invasions of privacy] in their entirety, so that any interceptions collected, without any authorisation, shall be admissible as evidence.

"While the Unlawful Activities (Prevention) Amendment [Act], 2004 does remedy many of the deficiencies that resulted in the gross misuse of POTA, it is clear that many of its antecedent's less sound provisions also remain intact." **[123]**

13.13 On 17 December 2008, a UAPA Amendment Bill was passed by parliament. The Asia Pacific Human Rights Network noted in a report of 22 January 2009 that the Amendment, amongst other things, broadened the definition of 'terrorist act', extended the maximum period of pre-charge detention to 180 days, established fast-track courts and limited entitlement to bail. **[123b]**

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JAMMU & KASHMIR: SECURITY LEGISLATION

Jammu and Kashmir Armed Forces Special Powers Act

13.14 The USSD 2008 Report recorded:

> "Concerns were raised about the Jammu and Kashmir Armed Forces Special Powers Act (AFSPA) of 1990, which states that no 'prosecution, suit, or other legal proceeding shall be instituted against any person' without the approval of the central government. The act allows security forces to shoot suspects and destroy structures suspected of harboring violent separatists or containing weapons. Human rights organizations claimed this provision allowed security forces to act with impunity." **[2e] (Section 1g)**

Public Safety Act

13.15 As noted in the USSD 2009 Report:

> "The Public Safety Act (PSA), which applies only in Jammu and Kashmir, permits state authorities to detain persons without charge or judicial review for as long as two years. During this time family members do not have access to detainees, and detainees do not have access to legal counsel. In 2005 the NHRC set guidelines regarding arrest under the PSA that included establishing reasonable belief of guilt, avoiding detention if bail is an option, protecting the dignity of those arrested, prohibiting public display or parading, and allowing access to a lawyer during interrogation. In practice police routinely employed arbitrary detention and denied detainees, particularly the destitute, access to lawyers and medical attention. According to media reports, since 2004 Indian authorities arrested approximately 2,700 Kashmiris under the PSA. On August 28 [2009], the state government announced that officials had detained 121 persons under the PSA during the year [2009] … On February 5 [2009], the Jammu and Kashmir High Court overturned the detentions of 10 persons arrested under the PSA during Amarnath land transfer agitation in 2008. On April 18 [2009], the Jammu and Kashmir Bar Court Association informed the State Assembly that lawyers had filed 2,223 PSA petitions since 2004 … On August 11 [2009], [Jammu and Kashmir] Chief Minister Omar Abdullah told the state legislative assembly that high-level state screening committees review PSA cases and make recommendations to the government regarding release. Based on these recommendations, 21 detainees were released during 2008 and 44 more were released during the year [2009]." **[2c] (Section 1d)**

13.16 The International Commission of Jurists (ICJ) noted, "The Jammu and Kashmir Public Safety Act 1978 (PSA) has…been frequently cited as prone to abuse, resulting in human rights violations." For example, the PSA permits the detention without charge of persons considered to be a security risk, involving detention periods of up to a year, subject to approval by three High Court judges after seven weeks of detention. (ICJ, 2001) **[117a]**

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14. PRISON CONDITIONS

14.01 The US State Department *Country Report on Human Rights Practices 2009* (USSD 2009), released on 11 March 2010, observed:

"Prison conditions continued to be life threatening and did not meet international standards. Prisons were severely overcrowded, and food and medical care were inadequate. In April 2008 the MHA [Ministry of Home Affairs] stated that since 2007, 38,366 cases of human rights violations had been registered in prisons throughout the country. According to a 2007 NHRC [National Human Rights Commission] report, the country's prisons, with an authorized capacity of 234,462, held 358,177 persons. The MHA reported that prisons were at 135.7 percent of capacity. In addition, a reported 69.9 percent of the prison population consisted of persons being tried but not yet convicted. Female prisoners accounted for 3.9 percent of the total prison population, and women and men were typically held in separate facilities. According to National Crime Records Bureau (NCRB) 2007 figures, 12 states held women in prisons built exclusively for them. Pretrial detainees were not separated from convicted prisoners … … By law juveniles must be detained in rehabilitative facilities, although at times they were detained in prison, especially in the rural areas." **[2c] (Section 1c)**

14.02 The same report stated:

"According to the 2006 NHRC report, a large proportion of deaths in prisons resulted from diseases such as tuberculosis and HIV/AIDS, aggravated by poor prison conditions. The NHRC assigned a special rapporteur to ensure that state prison authorities performed medical checkups on all inmates. According to the MHA, in 2008-09 there were a total of 1,528 deaths in prisons, 90 percent of which were due to natural causes.

"The NHRC identified torture and deaths in detention as priority concerns … The government allowed some NGOs to provide assistance to prisoners, within specific guidelines, but their observations of prison conditions often remained confidential due to agreements with the government. Increased press reporting and parliamentary questioning provide evidence of growing public awareness of custodial abuse.

"Prison monitoring by independent groups such as the International Committee of the Red Cross (ICRC) was permitted in many regions, including Jammu and Kashmir, Chhattisgarh, Arunachal Pradesh, and Nagaland. For Manipur and Nagaland, special permits were required for visits. According to the Home Ministry, the ICRC has conducted 832 visits since 2005 in 67 detention centers, including all 25 acknowledged detention centers in Jammu and Kashmir and all facilities where Kashmiris were held elsewhere in the country. The ICRC was not authorized to visit interrogation or transit centers in the northeastern states." **[2c] (Section 1c)**

14.03 The Protection of Human Rights Act was amended in August 2008 to remove the requirement for the NHRC to give prior notification and approval for visits to state-managed prisons. (USSD 2009) **[2c] (Section 1c)**

14.04 The USSD 2009 Report noted that the government had taken steps in recent years to alleviate prison overcrowding, particularly with regard to the number of remand prisoners: "In 2006 the government introduced a plea bargain option to reduce the pending time of cases in trial courts and prison overcrowding. In July 2009 the Ministry of Law and Justice informed parliament that 1,563 fast track courts [introduced in 2001] were operational in the country." **[2c] (Section 1c)**

See also Section 12: Fast track courts and Case backlogs

14.05 The Commonwealth Human Rights Initiative (CHRI), an independent NGO, observed in a report published in 2009 that 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. The National Human Rights Commission has issued guidelines to all state authorities on prisons and prisoners' rights. In addition, judgments of the Supreme Court with regard to prisoners' rights are binding on all state agencies in India. The CHRI report gives details of judicial directives relating to prisoners' living conditions, medical facilities, grievance redressal mechanisms, access to amenities, communication with family and friends and lawyers, external inspections, and on the rights of specific categories of prisoners, including those awaiting trial, women, and children who are in prison with their mothers. **[141a]**

14.06 According to the International Centre for Prison Studies at Kings College, London University, as of 31 December 2007 there were 113 central jails, 309 district jails, 769 sub jails, 16 women's jails, 28 open jails, 25 special jails, 10 Borstal schools and six other jails. ('Prison Brief for India', updated 18 March 2010) **[105a]**

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15. DEATH PENALTY

15.01 Amnesty International (AI), in its report *The Death Penalty in India: A Lethal Lottery* (Summary Report) dated 2 May 2008, noted that there are two broad categories of legislation that provide for the death penalty: the India Penal Code (IPC) and special or local laws. Under the penal code there are nine capital offences (Amnesty International, 2 May 2008):

- "Treason, for waging war against the Government of India (s.121)
- Abetment of mutiny actually committed (s.132)
- Perjury resulting in the conviction and death of an innocent person (s.194)
- Threatening or inducing any person to give false evidence resulting in the conviction and death of an innocent person (s.195A)
- Murder (s.302) and murder committed by a life convict (s. 303). Though the latter was struck down by the Supreme Court, it still remains in the IPC
- Abetment of a suicide by a minor, insane person or intoxicated person (s.305)
- Attempted murder by a serving life convict (s.307(2))
- Kidnapping for ransom (s.364A)
- Dacoity [armed robbery or banditry] with murder (s.396)." **[3c] (Footnote 4)**

15.02 The same source stated that there at least 14 other offences under special and local laws that potentially could result in the death penalty. (Details of these are provided in footnote 5 of the AI report of 2 May 2008.) **[3c]**

15.03 India's Supreme Court ruled that the death penalty should only be prescribed in the "rarest of rare" cases. However, this has not been defined and no clear guidelines exist, leaving it up to individual judges to interpret the phrase. (Amnesty International, India: Death Penalty, accessed 30 May 2007) **[3d]**

15.04 With regard to right of appeal, the Amnesty International Report of 2 May 2008 recorded:

"The High Court serves as the first court of appeal for a person sentenced to death, except under some anti-terrorist legislation where the Supreme Court of India is the first appellate court. Where a death sentence has not been imposed by a trial court, the State can appeal to the High Court to enhance the sentence to one of death … There is no automatic right of appeal to the Supreme Court, except in cases where a High Court has imposed a death sentence while quashing a trial court acquittal. Even where a High Court enhances a trial court's sentence to that of death, there is no automatic right of appeal to the Supreme Court. 'Special leave' to file an appeal with the Supreme Court has to be granted by the High Court or by the Supreme Court itself … The judicial process in capital cases comes to an end once the higher courts have confirmed the death sentence. At this stage, the defendant can file a mercy petition with the state or national executive. Under Articles 72 and 161 of the Constitution of India, the state governor and the President of India have the power to grant pardon or commutation of sentence." **[3c]**

15.05 The same source noted:

"The government of India will not disclose how many people have been executed and how many are awaiting execution today. According to the latest

official figures, there were 273 people under sentence of death as of 31 December 2005. However, the National Crime Records Bureau, which publishes these figures, does not distinguish between condemned prisoners whose sentences have been passed by a trial court, those whose sentences have been upheld by a High Court or the Supreme Court, and those whose mercy petitions are pending or have been rejected by the executive. Amnesty International believes this figure to be a gross underestimate. At least 140 people are believed to have been sentenced to death in 2006 and 2007. Some 44 persons are currently known to be on death row awaiting a decision on their mercy petitions by the President of India (the last possible recourse). The execution of some of these prisoners may be imminent. Executions in India are carried out by hanging." **[3c]**

15.06 Amnesty International (AI) stated in their Annual Report 2009, published on 28 May 2009 (events of 2008), "The authorities failed to make public information detailing the number of executions and people on death row. However, no executions were known to have taken place during the year [2008]. Despite government claims that the death penalty was used only in the 'rarest of cases', the courts sentenced at least 70 people to death." **[3e]** Amnesty International's Annual Report 2010, published on 28 May 2010, noted that no executions are known to have taken place during 2009 either, but that the courts sentenced at least 50 people to death in 2009. **[3g]**

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16. POLITICAL AFFILIATION

FREEDOM OF POLITICAL EXPRESSION

16.01 The Freedom House report, *Freedom in the World – India (2010)*, published on 24 June 2010, stated:

"Under the supervision of the Election Commission of India (ECI), recent elections have generally been free and fair. The 2009 national polls were generally peaceful, although Maoist militant attacks throughout the country led to 17 deaths during the first phase of voting. Electronic voting machines, also used in 2004 elections, have helped reduce voting day irregularities such as booth capturing. Violence has also declined during state-level elections, which were held in 2009 in Andhra Pradesh, Orissa, Sikkim, Arunachal Pradesh, Maharashtra, and Haryana. Incumbents retained power in all elections. Badly maintained voter lists and the intimidation of voters in some areas continue to be matters of concern, although the ECI has made efforts to make voter lists available online. A wide range of political parties operate freely." **[43d]**

See also Recent developments, Section 17: Freedom of Speech and Media and Section 6: Political System and Section 18: Human Rights Institutions, Organisations and Activists

FREEDOM OF ASSOCIATION AND ASSEMBLY

16.02 The US State Department *Country Report on Human Rights Practices 2009* (USSD 2009), released on 11 March 2010, noted:

"Authorities normally required permits and notification before parades or demonstrations, and local governments generally respected the right to protest peacefully, except in Jammu and Kashmir, where the local government sometimes denied permits to separatist parties for public gatherings and detained separatists engaged in peaceful protest. During periods of civil tension, authorities [have] used the criminal procedure code to ban public assemblies or impose a curfew.

"The law provides for the freedom of association, and the government generally respected this right in practice. NGOs must secure approval from the MHA [Ministry of Home Affairs] before organizing international conferences. Human rights groups contended that this practice provided the government with political control over the work of NGOs and restricted their freedom of assembly and association." **[2c] (Section 2b)**

16.03 The USSD 2009 report also noted:

"The law allows workers to form and join unions of their choice without previous authorization or excessive requirements, and in practice the government generally respected this right. … While some trade unions represented agricultural workers and informal sector workers, most of the country's estimated 13 to 15 million union members were in the formal sector. An estimated 80 percent of the unionized workers were members of unions affiliated with one of the five major trade unions." **[2c] (Section 6a)**

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OPPOSITION GROUPS AND POLITICAL ACTIVISTS

16.04 The USSD 2009 Report observed that "The country has a longstanding democratic parliamentary system of government, with representatives elected in multiparty elections … The country held a five-phase national election in April and May [2009] that included 714 million eligible voters … Citizens elected state governments and local municipal or village council governments at regular intervals … Political parties could operate without restriction or outside interference." **[2c] (Section 3)** The Freedom House report, *Freedom in the World – India (2010)*, published on 24 June 2010, observed that a wide range of political parties operate freely, and that there are no restrictions on peaceful political activism. **[43d]**

See also Section 4: General Election of April-May 2009 and Section 11, Non-government armed groups for information on militant opposition groups.

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17. FREEDOM OF SPEECH AND MEDIA

17.01 The US State Department *Country Report on Human Rights Practices 2009* (USSD 2009), released on 11 March 2010, noted:

"The constitution provides for freedom of speech and expression, but it does not explicitly mention freedom of the press. The government generally respected these rights in practice. Under the 1923 Official Secrets Act, the government may prosecute any person who publishes or communicates information that could be harmful to the state. The Press Council, a statutory body of journalists, publishers, academics, and politicians with a government-appointed chairman, investigates what it considers irresponsible journalism and sets a code of conduct for publishers. The code includes injunctions against publishing stories that might incite caste or communal violence. The council publicly criticized those it believed had broken the code." **[2c] (Section 2a)**

17.02 The report further stated:

"Independent newspapers and magazines regularly published and television channels broadcast investigative reports, including allegations of government wrongdoing, and the media generally promoted human rights and criticized perceived government violations. Private entities owned most print media and 80 percent of television stations.

"With the exception of radio, foreign media generally operated freely. Widely distributed private satellite television provided competition for Doordarshan, the government-owned television network. Although there were allegations that the government network manipulated the news, some privately owned satellite channels promoted the platforms of political parties their owners supported. On September 19 [2008], the cabinet authorized foreign news magazines to print local editions of their publications. Previously the government had allowed foreign magazines to print only scientific, technical, and specialty periodicals.

"AM radio broadcasting remained a government monopoly. Private FM radio station ownership was legal, but licenses authorized only entertainment and educational content." **[2c] (Section 2a)**

17.03 The Freedom House report, *Freedom in the World – India (2010)*, published on 24 June 2010, stated:

"The predominantly private media remain vigorous, although journalists face a number of constraints. The constitution protects freedom of speech and expression but does not explicitly mention media freedom. The government occasionally uses its power under the Official Secrets Act (OSA) to censor security-related articles. Authorities have also on occasion used other security laws, criminal defamation legislation, and contempt-of-court charges to curb critical voices, though a 2006 amendment to the Contempt of Courts Act introduced truth as a defense. Hate-speech laws have also been used against the press … Internet access is largely unrestricted, although some states have proposed legislation that would require the registration of customers at internet cafes. Under Indian internet crime law, the legal burden is on website

Operators to demonstrate their innocence … Potentially inflammatory books and films are occasionally banned or censored." **[43d]**

17.04 The same Freedom House report noted, "Journalists remain subject to intimidation. On a number of occasions during 2009, reporters were attacked, threatened, or detained by local authorities, right-wing groups, or insurgents. Members of the press are particularly vulnerable in rural areas and insurgency-racked states such as Chhattisgarh, Kashmir, Assam, and Manipur." **[43d]**

17.05 The BBC Country Profile for India, updated 19 August 2009, stated that "India's press is lively. Driven by a growing middle class, newspaper circulation has risen and new titles compete with established dailies." The same source reported "Broadcasting in India has flourished since state TV's monopoly was broken in 1992. The array of channels is still growing… Internet use has soared; by September 2007, around 60 million Indians were online..." **[32h]**

17.06 The BBC News Country Profile also noted that only public All India Radio (AIR) is permitted to broadcast news on the radio. **[32h]**

17.07 Reporters Without Borders 'Worldwide Press Freedom Index' for 2009, covering the period of September 2008 to September 2009, ranked India at 105 out of 175 countries (with the lower the ranking equating to less freedom). This represented an improvement on the previous year. **[42b]**

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TREATMENT OF JOURNALISTS

17.08 In their 2009 Annual Report, Reporters Without Borders stated that India "…provides a legal framework that is largely favourable to press freedom … However journalists' safety is precarious in some states in which press freedom is under threat from politicians, religious groups and criminal gangs … Journalists also have to beware of armed groups in the north-east of the country and militants and security forces in Kashmir." The report noted, "The justice system, under pressure from religious groups or corrupt officials, does sometimes abuse the use of charges and detentions against journalists." **[42a]**

17.09 The Committee for the Protection of Journalists (CPJ) report, *Attacks on the Press 2008*, released February 2009, noted:

"Throughout the year, local conflicts between separatists and insurgent groups on one hand and regional governments on the other created dangerous and unstable conditions for Indian journalists, particularly in rural areas. Violence in the disputed territory of Kashmir claimed the lives of two journalists, while a separatist insurgency in the north-eastern state of Assam led to the deaths of two others.

"Local journalists in Kashmir said the situation for the news media was worse than it had been in years. No curfew passes were given to news vendors, hampering distribution of publications that made it into print… Little nationwide action was taken on behalf of journalists. "We based in Delhi have no idea

about the goings-on in the length and breadth of the country," Vinod Mehta, editor of *Outlook* weekly, told a Press Club of India meeting in India." Attacks on or detentions of journalists also occurred in Assam, Chhattisgarh and Bihar states." **[46b]**

17.10 CPJ's report, *Attacks on the Press 2009*, released on 16 February 2010, observed that:

- Karnataka State Police arrested the editor-in-chief of Chitra Publications and his wife on 4 January 2009, on charges of offending a religious group. They were freed on 3 February and the Karnataka High Court later awarded them damages for illegal arrest.
- Police detained the editor and the publisher of the Calcutta-based daily *The Statesman* on 11 February and charged them under the penal code with 'outraging religious feelings', following complaints by local Muslim groups. The offending article had been reproduced from the London newspaper *The Independent*. The two men were released on bail on 25 February and the case was pending in late 2009.
- Police in Lalgarh, Bengal, beat at least seven photographers in two separate episodes on 18 June 2009 while they were covering a paramilitary offensive to break a four-day siege by Maoist insurgents.
- Members of the Hindu nationalist political party Shiv Sena attacked the offices of two IBN TV network channels in Maharashtra state on 20 November 2009 armed with iron rods and baseball bats, saying the channels had been 'too critical' of Shiv Sena leader Bal Thackeray. Several journalists and staff sustained minor injuries. Police made seven arrests in Mumbai and eight in Pune but were looking for at least 15 other suspects, according to the reports. Shiv Sena denied planning the assault. **[46g]**

17.11 Reporters Without Borders stated in a press release dated 26 February 2010, "Reporters Without Borders is extremely shocked and disturbed by a wave of police violence against journalists in Kashmir, Uttar Pradesh, Karnataka and Andhra Pradesh. It has registered a total of 13 cases of abusive treatment and physical attacks by police against media personnel in February [2010] alone." **[42c]**

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18. HUMAN RIGHTS INSTITUTIONS, ORGANISATIONS AND ACTIVISTS

NATIONAL AND STATE HUMAN RIGHTS COMMISSIONS

18.01 The National Human Rights Commission (NHRC) was established by the Government of India under the Protection of Human Rights Act 1993, amended 2006. The NHRC operates independently of the government and can inquire suo motu (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 or abettment or negligence in the prevention of such violation. The Commission has the powers of a civil court trying a suit under the Code of Civil Procedure in the course of inquiry. When dealing with complaints of violation of human rights by members of the armed forces, the Commission may seek a report from the central Government and on receipt of this report it may decide to proceed with the case and make its recommendations to the Government. The central Government must report on the action taken within three months or further time as the Commission suggests. (National Human Rights Commission website, accessed 1 June 2008) **[47a]**

18.02 The Protection of Human Rights Act was amended in 2006 to extend the powers of the NHRC. For example the NHRC may – in the course of, or following its investigations – recommend payment of compensation to victims or the initiation of proceedings for prosecution. (NHRC website) **[47a]** The USSD 2008 Report recorded that the Protection of Human Rights Act was again amended in August 2008 to remove the requirement of prior notification and approval for visits to state-managed prisons. **[2e] (Section 4)** As noted in Section 9, the NHRC has its own investigating staff, headed by an officer of the rank of Director General of Police. Under the Protection of Human Rights Act (1993), the Commission has the right to use the services of any officer or investigation agency of the central government or any state government; in many cases, the Commission has called NGOs to assist in the investigative work. **[47e]**

18.03 The US State Department *Country Report on Human Rights Practices 2008* (USSD 2008), released on 25 February 2009, recorded certain of the limitations to the mandate of the NHRC:

> "The NHRC did not have the statutory power to investigate allegations and could only request that a state government submit a report. State governments often ignored these requests and rarely carried out NHRC recommendations … Human rights groups such as ACHR [Asian Centre for Human Rights] claimed that the NHRC did not register all complaints, dismissed cases on frivolous grounds, did not adequately protect complainants, and did not investigate cases thoroughly." **[2e] (Section4)**

18.04 The US State Department *Country Report on Human Rights Practices 2009*, published 11 March 2010 (USSD 2009), noted, "From March 2008 to March 31 [2009], the NHRC received 9,090,954 complaints of human rights abuses. The NHRC closed 9,595,258 cases, including those from previous years. The NHRC transferred 5,925 cases to the State Human Rights Commission[s]. It recommended interim relief in 137 cases of custodial deaths, amounting to 19,775,000 rupees (approximately $396,000)." **[2c] (Section 5)**

18.05 The Protection of Human Rights Act 1993 also authorised the creation of State-based human rights commissions with similar functions and powers as the National Commission. The NHRC website, accessed 5 March 2009, listed state human rights commissions as existing in: Andhra Pradesh, Assam, Himachal Pradesh, Jammu and Kashmir, Kerala, Madhya Pradesh, Maharashtra, Manipur, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal, Chhattisgarh, Karnataka and Gujarat. **[47b]** The USSD 2009 Report commented, "Human rights groups alleged that state human rights commissions were limited by local politics and less likely to offer fair judgments than the NHRC." **[2c] (Section 4)**

HUMAN RIGHTS NGOS AND ACTIVISTS

18.06 According to the Front Line, a Dublin-based foundation for the protection of human rights defenders, undated, accessed 20 November 2009:

"There is a vibrant and diverse range of non-governmental organizations active in India the majority of whom enjoy a large degree of freedom of association and freedom of expression, however, serious concerns remain about the protection and security of human rights defenders working in some areas and on some issues. In some instances, defenders are subjected to arbitrary arrests and detentions and their personal safety is put at risk. In particular, defenders highlighting alleged human rights abuses by the police and military forces and defenders campaigning on environmental issues and land rights have been targeted.

"According to the UN Special Representative on Human Rights Defenders, 'defenders in India are active on a wide range of civil and political, economic, social and cultural rights such as caste discrimination, child rights, environmental issues, globalisation and human rights, housing rights, indigenous rights, LGBT rights, women's rights and trafficking'. These include defenders advocating non-discrimination against dalits, adivasis and other indigenous people and those seeking to uphold human rights in Jammu and Kashmir and other areas of civil unrest … Defenders campaigning on…human rights issues have reportedly been subjected to restrictions on freedom of movement, arbitrary arrests, detentions and criminal charges, torture and ill-treatment while in police custody, harassment, threats, attacks and extra-judicial killings. According to the UN Special Representative, there is an apparent pattern of impunity for violations committed against human rights defenders." (India profile, undated) **[101c]**

18.07 The Asian Centre for Human Rights commented in their India Human Rights Report 2008, published 25 June 2008, that human rights organisations did not have an effective presence in all regions of the country:

"Any democracy requires strong civil society. Yet human rights monitoring is almost non existent in many States. [This] report reveals the dearth of independent human rights monitoring in India - an extraordinary low level for a democracy. Many States, (which elsewhere would constitute medium sized countries) do not only lack State institutions to protect human rights, but incredibly, have no credible independent human rights organizations monitoring human rights violations. A major contributory factor to this situation is the emergency-era law, the Foreign Contribution Regulation Act of 1976.

The law effectively chokes off support to human rights monitoring. This is counter productive." **[18a] (pVIII)**

18.08 The US State Department *Country Report on Human Rights Practices 2009* (USSD 2009), released on 11 March 2010, noted:

"In 2006 the MHA [Ministry of Home Affairs] barred 8,673 organizations from seeking foreign funds under the FCRA [Foreign Contribution and Regulation Act] for failing to provide proper paperwork. NGOs called the FCRA restrictive and claimed the government failed to notify organizations when the requisite paperwork was due. Until December 2007, funds under the FCRA were granted to 475 organizations. During 2008-09, under the FCRA, 1,611 organizations were granted registration and 346 organizations were granted prior permission to receive foreign funds. In July the MHA informed the parliament that 6,653 NGOs received foreign funds of 100,000 rupees ($20,400) during 2007-08. Forty-one NGOs were prohibited from receiving foreign contribution, 34 NGOs were placed in the prior permission category, and accounts of 11 NGOs were frozen. Thirteen cases were referred to the CBI for FCRA violations." **[2c] (Section5)**

18.09 The Freedom House report, *Freedom in the World – India (2010)*, published on 24 June 2010, noted:

"Human rights organizations generally operate freely. However, they have expressed concern about threats, legal harassment, the use of excessive force by police, and occasionally lethal violence. In Gujarat, advocates for justice following anti-Muslim riots in 2000...have faced harassment, including police or tax investigations and threatening telephone calls, according to Human Rights Watch … The work of rights activists may be hindered by a 2001 Home Ministry order that requires organizations to obtain clearance before holding international conferences or workshops if the subject matter is 'political, semipolitical, communal, or religious in nature or is related to human rights,' although this prohibition is often ignored. Foreign monitors are occasionally denied visas to conduct research trips to India on human rights issues." **[43d]**

18.10 BBC News reported on 25 May 2009 that the Supreme Court had ordered the release on bail of a leading public health specialist and human-rights activist, Dr Binayak Sen. He had been in jail for two years, having been accused of links with Naxalite (Maoist) rebels in Chhattisgarh state and detained under the Unlawful Activities Prevention Act. Dr Sen denied the charge. He stated in court in 2008 that he did not support the Maoists. **[32ao]** Sen was released on bail in May 2009 after 22 months of detention. (Freedom House 2010) **[43d]**

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19. CORRUPTION

See also Section 12: Corruption in the Judiciary and Section 9: Security Forces

19.01 The US State Department *Country Report on Human Rights Practices 2009* (USSD 2009), released on 11 March 2010, stated in its introductory section that "Corruption existed at all levels of government and police..." and further stated that "The law provides criminal penalties for official corruption; however, in practice officials frequently engaged in corrupt practices with impunity." **[2c] (Section 3)**

19.02 Freedom House stated in its report *Freedom in the World – India (2010)*, published on 24 June 2010:

"Government effectiveness and accountability are undermined by criminality in politics, decrepit state institutions, and widespread corruption. India was ranked 84 out of 180 countries surveyed in Transparency International's 2009 Corruption Perceptions Index. The electoral system depends on 'black money' obtained though tax evasion and other means. Politicians and civil servants are regularly caught accepting bribes or engaging in other corrupt behavior, although a great deal of corruption goes unnoticed and unpunished. During the 2009 election campaign there were widespread allegations of vote-buying: police in Andhra Pradesh seized $600,000 in cash that was allegedly set to be used for bribes, while 500 cases of liquor destined for distribution to voters were seized in Karnataka. Despite laws requiring candidates to declare their financial assets, criminal records, and educational backgrounds, those with links to organized crime or whose election victories were at least in part dependent on unreported money continue towin election andserve as lawmakers, as do a number who face serious criminal charges. The 2005 Right to Information Act has reportedly been used heavily and successfully to improve transparency, although many information requests are still denied because of poor record-keeping by government agencies.Those who try to expose bureaucratic corruption often receive threats or are otherwise penalized in terms of career prospects." **[43d]**

19.03 In its 2009 Corruption Perceptions Index (CPI), released in November 2009, Transparency International ranked India 84th in the world corruption ranking, out of 180 countries, giving a CPI score of 3.4. (CPI Score relates to perceptions of the degree of corruption as seen by business people and country analysts and ranges between 10 - highly clean - and 0 - highly corrupt.) **[72c]**

19.04 The Government of India Central Vigilance Commission (CVC) website, accessed 20 June 2010, stated that "The Government of India has authorized the Central Vigilance Commission as the 'designated agency' to receive written complaints for disclosure on any allegation of corruption or misuse of office and recommend appropriate action." The CVC was established under the Central Vigilance Commission Act of 2003. **[24a]** The Commission's website gives details of its monthly activities; during the month of April 2010 the CVC took action to investigate 910 new complaints, sanctioned the prosecution of 28 public officials and initiated disciplinary action against a further 175 officials. **[24a] (Archive)**

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20. FREEDOM OF RELIGION

OVERVIEW

20.01 The US State Department *Country Report on Human Rights Practices 2009* (USSD 2009), released on 11 March 2010, in its introductory paragraph on freedom of religion, stated:

"The law provides for secular government and the protection of religious freedom, and the central government generally respected these provisions in practice. The country's longstanding democratic system, open society, independent legal institutions, vibrant civil society, and media all continued to provide mechanisms to address violations of religious freedom when they occurred.

