



INDIA

COUNTRY OF ORIGIN INFORMATION (COI) REPORT

COI Service

26 August 2011

SECURING OUR BORDER CONTROLLING MIGRATION

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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 12 August 2011. The 'Latest News' section contains further brief information on events and reports accessed from 13 August to 26 August 2011. The report was issued on 26 August 2011.
- ii The Report is compiled wholly from material produced by a wide range of 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 may be provided. It 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 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 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 information sources. In compiling the Report no attempt has been made to resolve discrepancies between information provided in different source documents though COI Service 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. 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 Report and the accompanying source material are public documents. All Reports are published on the UKBA website and the great majority of the source material for the Report is readily available in the public domain. Where the source documents identified are available in electronic form, the relevant weblink 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 COI Service upon request.
- ix Reports are published regularly on the top 20 asylum intake countries. Reports on countries outside the top 20 countries may also be produced 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 Report, COI Service has sought to provide an accurate, up to date, balanced and impartial compilation of extracts of the available source material. Any comments regarding this Report or suggestions for additional source material are very welcome and should be submitted to COI Service as below.

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INDEPENDENT ADVISORY GROUP ON COUNTRY INFORMATION

- xi The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent 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 COI material. Information about the IAGCI's work can be found on the Independent Chief Inspector's website at <http://icinspector.independent.gov.uk/country-information-reviews/>
- 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 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 material from September 2003 to October 2008) is available at <http://icinspector.independent.gov.uk/country-information-reviews/>

- 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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Website: <http://icinspector.independent.gov.uk/country-information-reviews/>

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Latest News

EVENTS IN INDIA FROM 13 AUGUST TO 26 AUGUST 2011

The Latest News provides a non-exhaustive selection of significant events since 13 August 2011. Further information may also be available from the list of useful sources below.

16 August Anti-corruption activist Anna Hazare commenced a hunger strike in Delhi on 16 August, in protest against a new anti-corruption bill which he regarded as 'too weak'. Hazare was initially arrested but, following mass protests, was released on 18 August after agreeing to a police offer permitting him to go on hunger strike for another 15 days. BBC News reported on 22 August that thousands of supporters had gathered at the Ram Lila Maidan grounds in the capital, where Mr Hazare was conducting his fast; the Prime Minister stated that the government was open to talks with the 74-year-old activist. Demonstrations in support of Mr Hazare also took place in Mumbai and in various other cities.

BBC News:

India corruption: Hazare heaps pressure on government, 22 August 2011

<http://www.bbc.co.uk/news/world-south-asia-14611374>

Date accessed 23 August 2011

16 August Freedom of information activist Shehla Masood, who had campaigned for enforcement of the Right to Information (RTI) Act for two years and was on her way to a demonstration in support of Anna Hazare, was shot dead in Bhopal.

Reporters Without Borders:

Right to information campaigner Shehla Masood shot dead, 17 August 2011

http://en.rsf.org/india-right-to-information-campaigner-17-08-2011_40804.html

Date accessed 19 August 2011

17 August The UN High Commissioner for Refugees (UNHCR) announced that it had started issuing new identity cards to refugees and asylum-seekers, mainly from Afghanistan and Burma. The new card includes a photograph of the bearer and a smart chip containing encrypted biographical information; UNHCR expects to issue about 18,000 such cards by the end of 2011.

UNHCR 'Refworld' database

UNHCR distributes pioneering smart ID cards to refugees in India, 17 August 2011

<http://www.unhcr.org/refworld/country,,,IND,,4e51f0522,0.html>

Date accessed 19 August 2011

19 August Eleven members of the Chhattisgarh police were killed and three were injured when cadres of the Communist Party of India (Maoist) ambushed their boat in the district of Bijapur.

The Hindu

Maoists kill eleven policemen in Chhattisgarh, 19 August 2011

<http://www.thehindu.com/news/national/article2373534.ece>

Date accessed 20 August 2011

26 August It was reported that the government had agreed to hold a parliamentary debate on proposals for a stronger anti-corruption bill, in an attempt to persuade the campaigner Anna Hazare to end his hunger strike (see above). On 25 August, Prime Minister Manmohan Singh told parliament that Mr Hazare had "become the embodiment of our people's disgust and concern about tackling corruption ... I applaud him, I salute him. His life is much too precious and therefore, I would like to urge Anna Hazare to end this fast."

BBC News:

Anna Hazare: India parliament to debate anti-graft law, 26 August 2011

<http://www.bbc.co.uk/news/world-south-asia-14675511>

Date accessed 26 August 2011

NEWS SOURCES FOR FURTHER INFORMATION

A list of news 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](#).

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

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

Hindustan Times <http://www.hindustantimes.com/>

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

ReliefWeb: <http://www.reliefweb.int/rw/dbc.nsf/doc104?OpenForm&rc=3&cc=ind>

South Asia Terrorism Portal <http://www.satp.org/satporqtp/countries/india/timeline/index.html>

REPORTS ON INDIA PUBLISHED OR ACCESSED BETWEEN 13 AUGUST AND 26 AUGUST 2011

US Department of State

Country Reports on Terrorism 2010, published 18 August 2011

<http://www.state.gov/s/ct/rls/crt/2010/index.htm>

Date accessed 22 August 2011

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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) The country borders on Bangladesh 4,053 km, Bhutan 605 km, Burma 1,463 km, China (Tibet) 3,380 km, Nepal 1,690 km and Pakistan 2,912 km. (CIA World Factbook) [35a]
- 1.02 Provisional data from the 2011 Census was released in March 2011. It showed that the country's population had reached just over 1.2 billion (1,210,193,422), having increased by 181 million (17.6 per cent) since 2001. This represented a slight decline in India's historical population growth rate. While India occupies 2.4 per cent of the world's surface, it supports 17.5 per cent of the world's population. [33a]
- 1.03 The Economist Intelligence Unit (EIU), in its India Country Profile 2008, dated 10 June 2008, noted that "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]
- 1.04 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, 14 July 2010) [2a]
- 1.05 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]
- 1.06 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 19 July 2011) [35a] The adult literacy rate at the time of Independence in 1947 was just 18 per cent. (World Police Encyclopedia) [110] (p377)

- 1.07 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, 19 July 2011) [35a]
- 1.08 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)
- 1.09 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, causing the prices of essential food items to rise sharply. (EIU Country Report, November 2009) [16a] (p16)

NATIONAL HOLIDAYS

- 1.10 The following are the national public holidays in India in 2011. There are also other holidays or festivals which are celebrated in specific regions or states.

26 January	Republic Day
15 February	Milad-Un-Nabi (Birth of the Prophet)
3 March	Mahashivratri
17 April	Mahavir Jayanthi
22 April	Good Friday
25 April	Easter Monday
17 May	Buddha Purnima
22 August	Janmashtami
15 August	Independence Day
30-31 August*	Id ul Fitr (End of Ramadan)
28 September*	Dussehra (Vijaya Dashami)
2 October	Mahatma Gandhi's Birthday
26 October	Deepavali or Diwali (Festival of Lights)
2 November	Guru Nanak's Birthday
6-7 November	Idu'l Zuha/Bakrid (Feast of the Sacrifice)
26 November	Muharram (Islamic New Year)
25 December	Christmas Day
26 December	Boxing Day

*date to be confirmed

(iExplore, accessed 13 July 2011) [125]

1.11 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. (iExplore website, accessed 13 July 2011) [125] The US State Department *International Religious Freedom Report 2010*, covering the period 1 July 2009 to 30 June 2010, observed that “The government observes the following religious holidays as national holidays: Good Friday and Christmas (Christian); the two Eids (Islamic); Lord Buddha’s Birthday (Buddhist); Guru Nanak’s Birthday (Sikh); Dussehra, Diwali, and Holi (Hindu); and the Birthday of Lord Mahavir (Jain).” [2b] (Section II)

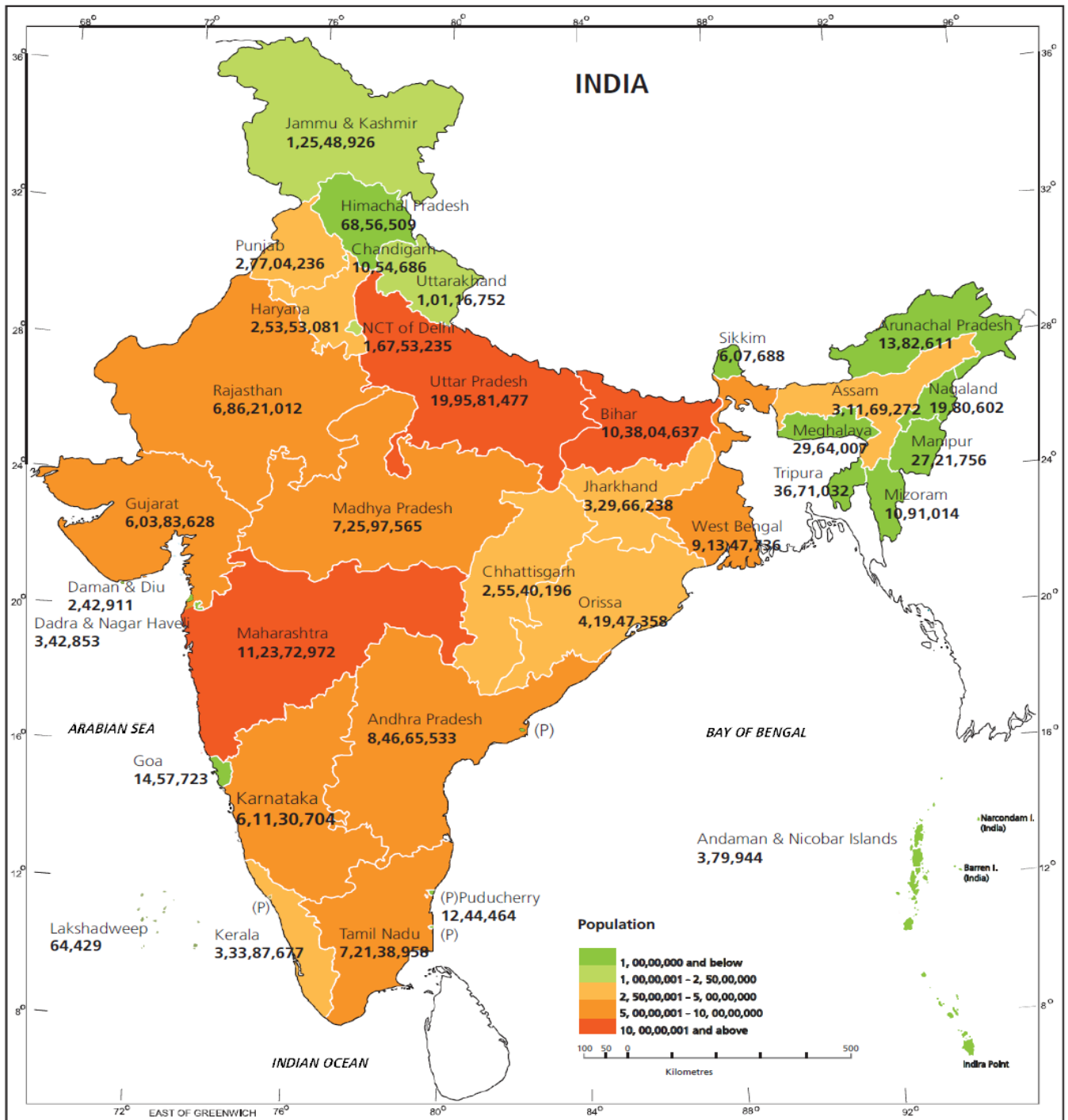
MAPS

1.12 SOUTH ASIA



Source: UN Department of Peacekeeping Operations, Cartographic Section <http://www.un.org/Depts/Cartographic/map/profile/seasia.pdf> [6c]

1.13 States and Union Territories of India, showing provisional population figures from the 2011 national Census:



Source: Census of India website: http://www.censusindia.gov.in/2011-prov-results/data_files/india/Final%20PPT%202011_chapter3.pdf [33b]

1.14 There are interactive maps of India on the website ‘Maps of India.com’: <http://www.mapsofindia.com/maps/india/india-political-map.htm> [63]

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2. ECONOMY

2.01 As noted in the CIA World Factbook, updated on 19 July 2011:

“India is developing into an open-market economy, yet traces of its past autarkic policies remain. Economic liberalization, including industrial deregulation, privatization of state-owned enterprises, and reduced controls on foreign trade and investment, began in the early 1990s and has served to accelerate the country's growth, which has averaged more than 7% per year since 1997. 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. In 2010, the Indian economy rebounded robustly from the global financial crisis - in large part because of strong domestic demand - and growth exceeded 8% year-on-year in real terms. Merchandise exports, which account for about 15% of GDP, returned to pre-financial crisis levels. An industrial expansion and high food prices, resulting from the combined effects of the weak 2009 monsoon and inefficiencies in the government's food distribution system, fueled inflation which peaked at about 11% in the first half of 2010, but has gradually decreased to single digits following a series of central bank interest rate hikes ... India's long term challenges include widespread poverty, inadequate physical and social infrastructure, limited non-agricultural employment opportunities, insufficient access to quality basic and higher education, and accommodating rural-to-urban migration.” [35a]

2.02 Data for the period July to September 2010 confirmed that India had the second fastest growing major economy in the world, behind China. (BBC News, 30 November 2010) [32b] The Economist Intelligence Unit (EIU), in its India Country Report for August 2011, forecast that the economy (measured in terms of real gross domestic product) would expand by 7.9 per cent in 2011/12 and 8.4 per cent in 2012/13, down slightly from an actual growth rate of 8.8 per cent in 2010/11. [16d] (p8) India's per capita GDP (on a purchasing power parity basis) was estimated to be US \$3,500 in July 2010, compared with \$7,600 for China, \$2,500 for Pakistan and \$34,800 for the United Kingdom. (CIA World Factbook, 19 July 2011) [35a]

2.03 Amnesty International noted in their Annual Report 2011, published on 13 May 2011, that “India's rapid economic growth was limited to key urban and suburban areas; large parts of rural India continued to experience grinding poverty, aggravated by an agricultural crisis and declining food availability for those living in poverty.” [3e] According to the USSD Background Note for India, updated in July 2010, 700 million Indians live on US \$2 per day or less. [2a]

2.04 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)

- 2.05 BBC News reported on 13 February 2011 that food price inflation had reached crisis levels; food prices in December 2010 were more than 18 per cent up on the previous year, affecting the day-to-day survival of hundreds of millions of people. In an effort to alleviate the situation, the government introduced such measures as a ban on food exports and the reduction of import duties. [32bq] The EIU Country Report for August 2011 recorded that the annual rate of consumer price inflation had moderated, to stand at 9.4 per cent in June 2011. [16d] (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.” [16a] (p4)
- 2.06 The Economist Intelligence Unit estimated the (official) rate of unemployment to have averaged 10.8 per cent in fiscal year 2010. (August 2011 India Country Report) [16d] (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] A survey by the Labour Bureau had indicated that only 17 per cent of the Indian workforce earned regular salaries or wages; more than 70 per cent of all working people were self-employed as casual workers. (BBC News, 11 November 2010) [32bp]
- 2.07 The national budget for fiscal year 2011/12 was passed in March 2011. The Economist Intelligence Unit has noted:
- “Three themes dominate the government’s spending plans: support for the farm sector, increased funding for infrastructure, and measures intended to damp down inflationary pressures. Public expenditure is expected to continue to rise rapidly, as the government has announced substantial increases in spending on health, education and rural infrastructure.” (August 2011 India County Report) [16d] (p6-7)
- 2.08 Currency: Rupee (Rs or INR) = 100 paise. (EIU, November 2009) [16a] The rate of exchange on 12 August 2011 was 73.9 Indian Rupees (INR) to the UK Pound Sterling. (xe.com) [106a] For comparison, the exchange rate on 28 June 2005 was 88.1 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 14 July 2010, 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 series attacks by armed terrorists took place in the city of Mumbai; A total of 173 (including the militants) were killed and around 250 were hospitalised. (Jane's Sentinel) [58f] (Security: 2008 Mumbai attacks)

3.04 As related by Jane's Security Sentinel, updated 21 April 2011:

“Shortly after 2100 local time (1530 GMT) on 26 November, an inflatable dinghy slipped into the fishing port on the west coast of Mumbai. Ten men disembarked with bags full of Kalashnikov assault rifles, pistols, grenades and explosives. They split into four teams. One team of two gunmen took a taxi to Chhatrapati Shivaji Terminus (CST), the city's largest railway station. A timed bomb placed in the taxi later exploded, creating more chaos and killing the driver, apparently so he could not report the number of militants or their identities. At CST, the gunmen opened fire, killing 56 people and wounding nearly 100 more. They then walked towards the nearby Cama Hospital, where they ambushed a police vehicle, killing the head of the local anti-terrorism squad, his deputy and several other policemen. They then drove through the streets of Mumbai, shooting at bystanders, until they were stopped in the Chowpatty Beach area. One of the militants was killed; the other was wounded and captured. The other three teams stormed the Taj Mahal Hotel, the Trident-Oberoi Hotel and the Jewish Centre at Chabad House. At all three locations the initial attack was followed by a lengthy siege. The Indian security forces finally announced the last militants had been cleared from the Taj Mahal Hotel on the morning of 29 November.” [58f] (Security: 2008 Mumbai attacks)

3.05 The US State Department *International Religious Freedom Report 2010* related:

“Mohammed Ajmal Amir Kasab, the only terrorist captured alive, disclosed that the attackers belonged to the [Pakistan-based] terrorist organization Lashkar e-Tayyiba (LeT). On May 3 [2010] a court found Kasab guilty of murdering seven persons, abetting the murder of 159, engaging in conspiracy, and waging war against the country. On May 6 Kasab was sentenced to death. The court exonerated two defendants accused of providing logistical support to the LeT terrorists.” [2b] (Section II)

- 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. [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). 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) [32a]

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, prepared – on behalf of *The Hindu* – an analysis of the various 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]

NAXALITE (MAOIST) COUNTER-INSURGENCY

- 3.15 As noted in [Section 8](#) and [Section 11](#), the term 'Naxalite' has been used to describe a range of armed groups that operate in 20 of India's 28 states, but are most prevalent in Bihar, Jharkhand, West Bengal, Orissa, Chhattisgarh, Andhra Pradesh and Maharashtra. There are dozens of small Naxalite groups, but by far the most prominent is the Communist Party of India-Maoist (CPI-M), which formed in 2004. Deaths related to the insurgency increased from 638 deaths in 2008, to 997 in 2009 and 1,174 in 2010. (Jane's Sentinel) [58f] (Security: Naxalites)
- 3.16 The Government increased the intensity of its counter-insurgency operations in late-2009, utilising an estimated 50,000 extra troops. [58f] [58g] BBC News reported on 22 January 2010 that "Thousands of Indian paramilitary troops and state policemen have launched a large offensive against Maoist rebels across five states this week ... Home Minister P Chidambaram is personally co-ordinating the operation in West Bengal, Jharkhand, Orissa, Chhattisgarh and Maharashtra ... 'The purpose of this operation is not to engage in gun-battles but to re-assert the authority of civil-administration in areas dominated by the Maoists,' Mr Chidambaram said..." [32bb]
- 3.17 Jane's Sentinel recorded that, since January 2010, the Maoists have carried out a number of high-profile attacks. For example:

"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 [2010], 26 police officers were killed in an ambush, again in Chhattisgarh."

