


# INDIA
# COUNTRY REPORT

**April 2005**

**Country Information & Policy Unit**
**IMMIGRATION & NATIONALITY DIRECTORATE**
**HOME OFFICE, UNITED KINGDOM**

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# 1. SCOPE OF DOCUMENT

**1.1** This Country Report has been produced by Immigration and Nationality Directorate, Home Office, 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. It includes information available up to 1 March 2005.

**1.2** The Country Report is compiled wholly from material produced by a wide range of recognised external information sources and does not contain any Home Office 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.

**1.3** The Report aims to provide a brief summary of the source material identified, focusing on the main issues raised in asylum and human rights applications. It is not intended to be a detailed or comprehensive survey. For a more detailed account, the relevant source documents should be examined directly.

**1.4** The structure and format of the Country Report reflects the way it is used by Home Office caseworkers 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.

**1.5** The information included in this Country 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; rather that information regarding implementation has not been found.

**1.6** As noted above, the Country Report is a collation of material produced by a number of reliable information sources. In compiling the Report, no attempt has been made to resolve discrepancies between information provided in different source documents. For example, different source documents often contain different versions of names and spellings of individuals, places and political parties etc. Country 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.

**1.7** The Country 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.

**1.8** This Country Report and the accompanying source material are public documents. All

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

**1.9** Country Reports are published every six months on the top 20 asylum producing countries and on those countries for which there is deemed to be a specific operational need. Inevitably, information contained in Country Reports is sometimes overtaken by events that occur between publication dates. Home Office officials are informed of any significant changes in country conditions by means of Country Information Bulletins, which are also published on the IND website. They also have constant access to an information request service for specific enquiries.

**1.10** In producing this Country Report, the Home Office has sought to provide an accurate, balanced summary of the available source material. Any comments regarding this Report or suggestions for additional source material are very welcome and should be submitted to the Home Office as below.

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## Advisory Panel on Country Information

**1.11** The independent Advisory Panel on Country Information was established under the Nationality, Immigration and Asylum Act 2002 to make recommendations to the Home Secretary about the content of the Home Office's country information material. The Advisory Panel welcomes all feedback on the Home Office's Country Reports and other country information material. Information about the Panel's work can be found on its website at www.apci.org.uk.

**1.12** It is not the function of the Advisory Panel to endorse any Home Office material or procedures. In the course of its work, the Advisory Panel directly reviews the content of selected individual Home Office Country Reports, but neither the fact that such a review has been undertaken, nor any comments made, should be taken to imply endorsement of the material. Some of the material examined by the Panel relates to countries designated or proposed for designation for the Non-Suspensive Appeals (NSA) list. In such cases, the Panel'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.

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# 2. Geography

**2.1** Europa World Regional Surveys of the World, South Asia 2005, documents that the Republic of India is one of the largest countries in the world, with an area of 3,287,263 sq km including the whole of Jammu and Kashmir, which is divided between India and Pakistan. **[1](p152)** As stated in the CIA World Factbook, updated on 11 May 2004, India's neighbours are Bangladesh, Bhutan, Burma, China, Nepal, and Pakistan. **[35](p2)** As noted by Europa 2005, on the north west India bounds Pakistan and borders Myanmar (Burma) on the north-east, and Bangladesh to the east. “India’s great southern peninsula stretches down into the tropical waters of the Indian Ocean, here its boundaries extend to Andaman and Nicobar Isalands, in the Bay of Bengal, and the Lakshadweep archipelago, in the Arabian sea.” **[1](p152)**

**2.2** As noted in the US State Department Background Note for India, reviewed in August 2004, the population of India (2003 estimate) is 1.05 billion; of which the urban population accounts for 27.8%. Although India occupies only 2.4% of the world’s land area, it supports over 15% of the world’s population. The population growth rate is 1.6% per annum. 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); Pune (4 million). **[2f](People)** According to the BBC timeline for India, the country marked the birth of its billionth citizen in May 2000. **[32bf]**

**2.3** As cited in the CIA World Factbook, the national language is Hindi, and the first language of 30% of the population. Since 1965 English has been recognised as an "associate language" but is the most important language for national, political, and commercial communication. **[35](p4)** As reflected in the Foreign & Commonwealth Office (F&CO) website, “In addition there are 18 main and regional languages recognised for adoption as official state languages. There are another 24 languages, 720 dialects and 23 tribal languages. Among the main languages are Bengali (8.2%), Marathi (7.7%), Urdu (5.2%), Gujarati (4.7%), Bihari (3.8%), Oriya (3.6%), Telugu (3.5%), Tamil (3.2%) and Punjabi (3.0%). Other languages include Assamese, Kannada, Rajasthani and Kashmiri. Bihari and Rajasthani are variants of Hindi.”**[7i](p2)** According to the Ethnologue Report for India, reviewed in November 2003, there are an estimated 850 languages in daily use. **[31]**

**2.4** According to estimates for 2000 in the CIA World Factbook, the biggest ethnic group in India is the Indo Aryans (72%) followed by the Dravidians (25%), Mongoloid and others 3%. 81.3% are Hindu, 12% Muslim, 2.3%, Christian, 1.9% Sikh, other religious groups groups include Buddhist, Jain and Parsi 2.5%. **[35](p4)**
See Section 6.204 – Ethnic Groups

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# 3. Economy

**3.1** As noted in the US State Department Background Note for India, reviewed in August 2004, “It has the world's 12th largest economy, and the third largest in Asia behind Japan and China, with total GDP of around $570 billion. Services, industry and agriculture account for 50.7%, 26.6% and 22.7% of GDP respectively. Nearly two-thirds of the population depends on agriculture for their livelihood. About 25% of the population lives below the poverty line, but a large and growing middle class of 320-340 million has

disposable income for consumer goods." **[2f](Economy)**

**3.2** As reported by the same source,

> "India is continuing to move forward with market-oriented economic reforms that began in 1991. Recent reforms include liberalized foreign investment and exchange regimes, industrial decontrol, significant reductions in tariffs and other trade barriers, reform and modernization of the financial sector, significant adjustments in government monetary and fiscal policies and safeguarding intellectual property rights…. However, economic growth is constrained by inadequate infrastructure, a cumbersome bureaucracy, corruption, labor market rigidities, regulatory and foreign investment controls, the 'reservation' of key products for small-scale industries and high fiscal deficits…. The rapidly growing software sector is boosting service exports and modernizing India's economy." **[2f](Economy)**