"According to the Ministry of Minority Affairs' annual report for 2008-09, the National Commission for Minorities received 2,250 total complaints: 1,474 from Muslims, 183 from Christians, 151 from Sikhs, 42 from Buddhists, and the remainder from other small groups.

"Some groups interpreted ineffective investigation and prosecution of past attacks on religious minorities, particularly at the state and local levels, as creating an atmosphere of impunity. The country's federal political system accords state governments primary jurisdiction over maintaining law and order, which limited the national government's capacity to deal directly with state-level abuses, including abuses of religious freedom." **[2c] (Section 2c)**

20.02 The US State Department *International Religious Freedom Report 2009*, covering the period 1 July 2008 – 30 June 2009 (USIRF 2009 Report), noted that India is a secular state with no official religion. The country has historically been fertile ground for all religious traditions to flourish and the Constitution protects the right of individuals to practice the religion of their choice. **[2b] (Section II)** The USIRF 2009 Report observed:

"India is the birthplace of several religions – Hinduism, Buddhism, Jainism, and Sikhism – and the home for more than a thousand years of Jewish, Zoroastrian, Muslim, and Christian communities. The vast majority of Indians of all religious groups lived in peaceful coexistence; however, there were some organized communal attacks against minority religious groups. The country's democratic system, open society, independent legal institutions, vibrant civil society, and freewheeling press all provide mechanisms to address violations of religious freedom when they occur." **[2b] (Introduction)**

20.03 The UN Special Rapporteur on Freedom of Religion or Belief, Asma Jahangir, undertook a mission to India in March 2008. In her report, which was published on 26 January 2009, she observed:

"According to article 26 of the Indian Constitution, every religious denomination or any section thereof shall have the right to manage its own affairs in matters of religion, subject to public order, morality and health. Diverse personal status laws exist governing all family relationships such as marriage and divorce, maintenance, custody of children, guardianship of

children, inheritance and succession, adoption etc. There are five broad sets of personal status laws: one for Hindus, Buddhists, Jains and Sikhs as well as separate laws for Christians, Jews, Muslims and Zoroastrians (Parsis). Hindu and Muslim personal status laws also cater to different schools of thoughts within each community ... There is rich jurisprudence in India, resolving inequalities within and amongst personal status laws of different communities, especially with regard to women's rights.

"There is concern amongst women's rights activists regarding several discriminatory aspects, especially on the basis of gender, within personal laws governing each religious community.

"In 1993, the Indian Central Government notified Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis) as 'minority' communities under section 2(c) of the National Commission for Minorities Act 1992. The National Commission for Minorities is mandated to make recommendations for the effective implementation of safeguards for the protection of the interests of 'minorities' by the Central Government or the State Governments as well as to look into specific complaints regarding deprivation of rights and safeguards of the 'minorities' and take up such matters with the appropriate authorities." **[6d]**

20.04 The USIRF 2009 Report noted:

"Federal and state laws that regulate religion include the Foreign Contribution Regulation Act (FCRA) of 1976, several state-level "anticonversion" laws, the Andhra Pradesh antipropagation law, the Unlawful Activities Prevention Act of 1967, the Religious Institutions (Prevention of Misuse) Act of 1988, the Foreigners Act of 1946, and the Indian Divorce Act of 1869 … The FCRA regulates foreign contributions to NGOs, including faith-based NGOs. Some organizations complained that the FCRA prevented them from properly financing humanitarian and educational activities." **[2b] (Section II)**

20.05 As stated above, the country's federal system gives state governments jurisdiction over the maintenance of law and order. (USSD 2009) **[2c] (Section 2c)** The UN Special Rapporteur confirmed, "…the level of action of the Government to protect its citizens in terms of freedom of religion or belief varies from state to state." **[6d]** According to the USIRF 2009 report, "Despite the National Government's rejection of 'Hindutva', the ideology that espouses the inculcation of Hindu religious and cultural norms above other religious norms, 'Hindutva' continued to influence the policies of some state and local governments and actions at the state and local levels." **[2b] (Section II)**

See also Religiously-motivated violence and communal tensions: paragraph 20.11

20.06 The USIRF 2009 Report outlined the religious demography of the country as follows:

"According to the 2001 government census, Hindus constitute 80.5 percent of the population, Muslims 13.4 percent, Christians 2.3 percent, Sikhs 1.8 percent, and others, including Buddhists, Jains, Parsis (Zoroastrians), Jews, and Baha'is, 1.1 percent. Slightly more than 85 percent of Muslims are Sunni; the rest are Shi'a. Tribal groups (indigenous groups historically outside the

caste system), which are generally included among Hindus in government statistics, often practice traditional indigenous religious beliefs (animism).

"There are large Muslim populations in the states of Uttar Pradesh (UP), Bihar, Maharashtra, West Bengal, Andhra Pradesh, Karnataka, and Kerala; Muslims are the majority in Jammu and Kashmir. Although Muslims are a minority, India is the world's third largest Muslim country in terms of population. Christians are concentrated in the northeast, as well as in the southern states of Kerala, Tamil Nadu, and Goa. Three small north-eastern states (Nagaland, Mizoram, and Meghalaya) have large Christian majorities. Sikhs are a majority in the state of Punjab.

"Approximately 200 million persons, or 17 percent of the population, belong to the Scheduled Castes and Scheduled Tribes (SC/ST, formerly called 'untouchables' and also known as 'Dalits'). Some converted from Hinduism to other religious groups, ostensibly to escape widespread discrimination." **[2b] (Section I)**

20.07 According to the USIRF 2009 Report, there is no requirement for religious groups to be licenced. There is no national law barring a citizen or foreigner from professing or propagating religious beliefs. The Government prohibits foreign missionaries of any religious group from entering the country without prior clearance and usually expels those who perform missionary work without the correct visa. Long-established foreign missionaries generally can renew their visas, but the Government has not admitted new resident foreign missionaries since the mid-1960s. **[2b] (Section II)**

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RELIGIOUSLY-MOTIVATED VIOLENCE AND COMMUNAL TENSIONS

20.08 The 2008 Annual Report of the United States Commission on International Religious Freedom (USCIRF) stated that, despite India's democracy and tradition of secular governance:

"... religious minorities in India have been the victims of violent attacks by fellow citizens, including killings, in what is called 'communal violence.' In the late 1990s, there was a marked increase in violent attacks against members of religious minorities, particularly Muslims and Christians, throughout India, including killings, torture, rape, and destruction of property. Those responsible for communal violence were rarely held responsible for their actions, helping to foster a climate in which it was believed that attacks on religious minorities could be carried out with impunity." **[67a] (p242)**

The same report further noted that "the current Congress-led government has…continued to act decisively to prevent communal violence in situations where it has erupted in the past." **[67a] (p243)**

The United States Commission on International Religious Freedom Annual Report 2010 (USCIRF) Annual Report 2010 noted, "India continues to witness terrorist bombings; however… swift state and central government action followed to prevent communal violence." **[67b] (p247)**

20.09 The USIRF 2009 Report observed that the motivating factors behind communal violence have sometimes been complex:

"There were instances of societal discrimination and violence based in whole or in part on religious affiliation. Many such incidents were linked to politics, nationalism, conversion, or retaliation. Economic competition for limited resources between religious communities played an important role in conflicts. According to the Ministry of Home Affairs 2008-09 annual report, there were 943 instances of communal violence or violence along religious lines, in which 167 persons were killed and 2,354 injured." **[2b] (Section III)**

20.10 The USIRF 2009 Report provided details of several instances of communal violence which took place during the period July 2008 to June 2009. For example:

"Violence erupted in August 2008 in Orissa after individuals affiliated with left-wing Maoist extremists killed a Hindu religious leader in Kandhamal, the country's poorest district. According to government statistics, 40 persons died and 134 were injured. Although most victims were Christians, the underlying causes that led to the violence have complex ethnic, economic, religious, and political roots related to land ownership and government-reserved employment and educational benefits. **[2b] (Introduction)**

"On July 27, 2008, Digras and Pusad towns in eastern Maharashtra witnessed Hindu-Muslim clashes over the rumour of an insult to the Qur'an. A secular group alleged that local police joined rioters in attacking Muslim properties. Police firing resulted in the deaths of two persons." **[2b] (Section II)**

See also 'Muslims' and 'Christians', below.

20.11 The USCIRF Annual Report 2010 noted:

"Hindu nationalist organizations retain broad popular support in many communities in India, and their activities, especially those with an extremist agenda or history of using violent force against minorities, often negatively impact the status of religious freedom in the country. Many of these organizations exist under the banner of the Sangh Parivar, a 'family' of over 30 organizations that includes the Vishwa Hindu Parishad (VHP), Bajrang Dal, Rashtriya Swayamsevak Sangh (RSS), and the BJP. Sangh Parivar entities aggressively press for governmental policies to promote a Hindu nationalist agenda, and adhere in varying degrees to an ideology of Hindutva, which holds non-Hindus as foreign to India." **[67b] (p242)**

20.12 The UN Special Rapporteur recorded in January 2009, "In December 2005, the Communal Violence (Prevention, Control and Rehabilitation of Victims) Bill was introduced in the Parliament but has not yet been adopted. The Bill provides for (a) prevention and control of communal violence; (b) speedy investigation and trials; and (c) rehabilitation of victims." She also expressed concern about the extended timeframe of investigations in cases involving communal riots, violence and massacres. **[6d]**

Jammu and Kashmir

20.13 Referring to Jammu and Kashmir, the 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. She continued:

"Muslims living in Srinagar provided information on several documented incidents relating to extrajudicial executions, torture, enforced disappearances and rape committed by the security forces against Muslims and they alleged that these acts were perpetrated against members of their community due to their religious background … A number of Hindu leaders expressed their mistrust of Muslims living in Srinagar … Since June 2008…tensions and violence in Jammu and Kashmir have increased subsequent to a controversy about a transfer of land to the Shri Amarnath Shrine Board … In a press statement of 27 August 2008, the Office of the High Commissioner for Human Rights voiced concerns about the violent protests that had reportedly led to civilian casualties as well as restrictions on the right to freedom of assembly and expression." **[6d]**

20.14 The USIRF 2009 Report gave details of the events of May-August 2008, relating to the Shri Amarnath Shrine Board:

"On May 26, 2008, the Jammu and Kashmir government decided to transfer 100 acres of land to the Shri Amarnath Shrine Board (SASB), a government-run organization that oversees an annual Hindu pilgrimage to a shrine in the Himalayas. Separatist leaders accused the National Government and the state government of illegally confiscating public land and settling non-Kashmiris in an attempt to change the demographics in the Muslim-majority state. Peaceful protests by Muslims later turned violent in June when police opened fire, killing two teenagers and injuring more than 70 protestors and police. After the state government revoked the land transfer on June 30, 2008, Hindu groups in the region mounted protests and destroyed 72 homes of Muslims. In August, as protests continued, security forces resorted to firing, causing 55 deaths and hundreds of injuries." **[2b] (Section II)**

20.15 The same source noted:

"It remained difficult to separate religion and politics in Kashmir; Kashmiri separatists were predominantly Muslim, and most of the security forces stationed there were non-Muslim. The majority of the 61,000-member Jammu and Kashmir police force was Muslim. Kashmiri Hindus remained vulnerable to violence. Most lived in refugee camps outside the valley of Kashmir and were awaiting safe return." **[2b] (Section II)**

Attacks by terrorist organisations, 2008-2009

20.16 According to the USIRF 2009 Report, "religious extremists committed numerous terrorist attacks throughout the country" during the period July 2008 to June 2009. The report recorded:

"Terrorists attacked Ahmedabad, Bangalore, and Delhi. On September 28, 2008, there was a bomb blast in Malegaon, Maharashtra, outside a building where the banned Students' Islamic Movement of India (SIMI) previously had an office. The blast killed 7 persons and injured more than 90. Several figures

…associated with Hindu nationalist groups were arrested in the blast investigation. On November 26, 2008, 10 terrorists carried out coordinated attacks across Mumbai over the course of three days and killed 173 persons … The terrorists attacked luxury hotels, a crowded railway station, a Jewish center, a hospital, and restaurants. Mohammed Ajmal Amir Kasab, the only terrorist captured alive, disclosed that the attackers belonged to the terrorist organization Laskhar e-Tayyiba (LeT)." **[2b] (Introduction)**

"In the aftermath of the November 2008 Mumbai terrorist strikes, religious leaders of all communities condemned the attacks and issued statements to maintain communal harmony." **[2b] (Section III)**

See also Section 4 (Recent Developments)

Gujarat Riots in 2002 (update)

20.17 The USIRF 2008 Report noted that:

"On May 1, 2009, the Supreme Court ordered speedy trials of cases relating to eight major incidents from the 2002 Gujarat violence; however, hundreds of other court cases stemming from this violence remained unsettled. **(Introduction)** … There was continued concern about the Gujarat government's failure to arrest those responsible for the communal violence in 2002. Home Ministry figures indicated that 790 Muslims and 254 Hindus were killed and 2,500 others injured. Some NGOs maintained the number of Muslims killed was higher, with estimates from 1,000 to 2,500. There were also reports of rape and molestation of Muslim women. On February 28, 2009, the official death toll rose to 1,272 as 228 persons who had been missing for seven years were officially declared dead." **[2b] (Section II)**

20.18 The same source noted:

"There were advances in eight high-profile cases, including the 2002 train fire in Godhra, as a result of investigations by the SIT the Supreme Court established in March 2008. The Supreme Court received the SIT's interim report on March 2, 2009, and issued decisions to expedite the judicial process for these cases based on the SIT report. On May 1, 2009, the Supreme Court ordered the Gujarat High Court to set up fast-track courts in Gujarat to hear at least eight high-profile cases [as stated above]. At the end of the reporting period [30 June 2009] the process of setting up fast-track courts was underway.

"On April 28, 2009, the Supreme Court ordered Gujarat police to register a complaint against Chief Minister Narendra Modi and some 60 other high-level officials of the Gujarat government, investigating their role in the riots. The Supreme Court made the ruling after hearing the petition of Zakia Jafri [wife of former Congress MP Ehsan Jafri who was killed during the riots], who had been trying since June 2006 to register a complaint in Gujarat against state government officials for their alleged complicity. The Supreme Court also asked the Special Investigation Team (SIT) …to investigate the Zakia Jafri complaint and submit a report by the end of July 2009." **[2b] (Section II)**

20.19 *The Hindu* reported on 31 July 2009 that the Gujarat High Court had rejected a petition submitted by the Gujarat government, to the effect that the Special

Investigation Team (SIT) did not have the jurisdiction to probe the complaint by Zakia Jafri against Chief Minister Narendra Modi and others. The SIT was asked to complete its investigation (not yet completed by the end of July) by 31 October 2009. **[60g]**

20.20 UN Special Rapporteur, in her report of January 2009, observed that, "prior to the Godhra train burning incident, Gujarat had witnessed 443 major communal incidents between 1970 and 2002. However, the massacre that took place after the tragic deaths in the Godhra train burning incident on 27 February 2002, is all the more horrifying since at least a thousand people were systematically killed." The Special Rapporteur expressed serious concern over the extended timeframe of the investigations into those events of 2002 and said that, in discussions with the survivors, she "could see their continuing fear which was exacerbated by the distress that justice continues to evade most victims and survivors. A large number of criminal cases relating to the communal violence in 2002 remain un-investigated or have been closed by the Gujarat police and the plight of those internally displaced from their homes continues." **[6d]**

Destruction of the Babri Masjid mosque in Ayodhya, Uttar Pradesh, in 1992 (update)

20.21 The Babri Masjid mosque in Ayodhya, Uttar Pradesh, had been a focus of Hindu-Muslim hostility for decades. It was built in the 16th Century on a site that is also sacred to Hindus, marking the birthplace of the Hindu God Ram. In December 1992, a mob of Hindu militants tore the mosque down. BBC News noted, "the destruction of the mosque was one of the most divisive acts in Indian history and led to Hindu-Muslim riots across the country in which more than 2,000 people were killed." A commission of inquiry was set up in December 1992 under Justice MS Liberhan. In June 2009, after 16 years, Justice Liberhan submitted a 900-page report to the government, but its contents were not made public. On 24 November 2009 the government tabled the report in parliament. (BBC News, 24 November 2009) **[32ad]**

20.22 *The Hindu*, on 25 November 2009, reported the commission's key finding that – in the words of the newspaper – "The demolition of the Babri Masjid was planned, systematic, and was the intended outcome of a climate of communal intolerance deliberately created by the Sangh Parivar and its sister affiliates, including the Bharatiya Janata Party." **[60f]** (The *Sangh Parivar* is a 'family' of organisations of Hindu nationalists.) *The Hindu* article further outlined Liberhan's findings, which implicated certain Bharatiya Janata Party (BJP) leaders:

"The [Liberhan] report places individual culpability for the demolition on a total of 68 persons, the bulk of them drawn from the extended Parivar clan comprising the Rashtriya Swayamsevak Sangh, the Vishwa Hindu Parishad, the Bajrang Dal and the BJP. The BJP contingent includes not just Hindutva ideologues Lal Krishna Advani and Murli Manhohar Joshi, but, surprisingly, also the party's celebrated moderate face, Atal Bihari Vajpayee.

"Justice Liberhan reserves the brunt of his searing commentary for the then Uttar Pradesh Chief Minister Kalyan Singh, under whose watch the 16th century mosque met its calamitous end: 'Kalyan Singh, his Ministers and his hand-picked bureaucrats created man-made and cataclysmic circumstances

which could result in no consequences other than the demolition of the disputed structure… They denuded the State of every legal, moral and statutory restraint and wilfully enabled and facilitated the wanton destruction and the ensuing anarchy'.

"Justice Liberhan goes on to say, 'It cannot be assumed even for a moment that L.K. Advani, A.B. Vajpayee or M.M. Joshi [members of the BJP's central leadership] did not know the designs of the Sangh Parivar. Even though these leaders were deemed and used by the Parivar … to reassure the cautious masses, they were party to the decisions which had been taken'." **[60f]**

(See also the sections below on Christians, Muslims and Sikhs.)

INTER-RELIGIOUS MARRIAGES

20.23 As noted in an Immigration and Refugee Board of Canada response, dated 9 January 2006, "According to several sources, inter-religious and inter-caste marriages are legal in India and are governed by the Special Marriage Act 1954." **[97e]**

20.24 The same source continued:

"'…Inter-religious marriages are more common between students and among professionals in urban areas, and are less likely in rural areas.' The professor consulted commented that marriages between Sikhs and Hindus are 'not uncommon' in the state of Punjab because of prominent numbers of Hindus. It was his opinion that: …The general societal attitude toward inter-religious married couples in India is 'not favourable'. In correspondence to the Research Directorate, an India-based lawyer agreed that society in general disapproves of inter-religious marriages but added that the treatment of married couples with different religious backgrounds depends on their location and social levels, and an associate professor of social and cultural anthropology added that 'social attitudes often [cause people to] ostracize and discriminate against such unions'." **[97e]**

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RELIGIOUS CONVERSIONS

20.25 UN Special Rapporteur noted in her report of 26 January 2009:

"A number of Indian states have adopted specific laws which seek to govern religious conversion and renunciation. Five states have passed and implemented the so-called Freedom of Religion Acts (Orissa, Madhya Pradesh, Chhattisgarh, Gujarat and Himachal Pradesh). Similar laws have been passed but not yet implemented in two other states (Arunachal Pradesh and Rajasthan). All of these laws stipulate 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 by inducement or by any fraudulent means nor shall any person abet any such conversion' … These laws carry penalties of imprisonment and fines with harsher penalties in case children, women or person belonging to the Scheduled Castes or Scheduled Tribes are forcibly converted. Furthermore, in some states anyone converting another person from one religion to another is required to obtain prior permission from

state authorities thirty days before the date of such intended conversion or submit a related intimation. In other states with such laws, anyone intending to change his or her religion needs to give prior notice or intimation after the conversion ceremony." **[6d]**

20.26 The USIRF 2009 Report noted:

"Where 'anticonversion' laws are not in place, local authorities on occasion relied upon certain sections of the Indian Penal Code (IPC) to arrest persons engaged in religious activities. For example, IPC Section 153A prohibits 'promoting enmity between different groups on grounds of religion, race, place of birth, residence, language, etc., and doing acts prejudicial to maintenance of harmony.' IPC Section 295A prohibits 'deliberate and malicious acts, intended to outrage religious feelings or any class by insulting its religion or religious beliefs'." **[2b] (Section II)**

20.27 However, the Special Rapporteur expressed deep concern that laws and bills on religious conversion in several Indian states were being used to vilify Christians and Muslims. She stated:

"While these laws appear to protect religious adherents only from attempts to induce conversion by improper means, they have been criticized on the ground that the failure to clearly define what makes a conversion improper bestows on the authorities unfettered discretion to accept or reject the legitimacy of religious conversions … [The broad and vague terms used in state legislation] might be interpreted to cover the expression of many religious beliefs … some provisions are discriminatory in giving preferential treatment to re-conversions … [and] the requirement of advance notice or prior permission seems to be unduly onerous for the individual who intends to convert." **[6d]**

The Special Rapporteur noted in her 26 January 2009 report that, even in the Indian states which have adopted laws on religious conversion, there appeared to be very few – if any – actual convictions for conversion by the use of force, inducement or fraudulent means. Nevertheless, both she and the National Commission for Minorities remained concerned about the apparent attempt to interfere with the basic right to freedom of religion. **[6d]** The USIRF 2009 Report confirmed that, in the period July 2008 to June 2009, there were no reports of convictions under 'anti-conversion' laws in the five states that had enacted such laws. **[2b] (Section II)**

20.28 The USIRF 2009 Report did state, however:

"Authorities arrested numerous Christians under state-level 'anti-conversion' laws during the reporting period [July 2008 – June 2009] for allegedly engaging in conversions by force, allurement, or fraud. Hindu nationalist organizations frequently alleged that Christian missionaries lured low-caste Hindus with offers of free education and health care, and these organizations 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 thus fraudulent." **[2b] (Section II)**

The USIRF Report continued, "There were reports from faith-based media of approximately 17 cases under state-level "anti-conversion" laws and other restrictive laws in Chhattisgarh, MP, and Maharashtra during the reporting period. Of the 17, seven were reports from Chhattisgarh and six from MP." **[2b] (Section II)**

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MUSLIMS

20.29 Although Muslims are a minority, India has the world's third largest Muslim population, according to the USIRF 2009 Report. The 2001 census showed that Muslims then constituted 13.4 per cent of the country's population; there are large Muslim populations in the states of Uttar Pradesh, Bihar, Maharashtra, West Bengal, Andhra Pradesh, Karnataka and Kerala. Muslims form the majority in Jammu and Kashmir. About 85 per cent of Muslims in India are Sunni. **[2b] (Section I)**

20.30 A Council on Foreign Relations background document of 22 June 2007, 'India's Muslim Population', stated, "India's booming economy has left the nation's largest minority group lagging behind. Muslims experience low literacy and high poverty rates, and Hindu-Muslim violence has claimed a disproportionate number of Muslim lives. Yet Muslims can impact elections, using their power as a voting bloc to gain concessions from candidates who court them." **[55]**

20.31 The Council on Foreign Relations document further stated:

"Muslims in southern and western India tend to be better off than in the north. Historically, wealthier Muslims lived in western and southern states, while many of their counterparts in the north left for Pakistan during the 1947 partition of India. Also, Muslims in rural areas are less poor than in urban areas, where their poverty rate of 38 percent is higher than any other population's, including low-caste Hindus. Although no Muslim caste system exists, three groups of Indian Muslims – ashraf, ajlaf, and arzal – essentially function as such. The ashrafs are upper-class Muslims thought to be of Arab ancestry, while the ajlafs tend to be considered Hindus who converted to Islam to escape India's caste system. A third group, the arzals, correlates to the lowest caste of Hindus." **[55]**

20.32 The 2006 Report on the Social and Economic Status of Muslims in India (the Sachar Report) noted that Muslim communities were disproportionately underserved regarding access to schools, credit, and housing. (USIRF 2009) **[2b] (Section II)** The Sachar report also observed:

"The poor representation of Muslims in the employment market was highlighted over and over again across all states. Despite obtaining degrees and certificates Muslims were unable to get employment, especially in the Government and organized sector. The Committee's attention was drawn to the lack of Muslim representation in positions of power. The lack of Muslims in public employment – in the bureaucracy, police and the judiciary, and so on – has been a matter of great concern." **[102a] (p20)**

The 2010 Annual Report of the United States Commission on International Religious Freedom (USCIRF) recorded, "In November 2006, the Sachar Committee reported that Indian Muslims face discrimination and other hardships and Prime Minister Singh pledged to 'address the imbalances.' Reports conflict about how many of the 22 recommendations have actually been implemented." **[67b] (p249)**

20.33 BBC News reported in February 2005 that Indian Shias had broken away from the country's most important Muslim organisation, the All India Muslim Personal Law Board (AIMPLB). According to the article, "Under the Indian constitution Muslims have the right to separate laws in matters such as marriage, divorce and inheritance. And it is the AIMPLB that sets out those laws … Shias and Sunnis do not interpret family laws in a similar way." **[32i]**

20.34 According to the USIRF 2009 Report, "There are approximately 30,000 madrassas (Islamic schools) providing full- or part-time education in India. Most did not accept government aid, alleging that it would subject them to stringent security clearance requirements. Educational institutions given 'minority status' by the Government are not eligible for government aid." **[2b] (Section II)**

20.35 An article in the July/August 2002 edition of the journal *Foreign Affairs* quoted a study by political scientist Ashutosh Varshney as showing that, during the years 1950 to 1995, the vast majority of communal riots had been concentrated in only 4 of India's 28 states, located in the northern, western, and eastern parts of the country. All four states have large Muslim minorities. Within those four states, most of the riots had been restricted to a handful of cities; 70 percent of Hindu-Muslim violence had taken place in only 30 out of India's more than 400 cities. **[147]**

See also Religiously motivated violence and communal tensions above

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CHRISTIANS

20.36 The USIRF 2009 Report noted that Christians constitute 2.3 percent of the population and are concentrated in the north east, as well as in the southern states of Kerala, Tamil Nadu and Goa. The north eastern states with Christian majorities are Nagaland, Mizoram and Meghalaya. **[2b] (Section I)**

20.37 A report published in May 2008 by the United States Commission on International Religious Freedom stated, "Attacks on Christian churches and individuals, largely perpetrated by individuals associated with extremist Hindu nationalist groups, continue to occur, and perpetrators are rarely held to account by the state legal apparatus." **[67a] (p244)**

20.38 Christian Solidarity Worldwide (CSW), in a report dated 26 March 2009, stated:

"2008 saw a continued pattern of religiously-motivated violence perpetrated against the Christian community across numerous states. This included large-scale violence in Orissa state in the weeks after 23 August 2008, the

ramifications of which are ongoing, and a sustained campaign of violence in Karnataka state during a similar period. Impunity for perpetrators and inciters of religiously-motivated violence, and the weak implementation of laws to protect religious minorities from violent reprisals, continued to be very significant problems." **[17d] (Executive Summary)**

20.39 The CSW report described the communal violence in Orissa in late-2008 as the "worst spate of 'communal violence' ever faced by the Christian community in post-independence India". The USIRF 2009 Report recorded:

"In Kandhamal, Orissa State, individuals affiliated with left-wing Maoist extremists killed Hindu religious leader Swami Laxmanananda Saraswati and four Vishwa Hindu Parishad (VHP) workers on August 23, 2008. Although ultra left Maoists claimed responsibility, the murders exacerbated underlying socio-economic tensions between the dalits and the tribals and unleashed a wave of revenge killings, assaults, and property destruction. According to widely accepted government statistics, 40 persons died and 134 were injured; most of the victims were Christians. The large-scale violence, which included the August 25 alleged rape of a Christian nun, attracted worldwide media attention. The central Government sent 39 companies of paramilitary forces to restore peace and security. State authorities established 18 emergency camps to house displaced persons, worked with NGOs to deliver assistance and relief to victims, and allocated funds to compensate next of kin and repair damaged houses, businesses, and places of worship. The police arrested 1,200 persons and registered more than 1,000 criminal cases. On April 21, 2009, police arrested Maoist leader P. Rama Rao in connection with Saraswati's murder. According to several independent accounts, an estimated 3,200 refugees remained in relief camps, down from 24,000 in the immediate aftermath of the violence." **[2b] (Section III)**

The USIRF 2009 Report stated that "Although most victims were Christians, the underlying causes that led to the violence have complex ethnic, economic, religious, and political roots related to land ownership and government-reserved employment and educational benefits. **[2b] (Introduction)**

20.40 The USIRF 2009 Report related that the All India Christian Council (AICC) documented 73 attacks on Christians, not counting attacks in Karnataka and Orissa, during the period July 2008 to June 2009:

"According to AICC, the greatest number of reported attacks occurred in Orissa, Chhattisgarh, Karnataka, and MP. In these incidents, Christians alleged Hindu extremists 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. There were also reported incidents in which Christians physically attacked by others were further victimized when the police arrested them rather than the attackers." **[2b] (Section III)**

20.41 The USIRF 2009 Report noted 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, Christians often held large public prayer meetings without violence or protests." **[2b] (Section III)**

See also Religious conversions

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SIKHS

Sikh religion and historical background

20.42 A response to an information request produced by the Immigration and Refugee Board of Canada in July 2007 noted that, "Sikhism is the fifth largest organized religion in the world with approximately 23 to 24 million adherents. Sikhs represent approximately two per cent of the population in India [about 20 million people]. Most Sikhs in India live in the state of Punjab where they account for roughly 60 per cent of the state's population." **[97a]**

20.43 A BBC website, Religion & Ethics, Origins of Sikhism, undated, stated:

"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 distinct from Hinduism and Islam. Nine Gurus followed Nanak and developed the Sikh faith and community over the next centuries.