Jane's added, "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 and underlined Prime Minister Singh's claim that the Maoists represent the 'gravest internal security threat' to the country." [58f] (Security: Naxalites)

- 3.18 Further historical information 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 2010 TO 12 AUGUST 2011

- 4.01 On 27 May 2010 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 Naxalite (Maoist) insurgents. (*The Hindu*, 28 May 2010) [60r]
- 4.02 In Indian-administered Kashmir, between 11 and 28 June 2010, 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 in the Kashmir Valley were placed under curfew and the army was called in to restore order. (BBC News, 28 and 29 June 2010) [32bh] [32bi] The US State Department *Country Report on Human Rights Practices 2010*, released 8 April 2011, noted that “According to the government, many of the protests turned violent after protesters threw stones and rocks at security forces, and security forces retaliated with excessive or deadly force. Deaths and injuries to protesters, including a number of children, spurred anger and renewed protests, deepening a cycle of violence.” [2a] (Section 1g) BBC News reported on 29 June 2010, “Local people and the state government have blamed most of those deaths on the paramilitary Central Reserve Police Force (CRPF) ... They say that in many cases the CRPF – who were described by the state government as ‘trigger happy’ – fired on unarmed protesters ... But the CRPF argues that it has had to use live ammunition on protesters because they have been pelted by stones. [32bi]
- 4.03 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’, published in July 2010, took into account issues such as health and education and whether or not people have access to clean water and electricity. (VOA News, 14 July 2010) [146]
- 4.04 India is to compile the world's largest population database, it was reported on 29 September 2010. Using biometric methods, including an iris scan, the system will log details of India's population of more than one billion people on a central database. The Unique Identification (UID) programme should help those in poor, marginalised communities who find it difficult to access public services and benefits because they do not have official records. The government expects to provide a card with a new UID number to every Indian citizen within four years. (BBC News, 29 September 2010) [32bn]
- 4.05 The Allahabad High Court in Uttar Pradesh delivered its long-awaited ruling on 30 September 2010 on whether Hindus or Muslims have a primary right to a site in Ayodhya, where the Babri Masjid mosque once stood and which both religions regard as holy land. The Court, in its 8,500-page order, determined that the site should be divided, with the Muslim community having control of a third of it, Hindus another third (including the mainly disputed section) and the remainder going to a minority Hindu sect, Nirmohi Akhara. Lawyers representing both Hindus and Muslims expressed their intention to appeal the ruling to the Supreme Court. Nearly 200,000 security personnel had been deployed in northern India ahead of the announcement to deal with possible rioting. (In 1992 a mob of Hindu extremists tore down the 16th century Babri Masjid mosque in Ayodhya; its destruction led to widespread rioting in which some 2,000 people died.) (BBC News, 30 September 2010) [34bm]

- 4.06 The Commonwealth Games in Delhi ended peacefully on 14 October 2010, despite terrorism fears. (Commonwealth Games 2010 website) [135]
- 4.07 On 24 December 2010 a District and Sessions court in Raipur sentenced Dr Binayak Sen, a well-known human-rights activist and public health specialist, to rigorous life imprisonment on charges of sedition and criminal conspiracy. His co-accused, Piyush Guha and Narayan Sanyal, were also convicted. The judgment was reportedly met with widespread outrage. (See section 18: [Human rights NGOs and activists](#)) (*Frontline*, 15 January 2011) [19f]
- 4.08 In January 2011 the Justice Srikrishna Committee presented the Government with an evaluation of six alternative options for the division of the state of Andhra Pradesh. (Times of India, 6 January 2011.) [13f] The Home Minister had confirmed in December 2009 that the Government would support a division of the state of Andhra Pradesh into at least two parts, creating a new state of 'Telangana' with Hyderabad as its capital; there were mass demonstrations and strikes by those opposed to the split. (BBC News, 11 December 2009) [32ba] (As of August 2011, neither Parliament nor the State Assembly had agreed on a plan for the division of Andhra Pradesh - COIS.)
- 4.09 Food price inflation reached crisis levels; it was reported on 13 January 2011 that food prices in December 2010 were more than 18 per cent up on the previous year, affecting the day-to-day survival of hundreds of millions of people. In an effort to alleviate the situation, the government introduced such measures as a ban on food exports and the reduction of import duties. (BBC News) [32ba]
- 4.10 It was reported on 22 February 2011 that a special court in the state of Gujarat had found 31 people guilty of setting fire to a passenger train in the town of Godhra in 2002. The court acquitted 63 other people of conspiracy and murder. Sentencing was postponed. The Sabarmati Express was attacked in February 2002 by a Muslim mob, killing 59 people, mainly Hindu pilgrims; this incident triggered widespread communal riots in which more than 1,000 people died. (BBC News) [32br]
- 4.11 The ruling Congress party was hit by a series of damaging corruption scandals in 2011. There was uproar in Parliament on 17 March 2011 after a 'leaked cable' on the WikiLeaks website described how a senior Congress party aide showed a US embassy official a 'chests of cash' allegedly used to bribe MPs to support the government in a crucial vote of confidence in 2008. The Congress party and all of those named in the cable have denied the allegations. (*The Hindu*, 17 March 2011) [60f] In February 2011, Telecommunications Minister Andimuthu Raja was arrested and accused of selling mobile phone frequency licences for a fraction of their true value, in what some analysts called India's biggest ever scandal; it is estimated to cost the exchequer about £24.5bn (sterling) in lost revenue. (BBC News, 17 March 2011) [32bs]
- 4.12 India released provisional results of its 2011 Census at the end of March 2011, showing that its population has grown by 181 million over the past decade to 1.21 billion. India is on course to overtake China as the world's most populous nation by 2030. (BBC News, 31 March 2011) [32 bu] The gender imbalance is becoming more pronounced, with 914 girls for every 1,000 boys under the age of six, compared with 927 in the 2001 Census. (Census of India website) [33c]

- 4.13 A prominent Muslim cleric, Maulvi Showkat Ahmed Shah, was killed in a bomb explosion outside a mosque in Indian-administered Kashmir on 8 April 2011. It was not clear who was responsible for the attack, although BBC News noted that this was the third attempt on Maulvi Showkat's life; he was a leader of the Jamiat-e-Ahle Hadith religious party, which represents Wahabi Muslims, and a well-known supporter of the separatist movement for an independent Kashmir. (BBC News, 8 April 2011) [32bt]
- 4.14 In elections held in the state of West Bengal between 18 April and 10 May, the world's longest serving elected communist government was voted out after 34 years of power. The Trinamool Congress (TMC) Party led by Mamata Banerjee, a woman said to be a 'firebrand orator', formed the new state government. Assembly Elections also took place in several other states over April and May 2011. (BBC News, 13 May 2011) [32bv]
- 4.15 It was reported on 27 May 2011 that President Pratibha Patil had rejected the mercy petitions of two convicts on death row, clearing the way for their executions. One of the individuals concerned had been convicted for murder; the other for planning a terrorist attack in 1993 in which several people were killed. This was the first time since 2004 that presidential assent for a death sentence had been given. (Amnesty International, 27 May 2011) [3h] [32b]
- 4.16 The bodies of ten policemen were found on 24 May 2011 in a densely-forested area in the state of Chhattisgarh. They had apparently been shot and then dismembered by Naxalite (Maoist) insurgents. Another seven policemen had been killed in a Maoist mine explosion in Chhattisgarh earlier the same month. (BBC News, 24 May 2011) [32bw]
- 4.17 On 13 July 2011 three coordinated bomb blasts in the city of Mumbai killed at least 24 people and injured more than 130, some of them severely. The attacks took place around 7 p.m. within 15 minutes in the southern and western part of the city. One bomb exploded near the Opera House, the second in the quarter of Dadar. The severest blast hit the Zaveri bazar in the city centre. There were no immediate leads on the identity of the perpetrators; some officials and analysts have blamed them on the Indian Mujahideen, a militant Islamist group which claimed to have carried out similar attacks in the past. (BBC News, 13 July and 25 July 2011) [32by] [32bz]
- 4.18 In July 2011 floods and landslides triggered by heavy monsoon rains forced more than 200,000 people from their homes in the north-east state of Assam, after more than 200 villages in the state's Lakhimpur and Dhemaji districts were submerged. (IDMC, 29 July 2011) [34c]
- 4.19 The Supreme Court of India ordered the authorities in the state of Chhattisgarh to disband two civilian militia organisations who had been aiding the security forces in their battle against Maoist insurgents, it was reported in July 2011. The Court ruled that the militia were unconstitutional. More than 70,000 members of such militia – referred to as Special Police Officers – have been deployed in various Indian states; they have been armed and trained by the Indian security forces. Security authorities said the Court's decision would seriously affect anti-Maoist operations. (BBC News, 14 July 2011) [32ca]
- 4.20 After more than 30 years of armed conflict claiming thousands of victims, the Union government and representatives of the banned United Liberation Front of Assam (ULFA) held initial peace negotiations on 6 and 7 August 2011. It was agreed that a Suspension of Operations agreement would be signed and that discussions would continue. (*The Hindu*, 7 August 2011) [60u]

4.21 Further information on recent developments in the country is available from the sources below.

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

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

Hindustan Times <http://www.hindustantimes.com/>

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

SATP <http://www.satp.org/satporqtp/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 and came into force on 26 January 1950. The Preamble to the Constitution resolved to constitute India as 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> [24c]

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6. POLITICAL SYSTEM

- 6.01 The Foreign and Commonwealth Office (FCO) Country Profile on India, updated on 15 May 2011, 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 2010* (USSD 2010), released 8 April 2011, 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 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 (a coalition of parties), headed by Prime Minister Manmohan Singh, returned to power for a second term ... Citizens elected state governments and local municipal or village council governments at regular intervals.” [2c] (Section3)

- 6.03 Europa World Online, accessed 8 August 2011, 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 related:

“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 2010 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 MHA [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 As noted in the Commonwealth Secretariat country profile on India, undated, accessed on 1 August 2011:

"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] (Constitution)

6.07 Referring to corruption and criminality in the political system, Freedom House stated in its report *Freedom in the World – India (2011)*, published on 5 July 2011:

"Political corruption continues to plague government efficiency in India ... Legal limits on electoral spending are invariably exceeded, with campaigns drawing on large amounts of 'black money' obtained through tax evasion and other means. Misdirection of funds meant for public goods and social programs has undermined overall progress on development. Though politicians and civil servants are regularly caught accepting such bribes or engaging in other corrupt behavior, a great deal of corruption goes unnoticed and unpunished. The federal government has introduced a number of initiatives to address the problem, such as the 2005 Right to Information Act, internet-based government services and information, and accountability and transparency agreements between organizations and individuals, known as citizen charters ... A system of 'social audits' was intended to allow individuals and independent monitors to assess the public utility of government programs, but many reports indicate that local government officials distrust the program and attempt to thwart the inquiries." [43d]

See also Section 19: [Corruption](#)

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Human Rights

7. INTRODUCTION

7.01 The Human Rights Watch (HRW) *World Report 2011* (covering events of 2010), published 24 January 2011, observed:

“India, the world's most populous democracy, has a vibrant media, active civil society, a respected judiciary, and significant human rights problems.

“The government's agenda in 2010 was dominated by continuing insurgency and armed conflict in several regions, including Jammu and Kashmir, Maoist-afflicted areas in central India, and Manipur and other parts of the volatile northeast. Impunity for abuses committed by security forces in the context of these conflicts remains a pressing concern ... Authorities made little progress in reforming the police; improving healthcare, education, and food security for millions still struggling for subsistence; ending discrimination against Dalits ("untouchables"), tribal groups, and religious minorities; and protecting the rights of women and children ... In many parts of the country, communities protested forcible acquisition of land by state governments for infrastructure and mining projects ... Legislators and officials proposed new laws to prevent torture, ensure food security, and prosecute those responsible for sexual violence, but have yet to repeal laws providing effective immunity from prosecution to government officials, including soldiers and police, responsible for human rights violations.

“The security forces have at times used excessive force in suppressing violent street protests in Indian-administered Kashmir.

“Maoist insurgents (Naxalites), operating in seven states, killed more than 100 police and paramilitary personnel in 2010, prompting a massive government security response. Civilians were often caught up in the fighting.

“Impunity for abusive policing remains a pressing concern in India, with continuing allegations in 2010 of police brutality, extrajudicial killings, and torture. While some policemen were prosecuted for human rights abuses, legal hurdles to prosecution remained in place and long-promised police reforms remained in draft form or unimplemented.

“Police in 2010 reported that extremist Hindu groups may have been responsible for bombing attacks in Ajmer and Hyderabad, prompting the Home Minister to warn against these previously ignored militant groups.

“Building on a 2009 decision of the Delhi High Court, government officials promised to drop section 377 – a provision too often abused to treat consensual homosexual conduct between adults as a crime – in proposed amendments to the Penal Code.” [26a]

7.02 The US State Department *Country Report on Human Rights Practices 2010*, released on 8 April 2011, stated:

“Separatist insurgents and terrorists in Jammu and Kashmir, the Northeastern States, and the Naxalite 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 [during 2010]. The number of incidents, however, declined compared with the previous year [2009].” [2c]

- 7.03 The Amnesty International Report 2011, published 13 May 2011 and referring to events of 2010, highlighted several concerns, including reports of extrajudicial executions, torture and arbitrary detention by the security forces and deaths in custody; police using excessive force against protesters; failure to protect the land and other rights of Adivasis (indigenous communities) and small farmers; Maoist and other insurgent violence, with local communities – including Adivasis – being targeted; death sentences passed, although no executions were actually carried out; ethnically motivated attacks in Assam and other states; harassment and intimidation of human rights defenders; judicial processes failing to ensure justice for many victims of past abuses; extrajudicial killing by the security forces in areas where insurgents were active and widespread impunity. [3e]
- 7.04 The United Nations Development Programme (UNDP), ‘Strengthened Access to Justice in India’ website, undated, observed:
- “The criminal justice system in India has confronted serious criticism in the recent times. It has been observed that the system has failed to protect the human rights of the poor, dalits, minorities and other vulnerable sections of society. The most vulnerable endure enormous challenges in seeking redress from the criminal justice system. The failure to provide equal protection of the law to and safeguard the rights of the minorities has been a major human rights issue plaguing the entire criminal justice system. Judicial reluctance and administrative indifference on the one hand and growing rate of crime on the other has led to a situation where the poor find themselves brutalized and isolated. In such a state of affairs, reform initiatives have been taken from time to time to strengthen access to justice and the criminal justice system. Police reforms and prison reforms are such two major components as far as the reform in the criminal justice system is concerned.” [82a]
- 7.05 The Right to Information Act, 2005 came into force on 12 October 2005. The Commonwealth Human Rights Initiative (CHRI) observed that “The formal recognition of a legal right to information in India occurred more than two decades before legislation was finally enacted, when the Supreme Court of India ruled in *State of U.P. v. Raj Narain* that the right to information is implicit in the right to freedom of speech and expression explicitly guaranteed in Article 19 of the Indian Constitution.” (CHRI website, undated) [11a] The text of the Act is available on the government’s Right to Information website at: <http://righttoinformation.gov.in/rti-act.pdf> [52]
- 7.06 The website of the National Human Rights Commission of India gives details of the various issues and programmes recently taken up by the Commission: <http://nhrc.nic.in/>

UN CONVENTIONS

- 7.07 The Foreign and Commonwealth Office noted in its Country Profile for India, updated on 15 May 2011, that India has signed and ratified all of the major international treaties and covenants on human rights except the UN Convention Against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment, which it signed in 1997. [7b]

7.08 Listed below is India's position in relation to the principal UN Conventions (source: UN 'Treaty Collection' database, accessed 23 July 2011):

- 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:

8.01 In its assessment, updated 21 April 2011, of the security situation in India, Jane's 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 a combination of democratic processes, extensive deployment of security forces and occasional use of extrajudicial methods, 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 tended to follow a complex strategy against active and simmering separatist campaigns, which fluctuates between support and outright suppression, backing rivals and attempting to undermine their political base.

“Nonetheless, many disputes remain unresolved, and the criminalisation of several militant groups means they continue to have a destabilising impact on large areas of the country regardless of their capacity for realising political goals. Nonetheless, many disputes remain unresolved, and the criminalisation of several militant groups means they continue to have a destabilising impact on large areas of the country regardless of their capacity for realising political goals.

“With the slew of devastating terrorist attacks between 2006 and 2008, the government sought to toughen its counter-terrorism stance. This included the introduction of a

National Investigating Agency Act 2008 and the Unlawful Activities (Prevention) Act (UAPA) Amendment Act 2008, which allowed 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, since 2009, this focus on religiously motivated terrorism has been overshadowed by a peak in violence by left-wing extremists, particularly the Communist Party of India (Maoist).” [58f] (Security)

- 8.02 The South Asia Terrorism Portal (SATP) observed in their India Assessment 2011, accessed on 12 August 2011:

“Despite enveloping uncertainty, unremitting misgovernance and widespread public perceptions of insecurity, the reality of India’s multiple terrorist and insurgent movements is that most of them are weakening. For the ninth year in a row, total fatalities due to terrorist and insurgent conflicts in the country continued their decline, registering a total of 1,902 deaths in 2010, as against 2,232 in 2009, and a peak of 5,839 in 2001 (all data from the South Asia Terrorism Portal database).

“The worst and steadily worsening of conflicts in India is, without dispute, the Maoist insurgency, principally spearheaded by the Communist Party of India – Maoist (CPI-Maoist), but including at least another 20 minor Left Wing Extremist (LWE, also called Naxalite) factions. Naxalite-related fatalities, at 1,180 in 2010, now significantly outstrip the combined total of all other terrorist and insurgent movements in the country.” [44d]

The SATP published a detailed map in April 2009 showing areas of conflict: <http://www.satp.org/satporgtp/countries/india/database/conflictmapindia.htm> [44b]

See Section 13: [Security legislation](#)

NAXALITE (MAOIST) VIOLENCE

- 8.03 In October 2009, Prime Minister Manmohan Singh termed naxalism “the greatest internal security threat to our country.” (*The Hindu*, 12 October 2009) [60i] Its attacks have intensified since 2007 and analysts have predicted that naxalite hostilities would continue for several more years. (*Frontline*, 6 November 2009) [19b]

- 8.04 Jane’s Sentinel Security Assessment for India, updated on 21 April 2011 noted:

“According to figures from the Institute of Conflict Resolution, a New Delhi think tank, deaths related to the insurgency have increased from 638 deaths in 2008, to 997 in 2009 and 1,174 in 2010. Of the latter, 624 were civilians, compared to 276 security forces and 274 insurgents.

“There are dozens of small Naxalite groups, but by far the most pressing security threat comes from the Communist Party of India-Maoist (CPI-M), which formed in 2004 from a merger between two leading parties, the People’s War and the Maoist Communist Centre, and a number of smaller parties ... [Naxalite operations] have been most prevalent in Bihar, Jharkhand, West Bengal, Orissa, Chhattisgarh, Andhra Pradesh and Maharashtra. The government has stated that 223 of India’s 636 districts are affected. Chhattisgarh is currently the worst-affected state.

32 The main text of this COI Report contains the most up to date publicly available information as at 12 August 2011. Further brief information on recent events and reports has been provided in the Latest News section to 26 August 2011.

“Since the government increased the intensity of its counter-insurgency operations in late 2009 (see Section 3: [History](#)), the Maoists have carried out a number of high-profile attacks that have raised serious questions about the government's strategy. [For example], 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 [2010], 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...” [58f]

- 8.05 The South Asia Terrorism Portal has published detailed statistics on the number of fatalities in the Naxalite conflict for 2010 and 2011(to date):
http://www.satp.org/satporgtp/countries/india/maoist/data_sheets/fatalitiesnaxal.htm
http://www.satp.org/satporgtp/countries/india/maoist/data_sheets/fatalitiesnaxal.asp
 [44c]

See Section 11: [Naxalites](#)

ISLAMIST TERRORIST ATTACKS

- 8.06 [See Section 11: Islamists](#) for a description of Islamist militant organisations and recent actions attributed to them.

JAMMU AND KASHMIR

- 8.07 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]

8.08 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 Srinagar 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]

8.09 The SATP's India Assessment 2011, accessed on 12 August 2011, recorded:

"Total fatalities resulting from the Pakistan-backed Islamist terrorist campaigns in Jammu & Kashmir (J&K) remained at 375 in 2010, the same number as the preceding year, though this figure excludes the 111 persons killed (overwhelmingly in Police firing) in the terrorist and separatist-backed street violence which peaked through June – October 2010." [44d]

See Section 11: Non-government armed groups: [Jammu and Kashmir](#) and Section 20: Freedom of religion: [Jammu and Kashmir](#)

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NORTHEASTERN STATES

8.10 The website GlobalSecurity.com, accessed in June 2010, observed:

"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]

8.11 According to the SATP's India Assessment 2011, total fatalities in India's Northeast fell dramatically to 322 in 2010, from 853 in 2009, and 1,051 in 2008. Manipur and Assam saw the most significant improvements in this long-troubled region, with fatalities dropping from 416 and 391, respectively, in 2009, to 138 and 158 in 2010. [44d] The same source observed that "There have been renewed Governmental efforts to bring almost all militant outfits in the Northeast to the negotiating table. Nevertheless, several contentious issues concerning post conflict repatriation, resettlement and, most importantly, demilitarisation of ex-combatants remained unresolved..." [44d]

8.12 It was reported on 7 August 2011 that, after more than 30 years of armed conflict, the Union government and representatives of the proscribed United Liberation Front of Assam (ULFA) had held initial peace negotiations. It was agreed that a Suspension of Operations agreement would be signed and that discussions would be ongoing. (*The Hindu*, 7 August 2011) [60u]

See Section 11: [Northeastern states](#)

EXTREMIST HINDU NATIONALIST GROUPS

8.13 According to the SATP India Assessment 2011:

“India’s security and intelligence apparatus...took cognizance of an emerging threat of ‘Hindutva terrorism’, confirming or investigating the role of right wing extremist Hindu groups in a number of terrorist incidents dating back to 2006-07. While no incident of suspected Hindutva terror was recorded in 2008, 2009 or 2010, ...12 extremists were arrested on charges of involvement in earlier incidents, particularly the Malegaon (September 8, 2006) Hyderabad Mecca Masjid (May 18, 2007) and Ajmer (October 11, 2007) blasts, even as linkages to the Samjhauta Express attack (February 19, 2006) were exposed.” [44d]

The SATP has published an article, *The Rise of Hindutva Terrorism*, at: http://www.satp.org/satporqtp/sair/Archives/sair8/8_44.htm#assessment2 [44h]

See also Section 20: Freedom of religion: [Incidents attributed to extremist Hindu groups](#)

For further information on the security situation in the country, see: South Asia Terrorism Portal: <http://www.satp.org/> [44] and Reuters: <http://www.alertnet.org/db/cp/india.htm> [98]

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9. SECURITY FORCES

POLICE

- 9.01 As described in the US State Department *Country Report on Human Rights Practices 2010*, released on 8 April 2011 (USSD 2010 Report), there is no national police force as such. Under 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) The same report noted, “Security forces reported to civilian authorities; unlike in previous years, there were no reported instances of security forces acting independently of government authority.” [2c] (Introduction)
- 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 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)

9.07 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, business people, 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)

9.08 Human Rights Watch, in a report dated 1 February 2011, stated that “India still lacks a nationwide crime database, leaving state police stations as ‘virtually unconnected islands’...” [26k] (p27)

9.09 The USSD 2010 Report stated:

“Bribes were typically paid to speed procedures such as police protection ... According to a survey released in January 2009 by Trace International, a not-for-profit association that helps companies combat bribery, 91 per cent of bribe demands came from government officials. Police officers accounted for 30 percent of bribe demands ... A May 2009 HRW report corroborated that corruption in the police force was pervasive, which several government officials reportedly acknowledged. Human rights activists and NGOs reported that citizens often had to pay bribes to receive police services.” [2c] (Section 4)

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 per cent 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 2010) [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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NATIONAL INVESTIGATION AGENCY (NIA)

9.15 Human Rights Watch (HRW) noted in their report of 1 February 2011 that Parliament passed the National Investigation Agency Act in December 2008 to establish the National Investigation Agency (NIA), with broad powers to investigate terrorism-related crimes and other national security offences. The Act also authorised the creation of special courts to prosecute crimes the NIA investigates. According to HRW:

“Proponents describe the NIA as similar to the US Federal Bureau of Investigation (FBI) because it can investigate terrorism cases in any part of India without seeking permission from individual states, which have authority over policing.

“The NIA cannot investigate an offense unless it is granted permission to do so from the central government, which has 15 days to decide whether to hand it to the agency ... In addition, the NIA's enabling legislation states that the agency answers to the central government but fails to clearly define the NIA's and the government's respective powers. Security analysts say this puts the NIA at risk of being thwarted any time a probe might prove embarrassing to the ruling party or its allies.

“There are also serious questions as to whether the NIA can be effective in thwarting potential attacks, an issue the central government says it intends to address with the creation of [a] National Counter-Terrorism Center. The government granted the NIA powers to investigate offenses already committed, but does not specify how information should be obtained, shared, or disseminated to prevent future crimes.

“[The Act] provisions authorizing the central and state governments to establish special courts to prosecute crimes that the NIA investigates are particularly worrying. Human Rights Watch opposes the creation and use of special courts to prosecute national security crimes. The record of national security courts in many countries over the years shows that such courts, while highly sensitive to the need to protect national security, typically lack the respect for the rights of defendants intrinsic to criminal courts of broader practice. National security courts are frequently authorized to conduct trials in a manner that restricts the rights of defendants beyond what is permissible under international human rights law ... [T]he judges to these special courts are appointed by the central and state governments on the recommendation of the chief justice of the relevant High Court.