**3.3** As noted in Europa Regional Surveys of the World, South Asia, 2005, "The economy grew by 8.2% in the fiscal year 2003/2004, making India one of the fastest growing economies in the World." **[1](p184)** BBC news reported in an article dated 28 February 2005, the Finance Minister Palaniappan Chidambaram said India's economy grew 6.9% in 2004. **[32fk]**

**3.4** As noted in the Economic Intelligence Unit Country Report for India, 2004-5,

> "Congress has also been challenged by its Left Front partners over the proposed liberalisation of foreign investment, highlighting the strains between the two groups. The budget released in July focuses attention on agricultural development and the provision of employment and social services to the poor, who are widely thought to have supported Congress in the recent election. Economic growth will moderate to 6.1% (at factor cost) in fiscal year 2004/05 (April-March), down from an exceptional 8.3% in 2003/04, owing to a likely contraction in the agricultural sector and hence less robust growth in personal incomes." **[16](Overview)**

**3.5** A BBC News Report of 27 August 2004 noted that the World Bank is to raise its lending to India under a newly drafted 4-year assistance programme, which starts in 2005. **[32ad]** A further report of 30 August 2004 indicated that India's central bank, the Reserve Bank of India, has warned that the high price of oil and drought are the two biggest threats to economic growth. **[32ds]**

**3.6** As noted in the Economic Intelligence Unit Country Report for India, 2004-5, the average unemployment rate in 2003 was 9.5%. The consumer price inflation at the end of 2003 was 3.7%. **[16](p6)**

**3.7** XE.com state that the approximate rate of exchange on 25 January 2005 was £1 = 81.6410 Indian rupees. **[36]**

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# 4. History

For history prior to 1991, please refer to The Europa Regional Surveys of the World, South Asia, 2005. **[1]**

## 1991 to present

### Congress (I) and economic reform

**4.1** As cited in the US State Department Background Note for India, August 2004, "On May 27, 1991, while campaigning in Tamil Nadu on behalf of Congress (I), Rajiv Gandhi was assassinated, apparently by Tamil extremists from Sri Lanka." In the elections, Congress (I) returned to power at the head of a coalition under the leadership of PV Narasimha Rao. This Congress-led government served a full 5-year term and opened India's economy to global trade and investment. **[2f](Government)**

### Emergence of BJP

**4.2** As noted by Europa 2005 and the BBC timeline, the results of the general elections held in May 1996 gave no party or group an overall majority. The Hindu nationalist Bharatiya Janata Party (BJP) emerged as the largest party but still well short of a majority, even with allies. **[1](p164[32bf]** As reflected in the US State Department Background Note for India, August 2004,

> "Under Prime Minister Atal Behari 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 his 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."**[2f](History)**

**4.3** As stated in the same source,

> "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 inaugurated 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, forcing U.S. President Clinton to impose economic sanctions on India pursuant to the 1994 Nuclear Proliferation Prevention Act." **[2f](History)**

### Tension with Pakistan

**4.4** The BBC timeline indicates that in February 1999, Prime Minister Vajpayee made a historic bus trip to Pakistan to meet Premier Nawaz Sharif and to sign the bilateral Lahore peace declaration. However, tension in Kashmir led to a brief war with Pakistan-backed forces in the icy heights around Kargil in Indian-held Kashmir. **[32bf]** As noted in the US State Department Background Note for India, August 2004, "In April 1999, the BJP-led coalition government fell apart, leading to fresh elections in September. The National Democratic Alliance – a new coalition led by the BJP – gained a majority to form the government with Vajpayee as Prime Minister in October 1999." **[2f](History)**

**4.5** As recorded in the BBC timeline, in July 2001, Vajpayee met Pakistani President Pervez Musharraf in the first summit between the two neighbours in more than two years. The meeting ended without a breakthrough or even a joint statement because of differences

over Kashmir. In May 2002 Pakistan test-fired three medium-range surface-to-surface Ghauri missiles, capable of carrying nuclear warheads. This intensified the tension between the leaders of India and Pakistan. **[32bf]**

**4.6** Pakistan handed over 16 Sikh prisoners to the Indian officials in September 2003 as a goodwill gesture. Pakistan also released 269 fishermen who had been jailed for illegally entering Pakistan's territorial waters.**[46]**

**4.7** As reported in a BBC report of 18 February 2004, 3 days of talks were held in Islamabad with the disputed region of Kashmir top of the agenda. India and Pakistan agreed to a "roadmap" for peace that would begin with high-level talks in May or June. **[32co]**

**4.8** On 20 May 2004, BBC news reported that Pakistan had welcomed the pledge made by incoming Prime Minister Manmohan Singh to seek friendly relations. **[32dq]** The Congress led government announced**,** as noted in a BBC report of 10 August 2004, that it would scrap the Prevention of Terrorism Act (POTA) **[32cw]**

**4.9** As reported in Human Rights Watch annual report 2005, "The Congress government continued its predecessor's policy of dialogue with Pakistan to resolve outstanding isssues of conflict. The two countries' leaders met in New York in September, where Singh and Musharraf reiterated a commitment to the bilateral dialogue to restore normalcy and a peaceful negotiated settlement in Kashmir." **[26e]** As recorded by BBC Timeline: Steps to peace in South Asia, this was the first official meeting of the two countries foreign ministers, at such a high level for three years. **[32fm]**