"Guru Arjan completed the establishment of Amritsar as the capital of the Sikh world, and compiled the first authorised book of Sikh scripture, the Adi Granth. The tenth Guru, Gobind Singh, recreated the Sikhs as a military group of men and women called the Khalsa in 1699, with the intention that the Sikhs should for ever be able to defend their faith. Gobind Singh established the Sikh rite of initiation (called khandey di pahul) and the 5Ks which give Sikhs their unique appearance." **[83a]**

20.44 The BBC's Religion & Ethics website noted in September 2009 that "The 5 Ks taken together symbolise that the Sikh who wears them has dedicated themselves (sic) to a life of devotion and submission to the Guru. The five Ks are: Kesh (uncut hair); Kara (steel bracelet); Kanga (a wooden comb); Kaccha – also spelt Kacch, Kachera (cotton underwear); Kirpan (steel sword)." **[83b]**

20.45 As observed in an undated article published by Global Security, "The Akali Dal (Army of the Immortals) a political-religious movement founded in 1920, preached a return to the roots of the Sikh religion." The Akali Dal became the political party that would articulate Sikh claims and lead the independence movement. **[4a]**

20.46 The Immigration and Refugee Board of Canada noted in a response to an information request in July 2007:

"Following the partition of India in 1947, some Sikhs in Punjab have actively promoted the idea of a Sikh homeland or sovereign state, also referred to as 'Khalistan'. In the early 1980s, the Sikh community's movement for an independent state turned violent. In May 1984, the Sikh political party Akali Dal engaged in popular agitation by obstructing the transportation of Punjabi wheat and by withholding taxes from the Indian government. In retaliation, the

government sent 100,000 army troops to Punjab, which resulted in violent attacks against the Sikh community in June 1984." **[97a]**

20.47 Europa World Online, accessed 28 June 2010, related that in the early 1980s:

"There was…unrest in the Sikh community of the Punjab, despite the election to the Indian presidency in July 1982 of Giani Zail Singh, the first Sikh to hold the position. Demands were made for greater religious recognition, for the settlement of grievances over land and water rights, and over the sharing of the state capital at Chandigarh with Haryana; in addition, a minority called for the creation of a separate Sikh state ('Khalistan'). In October 1983 the state was brought under presidential rule. However, the violence continued, and followers of an extremist Sikh leader, Jarnail Singh Bhindranwale, established a terrorist stronghold inside the Golden Temple (the Sikh holy shrine) at Amritsar. The Government [in 'Operation Blue Star', in June 2004] sent in troops to dislodge the terrorists and the assault resulted in the death of Bhindranwale and hundreds of his supporters, and serious damage to sacred buildings. A curfew was imposed, and army personnel blockaded Amritsar." **[1]**
(Contemporary political history: Indira Gandhi dominates Indian politics 1966–84)

"In October 1984 Indira Gandhi was assassinated by militant Sikh members of her personal guard [in apparent retaliation for ordering an attack on the Golden Temple]. Her son, Rajiv Gandhi, was immediately sworn in as Prime Minister, despite his lack of ministerial experience. Widespread communal violence erupted throughout India, resulting in more than 2,000 deaths." **[1]**
(Contemporary political history: Rajiv Gandhi assumes power (1984–89)

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; 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. (CBC News) **[148] (History of the bombing)** 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. (BBC News, 17 March 2005) **[32bj]**

Human Rights Watch recorded that, following Indira Gandhi's assassination:

"Angry mobs, instigated by leaders of the then-governing Congress Party, committed countless acts of retribution , killing and wounding thousands of Sikhs and destroying their property and businesses. During ensuing government counterinsurgency operation in Punjab state, from 1984 to 1995, Indian security forces committed serious human rights violations and killed, forcibly disappeared [sic] and tortured thousands of Sikhs. None of the architects of this counterinsurgency strategy have been brought to justice." (HRW, 2 November 2009) **[26j]**

See 'Prosecution of Security Force Personnel', below

Militant organisations in Punjab

20.48 The South Asia Terrorism Portal (SATP), accessed 6 December 2009, listed 12 organisations as terrorist groups in the Punjab:

- 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) **[44a]**

20.49 The same source noted in its 2008 Punjab Assessment that "Punjab remained peaceful through 2007, though it was marred by a single and significant terrorist strike at Ludhiana in October. This is the 14th consecutive year the State has remained relatively free of major political violence after the widespread terrorist-secessionist movement for 'Khalistan' was comprehensively defeated in 1993." **[44k]**

20.50 The Asian Centre for Human Rights' *Human Rights Report 2009*, published in May 2009, did not report any recent attacks by terrorist/insurgent groups in Punjab. **[18a]**

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Human Rights Concerns

20.51 The Asian Centre for Human Rights (ACHR), in their Indian Human Rights Report 2008, noted continued serious human rights issues in Punjab: torture was widespread in jails; the judiciary was hampered by judicial delay; security personnel were responsible for gross human rights violations including custodial deaths and extrajudicial executions; prison conditions were deplorable and prisons were overcrowded. **[18a] (Punjab)**

20.52 In a paper dated 11 July 2007, the Canadian Immigration and Refugee Board advised:

"Regarding the current treatment of Sikhs in Punjab, the sources consulted by the Research Directorate provided contrasting views.

"Two human rights organizations specializing in the situation of Sikhs in Punjab claim that the treatment of Sikhs involved in militant activities remains an issue of concern … The Sikh Human Rights Group (SHRG) … indicated in a telephone interview with the Research Directorate that Sikhs who are considered to be involved in Sikh militancy could be targeted by authorities … An October 2005 Ensaaf report entitled *Punjab Police: Fabricating Terrorism Through Illegal Detention and Torture* documented 28 cases in August and September 2005 of Sikhs being illegally detained for "militancy-related activities" … The report asserts that the Punjab police 'routinely' use illegal and incommunicado detention, without informing the families of the places of

detention and 'frequently tortur[ing] the detainees' … The report also claims that the police have threatened and detained relatives of targeted individuals, concocting 'exaggerated' stories about suspected Sikh militants in order to justify their abusive tactics.

"Following a visit to Punjab in April 2007, the Co-Director of Ensaaf claimed… that Sikhs who continue to advocate support for their cause are still being monitored by authorities and, in some cases, risk detention and physical harm.

"In contrast, the South Asia Terrorism Portal (SATP)… reports that the Sikh militant movement is no longer active in Punjab. Similarly, the British Broadcasting Corporation (BBC) reports that the divide between Sikhs and Hindus has been 'bridged'.

"No recent reports of the arrest or detention of Sikhs could be found among the sources consulted by the Research Directorate." **[97a]**

20.53 The Asian Centre for Human Rights noted in their *South Asia Human Rights Index 2008*, "About one million refugees, mainly Sikhs, who came to Jammu and Kashmir from Pakistan during partition in 1947 continued to be denied the right to citizenship as they have not been recognized as citizens of Jammu and Kashmir under the Jammu and Kashmir constitution. The government of India has failed to ensure their political participation for the last 60 years. **[18f] (p120)**

Prosecution of security force personnel for human rights violations between 1984 and 1994

(Refer to paragraph 20.47 above)

20.54 The USSD 2009 Report noted:

"The government [in 2009] made little progress holding police and security officials accountable for disappearances committed during the Punjab counterinsurgency in 1984-94 and the Delhi anti-Sikh riots of 1984, despite the work of a special investigatory commission. In February 2008 the NHRC criticized the Justice Bhalla Commission for its inability to identify the whereabouts of 657 missing victims." **[2c] (Section 1b)**

20.55 Amnesty International's Annual Report 2008 noted:

"In Punjab, a majority of police officers responsible for serious human rights violations during civil unrest between 1984 and 1994 continued to evade justice. The findings of a Central Bureau of Investigation probe into allegations of unlawful killings of 2.097 people who were cremated by the police had still not been made fully public, nine years after the investigation was launched. The [National Human Rights Commission] NHRC awarded compensation to the relatives of 1,298 victims of such killings in one district, Amritsar. However, the NHRC was criticized for the slow pace of its investigations, and a commission appointed by the NHRC in 2006 to examine compensation claims was criticized in October by human rights organizations for various failings. In May, the government ordered an investigation into three unlawful killings by the police in the Punjab in 1993-94, after reports that three people, listed as among those killed, surfaced in their native villages." **[3a]**

20.56 Amnesty International's Annual Report 2010, released May 2010, noted that little further progress was made in 2009, "Perpetrators of human rights violations in Punjab between 1984 and 1994… including enforced disappearances and extrajudicial executions… continued to evade justice." **[3g]**

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Internal relocation for Sikhs

20.57 As noted in an Immigration and Refugee Board (IRB) of Canada Response to Information Request, dated 18 January 2006, the Indian Constitution allows for freedom of movement of citizens. A human right activist stated that "theoretically, Sikhs can, like others, move and relocate themselves in any part of India that does not come under excluded or restricted zones like some parts in the northeast of India." **[97c]**

20.58 There were no checks on a newcomer to any part of India arriving from another part of India, even 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. "Sikhs relocating from Punjab state to other parts of India do not have to register with the police in their area of relocation, unless they are on parole…" (Immigration and Refugee Board of Canada, 18 January 2006) **[97c]**

20.59 The Danish Immigration Service fact-finding mission to Punjab, dated March to April 2000, noted, "The Director of the South Asia Human Rights Documentation Centre believed that a high-profile person would not be able to move elsewhere in India without being traced, but that this would be possible for low-profile people." Sources from foreign diplomatic missions in India considered that there was no reason to believe that someone who has or has had problems in Punjab would not be able to reside elsewhere in India. Reference was made to the fact that the authorities in Delhi are not informed about those wanted in Punjab. **[37] (p53)**

20.60 The US Citizenship and Immigration Services, in a response to a query (updated on 22 September 2003), noted:

"Observers generally agree that Punjab police will try to catch a wanted suspect no matter where he has relocated in India. Several say, however, that the list of wanted militants has been winnowed [whittled] down to 'high-profile' individuals. By contrast, other Punjab experts have said in recent years that any Sikh who has been implicated in political militancy would be at risk anywhere in India. Beyond this dispute over who is actually at risk, there is little doubt that Punjab police will pursue a wanted suspect. 'Punjab police and other police and intelligence agencies in India do pursue those militants, wherever they are located, who figure in their lists of those who were engaged in separatist political activities and belonged to armed opposition groups in the past,' a prominent Indian human rights lawyer said in an e-mail message to

the Resource Information Center (RIC) (Indian human rights lawyer 4 May 2003)." **[76] (p1)**

20.61 The Immigration and Refugee Board (IRB) of Canada indicated in a response paper dated 18 January 2006 that "A professor of Asian studies, commented that in pursuing a wanted individual, it is unlikely that the central Indian authorities will attempt to locate the person in another state, and this is the case with Sikhs…such pursuits have more to do with the profile of the individual than with the faith the individual subscribes to." A human rights activist consulted said he was not aware of any police sweeps or searches of Sikhs in India on the basis of their religion. **[97c]**

20.62 The same source indicated that Punjabi, which is the Sikh language, closely resembles Hindi and is also spoken by Hindus and Muslims living in Punjab state. Opinion differs as to whether Sikhs would be understood in all other states as they would understand Hindi, Urdu or English; however others argue that Sikhs would only be understood in certain areas and if the individual only spoke Punjabi then they would only be understood in northern and eastern parts of India, so would have to learn the local language. **[97c]**

20.63 Sikhs would have unlimited access to housing in localities outside Punjab state to whatever extent they could afford it, as the main factor limiting access to housing is financial rather than religion, according to two sources consulted by the Canadian IRB in their response dated 18 January 2006. The report continues to state that Muslims experience the greatest discrimination in housing, not Sikhs, and although there may be isolated instances of discrimination against Sikhs in terms of housing, it is by no means a common occurrence. Citizens may buy agricultural land only in their state of residence except for Punjab state, where agricultural land may be purchased by Indian citizens living in any Indian state. It was thought by one source that the application of this law was mainly used against Sikhs and other religious minorities. (Immigration and Refugee Board of Canada, 18 January 2006) **[97c]**

20.64 Upon relocation Sikhs would have indiscriminate access to employment dependent on their skill level. There may be isolated instances where an individual feels discriminated against because of a tendency by some firms to employ locally born and educated people. Sikhs would also have indiscriminate access to health care in states outside of Punjab although access depends largely on their financial situation and their proximity to an urban location. It was also agreed by two sources that Sikhs would have access to education outside of Punjab and again poverty is the main obstacle to education and proximity to an urban area affects the availability of education. (Immigration and Refugee Board of Canada, 18 January 2006) **[97c]**

See also Section 29: Freedom of Movement

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BUDDHISTS AND JAINS

20.65 Buddhism was born in India in the 6th century BC and over the next 1500 years became the South Asia's dominant belief system. However, Buddhism then declined over several centuries and was virtually extinct in India by the

end of the 19th century. In recent years, the religion has seen a revival under the influence of such visionaries as Dr Bimrao Ramji Ambedkar, who was born into an 'untouchable' family and became a jurist, political leader and an architect of the Indian Constitution, as well as Anagarika Dharmapala and the Dalai Lama. According to Indianetzone, in an article on Buddhists in India (undated), Dr B.R. Ambedkar began advocating Buddhism in 1956 as a means to escape the Hindu caste system; he is credited with converting over 500,000 'untouchables' to Buddhism. By 1991 there were 6.4 million Buddhists in India, concentrated mainly in Maharastra and in the hill areas of northeast India and the high Himalayan valleys. (Indianetzone, accessed December 2009) **[120a] [121]**

20.66 An analysis of data from the National Sample Survey Organization surveys (55th and 61st Round) showed that 89 per cent of people belonging to Scheduled Castes identified as Buddhist. (2006 Sachar Commission report) **[102a] (p7)**

20.67 According to a web article (undated) from the Geography Department of the University of Wisconsin, there are three to four million followers of Jainism, an ancient religion that follows a path of non-violence for all forms of living beings. Jain communities are concentrated in and around Mumbai in Maharastra and in the states of Gujarat and Rajasthan. **[122]**

For information about Scheduled Castes see Section 21

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21. 'SCHEDULED' CASTES AND TRIBES

BACKGROUND

The Caste System: *Dalits*

21.01 A report published by Human Rights Watch in March 1999 observed:

"India's caste system is perhaps the world's longest surviving social hierarchy. A defining feature of Hinduism, caste encompasses a complex ordering of social groups on the basis of ritual purity. A person is considered a member of the caste into which he or she is born and remains within that caste until death, although the particular ranking of that caste may vary among regions and over time … Traditional scholarship has described this more than 2,000-year-old system within the context of the four principal *varnas*, or large caste categories. In order of precedence these are the Brahmins (priests and teachers), the Ksyatriyas (rulers and soldiers), the Vaisyas (merchants and traders), and the Shudras (laborers and artisans). A fifth category falls outside the varna system and consists of those known as 'untouchables' or Dalits; they are often assigned tasks too ritually polluting to merit inclusion within the traditional varna system.

"Within the four principal castes, there are thousands of sub-castes, also called *jatis,* endogamous groups that are further divided along occupational, sectarian, regional and linguistic lines. Collectively all of these are sometimes referred to as 'caste Hindus' or those falling within the caste system. The Dalits are described as *varna-sankara*: they are 'outside the system' – so inferior to other castes that they are deemed polluting and therefore 'untouchable'. Even as outcasts, they themselves are divided into further sub-castes. Although 'untouchability' was abolished under Article 17 of the Indian constitution, the practice continues to determine the socio-economic and religious standing of those at the bottom of the caste hierarchy." **[26i] ((iii. The context of caste violence)**

21.02 The India country profile published in 2004 by the Library of Congress Federal Research Division stated, "Similar hereditary and occupational social hierarchies exist within Sikh and Muslim communities but are generally far less pervasive and institutionalized. About 16 percent of the total population [of India] is 'untouchable'. (*Scheduled Castes* is the more formal, legal term; *Dalit* is the term preferred by 'untouchables' and roughly translates to downtrodden)." **[77]** The USSD 2009 Report confirmed that, according to the 2001 census, 'Scheduled castes' – including Dalits – made up 16 per cent (168.6 million) of the population. **[2c] (Section 6)**

21.03 A report by the International Dalit Solidarity Network entitled *Cast an Eye on the Dalits of India* (undated) quoted a 2006 study on 'untouchability' in rural India, revealing:

- 37.8% of the villages: Dalits made to sit separately in government schools
- 27.6% of the villages: of Dalits: prevented from entering police stations
- 33% of the villages: public health workers refuse to visit Dalit homes
- 48.4% of the Dalit villages; denied access to water sources

- 35% of villages surveyed: Dalits barred from selling produce in local markets
- 25% of villages: Dalits paid lower wages than non-Dalits, work longer hours…suffer more verbal and physical abuse
- 64% of Dalits: restricted from entering Hindu temples. **[23a]**

21.04 A Human Rights Watch of March 1999 observed that "Dalit women face the triple burden of caste, class, and gender ... "[They] make up the majority of landless laborers and scavengers, as well as a significant percentage of the women forced into prostitution … Human Rights Watch has documented the use of sexual abuse and other forms of violence against Dalit women as tools by landlords and the police…" **[26i]**

21.05 The US State Department's International Religious Freedom Report 2009 recorded that some Dalits who sought to convert from Hinduism to other religions out of a desire to escape discrimination had encountered hostility and backlash from upper castes. **[2b] (Section III)** The report stated, "In 2008 the NCM [National Commission for Minorities] published its study on the status of Dalits in Muslim and Christian communities. The NCM argued that Dalit converts continued to face discrimination, even by their new coreligionists, and that religious affiliation made no difference in the socioeconomic status of Dalits." **[2b] (Section II)**

Tribal peoples (*Adivasi*)

21.06 Tribal peoples constitute 8.2% of the India's total population - 84.3 million people according to the 2001 census. (USSD 2009) **[2c] (Section 6)** According to the India country profile of the Library of Congress Federal Research Division, there are 461 tribal communities in India, "often called Scheduled Tribes for legal purposes, although the term *adivasi* is commonly used." **[77]**

21.07 According to information published in October 2009 by the Asian Centre for the Progress of Peoples (ACPP):

"Adivasis are not a homogenous group, but over 200 tribes speaking over 100 languages, which vary greatly in ethnicity, culture and language; however, there are similarities in their way of life...

"According to IFAD [International Fund for Agricultural Development] Indigenous Peoples suffer higher rates of poverty, landlessness, malnutrition, human rights violation, unemployment and internal displacement than other sects of the society, and they have lower level of literacy and less access to health services … 40.1 percent of the Adivasis are displaced; 55.2 percent of the Adivasis are under the below poverty line; … 53.1 percent of Adivasi households do not have drinking water source; 56 percent of the Adivasi children are undernourished; 53 percent of Adivasis are illiterate; 76 percent of the Adivasis do not have permanent houses." **[118a]**

ACPP has noted that "the vast majority" of Adivasi communities are classified as 'Scheduled Tribes' for purposes of the special provisions in the Constitution – see following section. **[118a]**

21.08 The USSD 2008 Report recorded that about 55 per cent of the total number of displaced persons, who had become so as a result of development projects in the country, were members of tribal groups. **[2e] (Section 1a)**

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CONSTITUTIONAL AND LEGAL MEASURES

21.09 The Indian Constitution guarantees equality of opportunity for all citizens, but also allows that special provision be afforded to certain castes (mainly Dalits) and tribal groups, in such areas as access to education, allotment of jobs, preferential allocation of development funds, political representation and protection against ill-treatment or exploitation. (Government of India, Constitution as of December 2007) **[24c]** The specific 'Scheduled Castes' and 'Scheduled Tribes' to which these provisions would apply were listed, by state, in Constitution Orders No. 19 and 22 of 1950.(Government of India, Constitution, Scheduled Castes and Scheduled Tribes Orders respectively) **[24i] [24j]** These lists could subsequently be amended by presidential order. (Government of India, Constitution as of December 2007) **[24c]**

21.10 A number of laws have been enacted to put into operation the provisions in the Constitution. For example, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 criminalised acts of violence and intimidation against members of scheduled castes and tribes; the Act carries more severe sentences for several offences already criminalised under the Indian Penal Code, such as murder, rape, right of entry to a public place, injury, sexual exploitation, bonded labour, and intimidation, insult or humiliation. (HRW, March 2009) **[26i]**

21.11 UN Special Rapporteur on Freedom of Religion or Belief noted in a report of 26 January 2009:

> "The Constitution (Eighty-Ninth) Amendment Act 2003 established a National Commission for the Scheduled Tribes and a National Commission for Scheduled Castes. The latter's duties include investigating and monitoring all matters relating to the safeguards provided for the Scheduled Castes under the Constitution or under any other law or order of the government. For example, article 17 of the Constitution states that 'untouchability' is abolished and that its practice in any form is forbidden and punishable in accordance with the law. Furthermore, the Protection of Civil Rights Act 1955 specifically provides for the punishment of anyone who, on the ground of 'untouchability', prevents any person from entering a place of public worship which is open to other persons professing the same religion or any section thereof … A new Ministry of Minority Affairs was created on 29 January 2006 to ensure a more focused approach towards issues relating to the minorities and to facilitate the formulation of overall policy and planning, coordination, evaluation and review of the regulatory framework and development programmes for the benefit of the minority communities, including religious ones. The Ministry of Minority Affairs is responsible for the administration and implementation of the National Commission for Minorities Act 1992…" **[6d]**

21.12 In the legislative assembly of each state or union territory (with certain exceptions), scheduled castes and tribes (sc/st) must be represented in proportion to their population within that state. The Constitution, under Articles

243D and 243T, also guarantees scheduled castes and tribes a minimum number of seats at local government level (in all *panchayats*), and in municipalities, proportional to their population in that area. At least a third of sc/st seats must be held by women. Section XVI of the Constitution makes provision for reserved seats for scheduled castes and tribes in the lower house of Parliament (the Lok Sabha). (Government of India, Constitution as of December 2007) **[24c]** As at March 2009, 131 seats in the Lok Sabha were reserved for scheduled castes and tribes. (BBC News, 30 March 2009) **[32ai]**

21.13 According to the US State Department *Country Report on Human Rights Practices 2009* (USSD 2009), released on 11 March 2010, "The MHA's [Ministry of Home Affairs'] 2008-09 annual report noted 30,031 cases of crime against SC in 2007, compared with 27,070 in 2006. In July the MHA reported to the parliament that 56,245 persons were arrested in 2007 for crimes against SC. On April 30, the MHA reported that 13,449 persons had been convicted of crimes against persons belonging to the SC and ST, according to NCRB [National Criminal Records Bureau] records." **[2c] (Section 6)**

21.14 The USSD 2009 report observed, however, that in spite of the various constitutional and legal provisions that existed to abolish 'untouchability' and to protect members of scheduled castes and tribes and improve their situation, discrimination against those people "remained ubiquitous". **[2e] (Section 6)**

21.15 Human Rights Watch stated in a report published in August 2009, "Local activists and groups said police routinely fail to register and investigate complaints of crimes against Dalits when the perpetrators are of a high caste. Instead, they encourage victims to settle disputes privately or threaten them with false arrest." **[26g] (p49)**

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22. LESBIAN, GAY, BISEXUAL AND TRANSGENDER (LGBT) PERSONS

LEGAL RIGHTS

22.01 On 2 July 2009, in the case of Naz Foundation (India) Trust v Government of NCT Delhi, the Delhi High Court ruled as follows: "We declare section 377 of IPC [Indian Penal Code], in so far as it criminalises consensual sexual acts of adults in private, is violative of Articles 14, 21 and 15 of the Constitution." The Court ruled that Section 377 should continue to be applied in cases of non-consensual sex and sex involving minors. (*The Hindu*, 2 July 2009) **[60h]**

22.02 Human Rights Watch commented in a statement of 2 July 2009:

"The ruling today by the Delhi High Court that Section 377 of the Indian Penal Code (IPC) can no longer be used to treat consensual homosexual conduct between adults as a criminal offense is a victory for basic rights to privacy, non-discrimination, and liberty … The ruling of the two-judge bench of the Delhi High Court…means that Section 377, which criminalizes 'carnal intercourse against the order of nature,' will no longer apply to consensual sexual activity among adults. This is the first time that a senior court in India has issued a decision on this law … The case has been before the Delhi High Court since 2001. Hearings began in May 2008, and the bench has been deliberating its judgment since November 2008. The petitioners, Naz Foundation (India) Trust…argued that Section 377 violated not only tenets of the Indian constitution, but also international human rights standards … India's Ministry of Home Affairs [had] opposed changes to the law on the grounds that decriminalizing homosexual conduct would 'open the floodgates of delinquent behavior'." **[26f]**

Human Rights Watch pointed out, "While the ruling applies to…Delhi, it is likely to influence the legal establishment across the nation." **[26f]**

22.03 The US State Department *Country Report on Human Rights Practices 2009* (USSD 2009), released on 11 March 2010, noted that "Within one week, three groups petitioned the Supreme Court, challenging the ruling [of the Delhi High Court of 2 July 2009]. On July 9 [2009], several Islamic, Christian, and Jain leaders issued a joint statement protesting the ruling." **[2c] (Section 6)** The International Gay and Lesbian Human Rights Commission (IGLHRC) reported on 18 September 2009:

"The government of India decided on September 17, 2009 that it will not oppose the Delhi High Court verdict on Section 377 of the Penal Code, which decriminalizes homosexuality by 'reading down' the section pertaining to same-sex relations between consenting adults in private … After reviewing the findings of the panel, the government has opted not to join the appeal and to let the Supreme Court determine the 'correctness' of the High Court's ruling. The Cabinet's deference to the judiciary effectively leaves the fate of Section 377 in the hands of the Supreme Court … The Supreme Court has received several private challenges to the Delhi High Court's verdict in this case, some of which are led by religious organizations…" **[80c]**

The Government had decided not to seek an interim stay on the Delhi High Court's ruling while the matter was before the Supreme Court. (Express News Service, 21 July 2009) **[143a]**

22.04 IndianExpress.com reported on 21 March 2010 that the challenge mounted by individuals and NGOs to the Delhi High Court judgment decriminalising gay sex was still pending in the Supreme Court. According to the same report:

"…the Ministry of Home Affairs (MHA) has quietly set in motion a move to take same-gender sex out of criminal jurisprudence. A communication from the MHA to the Ministry of Law and Justice, sent earlier this week, asks the latter to prepare a draft of an amendment Bill to the Indian Penal Code (IPC), the most striking feature of which is that Section 377 would no longer deal with the offence involving voluntary 'carnal intercourse against the order of nature' between consenting adults of the same gender." **[96b]**

[COI Service note: As of 28 June 2010, the legal challenge to the Delhi High Court's ruling of 2 July 2009 was still before the Supreme Court.]

22.05 IGLHRC had observed in an article of 25 September 2008, *prior* to the Delhi High Court's ruling of 2 July 2009:

"Section 377 of the Indian Penal Code (IPC) penalizes 'voluntary carnal intercourse against the order of nature with any man, woman or animal'. Punishment includes 10 years to life in prison and/or a fine. Part of British colonial law enacted in the 1860s, Section 377 was intended to criminalize 'all unnatural acts, ranging from consensual same-sex sexual activity between adults, or even oral sex between a married heterosexual couple, are offenses, though the pervasive homophobia in [Indian] society ensures that only the first is ever prosecuted." **[80a]**

The Immigration and Refugee Board of Canada, in an Information Response dated 13 May 2004, recorded that, "According to the government of India, Section 377 is rarely applied except when child abuse or rape is alleged...the Indian higher courts have heard only 30 cases relating to Section 377 between 1860 and 1992..." **[4h]** *Diva* magazine commented, "Typically, India's law banning 'carnal intercourse against the order of nature' [was] used against gay men but never women, because officially lesbians don't exist." **[114a]** An article in the Economist of 3 July 2008 referred to gay pride parades in the cities of Delhi, Bangalore and Kolkata on 29 June 2008 and noted that:

"Many of those who paraded under heavy monsoon clouds in Delhi said one of their main motives was to campaign for the repeal of the law, Section 377 of India's penal code, which deems homosexuality an 'unnatural sexual offence' alongside bestiality. They say the section, drawn up 150 years ago by the British, is routinely used by the police to harass and blackmail homosexuals, even if few are arrested." **[20]**

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SOCIETAL AND GOVERNMENT ATTITUDES

22.06 The USSD 2009 Report stated:

"Gays and lesbians faced discrimination in all areas of society, including family, work, and education. Activists reported that employers often fired gays and lesbians who did not hide their orientations. Gays and lesbians also faced physical attacks, rape, and blackmail. Police committed crimes against gays, lesbians, bisexuals, and transgender persons and used the threat of arrest to coerce victims not to report the incidents." **[2c] (Section 6)**

22.07 Writing in the March 2008 issue of *Himal Southasian*, Oishik Sircar observed that there were two specific strategies at work in India's LGBT communities: On the one hand was an attempt to create and increase the social and cultural visibility of LGBT people; on the other was a legal challenge to the archaic Section 377 of the Penal code. He said that "The need for creating visibility for [LGBT] people arises from an 'invisibility' that has been imposed on these communities by the larger society, which contributes to their exclusion from a whole range of human-rights guarantees." **[116a]**

22.08 Advice dated July 2003 from the Australian Department of Foreign Affairs and Trade, as quoted in a Refugee Review Tribunal (Australia) case of September 2007, was as follows:

"It is true that homosexuality is more tolerated in large cities than it is in other areas of India. In those cities (particularly Mumbai and Delhi, but also in other cities such as Bangalore and Kolkata) it is possible for gay men and lesbian women to live in a publicly acknowledged homosexual relationship. The likelihood of a person being open about their homosexuality is much greater among the more affluent and educated sections of society (these sections of society are often more accepting or tolerant of lifestyles and behaviour that do not conform to traditional or conservative Indian custom). Some of the NGO representatives with whom we spoke told us that while it might be possible to live in a publicly acknowledged homosexual relationship, it certainly is not easy. For these reasons the majority of gay people prefer to keep their sexuality a private matter...