“[The Act] gives special courts unfettered discretion to hold in camera (closed) proceedings, ‘if it so desires’ ... Another problematic provision of the NIAA permits a special court to conceal the identity of witnesses if it is satisfied that their lives are in danger.

“Cumulatively, these powers allow the government to intrude upon functions that are fundamentally judicial in nature. They call into question the special courts’ appearance of impartiality – an essential aspect of the internationally guaranteed right to a fair trial before a competent, independent and impartial tribunal.” [26k] (p94-97)

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ARMED FORCES

- 9.16 The US Background Note for India, updated 14 July 2010, confirmed 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)
- 9.17 The military consists of the army, navy (including naval air arm), air force (Bharatiya Vayu Sena) and Coast Guard. (CIA World Factbook, 19 July 2011) [35a]
- 9.18 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

- 9.19 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

- 9.20 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]

The Coalition to Stop the Use of Child Soldiers observed in their Global Report 2008:

"The Salwa Judum campaign emerged in Chhattisgarh in 2005, its leaders claiming that it was a spontaneous and voluntary movement against violence perpetrated by Maoists. A number of camps were established where around 50,000 mainly tribal people were living in temporary shelters. There were allegations that many of these people had been forcibly displaced and recruited to the Salwa Judum campaign as a means of isolating the Maoists and clearing land for development. Special police officers (SPOs) were recruited from among Salwa Judum members to join village defence forces and provided with arms and training by state police and security forces, including the Naga Indian Reserve Battalion. There were allegations that under-18s were being recruited as SPOs." [78a]

- 9.21 In July 2011 the Supreme Court of India ordered the authorities in the state of Chhattisgarh to disband two civilian militia organisations - Salwa Judum and Koya Commandos – who had been aiding the security forces in their battle against Maoist insurgents. There were said to be 6,500 'Special Police Officers' (SPOs) from these organisations operating in Chhattisgarh; they had been armed and trained by the Indian security forces. The Court ruled that the existence of the militia was unconstitutional. Security authorities said the Court's decision would seriously affect anti-Naxalite operations. (BBC News, 14 July 2011) [32ca]

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HUMAN RIGHTS VIOLATIONS BY SECURITY FORCES

- 9.22 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)

- 9.23 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] The ACHR report *Torture in India 2010*, published in April 2010, added:

“Law enforcement personnel continue to enjoy virtual impunity from prosecution for human rights violations including custodial torture and extrajudicial killings ... Section 197 of the Criminal Procedure Code, 1973 provide impunity to public servants against prosecution without prior sanction from the Central government or the concerned state government.” [18h]

- 9.24 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)

See also [Excessive use of force and other abuses in internal conflict areas](#), below

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Extra-judicial killings

- 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. 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 USSD 2010 Report noted:

“There were numerous reports that the government and its agents committed arbitrary or unlawful killings, including extrajudicial killings of suspected criminals and insurgents, especially in areas of conflict such as Jammu and Kashmir, the Northeastern States, and the Naxalite belt, where nongovernmental forces also committed such killings ... Most encounter killings, in which security forces and police extrajudicially killed alleged criminals or insurgents, occurred in areas in conflict, but the practice reportedly occurred elsewhere in the country as well.

“In March a number of media outlets reported that in response to a Right to Information (RTI) request the National Human Rights Commission (NHRC) provided data indicating that 1,224 of the 2,560 police encounter cases reviewed since 1993 had been staged by security forces. Despite the NHRC’s published recommendations that the Criminal Investigations Department investigate all police encounter deaths, many states did not follow the guidelines and continued to conduct internal reviews only at the discretion of senior officers.

“Custodial deaths, in which prisoners were killed or died in police custody, also remained a serious problem, and authorities often delayed or failed to pursue prosecutions against members of the police or security forces ... there was no current data regarding custodial deaths.” [2c] (Section 1a)

“In 2002 the Supreme Court ordered the central government and local authorities to conduct regular checks on police stations to monitor custodial violence, but government officials often failed to comply with the order.” [2c] (Section 1g)

The same source added, “Security forces killed demonstrators during the year, including during the protests that occurred between June and September [2010] in Jammu and Kashmir.” [2g] (Section 1a)

- 9.27 The Indian news magazine *Frontline*, in a special feature in its issue of 9 October 2009 on extrajudicial killing by the security forces, commented, “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]

See also [Excessive use of force and other abuses in internal conflict areas](#) and [Torture](#), below

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Arbitrary arrest and detention

- 9.28 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 possess 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.

“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)

- 9.29 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. [2g] (Section 1d) According to the USSD 2010 Report, arbitrary arrest and detention occurred during 2010. The 2010 report added, “Police also used special security laws to delay judicial review of arrests. Pretrial detention was arbitrarily lengthy and sometimes exceeded the sentence given.” [2c] (Section 1d)

- 9.30 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]

- 9.31 The Human Rights Watch report of February 2011, *The “Anti-Nationals”: Arbitrary Detention and Torture of Terrorism Suspects in India*, reported that the security forces have, on occasion, carried out mass arrests in an attempt to identify suspects:

“During the initial roundups after the 2008 [Mumbai] bombings, police detained hundreds of Muslim men for questioning. In many cases they forcibly entered homes or work places, sometimes in civilian clothes, and picked up individuals for custodial interrogation without identifying themselves properly or providing arrest warrants. The Indian Code of Criminal Procedure allows police to summon individuals for questioning. However, the police have no authority to involuntarily detain anyone for questioning prior to placing them under arrest. Nor can police force persons to answer questions that might be self-incriminating. The law also requires that police issue summonses in writing, a formality usually ignored by the police even in cases that do not involve national security

“Following the July 2008 bombings in Ahmedabad and the attempted bombings in Surat, Gujarat police questioned about 400 Muslims statewide, according to lawyers and human rights activists. ‘Hundreds of Muslims were picked up for questioning. My sense is they were randomly picking up people without a clue as to who did what,’ said Ahmedabad human rights activist Hanif Lakadwala...” [26k] (p53-54)

- 9.32 The same report stated that, in terrorism-related cases, the police have sometimes denied suspects access to lawyers or family members: “In several cases, police unlawfully denied suspects the right to meet with their legal counsel or family members for days or weeks. The police also in many cases unlawfully monitored suspects’ conversations with lawyers when their attorneys were finally allowed to visit.” [26k] (p56)

- 9.33 The Human Rights Watch report of February 2011 observed:

“Amendments passed in 2010 to the Code of Criminal Procedure that would curb police authority to make warrantless arrests have not yet been signed into law.

“Nevertheless, India’s Constitution and Supreme Court judgments set procedural obligations for police arrests ... The Indian Constitution establishes the right to life and

personal liberty ... The Supreme Court has held that these rights inherently limit the police's expansive arrest authority: Police can make an arrest only if, based on an investigation, they have 'reasonable belief' in 'the person's complicity' and 'the need to effect arrest.'

"The Constitution also mandates that when police make an arrest without a warrant, they must inform the accused of the grounds for the arrest and the right to bail. Police must produce an arrested person before the nearest magistrate without delay and at most within 24 hours. Moreover, in the landmark 1997 case of *D.K. Basu v. West Bengal*, the Supreme Court established additional mandatory procedures for police detention.

"Arbitrary detentions have been challenged, sometimes successfully, in Indian courts or at the national or state human rights commissions. The NHRC has repeatedly ordered prosecutions and compensation in such cases..." [26k] (p59-60)

See Section 13, [Arrest and detention – legal rights](#)

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Torture

9.34 The USSD 2010 Report stated,

"The law prohibits torture, but many NGOs alleged that such practices were common, especially in areas of conflict ... The law generally does not permit authorities to admit into evidence confessions that have been coerced, but NGOs and citizens alleged that authorities used torture to coerce confessions, which in some instances were submitted as evidentiary support for death sentences. Authorities allegedly also used torture to extort money or as summary punishment." [2c] (Section 1c)

9.35 The report published by the Human Rights Law Network in August 2009, *Accountability for the Indian Police: Creating an External Complaints Agency*, 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 The Asian Centre for Human Rights (ACHR) in its report, *Torture in India 2010*, published in April 2010, stated that “Torture in police custody remains a widespread and systematic practice in India ... The lack of any effective system of independent monitoring of all places of detention facilitates torture.” The report noted that – according to figures from the National Human Rights Commission – 1,789 people died in ‘judicial custody’ (prisons) and 127 died in police custody during a twelve-month period in 2008-2009. It was alleged that several of these deaths followed torture. [18h] The ACHR report added:

“The Central government has refused to implement the Law Commission of India’s recommendations in its 152nd Report on ‘Custodial Crimes’ to amend the Indian Evidence Act, 1872 (insertion of Section 114B) to provide that in cases of custodial death, the burden of proof lies with the police.

“Both the Central government and the State governments consistently refuse to provide sanction for prosecution as required under Section 197 of the Criminal Procedure Code.

“It is clear that the Supreme Court’s guidelines in the case of *D.K.Basu Vs State of West Bengal* have failed to reduce the custodial deaths in India. The writ petitions pending before the Supreme Court of India seeking enforcement of the *D K Basu Guidelines* made little headway.” [18h]

9.38 HRLN has noted that ‘deaths in custody’ figures provided by the National Human Rights Commission do not distinguish between ‘normal’ custodial deaths, such as from old age or sickness, and deaths resulting from other causes, such as torture – but that, nevertheless, the actual incidence of torture in custody may be somewhat higher than the number of cases reported. [22a] (p12)

9.39 Human Rights Watch stated in a report published on 1 February 2011:

“Human Rights Watch received numerous credible accounts of police torture and other ill treatment of suspects detained for the 2008 [Mumbai] bombings. Methods included both physical and mental abuses such as beatings, electric shocks, stress positions, denial of food and water, sensory deprivation, and threats against suspects and their families. The level of abuse varied by the police force involved and how swiftly investigators were able to secure confessions or other incriminating information.

“In some cases, the police not only relied on torture to force suspects into incriminating themselves and others, they also fabricated confessions that they made the suspects sign and memorize, to repeat later in front of a magistrate. They also used confessions to persuade magistrates to extend police custody of suspects for continued questioning.

“In all types of criminal cases in India, police routinely use torture to extract confessions. Many investigating officers admit they consider torture and other forceful methods essential tools of police work. In the 2008 bombing cases, those tendencies appeared to have been exacerbated by the tremendous public pressure to find and punish the perpetrators.

“Precisely because of the high risk of torture, confessions made to the police are generally not admissible as proof of guilt in an Indian court of law. For a confession to be used as evidence, a suspect must repeat the confession before a magistrate.

However, a suspect's statements to police are admissible as corroboration of other evidence, creating a 'back door' for them to enter into court proceedings." [26k] (p30-31)

- 9.40 On 26 April 2010 the Prevention of Torture Bill was introduced in Parliament, 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) [45e] *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]

- 9.41 The Prevention of Torture Bill, 2010 was passed by the Lok Sabha (lower house of Parliament) in December 2010; as of 9 August 2011 the Bill was pending in the Rajya Sabha (upper house). (PRS Bill track) [37a] The USSD 2010 Report noted,

"...a number of nongovernmental activists expressed concerns about the [Bill's] provisions. Activists were concerned that the [Bill] requires that complaints regarding torture be made within six months, that previous sanctions by appropriate government bodies must be sought before a court is empowered to consider a complaint, that the legal framework to address cases of torture is insufficient because there is no independent agency to receive torture complaints and conduct prompt investigations, and that there is no effective procedure for victims to receive redress and rehabilitation." [2c] (Section 1c)

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Excessive use of force and other abuses in internal conflict areas

9.42 The USSD 2010 Report observed:

“During the year [2010] the country's armed forces, individual states' security forces, and paramilitary forces continued to engage in armed conflict with insurgent groups in Jammu and Kashmir, in several northeastern states, and in the Naxalite belt in the central and eastern parts of the country. All parties to the conflict used excessive force on occasion, killing and injuring conflict participants and civilians. The central and state governments and the armed forces investigated complaints and punished human rights violations committed by their own forces, and they arrested and tried insurgents under terrorism-related legislation. Investigations and prosecutions into human rights violations, however, were slow and few in number.

“There were reports that government security forces tortured, raped, and mistreated insurgents and alleged terrorists in custody and injured demonstrators.

“The NHRC looked into media reports and photographs that were published on June 18 of what appeared to be security force members carrying the dead bodies of Naxalites, including women, with their hands and feet tied to bamboo poles ... The government of West Bengal stated that security personnel had no intention of carrying the victims trussed in bamboo poles but were forced to as they were facing a hostile situation.

“Human rights groups maintained that military, paramilitary, and insurgent forces abducted numerous persons in Jammu and Kashmir, the Northeastern States, and the Naxalite belt. Human rights activists feared that some of the unacknowledged prisoners were tortured or killed during detention ... Estimates of the number of missing persons varied. Human rights organizations stated there were 8,000 to 10,000 people missing in custody in Jammu and Kashmir.

“The conflicts in Jammu and Kashmir, the Northeastern States, and the Naxalite belt have displaced an estimated 621,000 persons; most remained without permanent homes during the year.” [2c] (Section 1g)

9.43 Referring to Jammu and Kashmir, the USSD 2010 Report recorded:

“In Jammu and Kashmir, between June and September [2010], security forces killed demonstrators during protests and injured many others. According to the government, many of the protests turned violent after protesters threw stones and rocks at security forces, and security forces retaliated with excessive or deadly force. Deaths and injuries to protesters, including a number of children, spurred anger and renewed protests, deepening a cycle of violence. The MHA [Ministry of Home Affairs] reported 101 civilians were killed from June 11 to October 31. In September the government sought to calm tempers through dialogue, by releasing arrested protesters and providing financial compensation for deaths. During the violence the state government arrested 2,266 individuals; 81 of them were charged under the PSA for leading the protests ... The conflicts in Jammu and Kashmir also resulted in the mistreatment and abuse of individuals. On April 1, the Jammu and Kashmir State Human Rights Commission informed the state assembly that there were 404 cases of human rights violations, including six rapes, 43 disappearances, and six custodial deaths in 2008-09, 11 of which were specific complaints against paramilitary forces and the Jammu and Kashmir

police. In three cases the army courts-martial court granted permission for the prosecution of the violators ... The army prosecuted and punished some soldiers for human rights violations ... However, government investigations generally revealed a large percentage of the claims to be false and unjustified ... on March 2, the Jammu and Kashmir government stated that as many as 384 complaints of the 623 human rights violations made to the State Human Rights Commission in the past two years were found to be false.” [2c] (Section 1g]

- 9.44 The Freedom House report, *Freedom in the World 2010, Kashmir (India)*, covering events in 2009, reported:

“Indian security personnel based in Kashmir, numbering about 500,000, 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 former militants into progovernment militias. Members of these groups act with impunity and have reportedly carried out a range of human rights abuses against pro-Pakistani militants and civilians. Official figures released in August 2009 estimated that 3,429 people had disappeared between 1990 and July 2009. Human rights groups have suggested a number closer to 8,000. Security personnel are often rewarded – with either cash or a promotion – for producing a dead militant, and holding militants in custody is considered a security risk. This has led to the practice of fake “encounter” killings, in which militants as well as civilians are killed in custody and then passed off as combatants killed in battle.” [43b]

See section 11: [Non-government armed groups](#)

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AVENUES OF COMPLAINT

- 9.45 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]
- 9.46 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, organisations and activists](#)

- 9.47 The USSD 2009 Report recorded, "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." [2g] (Section 4) The USSD 2010 Report noted that "...the NHRC received 82,021 complaints related to human rights violations in 2009-10, a decrease from the 90,946 complaints received in 2008-09 ... Nineteen states also have human rights commissions, which hold independent investigations but work under the NHRC." [2g] (Section 4)
- 9.48 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.
- 9.49 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]

- 9.50 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

- 9.51 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]

- 9.52 According to the USSD 2010 Report:

"Individuals or NGOs can file 'public interest litigation' (PIL) petitions in any high court or directly in the Supreme Court to seek judicial redress of public injury. These injuries may have been a result of a breach of public duty by a government agent or as a result of a violation of a provision of the constitution. NGOs credited PIL petitions for making government officials accountable to civil society organizations in cases involving allegations of corruption and partiality." [2c] (Section 1e)

See also Section 12: [Judiciary](#)

Complaints made at police stations

- 9.53 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)

- 9.54 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)

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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]

ABSENCE WITHOUT LEAVE AND DESERTION

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 (HRW) Report of 1 February 2011, *The Anti-Nationals*, observed, "Each year India suffers numerous bombings and other attacks on civilians conducted by an array of militant groups with religious, separatist, nationalist or other agendas. These include Maoist insurgents known as Naxalites, Punjabi Sikhs, Hindu extremists, and the warring parties in Jammu and Kashmir and in India's northeast." [26k] (p13)

Naxalites (Maoists)

- 11.02 Jane's Sentinel Security Assessment for India, updated on 21 April 2011, noted as follows:

"The term 'Naxalite' comes from an encounter between police and a group of armed peasants in the West Bengal town of Naxalbari in 1967. The label has since been used to describe a range of armed groups that operate in 20 of India's 28 states, but are most prevalent in Bihar, Jharkhand, West Bengal, Orissa, Chhattisgarh, Andhra Pradesh and Maharashtra. The government has stated that 223 of India's 636 districts are affected. Chhattisgarh is currently the worst-affected state.

"There are dozens of small Naxalite groups, but by far the most pressing security threat comes from the Communist Party of India-Maoist (CPI-M), which formed in 2004 from a merger between two leading parties, the People's War and the Maoist Communist Centre, and a number of smaller parties.

"According to figures from the Institute of Conflict Resolution, a New Delhi think tank, deaths related to the insurgency have increased from 638 deaths in 2008, to 997 in 2009 and 1,174 in 2010. Of the latter, 624 were civilians, compared to 276 security forces and 274 insurgents.

“The CPI-M is openly committed to Mao's three-stage protracted war strategy - developing liberated base areas in remote regions, building up a standing army that can attack police and state targets before eventually advancing on the country's cities and overthrowing the government. It also has an extensive socialist agenda, based on the redistribution of land, the elimination of foreign economic and political influence and concepts of social justice and economic equality.

“Although Maoist cadres are generally thought to have limited training and organisation, their advantages in terms of geography and human intelligence are considerable, and they have been able to mount sizeable co-ordinated attacks. Offensives often involve several hundred members of the people's militia, the largest component of the Maoists' armed wing: the People's Liberation Guerrilla Army (PLGA). The PLGA consists of a primary force (military and protection platoons), that spearheads the attack, a secondary force (guerrilla squads) and the base force (the people's militia). Unlike the guerrillas, people's militia members are ordinary villagers.

“Since the government increased the intensity of its counter-insurgency operations in late 2009, the Maoists have carried out a number of high-profile attacks...” [58f]

11.03 According to Jane's Sentinel, the “Maoists are a banned outfit in Andhra Pradesh, Chhattisgarh and Orissa, but not in West Bengal...and Jharkhand.” [58f]

11.04 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) 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]

11.05 The Prime Minister, in October 2009, termed *naxalism* “the greatest internal security threat to our country.” (*The Hindu*, 12 October 2009) [60]

11.06 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...” [26e]

- 11.07 *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)

- 11.08 *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)

See also [Section 8: Internal security situation](#)

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Jammu and Kashmir

- 11.09 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]

- 11.10 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 [44]
- 11.11 The Freedom House *Freedom in the World - Kashmir (India)* Report for 2009 had 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]

Northeastern states

- 11.12 Jane’s Sentinel Risk Assessment, updated 11 January 2010, reported:
 “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]
- 11.13 As stated in the Freedom House *Freedom in the World - India (2011)* report, published 5 July 2011: “...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. Such fighters have

been implicated in numerous bombings, killings, abductions, and rapes of civilians, and they also operate extensive extortion networks. However, the number of killings of civilians, security personnel, and militants in the northeastern insurgencies fell sharply to 322 in 2010, compared with 852 in 2009, according to the SATP [South Asia Terrorism Portal].” [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

11.14 The HRW report of February 2011 recorded:

“Over the past decade, Pakistan-based Islamist militant groups have carried out a number of attacks targeting civilians. These include the assault on the Indian Parliament building on December 13, 2001, which killed six policemen and a worker, and nearly prompted a war between India and Pakistan as both countries moved troops to their shared border. Other attacks attributed to Pakistan-based groups were the three synchronized bomb attacks in New Delhi on October 29, 2005, that killed over 60 people and injured 200 others, and the detonation of seven bombs on local commuter trains in Mumbai which killed over 200 people on July 11, 2006 ... In 2008, multiple, synchronized blasts in Jaipur in May, Ahmedabad in July, and Delhi in September killed at least 152 people. Those blasts were claimed by the then-obscure ‘Indian Mujahideen’ (IM) ... [These] were quickly overshadowed by the devastating attack on the commercial and economic hub of Mumbai that began on November 26, 2008, and became known as India’s ‘9/11’” [26k] (p14)

(See [Section 3: History](#) for details of the November 2008 Mumbai attacks.).

11.15 On 13 July 2011 three coordinated bomb blasts in the city of Mumbai killed at least 24 people and injured more than 130, some of them severely. There were no immediate leads on the identity of the perpetrators; some officials and analysts have blamed them on the Indian Mujahideen (IM). (BBC News, 13 July and 25 July 2011) [32by] [32bz]

11.16 The February 2011 HRW report identified the following principal Islamist militant groups:

Indian Mujahideen (IM)

“Indian federal and state authorities describe the Indian Mujahideen (IM) as a militant splinter faction of the Students Islamic Movement of India (SIMI), an outlawed organization that promotes an Indian Islamic state. Indian authorities depict IM as a mostly indigenous group but also allege that it is under the control of Pakistan’s ISI and has ties to foreign Islamist militant groups, specifically Bangladesh’s Harkat-ul-Jihad-al-Islami (HuJI) and Pakistan’s LeT and Jaish-e-Mohammad (JeM) ... In June 2010, the Indian government placed IM on its list of terrorist organizations and said that since 2005, it had conducted more than 10 bombings around the country that killed nearly 500 people. However, the group’s origins, its ties to SIMI, and its strength remain unclear.

“In emails sent to media outlets after attacks, IM claimed responsibility for the 2008 bombings in Jaipur, Delhi, and Ahmedabad...” [26k] (p16-17)

Students Islamic Movement of India (SIMI)

“The Students Islamic Movement of India (SIMI) was formed in Aligarh, in Uttar Pradesh state, in 1977. Initially SIMI simply attempted to promote morality campaigns and a conservative Islamic lifestyle that did not emulate the West ... SIMI attracted increasing support among Muslim youths and, according to Indian authorities, began preaching a more conservative interpretation of Islam and advocating violent “jihad” to protect the rights of Muslims.