**4.10** As reported by BBC in a news report of 11 November 2004, "India is to reduce its troop deployment in the disputed territory of Kashmir this winter, Prime Minister Manmohan Singh has announced. Mr Singh said the move reflected 'an improvement in the security situation' there….Pakistan has welcomed the move as a 'step in the right direction'." The move is widely seen as a significant confidence-building measure ahead of the Kashmir talks planned for December (2004). India's move came weeks after Pakistan's President Musharraf's made a fresh set of proposals to solve the long-running dispute peacefully. **[32fc]**

**4.11** A further BBC report of 17 November 2004 stated, "India has begun to withdraw some of its troops from Indian-administered Kashmir as premier Manmohan Singh started his first visit there since taking office… Shortly before Mr Singh's arrival, separatist militants launched an attack near a stadium where the prime minister later addressed a rally." Mr Singh stated that he had been able to order the withdrawal of troops as a result of the improvement in the security situation in Kashmir." **[32fd]**

**4.12** As reported by the BBC on 10 December 2004, police fired tear-gas and baton-charged demonstrators protesting against Indian rule in Kashmir. "More than 500 people marched on World Human Rights Day in Srinagar, summer capital of Indian-administered Kashmir. More than 200 protesters, representing a faction of the main separatist All Party Hurriyat Conference (APHC), were taken into custody. A further 60 were held earlier during a march against alleged human rights violations by Indian forces…Prominent leaders of the APHC Geelani faction, Sheikh Aziz, Ghulam Nabi Sumjhi and Nayeem Khan, were among those taken into custody. The Chairman of Geelani faction, Syed Ali Shah Geelani, and head of the Democratic Freedom Party, Shabir Shah, were kept under house arrest from Friday morning." **[32ff]**

**4.13** As reported by the BBC, on 13 December 2004, political leaders from the two portions of the disputed territory of Kashmir began the first of three days of talks in

Kathmandu, Nepal, marking the first time they had met in an organised forum. “Former diplomats and former military leaders from both India and Pakistan took part in the discussions.” It was a low profile meeting with the aim of improving communication between the two countries whose leaders had recently begun talks over the Kashmir issue. **[32fe]**

**4.14** As stated in the Economist Intelligence Unit Country Report for India, January 2005, “India’s relations with Pakistan, its long-standing rival, improved during 2004. Negotiations on a number of disagreements are taking place, and although the talks have not delivered solutions on major issues, they have resolved some minor ones. Continuing disagreement over a a higly symbolic proposed bus service linking Srinagar in Indian-administered Kashmir to Muzaffarabad in Pakistani-administered Kashmir led to an adjournment of talks in early December (2004) to a still unknown “mutually convenient date.”…**[91](p1)**

**4.15** As reported by the BBC on 16 February 2005,

> “India and Pakistan have agreed to launch a landmark bus service across the ceasefire line dividing Kashmir between the nuclear rivals. The deal was announced after a meeting between the Indian and Pakistani foreign ministers in Islamabad. The two sides have also agreed to begin discussions on reducing the risk of nuclear accidents. Correspondents say the agreements will give a new boost to a peace process that began more than a year ago [in 2003]. Pakistani Foreign Minister Khursheed Kasuri says the bus service linking the capitals of Indian and Pakistani-administered Kashmir is likely to start on 7 April.” It will give millions of Kashmiris a chance to travel across the ceasefire line for the first time in over 50 years. “The talks had been deadlocked by a disagreement over India’s insistence that passports be used as travel documents, which Pakistan says would compromise Kashmir’s disputed status. The two sides have now agreed to use entry permits in place of passports once identities of travellers have been verified.” **[32eo]**

**4.16** As also reported by Reuters on 16 February 2005, “A year of peace talks between India and Pakistan finally bore fruit on Wednesday when their foreign ministers unveiled several accords including the start of a bus service across a ceasfire line dividing Kashmir. “I am convinced that the cooperation between our two countries is not just a desirable objective, it is, in today’s context, an imperative,” Singh told a joint news conference held with Pakistan foreign Minister Khursheed Mehmood Kasuri… ”They also committed to finalizing an accord on notifiying each other before launching any missile tests.” **[8,I]**

**Religious strife**

**4.17** As recorded in the US State Department Background Note for India, August 2004,

> ”The Kargil conflict in 1999 and an attack on the Indian Parliament in December 2001 led to increased tensions with Pakistan. **[2f](History)**

**4.18** As recorded in the BBC timeline, (updated 22 September 2004), in 1992 Hindu extremists demolished a mosque in Ayodhya, triggering widespread Hindu-Muslim violence and communal riots throughout India. **[32bf]**

**4.19** As noted in Europa 2005, on 6 December 1992 the mosque at Ayodhaya was demolished. “It was clear that neither the central Government nor the state government had been able to take the necessary swift action that might have averted the demolition, but whether this reflected incompetence or deliberate intent is unclear. Whatever the

position adopted by the party leaders the demolition of the mosque was clearly regarded as a great victory by many of the BJP's supporters. One consequence was an outbreak of rioting in many cities in which hundreds of lives (the majority Muslim) were lost."**[1](p162)**

**4.20** As recorded in the US State Department Background Note for India, August 2004, "Hindu nationalists have long agitated to build a temple on a disputed site in Ayodhya. In February 2002, a mob of Muslims attacked a train carrying Hindu volunteers returning from Ayodhya to the state of Gujarat, and 57 were burnt alive. Over 900 people were killed and 100,000 left homeless in the resulting anti-Muslim riots throughout the state. This led to accusations that the state government had not done enough to contain the riots, or arrest and prosecute the rioters." **[2f](History)**

For more information please refer to Section 6A/Freedom of religion/Muslims

**4.21** A BBC news report dated 25 July 2002 announced that the eminent scientist Dr A.P.J. Abdul Kalam was sworn in as India's 12th President, replacing K.R. Narayanan. He is the retired architect of India's missile programme. As a Muslim, correspondents felt that this was an important signal at a time when the country was still recovering from the [Hindu-Muslim] Gujarat riots. **[32ai]**