"There is an emerging gay movement in India, restricted largely to urban areas. Mumbai and Delhi appear to be the cities with a more active and open gay culture. While there are no 'gay' nightclubs, there are some clubs (one in Delhi and perhaps two in Mumbai) which have gay and lesbian nights one night per week. These clubs are currently operating without police harassment. Large parties advertised on websites such as gay Delhi are held each month in Delhi and Mumbai at private venues. They generally operate free from police harassment, though this is not always the case." **[113a]**

22.09 A founder of the support group, The Sangini Trust, told *Diva* magazine in 2009 that a major problem facing lesbians in India was societal and family pressure to marry. The magazine quoted an editorial from the Indian women's magazine *Gladrags*: "From the time a little girl turns into a young girl, the one goal of her family and her is that she attracts a good husband." Other problems often expressed by callers to Sangini's helpline included fear of loneliness (or growing old alone) and, in the case of Christian women, questions of sin. **[114a]**

22.10 An article published in *The Times of India* on 3 July 2010 noted some significant changes affecting the LGBT community in the 12 months since the Delhi High Court pronouncement:

"The change may be slow in coming, but it is undoubtedly on the way. In the last year, activists say there has been a spurt of gay activity in the open, not just in the overhang … It has also taken away some of the stigma associated with being gay … 'One of the upsides to the verdict is that we can no longer sweep homosexuality under the carpet saying it's a western phenomenon,' says Anjali Gopalan, executive director of Naz Foundation which brought the challenge to the gay sex law. 'Still,the judgment didn't automatically bring with it a change in social attitudes. For those to change, it's important to engage society as a whole' … In cosmopolitan cauldrons like Mumbai, Delhi and Chennai, queer India is being seen and heard." **[13c]**

A report in the *Hindustan Times* of 2 July 2010 reached similar conclusions, quoting a gay activist: "The situation is changing drastically. As you can see that the police and the public are not concerned with what we are doing..." **[144a]**

22.11 Prime Minister Manmohan Singh, in a speech in July 2008 marking the release of the report of the Commission on AIDS in Asia, said:

"The HIV/AIDS epidemic has brought into focus many of our prevalent social prejudices … The fact that many of the vulnerable social groups, be they sex workers or homosexuals or drug users, face great social prejudice has made the task of identifying AIDS victims and treating them very difficult. If we have to win this fight against HIV/AIDS we have, therefore, to create a more tolerant social environment." **[112a]**

Transgender communities

22.12 In the culture of the Indian sub-continent, *hijras* – also known as *aravanis* – are regarded as a "third gender"; most *hijras* see themselves as "neither man nor woman". They cannot accurately be described as ''eunuchs" or "hermaphrodites" or "transsexual women", which are Western terms. Most *hijras* were born male or 'intersex' (with ambiguous genitalia); many will have undergone a ritual emasculation operation, which includes castration. Some other individuals who identify as *hijras* were born female. Although most *hijras* wear women's clothing and have adopted female mannerisms, they generally do not attempt to pass as women. Becoming a *hijra* involves a process of initiation into a hijra 'family', or small group, under a guru "teacher". (The Lesbian and Gay Studies Reader, 1993) **[115a]** (BBC, 30 November 2000) **[32af]** A BBC News article of 30 November 2000 commented that *Hijras* have been part of the South Asian landscape for thousands of years. It continued, "Even though they generally provoke horror or ridicule, they have traditionally had a role to play on the margins of society as entertainers and as bestowers of curses and blessings." **[32af]**

22.13 An article in the *New Statesman* of 13 May 2008 said there were estimated to be 200,000 *hijras* in India, and observed:

"With more than 4,000 years of recorded history Hijras have a supposedly sanctioned place in Indian life, but they've faced severe harassment …

Something, however, is beginning to alter in the traditional Indian mindset as right now there seems to be both subtle and appreciable changes taking place in terms of how this group are being treated and recognised by mainstream society … Yet these developments come after years of crushing social stigmatisation, abuse and general derision from the wider community.

"Hijras have few rights and are not recognised by Indian law. This denies them the right to vote, the right to own property, the right to marry and the right to claim formal identity through any official documents such as a passport or driving licence. Accessing healthcare, employment or education becomes almost impossible. In the face of such odds they are forced to earn money any way they can … As well as the police aggression, gangs of local thugs known as 'goondas' frequently rob and sexually assault hijras on the street. These attacks are rarely prevented or reported by the locals.

"But attitudes are gradually beginning to change. Thanks to a large number of internationally funded support groups that are gaining considerable momentum in many big Indian cities, hijras, as well as other sexuality minority groups, are slowly starting to get a better deal … Even the Indian government seems to be finally recognising that hijras exist. In March 2000 Shabnam Mausi…became the first hijra to be elected into Indian parliament and since then many others have taken her lead by successfully entering the political arena." **[88a]**

22.14 An article in the 21 June 2008 issue of *Economic & Political Weekly* recorded:

"The government of Tamil Nadu has taken the bold step of officially recognising transgender as a separate sex. For the first time in the country, a government order has been issued by an education department of a state government creating a third gender category for admission in educational institutions. Government and aided colleges will have to admit transgenders ('hijras/aravanis/alis') ... This is in tune with the Tamil Nadu governor's address in the legislative assembly in January 2008 expressing concern about the welfare of transgenders and announcing a number of welfare measures like the issue of ration cards, free surgeries in government hospitals and the establishment of a welfare board." **[5a]**

According to an article of 28 June 2009 on GlobalPost, no other states had, by that date, followed Tamil Nadu's lead in implementing such measures. **[119a]**

22.15 BBC News reported on 13 November 2009 that the Election Commission will allow hijras ("eunuchs or transsexuals") to register their gender as 'Other'; thus far, all voters had to declare themselves to be either 'male' or 'female'. The BBC commented that "the election commission's recognition of eunuchs as an independent group is a first step towards an official recognition of the community which has so far remained on the margins of society." **[32aq]**

ORGANISATIONS PROVIDING SUPPORT TO LGBT COMMUNITIES

22.16 The Indian Network for Sexual Minorities (INFOSEM), accessed 7 December 2009, lists organisations in India offering counselling and support to sexual minorities. **[68]**

22.17 Naz Foundation International, based in Lucknow, provides advocacy and support for LGBT communities throughout South Asia. (See 'Legal Rights' above.) The Naz website also has links to several organisations and institutions working on issues of gender, sexualities, HIV and related issues: http://www.nfi.net/useful.htm **[112]**

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23. DISABILITY

23.01 The US State Department *Country Report on Human Rights Practices 2009* (USSD 2009), released on 11 March 2010, stated:

"The constitution does not explicitly mention disability as a prohibited ground for discrimination. The Persons with Disabilities Act (PDA) provides equal rights for persons with disabilities, but a clause that makes implementation of programs dependent on the 'economic capacity' of the government significantly weakens the law. Widespread discrimination occurred against persons with physical and mental disabilities in employment, education, and access to health care. There was limited accessibility for persons with disabilities to public buildings and transport. The law did not require spaces and provisions for wheelchairs. According to a 2007 World Bank report, the country had approximately 40 to 80 million persons with disability. But low literacy, few jobs, and widespread social stigma resulted in the social exclusion of persons with disabilities. Children with disabilities were less likely to be in school, such adults were less likely to be employed, and families with a disabled member were often worse off than average." **[2c] (Section 6)**

23.02 The same source noted that the government and the PDA improved employment prospects for persons with disabilities:

"The PDA requires that 3 percent of public sector jobs be reserved for persons with physical, hearing, or visual disabilities. Although only 0.44 percent of public sector employees were persons with disabilities, the government allocated funds to NGO partners to develop programming that would increase the number of job reservations for such persons. Private sector employment of persons with disabilities remained low despite PDA benefits to private companies where persons with disabilities constituted more than 5 percent of the workforce." **[2c] (Section 6)**

23.03 The report continued:

"The PDA created a Central Coordination Committee, which reported that approximately 100,000 children with special needs attended approximately 2,500 schools that provided integrated and inclusive education or nonformal education. The MHRD [Ministry of Human Resources Development] reported in 2006 that children with mental disabilities had the lowest rate of school attendance of any other tracked group of children at 53 percent, followed by those with speech disabilities at 57 percent, and those with hearing disabilities at 68 percent." **[2c] (Section 6)**

23.04 The National Human Rights Commission (NHRC) has stated on its website (accessed 6 December 2009):

"The NHRC is deeply concerned about the fact that people with disabilities face various forms of discrimination, social exclusion and marginalization. The Commission has therefore taken several initiatives to protect the rights of the disabled. Notably, the NHRC has been redressing individual complaints from NGOs and others; the Commission reviewed relevant legislations and made recommendations for improvements thereon; it has successfully championed the need to enumerate the disabled in Census 2001 … In addition, the

Commission has been taking steps to spread awareness of the rights of the disabled through publications, besides undertaking research studies. The Commission has been advocating the need for a Comprehensive and Integral International Convention on the Protection and Promotion of the Rights of Persons with Disabilities." **[47c]**

23.05 The NHRC website indicated that state and union territory governments retained responsibility for policy and plans of action with respect to persons with disabilities: "[The NHRC] has made recommendations to both Union Ministers and Chief Ministers of all States and Union territories requesting them to evolve a State Disability Policy and Plan of Action, to provide social security, employment opportunities, rehabilitation, and barrier-free infrastructure to benefit the disabled." **[47c]**

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24. WOMEN

Additional information on the situation of women in India can be found in section 25: Children and section 26: Trafficking.

OVERVIEW

24.01 A July 2008 estimate, as stated in the CIA World Factbook updated 24 June 2010, noted that out of a population of nearly 1,148 million, approximately 47.4 per cent were female. **[35]**

24.02 India ratified the UN Convention on the Elimination of All Forms of Discrimination against Women (CEDAW) on 9 July 1993. **[6b] (CEDAW States Parties, undated)** A report published by the International Women's Rights Action Watch (IWRAW) entitled 'India: Second NGO Shadow Report on CEDAW', co-ordinated by the National Alliance of Women (NAWO) and dated November 2006, noted that "The Constitution of India does not define 'discrimination against women' in the elaborate terms of Article 1 of CEDAW. No legislation reflects such a definition either. Further, the right to equality contained in fundamental guarantees does not cover discrimination by private parties. This constitutes a serious lacuna in the Indian legal system." **[30] (p7)**

24.03 The Department of Women and Child Development noted in their National Policy for the Empowerment of Women 2001, accessed 20 December 2009:

"[T]here still exists 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 … The underlying causes of gender inequality are related to social and economic structure, which is 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 are in the rural areas and in the informal, unorganized sector – to education, health and productive resources, among others, is inadequate. Therefore, they remain largely marginalized, poor and socially excluded." **[24f]**

24.04 In their concluding comments of their 37th session, dated 2 February 2007, the UN Commitee on the Elimination of Discrimination against Women (CEDAW) recognised progress made by the Indian Government in its introduction of a National Policy on the Empowerment of Women, 2001, which, among other things, committed to ensure that all marriages were registered by 2010. In addition, the Women Component Plan in the national budget, where 30 per cent of planned development expenditure in all sectors was to be spent on women, was regarded favourably by the committee. Also viewed as positive by the Committee was India's achievement in increasing enrolment in primary education through various programmes and the introduction of the Protection of Women from Domestic Violence Act, 2005. **[6f]**

24.05 However CEDAW stated in the same report, "[W]hile de jure equality for women has been realized in many spheres, there remain many impediments to the realization of de facto equality." The report recorded a number of areas of concern where the State party had not acted on, or implemented, certain recommendations. Such areas of concern included the non-introduction of a

sex discrimination act; the development of a national plan of action to address the issue of gender-based violence in a holistic manner; the enforcement of laws preventing discrimination against Dalit women; taking affirmative action to increase women's participation in the judiciary; wider usage of free legal services for poor and marginalised women in rural and tribal areas; the displacement of tribal women; no laws enacted or regulations made relating to the status of asylum seekers and refugees which had an adverse impact on women asylum seekers and refugees. **[6f]**

24.06 An IWRAW report of November 2006 noted:

"The prevalence of pervasive gender based violence has prevented the practical realization of the right to equality for most women across the country. 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, violence through the medium of the law on the persons on grounds of sexual orientation." **[30] (p8)**

24.07 OneWorld.net, in its country guide for India, updated in September 2007, accessed 1 July 2008, noted:

"Of the many awesome human statistics for India, none is more disconcerting than the gender ratio of only 927 girls for every 1,000 boys under age 6, the most imbalanced in the world and declining further each year. The horrific inference of infanticide has cultural and economic considerations at its root, coupled with failure to enforce legislation. Gender discrimination pervades Indian society, from the extreme practice of honour killings to resistance in parliament to quotas for female representation. The government is however attempting to improve the status of women both in the draft 11th five year plan and by passing legislation such as the Hindu Succession (Amendment) Bill, 2004, giving daughters and sons equal rights to property. The Domestic Violence Act passed in 2005 also represents the culmination of years of campaigning by women's groups." **[70]**

24.08 The Freedom House *Freedom in the World 2010* report noted that "Muslim personal-status laws and traditional Hindu practices discriminate against women in terms of inheritance, adoption, and property rights." **[43d]**

Socio-economic indicators

24.09 According to the Handbook on Statistical Indicators for Women, published in 2007 by the Ministry of Women and Child Development:

- For the period 2001-05, life expectancy at birth was estimated to be 66.1 years for females and 63.8 years for males

- The 1991 and 2001 Censuses gave literacy rates for people aged 7 years and over:

	Total	Female	Male	Difference
1991	52.2%	39.3%	64.1%	24.8%
2001	64.8%	53.7%	75.3%	21.6%

- By 2001, 10.9 per cent of women and 19.6 per cent of men had completed secondary school (matric) education. 2.6 per cent of all women had a degree, diploma or other post-school qualification. (2001 Census)

- In 2005, 20.2 per cent of the waged workforce – excluding in agriculture – were female (NSSO Surveys). Just over 50 per cent of employed women worked in the formal sector. According to the 2001 Census, 51.9 of all males and 25.7 per cent of females were in employment. However, the majority of job seekers (registered with employment exchanges) were male.

- An NSSO survey of 2004-05 showed there was a substantial difference in average daily wages earned by casual workers:
  Urban: Rs 75.51 for men; Rs 44.28 for women
  Rural: Rs 56.53 for men; Rs 36.15 for women

- According to the 2001 Census, there were just under 20 million female-headed households in India, representing 10.4 per cent of all households.

- With regard to nutrition and health, a survey of 2005-06 showed that 56.2 per cent of married women the 15-49 age group were anaemic – 51.5 per cent of women in urban areas and 58.2 per cent in rural areas. 57.9 per cent of pregnant women in this age group were anaemic. 33 per cent of the women surveyed had a below-normal body mass index, compared with 28 per cent of men. Again, the incidence of under-nutrition was much higher in rural areas.

[24k]

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LEGAL RIGHTS

24.10 The Constitution of India states that women are guaranteed:

- Equality before the law. Article 14
- No discrimination by the State on the grounds only of religion, race, caste, sex, place of birth or any of these. Article 15 (1)
- Special provisions to be made by the State in favour of women and children. Article 15 (3)
- Equality of opportunity for all citizens in matters relating to employment of appointment to any office under the State. Article 16
- State policy to be directed to securing for men and women equally the right to an adequate means of livelihood. Article 39(a)
- Equal pay for equal work for both men and women. Article 39 (d)
- Provisions to be made by the State for securing just and humane conditions of work and for maternity relief. Article 42
- To promote harmony and to renounce practices derogatory to the dignity of women. Article 52 (a) **[24c]**

24.11 The Ministry of Women and Child Development, accessed 1 June 2008, lists various Acts relating directly to women. **[73] (Legislation/Acts)**

See 'Dowry' and Domestic Violence below for information on Protection of Women from Domestic Violence Act, 2005

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POLITICAL RIGHTS

Women in politics

24.12 Pratibha Patil became India's first woman President in July 2007. (BBC, 19 August 2009) **[32h]** Sonia Gandhi has been leader of the Congress Party since 1998; she declined the post of Prime Minister, which was open to her in 2004. Sonia Gandhi has been listed by *Forbes* and *Time* magazines as one of the most powerful/influential women in the world. Indira Gandhi became India's first woman Prime Minister in 1966 and served four terms. (Europa World online, accessed 20 November 2009) **[1]** However, as of May 2009, only 59 out of 543 elected members of the Lok Sabha (lower house of parliament) were women.(Parliament of India, accessed 2 December 2009) **[104a]** In 2008, 8.6 per cent of the Rajya Sabha's (upper house's) elected representatives were women. (Centre for Social Research Annual Report 2008) **[54a]**

24.13 The National Alliance of Women's *Second NGO Shadow Report to CEDAW* of November 2006 commented:

"There is concrete data to prove that women cannot enter mainstream politics in significant numbers without affirmative action. This has more to do with discrimination against women than with women's inhibitions.

"Women in politics especially at the state and district levels find corruption, criminalization and communalization of politics impediments to their effective participation." **[129] (Chapter 5)**

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SOCIAL AND ECONOMIC RIGHTS

Women in the workplace

24.14 The US State Department *Country Report on Human Rights Practices 2009* (USSD 2009), released on 11 March 2010, stated, "The law prohibits discrimination in the workplace; in practice employers paid women less than men for the same job, discriminated against women in employment and credit applications, and promoted women less frequently than men." **[2c] (Section 6)**

24.15 As noted in the same report:

"Sexual harassment of women in the workplace included physical and verbal abuse from male supervisors. In 2006 the Supreme Court instructed all state chief secretaries to comply with its mandate that all state departments and institutions with more than 50 employees establish committees to deal with matters of sexual harassment. According to the NCRB [National Criminal Records Bureau], which reports on the entire country, 4,541 cases of sexual

harassment were filed in 2006, the latest year for which figures were released." **[2c] (Section 6)**

24.16 A Social Science Research Network document, *Experiences of Sexual Harassment of Women Health Workers in Four Hospitals in Kolkata*, published in November 2007, stated:

"In 1997, the Supreme Court of India recognised sexual harassment in the workplace as a violation of human rights. However, little is known about the extent or persistence of sexual harassment. To obtain an understanding of women's experiences of sexual harassment in the health sector, an exploratory study was undertaken in 2005-2006 among 135 women health workers, including doctors, nurses, health care attendants, administrative and other non-medical staff working in two government and two private hospitals in Kolkata, West Bengal, India. Four types of experience were reported by the 77 women who had experienced 128 incidents of sexual harassment: Verbal harassment (41), psychological harassment (45), sexual gestures and exposure (15), and unwanted touch (27). None of the women reported rape, attempted rape or forced sex but a number of them knew of other women health workers who had experienced these. The women who had experienced harassment were reluctant to complain, fearing for their jobs or being stigmatised, and most were not aware of formal channels for redress. Experiences of sexual harassment reflected the obstacles posed by power imbalances and gender norms in empowering women to make a formal complaint, on the one hand, and receive redress on the other." **[90]**

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Gender imbalance – female foeticide (selective abortion for gender)

24.17 The 2001 Census showed that a gender imbalance in the country's population was more pronounced than in the 1950s – and had not changed significantly since 1971. (The differences between urban and rural figures may have been influenced by the fact that more men than women had left rural areas to work in the cities.)

Gender Ratio (number of females per 1000 males)1951-2001:

Census (Year)	Rural	Urban	All India
1951	965	860	946
1961	963	845	941
1971	949	858	930
1981	951	879	934
1991	938	894	927
2001	946	900	933

(Ministry of Women and Child Development, 2007) **[24k]**

24.18 A further analysis of data from the 2001 Census, in a report published in 2009 by the United Nations Population Fund (UNFPA), revealed that – specifically in the 0-6 age group – there were only 927 females per 1,000 males (compared to 933 per thousand for all age groups.) This suggested that the incidence of sex-selective abortion (female foeticide) had increased in recent years. The gender imbalance in this age group was most evident in Punjab followed by Haryana, Chandigarh, Delhi, Gujarat, Himachal Pradesh and

Uttaranchal. **[10a] (p4)** The same source noted that the practice of pre-natal sex selection was higher among urban, educated and well off households (perhaps because these have more access to technology that can determine foetal gender). **[10a] (p12)**

24.19 The USSD 2009 report noted that "Sex determination tests are illegal under the 1994 Prenatal Diagnostic Techniques Act (PNDT). Nevertheless, credible sources stated the problem was widespread and calculated that feticide was a $116 million industry. Officials claimed the practice was prominent among educated and urban sections of society." **[2c] (Section 6)** The same source noted:

"According to the Ministry of Health and Family Welfare, 89 cases of violation of the PNDT were reported during the year [2009]. In November [2009] the ministry informed parliament that there were 603 cases pending for violation of the PNDT law.

"Efforts to combat feticide included a program by the Health and Family Welfare Ministry to target and apprehend those who perform or abet female feticide. The central government also launched a 'Save the Girl Child' campaign. The New Delhi municipal government sponsored the Ladli plan, which provided each registered girl child with a gift deposit of 5,000 rupees (approximately $114) at time of admission to class I, VI, IX, X, and XII. The money accumulates interest until the child reaches the age of 18." **[2c] (Section 6)**

24.20 *The Guardian* reported on 25 April 2008:

"The Indian government yesterday signalled that it would be imposing tougher sentences on doctors who illegally abort female foetuses – a tacit admission that the law was not working. Experts estimate India has lost 10 million girls in the past 20 years. Yet in the 14 years since selective abortion was outlawed only two doctors has (sic) been convicted of the crime – and officials admit one of those is back in business. The reason, says the government, is that under the existing act doctors are only suspended, face a fine of 50,000 rupees (£625) and a jail term of three months. Instead the health minister wants doctors conducting illegal sex determination tests to be struck off permanently, face a fine of 700,000 rupees (£8,750) and imprisonment for up to three years." **[40b]**

24.21 *Thaindian News* commented on 14 December 2008:

"A baby girl is still unwanted in many Indian homes. What's more, the sex ratio imbalance is highest among the rich and the educated, says a study by the Harvard School of Public Health in the US. In India, where families have traditionally preferred son[s], the male-female ratio increases with the level of education. The odds of having a boy compared to a girl is 25 per cent higher in houses where the head of the family has completed schooling… The male-female ratio also increases with income, the study found." **[45b]**

Marriage and divorce

24.22 The USSD 2009 Report observed that "In 2006 the central government passed the Prohibition of Child Marriage Act, strengthening the 1929 Child

Marriage Restraint Act and declaring existing child marriages null and void. On September 7 [2009], Orissa became one of the last states to implement the act." According to the Child Marriage Restraint Act, 'child' means a person who, if a male, is under 21 years of age and if female, is under 18 years of age. **[2c] (Section 6)** A survey conducted on behalf of the Health Ministry in 2005-06 found that, in a sample of 20-24 year old women, 44.5 per cent of respondents were married by the age of 18. The incidence of underage marriage was 52.5 per cent in rural areas and 28.1 per cent in urban areas. (Ministry of Women and Child Development, 2007) **[24k]**

24.23 As noted in the USIRF 2008 Report, "The Indian Divorce Act of 2001 limits inheritance, alimony payments, and property ownership of persons from interfaith marriages and prohibits their use of churches to celebrate marriage ceremonies in which one party is a non-Christian. Clergymen who contravene its provisions could face up to ten years' imprisonment. However, the act does not bar interfaith marriages in other places of worship." **[2b] (Section II)**

24.24 As related in the USSD 2009 Report, "In March 2008 the All India Muslim Women Personal Law Board released a new marriage law, applicable to both Shias and Sunnis, that makes registration of marriages compulsory and expands the rights of women. For example, the new law prohibits divorce via text message, e-mail, or telephone, and the wife can file for divorce if her husband forces her to have sex with him." **[2c] (Section 6)**

24.25 The same report further noted:

"Many tribal land systems, notably in Bihar, denied tribal women the right to own land. Shari'a (Islamic law) determines land inheritance for Muslim women. Other laws relating to the ownership of assets and land accorded women little control over land use, retention, or sale. Several exceptions existed, such as in Ladakh, Meghalaya, and Himachal Pradesh, where women traditionally controlled family property and enjoyed full inheritance rights." **[2c] (Section 6)**

Dowry

24.26 The Freedom House report, *Freedom in the World - India (2010)*, noted that "Despite the criminalization of dowry demands and hundreds of convictions each year, the practice continues." **[43d]** On the same issue the USSD 2009 Report recorded:

"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 provides extensive powers to magistrates to issue protection orders to address dowry-related harassment and murder. Deaths associated with the nonpayment of dowries rose in the past several years. The number of dowry deaths in 2007 was 8,093, up from 6,767 in 2005." **[2c] (Section 6)**

24.27 Four to 40.com reported on 12 April 2008 that fourteen people an hour committed suicide in India due to various reasons ranging from failure in relationships, bankruptcy, illness and social disrepute. The 2007 report 'Accidental Deaths and Suicide in India' noted that Maharashtra had the highest number of suicides. The major causes were mass or family suicides, family problems, illness, relationship breakdown, bankruptcy and dowry disputes. **[95a]**

24.28 The USSD 2007 Report observed:

> "Under the law courts must presume that a husband and/or his family are responsible if his wife dies an unnatural during the first seven years of marriage and if harassment is proven. NGOs claimed that accused in-laws often avoided legal consequences by bribing police officials. According to press reports, the rate of acquittal in dowry death cases was high, and due to court backlogs, cases took an average of six to seven years to conclude." **[2f] (Section 5)**

24.29 As recorded in the USSD 2009 Report, "Madhya Pradesh, Kerala, Bihar, and several other states had a chief dowry prevention officer, although it was unclear whether these officers were effective. Madhya Pradesh required government employees to produce sworn affidavits by prospective brides, bridegrooms, and fathers of bridegrooms that no dowry was exchanged." **[2c] (Section 6)**

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VIOLENCE AGAINST WOMEN

24.30 *Thaindian News* reported on 25 December 2008:

> "Every three minutes a woman becomes victim of crime somewhere in India. The highest number become targets of their husbands and in-laws… The number of crimes committed against women has increased continuously during the last five years. In 2007, the highest number of crimes against women were recorded in Andhra Pradesh… Homes were far from being safe havens for women. Last year, 75,930 women became victims of torture and cruelty by their husbands and in-laws, accounting for the highest number of crimes against women." **[45d]**

24.31 The USSD 2009 Report stated that rape and other violent attacks against women had remained a serious problem. **[2c] (Section 6)** The Human Rights Watch (HRW) Annual Report 2009 observed that "India has a mixed record on women's rights: despite recent improvements in legal protections, gender-based discrimination and violence remained deeply entrenched." **[26b]** The HRW Report 2010 referred also to an "unequal share of resources made available to women and girls in areas such as access to education, food, and medical aid." **[26k]**

24.32 The Freedom House report *Freedom in the World – India (2010)* noted*:*

> "Each year, several thousand women are killed or driven to suicide, and countless others are abused or deserted by husbands, in the context of domestic disputes …Rape and other violence against women are serious problems, and lower-caste and tribal women are particularly vulnerable ... So-called honor killings, in which women are murdered by relatives for perceived sexual or moral indiscretions, remain a problem, especially in the northwestern states of Punjab and Haryana." **[43d]**

Domestic violence

24.33 The USSD 2009 Report recorded:

"The law provides for protection from all forms of abuse against women in the home, including physical, sexual, verbal, emotional, or economic abuse. Domestic violence includes actual abuse or threat of abuse. 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. The law banned harassment in the form of dowry demands and empowered magistrates to issue protection orders. The law criminalizes spousal rape. Punishment ranged from jail terms as long as one year, a fine of 19,800 rupees (approximately $450), or both." **[2c] (Section 6)**

24.34 The Indian Penal Code, under Section 498-A, criminalises domestic 'cruelty' (physical or mental) and unlawful harassment, whether committed by the husband himself or by a relative of his. (Section 498-A is 'non-bailable', 'non-compoundable' and 'non-cognizable'.) It carries a maximum sentence of three years imprisonment and a fine. **[74]** Whilst each of the 28 states has its own police force and courts system, clear steps have been taken to assist enforcement, such as 'gender sensitisation' and domestic violence awareness training for police officers and magistrates, and liaison with NGOs. (LCWRI) **[136a]**

24.35 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 protects women not only from abuse by a spouse, but also members of the spouse's family. Its definition of violence against women encompasses physical, sexual, psychological, verbal, and economic abuse. Evidence proving abuse is tested on a balance of probabilities; proof beyond reasonable doubt is not required. In the absence of eye witnesses, circumstantial evidence is considered. **[135]** The victim of domestic violence deals primarily with a Protection Officer, rather than the police. The implementation of the PWDVA has been monitored and evaluated by the Lawyers Collective Women's Rights Initiative (in collaboration with the International Centre for Research on Women), who have published three detailed reports since the Act came into operation. **[136a]**

24.36 The Indian Ministry of Women and Child Development included on its website, accessed on 11 July 2008, details of other legislation and proposed legislation on the protection of women and children: http://wcd.nic.in/ **[24f]**