“India’s central government banned SIMI after September 11, 2001... Indian officials contend that SIMI has continued its operations despite the ban, often through front organizations, and receives funding primarily from sources in the Persian Gulf that support Islamist militancy. They also allege that some SIMI members have received training and instructions from Pakistan-based groups such as LeT and JeM, and have provided safe houses for militants from LeT, JeM, HUJI, and others.” [26k] (p17-18)

Lashkar-e-Taiba (LeT)

“Lashkar-e-Taiba [based in Pakistan] is widely considered to be the most formidable foreign-based militant group targeting India and is viewed with increasing concern by Western governments. It was formed in the early 1990s and initially operated in Indian-administered Kashmir. Its later strikes inside India’s heartland include the November 2008 attack on Mumbai. After LeT was banned by the Pakistani government in January 2002, largely as the result of international pressure, it adopted a new identity as a charity, Jamaat-ud-Daawa (JuD), which was banned by the United Nations after the Mumbai attacks.” [26k] (p18-19)

On 13 February 2010 a bomb blast in a restaurant in the western city of Pune killed 16 people and injured about 40 others. The explosion tore through the German Bakery in the Koregaon Park area of the city, which is popular with tourists. Lashkar-e-Taiba al-Almi, which is said to be a splinter group of Lashkar-e-Taiba, claimed responsibility for the incident, saying it was in response to India's "refusal" to discuss the disputed Kashmir region. The attack came a day after India and Pakistan agreed to meet for talks in Delhi. (BBC News, 17 February 2010) [32bc]

For further information about the activities of insurgent groups see [section 8: Internal Security situation](#)

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12. JUDICIARY

ORGANISATION

- 12.01 As stated in the US State Department *Country Report on Human Rights Practices 2009* (USSD 2009), released 11 March 2010, “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.” [2g] (Section 1e)

Supreme Court

12.02 Europa World online, accessed 8 August 2011, related:

“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] (Judicial system: 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..." [73a] (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." [18a] 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 US State Department *Country Report on Human Rights Practices 2010*, published on 8 April 2011 (USSD 2010 Report) noted that, as of 25 November 2010, there were 1,292 functional fast-track courts across the country, which disposed of more than 16,000 cases in 2008 and 14,000 cases in 2009. The report added, "Critics contended that poor detainees were unable to make bail and would remain in detention." [2c] (Section 1d)

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." [73a] (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.]” [127a]

- 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). [127a]

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INDEPENDENCE OF THE JUDICIARY

- 12.09 The USSD 2010 Report stated that “The law provides for an independent judiciary, and the government generally respected judicial independence in practice...” [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 According to the USSD 2010 Report:

“The legal system was seriously overburdened and lacked modern case management systems, often delaying or denying justice. The court system had an estimated backlog of 30 million cases; one estimate during the year [2010] was that courts would require 320 years to clear that backlog ... Many citizens reported that they offered bribes to move cases through the overburdened court system. In 2009 Minister of Law Veerappa Moily reported there were four million civil and criminal cases pending in the country’s 21 high courts and 27 million pending civil and criminal cases in the lower courts. According to Moily the average time for a case to work its way through court was 15 years.” [2a] (Section 1e)

- 12.17 Transparency International recorded in their *Global Corruption Report 2007*, “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]

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FAIR TRIAL

12.20 The USSD 2010 Report noted as follows:

“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. 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. While defendants have the legal right to question witnesses against them, in practice underprivileged defendants sometimes did not enjoy this right. Courts must announce sentences publicly, and there are effective channels for appeal at most levels of the judicial system.

“Courts in Jammu and Kashmir often were reluctant to hear cases involving insurgent and terrorist crimes and failed to act expeditiously, if at all, on habeas corpus cases. According to a study by the South Asia Forum for Human Rights and the Centre for Law and Development, thousands of habeas corpus cases were pending in the courts throughout the Kashmir valley.” [2c] (Section 1e)

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 (2011)*, published on 5 July 2011, “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 system is severely backlogged and understaffed, with millions of civil and criminal cases pending ... 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

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 August 2011) [128a]

12.25 The National Legal Services Authority (NALSA), 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. [128a] NALSA also has legal aid schemes designed for certain minority groups. [128b]

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 August 2011) [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 non-cognizable, 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. (VakilNo1, accessed 7 August 2011) [75a]

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 2010* (USSD 2010), released on 8 April 2011, noted:

“Under the code of criminal procedure, a magistrate may authorize the pre-charge detention of an accused person for a period of no more than 90 days. Under the regular criminal procedure, the accused must be released on bail after 90 days. Article nine of the code prohibits arbitrary arrest or detention. Those detained on criminal charges must be promptly informed of the charges against them and of their rights to legal counsel. Article 39A of the constitution mandates free legal aid to the poor and weaker sections of society; however, need is not assessed systematically. By law authorities must allow family members access to detainees. In practice authorities granted access only occasionally. Arraignment of detainees must occur within 24 hours, unless the suspect is held under a preventive detention law.” [2c] (Section 1d)

The same report observed that the “Authorities could also arrest and detain individuals under several other laws.” [2c] (Section 1d) See [‘Security legislation’](#), below

- 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.” [117a] (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) [75c]

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] The USSD 2010 Report noted that “The AFSPA remained in effect in Nagaland, Manipur, Assam, and parts of Tripura, and a version of the law was in effect in Jammu and Kashmir.” [2c] (Section 1d)

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.” [44I]

- 13.08 The USSD 2010 Report 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> [44I]

Unlawful Activities Prevention Act (UAPA)

13.11 The USSD 2010 Report noted:

“In 2008 parliament passed the Unlawful Activities Prevention Act (UAPA), which gives authorities the ability to detain persons without charge in cases where insurgency or terrorism was suspected. Under the UAPA police can detain an individual without charge for up to 30 days. The UAPA also permits authorities to hold a detainee in judicial custody without charge for up to 180 days (including the 30 days in police custody). A court can authorize an initial period of 90 days pre-charge detention without special grounds and can extend detention for up to 90 days if the public prosecutor files a report with the court indicating the progress of the investigation. The UAPA also denies bail for foreigners and makes it easier for courts to deny bail in the case of detained Indian citizens. It presumes the accused to be guilty if the prosecution can produce certain incriminating evidence against the accused, such as the possession of arms or explosives or the presence of fingerprints at the crime scene, regardless of whether criminal intent exists ... State governments also held persons without bail for extended periods before filing formal charges under the UAPA.” [2c] (Section 1d)

13.12 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]

13.13 Human Rights Watch, in a report of 1 February 2011, quoted the executive director of the Delhi-based South Asia Human Rights Documentation Centre as saying, “They brought back the unjust provisions of POTA and TADA through the back door...Even POTA and TADA included some safeguards such as a review committee or sunset provisions...but under the 2008 amendments to UAPA, all that is gone.” [26k] (p89) The HRW report specified:

“[T]he amended UAPA includes a vague and overly broad definition of terrorism ... The UAPA definition includes acts ‘likely to threaten the unity, integrity, security or sovereignty of India or with intent to strike terror or likely to strike terror in the people ... by any means of whatever nature to cause or likely to cause’ death or injury to persons, damage to property, or ‘the disruption of any supplies or services essential to the life of the community in or in any foreign country.’ This definition can encompass non-violent forms of political protest. It gives authorities the ability to classify political opponents and a broad range of oppositional movements arising from regional, ethnic, or religious grievances, as ‘terrorist’ ... UAPA had already empowered the government to outlaw a group as a ‘terrorist organization,’ a ‘terrorist gang,’ or an ‘unlawful association.’ The 2008 amendments broadened those powers by increasing the number of criminal offenses linked to association with or membership in a terrorist organization or gang.

“Bans on groups that the government designates as ‘terrorist organizations’ are permanent and are not subject to judicial review. Bans on ‘unlawful associations’ are subject to judicial review and must be renewed every two years.

"The 2008 UAPA amendments also grant security forces sweeping powers that are not authorized under the Indian criminal code, significantly raising the risk of arbitrary detentions such as those that occurred under TADA and POTA.

"The UAPA amendments also increase the risk of arbitrary detention, custodial abuse, and violation of basic due-process rights by allowing courts to double the maximum period of detention without charge for terrorism suspects.

"Another 2008 amendment directs a court during trial to presume the guilt of an accused in [two specific] circumstances, without a showing of criminal intent." [26k] (p87-93)

- 13.14 The USSD 2010 Report noted that "In 2004 the government repealed the Prevention of Terrorism Act (POTA) ... By law, however, persons arrested under a prior law [e.g. POTA] continue to be prosecuted under that law even after its repeal. There were conflicting reports during the year of how many persons remained detained under POTA." [2c] (Section 1d)

See also Section 9: [National Investigation Agency](#)

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JAMMU & KASHMIR: SECURITY LEGISLATION

Jammu and Kashmir Armed Forces Special Powers Act

- 13.15 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) The USSD 2010 Report noted that, on 29 September 2010, the Jammu and Kashmir state government created two committees to review areas in the state in which AFSPA could be lifted; however, the committees did not meet during 2010. [2c] (Section 1d)

Public Safety Act (PSA)

- 13.16 As noted in the USSD 2010 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.

“On February 24, the Jammu and Kashmir governor stated that 728 persons had been detained under the PSA during 2008-10. On December 29 [2010], a Kashmir newspaper reported more than 3,500 youths were arrested and 120 persons detained under the PSA during the June to September [2010] protests in the Kashmir valley.” [2c] (Section 1d)

- 13.17 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]

SECURITY LAWS IN OTHER STATES

- 13.18 Human Rights Watch noted in a report of February 2011 that certain states, apart from Jammu and Kashmir, have specific security legislation. For example, “At least 21 Muslims accused in the 2008 [Mumbai] bombings and the 11 Hindus accused in the 2008 Malegaon bombing have been charged under the Maharashtra Control of Organized Crime Act (MCOCA) of 1999, India’s most draconian counterterrorism law.” [26k] (p85)

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14. PRISON CONDITIONS

- 14.01 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]
- 14.02 According to the National Crime Records Bureau (NCRB), as of 31 December 2009 there were 1,374 prison establishments in India, including 119 central jails, 321 district jails, 832 sub jails, 18 women’s jails, 32 open jails, 21 Borstal schools and 31 other jails. (NCRB website accessed 9 August 2011) [105a]
- 14.03 The *US State Department Country Report on Human Rights Practices 2010* (USSD 2010), released on 8 April 2011, stated:

“Prison conditions were frequently life threatening and did not meet international standards. Prisons were severely overcrowded, sanitation and other environmental

conditions often did not meet international standards, and food and medical care were inadequate.

“Two-thirds of the prison population reportedly consisted of persons awaiting trial. Female prisoners accounted for approximately 4 percent of the total prison population, and juveniles composed less than 1 percent. Men and women were held separately. The law requires juveniles to be detained in rehabilitative facilities, although at times they were detained in prison, especially in the rural areas. Pre-trial detainees were held with convicted prisoners.

“Prisoners were permitted reasonable access to visitors, although some family members stated they were denied access to relatives held in detention, particularly in areas of conflict, including Jammu and Kashmir. Prisoners have the right to engage in religious observances, and in most cases that right was respected in practice. As in previous years, the government allowed some NGOs to provide assistance to prisoners, within specific guidelines.

“Investigations of the prisoner complaints were within the purview of the NHRC [National Human Rights Commission], which received and investigated prisoner complaints of human right violations throughout the year, but some activists indicated that many complaints were not filed due to fear of retribution by prison guards or officials. Most investigation findings and NHRC recommendations were published on the NHRC Web site; however, there were allegations by NGOs that investigations and recommendations of controversial issues were not disclosed.” [2c] (Section 1c)

(The NHRC website can be accessed at: <http://nhrc.nic.in/nhrc.htm>) [47]

14.04 According to the most recent figures published by the National Crime Records Bureau (NCRB), as of 31 December 2009 the total prison population stood at 376,969 – 22.8 per cent over the total nominal prison capacity of 307,052. Central jails were overcrowded by 22.5 per cent and district jails by 43.7 per cent; other types of prison establishments were operating at less than their total capacity. (NCRB website accessed 9 August 2011) [105a]

14.05 The USSD 2010 Report continued:

“Most state governments permitted prison monitoring by independent groups such as the International Committee of the Red Cross (ICRC) and the NHRC. In many states the NHRC made surprise visits to state prisons...

“In an effort to improve conditions, the MHA [Ministry of Home Affairs] acknowledged in its 2009-10 annual report that prisons were overcrowded and required repairs and renovations, including improvements in sanitation and water supply. During the year the central government began implementing a plan to modernize the prisons. According to the MHA 2009-10 annual report, the plan had been implemented in 27 states and resulted in the construction of 99 new jails and 1,365 additional barracks in existing prisons.” [2c] (Section 1c)

14.06 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](#)

- 14.07 The National Human Rights Commission, on 1 May 2011, published several recommendations for the improvement of prison conditions:
<http://nhrc.nic.in/disparchive.asp?fno=2335> [47]

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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 Amnesty International, in their Annual Report 2011 published on 13 May 2011, noted that no executions had taken place during 2010. The report stated:

"In December [2010], India voted against a UN General Assembly resolution calling for a worldwide moratorium on executions. At least 105 people, including Ajmal Kasab, the sole surviving Pakistani man accused of involvement in the 2008 Mumbai attacks, were sentenced to death. However, for the sixth successive year, no executions took place and the death sentences of 13 people were commuted to life imprisonment. Amendments to the law extended the death penalty to hijackers. Under new legislation, 16 states published death row figures, but at least five others refused to do so." [3e]

- 15.06 It was reported on 27 May 2011 that President Patil had rejected the mercy petitions of two convicts on death row, clearing the way for their executions. One of the individuals concerned had been convicted for murder; the other for planning a terrorist attack in 1993 in which several people were killed. This was the first time since 2004 that presidential assent for a death sentence had been given. (BBC News) [32b]

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16. POLITICAL AFFILIATION

FREEDOM OF POLITICAL EXPRESSION

- 16.01 The Freedom House report, *Freedom in the World – India (2011)*, published on 5 July 2011, stated:

"Under the supervision of the Election Commission of India (ECI), elections in India have generally been free and fair. The 2009 national polls were mostly peaceful, though Maoist militant attacks in parts of the country led to 17 deaths during the first phase of voting. Electronic voting machines, also used in 2004, have helped reduce election-day irregularities. Violence has also declined during state-level elections, which were held in Andhra Pradesh, Orissa, Sikkim, Arunachal Pradesh, Maharashtra, and Haryana in 2009, and Bihar in 2010. Incumbents retained power in all of the votes. 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 Section 4: [Recent developments](#), [Section 6: Political System](#), [Section 17: Freedom of Speech and Media](#) 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 2010* (USSD 2010), released on 8 April 2011, 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; however, there were restrictions on foreign funding and organization of international conferences.” [2c] (Section 2b)

- 16.03 The USSD 2010 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)

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 (2011)*, published on 5 July 2011, observed that a wide range of political parties operate freely, and that there are no restrictions on peaceful political activism. [43d]

See also Section 3 History: [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. While the government generally respected freedom of speech and press in practice, certain forms of expression, such as obscenity or speech that the government feared might disrupt public order, are not protected.

“Individuals could generally criticize the government publicly or privately without reprisal” [2c] (Section 2a)

17.02 The report further stated:

“The independent media were active and expressed a wide variety of views without restriction. Independent newspapers and magazines were regularly published, and television channels broadcast investigative reports, including allegations of government wrongdoing. The media generally promoted human rights and criticized perceived government violations.

“AM radio broadcasting remained a government monopoly. Private FM radio station ownership was legal, but licenses authorized only entertainment and educational content. With the exception of radio, foreign media generally operated freely. Widely distributed private satellite television provided competition for Doordarshan, the government-owned television network. There were allegations that the government network manipulated the news. Some privately owned satellite channels promoted the platforms of political parties their owners supported.

“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 self-regulated 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)

17.03 Referring to Jammu and Kashmir, the USSD 2010 Report stated:

“... both the state and central governments imposed restrictions on media in Jammu and Kashmir during the violent protests in the summer as they attempted to restore law and order ... On July 1 [2010], the Jammu and Kashmir government banned publication of three daily newspapers after allegations of inflammatory reporting. The ban was lifted on July 6.

“On July 30, the Jammu and Kashmir government banned transmissions of two local television channels accused of broadcasting ‘provocative’ telecasts and creating law and order problems. The channels allegedly violated the 1995 Cable Television Network (Regulation) Act and were restricted to broadcasting news for only 15 minutes at a predetermined time.

“Journalists experienced violence and harassment as a result of their reporting during the year.” [2c] (Section 2a)

17.04 Freedom House reported in *Freedom in the World – India (2011)*, published on 5 July 2011:

“India’s private media are vigorous and diverse. Investigations and scrutiny of politicians in print, online, and television outlets – as well as linkages with human rights groups, other civil society organizations, and government bodies tasked with responding to problems through the political process – make the news media one of the most important components of India’s democracy. While radio remains dominated by the state and private stations are not allowed to air news content, the television and print

sectors have expanded considerably in recent years, with many of the new outlets targeting specific regional or linguistic audiences. Despite this vibrant media landscape, journalists, creative writers, and human rights defenders continue to face a number of constraints. The government sometimes uses its power under the Official Secrets Act to censor security-related articles. Authorities have also on occasion used other security laws, criminal defamation legislation, hate-speech laws, and contempt-of-court charges to curb critical voices.” [43d]

- 17.05 The BBC Country Profile for India, updated 8 April 2011, 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 “Indian broadcasting has flourished since state TV's monopoly was broken in 1992. The array of channels is still growing. Private cable and satellite stations command large audiences. News programmes often outperform entertainment shows. Many 24-hour news channels are up and running and more are planned ... Internet use has soared; by late 2008, around 81 million Indians were online” [32h]
- 17.06 In an interview with the BBC on 28 April 2011, Dr Binayak Sen, a well-known human-rights activist and public health specialist who had been sentenced to rigorous life imprisonment on charges of sedition and criminal conspiracy, accused the Indian government of misusing the country's sedition laws "to silence voices of dissent". He described the sedition laws as an outdated relic from the country's colonial past. He stated there were hundreds of people in Indian jails on charges of sedition. [32cb] (See Section 18: [Human Rights NGOs and activists](#))
- 17.07 Reporters Without Borders (RWB) reported on 19 May 2011 that the Ministry of Information Technology and Communications had issued a new set of regulations on Internet usage, called ‘IT Rules 2011’. “The new rules require Internet companies to withdraw offensive content – including content that is ‘obscene,’ ‘harassing,’ ‘libellous,’ ‘hateful,’ ‘harms minors’ or ‘infringes copyright’ – within 36 hours of being notified by the authorities or risk prosecution.” RWB commented, “This has the effect of turning technical intermediaries such as telecom companies, access providers, social networks and search engines into police auxiliaries and Web censors. The definition of illegal content is very vague.” RWB noted that the new regulations also required Internet café operators to keep a copy of each client’s identity document for a year. They will also have to photograph their clients and keep their web browsing history from each visit. This data will have to be sent to the government each month. [42b]
- 17.08 Minister of Information and Broadcasting, Ambika Soni, and Minister of Law and Justice, Moodbidri Veerappa Moily, both said in early-2011 that the government was actively looking to reform the Penal Code so as to decriminalise defamation. The NGO ‘Article 19’ stated that “Criminal defamation is one of worst forms of state suppression of free speech ... Article 19 is ready to support the government in creating a new defamation code in line with international standards.” [133]

See Section 7: [Human Rights, Introduction](#), paragraph 7.05, regarding the Right to Information Act, 2005

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TREATMENT OF JOURNALISTS

- 17.09 In their 2011 Annual Report, Reporters Without Borders stated that India "...provides a legal framework that is largely favourable to press freedom. Indian journalists take pride in their freedom and will defend it robustly in street protests or before the courts. The Constitution is on their side and guarantees free expression in Article 19, but on the condition that it does not conflict with the 'sovereignty and integrity of India'. However journalists' safety is precarious in some states in which press freedom is under threat from politicians, religious groups and criminal gangs." 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]
- 17.10 According to the *Freedom in the World – India (2011) report*, "Journalists remain subject to physical intimidation. On a number of occasions during 2010, reporters were attacked, threatened, or detained by police, local authorities, insurgents, or right-wing groups. Members of the press are particularly vulnerable in rural areas and insurgency-racked states such as Chhattisgarh, Kashmir, Assam, and Manipur ... Perpetrators of violence against journalists in India are rarely punished in practice." [43d]
- 17.11 The Committee for the Protection of Journalists (CPJ) report, *Attacks on the Press 2010*, released in February 2011, noted:
- "Anti-press violence spiked in the eastern state of Orissa in early year, according to media support groups, which documented 12 assaults and six cases of threats and intimidation between January and July [2010]. Three attacks had been reported in all of 2009. In some cases, the victims accused members of the Central Industrial Security Force and Indian Reserve Battalion of being involved. In three assault cases, police were present but did not respond, support groups and local media said. The attacks were linked to a range of sensitive issues, including Maoist uprisings, government corruption, and student protests.
- "About 3,000 people stormed the premises of the Delhi-based television news channel Headlines Today on July 16 [2010]. The attackers, members of the Hindu nationalist organization Rashtirya Swayamsevak Sangh (RSS), destroyed the building's lobby, blocked all exits for two hours, and assaulted a camera operator, according to news reports and media support organizations. Headlines Today stories had recently accused RSS members of involvement in bombings across the country ... Also on July 16, in an apparently unrelated attack, members of the far-right nationalist party Shiv Sena ransacked the studio of TV channel Zee 24 Taas in Kolhapur, western Maharashtra state.
- "Strict enforcement of curfews by security forces in cities across Indian-controlled Kashmir greatly hindered press coverage. On several occasions, local publications and regional TV channels were paralyzed as employees were unable to leave their homes without risk of police obstruction, according to local media reports and journalists' organizations." [46c]
- 17.12 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]

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 2010*, released on 8 April 2011 (USSD 2010 Report) observed certain limitations on the functioning of the NHRC:
- “The government-appointed NHRC generally acted independently, but some human rights groups claimed institutional and legal weaknesses hampered it. The president [of India] appoints members after recommendations from parliament. While the NHRC has the authority to initiate investigations, inquire into complaints, or request that a state government submit a report – a request that state governments often ignored – it does not have the statutory power to enforce requests, initiate proceedings for prosecution, or grant interim compensation, nor could it inquire independently into human rights violations by the armed forces. Human rights NGOs criticized the NHRC's financial dependence on the government and its failure to investigate abuses more than one year old. They claimed the NHRC did not register all complaints, dismissed cases on frivolous grounds, failed to investigate cases thoroughly, and did not adequately protect complainants.” [2c] (Section 5)

- 18.04 The US State Department *Country Report on Human Rights Practices 2009*, published 11 March 2010 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)." [2g] (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]

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, accessed 7 August 2011) [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 USSD 2010 Report noted:

“The country hosts more than three million NGOs that advocate for social justice, sustainable development, and human rights. The government generally met with domestic NGOs, responded to their inquiries, and took action in response to their reports or recommendations. The NHRC works cooperatively with numerous NGOs, and NGOs are present on several NHRC committees. However, while human rights monitors in Jammu and Kashmir were able to document human rights violations, security forces, counterinsurgents, and police at times restrained or harassed them.