**4.22** BBC news reported on 21 May 2004 that the Supreme Court had ordered a retrial of a riot case in which 12 Muslims were burned to death by a Hindu mob two years ago in Gujarat. It ruled that the new trial must take place in neighbouring Maharashtra state and called for a fresh investigation. **[32cp]**

For more information on the Gujarat riots and the retrial please refer to Section 6A/Freedom of religion/Muslims

**General elections 2004**

**4.23** As reported by BBC news on 1 March 2004, and CNN on 20 April 2004 early elections were called by Prime Minister Atal Behari Vajpayee and voting held over 4 days starting on 20 April and ending on 10 May. Ballots were cast on electronic voting machines for the first time with 675 million eligible to vote. **[32ay] [33e]** A CNN report of 20 April 2004 and a further BBC report of 29 April 2004 announced that India's autonomous election commission had ordered an inquiry into complaints of widespread vote-rigging and other irregularities in Bihar. Violence and ballot box theft required reballoting in some areas. **[32dj] [33e]**

**4.24** As recorded in the India Today May 2004 issue, in an unexpected turnaround, the Congress-led front emerged victorious, securing 217 seats (35.19%) with its allies: RJD, NCP, DMK, PMK, MDMK, TRS, JMM, LNJSP, JKPDP. The BJP and allies (Shiv Sena, JD(U), SAD, BJD, Trinamool, ADMK, TDP) secured 185 seats (35.31%), and others 136 seats. **[11g](p3-10)** As noted in the FCO website, reviewed 27 May 2004, the surprise result saw the former BJP-led coalition government resign. **[7i](p2)**

**4.25** As reflected in the CRS (Congressional Research Service) Report for Congress issued on 12 July 2004,

> "Investor fears that a new coalition government including communists might curtail or halt India's economic reform and liberalization process apparently led to huge losses in the country's stock markets…Market recovery began after Congress Party leaders offered assurances that the new government would be 'pro-growth, pro-savings, and pro-investment… Other analysts saw in the results a rejection of the

Hindu nationalism associated with the BJP (just days after a December 2002 state election victory in Gujarat, the BJP's president declared that his party would "duplicate the Gujarat experience everywhere" as it represented a "mandate for the [Hindutva] ideology.)"[64](p6)

**4.26** The BBC reported on 18 May 2004 that Sonia Gandhi, the leader of the Congress Party, had declined the prime ministership. [32dl] According to the BBC timeline for India and the CRS Report for Congress, Manmohan Singh, a former finance minister, was sworn in as Prime Minister on 22 May 2004, becoming India's first-ever non-Hindu Prime Minister. He leads a coalition government, called the United Progressive Alliance. [32bf] [64](p2)[7i](p2) As cited in the US State Department Background Note for India, August 2004, Party President Sonia Gandhi was re-elected by the Party National Executive in May 2004. [2f](Political Conditions) A BBC report of 1 June 2004 reported that the BJP, the main opposition party elected L.K. Advani, the former Deputy Prime Minister as its new leader. [32dr]

**4.27** As noted in the CRS Report for Congress, 12 July 2004, Prime Minister Singh has said that development will be a central priority of the UPA government with reforms aimed at reducing poverty and increasing employment. The foreign policy focus will be on India's immediate neighbours. "The UPA has indicated that it will make the 1972 Simla Agreement between India and Pakistan the basis of its relationship with Islamabad even as it will abide by all subsequent accords." The two countries vowed to bolster defence and trade ties, while moving forward to resolve outstanding territorial disputes. [64](p10-11)

For further information please see Annex C: Summary of election results and Annex D: Political make up of government.

**State Assembly Elections**

**4.28** As reported in Keesings Record of World Events for October 2004, "The position of the Congress (I) – led UPA government was strengthened in October by the results of two state assembly elections. In the election on October 16 (2004) in the major industrial western state of Maharashtra the ruling alliance of Congress and the Nationalist Congress Party (NCP) unexpectedly retained power by winning 141 seats in the 288-seat assembly, against a total of 117 seats for the opposition alliance of the BJP and the local right-wing Shiv Sena party. The elections also saw a shift of power within the governing alliance, as Congress (I), with 69 seats (against 75 in 1999) was overtaken by the NCP with 71 (58 in 1999). (The alliance's last seat was won by the Republican Party of India – Athavale.)"[5u]

**4.29** The same source reported that elections of 11 October 2004 in Arunachal Pradesh Congress (I) secured a majority with 34 seats in the 60 seat assembly, followed by independents with 13 seats, the BJP with nine, the NCP with two, and Arunachal Congress with two. Congress legislators unanimously elected Gegong Apang to his seventh term as chief minister on 14 October 2004. [5u]

**4.30** As reported by Keesings News Digest for February 2005, "State assembly elections held in Bihar, Haryana, and Jharkhand in February were the first electoral tests since the United Progressive Alliance (UPA) government was brought to power in May 2004 and as such delivered a mixed verdict for the Congress (I) party and its allies." [5x]

**4.31** As reported by BBC on 15 February 2005, "More than half the eligible voters turned out in the second round of provincial elections in the northern Indian states of Bihar and Jharkhand…There were reports of some incidents of violence in Bihar and police say at least 17 people were injured…voting has been spread over three phases in the two states

on account of the security situation. Earlier this month (February) voting also took place in the northern state of Haryana. Vote counting will be taken up on 27 February in all three states." **[32ep]**

**4.32** As cited in a BBC news item dated 23 February 2005, with regard to the voting in the east Indian states of Bihar and Jharkhand for the provincial elections, "The Elections Commsission said two people were killed in separate incidents during the voting, but the poll was largely peaceful. The elections were held in more than 130 constituencies in both of the states." **[32ga]**

**4.33** As reported by the BBC on 28 February 2005, "India's Congress Party has won a landslide victory in elections in the northern state of Haryana but suffered a setback in two other states. Congress and its allies suffered setbacks in the politically crucial state of Bihar and in Jharkhand. Both states threw up hung assemblies and it is unclear who will form the next government there. The outcome in the three states is unlikely to affect the governing Congress-led coalition nationally… At least 30 people were killed in poll violence in the two states, blamed mainly on Maoist rebels who had vowed to disrupt the elections." **[32ez]**