See Police Protection, below

Rape

24.37 The USSD 2009 Report noted that rape and other violent attacks against women continued to present a serious problem. In 2005 the Code of Criminal Procedure was amended, stipulating mandatory DNA tests in all rape cases. **[2c] (Section 6)** According to the USSD 2009 Report, there were reports of rape by police and the security forces, including custodial rapes. Various insurgent groups also engaged in widespread rape. **[2c] (Introduction and Section 1c)**

24.38 According to data from the National Crime Records Bureau (NCRB) 21,467 cases of rape (committed against adult women) were recorded in 2008, compared with 20,737 in 2007 and 19,348 in 2006. (Lok Sabha PQ5804 of 30 April 2010) **[28c]** Of the 20,737 cases reported in 2007, 94.6 per cent led to charges being brought and 26.4 per cent resulted in a conviction. (NCRB) **[139a]** In Delhi UT, 466 rape cases were registered in 2008; 702 suspects were charged, 573 were arrested and 155 were convicted. (Lok Sabha PQ1878 of 1 December 2009) **[28d]**

24.39 According to a booklet written by Silva Asmita for International Women's Day, March 2004, and quoted in the Home Office *Report of the Fact Finding Mission to India: Women in India* of July 2004:

"Rape and sexual assault are forms of violence that survivors, judges and lawyers hesitate to name, because it carries the horror of social ostracism for the victim survivor. It has needed exceptional courage of conviction for women to be able to even register a case of rape. The women's movement has fought for decades to persuade women to break cultural barriers and treat rape as aggravated assault and report it, without very much success." **[64b]**

24.40 The Criminal Law Amendment Bill, introduced in March 2010, modifies the provisions currently contained in the Penal Code with regard to rape. For example, the term 'sexual assault' replaces 'rape' and the definition of the offence is broadened; the Bill raises the age of consent to 18, meaning that consent of a woman below the age of 18 is immaterial; it imposes higher sentences for certain forms of acquaintance rape, particularly by relatives, those in positions of trust and those in positions of economic, social or political dominance. However, the Bill contains a marital rape exemption. The Bill deals specifically with sexual assaults committed by police officers and provides for a minimum sentence of ten years and a maximum sentence of life imprisonment for such offences. **[24l]**

24.41 The Ministry of Women and Child Development provides support to women victims of sexual violence who have been disowned by their famililies or do not wish to return to their families. (MoWCD Annual Report 2009-10) **[24m] (ch2, p19)**

See also Section 12 on Fast Track Courts and Section 21: Dalits

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Other forms of violence and harassment

24.42 On the subject of 'sati' the USSD 20074 Report observed that "The government banned sati, the practice of burning a widow on the funeral pyre of her husband, and there were few instances of sati in recent years." **[2f] (Section 5)** There have, in recent years, been a small number of incidents of sati in Rajasthan, as well as attempts to glorify the practice. InfoChange recorded in an article of March 2004:

"On September 4, 1987 in Deorala, a nondescript village in Rajasthan, 18-year-old Roop Kanwar burned to death on the pyre of her husband Maal Singh. Dressed in bridal finery, Roop Kanwar walked at the head of the funeral

procession to the centre of the village and ascended the pyre. The family lit the pyre…with hundreds of onlookers watching the proceedings … In fact, relatives even fed a thousand people in honour of 'Sati Mata'." **[39b]**

The same article noted that, following pressure from women's groups, the Rajasthan Sati (Prevention) Ordinance 1987 was promulgated on 1 October 1987, prohibiting the glorification of sati. **[39b]**

24.43 In October 2009, five women branded as 'witches' were paraded naked, beaten and forced to eat human excrement by the residents of a remote village in Jharkhand state. The women were accused of practicing witchcraft and causing 'misery' in the area. News of the incident was aired on television and reportedly caused outrage across India. Police lodged a case against 11 villagers, including six women, and arrested four of them. BBC News stated, "Correspondents say the abuse of women branded as witches is common … Hundreds of people, mostly women, have been killed in India because their neighbours thought they were witches. Experts say superstitious beliefs are behind some of these attacks, but there are occasions when people – especially widows – are targeted for their land and property." (BBC News, 20 October 2009) **[32ae]**

24.44 The National Human Rights Commission has stated on its website that it is deeply concerned about harassment of women passengers in trains. The NHRC has issued guidelines to the Ministry of Railways and the Railway Police, in an effort to deal with the issue. (NHRC, undated) **[47d]**

Police protection

24.45 Human Rights Watch (HRW), in August 2009, published a report on the police in India, based on research in three states: Uttar Pradesh, Himachal Pradesh and Karnataka. According to the report, police "treated claims of violence against women and girls differently from other crimes due to their 'private' nature." The report stated:

"The police's attitude that such crimes are a 'private matter' is most plain with regard to police treatment of criminal offenses involving domestic violence, for which police are empowered to make an arrest without a warrant. The Protection of Women from Domestic Violence Act of 2005 was enacted to augment women's immediate protection from violence through emergency relief, including access to temporary protection orders and domestic violence shelters. But lawyers and activists say that due to poor implementation of the law, women facing imminent and life-threatening violence remain almost solely reliant on police aid.

"Victims often turn to the police only as a last resort and typically when the violence has escalated. Yet, in interviews with Human Right Watch, virtually all police – including those working at women's cells and departments – said that they do not treat domestic violence as a normal criminal offense to be registered and investigated, with the perpetrators arrested or monitored. Instead, they encourage 'compromise' between domestic violence victims and their spouses or spouses' families, even when women allege repeated physical abuse. Police fail women victims of violence when they promote

reconciliation and ignore police obligations to promote safety and enforce the laws." **[26g] (p51-52)**

24.46 The Ministry of Home Affairs answer to an 'unstarred' question (no.3005) in the Lok Sabha for 22 March 2005 stated:

"The Government of India has issued guidelines to the State Governments to give more focused attention to improving the administration of criminal justice system and to take such measures as are necessary for prevention of crime against women. The steps taken by Delhi Police to check crime against women and children include:

- Establishment of a Crime Against Women Cell;
- Setting up of Rape Crises Intervention Centres in all the nine Police Districts;
- Association of Women Police Officers in investigation of rape cases;
- Setting up of Special Courts headed by Women judges to try rape cases;
- Networking with Non-Governmental Organisations;
- Deployment of staff in plain clothes at vulnerable places;
- Starting of dedicated telephone helplines;
- Constitution of 'Women Mobil [sic] Team' to attend to distress calls from women on round-the-clock basis;
- Briefing of the police personnel regularly to be more vigilant to prevent crime against children;
- Deployment of Police personnel at schools specially to keep watch on suspicious persons at the time of opening and closing time of schools;
- Advising school authorities in Delhi not to allow the children to go out of the school premises during school hours and to persuade the parents to educate the children not to mix-up/be friendly with strangers and also not to accept any gift or eatable from any unknown person; and
- Collection of intelligence to identify and keep watch on gangs and persons suspected to be involved in committing crime against children." **[28b]**

Organisations offering assistance to women

24.47 The South Asian Women's Network (SAWNET) lists several organisations which focus on women's issues **[25a]**, as does the Delhi Directory. **[8]**

24.48 As stated in the UN-commissioned report for 2001, "*Women in India, how free, how equal?*"

"Indian women have far greater visibility and voice than they did fifty years ago – they have entered into and created impacts in every sphere of public activity. There are many strong and vibrant movements around issues of importance not only to their own lives, but also to the country as a whole. Movements in India – for the right to control and manage natural resources, the right to information, the right to participation in decisions and development – have set the parameters of global debates on these issues. Millions of women are part of these struggles and movements. Tangible proof of the relevance and effectiveness of Indian women's movements, is the fact that the issue of

women's rights is today a central tenet of political and development discourse in India. Affirmative actions for women's political participation, the implementation of major poverty alleviation programmes through women's groups, the review of laws and regulations to ensure women's equality – all demonstrate this recognition at the political level and at the level of policy. Nevertheless there is no denying the facts documented in this report – evidence of the huge gaps between constitutional guarantees and the daily realities of women's lives." **[6e] (p79)**

24.49 The Amnesty International 2009 report observed:

"Women activists in India have played a crucial role in highlighting the problems faced by women. Delegates saw clear evidence of this in Rajasthan and Uttar Pradesh where alliances of women's organisations come together regularly in protest of incidents of violence and pressure the authorities to take action against the perpetrators. Many victims would be alone without redress for justice, without such pressure… Many of the positive initiatives of the state have been taken as a result of the forceful arguments of the women's movement in India." **[3e]**

24.50 The Centre for Social Research (an NGO for women in India) website listed non-governmental organisations involved in combating violence in Delhi and it stated that the organisation could be contacted for help or counselling. Crime Against Women cells throughout Delhi were listed, as were a number of shelter homes and counsellors. **[54] (Accessed 15 June 2008)**

24.51 SAWNET [South Asia Women's NETwork] listed various organisations available to women who suffer domestic violence. Delhi based Sakshi helped as violence intervention for women and children with their work on sexual harassment, sexual assault, child sexual abuse and domestic violence, and with a focus on equality education for judges, implementation of the 1997 Supreme Court Sexual Harassment Guidelines, outreach and education. The Women's Rights Initiative [based in New Delhi] ran a pro bono legal aid cell for domestic violence cases and was associated with law reforms in connection with domestic violence. **[25b] (p1-2) (Accessed 10 June 2008)**

24.52 The Self-Employed Women's Association (SEWA) recorded on its website, accessed 1 July 2008:

"SEWA is a trade union registered in 1972. Today it is a national union of poor, self-employed women workers, with members from nine states – Gujarat, Madhya Pradesh, Bihar, Kerala, Uttar Pradesh, Rajasthan, Delhi, West Bengal and Uttarakhand. Our members are women who earn a living through their own labour or small businesses. They do not obtain regular salaried employment with welfare benefits like workers in the organized sector. They are the unprotected labour force of our country. Constituting 93% of the labour force, these are workers of the informal economy. Of the female labour force in India, more than 94% are in this informal or unorganized sector…SEWA's main goals are to organize workers for full employment and self reliance. Full employment means employment whereby workers obtain work security and social security (at least health care, child care and shelter)." **[53]**

24.53 India's National Commission for Women (NCW India), accessed 10 July 2007, noted that it "...regularly extends financial support to NGOs and educational institutions to conduct Legal Awareness Programmes to enable women and girls to know their legal rights and to understand the procedure and method of access to the legal systems. So far 55 Legal Awareness Programmes have been conducted." **[49a]**

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WOMEN'S HEALTH

Ante and post natal care; maternal mortality

24.54 On 16 October 2007, *The Times of India* reported on recent figures released in the latest Maternity Mortality report, published 12 October 2007 and compiled by the World Health Organisation (WHO), United Nations Children's Fund (UNICEF), United Nations Population Fund (UNFPA) and the World Bank. The report revealed that, in 2005, India had the highest maternal mortality rate in the world, accounting for the deaths of 117,000 women during pregnancy or after childbirth. The maternal mortality ration (MMR) for India was 450 deaths per 100,000 live births. *The Times of India* stated that "the probability that a girl will die from a complication related to pregnancy and childbirth during her lifetime is 1 in 70, in India." **[13a]**

24.55 In the same article, *The Times of India* noted:

"According to an Indian Health Ministry expert, the recently released NFHS-III [National Family Health Survey] findings could explain why maternal mortality is a cause of such shame for India. 'NFHS-III found that women in India lack quality care during pregnancy and childbirth. Almost one in four women (23%), who gave birth in the last eight years, received no antenatal care, ranging from 1% or less in Kerala and Tamil Nadu to 66% in Bihar. At least 40% of pregnant women did not get any antenatal care in Jharkhand, Arunachal Pradesh and Nagaland,' he said." **[13a]**

24.56 The same source continued:

"The quality of antenatal care also needs improvement in India. 'Only 65% of women receiving antenatal care received iron and folic acid supplements, and only 23% took the supplements for at least 90 days. Only 4% of expectant mothers took a deworming drug during pregnancy. Failure to take an iron supplement and deworming drugs increases the risk of anaemia, a major problem for mothers and children in India,' an expert said. Home births are still common in India - accounting for almost 60% of recent births. NFHS-III found that 37% of deliveries were assisted by a traditional birth attendant, and 16% were delivered by a relative or other untrained person." **[13a]**

24.57 In a report on maternal mortality, dated 7 October 2009, Human Rights Watch stated:

"After more than a decade of programming for reproductive and child health with few results, the Indian government acknowledged the problem and in 2005 took steps under its flagship National Rural Health Mission (NRHM) to improve public health systems and reduce maternal mortality in particular.

Recent data suggest it is having some success: all-India figures show a decline in maternal deaths between 2003 and 2006. This decline, however, is small in relation to the scope of the problem, and camouflages disparities. Some states like Haryana and Punjab actually showed an increase in maternal mortality. And significant disparities based on income, caste, place of residence, and other arbitrary factors persist even within every state, including those that appear to be improving access to care for pregnant women and mothers. Poor maternal health is far too prevalent in many communities, particularly marginalized Dalit, other lower caste, and tribal communities.

"Indian government policies and programs aim to provide poor rural women with free access to comprehensive emergency obstetric care to save them from life-threatening complications during childbirth. Despite this, thousands of women continue to die because of complications including haemorrhage, obstructed labor, or hypertensive disorders … while health authorities are upgrading public … health facilities, they have a long way to go … Currently, a majority of public health facilities that are supposed to provide basic and comprehensive emergency obstetric care have yet to do so…

"Women and girls also face considerable financial barriers to care. Even though government programs guarantee a host of free services including out-patient obstetric services, drugs, and in-patient obstetric services such as comprehensive emergency obstetric care, in practice, the care is seldom free." **[26h] (p6-18]**

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25. CHILDREN

This section should be read in conjunction with Section 24: Women, Section 26: Trafficking and Section 30.05: Child IDPs

OVERVIEW

25.01 India ratified the UN Convention on the Rights of the Child in December 1992, and also ratified the optional protocols on the involvement of children in armed conflict, and the sale of children, child prostitution and child pornography in November and August 2005 respectively. (Office for the High Commissioner of Human Rights, undated, accessed 10 July 2008) **[36]**

25.02 The UNICEF website for India, under children's issues, undated, stated that "In India, children's vulnerabilities and exposure to violations of their protection rights remain [widespread] and multiple in nature. The manifestations of these violations are various, ranging from child labour, child trafficking, to commercial sexual exploitation and many other forms of violence and abuse." **[85a]**

25.03 The Indian Elections website stipulated that "the minimum age for registration of a voter is 18 years." **[14a] (Electoral Systems; Who can vote)** The minimum age for voluntary military service was 16 years old; there was no conscription; women were allowed in non-combat roles only (2008). (CIA World Factbook, 24 June 2009) **[35]** The right to education.org website indicated that the minimum school leaving age was 14. The same website stated that the minimum age for criminal responsibility in the country was 7 years old. **[48]** The charity Avert stated that "India's age of consent for heterosexual sex is 16 except in Manipur, where it is 14. If the partners are married then a lower age of consent applies (13 in Manipur and 15 elsewhere). A law banning 'carnal intercourse against the law of nature' may be used to prosecute people for having anal or oral sex, though prosecutions are rare." **[86]**

25.04 The website of the Indian NGO 'Child Rights and You' (CRY), accessed on 16 July 2010 noted, for example:

- Less than half of India's children between the age 6 and 14 go to school.
- One in every ten children is disabled in India.
- 70 in every 1000 children born in India, do not see their first birthday.
- Only 38% of India's children below the age of 2 years are immunized.
- 74% of India's children below the age of 3 months are anemic.
- Acute respiratory infections are leading causes of child mortality (30%) followed by diarrhoea (20%) in India.
- 30-40% of the India's population spend over 70% of their total expenditure on food.
- Amongst married women in India today, 75% were under age at the time of their marriages.
- More that 50% of India's children are malnourished.

Regarding girl children in particular, CRY noted:

- 1 out of every 6 girls does not live to see her 15th birthday.
- Females are victimised far more than males during childhood.
- 1 out of every 10 women reported some kind of child sexual abuse during childhood, chiefly by known persons.
- The death rate among girls below the age of 4 years is higher than that of boys. Even if she escapes infanticide or foeticide, a girl child is less likely to receive immunisation, nutrition or medical treatment compared to a male child. Every sixth girl child's death is due to gender discrimination.
- 53% of girls in the age group of 5 to 9 years are illiterate. **[150]**

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LEGISLATION AND GOVERNMENT POLICY

25.05 In her foreword to the report, '*Study on Child Abuse: India 2007'*, the secretary of the Ministry of Women and Child Development (MWCD), Deepa Singh, stated:

"Independent India has taken large strides in addressing issues like child education, health and development. However, child protection has remained largely unaddressed. There is now a realization that if issues of child abuse and neglect like female foeticide and infanticide, girl child discrimination, child marriage, trafficking of children and so on are not addressed, it will affect the overall progress of the country.

"Realizing this, the Government of India is focusing on child issues and created a new Ministry of Women and Child Development [MWCD]. MWCD has taken significant steps to address the issue of child protection by setting up a National Commission for the Protection of Child Rights, amending the Juvenile Justice (Care and protection of Children) Act 2000 and the Child Marriage Restraint Act 1929, launching the Integrated Child Protection Scheme (ICPS) and the proposed amendments to the [Immoral Trafficking Prevention Act] ITPA and the draft Offences against Children (Prevention) Bill." **[24f] (Publications/Reports)**

25.06 The MWCD website lists various pieces of legislation to protect children and policies in place to improve child welfare and protection. **[24f] (Child Welfare, Brief on Child Welfare; and Legislation/Acts)** A detailed list of all relevant law, policies, actions plans and schemes in place to assist children is also provided in chapter three of the MWCD report, *Study on Child Abuse: India 2007*. **[24f] (Publications/Reports)** The National Commission for Protection of Child Rights (NCPCR) was set up in 2007 under the Commission for Protection of Child Rights Act (2005). The Commission's website sets out its mandate, powers and priority activities: http://ncpcr.gov.in/ **[151]**

25.07 The USSD 2007 Report recorded, "In August 2006 Parliament passed the Juvenile Justice (Care and Protection of Children) Amendment Bill, which is

the primary law for not only the care and protection of children but also for the adjudication and disposition of matters relating to children in conflict with law." **[2f] (Section 5)** The *Harvard Human Rights Journal* noted in a report of 2008:

"To address the particular needs of children, the Government of India has devised entities separate from the traditional justice system: Juvenile Justice Boards (JJBs). The second three-year term of Juvenile Justice Boards just began in January 2007, and the JJBs have not yet been established in all districts. Each JJB consists of a three-person panel, with one magistrate and two social workers. The goal of this composition is to have a legally recognized body that is also sensitive to the needs of children. To some degree, this has been successful, but there are also limitations…" **[152]**

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CHILD MARRIAGE

25.08 The USSD 2009 Report stated:

"In 2006 the central government passed the Prohibition of Child Marriage Act, strengthening the 1929 Child Marriage Restraint Act and declaring existing child marriages null and void. On September 7 [2009], Orissa became one of the last states to implement the act.

"Although the law sets the legal age of marriage for women as 18 and for men as 21, in practice this law was not enforced. According to a 2005 Health Ministry report, 50 percent of women were married by the age of 15. The report found that 45 percent of women ages 18 to 24 and 32 percent of men ages 18 to 29 had married before the legal age. According to a 2005 report from the Office of the Registrar General of India, an average of 240 girls died every day due to pregnancy-related complications in early-child marriages. The International Center for Research on Women concluded that those married younger than 18 were twice as likely to experience abuse by their husbands compared with women who married later; they were also three times more likely to report marital rape. The center reported that child brides often showed signs of child sexual abuse and posttraumatic stress. Child marriages limited girls' access to education and increased their health risks, as they had higher mortality rates and exposure to HIV/AIDS than girls married at 18 or older." **[2c] (Section 6)**

25.09 The Ministry of Women and Child Development (MWCD), accessed 9 January 2008, announced that the Prohibition of Child Marriage Act 2006 came into force on 1 November 2007. **[24f]** The Human Rights Law Network (HRLN), dated 2007, noted a "flaw in the law" and stated that "Section 3 of the Prohibition of Child Marriage Act, 2006 lays down that a child marriage will be rendered void only if the children or their guardians file legal proceedings. Given the social pressure surrounding such marriages, it is unlikely that any such case will be filed. Child marriages will be void only in cases of 'compulsion' and trafficking thereby implicitly acknowledging customary and traditional marriages as valid." **[82b]**

See also section 24: Women; Marriage and divorce

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VIOLENCE AGAINST CHILDREN

25.10 The MCWD report, *Study on Abuse: India 2007*, in its preface under major findings, noted that children aged between 5 and 12 years old were most vulnerable. The results from interviews indicated that physical, sexual and emotional abuse was widespread and common. Of the children sampled for the report (over 12,000), two out three had been physically abused, a little over 50% had been subject to some form of sexual abuse and about 50% claimed to have suffered emotional abuse. Over 50% of children worked seven days a week. (Definitions of physical, sexual and emotional abuse are provided in chapter one of the report, pages 2 and 3). **[24f] (p. vi and vii)**

25.11 The same report noted that there was a dearth of accurate information on child abuse, and many incidents went unreported. It further stated:

"While on the one hand girls are being killed even before they are born, on the other hand children who are born and survive suffer from a number of violations. The world's highest number of working children is in India. To add to this, India has the world's largest number of sexually abused children, with a child below 16 years raped every 155th minute, a child below 10 every 13th hour and one in every 10 children sexually abused at any point of time.

"The National Crime Records Bureau (NCRB) reported 14,975 cases of various crimes against children in 2005. Most subtle forms of violence against children such as child marriage, economic exploitation, practices like the 'Devadasi' tradition of dedicating young girls to gods and goddesses, genital mutilation in some parts of the country are often rationalized on grounds of culture and tradition. Physical and psychological punishments take place in the name of disciplining children and are culturally accepted. Forced evictions, displacement due to development projects, war and conflict, communal riots, natural disasters - all of these take their own toll on children. Children also stand worst affected by HIV/AIDS. Even those who have remained within the protective, net stand at the risk of falling out of it." **[24f] (p7-8)**

25.12 The website of the NGO 'Child Rights and You' (CRY), accessed on 16 July 2010, stated that there were approximately two million child commercial sex workers between the ages of 5 and 15 years in India, and about 3.3 million others between 15 and 18 years. They formed 40% of the total population of commercial sex workers in India. 500,000 children were forced into this trade every year. **[150]**

See also section 26: Trafficking

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Child labour

25.13 In its report *Freedom in the World - India (2010)*, Freedom House stated, "Estimates of the number of child laborers vary widely, from 12 million to 55 million. Many work in the informal sector in hazardous conditions, and some are bonded laborers." **[43d]** On the same issue the USSD 2009 Report noted, "The law prohibits child labor, but the prohibition was not effectively enforced, and forced child labor remained a serious problem. Estimates of the number of

child laborers varied widely. The government's 2004 national survey estimated the number of working children from ages five to 14 at 16.4 million. NGOs claimed the number of child laborers was closer to 55 million." **[2c] (Section 6d)**

25.14 The same report also noted:

"There is no overall minimum age for child labor, but the law prohibits work by children under 14 in factories, mines, domestic work, roadside eateries, and hazardous industries. In occupations and processes in which child labor is permitted, children may work only for six hours between 8 a.m. and 7 p.m., with one day's rest weekly. Employers who failed to abide by the law were subject to penalties specified in the Child Labor (Prohibition and Abolition) Act. The penalty for employers of children in hazardous industries is 20,000 rupees (approximately US $430) per child employed. The fines go into a welfare fund for formerly employed children. The law requires the government to find employment for an adult member of the child's family or pay 5,000 rupees ($108) to the family. NGOs noted that requiring the government to pay the family of a child laborer or find the adult family member a job could be a disincentive to investigating violations." **[2c] (Section 6d)**

However the Freedom House report *Freedom in the World – India (2010)* noted that legislation banned children younger than 14 from working as domestic servants or at hotels, restaurants or roadside food stalls, although in practice the law was routinely flouted. **[43d]**

25.15 The USSD 2009 Report stated:

"According to 2001 census figures, 65.3 million (29 percent) of 226 million children between the ages of five and 14 did not receive any formal education. Most, if not all, of the 87 million children not in school worked in the informal sector, often in private homes, with the highest rate (15 percent) in Uttar Pradesh. Child labor continued due to social acceptance of the practice, ineffective state and federal government enforcement of existing laws, and poverty. Many officials claimed they were unable to stop the practice because the children were working with their parents' consent." **[2c] (Section 6d)**

25.16 According to the USSD 2009 Report, "Working conditions sometimes amounted to bonded labor. Some NGOs alleged that children were found working in forced or bonded conditions in gemstone cutting, quarrying, assembling garments, weaving carpets, brick kilns, rice production, silk thread production, and textile embroidery. The government and industry leaders, however, challenged many of these claims and noted their joint efforts to address violations of labor law." **[2c] (Section 6d)**

25.17 The USSD 2009 Report stated:

"The country made moderate progress during the year on addressing child labor. The MOLE [Ministry of Labour and Employment], through its 250 National Child Labor Projects (NCLP), rehabilitated more than 400,000 children from child labor in part by enrolling the children in NCLP schools.

"During its July [2009] session, the MOLE informed parliament that states were providing welfare to 507,450 former child laborers. Also in July the MOLE informed parliament that in 2008-09, it had conducted 2,860

inspections to check child labor. It noted 2,277 violations and pursued two prosecutions, but there were no convictions. During 12 months preceding March 31 [2009], the MOLE launched 12,244 prosecutions and obtained 566 convictions." **[2c] (Section 6d)**

EDUCATION

25.18 The USSD 2009 Report stated:

"The constitution provides free education for children from six to 14 years of age, but the government did not enforce this provision. On July 20 [2009], the parliament passed the Right to Free and Compulsory Education for all children ages six to 14 … Abuse of children in both public and private educational institutions was a problem. Although corporal punishment is banned, schoolteachers often used it." **[2c] (Section 6)**

25.19 The Economist Intelligence Unit's India Country Profile 2008 recorded:

"Literacy and school attendance have improved markedly since the early 1990s, as poverty has declined and educational aspirations have surged. Attendance in primary schools has risen notably, but the rates for girls are significantly lower than for boys. Overall attendance in secondary schools rose from 20% in 1960 to 54% in 2006 (with the female rate rising from 13% to 49%). In higher education (science, maths and engineering) the rate was 20% for both males and females in 1998-2003…" **[16b]**

25.20 According to the same source, "In spite of recent progress, India still lags behind in educational standards, both absolutely and compared with other developing countries: it has 17% of the world's population, but some 40% of the world's illiterates. India…possesses a large pool of highly educated and vocationally qualified people, although they make up a small fraction of the population." **[16b] (p12-13)**

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CHILDCARE AND PROTECTION

25.21 The Ministry of Women and Child Development report, *Study on Abuse: India 2007*, undated, observed that there were a number of schemes provided by the Indian government to assist children. These included:

"**A Programme for Juvenile Justice** for children in need of care and protection and children in conflict with law. The Government of India provides financial assistance to the State Governments/UT Administrations for establishment and maintenance of various homes, salary of staff, food, clothing, etc. for children in need of care and protection and juveniles in conflict with law. Financial assistance is based on proposals submitted by States on a 50-50 cost sharing basis.

"**An Integrated Programme for Street Children** without homes and family ties. Under the scheme NGOs are supported to run 24 hours drop-in shelters and provide food, clothing, shelter, non-formal education, recreation, counselling, guidance and referral services for children. The other components

of the scheme include enrolment in schools, vocational training, occupational placement, mobilizing preventive health services and reducing the incidence of drug and substance abuse, HIV/AIDS etc.

"**Shishu Greha Scheme** for care and protection of orphans/abandoned/destitute infants or children up to 6 years and promote in-country adoption for rehabilitating them.

"**Scheme for Working Children in Need of Care and Protection** for children working as domestic workers, at roadside dhabas, mechanic shops, etc. The scheme provides for bridge education and vocational training, medicine, food, recreation and sports equipments.

"**Rajiv Gandhi National Creche Scheme for the Children of Working Mothers** in the age group of 0-6 years. The scheme provides for comprehensive day-care services including facilities like food, shelter, medical, recreation, etc. to children below 6 years of age.

"**Pilot Project to Combat the Trafficking of women and Children for Commercial Sexual Exploitation in Source and Destination Areas** for providing care and protection to trafficked and sexually abused women and children. Components of the scheme include networking with law enforcement agencies, rescue operation, temporary shelter for the victims, repatriation to hometown and legal services.

"**National Child Labour Project (NCLP)** for the rehabilitation of child labour. Under the scheme, Project Societies at the district level are fully funded for opening up of Special Schools/Rehabilitation Centres for the rehabilitation of child labourers. These Special Schools/Rehabilitation Centers provide non-formal education, vocational training, supplementary nutrition and stipend to children withdrawn from employment.