“On September 15 [2010], parliament passed a new Foreign Contributions (Regulation) Act (FCRA). Many NGOs believed the law's revised regulations were vague and were concerned the ban on funding for organizations of a ‘political nature’ made the law vulnerable to abuse and corruption by government officials. On November 16, the MHA informed parliament that 41 NGOs were banned from receiving foreign contributions due to complaints of corruption and/or irregularities in the use of funds received under the FCRA.

“NGOs must secure approval from the MHA [Ministry of Home Affairs] before organizing international conferences; permission was typically granted, but the process was lengthy. 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.

“International human rights NGOs faced difficulties obtaining visas for their representatives, and occasional official harassment and restrictions limited the public distribution of materials.

“The government permitted representatives of the UN and other international humanitarian organizations, such as the ICRC, access to the Northeastern States and Naxalite-controlled areas.” [2c] (Section5)

18.09 Amnesty International stated in their Annual Report 2011 (Covering events of 2010), published on 13 May 2011: “People defending the land rights of Adivasis and other marginalized communities, in some cases by using recent legislation to obtain information to protect their rights, continued to face serious threats and violent attacks from private militias.” [3e]

18.10 The Freedom House report, *Freedom in the World – India (2011)*, published on 5 July 2011, 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 July 2010, activist and lawyer Amit Jethwa was shot and killed in Gujarat after filing a lawsuit that implicated local political figures in illegal mining; one of those he accused was later arrested and charged with organizing the murder. In December [2010], civil liberties activist Binayak Sen was convicted of

sedition and sentenced to life in prison for his peaceful opposition to government counterinsurgency tactics used against Maoist rebels [see below]. Foreign monitors are occasionally denied visas to conduct research trips to India on human rights issues.” [43d]

- 18.11 On 24 December 2010 a District and Sessions court in Raipur sentenced Dr Binayak Sen, a well-known human-rights activist and public health specialist, to rigorous life imprisonment on charges of sedition and criminal conspiracy. He had been accused of aiding Maoist insurgents. His co-accused, Piyush Guha and Narayan Sanyal, were also convicted. The trial had lasted two years and the judgment was met with widespread outrage. Amnesty International commented, “Many of the charges against Sen stem from laws that contravene international standards. Repeated delays in the conduct of his trial have cast doubts about its fairness. The life sentence handed down against him violates international fair trial standards and is likely to enflame tensions in the conflict-affected area.” It was expected that the judgment would be appealed in the Chhattisgarh High Court (*Frontline*, 15 January 2011) [19f]
- 18.12 In an interview with the BBC on 28 April 2011, Dr Sen accused the Indian government of misusing the country's sedition laws "to silence voices of dissent". He described the sedition laws as an outdated relic from the country's colonial past. He stated there were hundreds of people in Indian jails on charges of sedition. [32cb]

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19. CORRUPTION

See also Section 12: [Corruption in the Judiciary](#) and Section 9: [Security Forces](#)

- 19.01 *Frontline* magazine commented in its issue of 4 December 2010, “Corruption has scaled unimaginable heights in the reforms era driven by private capital seeking to manipulate public policy.” [19g]
- 19.02 The US State Department *Country Report on Human Rights Practices 2010* (USSD 2010), released on 8 April 2011, 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)
- 19.03 Referring to corruption and criminality in the political system, Freedom House stated in its report *Freedom in the World – India (2011)*, published on 5 July 2011:
- “Political corruption continues to plague government efficiency in India ... Legal limits on electoral spending are invariably exceeded, with campaigns drawing on large amounts of ‘black money’ obtained through tax evasion and other means. Misdirection of funds meant for public goods and social programs has undermined overall progress on development. Though politicians and civil servants are regularly caught accepting such bribes or engaging in other corrupt behavior, a great deal of corruption goes unnoticed and unpunished. The federal government has introduced a number of initiatives to address the problem, such as the 2005 Right to Information Act, internet-based government services and information, and accountability and transparency agreements between organizations and individuals, known as citizen charters. The 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 and broad restrictions on the release of information remain in place. In January 2010, a right to information activist responsible for exposing several corrupt land deals was attacked and killed by unidentified assailants. A system of 'social audits' was intended to allow individuals and independent monitors to assess the public utility of government programs, but many reports indicate that local government officials distrust the program and attempt to thwart the inquiries." [43d]

- 19.04 In its 2010 Corruption Perceptions Index (CPI), released in November 2010, Transparency International ranked India 87th in the world corruption ranking, out of 178 countries, giving a CPI score of 3.3. (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]
- 19.05 A BBC News columnist noted on 28 June 2011 that nearly a third of Members of Parliament – 158 of the 543 members of the lower house – faced criminal charges. Seventy-four of them faced serious charges such as murder and abduction. The election watchdog, Association For Democratic Reforms (ADR), proposed that any individual charged with offences punishable for two years or more should not be allowed to contest elections; however some politicians resisted this, saying that opponents regularly file false cases against them. [32bx]
- 19.06 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)
- 19.07 It was announced on 30 July 2011 that the government would be introducing a new anti-corruption bill in parliament. (BBC News, 1 August 2011) [32cc] As noted in Section 4, there were several high-profile corruption scandals in 2010 and 2011. In February 2011, Telecommunications Minister Andimuthu Raja was arrested and accused of selling mobile phone frequency licences for a fraction of their true value, in what some analysts called India's biggest ever scandal; it was predicted to cost the exchequer about £24.5bn (sterling) in lost revenue. (BBC News, 17 March 2011) [32bs]

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20. FREEDOM OF RELIGION

OVERVIEW

- 20.01 The US State Department *International Religious Freedom Report 2010*, covering the period 1 July 2009 – 30 June 2010 (USRF 2010 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 USRF 2010 Report observed:

“The country is the birthplace of several religions, Hinduism, Buddhism, Jainism, and Sikhism, and home for more than a thousand years of Jewish, Zoroastrian, Muslim, and Christian communities. The vast majority of citizens of all religious groups lived in peaceful coexistence and were conscious of religious freedom and minority rights; however, there were some instances of religious violence between religious groups and organized communal attacks against religious minorities during the reporting period [July 2009 – June 2010] ... The country's democratic system, open society, independent legal institutions, vibrant civil society, and free press actively provided mechanisms to address violations of religious freedom when they occurred.”

20.02 The same source noted:

“The national government, led by the United Progressive Alliance (UPA), continued to implement an inclusive and secular platform that included respect for the right to religious freedom. Despite the national government's rejection of Hindutva (Hindu nationalism), a few state and local governments continued to be influenced by Hindutva. [2b] (Introduction)

“There were different personal laws for the various religious communities in matters of marriage, divorce, adoption, and inheritance. The government granted a significant amount of autonomy to personal status law boards in crafting these laws. There was Hindu law, Christian law, Parsi law, and Islamic law; all were legally recognized and judicially enforceable. None were exempt from national and state level legislative powers or social reform obligations as laid down in the constitution.”

“The government observes the following religious holidays as national holidays: Good Friday and Christmas (Christian); the two Eids (Islamic); Lord Buddha's Birthday (Buddhist); Guru Nanak's Birthday (Sikh); Dussehra, Diwali, and Holi (Hindu); and the Birthday of Lord Mahavir (Jain).” [2b] (Section II) (See section 1: [National holidays](#))

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 USRF 2010 Report noted:

“Federal and state laws that related to religion included the 1976 Foreign Contribution Regulation Act (FCRA), several state level ‘anti-conversion’ laws, the Andhra Pradesh anti-propagation law, the 1967 Unlawful Activities Prevention Act, the 1988 Religious Institutions (Prevention of Misuse) Act, the 1946 Foreigners Act, and the 1869 Indian Divorce Act ... The FCRA regulates foreign contributions to nongovernmental organizations (NGOs), including faith-based NGOs. Some organizations complained that the FCRA prevented them from properly financing humanitarian and educational activities.

“...due to a lack of sufficient trained police and corruption, the law was not always enforced rigorously or effectively in some cases pertaining to religiously oriented violence. Legal protections existed to cover discrimination or persecution by private actors.” [2b] (Section II)

20.05 The same source pointed out, “The country's political system is federal and gives state governments primary jurisdiction over law enforcement and the maintenance of order, which limited the national government's capacity to deal directly with state level abuses, including abuses of religious freedom.” [2b] (Section II) 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 USRF 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](#)

20.06 The USRF 2010 Report outlined the religious demography of the country as follows:

“According to the 2001 census...Hindus constitute 80.5 percent of the population, Muslims 13.4 percent, Christians 2.3 percent, and Sikhs 1.9 percent. Groups that constitute less than 1.1 percent of the population include Buddhists, Jains, Parsis (Zoroastrians), Jews, and Baha'is. 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, the country has the

world's second-largest Muslim population. Christian populations are found across the country but in greater concentrations in the northeast, as well as in the southern states of Kerala, Tamil Nadu, and Goa. Three small northeastern 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 (SC), also known as Dalits and Scheduled Tribes (ST). Some converted from Hinduism to other religions [mainly Buddhism], ostensibly to escape discrimination ...

“Under the 1992 National Commission for Minorities Act, five religious communities--Muslims, Sikhs, Christians, Parsis, and Buddhists--were considered minority communities.” [2b] (Section I)

- 20.07 According to the USRF 2010 Report, there is no requirement for religious groups to be licensed. 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 *2011 Annual Report of the United States Commission on International Religious Freedom* (USCIRF) stated:

“While there has been no large-scale communal violence against religious minorities since 2008, India’s progress in protecting and promoting religious freedom during the past year continued to be mixed. The Indian government at various levels has recognized past problems of communal violence and has created some structures to address these issues. Also, the national government and several state governments have taken positive steps to improve religious freedom. However, as a whole, justice for the victims of large-scale communal violence that took place in Orissa in 2007-2008, in Gujarat in 2002, and against Sikhs in 1984 remains slow and often ineffective.

“The infrastructure for investigating and prosecuting cases of religiously-motivated violence or harassment exists, such as Fast Track courts and Special Investigative Teams (SITs), in India, but its capacity is severely limited, it is utilized inconsistently, and it is hampered by political corruption and religious bias, particularly at the state and local levels. These deficiencies have resulted in a culture of impunity that gives members of vulnerable minority communities few assurances of their safety, particularly in areas with a history of communal violence, and little hope of perpetrator accountability. [67c] (p243)

- 20.09 The USRF 2010 Report recorded, “The Ministry of Home Affairs published in its Annual Report 2009-10 that 826 communal incidents occurred in 2009, in which 125 persons died, compared to 943 incidents in 2008 in which 167 persons died.” [2b] (Introduction)

20.10 The same 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 incidents were linked to politics, conversion, retaliation, or economic competition among religious communities for scarce resources.” [2b] (Section III)

See also [Muslims](#) and [Christians](#), below.

20.11 PRS Legislative Research reported on their website on 15 June 2011 that “The National Advisory Council recently released a draft ‘Prevention of Communal and Targeted Violence (Access to Justice and Reparations) Bill, 2011’. The Bill intends to create a framework for prevention and control of communal and sectarian violence. It also aims to provide relief to victims of such violence.” [37b] The following is some of the data published by PRS to describe the context of the draft Bill, based on information given in response to parliamentary questions:

- During the period 2005-09, 648 people were killed and 11,278 were injured in 4,030 incidents of communal violence
- Incidents were reported from 24 of the 35 states and union territories. The maximum number of incidents occurred in Maharashtra (700), followed by Madhya Pradesh (666) and Uttar Pradesh (645).
- The highest number of cases of communal violence (943) were reported in 2008. [37b]

Jammu and Kashmir

20.12 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]

20.13 According to the USRF 2010 Report:

“There were no reports of attacks against the Hindu community in Jammu and Kashmir by rebel forces, foreign forces, or terrorist organizations during the reporting period [July 2009-June 2010].

“On March 27 [2010] the Jammu and Kashmir government told the state assembly that 170 Hindu temples had been damaged by militants in the valley in the past 20 years. Ninety temples have been renovated, and the government has allocated funds for the renovation of other temples.” [2b] (Section II)

20.14 The USRF 2009 Report had observed:

“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.” [2h] (Section II)

Attacks by terrorist organisations

20.15 According to the USRF 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 Lashkar e-Tayyiba (LeT).” [2h] (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.” [2h] (Section III)

See also [Section 4: Recent Developments](#)

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Gujarat Riots in 2002 (update)

20.16 The Sabarmati Express train was attacked in February 2002 by a Muslim mob, killing 59 people, mainly Hindu pilgrims; this incident triggered widespread communal riots in which more than 1,000 people died. (BBC News, 22 February 2011) [32br]

20.17 The USRF 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 Amnesty International's 2011 Annual Report (covering events of 2010), commented:

“Cases against some of those responsible for the 2002 attacks against Muslim minorities in Gujarat, in which about 2,000 people were killed, made little progress. Proceedings were marred by the authorities' openly hostile attitude towards witnesses, the investigating agencies' refusal to examine crucial evidence including official telephone records, and the destruction of evidence linking key political leaders to the violence.” [3e]

20.19 The USRF 2010 Report provided an update, excerpts as follows:

“There was continued concern about the Gujarat government's failure to arrest those responsible for the communal violence in 2002 that killed over 1,200 persons, a majority of which were Muslim...

“The Gujarat government appointed the Nanavati-Mehta Commission in 2002 to investigate the violence. The term of the commission was extended for the 14th time with the final report on the 2002 Gujarat communal violence now due on December 31, 2010... [Articles published on the *Times of India's* Nanavati-Mehta Commission webpage up to 11 August 2011 indicated that the Nanavati-Mehta Commission had not yet published its final report . [13d]

“By the end of January, the Gujarat government had paid additional compensation to the next of kin to all victims, including those of 228 missing persons declared dead in February 2009...

“In 2007 the newsweekly Tehelka published secretly recorded interviews in which many of the accused admitted their roles as well as police and BJP leadership complicity in the 2002 violence.

“The situation for many persons displaced by the 2002 violence remained unchanged.

“In March 2006 the commission appointed by the Indian Railways, the Justice Banerjee Commission, concluded that the Godhra train incident, which sparked the 2002 Gujarat violence, was an accident. In September 2008 the Nanavati-Mehta Commission concluded that the Godhra incident was a conspiracy. At the end of the reporting period, the Supreme Court had not ruled on the dispute between the Indian Railways and the Gujarat government about the release of the Banerjee report to the public.” [2b] (Section II)

20.20 In April 2011 a senior Gujarat police officer filed an affidavit in the Supreme Court, accusing Gujarat Chief Minister Narendra Modi of instigating Hindus in 2002 to “teach a lesson” to Muslims. This instigation, the affidavit asserted, preceded the genocide of Muslims in the state in 2002. (*Frontline*, 7 May 2011) [19e]

- 20.21 BBC News reported on 22 February that a special court in Gujarat had found 31 people guilty of setting fire to a passenger train in the town of Godhra in 2002. The court acquitted 63 other people of conspiracy and murder. Sentencing was postponed. [32br]
- 20.22 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 in 1992 (update)

- 20.23 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]
- 20.24 *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 Manohar 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'." [60f]

20.25 The Lucknow Bench of the Allahabad High Court delivered its long-awaited ruling on 30 September 2010 on whether Hindus or Muslims have a primary right to the site in Ayodhya. The Court, in its 8,500-page order, determined that the site should be divided, with the Muslim community having control of a third of it, Hindus another third (including the mainly disputed section) and the remainder going to a minority Hindu sect, Nirmohi Akhara. Lawyers representing both Hindus and Muslims expressed their intention to appeal the ruling to the Supreme Court. Nearly 200,000 security personnel had been deployed in northern India ahead of the announcement to deal with possible rioting. (BBC News, 30 September 2010) [34bm]

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

Incidents attributed to extremist Hindu groups

20.26 According to the *United States Commission on International Religious Freedom (USCIRF) Annual Report 2011* (covering the period April 2010 to March 2011):

“Hindu nationalist organizations retain broad popular support in many communities in India. The activities of these groups, especially those with an extremist agenda or history of using violence 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.” [67c] (p245)

(Note that the Supreme Court, in a 1995 judgment, found that “that “Ordinarily, *Hindutva* is understood as a way of life or a state of mind and is not to be equated with or understood as religious Hindu fundamentalism...” [86a])

20.27 The USRF 2010 Report related, for example::

“On April 29, 2010, a pastor was attacked in Mahaboobnagar district, Andhra Pradesh, for alleged conversion activities. According to the All India Christian Council, a group belonging to the RSS [Rashtriya Swayamsevak Sangh] was behind the attack.

“Christian groups in Karnataka alleged that local police harassed pastors and parishioners at the instigation of Hindu extremist groups. On April 5, 2010, 12 pastors from the Village Ministry, which worked among indigenous persons in the Kodagu district of southern Karnataka, were arrested on charges of luring local persons to convert. The arrest was made based on a complaint filed by local RSS members.

“On March 21 according to a press report, extremists from the Vishwa Hindu Parishad, or World Hindu Council, attacked the Christian Personality Development Center for Youth in Durg, Chhattisgarh.

“On January 22 approximately 60 Hindu extremists attacked a prayer meeting in Sindhu Bhawan, Chhattisgarh, and accused Christians of forcefully carrying out conversions. Police arrested eight Christians but released them on bail six days later.” [2b] (Section II)

“Muslim groups protested against the mistreatment of Christians by Hindu extremists.”
[2b] (Section III)

See also paragraph 20.44

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INTER-RELIGIOUS MARRIAGES

20.28 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]

20.29 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]

RELIGIOUS CONVERSIONS

20.30 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]

20.31 The USRF 2010 Report noted that, where ‘anticonversion’ laws are not in place:

“Local authorities on occasion relied upon certain sections of the Indian Penal Code (IPC), which in general emphasize preserving social harmony rather than individual freedoms, 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, 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)

20.32 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 USRF 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)

20.33 The USRF 2010 Report noted, however:

"Authorities in some states arrested Christians under state level 'anticonversion' laws during the reporting period for allegedly engaging in conversions by force, allurement, or fraud. Authorities granted bail to those charged, and there were no reports of convictions under these laws during the reporting period. Hindu nationalist organizations frequently alleged that Christian missionaries lured low caste Hindus in impoverished areas 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)

See paragraph 20.27 above.

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MUSLIMS

20.34 Although Muslims are a minority, India has the world's second largest Muslim population, according to the USRF 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 (UP), Bihar, Maharashtra, West Bengal, Andhra Pradesh, Karnataka, and Kerala; Muslims are the majority in Jammu and Kashmir. [2b] (Section I)

20.35 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]

20.36 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]

20.37 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. (USRF 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)

20.38 The USRF 2010 Report noted:

"There were...instances of Hindu-Muslim clashes or communal violence during the reporting period. According to the Ministry of Home Affairs 2009-10 Annual Report, there were 750 incidents of Hindu-Muslim violence throughout the country in 2009 resulting in 123 deaths and 2,380 injuries, compared with 656 incidents, including four riots, in 2008 resulting in 123 deaths and 2,272 injuries.

"The Mumbai based Center for the Study of Society and Secularism (CSSS) published a report on Hindu-Muslim violence in 2009 compiled from mainstream and faith-based

media reports. According to CSSS during 2009, 23 persons lost their lives and 73 persons were injured in Hindu-Muslim clashes in Uttar Pradesh, Bihar, Maharashtra, Rajasthan, Karnataka, Madhya Pradesh, Assam, and Gujarat. The report noted there were no Hindu-Muslim clashes in West Bengal, Chhattisgarh, Jharkhand, Orissa, Andhra Pradesh, Tamil Nadu, and Kerala. The remaining 13 states were not included in the report.” [2b] (Section III)

- 20.39 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]
- 20.40 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]
- 20.41 According to the USRF 2010 Report, “There were approximately 30,000 madrassahs (Islamic schools) providing full or part-time education. Most did not accept government aid, alleging that it would subject them to government influence . Educational institutions given ‘minority status’ by the government were not eligible for government aid.” [2b] (Section II)

See also [Religiously motivated violence and communal tensions](#) above

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CHRISTIANS

- 20.42 The USRF 2010 Report noted that Christians constitute 2.3 percent of the population (2001 Census) 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)
- 20.43 The 2011 Annual Report of the US 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)
- 20.44 The USRF 2011 Report cited various incidents of communal violence in which Christians were the victims; many of these related to accusations of proselytising or ‘forced conversions’ to Christianity. For example:
- CSW reported that on May 12, 2010, over 20 Hindu extremists forcibly entered a prayer meeting and accused Pastors KK Ramesh and PS Anjaneya of forcible conversions. The extremists attacked the Christian pastors and three other men...

- On December 14, 2009, a group of Hindu extremists forcibly entered the house of Pastor H. T. Manjunath and his wife and physically assaulted them
- A group of 30 to 40 persons attacked Pastor Erra Krupanamdham of Bethel Church on 11 March 2009. He suffered permanent spinal injuries. [2b] (Section III)

(A number of other examples are noted under paragraph 20.27 above.)