**4.34** The same source continues,

> "Congress took 67 seats in the 90-member assembly in Haryana, while the incumbent Indian National Lok Dal (INLD) got just nine, election Commision officials said. The result in Haryana means that Congress is back in power in the state for the first time in nine years, unseating the INLD and its allies in the right-wing Hindu nationalist Bharatiya Janata Party (BJP)." One of Congress's main allies, the regional Rashtriya Janata Dal (RJD) lost its majority in Bihar. "In the adjoining state of Jharkhand, Congress appeared to have failed in its effort to oust the BJP winning just 26 of the 81 seats with 36 going to the BJP." **[32ez]**

### Indian Ocean Tsunami – 26 December 2004

**4.35** As reported on the Government of Tamil Nadu website on 10 January 2005, a very severe earthquake measuring a magnitude of 8.9 on the Richter scale struck northern Sumatra, Indonesia. "The earthquake was felt widely along the east coast of India." **[97]**

**4.36** As reported by the World Health Organization in a weekly tsunami situation report as at 24 February 2004, "The tsunami caused extensive damage in the states of Tamil Nadu, Andhra Pradesh and Kerala and the Union Territories (UT) of Andaman and Nicobar Islands and Pondicherry on 26 December 2004. It affected nearly 2,260 km of the coastline besides the entire areas of Nicobar Islands. Tidal waves as high as 3 to 10 metres penetrated inland ranging from 300 m to 3 km. Andaman & Nicobar Islands in the Bay of Bengal were particularly badly affected by the earthquake under the sea, which caused the tsumani." **[98]**

**4.37** The same report continues, "The Government of India, in association with the affected states/UTs mounted massive relief and rescue operations on the mainland and in the Andaman and Nicobar group of Islands." **[62b]**

### Heavy snow and avalanches

**4.38** As reported by BBC on 23 February 2004, "At least 230 people have been killed and

hundreds more are missing after a series of avalanches hit Indian-administered Kashmir. " The army helped relief and rescue operations in both Indian-administered Kashmir as well as in Pakistan." **[32gc]**

**4.39** As reported by BBC on 25 February 2004, soldiers and medical teams were trying to reach villagers cut off after weeks of heavy snow in Afghanistan and and Indian-administered Kashmir. The region was hit by snow storms and avalanches in reportedly the coldest winter in decades. Several hundred people died in both countries as well as in areas of Pakistan. In Indian-administered Kashmir, army medical teams began arriving in remote villages cut off by a series of avalanches with the aim of providing medical facilities to the injured and survivors. More than 230 people have died in Indian-administered Kashmir with thousands stranded along the key highway. Food and medical supplies were dropped by helicopter in the affected areas. **[32fr]**

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# 5. State structures

## The Constitution

**5.1** As cited on the Government of India website, accessed on 4 October 2002, the Indian Constitution was passed on 26 November 1949. The Preamble to the Constitution resolved to constitute India into a

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

**5.2** The fundamental rights section of the Constitution of India, accessed on 25 September 2004, indicates that the rights of the citizen include 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 **[61]**

**5.3** As stated by Europa 2005, the Constitution is flexible in character, and a simple process of amendment has been adopted. **[1](p193)**

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### Citizenship and nationality

**5.4** As noted by the Defence Security Service website, updated on 29 September 2004, Indian citizenship is based upon the Citizenship Act of 1955. "Despite the variety of states, peoples and languages in India, the law recognises only Indian citizenship… Though the law of India does recognise citizenship through birth in country, unless the citizenship is actively applied for, the Indian Government does not consider the child a citizen of India." **[38]**

**5.5** "Children born abroad must be registered at the Indian Consulate… The child of an Indian mother and a foreign father is considered an Indian citizen if the mother and child continue to live in India and the father does not give the child his country's citizenship." **[38]**

**5.6** As noted in the Government of India, Ministry of Home Affairs website, accessed on 28 September 2004, "A person born in India on or after 26th January 1950 but before 1st July 1987 is a citizen of India by birth irrespective of the nationality of his parents. A person born in India on or after 1st July 1987, is considered as a citizen of India only if either of his parents is a citizen of India at the time of his birth." **[39b]**

**5.7** As stated in the same source "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 at the time of his birth. A person born outside India on or after 10th December 1992, is considered as a citizen of India if either of his parents is a citizen of India at the time of his birth." **[39b]**

**5.8** The Government of India website, accessed on 28 September 2004, indicates that Indian citizenship may be acquired by naturalisation by a foreigner if the person has resided in India for ten years (continuously for the twelve months preceding the date of application and for nine years in the aggregate in the twelve years preceding the twelve months). **[39b]** The Defence Security Service website notes that the applicant would need to have renounced previous citizenship.**[38]**

**5.9** As cited in the Defence Security Service website, updated on 29 September 2004, "Voluntary renunciation of Indian citizenship is permitted by law… The following are grounds for involuntary loss of Indian citizenship: the person voluntarily acquires a foreign citizenship; naturalised citizenship was acquired through false statements; a naturalised citizen commits acts against the State of India before the end of the five-year grace period." **[38]**

**5.10** As noted in the website of the Embassy of India, Washington DC, accessed on 25 September 2004 the Indian Parliament passed a Bill on December 22, 2003 to grant dual citizenship to people of Indian origin overseas belonging to 16 specified countries. The Bill received the President's assent on January 7, 2004. Among other things, the Bill which amends the Citizenship Act -1955, would simplify the procedure to reacquire Indian citizenship by the offspring of Indian citizens and former Indian citizens.**[56]** As noted in a report in the Times of India dated 23 August 2004, people of Indian origin (PIO) would have to pay to secure Indian overseas citizenship. "A PIO would enjoy all rights of an Indian citizen, except the right to employment in government service and exercising franchise or holding a constitutional post." The PIO would not be required to have a visa while visiting India and could also buy property. The new PIO scheme would be called Citizenship (Third Amendment) Rules, 2004. The facility has been extended to people of Indian origin living in Australia, Canada, Finland, France, Greece, Ireland, Israel, Italy, the Netherlands, New Zealand, Portugal, Republic of Cyprus, Sweden, Switzerland, UK and the US. **[13b]**