"**INDO-US Child Labour Project (INDUS):** The Ministry of Labour, Government of India and the US Department of Labour have initiated a project aimed at eliminating child labour in 10 hazardous sectors across 21 districts in five States namely, Maharashtra, Madhya Pradesh, Tamil Nadu, Uttar Pradesh and NCT of Delhi." **[24f] (Chapter 3, Instruments and Standards for the Protection of Child Rights, page 30)**

25.22 The USSD 2009 Report noted that "The government sponsored a toll-free 24-hour helpline for children in distress in 72 cities. A network of NGOs staffed the 'Childline 1098 Service' number, accessible by either a child or an adult to request immediate assistance, including medical care, shelter, restoration, rescue, sponsorship, and counseling." **[2c] (Section 6)**

25.23 Save the Children reported on 17 September 2008 from Patna in Bihar that following river floods "Save the Children's assessment teams found several parents whose children were missing, looking for their lost and separated children." To reunite families and prevent child trafficking the Bihar Government launched the Family Tracing and Reunification Programme. **[91a]**

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Orphanages

25.24 The majority of orphanages throughout India are run by charities and religious organisations, making it difficult to determine exact numbers. Orphanage.org, accessed 24 June 2010, gave details of over 150 orphanages throughout India. **[9]**

25.25 As noted in an article dated 16 December 2007 entitled 'Inter-Country Adoptions from India' from Commonwealth Law Bulletin, "At present there exists no law on adoption of children governing non-Hindus and foreigners. Adoption is permitted by statute among Hindus, and by custom among other communities… At present non-Hindus and foreign nationals can only be guardians of children under the Guardians and Ward Acts 1890. They cannot adopt children." **[87]**

25.26 BBC News reported on 23 June 2008 that "The Indian authorities have given approval for the establishment of orphanages for children whose parents have died of Aids. The National Aids Control Organisation is to set up 10 homes across India to care for and educate the orphans. A spokesman for the organisation said it was possible to find families willing to take in Aids orphans if they were healthy. But that was not the case if the orphans were HIV positive." **[32u]**

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HEALTH ISSUES

25.27 It was reported in a BBC News article dated 8 May 2008:

> "More than half of Indian children do not get the health care they need, according to a report by Save the Children. It ranks India alongside Ghana when it comes to providing basic health care to its children under five years of age…The report, called *State of the World's Mothers*, says girls die at much higher rates in India than most countries. Although India has cut its child mortality rate by 34% since 1990, Indian girls are 61% more likely than boys to die between the ages of one and five. Inequity of health care among male and female children is responsible for the situation, the report says. The report says experts predict that over 60% of the nearly 10 million children who die every year could be saved by delivering basic health services through a health facility or community health worker." **[32v]**

25.28 A further BBC News article of 13 May 2008 reported:

> "More than 1.5 million children in India are at risk of becoming malnourished because of rising global food prices, the UN children's charity, UNICEF, says…The region already has the largest number of malnourished children in the world and levels could get even worse. Even before the current crisis almost half of all Indian children showed signs of stunted growth, Unicef says…According to UNICEF's latest *State of the World's Children* report **[see source 85c]**, India has the worst indicators of child malnutrition in South Asia: 48% of under fives in India are stunted…Meanwhile 30% of babies in India are born underweight…UNICEF calculates that 40% of all underweight babies in the world are Indian." **[32w]**

25.29 UNICEF reported on their website under Health, Children's Issues (accessed on 24 June 2008) that more than two million children die every year from preventable infections. It stated, "Children in India continue to lose their life to vaccine- preventable diseases such as measles, which remains the biggest killer. Tetanus in newborns remains a problem in at least five states: Uttar Pradesh, Madhya Pradesh, Rajasthan, West Bengal, and Assam…With only 225 cases of polio reported in 2003, India is well on its way to interrupting transmission and eradicating the disease." **[85b]**

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26. TRAFFICKING

26.01 The USSD *Trafficking in Persons Report* for 2010 (USSD Trafficking Report 2010), released 14 June 2010 and covering the period April 2009 – March 2010, noted that India is a source, destination and transit country for trafficking for the purposes of forced labour and commercial sexual exploitation. The report stated:

"In late 2009, the Indian Ministry of Home Affairs assessed India's human trafficking problem as including commercial sexual exploitation, forced labor, and bonded labor. The forced labor within the country of millions of citizens constitutes India's largest trafficking problem; men, women, and children in debt bondage are forced to work in industries such as brick kilns, rice mills, agriculture, and embroidery factories. Ninety percent of trafficking in India is internal, and those from India's most disadvantaged social economic strata are particularly vulnerable to forced or bonded labor and sex trafficking … Women and girls are trafficked within the country for the purposes of commercial sexual exploitation ... Children are also subjected to forced labor as factory workers, domestic servants, beggars, and agricultural workers." **[2d] (Country narrative, India)**

26.02 The USSD Trafficking Report 2010 further observed:

"The Government of India does not fully comply with the minimum standards for the elimination of trafficking; however, it is making significant efforts to do so, particularly with regard to the law enforcement response to sex trafficking. Despite these efforts, the Indian government has not demonstrated sufficient progress in its law enforcement, protection, or prevention efforts to address labor trafficking, particularly bonded labor; therefore India is placed on Tier 2 Watch List for the seventh consecutive year. There were few criminal convictions of forced labor during the reporting period [April 2009 – March 2010]. Police raids of brick kilns, rice mills, factories, brothels, and other places of human trafficking were usually prompted by NGO activists, as were efforts to provide rehabilitation and protective services to the victims removed from human trafficking. National and state government anti-trafficking infrastructure, and the implementation of the Bonded Labor (System) Abolition Act (BLSA), remained weak. The number of government shelters increased but some continued to be of poor quality. Some public officials' complicity in trafficking remained a major problem. During the reporting period, the Maharashtra and Andhra Pradesh state governments dramatically improved law enforcement efforts against sex trafficking. The central government encouraged the expansion of the number of Anti-Human Trafficking Units (AHTUs) at the state and district levels; these units, if dedicated exclusively to combating all forms of human trafficking, have the potential to substantially increase law enforcement activities. Kerala, Andhra Pradesh, and the Indian embassy in Oman began to address the issue of migrant workers subjected to forced labor in other countries." **[2d] (Country narrative, India)**

26.03 The US State Department *Country Report on Human Rights Practices 2009* (USSD 2009), released on 11 March 2010, noted:

"The country prohibits some forms of trafficking for commercial sexual exploitation through the ITPA [Immoral Trafficking Prevention Act]. Prescribed penalties under the ITPA range from seven years' to life imprisonment. To

arrest traffickers, authorities also used sections 366(A) and 372 of the penal code, which prohibit kidnapping and selling minors into prostitution. Penalties prescribed under these provisions are a maximum of 10 years' imprisonment and a fine. In general enforcement of these laws was weak, and convictions of traffickers remained infrequent." **[2c] (Section 6)**

The USSD Trafficking Report 2010 added:

"Indian authorities also use Sections 366(A) and 372 of the Indian Penal Code, prohibiting kidnapping and selling minors into prostitution, respectively, to arrest traffickers. Penalties prescribed under these provisions are a maximum of ten years' imprisonment and a fine … India also prohibits bonded and forced labor through the BLSA [Bonded Labor (System) Abolition Act], the Child Labor (Prohibition and Regulation) Act of 1986, and the Juvenile Justice Act of 1986. These laws were ineffectively enforced, and their prescribed penalties – a maximum of three years in prison – are not sufficiently stringent." **[2d] (Country narrative, India)**

26.04 The USSD 2008 Report had noted that "Traffickers usually targeted minors and Dalit women. A study prepared by Bhoomika Vihar, an NGO from Bihar, said that out of the 173 identified cases of women who had become victims of the sex trade, 85 percent were minors, and half were Dalits … According to the Indian Center for Indigenous and Tribal Peoples, more than 40,000 tribal women, mainly from Orissa and Bihar, were forced into economic and sexual exploitation." **[2e] (Section 5)**

26.05 The USSD 2009 report observed:

"The MHA [Ministry of Home Affairs] renewed its efforts to combat human trafficking … The MHA also expanded its Anti-Human Trafficking Cell to better coordinate nationwide efforts. The central government continued to improve coordination among the many bureaucratic agencies that play a role in antitrafficking. The central government earmarked 4 trillion rupees (approximately US $440 million) to establish a computerized tracking and network system for serious crimes such as trafficking and to connect all of the country's 14,000 police stations. The central government allocated 840 million rupees ($18 million) to create 297 antitrafficking units across the nation to train and sensitize law enforcement officials. According to NGOs, state-level officials who received such training in the past increasingly recognized women in prostitution as potential trafficking victims and did not arrest them for solicitation. " **[2c] (Section 6)**

The USSD Trafficking Report 2010 added, "The government reduced the demand for commercial sex acts…by convicting clients of prostitution. **[2d] (Country narrative, India)**

26.06 The USSD Trafficking Report 2010 stated:

"The Ministry of Women and Child Development (MWCD) funded 314 'Swadhar' projects – which covers female victims of violence, including sex trafficking – 96 projects under the Ujjuwala scheme – which is meant to protect and rehabilitate female trafficking victims – and 210 women's helplines … India does not have specialized care for adult male trafficking victims … Conditions of government shelter homes…varied from state to state." **[2d] (Country narrative, India)**

26.07 The USSD Trafficking Report 2010 noted also, "Although each government-recognized victim of bonded labor is entitled to 20,000 rupees (about $450) under the BLSA from the state and central government, disbursement of rehabilitation funds was sporadic." According to the same source, in most states NGOs provide the bulk of protection services to bonded labour victims. **[2d] (Country narratives. India: Prosecution)**

Also see sections 24: Women and 25: Children

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27. MEDICAL ISSUES

OVERVIEW OF AVAILABILITY OF MEDICAL TREATMENT AND DRUGS

27.01 The CIA World Factbook, updated on 24 June 2010, indicated that life expectancy at birth is 65.5 years for males and 67.6 years for females. **[35]**

27.02 The FCO in its Country Profile, updated on 18 February 2009, noted that "Local medical facilities are not comparable to those in the UK, especially in more remote areas. However, in the major cities private medical care is available, but is expensive. In the case of psychiatric illness, specialised treatment may not be available outside major cities." **[7e]**

27.03 The US Department of State, Bureau of Consular Affairs, Consular Information Sheet for India, updated 9 July 2009, with regard to medical facilities noted that, "The quality of medical care in India varies considerably. Medical care is available in the major population centers that approaches and occasionally meets Western standards, but adequate medical care is usually very limited or unavailable in rural areas." **[81] (Medical Facilities & Health Information)**

27.04 One World.net commented in their In Depth Country Guides, accessed on 1 July 2008:

> "There is immense unevenness in the provision of healthcare across the country. The government is happy to boast of a target of one million overseas 'medical tourists' by 2010 whilst its own public hospitals are scraping for funds and facilities. Staff vacancies remain unfilled and absenteeism is high, forcing patients to revert to private treatment which they cannot afford. Immunisation programmes are in reverse in some areas and the target date for eradication of polio has been pushed back as far as 2010." **[70]**

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HIV/AIDS – ANTI-RETROVIRAL TREATMENT

27.05 UNAIDS, in its 2008 AIDS Epidemic Update for India, reported that new, more accurate estimates indicated that approximately 2.4 million people were living with HIV in India. **[15b]** Human Rights Watch stated in their World Report 2009, "According to the National AIDS Control Organization, more than 2.5 million people are living with HIV. Four southern states (Andhra Pradesh, Maharashtra, Tamil Nadu, and Karnataka) account for nearly two-thirds of those infected. Although antiretroviral therapy is supposed to be freely available at public health facilities, there are significant regional disparities in implementation of the policy." **[26b]** The National AIDS Control Organisation (NACO) have increased the number of centres in New Delhi offering free anti-retroviral treatment (ART) to 197, as at January 2009. UNAIDS 2008 AIDS Epidemic Update for India noted that 57,000 people received ART at 103 centres by the end of January 2007 in India. **[15b]** NACO has provided a list of Antiretroviral Therapy Centres in India, updated January 2009. **[41a]**

27.06 With regard to people living with HIV/AIDS, the US State Department *Country Report on Human Rights Practices 2008,* released on 25 February 2009, noted:

"According to the National AIDS Control Organization (NACO), the government agency responsible for monitoring HIV/AIDS, there were approximately 2.3 million persons living with HIV/AIDS in the country, and according to the International Labor Organization (ILO), 70 percent of persons suffering from HIV/AIDS faced discrimination. HRW reported that many doctors refused to treat HIV-positive children and that some schools expelled or segregated them because they or their parents were HIV-positive. Many orphanages and other residential institutions rejected HIV-positive children or denied them housing." **[2e] (Section 5)**

27.07 The US State Department *Country Report on Human Rights Practices 2009,* released on 11 March 2010, observed that about one million women in India were living with HIV/AIDS. The report added:

"Infection rates for women were highest in urban communities, and care was least available in rural areas. There were a number of HIV/AIDS treatment and prevention programs under way across the country, but a 2007 report cosponsored by the United Nations Children's Fund (UNICEF), Horizons, and others indicated that fewer than 50 percent of HIV-positive women had heard of treatment, and NGOs expressed concerns that many affected persons had insufficient access to programs. In its 2006-07 report, NACO noted that traditional gender norms left women especially vulnerable to infection, stating that the government and NGOs had created programs to address the 'feminization of the epidemic' and to provide access comparable to that of men." **[2c] (Section 6)**

27.08 There ia a residential school for HIV-positive children in Karunapuram, enabling children with HIV, who had been denied admission elsewhere, to study and to receive medical help and free anti-retro viral (ARV) medicines. (USSD 2007 Report) **[2f] (Section 5)**

CANCER TREATMENT

27.09 An extract from a 2008 newsletter of the International Network for Cancer Treatment Research, written by the Chief of Department of Medical Oncology at the Tata Memorial Centre in Mumbai, recorded:

"India faces 2.5 million cases of cancer at any given time. The most commonly encountered cases are those related to tobacco use in men, i.e. cancer in the head and neck region, lung and oesophagus. In women, the most common cancers are cervical, breast, oral cavity, oesophagus and stomach. Since most of these cancers are related to lifestyle, many are amenable to both primary and secondary prevention. The high cancer toll in developing countries like India is attributed to late detection (70% of all cases). Also, there are very few comprehensive cancer centres with good infrastructure." **[11]**

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KIDNEY DIALYSIS

27.10 There were at least 179 dialysis centres located throughout India. (Global Dialysis, accessed 20 June 2008) **[29]**

MENTAL HEALTH

27.11 As noted in the WHO Project Atlas Country Profile for India, 2005, the national mental health programme was reviewed in 1995 by the Central Council, which led to the launch of the District Mental Health Programme: "it covers 24 districts currently, with plans for expansion to 100 districts in the near future and all districts by 2020." Pilot projects were undertaken looking at the feasibility of extending mental health services to the community and primary care levels. **[61a] (p1-2)**

27.12 The same report continued, "A large, mostly indigenous, pharmaceutical industry ensures that most psychotropic drugs are available often at a fraction of their cost in high-income countries." **[61a] (p1-2)**

27.13 The same report also noted:

"The Mental Health Act of 1987 simplified admission and discharge procedures, provided for separate facilities for children and drug abusers and promoted human rights of the mentally ill. In 2002, it was implemented in 25 out of 30 states and Union territories from which information was available. Other acts relevant to the mental health field are: the Juvenile Justice Act, the Persons with Disabilities Act and the Narcotic Drugs and Psychotropic Substances Act (amended in 2001)." **[61a] (p1-2)**

27.14 As indicated in the same WHO source, the Government spends 2.05 per cent of its total health budget on mental health. Financing for health services is provided both by the states and the centre:

"Government funding for health services are provided both by the states and the centre. Services provided at Government health centres are free. Certain industrial/governmental organizations provide health care schemes for their employees. In the 10th Five Year Plan estimates, mental health constitutes 2.05% of the total plan outlay for health. The country has disability benefits for persons with mental disorders. Details about disability benefits for mental health are not available. Disability benefits have become available recently and in a limited way.

"Mental health care in primary care is available in 22 districts out of about 600 districts. It will be extended to over 100 districts in the next few years." Regular training of primary care professionals in the field of mental health is present. Community care facilities in mental health are present. "Mental health facilities in community care [are] available in some designated districts. In addition, various non-governmental organizations provide different types of services ranging from telephone hotlines to residential rehabilitative services." **[61a] (p1-2)**

27.15 The same report continued:

"There are 200 mental health workers of other types. One third of mental health beds are in one state (Maharashtra) and several states have no mental hospitals. Some mental hospitals have more than 1,000 beds and several still have a large proportion of long-stay patients. During the past two decades, many mental hospitals have been reformed through the intervention of the voluntary organizations (e.g. Action Aid India), media, National Human Rights

Commission and judiciary (courts), and yet a survey in 2002 showed that about a quarter had shortages in terms of drugs/treatment modalities and three quarters in terms of staff. The current emphasis is on general health psychiatry units that support voluntary admissions and encourage family members to stay with the patient. Some beds are allocated to treatment of drug abuse and for child psychiatry. Very few mental health professionals are based in rural areas. Most states allow public sector psychiatrists to have private clinics… Psychologists do not have prescription privileges, and there is no formal system of licensing clinical psychologists." **[61a] (p2-3)**

27.16 The WHO report further stated, "NGOs are involved in advocacy, promotion, prevention, treatment and rehabilitation. NGOs are involved in counselling, suicide prevention, training of lay counsellors and provision of rehabilitation programmes through day care, sheltered workshops, halfway homes, hostels for recovering patients and long-term care facilities. Parents and other family members of mentally ill persons have recently come together to form self-help groups." **[61a] (p4-5)**

27.17 In an article in *The Hindu*, dated 23 February 2008, the Union Minister for Health and Family Welfare in Bangalore was quoted:

"The discipline of mental health and neurological sciences faced the toughest challenge of human resources shortage. The shortage level was around 80 per cent for doctors, psychiatric nurses and psychologists. There were many districts which did not even have a mental health professional. There was an urban-rural divide in terms of quality of mental healthcare in the country. The country had about 3,300 qualified psychiatrists of whom nearly 3,000 had settled in the four metros. The Union Government was planning to train general doctors to handle simple mental health disorders to cope with the shortage of mental health specialists." **[60b]**

27.18 A report issued by the National Commission for Women (NCW), on a national seminar entitled 'Mentally ill women – is destitution the only answer?', held on 8 and 9 March 2007 (report itself is undated), stated:

"Homelessness is a crucial issue for women who are suffering from mental illness. It is estimated that of the 10 million affected population about 50,000 to 1 lakh [one lakh is equal to a hundred thousand] are homeless. The city of Delhi has about 3000 mentally ill women who are on the streets and have nowhere to go. Mental health hospitals are in a deplorable condition where only a meager amount is spent for the care and rehabilitation of the inmates. There is an acute shortage of psychiatrists in the country." **[49b] (p4)**

27.19 The WHO Project Atlas 2005 stated that the following therapeutic drugs are generally available at the primary health care level of the country, though not routinely distributed by the government at the primary health care level except for some designated districts where a special programme is operational:

- Carbamazepine
- Phenobarbital
- Phenytoinsodium
- Sodium Valproate
- Amitriptyline

- Chlorpromazine
- Diazepam
- Fluphenazine
- Haloperidol
- Lithium
- Carbidopa
- Levodopa

[61a] (p4-5)

SWINE FLU

27.21 By mid-October 2009, swine flu had claimed more than 400 lives and infected more than 13,000 people in India. By November 2009, the government had acquired a stock of about 1 million capsules of Tamiflu, used to treat the virus. (EIU Country Report November 2009) **[16a]**

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28. HUMANITARIAN ISSUES

28.01 The website of the World Food Programme (WFP), accessed 12 December 2009, advised:

"Nearly 50 percent of the world's hungry live in India, a low-income, food-deficit country. Around 35 percent of India's population - 350 million - are considered food-insecure, consuming less than 80 percent of minimum energy requirements. Nutritional and health indicators are extremely low. Nearly nine out of 10 pregnant women aged between 15 and 49 years suffer from malnutrition and anaemia. **[66a] (Overview)**

28.02 The same source stated:

"Strong economic growth continues in India, resulting in a substantial reduction in poverty; but food and nutrition insecurity remain high. India is home to 40 percent of the world's undernourished children and prevalence of vitamin and mineral deficiencies is among the highest in the world – yet India has some of the world's largest food-based welfare schemes. **[66b] (Country Programme)**

"WFP's assistance in India has shifted from food delivery towards capacity-development to support India's own schemes to reach its nutritional objectives and the Millennium Development Goal of halving the number of underweight children by 2015." **[66b] (Country Programme)**

28.03 The EIU Country Profile 2008 observed, "Less than one-third of cropland is irrigated, making agricultural output heavily dependent on the annual monsoon … This brings 80% of India's [annual rainfall], usually within a three-month period from June to mid-September. A second, north-east monsoon brings lighter rains to the south of the country from mid-October to December." **[16b] (p20-21)** In 2009 India experienced its weakest monsoon rains in almost four decades; as a result, the prices of essential food items had risen sharply by November 2009. (EIU Country Report, November 2009) **[16a] (p16)**

28.04 A paper, *Climate Change: Perspectives from India*, published in November 2009 by the United Nations Development Programme (UNDP) in India stated:

"Sustaining supply of food itself is emerging as a critical issue. Growth in foodgrain production is slow…During 1996-2008 it increased by just 1.2 percent per annum: from 199 to 230 million tons (mT), as against an annual rate of growth of 3.5 percent achieved during the 1980s … On top of it, the poor lack purchasing power. This [has] led to artificial surpluses in foodgrain stock … Public investment in agriculture has fallen dramatically since [the] 1980s … The bulk of Indian agriculture not only remains rainfed but also depends on groundwater, not surface water. This is worrisome in the current context of increasingly variable rainfall." **[82a]**

28.05 BBC News reported in an article dated 22 April 2008:

"In February [2008], the [Indian] government agreed a $15bn (£7.6bn) scheme to write off the debts of millions of small farmers…Farm activists say debts have been driving many farmers to suicide. At least 10,000 debt-ridden farmers have committed suicide in India each year over the last decade – and

activists say hundreds more have done so in recent months, despite the aid package…Drought, a fall in crop prices and an increase in the cost of cultivation are cited as reasons for the farmers' plight." **[32x]**

28.06 According to a newsletter published in December 2009 by the UK Department for International Development (DfID), South Asia is particularly vulnerable to the effects of global climate change. DfID observed, "For 500 million people living in Bangladesh, Nepal and India, climate change is a daily concern. Frequent floods and rising sea levels are devastating the region. The glaciers of the greater Himalaya region (in China and South Asia) are melting faster than those of the north and south poles … 30 million people are already affected in India." **[38a]**

28.07 In early-October 2009, severe flooding in southern India – primarily in the states of Andhra Pradesh and Karnataka – left at least 250 people dead and millions homeless. This occurred just a week after the government announced that the country had experienced its worst drought in 40 years. (BBC News, 5 October 2009) **[32ay]** India received relatively weak monsoon rains in 2009 (see paragraph 28.02 above), but the monsoon of 2008 displaced more than two million people and caused "dozens" of deaths. (BBC News, 8 August 2008) **[32aa]**

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29. FREEDOM OF MOVEMENT

29.01 The US State Department *Country Report on Human Rights Practices 2009* (USSD 2009), released on 11 March 2010, noted that "The law provides for freedom of movement, and the government generally respected this in practice, although special permits are required for the northeastern states and parts of Jammu and Kashmir." **[2c] (Section 2d)**

29.02 The same source stated:

"The government legally may deny a passport to any applicant who it believes may engage in activities outside the country 'prejudicial to the sovereignty and integrity of the nation.' The government prohibited foreign travel by some government critics, especially those advocating a Sikh homeland and members of the separatist movement in Jammu and Kashmir.

"Unlike in previous years, there were no reports of the government using the issuance of passports or travel documents to restrict travel of separatist leaders in Jammu and Kashmir. Citizens from Jammu and Kashmir continued to face extended delays, often as long as two years, before the Ministry of External Affairs would issue or renew their passports. Government officials demanded bribes for applicants from Jammu and Kashmir who required special clearances. The government subjected applicants born in Jammu and Kashmir – even the children of serving military officers born during their parents' deployment in the state – to additional scrutiny, requests for bribes, and police clearances before issuing them passports." **[2c] (Section 2d)**

UNIQUE IDENTIFICATION PROJECT

29.03 The Unique Identification Authority of India (UIDAI) has been established under the government's Planning Commission to "develop and implement the necessary institutional, technical and legal infrastructure required to issue unique identity numbers to all Indian residents … that can be verified and authenticated in an online, cost-effective manner [and] is robust enough to eliminate duplicate and fake identities." **[149] (Background)** The new identity system will be linked to each individual's demographic and biometric details; it will enable the bearer to identify themselves and to access benefits and services anywhere in India. **[149] (Concept)** The first new identity numbers will be issued between August 2010 to February 2011 and, over the following five years, it is planned to issue 600 million such numbers. **[149] (Background)**

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30. INTERNALLY DISPLACED PEOPLES (IDPS)

30.01 The Internal Displacement Monitoring Centre (IDMC), in a report of 22 December 2008, noted:

> "In 2007-2008, civilians in various parts of India continued to be displaced by internal armed conflict and separatist, ethnic or communal violence, as well as conflict stemming from the threat of development-induced displacement…The armed movement by Maoist groups known as naxalites was the most widespread insurgency n the country and had displaced over 100,000 people of Chhattisgarh state. Clashes between a tribal group and immigrant settlers in Assam state caused the displacement of over 200,000 people, and communal violence in Orissa state displaced tens of thousands. In Nandigram region of West Bengal state, displacement followed conflict arising from the government's plans to evict the local community and use the land for a development project." **[34b]**

RELIEF CAMPS

30.02 The Internal Displacement Monitoring Centre (IDMC), in a report dated April 2008, noted:

> "Displaced women in India continued to face threats to their security. In the north-east, the water tanks and wells in many camps were out of order, and women were forced to walk many kilometres to collect water from streams and ponds, rendering them vulnerable to harassment from the local population. In some areas, the government provided rations, but no firewood, and women also had to venture out of the IDP camps to collect firewood, exposing themselves to further risks." **[34a] (p71)**

30.03 The IDMC report continued:

> "Living conditions for IDPs in relief camps in India's Chhattisgarh state continued to be unsatisfactory. Having lost access to agricultural activity, IDPs were largely dependent on government rations and occasional manual labour on government projects under a food-for-work programme. A number of the camp shelters had no adequate roofs, with IDPs using leaves as they could not get any tarpaulin. Conditions for IDPs in camps in the north-east remained similarly desperate. In many cases, they had to do without adequate food rations, resulting in widespread malnutrition. Lack of clean drinking water remained a concern, and many camp residents had to travel miles in search of clean drinking water or collect it from dirty ponds. Health facilities remained non-existent in many cases and diseases such as malaria, jaundice, dysentery and influenza posed serious threats as existing government dispensaries often lacked basic medicines." **[34a] (p73)**

See section 24: Women.

CHILD IDPS

30.04 The IDMC 2008 report stated:

"IDP children remained without education in many parts of India in 2007. In Gujarat, many Muslim IDPs who returned to their areas of origin stopped sending children to school for fear of violence there, while thousands of tribal children in India's north-eastern states were forced to abandon their education after being displaced. Children as young as nine years of age were forced to seek work under a food-for-work programme in Chhattisgarh state, and fact-finding missions to the Chhattisgarh relief camps in 2007 noted that a number of children were unaccompanied by their parents, and that some children had been deported to the camps without the consent or the knowledge of their parents." **[34]**

See also section 25: Children

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31. REFUGEES IN INDIA

31.01 India is not a party to the 1951 Refugee Convention relating to the Status of Refugees and has no national refugee legislation. However, India is a member of UNHCR's Executive Committee. Members of the Executive Committee should have a "demonstrated interest in and devotion to the solution of refugee problems". (Human Rights Watch, *Last Hope: The Need for Durable Solutions for Bhutanese Refugees in Nepal and India*, 17 May 2007, Chapter XII Unregistered Bhutanese Refugees in India) **[26d]**

31.02 The US Committee for Refugees and Immigrants (USCRI) *World Refugee Survey 2009* (covering events of 2008) confirmed that India has no refugee legislation, and noted:

> "The Foreigners Act and the 1948 Foreigners Order implementing it govern the country's refugee policy. They allow the Government to make orders 'regulating or restricting the entry of foreigners into India or their departure therefrom or their presence or continued presence therein.' The Government may also order that any non-citizen of India 'shall not enter India or shall enter India only at such times and by such route and at such port or place and subject to the observance of such conditions on arrival as may be prescribed.' India's Citizenship Amendment Act of 2003 defines all non-citizens who entered without visas as illegal migrants, with no exception for refugees or asylum seekers." **[12b]**

31.03 The USCRI 2009 report noted, "In 1996 the Supreme Court ruled that guarantees of life and personal liberty in the 1950 Constitution protect refugees from *refoulement* and, in 2007, the Court affirmed this [in the case of a refugee from Iran]." **[12b]**

31.04 The 2008 USCRI World Refugee Survey observed that India treats asylum seekers differently, depending on their nationality. **[12a]** The USCRI 2009 report **[12b]** summarised:

> "India does grant some Tibetans and Sri Lankans asylum under executive policies, based on strategic, political, and humanitarian grounds, and Bhutanese and Nepalis live in India under friendship treaties. India does not formally recognize UNHCR's grants of refugee status under its mandate but typically does not *refoule* them either and gives residence permits to some Afghans and Myanmarese mandate refugees … The Citizenship Act of 1955 states that Indian-born Tibetans may be eligible for Indian citizenship [subject to their year of birth].
>
> "The Government issues identity documents to Sri Lankan refugees … UNHCR issues certificates to those it recognizes as refugees under its mandate but they are not legal permits recognized by India and do not protect refugees from detention for illegally presence. The Government does not recognize them but often issues residency permits to Afghan and Myanmarese refugees anyway, but to no others. UNHCR issues Under Consideration Certificates to those whose cases it is considering and local authorities generally respect them. In 2008, the Government began penalizing foreigners in India prior to UNHCR recognition, thus denying some residence permits.

"The Indian Home Ministry issues residence permits, which must be renewed yearly, to Tibetans who arrived or were born in India prior to 1979." **[12b]**

31.05 According to the USCRI 2009 report, "…in December [2008], without explanation, the Foreigners Regional Registration Office under the Ministry of Home Affairs began requiring refugees to pay a visa fee and a penalty for prior illegal presence in the country to get their residence permits. Refugees from Myanmar, Iran, and Afghanistan, but not Somalia, must all have such a permit once UNHCR recognizes them as refugees." **[12b]**

31.06 The USCRI 2009 Report recorded:

"India hosted around 456,000 refugees [in 2008], including about 96,000 Sri Lankans, mostly Tamils fleeing fighting between the Liberation Tigers of Tamil Eelam and Sri Lankan armed forces. About 73,300 stay in more than a hundred camps in Tamil Nadu State and 26,300 outside the camps but registered with the nearest police stations. About 2,800 more entered in 2008.