20.45 The USRF 2010 Report noted that “Christian Solidarity Worldwide (CSW) reported over 50 incidents during the reporting period in which Christians were falsely accused of forcible conversions, often beaten, and arrested by police.” [2b] (Section III)

20.46 Christian Solidarity Worldwide (CSW), in a report dated 26 March 2009, recounted:

“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.” [17d] (Executive Summary)

20.47 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”. [17d] The USRF 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 USRF 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. [2h] (Introduction)

20.48 The USRF 2010 Report provided an update:

“The Orissa state government has subsequently ensured law and order in Kandhamal district by promoting reconciliation, rehabilitation, and justice, and ensuring a visible administrative, police, and civil society presence. Two fast-track courts, established in

March 2009, have tried more than 120 of the 800 registered cases. Verdicts have been announced in 63 cases with 100 convictions and 300 acquittals. All stakeholders acknowledged and appreciated the lack of further violence, but some lamented the pace of the country's judicial system.” [2b] (Section III)

See also [Religious conversions](#)

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SIKHS

Sikh religion and historical background

20.49 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]

20.50 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]

20.51 The BBC’s Religion & Ethics website noted in August 2011 that “The 5 Ks taken together symbolise that the Sikh who wears them has dedicated themselves to a life of devotion and submission to the Guru ... The 5 Ks date from the creation of the Khalsa Panth by Guru Gobind Singh in 1699 ... 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]

20.52 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]

20.53 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]

20.54 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)

The same source continued:

"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... 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) [32b]]

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

20.55 The South Asia Terrorism Portal (SATP), accessed 11 August 2011, noted that “Even after the terrorist-secessionist movement for Khalistan was comprehensively defeated in 1993, there remain a handful of terrorist outfits chiefly supported by Pakistan and some non-resident Indian Sikh groups who continue to propagate the ideology of Khalistan.” SATP has listed 12 organisations in the Punjab as ‘terrorist groups’:

- Babbar Khalsa International (BKI): The BKI traces its origin to the Babbar Akali Movement and is among most organised Khalistan militant groups. The first unit of the BKI was founded in Canada in 1981 under the leadership of late Talwinder Singh Parmar. The outfit is reportedly active in the USA Canada, the UK, Germany, France, Belgium, Norway, Switzerland and Pakistan. Current BKI leader is Wadhwa Singh, who is reportedly hiding in Pakistan. Talwinder Singh Parmar, a co-founder of the BKI, formed the Babbar Khalsa (Parmar) faction in 1992 when he split from the BKI. The Parmar faction is said to have a presence in the UK, Germany, Belgium and Switzerland. BKI’s objective: An independent Sikh state called Khalistan.
- Khalistan Zindabad Force (KZF): The KZF, a proscribed group under The Unlawful Activities (Prevention) Act, 1967, aims to establish a ‘sovereign Khalistan state’. It is, according to the SATP, largely comprised of Jammu-based Sikhs. Leader is Ranjit Singh Neeta.
- International Sikh Youth Federation (ISYF) : The ISYF, proscribed in India under the Prevention of Terrorism Act (POTA) in March 2002, was founded in the United Kingdom (UK) in 1984 (following Operation Blue Star) by Amrik Singh and Jasbir Singh Rode. The organisation was also proscribed in the UK in 2001. Initially, the ISYF split into two factions – one owing allegiance to Jasbir Singh Rode and led by his elder brother Lakhbir Singh Rode – and the other led by Satinderpal Singh Gill, a former member of the second Panthic Committee. Soon thereafter, more splits occurred and several splinter groups emerged – the Damdami Taksal (DDT), Chaheru, Bittoo and Gill factions. These reportedly operate mainly in parts of the UK, Germany, the US. The ISYF is presently headed by Lakhbir Singh Rode, who apparently has immense political influence in parts of Punjab and is described by security forces as a “hardcore terrorist”.
- Khalistan Commando Force (KCF)
- All-India Sikh Students Federation (AISSF)
- Bhindrawala Tigers Force of Khalistan (BTFFK)
- Khalistan Liberation Army (KLA)
- Khalistan Liberation Front (KLF)
- Khalistan Armed Force (KAF)
- Dashmesh Regiment
- Khalistan Liberation Organisation (KLO)
- Khalistan National Army (KNA) [44a]

20.56 The SATP noted in its 2010 Punjab Assessment:

“The north-west Indian State of Punjab remained peaceful through 2009. This is the 16th 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 ... Central intelligence sources, however, indicate that a concerted attempt to revive militancy in the State is under way. The Inter-Services

Intelligence (ISI), Pakistan's external intelligence agency, continues to give support to the Khalistani terrorist groups. The Director General of Punjab Police, Paramdeep Singh Gill, said on August 17, 2009 that the ISI is actively engaged in reviving militancy in the State by providing arms and money to Sikh extremists." [44k]

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Human Rights Concerns

- 20.57 The Asian Centre for Human Rights (ACHR), in their Indian Human Rights Report 2009, noted continued serious human rights issues in Punjab: there were deaths in police custody and unlawful detentions; the judiciary was hampered by delays in appointing judges; prison conditions were poor and prisons were overcrowded; there were also reports of torture in prisons; there were many incidents of violent crime against women, including by the security forces. [18a] (Punjab, p163-167)
- 20.58 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]
- 20.59 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 20.51 above)

20.60 Amnesty International's Annual Report 2008 had reported:

"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]

20.61 The USSD 2010 Report noted:

"The government made no progress in holding officials accountable for abuses that occurred during the period of the Punjab counterinsurgency between 1984 and 1994. In January [2010] the Human Rights Data Analysis group published research findings that supported claims by human rights groups that '...more Amritdharis (or baptized Sikhs) were the victims of state-attributed lethal violence than non-Amritdharis, that most victims of state-based lethal violence were young males of military age, and that police, although claiming to carry out a focused counterinsurgency against members of the militancy, ended up killing and disappearing a sizable number of individuals who were not known to have any links to the militancy'.

"The government made some movement in holding police and security officials accountable for killings committed during the Delhi anti-Sikh violence of 1984. On July 7 [2010], a Delhi court brought charges of murder and rioting against senior Congress Party leader Sajjan Kumar and others in connection with an incident in which six persons were killed in New Delhi." [2c] (Section 1a)

20.62 Amnesty International's Annual Report 2011, released 13 May 2011, noted that little further progress was made in 2010: "Perpetrators of enforced disappearances, extrajudicial executions and other human rights violations in Punjab between 1984 and 1994... continued to evade justice." [3e]

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BUDDHISTS AND JAINS

20.63 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

102 The main text of this COI Report contains the most up to date publicly available information as at 12 August 2011. Further brief information on recent events and reports has been provided in the Latest News section to 26 August 2011.

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 Maharashtra and in the hill areas of northeast India and the high Himalayan valleys. (Indianetzone, accessed December 2009) [120a] [121]

20.64 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)

20.65 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 Maharashtra and in the states of Gujarat and Rajasthan. [122]

20.66 The USRF 2010 Report noted:

“Under article 25 of the constitution Sikhism, Jainism, and Buddhism are considered sects of Hinduism; however, these groups viewed themselves as unique and sought to introduce their own separate personal laws. Sikhs sought a separately codified body of law that recognizes their uniqueness and precludes ambiguity. The 1992 NCM Act identified Buddhism as a separate religion. The Supreme Court rejected the inclusion of Jainism under the act, stating that the practice of adding new religious groups as minorities should be discouraged. In June 2008 the Delhi government decided to accord minority status to the Jain community. Jains have also been accorded this status in the states of Maharashtra, Karnataka, Madhya Pradesh, Uttaranchal, Rajasthan, Jharkhand, Chhattisgarh, Uttar Pradesh, and West Bengal. According to press reports, state governments have the power to grant minority status to religious groups designated as minorities under the 1992 act, but not all states have officially done so.” [2b] (Section II)

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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 Kshatriyas (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 2010 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) [2g] (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 per cent of the Adivasis are displaced; 55.2 per cent of the Adivasis are under the below poverty line; ... 53.1 per cent of Adivasi households do not have drinking water source; 56 per cent of the Adivasi children are undernourished; 53 per cent of Adivasis are illiterate; 76 per cent 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 Freedom House noted in its report *Freedom in the World – India (2011)*, published on 5 July 2011:

“Property rights are somewhat tenuous for tribal groups and other marginalized communities, and members of these groups are often denied adequate resettlement opportunities and compensation when their lands are seized for development projects. While many states have laws to prevent land transfers to nontribal groups, the practice is widespread, according to a 2008 Asian Indigenous and Tribal People’s Network report. The 2006 Forest Rights Act gave tribal groups ownership rights over forestland they farmed, though some reports have suggested that the law has not been effectively implemented.” [43d]

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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*, 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.” [2g] (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 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]

The US State Department *Country Report on Human Rights Practices 2010*, released on 8 April 2011 (USSD 2010 Report) recorded that, by the end of 2010, the Supreme Court had not yet rendered a judgment on the appeal. [2c] (Section 6) (As of 30 July 2011 the case was still before the Supreme Court. [13e])

22.04 According to an article of 21 March 2010 on IndianExpress.com:

“...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]

22.05 The International Gay and Lesbian Human Rights Commission (IGLHRC), in a report dated 25 September 2008, observed:

“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]

[Note that, as of August 2011, Section 377 officially remained in force throughout India, with the exception of the union territory of Delhi – COIS.]

SOCIETAL AND GOVERNMENT ATTITUDES

108 The main text of this COI Report contains the most up to date publicly available information as at 12 August 2011. Further brief information on recent events and reports has been provided in the Latest News section to 26 August 2011.

22.06 The USSD 2010 Report stated:

“Although LGBT groups were active throughout the country, sponsoring events and activities including rallies, gay pride marches, film series, and speeches, they faced discrimination and violence in many areas of society, particularly in rural areas. Activists reported that transgender persons who were HIV-positive often had difficulty obtaining medical treatment. Activists also reported some employers fired LGBT persons who did not hide their orientations. LGBT persons also faced physical attacks, rape, and blackmail.” [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]

- 22.12 Health Minister Ghulam Nabi Azad, speaking at a conference on HIV and AIDS in Delhi on 4 July 2011, reportedly referred to homosexuality as an unnatural “disease” from the west. He was quoted as saying, “Unfortunately this disease has come to our country too ... where a man has sex with another man, which is completely unnatural and should not happen but does.” Anjali Gopalan of the NAZ Foundation told Associated Press that “These comments help no cause. It’s definitely not going to help in our fight against HIV.” (*Pink News*, 5 July 2011) [89a]

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Transgender communities

- 22.13 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]

- 22.14 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]

- 22.15 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]

The USSD 2010 Report recorded further: “In April [2010] the state of Tamil Nadu hosted a weeklong transgender festival to facilitate the acceptance of transgender persons into mainstream society. The state, which established a transgender welfare board in 2008, continued to provide separate identity and ration cards to transgender persons.” [2c] (Section 6)

- 22.16 BBC News reported on 13 November 2009 that the Election Commission would 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

- 22.17 The [Indian Network for Sexual Minorities](#) (INFOSEM), accessed 7 December 2009, lists organisations in India offering counselling and support to sexual minorities. [68]
- 22.18 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 2010* (USSD 2010), released on 8 April 2011, 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 the following disabilities: blindness, low vision, leprosy-cured (those cured of leprosy but who still lack sensation in extremities or suffer from deformity), hearing impairment, locomotor disability, mental retardation, and mental illness. The law is weakened by a clause that links implementation of programs to the ‘economic capacity and development’ of the government. There were approximately 200 government-run centers across the country that provided comprehensive, integrated rehabilitation services to persons with disabilities.

“Discrimination against persons with physical and mental disabilities in employment, education, and access to health care was more pervasive in rural areas. Despite legislation that all public buildings and transport be accessible to the disabled, there was limited accessibility.” [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 3 percent of public-sector jobs be reserved for persons with physical, hearing, or visual disabilities. The government continued to allocate funds to programs and NGO partners to improve the number of filled jobs. 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 USSD 2010 Report noted, with regard to education:

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“The law also stipulates that 3 percent of all educational places be reserved for persons with disabilities, but the MSJE stated that students with disabilities made up only an estimated 1 percent of all students ... The MSJE offered 500 scholarships to persons with disabilities to pursue higher education. University enrollment of students with disabilities remained low for reasons including inaccessible infrastructure, limited availability of resource materials, non-implementation of the 3 percent reservation, and harassment. The government made efforts to increase enrollment during the year ... In May 2009 the Delhi High Court noted that 650 New Delhi government schools and 1,800 Municipal Corporation of Delhi schools had not hired any teachers dedicated for the 10,000 students with disabilities. The Delhi High Court directed the state government to develop an action plan to hire teachers and build facilities for students with disabilities.” [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 According to an estimate for July 2011 in the CIA World Factbook, updated 19 July 2011, out of a total population of just over 1,189 million approximately 48.1 per cent were female (1.08 male(s)/female). [35a]

See [Gender imbalance](#), below

- 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 (IWRAP) 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." [30a] (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 Committee 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 IWRAP report of November 2006 noted:

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“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.” [30a] (p8)

24.07 The United Nations Development Programme (UNDP) has observed, “It is a paradox of modern India that a section of women are placed in powerful positions at the topmost level, yet large sections of women are among the most underprivileged.” (UNDP: SAJI website, undated) [82a]

24.08 The Freedom House *Freedom in the World 2011* 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]

- 24.10 Provisional data from the 2011 Census showed the following literacy rates for people over the age of seven: Female: 65.46 per cent, males 82.14 per cent. In Delhi, female literacy had risen to 80.93 per cent. [33d]

LEGAL RIGHTS

- 24.11 The Constitution of India provides 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]

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

See '[Dowry](#)' and [Domestic Violence](#) below for information on Protection of Women from Domestic Violence Act, 2005

POLITICAL RIGHTS

Women in politics

- 24.13 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 August 2011, only 60 out of 543 elected members of the Lok Sabha (lower house of parliament) were women. (Parliament of India website, accessed 2 August 2011) [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]
- 24.14 The National Alliance of Women's *Second NGO Shadow Report to CEDAW* of November 2006 commented:

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“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)

SOCIAL AND ECONOMIC RIGHTS

Women in the workplace

24.15 The US State Department *Country Report on Human Rights Practices 2010* (USSD 2010), released on 8 April 2011, 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) As noted in the same report:

“Sexual harassment of women in the workplace included physical and verbal abuse from male supervisors ... There are no legislative enactments or statutory policies against sexual harassment and abuse at work places; all charges of sexual harassment use the guidelines set forth in a 1997 judgment. The guidelines are treated as law declared by the Supreme Court and enforceable. The law does not provide for penalties; it outlines what conduct is considered harassment and makes it incumbent on the employer to include a prohibition of sexual harassment in employees’ rules of conduct and discipline. All state departments and institutions with more than 50 employees are required to have committees to deal with matters of sexual harassment.” [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 Provisional figures from the 2011 Census showed the extent of the gender imbalance in the country's population. (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:

<u>Census (Year)</u>	<u>Rural</u>	<u>Urban</u>	<u>All India</u>
1951	965	860	946
1961	963	845	941
1971	949	858	930
1981	951	879	934
1991	938	894	927
2001	946	900	933
2011			940*

(Ministry of Women and Child Development, 2007) [24k]
*(2011 Census, provisional data) [33c]

The provisional 2011 Census figures also showed that the gender imbalance specifically in the 0-6 age group has become even more pronounced, with 914 girls for every 1000 boys in 2011, compared with 927 in 2001. [33c]

- 24.18 Based on the conclusions of a report published in 2009 by the United Nations Population Fund (UNFPA), the 2011 Census data for the 0-6 age group suggests that the incidence of sex-selective abortion (female foeticide) has continued to increase in recent years. [10a] The UNFPA report noted that the practice of pre-natal sex selection was higher among urban, educated and well off households (perhaps because these demographics have more access to ultrasound and other 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." [2g] (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." [2g] (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]

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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. [2g] (Section 6) However, the USSD 2010 Report noted, “... in practice the law was not enforced. The law does not characterize a marriage between a girl below 18 years old and boy below 21 years old as illegal but recognizes such unions as void and voidable, providing grounds for such unions to be challenged in court.” [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 USRF 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)

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Dowry

24.26 The Freedom House report, *Freedom in the World - India (2011)* noted that “Despite the criminalization of dowry demands and hundreds of convictions each year, the practice continues.” [43d] On the same issue the USSD 2010 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 bans harassment in the form of dowry demands and empowers magistrates to issue protection orders. Deaths associated with the non-payment of dowries rose in the past several years. According to the NCRB, in 2009 there were 8,383 reported dowry deaths. However, since many cases were not reported and not properly monitored, statistics were not accurate.” [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 recorded:

“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 The USSD 2010 Report added, “On November 23 [2010], the Supreme Court made it mandatory for all trial courts across the country to add the charge of murder against persons accused in dowry death cases.” [2c] (Section 6)

VIOLENCE AGAINST WOMEN

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24.30 The USSD 2010 Report noted:

“The NCRB [National Criminal Records Bureau] estimated there were 194,787 [reported] crimes against women during the year [2010] and noted that under reporting of such crimes was likely. The MHA [Ministry of Home Affairs] informed parliament it recorded 109,559 cases of crime against women – including molestation, sexual harassment, rape, dowry deaths, and abduction – through August 2009. The state of Andhra Pradesh recorded the worst record with 23,224 crimes against women, including 1,188 cases of rape, 1,526 cases of kidnapping and abduction, 546 cases of dowry deaths, and 11,297 cases of domestic violence. Uttar Pradesh recorded 22,941 cases of violence, including 2,232 cases of dowry deaths, 1,759 cases of rape, and 5,078 cases of kidnapping. Bihar reported that 2,532 married women were victims of domestic violence and recorded 7,480 cases of violence against women, including 929 rape cases, 1,295 dowry deaths, and 1,986 kidnapping and abduction cases.” [2c] (Section 6)

24.31 The National Crime Records Bureau registered 203,804 crimes against women in 2009, which included 89,546 cases of ‘cruelty by husbands or relatives’, 21,397 cases of rape, 25,741 of ‘kidnapping or abduction of women or girls’, 11,009 of sexual harassment, 38,711 cases of ‘molestation’, 8,383 dowry deaths and 9,017 other crimes. The overall conviction rate for crimes specifically against women was given as 27.8 per cent, compared with 27.2 per cent for all violent crimes against both men and women. [139a]

24.32 The Freedom House report *Freedom in the World – India (2011)* 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 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]

24.34 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. [75b] 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]

A copy of the Protection of Women from Domestic Violence Act 2005 can be accessed at: <http://www.vakilno1.com/bareacts/Domestic-Violence/Domestic-Violence-Act-2005.htm> [75b]

24.35 The USSD 2010 Report added:

"The law recognizes the right of a woman to reside in a shared household with her spouse or partner while the dispute continues, although a woman can be provided with alternative accommodations at the partner's expense. The law also provides women with the right to police assistance, legal aid, shelter, and access to medical care ... While the Ministry of Women and Child Development has issued guidelines for the establishment of these social services, in practice lack of funding, personnel, and proper training resulted in limited services, primarily available in metropolitan areas." [2c] (Section 6)

24.36 The Indian Ministry of Women and Child Development included on its website, accessed on 11 July 2011, details of other legislation and proposed legislation on the protection of women and children: <http://wcd.nic.in/> [24f]

See [Police protection](#), below

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Rape

24.37 The USSD 2010 Report stated:

"Official statistics point to rape as the fastest growing crime in the country, even when compared to murder, robbery, and kidnapping. Despite assurances from law enforcement, the NCRB states that a woman is raped in the country every 30 minutes. Since 1971 when rape cases were first recorded officially, the NCRB [National Criminal Records Bureau] has registered a 678 percent increase in the crime. According to the NCRB, there were 21,397 rape cases registered in the country in 2009. Law enforcement and legal avenues for rape victims are inadequate, overburdened, and unable to address the issue effectively.

"Women in conflict situations, such as in Jammu and Kashmir, and vulnerable women, including lower-caste or tribal women, were often victims of rape." [2c] (Section 6)

The same report recorded that 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 The USSD 2009 Report recorded that the Code of Criminal Procedure was amended in 2005, stipulating mandatory DNA tests in all rape cases. [2g] (Section 6) As noted in the USSD 2010 Report, the law also criminalises spousal rape. [2c] (Section 6)

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 families 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](#)

‘Honour’ crimes

24.42 The USSD 2010 Report stated:

“So-called honor killings continued to be a problem, especially in Punjab and Haryana, where as many as 10 percent of all killings were honor killings. Although statistics for honor killings are difficult to verify, on October 10, *The Guardian* reported police officially recorded 19 honor killings in the northern part of the country between April 19 and June 30. According to the same report, one recent study estimated more than 1,000 honor killings every year, most of them occurring in the northern states of Haryana, Punjab, and Uttar Pradesh. The most common justification for the killings offered by those accused or by their relatives was that the victim married against their family's wishes. During the year a survey conducted by the NCW along with the NGO Shakti Vahini revealed that in 88.9 percent of the cases, the perpetrators of the honor killing were the girl's family members. In 2009 the MHA issued an advisory to all state governments and union territories to review their policies and tackle the problem of such killings.” [2c] (Section 6)

21.43 According to the Human Rights Watch (HRW) *World Report 2011* (covering events of 2010), published on 24 January 2011:

“‘Honor’ killings of women and girls continued in 2010, mostly in the northern states of Haryana, Punjab, and Uttar Pradesh. Khap panchayats (unofficial village councils) issued edicts condemning couples for marrying outside their caste or religion and

censured marriages within a gotra (kinship group) as incestuous even though there was no biological connection. To enforce these decrees, family members threatened couples, filed false cases of abduction, and killed spouses to protect the family's 'honor.' Some local politicians and officials were sympathetic to the councils' edicts, implicitly supporting the violence." [26a]

- 21.44 It was reported on 20 April 2011 that India's Supreme Court had told state governments to "ruthlessly stamp out" so-called honour killings, warning that senior officials who failed to act against offenders would be prosecuted. The Supreme Court denounced village-based caste councils as "kangaroo courts", noting that honour killings are often endorsed, or even encouraged, by such councils. (BBC News) [32cd]

Other forms of violence and harassment

- 24.45 On the subject of 'sati' the USSD 2007 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]

- 24.46 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]
- 24.47 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

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24.48 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)

24.49 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

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

24.51 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)

24.52 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]

24.53 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)

24.54 [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 26 July 2011)

24.55 The [Self-Employed Women's Association \(SEWA\)](#) recorded on its website, accessed 11 August 2011:

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“SEWA is a trade union registered in 1972. It is an organisation of poor, self-employed women workers. These 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 organised sector. They are the unprotected labour force of our country. Constituting 93% of the labour force, these are workers of the unorganised sector. Of the female labour force in India, more than 94% are in the unorganised sector. However their work is not counted and hence remains invisible.” [53]

- 24.56 India’s [National Commission for Women](#) (NCW India), website accessed 11 August 2011, noted that the NCW “was set up as statutory body in January 1992 under the National Commission for Women Act, 1990 (Act No. 20 of 1990 of Govt.of India) to: review the Constitutional and Legal safeguards for women; recommend remedial legislative measures; facilitate redressal of grievances and advise the Government on all policy matters affecting women.” [49a]

WOMEN’S HEALTH

Ante and post natal care; maternal mortality

- 24.57 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]

- 24.58 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]

- 24.59 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]

- 24.60 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)

- 24.61 Save the Children, in their report *State of the World's Mothers 2010*, noted that an estimated 47 per cent of births in India in 2008 were attended by skilled health personnel. [91c] (Complete Mothers' Index, Tier II)

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25. CHILDREN

This section should be read in conjunction with [Section 24: Women](#), [Section 26: Trafficking and Section 30: Internally Displaced Persons - 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 12 June 2010) [36]
- 25.02 The UNICEF website for India, accessed on 8 August 2011, provided the following overview:

“In India, children’s vulnerabilities and exposure to violations of their protection rights remain spread 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. Although poverty is often cited as the cause underlying child labour, other factors such as discrimination, social exclusion, as well as the lack of quality education or existing parents' attitudes and perceptions about child labour and the role and value of education need also to be considered. In states like Bihar, Mizoram, Rajasthan and Uttar Pradesh, 60 per cent or more girls dropped out before completing their five years primary education.