**5.11** According to an internet article cited on Immihelp.com accessed on 18 March 2005,

"The scheme of granting 'Overseas Indian Citizenship (OIC)' under the Citizenship (Amendment) Act, 2003 has been put on hold till further notice." **[96]**

**5.12** As reported by BBC news on 13 January 2005, "More than 100 Pakistanis have renounced their nationality and taken oaths to become Indian citizens at a ceremony in the western Indian state of Rajasthan. The event was part of a special drive to give Indian citizenship to more than 5,000 Pakistani nationals who migrated to the state over the past few decades."**[32eq]**

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## Political system

**5.13** As cited in the US State Department Report 2004 (published in 2005),

> "The Constitution provides citizens with the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections held on the basis of universal suffrage. The country has a democratic, parliamentary system of government with representatives elected in multiparty elections. A Parliament sits for 5 years unless dissolved earlier for new elections, except under constitutionally defined emergency situations. State governments were elected at regular intervals except in states under President's rule." **[2c](Section3)**

**5.14** The Europa Regional Surveys of the World 2005 notes that,

> "The Parliament of the Union consists of the President and two Houses: the Rajya Sabha (Council of States) and the Lok Sabha (House of the People.) The Rajya Sabha consists of 245 members, of whom a number are nominated by the President. One third of its members retire every 2 years… The Lok Sabha has 543 members, elected by adult franchise; not more than 13 represent the Union Territories and National Capital Territory. Two members are nominated by the President to represent the Anglo-Indian community." **[1](p192)**

**5.15** Europa Regional Surveys of the World 2005 indicates that "The President is the head of the Union, exercising all executive powers on the advice of the Council of Ministers, responsible to Parliament. He is elected by an electoral college consisting of elected members of both Houses of Parliament and the Legislatures of the States. The President holds office for a term of five years and is eligible for re-election." **[1](192)**

**5.16** Europa further notes that, "The Union of India comprises 28 states, six Union Territories and one National Capital Territory. There are provisions for the formation and admission of new states." **[1](p192)** As noted in the USSD report 2003, "On the advice of the Prime Minister, the President may proclaim a state of emergency in any part of the national territory in the event of war, exernal aggression, or armed rebellion. Similarly, President's Rule may be declared in the event of a collapse of a state's constitutional machinery." **[2g](p20)**

**5.17** As indicated in Europa 2005, the 28 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. **[1](p186)**

**5.18** The Territories are: Andaman and Nicobar Islands, Chandigarh, Dadra and Nagar Haveli, Daman and Diu, Delhi, Lakshadweep, and Pondicherry. **[1](p186)**

**5.19** As noted by the US State Department Report 2004, "Although the 28 state governments have primary responsibility for maintaining law and order, the central Government provides guidance and support."**[2c](introduction)**

**5.20** As reflected by Europa in 2005, "The Panchayat Raj Scheme is designed to decentralize the powers of the Union and State Governments. "It is based on the Panchayat (Village Council) and the Gram Sabha (Village Parliament) and envisages the gradual transference of local government from state to local authority."**[1](p193)**

**5.21** As noted in the US State Department Post Report for India dated 1 July 2004, national political parties include the Congress (I) Party, Bharatiya Janata Party (BJP), Janata Party (United), Communist Party of India (CPI), and Communist Party of India-Marxist (CPM). In addition, there are several important regionally based political parties, including Telugu Desam, All India Anna Dravida Munetra Kazhagam (AIDMK), Dravida Munetra Kazhagam (DMK), Akali Dal, and Samajwadi Janata Dal. **[2e](p6)**

**5.22** As reported in the Foreign and Commonwealth Office website, reviewed on 27 May 2004,

> "The Bharatiya Janata Party (BJP) and the Congress Party are the two main forces in the current Indian political scene, but neither can command a clear Parliamentary majority. The balance of power is held by a loose collection of regional and other parties…. Elections were held throughout India in April and May 2004. The Congress Party and allies emerged with 219 seats, the BJP and allies with 186 seats, and others with 131 seats [136 in India Today]. The surprise result saw the former BJP-led coalition government resign. Manmohan Singh, a former finance minister, is the new Prime Minister. He leads a coalition government, called the United Progressive Alliance."**[7i]**

A P J Abdul Kalam is the current President, as cited by BBC news. **[32bf]**

Please see Annexes B, C, D for more information

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## Judiciary

**5.23** As stated in the US State Department report 2004, "The judiciary is independent, however the judiciary was under funded, overburdened, and Non Governmental Organisations (NGOs) alleged that corruption influenced some court decisions." **[2c](Introduction)**

**5.24** As reflected in the same report,

> "The judiciary was backlogged and understaffed in most parts of the country, and in Jammu and Kashmir members of the judiciary have long been subject to threats and intimidation by guerillas and security forces. The judicial system is headed by a Supreme Court, which has jurisdiction over constitutional issues, and includes the Court of Appeals and lower courts. Lower courts hear criminal and civil cases and send appeals to the Court of Appeals. The President appoints judges, and they may serve until the age of 62 on state high courts and until the age of 65 on the Supreme Court." **[2c](section 1e)**

**5.25** The report continues,

> "The court system remained severly overloaded, resulting in the detention of thousands of persons awaiting trial for periods longer than they would receive if they had been convicted. Prisoners were held for months or even years before obtaining a trial date. In July (2004), the Ministry of Law and Justice reported that there were 29,622 cases pending before the Supreme Court, and 3,269,224 before the state High Courts. The NHRC reported that 75 percent of the country's total inmates were prisoners waiting for trial." **[2c](section 1e)**