"Some 110,000 Tibetans, about 80 percent of whom lived in camps or scattered settlements, lived more freely in the country. Beginning in 1959, Tibetans followed the Dalai Lama to India, settling in Dharamsala in the north. A second wave occurred in 1979 after China relaxed its emigration policy.

"About 100,000 ethnic Chin from Myanmar lived under the most restricted conditions in the eastern state of Mizoram with a few hundred in New Delhi. They were fleeing persecution, including forced labor and severe economic privation, because of their Christian faith and non-Burman ethnicity." **[12b]**

[UNHCR has pointed out that it is unclear whether all the Myanmar Chin in the north east would be asylum seekers. **[6i]**]

31.07 The USCRI 2009 Report continued:

"An estimated 30,000 Afghans remained although only about 9,000 held UNHCR mandate status. [Note that not all of the Afghan nationals presently in India – without UNHCR mandate status – are refugees, or are in the country illegally (UNHCR) **[6i]**.] Around 25,000 Bhutanese refugees also resided in India as more left Nepal for the Indian States of West Bengal, Sikkim, and Bihar and about 25,000 Nepalis remained in fear of Maoists now in the Government of Nepal.

"India also hosted some 600 Somali refugees, who began fleeing their country after the collapse of the government in 1991 and an unknown number of Iraqi and Iranian refuges and about 200 Palestinians from Iraq also resided in India. The Government deported some, ignored others, and issued others residence permits.

"Some 65,000 ethnic Chakmas from Bangladesh remained mostly in the states of Arunachal Pradesh, Mizoram, and Assam. The Supreme Court established their Indian nationality but the actual naturalization process proceeded slowly." **[12b]**

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32. CITIZENSHIP AND NATIONALITY

32.01 The Government of India, Ministry of Home Affairs website, accessed on 3 July 2008 noted:

"A person born in India on or after 26th January 1950 but before 1st July, 1987 is citizen of India by birth irrespective of the nationality of his parents. A person born in India on or after 1st July,1987 but before 3rd December, 2004 is considered citizen of India by birth if either of his parents is a citizen of India at the time of his birth. A person born in India on or after 3rd December, 2004 is considered citizen of India by birth if both the parents are citizens of India or one of the parents is a citizen of India and the other is not an illegal migrant at the time of his birth.

"A person born outside India on or after 26th January 1950 but before 10th December 1992 is a citizen of India by descent, if his father was a citizen of India by birth at the time of his birth. In case the father was a citizen of India by descent only, that person shall not be a citizen of India, unless his birth is registered at an Indian Consulate within one year from the date of birth or with the permission of the Central Government, after the expiry of the said period.

"A person born outside India on or after 10th December 1992 but before 3rd December, 2004, is considered as a citizen of India if either of his parents was a citizen of India by birth at the time of his birth. In case either of the parents was a citizen of India by descent, that person shall not be a citizen of India, unless his birth is registered at an Indian Consulate within one year from the date of birth or with the permission of the Central Government, after the expiry of the said period." **[24h]**

32.02 The same source indicated that Indian citizenship by naturalisation may be acquired by a foreigner (not illegal migrant) if the person has resided in India for 12 years (continuously for the 12 months preceding the date of application and for 11 years in the aggregate in the 14 years preceding the 12 months). **[24h]**

32.03 As stated on the Ministry of Home Affairs website, accessed on 25 June 2008, with regard to overseas citizenship of India (OCI):

"The Constitution of India does not allow holding Indian citizenship and citizenship of a foreign country simultaneously. Based on the recommendation of the High Level committee on Indian Diaspora, the Government of India decided to grant Overseas Citizenship of India (OCI) commonly known as 'dual citizenship'. Persons of Indian Origin (PIOs) of certain category as has been specified in the Brochure who migrated from India and acquired citizenship of a foreign country other than Pakistan and Bangladesh, are eligible for grant of OCI as long as their home countries allow dual citizenship in some form or the other under their local laws.

"Persons registered as OCI have not been given any voting rights, election to Lok Sabha/Rajya Sabha/Legislative Assembly/Council, holding Constitutional posts such as President, Vice President, Judge of Supreme Court/High Court etc. Registered OCIs shall be entitled to following benefits:

(i) Multiple entry, multi-purpose life long visa to visit India;

(ii) Exemption from reporting to Police authorities for any length of stay in India; and

(iii) Parity with NRIs in financial, economic and educational fields except in the acquisition of agricultural or plantation properties. Any further benefits to OCIs will be notified by the Ministry of Overseas Indian Affairs (MOIA) under section 7 B (1) of the Citizenship Act, 1955.

"A person registered as OCI is eligible to apply for grant of Indian citizenship under section 5 (1) (g) of the Citizenship Act, 1955 if he/she is registered as OCI for five years and has been residing in India for one year out of the five years before making the application." **[24b]**

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33. FORGED AND FRAUDULENTLY OBTAINED OFFICIAL DOCUMENTS

33.01 India PR Wire noted on 12 August 2008 that:

> "The Indian software industry is flooded with 'fake cv's' and the leading software companies have begun taking stringent action on the employees as well as all concerned people. Indian knowledge workers are upwardly mobile and in great demand globally. The recent 'India Fraud Survey Report – 2008' by KPMG [a leading provider of professional services] emphasizes the alarming rise in fraudulent documentation by employees. The delay in processing of visas for Indian knowledge workers by host nations, due to their stringent immigration border control policies, restrict the outward mobility and increase costs to their employers… With the recent spate of documentation fraud, NOSTOPS [National Organisation for Software and Technology Professionals] has launched a new initiative that will serve as an online databank of live 'verified and screened' knowledge workers, which employers use to query and authenticate prospective employees." **[51a]**

33.02 *The Montreal Gazette* reported on 17 January 2009:

> "Canadian officials in the Punjab capital of Chandigarh are being swamped with visa applications supported by everything from false job offers and university transcripts to fake wedding pictures and letters of support from Canadian MPs. 'We are talking about a very, very high incidence (of fraud),' Immigration Minister Jason Kenney said yesterday in a teleconference call with reporters from New Delhi." The Chief Minister of Punjab promised to crack down on this developing industry. **[59a]**

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34. EXIT AND RETURN

34.01 Anyone who tries to enter India without a valid passport, or who enters or attempts to enter India using a forged passport or visa, may face either up to three months imprisonment, a fine, or both. (UNHCR Legal documents – India, Passport (Entry into India) Rules, 1950, accessed 19 June 2007) **[6a]**

34.02 The Advance Passenger Information System (APIS) came into effect in India on 1 October 2005. The rules state that pilots of aircrafts destined for India are required to send passenger information, including name, date of birth, nationality, sex, passport number, country issuing passport, country of permanent residence and visa number, date and place of issue, to immigration authorities in India within 15 minutes of departing for India. This information is then checked by the immigration authorities and shared with other Indian government border control agencies. (Immigration and Refugee Board of Canada, Responses to Information Requests, IND100662.E, 9 January 2006) **[97b]**

34.03 The same source stated:

"According to a UNHCR legal officer, Indian nationals who returned after having their asylum applications rejected abroad did not have problems if they returned with valid travel documents, and, if their departure had taken place with valid travel documents. Those who had not complied with Indian laws on departure and return to India might be prosecuted. Refused Indian asylum-seekers who returned to India with temporary travel documents could enter without any problems as such, but if they arrived after their passport had expired then they would be questioned about the reasons for this. These arrivals were questioned briefly and then were able to leave the airport freely (3 Nov. 2005)." **[97b]**

34.04 The IRB of Canada further noted that "those suspected of having requested refugee status abroad are often treated with suspicion and likely to be 'harassed'." However, the general secretary of an India-based human rights organisation stated that "there appears to be no possibility of any harassment against such persons." **[97b]**

FAILED ASYLUM SEEKERS

34.05 COI Service is not aware of any reports of Indian nationals facing adverse treatment for reason of having claimed asylum abroad, following their return to India.

34.06 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 UK Border 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 to failed asylum seekers. **[133]**

35. EMPLOYMENT RIGHTS

35.01 The US State Department *Country Report on Human Rights Practices 2009* (USSD 2009 Report), released on 11 March 2010, noted:

"State government laws set minimum wages, hours of work, and safety and health standards. The Factories Act mandates an eight-hour workday, a 48-hour workweek, and safe working conditions, which include adequate provisions for restrooms, canteens, medical facilities, and ventilation. The law mandates a minimum rest period of 30 minutes after every four hours of work and premium pay for overtime. These standards generally were enforced in the modern industrial sector; they were generally not observed in the informal economy, which included nearly 93 percent of the work force.

"Minimum wages varied according to the state and to the sector of industry. Such wages were inadequate to provide a decent standard of living for a worker and family. Most workers employed in units subject to the Factories Act received more than the minimum wage, including mandated bonuses and other benefits. State governments set a separate minimum wage for agricultural workers but did not enforce it effectively." **[2c] (Section 7e)**

35.02 The same report noted:

"The law allows workers to form and join unions of their choice…and in practice the government generally respected this right. Although the country's active work force comprised more than 400 million persons, only 30 million were employed in the formal sector … most of the country's estimated 13 to 15 million union members were in the formal sector … The 1926 Trade Union Act prohibits discrimination against union members and organizers, and employers were penalized if they discriminated against employees engaged in union activities … Trade unions have a limited right to strike, and workers exercised this right." **[2c] (Section 7a)**

35.03 It also stated that "The law allows unions to conduct their activities without interference and the government protected this right... When parties cannot agree on equitable wages, the government may establish boards of union, management and government representatives to make a determination." **[2c] (Section 7b)**

35.04 The USSD 2009 Report continued, "The law prohibits discrimination in the workplace; in practice employers paid women less than men for the same job, discriminated against women in employment and credit applications, and promoted women less frequently than men." **[2c] (Section 6)**

35.05 The same report recorded:

"The law prohibits forced or bonded labor, but such practices remained widespread. Offenders may be sentenced up to three years in prison, but successful prosecutions were rare. Enforcement and compensation for victims were the responsibility of state and local governments and varied in effectiveness due to inadequate resources and societal acceptance of bonded or forced labor. When inspectors referred violations for prosecution, long court backlogs and inadequate funding for legal counsel sometimes resulted in

acquittals simply due to inadequate prosecution, which resulted from lack of preparation time and access to evidence.

"Members of Scheduled Castes and Tribes lived and worked under traditional arrangements of servitude in many areas of the country." **[2c] (Section 7c)**

35.06 The Amnesty International Report 2010, released 28 May 2010, referring to events of 2009, noted that "Legislation guaranteeing rural people living in poverty a right to work for at least 100 days per year made headway in some states, but its implementation continued to rely on vigilant local communities. Human rights defenders involved in monitoring implementation faced violence and harassment." **[3g]**

See also Section 25.12 Child labour

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Annex A: Chronology of major events

1947 End of British rule and partition of sub-continent into mainly Hindu India and Muslim-majority state of Pakistan.

1947-48 Hundreds of thousands die in widespread communal bloodshed after partition.

1948 Mahatma Gandhi assassinated by Hindu extremist.

1948 War with Pakistan over disputed territory of Kashmir.

1951-52 Congress Party wins first general elections under leadership of Jawaharlal Nehru.

1962 India loses brief border war with China.

1964 Death of Prime Minister Jawaharlal Nehru.

1965 Second war with Pakistan over Kashmir.

1966 Nehru's daughter Indira Gandhi becomes prime minister.

1971 Third war with Pakistan over creation of Bangladesh, formerly East Pakistan.

1971 Twenty-year treaty of friendship signed with Soviet Union.

1974 India explodes first nuclear device in underground test.

1975 Indira Gandhi declares state of emergency after being found guilty of electoral malpractice.

1975-77 Nearly 1,000 political opponents imprisoned and programme of compulsory birth control introduced.

1977 Indira Gandhi's Congress Party loses general elections.

1980 Indira Gandhi returns to power heading Congress party splinter group, Congress (Indira).

1984 Troops storm Golden Temple - Sikh's most holy shrine - to flush out Sikh militants pressing for self-rule.

1984 Indira Gandhi assassinated by Sikh bodyguards, following which her son, Rajiv, takes over.

1984 **December** Gas leak at Union Carbide pesticides plant in Bhopal. Thousands are killed immediately, many more subsequently die or are left disabled.

1987 India deploys troops for peacekeeping operation in Sri Lanka's ethnic conflict.

1989 Falling public support leads to Congress defeat in general election.

1990 Indian troops withdrawn from Sri Lanka.

1990 Muslim separatist groups begin campaign of violence in Kashmir.

1991 Rajiv Gandhi assassinated by suicide bomber sympathetic to Sri Lanka's Tamil Tigers.

1991 Economic reform programme begun by Prime Minister PV Narasimha Rao.

1992 Hindu extremists demolish mosque in Ayodhya, triggering widespread Hindu-Muslim violence.

1996 Congress suffers worst ever electoral defeat as Hindu nationalist BJP emerges as largest single party.

1998 BJP forms coalition government under Prime Minister Atal Behari Vajpayee.

1998 India carries out nuclear tests, leading to widespread international condemnation.

1999 **February** Vajpayee makes historic bus trip to Pakistan to meet Premier Nawaz Sharif and to sign bilateral Lahore peace declaration.
May Tension in Kashmir leads to brief war with Pakistan-backed forces in the icy heights around Kargil in Indian-held Kashmir.
October Cyclone devastates eastern state of Orissa, leaving at least 10,000 dead.

2000 **May** India marks the birth of its billionth citizen.

2001 **January:** Massive earthquakes hit the western state of Gujarat, leaving at least 30,000 dead.
April: 16 Indian and three Bangladeshi soldiers are killed in border clashes. A high-powered rocket is launched, propelling India into the club of countries able to fire big satellites deep into space.
July: Vajpayee meets Pakistani President Pervez Musharraf in the first summit between the two neighbours in more than two years. The meeting ends without a breakthrough or even a joint statement because of differences over Kashmir.
July: Vajpayee's BJP party declines his offer to resign over a number of political scandals and the apparent failure of his talks with Pakistani President Musharraf.
September: US lifts sanctions which it imposed against India and Pakistan after they staged nuclear tests in 1998. The move is seen as a reward for their support for the US-led anti-terror campaign.
October: India fires on Pakistani military posts in the heaviest firing along the dividing line of control in Kashmir for almost a year.
December: Suicide squad attacks parliament in New Delhi, killing several police. The five gunmen die in the assault.
December: India imposes sanctions against Pakistan, to force it to take action against two Kashmir militant groups blamed for the suicide attack on parliament. Pakistan retaliates with similar sanctions, and bans the groups in January.
December: India, Pakistan mass troops on common border amid mounting fears of a looming war.

2002 **January:** India successfully test-fires a nuclear-capable ballistic missile - the Agni - off its eastern coast.
February: Inter-religious bloodshed breaks out after 59 Hindu pilgrims returning from Ayodhya are killed in a train fire in Godhra, Gujarat. More than 1,000 people, mainly Muslims, die in subsequent riots. (Police and officials blamed the fire on a Muslim mob; a 2005 government investigation said it was an accident.)
May: Pakistan test-fires three medium-range surface-to-surface Ghauri missiles, which are capable of carrying nuclear warheads.
War of words between Indian and Pakistani leaders intensifies. Actual war seems imminent.
June: UK, US urge their citizens to leave India and Pakistan, while maintaining diplomatic offensive to avert war.
July: Retired scientist and architect of India's missile programme APJ Abdul Kalam is elected president.

2003 **August:** At least 50 people are killed in two simultaneous bomb blasts in Bombay.
November: India matches Pakistan's declaration of a Kashmir ceasefire.
December: India, Pakistan agree to resume direct air links and to allow overflights.

2004 **January:** Groundbreaking meeting held between government and moderate Kashmir separatists.
May: Surprise victory for Congress Party in general elections. Manmohan Singh is sworn in as prime minister.
September: India, along with Brazil, Germany and Japan, launches an application for a permanent seat on the UN Security Council.
November: India begins to withdraw some of its troops from Kashmir.
December: Thousands are killed when tidal waves, caused by a powerful undersea earthquake off the Indonesian coast, devastate coastal communities in the south and in the Andaman and Nicobar Islands.

2005 **April:** Bus services, the first in 60 years, operate between Srinagar in Indian-administered Kashmir and Muzaffarabad in Pakistani-administered Kashmir.
July: More than 1,000 people are killed in floods and landslides caused by monsoon rains in Mumbai (Bombay) and Maharashtra region.
October: An earthquake, with its epicentre in Pakistani-administered Kashmir, kills more than 1,000 people in Indian-administered Kashmir.
October: Bombs kill 62 people in Delhi. A little-known Kashmiri group says it is behind the attacks.

2006 **February:** India's largest-ever rural jobs scheme is launched, aimed at lifting around 60 million families out of poverty.
March: US and India sign a nuclear agreement during a visit by US President George W Bush. The US gives India access to civilian nuclear technology while India agrees to greater scrutiny for its nuclear programme.
14 people are killed by bomb blasts in the Hindu pilgrimage city of Varanasi.
May: Suspected Islamic militants kill 35 Hindus in the worst attacks in Indian-administered Kashmir for several months.
July: More than 180 people are killed in bomb attacks on rush-hour trains in Mumbai. Investigators blame Islamic militants based in Pakistan.
September: Explosions outside a mosque in the western town of Malegaon kill at least 31 people.

November: Hu Jintao makes the first visit to India by a Chinese president in a decade.
December: US President George W Bush approves a controversial law allowing India to buy US nuclear reactors and fuel for the first time in 30 years.

2007 **February:** 68 passengers, most of them Pakistanis, are killed by bomb blasts and a blaze on a train travelling from New Delhi to the Pakistani city of Lahore. India and Pakistan sign an agreement aimed at reducing the risk of accidental nuclear war.
March: Maoist rebels in Chhattisgarh state kill more than 50 policemen in a dawn attack.
April: India's first commercial space rocket is launched, carrying an Italian satellite.
May: At least nine people are killed in a bomb explosion at the main mosque in Hyderabad. Several others are killed in subsequent rioting.
July: India says the number of its people with HIV or AIDS is about half of earlier official tallies. Health ministry figures put the total at between 2 million and 3.1 million cases, compared with previous estimates of more than 5 million. Pratibha Patil becomes country's first woman to be elected president.

2008 **July:** Congress-led governing coalition survives vote of confidence brought after left-wing parties withdraw their support over controversial nuclear cooperation deal with US. After the vote, several left-wing and regional parties form new alliance to oppose government, saying it had been tainted by corruption.
A series of explosions kills 49 in Gujarat state. Indian Mujahideen claims responsibility.
November: Nearly 200 people are killed and hundreds injured in a series of coordinated attacks by gunmen on the main tourist and business area of Mumbai. India blames militants from Pakistan for the attacks and demands that Islamabad take strong action against those responsible.
December: India announces 'pause' in peace process with Pakistan.

2009 **April:** Trial of sole surviving suspect in the Mumbai attacks begins.
May: The United Progressive Alliance (UPA), led by the Congress party, wins the General Election; voting had taken place in five phases, from 16 April to 13 May. Manmohan Singh returns as Prime Minister.
June: The government bans the Communist Party of India (Maoist).
July: The Delhi High Court rules that Section 377 of the Indian Penal Code (which criminalises same sex consensual sex) violates the Constitution. **[80c]**
November: The Liberhan Commission's report on the destruction of the Babri Masjid mosque in 2002 is published. **[60f]**
December: The federal government says it will allow a new state, called Telangana, to be carved out of part of the southern state of Andhra Pradesh. Violent protests both for and against the new state break out.

2010 **February:** Bomb explosion in a restaurant popular with tourists in Pune, in the western state of Maharashtra, kills 16 people, sparking security fears.
May: The solve surviving gunman of the 2008 Mumbai attacks, Ajmal Amir Qasab, is convicted of murder, waging war on India and possessing explosives.
June: A court in Bhopal sentences eight Indians to two years each in jail for 'death by negligence' over the 1984 Union Carbide gas plant leak.

Source: BBC News: Timeline India, updated 7 June 2010 **[32a]**, unless otherwise stated.

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Annex B: Political parties

(Sources: **[1] [5h] [7f] [32m] [32l]** unless otherwise stated)

Candidates in the 2009 general election came from a total of 1,055 political parties. (BBC News, 30 March 2009) **[32ai]** The following are the principle parties:

Akali Dal also termed as Shiromani Akali Dal
A Sikh party, formed in 1920 and demanded an independent Sikh state. This demand has been dropped since the Punjab peace accord of 1985. Formed an alliance with the BJP in 1997, but lost the Punjab state elections in 2002. Strong performance in the 2004 elections, winning 10 out of 13 seats in Punjab. It is a major player in the northern state of Punjab where it is currently in opposition. **[32m]**

All India Anna Dravida Munnetra Kazhagam (All India Anna Dravidian Progressive Association: AIADMK)
A Tamil Nadu party, with its headquarters in Chennai (Madras). Founded in 1972 as a breakaway group from the DMK. It went into the 1998 national elections in alliance with the BJP and joined the BJP-led Government afterwards. However its withdrawal of support in April 1999 led to the collapse of the Government and another national election. **[32m]** Leader: Jayaram Jayalalitha has been the Chief Minister since 2001. **[7c]** Its alliance with the BJP failed to win a single seat in Tamil Nadu in the 2004 national elections. **[32m]**

All India Forward Bloc
Founded in 1940 by Netaji Subhash Chandra Bose and has socialist aims, including nationalisation of major industries, land reform and redistribution. A minor Marxist-Leninist ally of CPI-M in West Bengal. General Secretary: Debabrata Biswas. (900,000 members) **[1]**

All India Trinamool Congress
Merged with the Sangma faction of the Nationalist Congress Party in 2004. Leader: Mamata Banerjee. **[1]**

Asom Gana Parishad (AGP) (Assam People's Council)
Founded 1985. Draws support from the All Assam Gana Sangram Parishad and the All Assam Students' Union. (President: Keshab Mahanta) Advocates the unity of India in diversity and a united Assam. President: Mr Brindaban Goswami. **[1] [7c]** The AGP split in 2005. Its Founder is President Prafulla Kumar Mahanta, who was expelled, formed a separate outfit, AGP-Progressive (P). Mr Brindaban Goswami is the President of the original AGP. **[7c]**

Bahujan Samaj Party (BSP) (Majority Society Party)
Formed in 1980 as the champion of scheduled castes and is strong in Uttar Pradesh, where it briefly formed the Government in alliance with the BJP in 1996. President: Mayawati. The party won 19 seats (5.4% of the vote) in the recent elections. It promotes the rights of the Harijans (Untouchables) **[63] [1]**

Bharatiya Janata Party (Indian People's Party) (BJP)
The leading political party of the 24-party National Democratic Alliance (NDA) coalition. The BJP was formed in 1980 from Janata Party. It is a right of centre Hindu national party. The BJP and its allies (NDA) were routed in a surprise defeat in the 2004 elections. The former PM Atal Behari Vajpayee is viewed as the leading moderate

while former deputy PM and current BJP parliamentary leader L.K. Advani fronted the hardline faction. It has about 10.5 million members. **[5h] [63] [1]**

Biju Janata Dal (BJD)
Made up of almost the entire Janata Dal unit of Orissa which formed the BJD because of neglect by the Janata Dal national leadership. Main Government party in Orissa. An ally of the BJP. Led by Naveen Patnaik (Chief Minister of Orissa).

Communist Party of India (CPI)
Founded 1925 and advocates the establishment of a socialist society led by the working class, and ultimately of a communist society. It has a nine member central secretariat. Support in West Bengal, Bihar and Kerala. General-Secretary: Ardhendu Bhushan Bardhan. CPI is recognised by the Election Commission of India as a "National Party". On the national level it supports the Indian National Congress-led United Progressive Alliance Government, but without taking part in it. The CPI won 43 seats (5.7% of the vote) in the recent elections. **[63] [1]**

Communist Party of India - Marxist (CPI-M)
Founded 1964, as a breakaway group of the Communist Party of India; maintained an independent position; managed by a central committee of 87 members and a politburo of 15 members. In October 2000, the Election Commission demoted CPI-M's status from that of a national party to a State party. CPI(M) took 5.5 per cent of the vote in the last legislative election (May 2004) and it has 43 MPs. It supports the Indian National Congress-led United Progressive Alliance Government but without taking part in it. In West Bengal and Tripura it participates in Left Front. In Kerala the party is part of the Left Democratic Party. In Tamil Nadu it is part of the Progressive Democratic Alliance. General-Secretary: Prakash Karat. The CPI (M) MP Somnath Chatterjee is the speaker of the Lok Sabha (2004). The CPI(M) is the third largest party in the Indian parliament and is a key ally of the country's governing Congress-led coalition. In 2006, it had 975,799 members. **[32d] [1]**

Dravida Munnetra Kazhagam (DMK)
Founded in 1949. Supports greater federalism; resents northern domination. Exclusive to Tamil Nadu and supported primarily by locally dominant scheduled castes. In 1972, a faction of the party broke away to form the AIADMK. Member of the National Democratic Alliance. Led by Muthuvel Karunanidhi (President). The DMK won all the 16 seats it contested in the 2004 elections. **[32n]**

Indian National Congress (INC)
Founded 1969 as separate faction under Indira Gandhi; originally known as Indian National Congress, then as Indian National Congress (I), or the Congress Party. Party of Indian independence, then of Government for 45 of the following 50 years under Nehru, his daughter Indira Gandhi (Congress I) and grandson Rajiv Gandhi. Had support throughout India, but suffered massive losses in the North and partially in the West in 1998 and lost the confidence of traditional voters such as Muslims and scheduled castes. Sonia Gandhi, widow of Rajiv Gandhi, took over as President of Congress (I) in April 1998. In December 2003, Congress began actively seeking alliance partners. The 2004 national elections ended governance by the BJP and brought in a new left-leaning coalition Government, the United Progressive Alliance, led by Prime Minister Manmohan Singh after Sonia Gandhi declined the post. **[63] [1]** The Congress Party secured 206 seats in the 2009 parliamentary election. **[32al]**

Indian Union Muslim League
Concerned with the interests of the Muslims of Kerala.

Jammu and Kashmir National Conference (JKNC)
Headquarters in Srinagar. Formerly All Jammu and Kashmir National Conference. Founded 1931, renamed 1939, reactivated 1975. A State-based party campaigning for internal autonomy and responsible self-government. Accepts accession to the Indian Union. President: Omar Abdullah. (1m members) **[1]**

Janata Dal (United)
Formed on the eve of the 1999 Lok Sabha election due to a split in the Janata Dal over whether to ally with the BJP in the National Democratic Alliance. The JD(U) favoured the alliance. Merged with another regional party, the Samata. Strong support base in Bihar. George Fernandes is the main national leader. Sharad Yadav is the President. The party, along with the BJP, defeated Laloo Prasad Yadav's Rashtriya Janata Dal in Bihar in 2005. It suffered a major setback in the elections in 2004 winning only eight seats. **[32m] [7c]**

Janata Dal (Secular)
A smaller section of the Janata Dal did not agree with an alliance with the BJP and formed the Janata Dal (Secular). Led by former Prime Minister H.D. Deve Gowda.

Jharkhand Mukti Morcha
Aligned with the ruling coalition, the United Progressive Alliance. Led by Shibu Soren **[1]**

Kerala Congress (M)
Concerned with the interests of the Christians of Kerala.

Lok Jan Shakti Party (LJSP)
Founded in 2000 as a breakaway faction of Janata Dal – United; left wing. President: Ram Vilas Paswan **[1]**

Nationalist Congress Party (NCP)
Founded 1999 as breakaway faction of Congress; split into two factions in January 2004 – one headed by Sharad Pawar and another by Purno Shangma; faction led by Shangma merged with the All India Trinamool Congress. The NCP won half of the 18 seats it contested in the 2004 elections. **[32n] [1]** Pawar is a minister in the Congress-led UPA coalition at the Centre. **[7c]**

Pattali Makkal Katchi
Leader: Dr Anbumani Ramdoss **[1]**

Rashtriya Janata Dal (RJD) (National People's Party)
Founded 1997 as a breakaway group from Janata Dal. Supported by the backward Yadav caste and Muslims of Bihar. Led by Lalu Prasad Yadav. Leading an alliance with Congress, the RJD won 19 of the 23 seats it contested in the 2004 elections. The Congress-RJD alliance won 26 of the 40 seats in Bihar. **[32n] [1]** Its leader Lalu Prasad Yadav is the Union Minister for Railways.

Republican Party of India (RPI)
Founded 1952; by 2003 the group had split into 10 factions; the three main factions were led by Prakash Rao Ambedkar, Ramdas Athavale and R. S. Gavai, respectively. **[1]**

Revolutionary Socialist Party
Minor Marxist-Leninist party allied with CPI-M, and supported in West Bengal.

Leaders: Debarata Bandopadhyay; Abani Roy.

Formatted: Spanish Spain-Traditional Sort

Samajwadi Party (Socialist Party)
Emerged from V.P. Singh's Janata Dal as an aggressive champion of specific backward castes and Muslims. Supports reservations for jobs and education. Support confined to Uttar Pradesh. Led by Mulayam Singh Yadav.
Mulayam Singh Yadav is the Chief Minister of Uttar Pradesh. **[7c]**

Samajwadi Janata Party (SJP)
The one-man party of Chandra Shehkar, a former Prime Minister.