"Trafficking of children also continues to be a serious problem in India. The nature and scope of trafficking range from industrial and domestic labour, to forced early marriages and commercial sexual exploitation. Existing studies show that over 40 per cent of women sex workers enter into prostitution before the age of 18 years. Moreover, for children who have been trafficked and rescued, opportunities for rehabilitation remain scarce and reintegration process arduous.

"While systematic data and information on child protection issues are still not always available, evidence suggests that children in need of special protection belong to communities suffering disadvantage and social exclusion such as scheduled casts and tribes, and the poor. The lack of available services, as well as the gaps persisting in law enforcement and in rehabilitation schemes also constitute a major cause of concern."
[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) [35a] 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 anaemic.
- 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 than 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]

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

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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]

- 25.08 The USSD 2010 Report noted that “The law establishes state governments’ procedures for birth registration. According to the National Commission on Population, approximately 55 percent of national births were registered at year’s end [2010], and the registration rate varied substantially across states.” [2c] (Section 6)

See also Section 32: [Citizenship and nationality](#)

CHILD MARRIAGE

- 25.09 The USSD 2010 Report stated:

“The law sets the legal age of marriage for women at 18 years old and men at 21 years old. The law prohibits child marriage in any form and empowers courts to annul such marriages. It also sets penalties for individuals who perform, arrange, or participate in such marriages. However, in practice the law was not enforced. The law does not characterize a marriage between a girl below 18 years old and boy below 21 years old as illegal but recognizes such unions as void and voidable, providing grounds for such unions to be challenged in court.

“A National Family Health Survey from 2006-07 reported that more than 50 percent of women were married before the age of 18. In comparison men married at a median age of 23.4 years. On February 20, media reports announced the latest demographic indicators provided by the Health and Family Welfare Ministry revealed that the national average age of marriage for women was 20.6 years in 2008, up from 18.3 years in 2001. According to a 2005 UNICEF report, women married as children were often victims of domestic violence and often became mothers early, contributing to the country’s high infant and maternal mortality.

“The law establishes a full-time child marriage prohibition officer in every state to prevent and police child marriage. These individuals have the power to intervene when a child marriage is taking place, document violations of the law, and remove a child from a dangerous situation in order to deliver them to local child protection authorities.” [2c] (Section 6)

- 25.10 The Ministry of Women and Child Development (MWCD), accessed 9 January 2008, recorded that the Prohibition of Child Marriage Act 2006 had come into force on 1 November 2007. [24f] The Human Rights Law Network (HRLN), in a report of 2007, asserted 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." [22b]

See also [section 24: Women; Marriage and divorce](#)

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VIOLENCE AGAINST CHILDREN

25.11 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 of three had been physically abused, a little over 50 per cent had been subject to some form of sexual abuse and about 50 per cent claimed to have suffered emotional abuse. Over 50 per cent 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)

25.12 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.

"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)

25.13 The USSD 2010 Report recorded:

"The law provides for protection against various forms of child abuse, but child abuse remained common, including in school and institutional settings, and the government failed to educate the public adequately against child abuse or enforce the law. Although corporal punishment is banned, teachers often used it. According to the MHA 2009-10 annual report, there were 22,500 cases of crime reported against children in 2008.

"According to the NCRB [National Crime Records Bureau], 5,368 cases of child rape were registered in 2009. On October 26, a survey conducted by London-based Plan International estimated that 50 percent of children had faced sexual abuse. The survey covered 12,500 school children in 13 states between the ages of five to 18. The survey

found corporal punishment was widespread in the country and 54 percent of boys and 45 percent of girls had been victims of such punishment. On October 31, the National Commission for Protection of Child Rights noted that it had received 785 reports of child abuse, including cases of corporal punishment.” [2c] (Section 6)

- 25.14 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](#)

Child labour

- 25.15 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.” [2g] (Section 6d) According to the USSD 2010 Report, “Estimates of the number of child laborers varied widely. The government’s 2004 national survey estimated the number of working children between the ages five and 14 at 16.4 million. NGOs claimed the number of child laborers was between 55 and 87 million.” [2c] (Section 6d)

- 25.16 The USSD 2010 Report noted:

“There is no overall minimum age for child labor. Child labor was widespread due to social tolerance of the practice, weak state and federal government enforcement of existing laws, and poverty. The absence of a minimum age for employment increased the risk of children falling victim to the worst forms of child labor.

“Children of any age may be employed, with some restrictions. In occupations and processes in which child labor is permitted, children may work only for six hours a day, 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 (CLPAA). The penalty for employers of children in hazardous industries is 20,000 rupees (approximately \$454) 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 an unlawfully employed child’s family or pay 5,000 rupees (\$114) 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. The law does not apply to family farms or family businesses, both large sectors of the economy. ” [2c] (Section 6d)

However the Freedom House report *Freedom in the World – India (2011)* 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]

- 25.17 The USSD 2009 Report had stated:

“According to 2001 census figures, 65.3 million (29 per cent) 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 per cent) 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.” [2g] (Section 6d)

25.18 According to the USSD 2010 Report, “Forced child labor, including as bonded labor, remained a serious problem. Children performed forced or indentured labor as factory workers, domestic servants, and beggars, as well as in gemstone cutting, quarrying, hybrid seed production, circuses, brick kilns, rice mills, garment assembly, silk thread production, and textile embroidery.” [2c] (Section 6d)

25.19 The USSD 2010 Report continued:

“State governments enforce labor laws and employ labor inspectors, while the Ministry of Labor provides oversight and coordination; however, enforcement was inadequate. During 2008-09, the ministry reported 12,244 labor prosecutions and 566 convictions nationwide. Employers in cottage industries often claimed child laborers were assisting their families, an exemption under the CLPAA. Labor inspectors also generally did not investigate family businesses, including farms, as these are not covered under the labor law. The ministry reportedly conducted 2,860 inspections for domestic child labor (that is, in a home) during 2008-09, noted 2,277 violations, and pursued two prosecutions, but there were no convictions.

“The Ministry of Labor reported more than 40,000 child laborers rescued between January and December 2009.

“The Ministry of Labor continued to raise awareness about child labor and coordinated its efforts with states. On July 31, the ministry launched a five-year, 308.25 million rupees (\$6.85 million) child labor prevention program, with an emphasis on children vulnerable to trafficking, in the areas of Orissa, Madhya Pradesh, Gujarat, Jharkhand, and Bihar. Some states were in the process of implementing action plans to eliminate child labor from hazardous industries.

“The government and NGOs anticipated that the Right to Education Act, which came into force on April 1 [2010], would help reduce child labor and trafficking in the long term by increasing school enrollment among otherwise vulnerable children.” [2c] (Section 6d)

(See Education: [The Right to Education \(RTE\) Act](#))

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EDUCATION

25.20 As stated in the USSD 2010 Report:

“The constitution provides free education for children from six to 14 years of age, but the government did not enforce this provision. According to the World Bank, the number of children reportedly enrolled in elementary education in the country increased from 57 million to 192 million between 2003 and 2009; however, in 2009 8.1 million children between the ages of six and 14 did not attend school ... On April 1 [2010], the Right of

Children to Free and Compulsory Education Act, passed by parliament in August 2009, became legally enforceable...”

“In a 2009 UNICEF report, UNICEF stated that school attendance among girls between the ages of six and 10 had increased from 61 percent to 81 percent during 2005-06. Once girls reach puberty, their dropout rate increases, particularly in rural areas. Reasons include family pressure, lack of dedicated sanitation facilities for girls, and lack of secondary schools in rural areas. [2c] (Section 6)

- 25.21 The Economist Intelligence Unit’s India Country Profile 2008 observed, “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)

The ‘Right to Education’ (RTE) Act

- 25.22 *The Right of Children to Free and Compulsory Education Act, 2009* came into force on 1 April 2010, effectively making Article 21 of the Constitution (concerning the right to education) legally enforceable. The Central Board of Secondary Education (CBSE) website reported on 1 April 2010:

“Every child in the age group of 6-14 years will be provided 8 years of elementary education in an age appropriate classroom in the vicinity of his/her neighbourhood.

“Any cost that prevents a child from accessing school will be borne by the State which shall have the responsibility of enrolling the child as well as ensuring attendance and completion of 8 years of schooling.

“No child shall be denied admission for want of documents; no child shall be turned away if the admission cycle in the school is over and no child shall be asked to take an admission test. Children with disabilities will also be educated in the mainstream schools.

“All private schools shall be required to enroll children from weaker sections and disadvantaged communities in their incoming class to the extent of 25% of their enrolment, by simple random selection. No seats in this quota can be left vacant. These children will be treated on par with all the other children in the school and subsidized by the State...

“All schools will have to prescribe to norms and standards laid out in the Act and no school that does not fulfill these standards within 3 years will be allowed to function. All private schools will have to apply for recognition ... Teachers in all schools will have to subscribe to these norms within 5 years.” [31]

CBSE noted that “[The right to education] has been a part of the directive principles of the State Policy under Article 45 of the Constitution, which is part of Chapter 4 of the Constitution. And rights in Chapter 4 are not enforceable. For the first time...we have made this right enforceable by putting it in Chapter 3 of the Constitution as Article 21. This entitles children to have the right to education enforced as a fundamental right.” [31]

The magazine *Frontline* published an analysis of the Right to Education Act in its issue Vol.28 No.14 dated 2-15 July 2011:

<http://www.frontline.in/fl2814/stories/20110715281400600.htm> [19d]

The full text of the Act can be accessed on the website of the Department of Education:

<http://www.education.nic.in/elementary/free%20and%20compulsory.pdf> [24n]

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CHILDCARE AND PROTECTION

25.23 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)

25.24 The USSD 2010 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)

25.25 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]

Orphanages

25.26 The majority of orphanages throughout India are run by charities and religious organisations, making it difficult to determine exact numbers. Orphanage.org, accessed 24 July 2011, gave details of over 150 orphanages throughout India. [9]

25.27 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]

25.28 The USSD 2010 Report stated:

“Weak enforcement of laws and lack of safeguards encouraged an atmosphere of impunity in group homes and orphanages. NGOs alleged that many such homes for children were operating without government oversight or approval. According to a 2007 study by the Ministry of Women and Child Development, approximately 56 percent of institutionalized children reported that staff physically abused them. In some states the percentage was higher; in Uttar Pradesh and Assam, for example, more than 80 percent of such children reported physical abuse. The reported incidence of abuse was also higher among children housed in special homes due to ‘conflict with the law’ than among children institutionalized for other reasons.” [2c] (Section 6)

HEALTH ISSUES

25.29 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]

25.30 A BBC News article of 13 May 2008 further noted:

“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]

25.31 UNICEF reported on their website (accessed 8 August 2011) 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 ... However, the proportion of children who receive vaccination against measles has dropped considerably, from 72% in 1995 to a low of 50% in 1999. It now stands at 61%.” [85b] (Health)

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26. TRAFFICKING

26.01 The *USSD Trafficking in Persons Report 2011* (USSD Trafficking Report 2011), released 27 June 2011 and covering the period April 2010 – March 2011, 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:

“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. A common characteristic of bonded labor is the use of physical and, in many instances, sexual violence – including rape – as coercive tools, in addition to debt, to maintain these victims’ labor. 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 forced prostitution ... 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. The Ministry of Home Affairs’ launched the government’s ‘Comprehensive Scheme for Strengthening Law Enforcement Response in India,’ which seeks to improve India’s overall law enforcement response to all forms of trafficking, including bonded labor, and established at least 87 new Anti Human Trafficking Units (AHTUs). The government also ratified the 2000 UN TIP Protocol. The government took important law enforcement steps by convicting several bonded labor offenders with sentences between five and 14 years and improved rescue and rehabilitation efforts for bonded laborers. Overall law enforcement efforts against bonded labor, however, remained inadequate, and the complicity of public officials in human trafficking remained a serious problem, which impeded progress.

“The government made progress in law enforcement efforts to combat human trafficking in 2010, but concerns remain. India prohibits and punishes most, but not all, forms of human trafficking under a number of laws. The government prohibits bonded and forced labor through the BLSA, the Child Labor (Prohibition and Regulation) Act (CLA), and the Juvenile Justice Act. These laws were unevenly enforced, and their prescribed penalties – a maximum of three years in prison – are not sufficiently stringent. Moreover, these prison sentences were rarely imposed on offenders. India also prohibits some, but not all, forms of sex trafficking through the Immoral Trafficking Prevention Act (ITPA). Prescribed penalties under the ITPA, ranging from seven years’ to life imprisonment, are sufficiently stringent and commensurate with those prescribed for other serious crimes, such as rape. The ITPA also criminalizes other offenses ... Indian authorities also used Sections 366(A) and 372 of the Indian Penal Code (IPC), which prohibit kidnapping and selling children into prostitution, respectively, to arrest and prosecute suspected sex traffickers. Penalties prescribed under these provisions are a maximum of 10 years’ imprisonment and a fine.

“A court in the state of Tamil Nadu in July 2010 issued a landmark conviction of five years’ imprisonment and a fine to three bonded labor perpetrators. An NGO reported five other convictions against bonded labor perpetrators in Uttar Pradesh with sentences of 14 years’ imprisonment. NGOs reported there were at least 150 labor trafficking prosecutions launched ... In Mumbai, the ITPA court issued 164 convictions against brothel owners and pimps; a majority of these convictions were for sex trafficking.” [2d] (Country narrative, India)

26.03 The same report continued:

“Under the Indian Constitution, states have the primary responsibility for law enforcement, and state level authorities are limited in their abilities to effectively confront interstate and transnational trafficking crimes.

“The Government of India’s ‘Comprehensive Scheme for Strengthening Law Enforcement Response in India’ earmarked \$12 million over three years to implement the nationwide anti-trafficking effort. As a part of this effort, state governments established at least 87 new AHTUs [Anti Human Trafficking Units] in police departments

during the reporting period, for a total of at least 125 AHTUs, spanning at least 17 of India's 28 states.

"The involvement of some public officials in human trafficking, and the pervasiveness of corruption in India, remained significant and largely unaddressed hurdles to greater progress against trafficking. Corrupt law enforcement officers reportedly continued to facilitate the movement of sex trafficking victims and protected suspected traffickers and brothel keepers from the law.

"Indian courts continued to be active in the fight against human trafficking during the year ... According to NGOs, state and district officials countrywide trained over 10,000 law enforcement officials on human trafficking, in partnership with them." [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 per cent 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 Regarding the protection of trafficking victims, the USSD 2010 Report noted:

"India made uneven progress in its efforts to protect victims of human trafficking. Indian law enforcement and immigration officials continued to lack formal procedures for proactively identifying victims of trafficking among vulnerable populations, such as children at work sites, females in prostitution, or members from the disadvantaged social economic strata in rural industries.

"The Ministry of Labor and Employment reported that in Chhattisgarh, Uttar Pradesh, and West Bengal, over 750 bonded laborers were rescued and hundreds of rehabilitation packages were issued ... NGOs reported hundreds of more rescues and release certificates and issued during the reporting period, particularly in Tamil Nadu, Andhra Pradesh, Karnataka, Uttar Pradesh, and Bihar.

"The Ministry of Women and Child Development (MWCD) funded 331 Swadhar projects – which helps female victims of violence, including sex trafficking – and 134 projects and 73 rehabilitation centers in 16 states under the Ujjawala program – which seeks to protect and rehabilitate female trafficking victims – and 238 women's helplines ... Foreign victims can access these shelters ... Conditions of government shelter homes under the MWCD varied from state to state. Many shelters functioned beyond capacity, were unhygienic, offered poor food, and provided limited, if any, psychiatric and medical services, although NGOs provided some of those services.

"The Ministry of Labor and Employment launched a five-state project, funded by a foreign government and implemented in partnership with the ILO, which is directed in part against forced child labor.

"The government reduced the demand for commercial sex acts in the reporting period by convicting clients of prostitution ... The Code of Conduct adopted by the Tourism

Ministry in July 2010 included guidelines to enable the Indian travel and tourism industry to prevent child sex tourism.” [2d] (Country narrative, India)

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 Foreign & Commonwealth Office, in its Travel Advice updated on 12 August 2011, noted that “Local medical facilities are not comparable to those in the UK, especially in more remote areas ... For psychiatric illness, specialised treatment may not be available outside major cities.” [7e]

27.02 The US Department of State, Bureau of Consular Affairs, Consular Information Sheet for India, accessed on 30 July 2011, noted with regard to medical facilities 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)

27.03 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...” [70]

HIV/AIDS: ANTI-RETROVIRAL TREATMENT

27.04 According to an UNGASS (UN General Assembly Special Session on HIV/AIDS) *Country Progress Report* for India dated 31 March 2010, published on the UNAIDS website:

“In 2008, an estimated 2.27 million people between the ages of 15-49 years of India’s 1160 million population was living with HIV (PLHIV). India carries the largest burden of HIV behind South Africa and Nigeria ... The epidemic in India shows a declining trend overall. HIV prevalence among adult population in 2007 was 0.34 percent and in 2008 was 0.29 percent. There is also a declining number of PLHIV in the country, with an estimated 2.27 million PLHIV in 2008 vis-à-vis 2.31 million in 2007.

“There is improved access by HRG [high risk groups] to services through an increase in number, geographical distribution and coverage of TI [targeted intervention]. There has also been a greater focus on the complement of services now available to HRG through these interventions, especially around counselling and testing services, STI care and behaviour change communication.

“The government provides for the safety of all blood used for transfusion purposes in India through the establishment of good quality testing facilities, use of blood products and increased amount of voluntary blood donation.

“India has adopted a new approach to counselling and testing in establishing an integrated facility that undertakes these services for all sections of the population that access it ... Almost 600 have been placed in primary health centres in the rural areas of the country. Over 9 million HIV tests were carried out in 2009...

“The implementation of the ART [Anti-Retroviral Treatment] programme has been very successful ... Some targets set for the programme under the NACP III are likely to be exceeded, for example, the number of ART centres (which may well reach 300 by 2010) and adults alive and on ART. A significant number of NGO provide care, support and treatment (CST) services and other support to people living with HIV and AIDS.

“In response to limited or poor access to ART centres, 208 Link ART Centres (LAC) are established and fully functional. In addition to addressing accessibility constraints, the LAC are expected to decongest ART centres and provide decentralized replenishment of treatment supplies to stable patients on prescription.

The ART centres are linked to Community Care Centres (CCC) which are set up with the mandate of providing a comprehensive package of CST [care, support and treatment] services. These were set up in the NGO sector with the main objective of providing psycho-social support, ensuring drug adherence and providing home-based care. At present, 266 CCC are fully functional.

“There are 198 CD4 machines servicing 226 ART centres and another 13 CD4 machines under installation. In 2008-2009, approximately 658,143 CD4 tests were performed. A national CD4 External Quality Assessment Scheme (EQAS) for Indian testing laboratories developed in 2005 is operational with support from the Clinton Foundation. Now, an Indian database India.qasi-lymphocyte is being developed and will be piloted for data entry, online submission analysis and report preparation.

“The supply chain management of Anti-retroviral (ARV) drugs is managed through a dedicated Logistic Coordinator appointed at NACO. As a result of a well monitored system, there has been regular and uninterrupted supply of ARV drugs without any stock-out situation.

“India has taken several steps to ensure that the environment within which HRG groups and PLHIV must live and survive is conducive to their easy access to prevention and CST services but equally to livelihood and dignity. NACO has undertaken training in Stigma and Discrimination (S&D) of its staff at national and state levels as well as of personnel who will directly interact with persons accessing services under the NACP [National AIDS Control Programme].” [15a] (Section II)

- 27.05 The 2010 UNGASS report showed that, as of 2009, 45.3 per cent of people over the age of 15 with advanced HIV infection were receiving anti-retroviral therapy. [15c] (p10) There is further detailed statistical information in this report, which can be accessed at: http://www.unaids.org/en/dataanalysis/monitoringcountryprogress/2010progressreportssubmittedbycountries/india_2010_country_progress_report_en.pdf

27.06 The National AIDS Control Organisation's website, accessed on 6 August 2011, provided the locations of 306 Anti-retroviral Therapy Centres. [41a]

27.07 There is 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) According to the 2010 UNGASS report:

"The country has adopted the terminology Children affected by AIDS (CABA), jointly developed by NACO, UNICEF and other development partners. NACO estimates that 57,000 children are infected at birth in India each year, but is yet to finalise estimates of Children living with HIV/AIDS. A total of 63,889 children living with HIV are registered, out of which, 18,763 are receiving ART as on January 2010. Ten orphanages have been developed in collaboration with Ministry of Women and Child Development and Ministry of Social Justice and Empowerment." [15a]

KIDNEY DIALYSIS

27.08 There were at least 179 dialysis centres located throughout India. (Global Dialysis, accessed 20 June 2008) [29]

MENTAL HEALTH

27.09 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)

27.10 The same report observed:

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

"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)

27.11 As indicated in the same WHO source, 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)

27.12 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)

27.13 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)

27.14 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)

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28. FOOD SECURITY

28.01 The website of the World Food Programme (WFP), accessed 10 August 2011, advised:

“Despite significant economic progress in the past decade, India is home to about 25 percent of the world's hungry poor. Although the country grows enough food for its people, pockets of hunger remain ... According to government figures, around 43 per cent of children under the age of five years are malnourished and more than half of all pregnancy women aged between 15 and 49 years suffer from anaemia ... Stark inter-state disparities exist with some states better off on all social indicators than the others. The states that suffer from hunger and malnutrition the most include Madhya Pradesh, Chhattisgarh, Bihar, Jharkhand, Orissa, Rajasthan and Uttar Pradesh.” [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.

“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 food grain 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 The Asian Centre for Human Rights noted in its *India Human Rights Report Quarterly* for July – September 2010:

“In 1965, India introduced universal Public Distribution System (PDS) with the aim of (a) maintaining stability in the prices of essential commodities across regions; (b) ensuring

food entitlements to all sections at reasonable and affordable prices; and (c) keeping a check on private trade, hoarding and black-marketing. [3] In 1997, the PDS was converted into Targeted PDS (TPDS) through classification of its population into Above Poverty Line (APL) and Below Poverty Line (BPL) categories. Only those households classified as BPL were made eligible for subsidised purchase of commodities from ration shops.