**5.26** As indicated by Europa in 2005, "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." **[1](p199)**

**5.27** As noted by the same source, "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. 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."**[1](p199)**

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## Legal rights/Detention

**5.28** As stated in the US State Department report 2004,

> "The Constitution provides detainees the right to be informed of the grounds for their arrest, representation by legal counsel, and, unless held under a preventive detention law, to be arraigned within 24 hours of arrest, at which time the accused must either be remanded for further investigation or released. However, thousands of criminal suspects remained in detention without charge…The Constitution provides arrested persons the right to be released on bail and the law provides for prompt access to a lawyer... Court approval of a bail application is mandatory if police do not file charges within 60 to 90 days of arrest…" **[2c](section 1d)**

**5.29** Information sourced by the Research Directorate, Immigration and Refugee Board, Ottawa in August 2001, indicates that a police officer or arresting officer should not proceed to arrest unless he has a warrant in his possession, otherwise resistance offered to him would not be punishable. The warrant is the justification of arrest and need not be parted with. The arresting officer's status must be shown or notified to the person to be arrested. The arrest warrant has to be in writing, must be signed by the Presiding Officer and bear the seal of the Court. A warrant of arrest remains in force until it is cancelled by the Court which issued it or until it is executed. **[4d]**

**5.30** As reported by the Canadian Immigration and Refugee Board (REFINFO) on 27 March 2003,

> "The concept of anticipatory bail is mandated under Section 438 of the Indian Criminal Procedure Code. Under its provisions, any person who has reason to believe that they may be arrested 'on an accusation of having committed a non-bailable offence' may

apply to the High Court or the Court of Session for grant of bail in the event of an arrest. Anticipatory bail is not available in the state of Uttar Pradesh. Unlike a regular bail order that follows a person's arrest and results in that person's release from police custody, anticipatory bail is effective at the moment of arrest." **[4j]**

**5.31** As cited in the US State Department report 2004,

"The Criminal Procedure Code provides that trials be conducted publicly, except in proceedings involving official secrets, trials in which statements prejudicial to the safety of the State might be made, or under provisions of special security legislation. Sentences must be announced publicly. Defendants have the right to choose counsel independent of the Government. There are effective channels for appeal at most levels of the judicial system and the State provides free legal counsel to indigent defendants. Defendants were allowed access to to relevant government-held evidence in most civil and criminal cases; however the Government had the right to withold information and did so in cases it considered sensitive. In October 2003, the Delhi High Court issued new witness protection guidelines to reduce the number of witnesses who recanted their testimony under threat from defendants." **[2c](section 1e)**

**5.32** 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 means that persons covered by the Act are entitled to legal advice, legal representation and legal adjudication free of cost. Despite this laudable objective, some of the provisions of the Act have attracted criticism from lawyers who claim that it seeks to reduce justice dispensation to an informal and casual process. The reason for the backlogs is the abysmal infrastructure, enormous delays in filling up vacancies, low entry level barriers into the legal profession and appallingly low judge-to-population ratio in India. **[60a]**

**5.33** The US State Department report 2004 continues, "The Government does not interfere in the personal status laws of minority communities, including those laws that discriminate against women. There are separate laws for Muslims and Hindus on a number of issues. Muslim personal status law governs family law, inheritance, and divorce."**[2c](section 1e)**

**5.34** As stated in the same report,

"The Armed Forces Special Powers Act (AFSPA) of 1958 remained in effect in Nagaland, Manipur, Assam and parts of Tripura, and a version of this law was in effect in Jammu and Kashmir. Under AFSPA, the Government can declare any State or Union Territory a 'disturbed area'. This allows the security forces to fire on any person for the "maintenance of law and order" and to arrest any person "against whom reasonable suspicion exists" without informing the detainee of the grounds of arrest. Security forces are also granted immunity from prosecution for acts committed under AFSPA." **[2c](section 1d)**

**5.35** BBC news reported on 5 August 2004 that thousands of protesters in Manipur campaigned to demand the withdrawal of the Act after a Manipuri woman was found raped and shot by the security forces, however the latter say they need the special powers to fight the separatists. **[32dc]** A further BBC new report of 11 August 2004 noted that at least 25 people were injured after police used force to break up demonstrations in Manipur. Protesters attempted to enter government buildings in the capital, Imphal, to enforce a strike demanding

the withdrawal of an anti-terror law. The state government was under intense pressure over the Armed Forces Special Powers Act which gives the security forces wide-ranging powers to arrest and detain people. The previous week 100 people were injured when police used force to break up a demonstration in Imphal. Manipuris claim the law is frequently misused by the troops. Protest began when a local girl was allegedly raped and killed by Indian troops. **[32fx]** Amnesty International made a public statement on 11 August 2004 and called for a review of the Act. "In areas declared as "disturbed" -- such as in the north-east region -- Amnesty International is concerned that the AFSPA:

- facilitates grave human rights violations,
- empowers the security forces to arrest and enter property without warrant,
- gives the security forces powers to use excessive force, including to shoot to kill without members of the security force lives being at imminent risk,
- facilitates impunity because no person can start legal action against any member of the armed forces for anything done under the Act without permission of the Central Government,
- by certain of its provisions violates articles of the International Covenant on Civil and Political Rights (ICCPR)…"**[3j]**

**5.36** As reported in Keesings News Digest November 2004, on 2 November 2004 Prime Minister Manmohan Singh pledged that the government would review the unpopular Armed Forces Special Powers Act (AFSPA) which was in force in Manipur and Assam. **[5v]**

**5.37** The Tribune, Chandigarh, reported on 19 November 2004 that during a two day visit to Manipur, Prime Minister Manmohan Singh was expected to replace the AFSPA with a "humane law." **[12e]**