Samata Party
A breakaway from V.P. Singh's Janata Dal. Supported by backward castes mainly in Bihar and also in Uttar Pradesh. It was led by George Fernandes. It has completely merged its identity with the Janata Dal United, which is the ruling party in Bihar. **[7c]**

Shiromani Akali Dal (SAD)
A moderate Sikh party controlled by the dominant Jat Sikh farming community of Punjab. Supports greater federalism and is a strong ally of the BJP. Main leader is Prakash Singh Badal. (see under Akali Dal for a more detailed account)

Shiv Sena (Shiva's Army)
A member of the NDA and more hard-line than the BJP, Shiv Sena is based in Mumbai (Bombay), the capital of Maharashtra State. **[5h]** An important ally of the BJP. **[32m]**
Shiv Sena is described as an ultra-nationalistic Hindu party based in Maharasthra state with a powerful presence in Mumbai, headed by one of India's most controversial and militant right-wing leaders, Bal Thackeray:

"Over the years, the party has acquired a reputation of promoting religious and ethnic chauvinism while targeting minorities, especially Muslims. An important ally of the BJP, the western state of Maharashtra remains the Shiv Sena's main support base where it formed its first government in 1995." **[32m]**

Tamil Maanila Congress (TMC)
TMC returned to Congress in 2002. Broke away from Congress (I) in 1996 in protest against Rao's decision to fight elections with the AIADMK. Policies not otherwise distinct from Congress (I). Confined to Tamil Nadu.

Telangana Rashtra Samithi
Founded in 2001. **[1]**

Telugu Desam Party (NAIDU)
Founded in 1982 by Telugu film star N.T. Rama Rao, who died in 1996. Based in Andhra Pradesh, and is supported by locally dominant middle castes. Led by N. Chandrababu Naidu, Chief Minister of Andhra Pradesh. His defeat in the 2004 elections has cast him in the political wilderness. Continues to back the BJP at the federal level. **[32m]**

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Annex C: Proscribed terrorist/unsurgent groups (by the Government of India)

(Unless otherwise stated, source used South Asia Terrorism Portal (SATP) **[44]**)

Achik National Volunteer Council (ANVC)
Formed in 1995 with aims to establish a homeland called "Achik Land" comprising of the Garo Hills in Meghalaya and a large area of Kamrup and Goalpara district of Assam. Proscribed in November 2000, the ANVC signed a ceasefire agreement with the Government of India in July 2004. **[43d]**

Akhil Bharat Nepali Ekta Samaj (ABNES)
Founded in 1979 to work for the unity amongst and welfare of Nepalese people living in India. Gradually became involved in terrorism and acted as a front for the Maoist insurgents of Nepal. Proscribed in July 2002 under the Prevention of Terrorism Act (POTA) 2002. **[44e] (Other Extremist groups)**

Al Badr
Formed in 1998 to strengthen the "Kashmiri freedom struggle" and "liberate" Jammu and Kashmir. Part of the United Jehad Council (UJC), a coalition of Pakistan-based terrorist groups active in Jammu and Kashmir. Proscribed in April 2002 and also designated a Foreign Terrorist Organisation in the United States. **[44f]**

All Tripura Tiger Force (ATTF)
Founded as the All Tripura Tribal Force in July 1990 as a small group of tribal extremists in North and South Tripura and emerged as a formidable terrorist outfit in 1991. Banned in April 1997. **[44g]**

Al Qaeda
Al Qaeda (The Base), formed in 1988 by Osama Bin Laden. Serves as a focal point/umbrella outfit for a global network that includes terrorist cells an estimated 60 countries. **[44h]**

Al-Umar-Mujahideen
Founded in 1989 with aims to liberate Jammu and Kashmir through armed struggle. **[44f]**

Babbar Khalsa International (BKI)
Among the oldest and most organised Khalistan terrorist groups. Formed in 1978 with aims to create an independent Sikh state called Khalistan. **[44a]**

Communist Party of India-Maoist
The Maoist Communist Centre of India (MCC) and the Communist Party of India (Marxist-Leninist) People's War (also known as the People's War Group or PWG) merged to form a new entity, the Communist Party of India-Maoist (CPI-Maoist) in September 2004.
According to a CPI-Maoist press release...the unity was aimed at furthering the cause of "revolution" in India. The new party also pledged to work in close collaboration with the Communist Party of Nepal (Maoist). As part of its strategy, the CPI-Maoist would fiercely oppose the Central Government run by the Congress and its mainstream communist allies, the Communist Party of India (CPI) and the CPI-Marxist.
[44e] (Left-wing Extremist groups)

Deendar Anjuman
The Deendar Anjuman (the Religious Association) perceives Islam as the only true global religion. The group came into prominence in the aftermath of 13 bomb explosions at various places of worship across the states of Andhra Pradesh, Goa and Karnataka between May and July 2000. **[44e] (Other Extremist groups)**

Dukhtaran-e-Millat
The all-women outfit, formed in 1987, has claimed that the Kashmir issue is primarily a religious issue and jehad is mandatory. It also supports the accession of the Kashmir valley with Pakistan. **[44f]**

Hynniewtrep National Liberation Council (HNLC)
Formed in 1992 following a split in the Hynniewtrep Achik Liberation Council (HALC) with aims to transform Meghalaya as a province exclusively for the Khasi tribe and to fight the presence of "outsiders". Proscribed in November 2000. **[43d]**

Harkat-ul-Mujahideen (HuM)
Formerly known as Harkat-ul-Ansar, HuM is a Pakistan-based terrorist outfit. **[44f]**

Hizb-ul-Mujahideen (HM)
One of the largest groups operating in Jammu and Kashmir. Formed in 1989, reportedly as the militant wing of Jamaat-e-Islami (JeL), an Islamist organisation. **[44f]**

International Sikh Youth Federation
Founded in the UK in 1984. Aims to establish an independent homeland for Sikhs. Currently headed by Lakhbir Singh Rode. **[44a]**

Jaish-e-Mohammed
Formed in 2000 and held responsible for the December 2001 terrorist attack on the Indian parliament in New Delhi. Banned under POTA in October 2001. Also designated a Foreign Terrorist Organisation by the USA. Part of the Islamist terrorist outfit based in Pakistan and active in Jammu and Kashmir. **[44f]**

Jamiat-ul-Mujahideen
Breakaway faction of Hizb-ul-Mujahideen and formed in 1990. **[44f]**

Jammu and Kashmir Islamic Front
This group is no longer active. (MIPT Terrorism Knowledge Base) **[69a]**

Kanglei Yawol Kanna Lup (KYKL)
Formed in January 1994 with a purported objective to 'rebuild' Manipuri society by clearing it of all vices like immoral activities including drug trade and corruption. The name of the group means 'Organization to Save the Revolutionary Movement in Manipur'." **[44i]**

Kangleipak Communist Party (KCP)
Formed in 1980 to restore the independence of Manipur. The KCP is concerned with the preservation of Meitei culture and demands secession of Manipur from India. **[44i]**

Lashkar-e-Taiba (LeT)
Meaning "Army of the Pure". Also known as Jama'at-ud-Da'awa. Based in Lahore, Pakistan. Operates primarily in Jammu and Kashmir but has also carried out attacks across India.

"The LeT's professed ideology goes beyond merely challenging India's sovereignty over the State of Jammu and Kashmir. The Lashkar's 'agenda', as outlined in a pamphlet titled Why are we waging jihad includes the restoration of Islamic rule over all parts of India. Further, the outfit seeks to bring about a union of all Muslim majority regions in countries that surround Pakistan. Towards that end, it is active in Jammu and Kashmir, Chechnya and other parts of Central Asia." **[44f]** Hafiz Muhammad Saeed, founder of this group accused of conducting the Mumbai atrocities, detained by officials in Pakistan on 11 December 2008. **[50b]**

Liberation Tigers of Tamil Eelam (LTTE)
The LTTE aims to create a separate homeland for the Tamils known as the Tamil Eelam (state) in the Northern and Eastern provinces of Sri Lanka. The Tigers control most of the northern and eastern areas of Sri Lanka but have also conducted operations throughout the island. **[44e] (Other Extremist groups)**

Manipur People's Liberation Front (MPLF)
See United National Liberation Front (UNLF), People's Liberation Army (PLA) and People's Revolutionary Party of Kangleipak (PREPAK) who all now operate from a unified platform known as the Manipur People's Liberation Front. **[44e] (Manipur)**

National Democratic Front of Bodoland (NDFB)
Formed in 1986 as the Bodo Security Force (BdSF), the NDFB is currently observing a ceasefire agreement with the Government. **[44j]**

National Liberation Front of Tripura (NLFT)
Formed in 1989 and outlawed in April 1997. Also proscribed under POTA. Purported aims to establish an independent Tripura through armed struggle. **[44g]**

People's Liberation Army (PLA)
Established in 1978 with aims to organise a revolutionary front covering the entire Northeast and unite all ethnic groups, including the Meiteis, Nagas and Kukis, to liberate Manipur. PLA, though a Meiti outfit, claims itself to be a trans-tribal organisation seeking to lead the non-Meiteis as well. **[44i]**

People's Revolutionary Party of Kangleipak (PREPAK)
Formed in 1979 and demands the expulsion of "outsiders" from Manipur state. **[44i]**

Revolutionary People's Front (RPF)
The RPF is the political wing of the PLA. The group runs a government-in-exile based in Bangladesh. **[44i] (People's Liberation Army)**

Students Islamic Movement of India (SIMI)
Islamic fundamentalist group that advocates Islamic revolution in India. **[44e] (Other Extremist Groups)**

Tamil Nadu Liberation Army (TNLA)
The TNLA became active in the early 1980's during the period when the Indian Peacekeeping Force (IPKF) was sent to Sri Lanka and pro-Liberation Tigers of Tamil Eelam (LTTE) sentiments were running high among a section of people in the State. Proscribed under POTA in July 2002. Official sources indicated that following proscription, TNLA cadres started operating under a new name, Tamizhar Vidhuthalai Iyakkam. **[44e] (Other Extremist Groups)**

Tamil National Retrieval Troops (TNRT)
Believed to have been functioning in Tamil Nadu since the late 1980s, fighting for an independent homeland for Tamils in India. **[44e] (Other Extremist Groups)**

United Liberation Front of Assam (ULFA)
Also known as United Liberation Front of Asom. Formed in 1979 with a clearly partitioned political and military wing. Aims to establish a "sovereign socialist Assam" through armed struggle. Most of ULFA's top leadership reportedly operates from Bangladesh. **[44j]**

United National Liberation Front (UNLF)
The UNLF was formed in 1964 with aims to achieve independence and a socialist society in Manipur. In 1990, the UNLF launched an armed struggle for the "liberation" of Manipur from India. It also formed an armed wing called the Manipur People's Army (MPA) in the same year. **[44i]**

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Annex D: Other organisations/insurgent/extremist groups

Rashtriya Swayamsevak Sangh (RSS) (Association of National Volunteers)
A Hindu nationalist umbrella organisation, founded in 1925 by Keshav Baliram Hedgewar. Prime Minister Vajpayee. Many leading members of the BJP party are RSS members. The RSS was banned between December 1992 and June 1993 for its alleged role in the destruction of the Babri mosque at Ayodhya in 1992. **[5h]**

All-India Sikh Students Federation (AISSF)
The AISSF was founded in 1944. Its founder President was Sardar Swarup Singh. It was the first body to pass a resolution seeking the formation of a separate Sikh homeland. Its other objectives were to promote and propagate Sikhism amongst the college-going Sikh students. While the AISSF sought a separate Sikh homeland, it did not fight for it until militancy erupted under Bhindranwale in 1981. From then onwards, a number of AISSF members joined the ranks of the militants. **[7d]** FCO advice in correspondence dated 18 August 2005, noted that to the best of its understanding the AISSF was banned in 1984 and the ban was subsequently lifted in 1985:

"The AISSF has since split into various factions and is believed to be active in various universities in Punjab. The AISSF now operates in the name of Sikh Students Federation (SSF). The 'All India' was dropped in 1991. There were originally three factions, now there are two: the main SSF faction and the Bitto factions, the latter led by Mandhir Singh." **[7a]**

It is thought that the current president of the SSF is Gurucharan Singh Grewal, and that the organisation is based in Amritsar but now operates from Ludhiana district (address: 1756, Tehsil Road, Jagraon, Ludhiana, Punjab – 142 026). The SSF has a 100-member executive including 50 office bearers. Senior Vice Presidents are: Surendrapal Singh, Kulwant Singh Kamal, Sarabjit Singh and Paramjit Singh. General Secretaries are Major Singh, Shispal Singh and Jaspal Singh. The SSF adheres to the ideology of the Guru Granth Sahib (Religious book of Sikhs) and the principles of the Akal Takht (the highest seat of religious-political power) headed by the Jathedar, the head priest. The SSF works to the Sikh principles but often takes the advice of the Jathedar. **[7a]**

Bajrang Dal
The youth wing of the Vishwa Hindu Parishad (VHP). Banned between December 1992 and June 1993, Bajrang Dal was originally formed in the 1980s to counter "Sikh terrorism", but has since then shifted to militant activism against the Muslim and Christian minorities. **[5h]**

Sangh Parivar (Family of Associations)
The Sangh Parivar is the collective name for the various loosely associated Hindu nationalist organisations. All embraced the concept of Hindutva ("Hindu-ness"), Hindu nationalism, and an ideal of Hindu supremacy in India, often called "saffron power". The Hindutva project was intended to redress supposed grievances deriving from the contamination of Hindu India by Islam and Christianity, two religions that refused to incorporate the Hindu caste structure. **[5h]**

Vishwa Hindu Parishad (VHP) (World Council of Hindus)
Led by Ashok Singhal. **[5g]** Right-wing ally of the BJP, concerned explicitly with religious matters, founded in August 1964. The VHP was banned between December

1992 and June 1995 for its role in the destruction of the Babri mosque in Ayodhya. A wealthy organisation, the VHP is partly funded by donations from Hindu communities abroad, especially the USA. The VHP's militant women's wing is known as Durga Vahini. **[5h]** Dr Pravin, also spelt Praveen Togadia, is its international General Secretary. **[7c]**

Bodo Liberation Tigers (BLT)
Aliases: Bodo Liberation Tiger Force (BLTF); Terrorist Group of Assam. Formed in 1996 and based in Bhutan and India. The last attack was on 24 March 2003. Founded by Prem Singh Brahma to safeguard the interests of the Bodo people living in Assam. The BLT favoured the creation of a 'Bodo State' independent from Assam but under the control and protection of the Indian Constitution. The BLT has agreed to abide by the rule of law. It is thought to be fully disbanded and it is unlikely that the group will re-emerge. **[69a]**

Borok National Council of Tripura (BNCT)

Communist Party of Nepal-Maoist (CPN-M)
The group maintains bases in India as well as Nepal and enjoys support from many Indian insurgent groups, most notably the United Liberation Front of Assam and the Communist Party of India-Maoist, and was first mentioned in 1996. "The Communist Party of Nepal-Maoist (CPN-M) is one of the largest and most potent Communist insurgent groups in the world. In little over a decade, the CPN-M has been responsible for hundreds of attacks on government and civilian targets." **[69a]**

Dima Halam Daoga (DHD)
Formed in 1996 with less than 400 members:

"Dima Halam Daoga (DHD) is a terrorist organization that has been operating in the Assam region of northeast India for over 10 years. DHD was founded in 1996 by Jewel Garlossa as an offshoot of Dimasa National Security Force (DNSF) after the organization surrendered in 1995…The group seeks to establish political autonomy for its tribe, the Dimasa, and a separate state, called Dimaraji, exclusively for the tribe…Currently, DHD is observing a ceasefire which was declared on December 23, 2002. However, there are still reports of extortion and armed violence between the DHD and other tribal terrorist organizations of the Karbi tribe, such as the United People's Democratic Solidarity (UPDS), leading the government to claim the group has violated the ceasefire agreement. Members of the DHD continue to remain active in the Cachar, N C Hills, Karbi Anglong and Nagaon districts of Assam, India." **[69a]**

Islami Inqilabi Mahaz
Alias: Islamic Revolutionary Group. Bases of Operation: India; Kashmir; Pakistan

MIPT noted:

"Islami Inqilabi Mahaz (Islamic Revolutionary Group) is a shadowy group of militants thought to be operating in Pakistan, Kashmir, and India. The group first drew notice in 1997 after claiming responsibility for the killing of four American contractors in Pakistan. Islami Inqilabi Mahaz then disappeared for a period of years, only to reemerge in October 2005, when they claimed responsibility for a trio of devastating bombings that killed dozens of people in New Delhi, India…At the current time, it is unclear whether Islami Inqilabi Mahaz was actually responsible for the New Delhi market bombings. It is also unknown whether the group is an independent outfit, or operating as a front for LeT or other militant groups." **[69a]**

Islamic Defense Force
The group is currently inactive. **[69a]**

Janashakti
"The Communist Party of India (Marxist-Leninist) Janashakti is a left-wing extremist group operating in India's southern Andhra Pradesh state. Officially created in July 1992…Janashakti is still active in Andhra Pradesh, but the killing and imprisonment of many of its top leaders, have severely limited the group's operational capability to wage 'revolution'. In an extremely telling decision in August 2005, the Andhra Pradesh government re-banned several Maoist groups, but Janashakti was not among them. This is due to the perceived lack of threat from the group." **[69a]**

Jihad Committee
"Jihad Committee is an Islamic extremist group in Tamil Nadu, India. The group has been held responsible for several acts of terrorism and communal violence since the early 1990s…Although both the state and federal Indian government have initiated a large crackdown on militant activities in Tamil Nadu, Jihad Committee remains an active organization and a moderate security threat in the region." **[69a]**

Karbi Longri North Cachar Hills Resistance Force (KNPR)
"It is estimated that the KLNLF currently has as many as 60 cadres; it is unknown how many of those are members of the armed KNPR. In 2006, KNPR activity has been relatively minimal. The group is suspected in several abductions, but multiple wanted KLNLF cadres have also turned themselves in to the police, showing that group security and morale is likely low. It is estimated that the KLNLF currently has as many as 60 cadres; it is unknown how many of those are members of the armed KNPR. In 2006, KNPR activity has been relatively minimal. The group is suspected in several abductions, but multiple wanted KLNLF cadres have also turned themselves in to the police, showing that group security and morale is likely low." **[69a]**

Kuki Liberation Army (KLA)
"The Kuki Liberation Army (KLA) is a small insurgent group in Manipur, India. One of many separatist groups in the region, the KLA claims to be fighting for an independent Kuki state, but it is better known for a series of high-profile kidnappings for ransom money." It is currently observing a ceasefire and has agreed to pursue peaceful negotiations with the government. The group is not considered a high security threat in the region. **[69a]**

Kuki Revolutionary Army
"The Kuki Revolutionary Army is a tribal terrorist organization fighting for an autonomous administrative council for the minority Christian Kuki tribe in India. They are located in the Karbi Anglong district of Assam. In October 2005, the KRA and seven other militant groups announced their desire to enter peace talks with the Indian government in hopes to settle the insurgency. Despite this announcement, the KRA continues to conduct armed attacks and remains a security threat in the Karbi Anglong district." **[69a]**

Lashkar-e-Jabbar (LeJ)
Alias: The Army of the Omnipotent Almighty based in India; Kashmir.
MIPT notes:
"LeJ continues to attempt to enforce the Islamic dress code in Kashmir. They also issued an edict mandating that men and women be separated on buses…" **[69a]**

Lashkar-e-Jhangvi (LeJ)
"Aliases: Army of Jhangvi, Lashkar I Jhangvi (LJ) Base of Operation: India; Pakistan" MIPT notes:
"Lashkar-e-Jhangvi is the militant offshoot of the Sunni sectarian group Sipah-i-Sahaba Pakistan (SSP) (the Army of Mohamed's companions). The breakaway group was formed in 1996 by Akram Lahori, Malik Ishaque, and Riaz Basra, after they accused the SSP of deviating from the ideals of its slain co-founder, Maulana Haq Nawaz Jhangvi. The Sunni-Deobandi group focuses primarily on anti-Shia attacks and was banned by Pakistani President Musharraf in August 2001 as part of an effort to rein in sectarian violence. Many of its members then sought refuge with the Taliban in Afghanistan, with whom they had existing ties." The group is banned in the UK. **[69a]**

National Socialist Council of Nagaland-Isak-Muivah (NSCN-IM)
"The main goal of the NSCN-IM continues to be an independent greater Nagaland… Formed on April 30, 1988, the National Socialist Council of Nagaland-Isak-Muivah (NSCN-IM) is the largest and most formidable of the ethnic Naga separatist groups in northeastern India…The main goal of the NSCN-IM continues to be an independent greater Nagaland." Despite a ceasefire being in place since 1997, the group is still considered highly active and dangerous. **[69a]**

National Socialist Council of Nagaland-Khaplang (NSCN-K)
This group is a Naga separatist outfit in northeastern India. "Formed as a splinter group in 1988, the NSCN-K has been responsible for numerous attacks on Indian security forces and other militant groups in the region. The NSCN-K states that its goal is an independent Nagaland state consisting of all ethnic Naga territories with a Socialist government based on Maoist principles." **[69a]**

People's United Liberation Front (PULF)
An Islamic terrorist group fighting for an independent Islamic state in northeastern India for the region's Muslims, many of them migrants from Bangladesh. **[69a]**

Save Kashmir Movement
Base of operation: India; Kashmir. "The Save Kashmir Movement is a terrorist organization opposed to Indian rule of the disputed province of Kashmir." **[69a]**

Ukrainian Reactionary Force
No longer active in India. **[69a]**

United Kuki Liberation Front (UKLF)
"The United Kuki Liberation Front (UKLF) is one of several small insurgent groups that are fighting for an ethnic Kuki state within the Indian state of Manipur. The Kuki are one of over 30 tribes in Manipur, where they inhabit the hill-country. Ethnic Kukis also inhabit small areas of Bangladesh and Burma. Little is known about the formation of the UKLF, although sources indicate that in the late 1990s they splintered off from a larger Kuki insurgent group, possibly the Kuki National Army (KNA), or the Kuki National Front (KNF)." **[69a]**

United People's Democratic Solidarity (UPDS)
"The United People's Democratic Solidarity (UPDS) is a terrorist organization operating in the Assam region of India. UPDS is a separatist group that aims to create an independent country for the tribal people of Assam's eastern territory. Specifically, UPDS is comprised of people from the Karbi tribe and advocates for improved rights on behalf of the tribe…It is believed that the anti-negotiation faction renamed itself the Karbi Longri North Cachar Hills Resistance Force (KNPR) in May 2004…The United

People's Democratic Solidarity operates primarily in the eastern area of the Assam region. Compared with the region's larger terrorist organizations, UPDS is fairly small with just 150 insurgents. Of these 150 insurgents, some are actually engaged in peace talks with the government." **[69a]**

Zomi Revolutionary Army (ZRA)
"The ZRA was founded in June 1997 after clashes broke out between Kukis and Paites in India's Manipur state…The Zomi Revolutionary Army (ZRA) is the armed wing of the Zomi Revolutionary Organization, a nationalist-separatist group dedicated to the protection of the ethnic Paites and the re-unification of all ethnic Zomi peoples in northeast India, Bangladesh, and Burma." **[69a]**

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al-Faran
Presumed inactive. **[69a]**

al-Hadid
Non-active since 1994. **[69a]**

al-Madina
Aliases: al-Madina Regiment, al-Madinah, al-Medina. Bases in India; Kashmir; Pakistan.
"Al-Madina is a little-known Kashmiri militant group responsible for several terrorist attacks in Indian-controlled Kashmir." **[69a]**

al-Mansoorain
Base of operation: India; Kashmir; Pakistan. Founded in 2003.
"Al-Mansoorain is a Kashmiri separatist organization conducting attacks on Indian targets within the Kashmir valley. Al-Mansoorain is believed to be one of many fronts for the Pakistan-based Lashkar-e-Taiba (LeT) which have arisen since the U.N. banned LeT. Al-Mansoorain primarily employs suicide-bombing tactics." **[69a]**

al-Zulfikar
"Base of Operation: Afghanistan; India; Libya; Pakistan; Syria.
Al-Zulfikar was formed in 1977 by Mir Murtaza Bhutto, the eldest son of former Pakistani Prime Minister Zulfikar Ali Bhutto, who was deposed by a military coup in July and arrested on murder charges in September of that year. Al-Zulfikar's goal was to overthrow the military regime that ousted Bhutto; the regime was headed by General Zia ul-Haq. Al-Zulfikar was funded by the security agencies of both Afghanistan and India, both of whom were opposed to the Zia regime." **[69a]**

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ORGANISATIONS PROSCRIBED IN THE UNITED KINGDOM UNDER THE TERRORISM ACT 2000

Babbar Khalsa (BK)
BK is a Sikh movement that aims to establish an independent Khalistan within the Punjab region of India. **[64]**

Harakat Mujahideen (HM)
HM, previously known as Harakat Ul Ansar (HuA), seeks independence for Indian-administered Kashmir. The HM leadership was also a signatory to Osama Bin Laden's 1998 fatwa, which called for worldwide attacks against US and Western interests.

[64]

International Sikh Youth Federation (ISYF)
ISYF is an organisation committed to the creation of an independent state of Khalistan for Sikhs within India. **[64]**

Jaish e Mohammed (JeM)
JeM seeks the "liberation" of Kashmir from Indian control as well as the "destruction" of America and India. JeM has a stated objective of unifying the various Kashmiri militant groups. **[64]**

Lashkar e Tayyaba (LT)
LT seeks independence for Kashmir and the creation of an Islamic state using violent means. **[64]**

[64] (UK Home Office, Terrorism Act 2000, Proscribed terrorist groups)

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Annex E: Prominent Political Figures

(Updated 6 December 2009)

ADVANI Lal Krishna
Leader of the Opposition in the Lok Sabha until 18 December 2009. **[60m]** He is credited with scripting the swift rise of the Bharatiya Janata Party (BJP) as a major political force; the party held only two parliamentary seats in 1984. **[16b]**

GANDHI Rahul
Son of Rajiv and Sonia Gandhi and grandson of Indira Gandhi, Dr Rahul Gandhi is a member of parliament and played a prominent role in the Congress Party's national election campaigns of 2004 and 2009. Heir to the Nehru-Gandhi dynasty, he is expected by many to become a future prime minister. **[16b]**

GANDHI Sonia
President of the Indian National Congress party since 1998. The Italian-born widow of former Prime Minister Rajiv Gandhi, she led Congress to victory in the 2004 general election but declined the post of prime minister, which was open to her. **[16b]** Sonia Gandhi has been listed by *Forbes* and *Time* magazines as one of the most powerful/influential women in the world. **[1]**

KALAM Abdul APJ
India's twelfth President, from July 2002 to July 2007. A Muslim, an eminent scientist and architect of India's missile programme. **[32g]**

KARAT Prakash
General Secretary of the Communist Party of India (Marxist). **[131]**

KUMAR Meira
Elected the first woman Speaker of the Lok Sabha (lower house of parliament) in June 2009. Ms Kumar's father – a Dalit – was Deputy Prime Minister in Indira Gandhi's cabinet. **[32as] [103a]**

KUMARI Mayawati
Mayawati, as she is generally known, is Chief Minister of Uttar Pradesh and president of the Bahujan Samaj Party. She was born into the low-caste *Hindu Jatav*, or *Chamar*, community and is a champion of India's Dalits. **[32az]**

PATIL Pratibha
President of India. In July 2007 Pratibha Patil became the first woman to be elected, by parliament and the state assemblies, to the office of President. She was previously governor of the state of Rajasthan. **[32h] [32o]**

SINGH Manmohan
Prime Minister since May 2004. An Oxford-educated economist and former Governor of the Reserve Bank of India (central bank), he was India's Finance Minister from 1991 to 1996 and is widely regarded as the architect of the country's economic reform programme. When the Congress-led UPA coalition won the 2009 general election, Dr Singh became the first prime minister since Jawaharlal Nehru to return to power after completing a full five-year term. He is also the first Sikh to hold this office. **[32h] [16b] [1]**

SWARAT Sushma
Leader of the Opposition in the Lok Sabha from December 2009. Formerly Chief Minister of Delhi. **[60m]**

VAJPAYEE Atal Behari
Former Prime Minister of India (1996, 1998-2004). Was a founding member of the Bharatiya Jana Sangh, the Hindu nationalist precursor of the Bharatiya Janata Party. **[63]**

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Annex F: List of abbreviations

AI	Amnesty International
CEDAW	Committee on the Elimination of All Forms of Discrimination Against Women
CPJ	Committee to Protect Journalists
FCO	Foreign and Commonwealth Office (UK)
FH	Freedom House
GDP	Gross Domestic Product
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
ICG	International Crisis Group
ICRC	International Committee of the Red Cross
IDP	Internally Displaced Person
IFRC	International Federation of Red Cross and Red Crescent Societies
IMF	International Monetary Fund
IOM	International Organization for Migration
IRB	Immigration and Refugee Board of Canada
MSF	Médecins sans Frontières
NGO	Non Governmental Organization
OCHA	Office for the Coordination of Humanitarian Affairs
ODPR	Office for Displaced Persons and Refugees
OECD	Organization for Economic Co-operation and Development
OHCHR	Office of the High Commissioner for Human Rights
RSF	Reporteurs sans Frontières (Reporters without Borders)
STC	Save The Children
STD	Sexually Transmitted Disease
TB	Tuberculosis
TI	Transparency International
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNESCO	United Nations Educational, Scientific and Cultural Organization
UNHCHR	United Nations High Commissioner for Human Rights
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UNODC	United Nations Office on Drugs and Crime
USAID	United States Agency for International Development
USSD	United States State Department
WFP	World Food Programme
WHO	World Health Organization

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Numbering of source documents is not always consecutive because some older sources have been removed in the course of updating this document.

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