“In its election manifesto during the general elections in 2009, the Congress-led United Progressive Alliance (UPA) promised to enact a food security law that guarantees access to sufficient food for all people, particularly the most vulnerable sections of the society. The UPA government constituted an Empowered Group of Ministers (EGoM) headed by Finance Minister Pranab Mukherjee to bring out a framework of Food Law in July 2009. The EGoM drafted the National Food Security Bill, 2010 which promises every BPL family in rural as well as urban areas to be entitled by law to 25 kg of rice or wheat a month at Rs 3 a kg.

“However, the National Food Security Bill, 2010 fails to address three critical flaws that plagued the PDS: (1) acceptable criteria for identification of the beneficiaries; (2) flaws of the existing procurement, storage and disbursement of food grains under the PDS system; and (3) the need for accountability mechanisms for rampant corruption and pilferage.” [18i]

28.06 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]

28.07 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]

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29. FREEDOM OF MOVEMENT

29.01 The US State Department *Country Report on Human Rights Practices 2010* (USSD 2010), released on 8 April 2011, noted that “The law provides for freedom of movement within the country, foreign travel, emigration, and repatriation, and the government generally respected these rights in practice. At year’s end the government lifted the requirement for nationals and foreigners, except persons from Pakistan and China, to apply for a special permit to travel to Manipur, Mizoram, or Nagaland; however, it continued to require special permits to travel to Jammu and Kashmir.” [2c] (Section 2d)

146 The main text of this COI Report contains the most up to date publicly available information as at 12 August 2011. Further brief information on recent events and reports has been provided in the Latest News section to 26 August 2011.

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.’

“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.” [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)

29.04 The *USSD Trafficking in Persons Report 2011*, released 27 June 2011, recorded that – as of March 2011 – the Unique Identification Authority had issued numbers to almost four million citizens. [2d] (India Country Narrative)

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30. INTERNALLY DISPLACED PERSONS (IDPs)

30.01 The Internal Displacement Monitoring Centre (IDMC), in their *Internal Displacement: Global Overview of Trends and Developments in 2010*, published 23 March 2011, noted:

“A conservative estimate of the number of IDPs in India was at least 650,000 in 2010, but this was largely based on the number of people living in camps and registered there. The real figure was unknown as there is no central government monitoring agency and monitors have limited access to IDPs. Actual figures, however, are likely to be significantly higher than 650,000, particularly as in 2010, 310 of India’s 636 districts were experiencing some level of insurgent activity and armed conflicts, such as between the government and Maoist groups, continued after escalating during the last decade.” [34a] (p17)

30.02 The same report stated:

“Included in the 650,000 are people displaced since 1990 by separatist violence targeting the Hindu minority in Jammu and Kashmir; those displaced in the north-east of the country since 1947 by conflicts between government forces and armed non-state groups as well as by violence between ethnic groups; people displaced in central India

by armed conflict over land and mineral resources pitting government forces and government-allied militia against Maoist insurgents; and victims of communal violence between the majority Hindu populations in Gujarat and Orissa states and the states' respective Muslim and Christian minorities.

"In 2010, people were newly displaced in several central and north-eastern states. In central India, more than 100,000 people were displaced by the Naxalite conflict between mid-2009 and mid-2010, with the conflict and displacement continuing at the end of 2010. [According to the IDMC Profile updated in September 2010, another 350,000 members of tribal groups had been displaced by the Naxalite conflict up to March 2009. [34b]] In April [2010], ethnic violence displaced several hundred Nagas, mostly women and children, from Manipur state to Nagaland state. That same month and also in Manipur state, at least 1,500 villagers were forced to leave their homes because of a military operation against armed insurgents. In May [2010], several thousand Nepali-speakers were displaced due to communal violence in the Assam-Meghalaya border region.

"Many of India's IDPs had insufficient access to basic necessities of life such as food, clean water, shelter and health care in 2010. Those in protracted situations still struggled to access education, housing and livelihoods. Tribal IDPs in camps in Chhattisgarh faced the risk of attacks by government forces and government-allied militia on the one hand and Naxalite insurgents on the other.

"There is no national policy, legislation or other mechanism to respond to the needs of people displaced by these conflicts, and the national government has generally left their protection to state governments and district authorities, who are often unaware of IDPs' rights or reluctant to offer support, particularly in cases where they played a role in causing the displacement." [34a] (p88-89)

- 30.03 The IDMC updated its Profile of the Internal Displacement Situation in India in September 2010; this provides a detailed analysis of the causes, background and current situation of internal displacements in each region of the country, as well as living conditions in relief camps:
[http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/58CE50923D581936C1257792005695C3/\\$file/India+-+September+2010.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/58CE50923D581936C1257792005695C3/$file/India+-+September+2010.pdf) [34b]

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31. FOREIGN 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 The US State Department *Country Report on Human Rights Practices 2010*, released on 8 April 2011, stated that “[T]here were no reports that the government deported refugees during the year [2010]. The government generally provided protection against the expulsion or return of refugees to countries where their lives or freedom would be threatened on account of their race, religion, nationality, membership in a particular social group, or political opinion.” [2c] (Section 2d)

31.06 The same report observed:

“According to the UNHCR, as of January there were 185,323 refugees in the country, including approximately 72,000 Sri Lankan refugees, 100,000 Tibetan refugees, and

more than 14,000 urban refugees from other countries living in New Delhi. Of the 6,037 asylum seekers and 15,216 refugees registered with the UNHCR in New Delhi, a majority were from Afghanistan and Burma.

“The UNHCR had no formal status in the country, but the government permitted its staff access to refugees in urban centers and allowed it to maintain a local office in Tamil Nadu; however, the UNHCR was not permitted direct access to Sri Lankan refugee camps, Tibetan settlements, or asylum seekers in Mizoram. In contrast the government generally permitted NGOs, international humanitarian organizations, and foreign governments access to Sri Lankan refugee camps and Tibetan settlements but also generally denied them access to asylum seeker populations in Mizoram.

“As of December [2010] approximately 70,000 Sri Lankan Tamil refugees lived in 112 refugee camps throughout Tamil Nadu and one camp in Orissa. The central government and the state of Tamil Nadu jointly provided monthly cash payments and food subsidies to the refugees.

“While the government respected the UNHCR's mandate of protection for UNHCR-recognized groups in New Delhi and provided residential permits to many of the UNHCR-recognized urban refugees, the government did not recognize these populations in Delhi and other cities as ‘refugees,’ leaving them ineligible for certain rights and services and vulnerable to harassment and gender-based violence. They did not have the legal right to work and thus often worked for low wages in the informal market. Many refugees did not have sufficient access to education or basic services, although they received medical care in free clinics. Refugees without residency permits or other official documents did not have access to police or courts. One organization also reported a number of cases of abuse of refugees and arbitrary detentions.” [2c] (Section 2d)

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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 Persons who attempt to enter India without a valid passport, or who enter or attempt to enter 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 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]
- 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.

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35. EMPLOYMENT RIGHTS

- 35.01 The US State Department *Country Report on Human Rights Practices 2010* (USSD 2010 Report), released on 8 April 2011, noted:

“State government laws set minimum wages, hours of work, and safety and health standards.

“The Factories Act mandates a maximum eight-hour workday and 48-hour workweek, as well as 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 generally were not observed in the informal economy, which employed nearly 93 percent of the workforce.

“State government laws set minimum wages, hours of work, and safety and health standards. During the year the federal government increased its floor minimum wages from 80 rupees (\$1.80) to 100 rupees (\$2.20), suggesting it would pay a minimum of 100 rupees for any employment. Minimum wages varied according to the state and to the sector of industry, but generally did not provide a decent standard of living for a worker and family. However, most workers 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 effectively enforce it.

“Enforcement of safety and health standards was poor, especially in the informal sector but also in some formal sector industries ... Industrial accidents occurred frequently ... The law does not give workers the right to leave workplaces that endanger health and safety without jeopardizing their continued employment.” [2c] (Section 7e)

- 35.02 The same report noted:

“The law allows workers to form and join unions of their choice without previous authorization or excessive requirements, and the government generally respected this right. Public servants have limited organizing rights. Although there were more than 400 million persons in the country's active workforce, only 30 million worked in the formal sector ... Most of the country's estimated 13 to 15 million union members were in the formal sector; trade unions represented a small number of agricultural and informal sector workers. An estimated 80 percent of unionized workers were members of unions affiliated with one of five major trade federations ... In practice legal protections of

worker rights, including freedom of association, were effective only in the organized industrial sector, in which authorities generally prosecuted and punished persons responsible for intimidation or suppression of legitimate trade union activities.

“Employers are not legally obligated to recognize a union, and some employers established and recognized company unions or ‘worker committees’ rather than allowing representational unions.” [2c] (Section 7a)

35.03 It also stated that “The government protects collective bargaining under the law, but employers are not legally obligated to engage in collective bargaining. When parties cannot agree on equitable wages, the government may establish a board of union, management, and government representatives to make a determination. Specialized labor courts adjudicated labor disputes, but there were long delays and a backlog of unresolved cases.” [2c] (Section 7b)

35.04 The USSD 2009 Report observed, “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 USSD 2010 Report recorded:

“The law prohibits forced or bonded labor, but such practices remained widespread. Estimates of the number of bonded laborers in the country varied widely; several NGOs placed the number in the millions.

“Prison sentences for employers of forced laborers could be as long as three years, 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 tolerance of forced labor. When inspectors referred violations for prosecution, long court backlogs and inadequate prosecution sometimes resulted in acquittals ... Ministry of Labor and Employment statistics showed a large decrease in the number of bonded labor cases brought before the courts, although the extent to which this reflected a decrease in bonded labor was unclear.

“The Ministry of Labor continued to partner with the NHRC and NGOs to investigate allegations of bonded labor ... Since 1976 the Ministry of Labor has freed and rehabilitated approximately 270,000 bonded laborers from 18 states across the country.

“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: Child labour](#) and [Section 26: Trafficking](#)

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36. LAND ACQUISITION

36.01 *Frontline* magazine, in its issue of 4-17 June 2011, focused on the acquisition of land by the state, mainly from farmers, for public works (roads, power plants, mining, etc) or for corporate-led development (factories, etc). The magazine noted that Congress Party president Sonia Gandhi had announced that legislation would be introduced in parliament in 2011 that would comprehensively address issues relating to land acquisition. This process was currently based on a Land Acquisition Act which had been in force since 1894. [19h]

36.02 *The Telegraph*, in an article dated 4 August 2011, reported that many poor farmers were being “forced from their land or cheated of fair compensation rates ... land mafia aggregators often provoke disputes by buying cheap from farmers, then selling high after re-zoning the land to industrial use.” The article quoted a leading campaigner for the rights of the rural poor, Dr Binayak Sen, as saying that “widespread expropriation” of farmers’ property was taking place under the “archaic” Land Acquisition Act. The article noted that “The Act allowed officials to seize their land by claiming it was for a ‘public purpose’ even when the plots are given to private contractors looking for quick profits.” [130a]

36.03 Amnesty International’s Annual Report 2011 stated:

“Protests by Adivasis (indigenous communities) and other marginalized communities against moves to acquire their lands and natural resources without proper consultation or consent resulted in the suspension of key corporate-led projects. Human rights defenders in these cases were attacked by state or private agents, with politically motivated charges, including sedition, being brought against some.

“Both the authorities and companies failed to ensure adequate consultation with and protection of the rights of local marginalized communities affected by mining, irrigation and other corporate projects. In several states, Adivasi and other marginalized local communities staged protests – some of them successful – against the authorities’ failure to respect their claims, guaranteed by the Constitution and recent legislation, over lands which were threatened by corporate ventures.” [3e]

The same report did, however, note:

“In a landmark victory for Adivasi rights [in 2010], the Indian government rejected plans to mine bauxite in the Niyamgiri Hills, Orissa, and to expand an alumina refinery in nearby Lanjigarh. The plans were proposed by a subsidiary of UK-based Vedanta Resources and the state-owned Orissa Mining Corporation. The authorities found that both projects violated forest and environmental laws and would perpetrate abuses against the Dongria Kondh and other Adivasi communities.” [3e]

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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.
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.
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.
Indira Gandhi assassinated by Sikh bodyguards, following which her son, Rajiv, takes over.
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.
Muslim separatist groups begin campaign of violence in Kashmir.
- 1991** Rajiv Gandhi assassinated by suicide bomber sympathetic to Sri Lanka's Tamil Tigers.
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.
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 put large satellites into orbit.
- 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.
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.

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. 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.
- 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.
- 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.

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 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 sole 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.

September Allahabad High Court rules that disputed holy site of Ayodhya should be divided between Hindus and Muslims; the destruction of a mosque on the site by Hindu extremists in 1992 led to rioting in which about 2,000 people died.

October Delhi Commonwealth Games go ahead despite widespread criticism of the state of the facilities and claims of poor organisation.

2011

January Food price inflation reaches 18 per cent. [32bq]

February A court in Gurarat finds 31 people guilty of setting fire to a passenger train in Godhra in 2002. [32br]
Telecommunications Minister Andimuthu Raja is arrested and accused of selling mobile phone frequency licences for a fraction of their true value, costing the exchequer about £24.5bn (sterling) in lost revenue

March Results of 2011 census put India's population at 1.21bn, an increase of 181 million over ten years.

April Prominent Muslim cleric Maulvi Showkat Ahmed Shah is killed in a bomb explosion outside a mosque in Indian-administered Kashmir. [32bt]

Assembly elections are held in several states over April and May. [32bv]

May The President, for the first time since 2004, gives assent for two executions to be carried out. [3h]

July On 13 July 2011 three coordinated bomb blasts in the city of Mumbai kill at least 24 people and injure more than 130. No terrorist group claims responsibility. [32bz]

Source: BBC News: Timeline India, updated 21 June 2011 [32a], unless otherwise stated.

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Annex B

POLITICAL PARTIES

Candidates in the 2009 general election were from a total of 1,055 political parties. (BBC News, 30 March 2009) [32ai] The following are the principle nationally-based and regional parties:

All India Trinamool Congress (TMC)

Website: <http://aitmc.org/>

Merged with the Sangma faction of the Nationalist Congress Party in 2004. Leader: Mamata Banerjee. [1] The Trinamool Congress won the West Bengal Assembly elections in May 2011 and formed the new state government. [32bv]

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)

Website: www.bspindia.org

Formed in 1980 as the champion of scheduled castes and has a stronghold in Uttar Pradesh. President: Kumari Mayawati. The party won 21 seats in the 2009 general election as part of the Third Front coalition. [63] [1] [32ai]

Bharatiya Janata Party (Indian People's Party) (BJP)

Website: www.bjp.org

The leading political party of the National Democratic Alliance (NDA) coalition. The BJP traces its roots back to the Bharatiya Jan Sangh, a party representing traditional Hindu values and the interests of small businesses, traders and the middle class. BJP and its allies (NDA) have been in opposition since 2004. The party won 116 seats in the 2009 general election. President: Shri Nitin Gadkari. Has about 10.5 million members. [63] [1]

Communist Party of India (CPI)

Website: www.cpindia.org

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. The CPI formed part of the Third Front coalition in the 2009 general election and won 4 seats in the lower house. Leader: Gurudas Dasgupta. Gen. Secretary: Ardhendu Bhushan Bardhan [63] [1] [32ai]

Communist Party of India - Marxist (CPI-M)

Website: www.cpim.org

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 14 members. CPI(M) contested the 2009 general election as part of the Third Front coalition and won 16 seats in the Lok Sabha. General-Secretary: Prakash Karat. In 2009, the party had 1,042,287 members. [32ai] [1]

Dravida Munnetra Kazhagam (DMK)

162 The main text of this COI Report contains the most up to date publicly available information as at 12 August 2011. Further brief information on recent events and reports has been provided in the Latest News section to 26 August 2011.

Founded in 1949. Supports greater federalism; resents northern domination. Exclusive to Tamil Nadu. In 1972, a faction of the party broke away to form the AIADMK. A member of the United Progressive Alliance, the DMK won 18 seats in the 2009 elections. [32n] [32a]

Indian National Congress (INC)

Website: www.congress.org.in

Congress led the campaign for independence and has remained a powerful force in Indian politics, transcending religious, ethnic and caste divisions. However, it is also a party tightly focused on its heritage: members of the Nehru-Gandhi family have led the party throughout most of its history. Sonia Gandhi, widow of former Prime Minister Rajiv Gandhi, became President of the INC in April 1998. 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. [63] [1] The Congress Party secured 206 seats in the 2009 parliamentary election. [32a]

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: Farooq Abdullah. (1m members) [1]

Janata Dal (United)

Formed on the eve of the 1999 Lok Sabha election following a split in the Janata Dal.. Strong support base in Bihar. Won 20 seats in the 2009 elections in the National Democratic Alliance coalition. Leader: Nitish Kumar. [32a] [7c] [1]

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). President: H.D. Deve Gowda. [1]

Jharkhand Mukti Morcha

Aligned with the ruling coalition, the United Progressive Alliance. Led by Shibu Soren. [1]

Nationalist Congress Party (NCP)

Website: www.ncp.org.in

Founded 1999 as breakaway faction of Congress; split into two factions in January 2004 – one headed by Sharad Pawar and another by Purno Shangma, but was reunified in 2006. Current president: Sharad Pawar. The NCP won 9 seats in the 2009 elections as a member of the United Progressive Alliance led by the Indian National Congress and, as of August 2011, had two ministers in the Cabinet. [32a] [1] [16d]

Pattali Makkal Katchi

Founded 1989, representing the interests of Tamils. Leader: Anbumani Ramdoss. [1]

Rashtriya Janata Dal (RJD) (National People's Party)

Founded 1997 as a breakaway group from Janata Dal. Led by Lalu Prasad Yadav. Won 4 seats in the 2009 parliamentary elections. [1] [32a]

Revolutionary Socialist Party

Founded 1940; Marxist-Leninist. Leader: Debarata Bandopadhyay. Gen.Sec. T. J. Chandrachoodan. [1]

Samajwadi Party (Socialist Party)

Website: <http://www.samajwadiparty.in/index.php>

Emerged from V.P. Singh's Janata Dal as an aggressive champion of certain backward castes and Muslims. Supports reservations for jobs and education. Support largely confined to Uttar Pradesh. President: Mulayam Singh Yadav. [7c][1]

Shiromani Akali Dal (SAD)

Punjab-based party formed in 1920. Largest of six splinter groups, each of which claims to be the 'real' Akali Dal. Supports greater state autonomy and is an ally of the BJP. President: Sukhbir Singh Badal. [1]

Shiv Sena (Shiva's Army)

Founded 1966. A member of the National Democratic Alliance and said to be more hard-line than the BJP, Shiv Sena is based in Mumbai. [32m] The party is headed by one of India's most controversial Hindu nationalist leaders, Bal Thackeray. Secured 11 seats in the 2009 general election. [32m] [32a] [1]

Telugu Desam Party (NAIDU)

Founded in 1982. State-based party in Andhra Pradesh. President: N. Chandrababu Naidu. Supports the BJP at 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) [44j])

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 Jihad 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-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]

See Section 20: [Militant organisations in Punjab](#)

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)

See Section 8: [Internal security situation: Naxalite \(Maoist\) violence](#) and Section 11: [Non-government armed groups: Naxalites \(Maoists\)](#)

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 jihad 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.

166 The main text of this COI Report contains the most up to date publicly available information as at 12 August 2011. Further brief information on recent events and reports has been provided in the Latest News section to 26 August 2011.

“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 clearly partitioned political and military wings. 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]

Dima Haram Daoga (DHD)

Formed in 1996 with less than 400 members:

"Dima Haram 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]

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]

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]

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]

172 The main text of this COI Report contains the most up to date publicly available information as at 12 August 2011. Further brief information on recent events and reports has been provided in the Latest News section to 26 August 2011.

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]

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

President	Pratibha Patil
Prime Minister	Manmohan Singh (Indian National Congress)
Minister of Agriculture, Consumer affairs	Sharad Pawar (National Congress Party)
Minister of Commerce & Industry	Anand Sharma (INC)
Minister of Communications & IT	Kapil Sibal (INC)
Minister of Defence	A K Antony (INC)
Minister of External Affairs	S M Krishna (INC)
Minister of Finance	Pranab Mukherjee (INC)
Minister of Heavy Industries & Enterprises	Praful Patel (NCP)
Minister of Home affairs	P Chidambaram (INC)
Minister of Information & Broadcasting	Ambika Soni (INC)
Minister of Law & Justice	M Veerappa Moily (INC)
Minister of Petroleum & Natural gas	Jaipal Reddy (INC)
Minister of Power	Sushilkumar Shinde (INC)
Minister of Railways	Dinesh Trivedi (All India Trinamool Congress)
Minister of Urban development	Kamal Nath (INC)
Minister of Steel	Beni Prasad Verma (INC)
Central Bank Governor	Duvvuri Subbarao

Source: Economist Intelligence Unit: India Country Report, August 2011 [16d]

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]

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SOME PROMINENT PEOPLE OUTSIDE OF THE GOVERNMENT**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]

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]

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]

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]

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

AFSPA	Armed Forces Special Powers Act
AI	Amnesty International
BJP	Bharatiya Janata Party (Indian People's Party)
CEDAW	Committee on the Elimination of All Forms of Discrimination Against Women
CPI-M	Communist Party of India (Marxist)
CPI-Maoist	Communist Party of India (Maoist)
CPJ	Committee to Protect Journalists
CRPF	Central Reserve Police Force
FCO	Foreign and Commonwealth Office (UK)
GDP	Gross Domestic Product
HIV/AIDS	Human Immunodeficiency Virus/Acquired Immunodeficiency Syndrome
HRW	Human Rights Watch
ICRC	International Committee for Red Cross
INC	Indian National Congress
IDP	Internally Displaced Person
IFRC	International Federation of Red Cross and Red Crescent Societies
IOM	International Organisation for Migration
IPC	Indian Penal Code
IPS	Indian Police Service
MHA	Ministry of Home Affairs
MSF	Médecins sans Frontières
NCP	Nationalist Congress Party
NDA	National Democratic Alliance
NHRC	National Human Rights Commission of India
NIA	National Investigation Agency
NSA	National Security Act
OHCHR	Office of the High Commissioner for Human Rights
PSA	Public Safety Act
TI	Transparency International
UAPA	Unlawful Activities Prevention Act
UN	United Nations
UNAIDS	Joint United Nations Programme on HIV/AIDS
UNHCR	United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
UPA	United Progressive Alliance
USSD	United States State Department
WFP	World Food Programme
WHO	World Health Organization

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