**5.38** As reported in the US State Department report 2004, "The Armed Forces Special Powers Act (AFSPA) and the Disturbed Areas Act remained in effect in Jammu and Kashmir, Nagaland, Manipur, Assam, and parts of Tripura, where active secessionist movements existed. The Disturbed Areas Act gives police extraordinary powers of arrest and detention, and the AFSPA provides search and arrest powers without warrants. **[2c](section1a)**

**5.39** The report continues,"The National Security Act (NSA) permits police to detain persons considered security risks anywhere in the country (except for Jammu and Kashmir) without charge or trial for as long as 1 year on loosely defined security reasons. NSA does not define "security risk." State governments must confirm the detention order, which is reviewed by an advisory board of three High Court judges within 7 weeks of the arrest. NSA detainees are permitted visits by family members and lawyers, and detainees must be informed of the grounds for their detention within 5 days (10 to 15 days in exceptional circumstances). According to press accounts, 32 persons had been detained under the NSA during the year." **[2c](section 1d)**

**5.40** As cited in the US State Department report 2004,

> "Although the Government allowed the Terrorism and Disruptive Activities Act (TADA) to lapse in 1995, the South Asia Human Rights Documentation Center reported that more than 1,000 persons remained in detention awaiting prosecution under the law, and that cases opened under TADA continued through the judicial system. This remained a problem in Jammu and Kashmir. TADA courts curtailed many legal protections provided by other courts. For example, defense counsel was not permitted to see prosecution witnesses, who were kept behind screens while testifying in court, and confessions extracted under duress were admissible as evidence." **[2c](section 1d)**

**5.41** The USSD report for 2003, indicated that in March 2002 the Prevention of Terrorism Ordinance (POTO) was enacted into law and changed to the Prevention of Terrorism Act (POTA).

**5.42** BBC news reported on 10 August 2004 that the new Congress-led government is to repeal the controversial POTA which has been criticised by human rights groups such as Amnesty International for being "draconian". Critics say that after the Gujarat riots of 2002, Muslims were unfairly singled out by POTA.**[32cw]**

**5.43** As noted in the US Department of State report 2004, "On September 21, President Kalam signed a bill repealing the POTA, and on 1 December, Parliament passed legislation for its repeal. With its repeal, numerous features of POTA, including the legal definition of terrorism and specific ordinances dealing with the financing of terrorism, were folded into an existing law, the Unlawful Activities (Prevention) Act (UAPA)." **[2c](section 1d)**

**5.44** The report continues,

> "POTA contains a sunset feature, which gives the Central POTA Review Committee 1 year to review all existing POTA cases. This clause allows the Government to make new arrests if they are tied to an existing POTA case. The Government can issue a new indictment on a case opened 5 years ago under POTA, against a person never previously associated with the case. It can also extend the 1-year limit for reviews. POTA was used to hold people in jail for extended periods prior to the filing of formal charges. Formal charges were necessary, but persons could be held without pretrial proceedings for up to 3 months without a formal charge, and an additional 3 months when approved by a judge. Approvals were regularly given in POTA cases. The law also provided that perons who did not disclose information to the authorities about terrorist activities as defined by POTA could be arrested and charged with an offense, and provided the Government extensive powers to ban terrorist organizations and seize their assets. POTA provided for speical courts to try offenses, placed the burden of proof at the bail stage on the accused, allowed confessions made to a police officer to be admissible as evidence, extended the period of remand from 15 to 60 days, and set mandatory sentences for terrorism-related offenses. Human rights groups said POTA gave the Government boundless authority, without holding it accountable for its actions. Human rights activists reported that the revised UAPA contains important improvements over the POTA. For example it does not allow coerced confessions to be admitted as evidence in court." **[2c](section 1d)**

**5.45** As noted in Keesings record of World Events for December 2004,

> "The Rajya Sabha (the upper house of Parliament, the federal legislature) on Dec.9 passed a bill repealing the draconian and controversioal Prevention of Terroism Act (POTA) introduced by the previous Bharatiya Janata Party (BJP)-led government. On the same day, the Rajya Sabha passed substitute legislation, the Unlawful Activities (Prevention) Amendment bill, which Home Minister Shivraj Patil said would continue the fight against terrorism but at the same time protect the innocent." **[5w]**

**5.46** A Human Rights Watch report dated 22 September 2004, India, POTA Repeal, A Step Forward for Human Rights, states that,

> "The Indian government's decision to repeal the controversial Prevention of Terrorism

Act (POTA) is a major step forward for civil liberties in India, Human Rights Watch said today….POTA was enacted soon after the September 11, 2001 attacks on the United States and the adoption of a United Nations Security Council resolution against terrorism. The legislation allowed security agencies to hold suspects for up to 180 days without filing charges. In practice, the law was often used against marginalized communities such as Dalits (so-called "untouchables"), indigenous groups, Muslims, and the political opposition." **[26f](p1)**

**5.47** The report continues,

"India's move to repeal POTA is an important signal to other countries that counter-terror efforts can be pursued while respecting basic rights… The government has appointed a central review committee to review all cases brought under POTA. This review committee was established in December 2003 in response to widespread criticism of egregious abuses under POTA, but it has not processed many cases. It has been given one year to review all cases. Human Rights Watch also called on the government to address the cases of dozens of individuals arrested under the earlier Terrorist and Disruptive Activities (Prevention) Act (TADA) who are still being held in custody. TADA was widely crticized for for its overbroad scope and the abuses it allowed and was allowed to lapse in 1995. Yet unfair trials continue in several cases and many remain in jail." **[26f](p1)**

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## Death penalty

**5.48** A BBC report of 18 December 2002 noted that India is one of a number of countries around the world which still upholds capital punishment, although it is rarely used. Under Indian law the death penalty can be imposed for murder, gang robbery with murder, abetting the suicide of a child or insane person, waging war against the government, abetting mutiny by a member of the armed forces and, in recent years, for terrorist acts. A 1983 Supreme Court ruling, however, stated that the death penalty should be imposed only in the "rarest of rare cases". **[32cx]**

**5.49** A press release by the Asian Human Rights Commission dated 13 August 2004, titled "AHRC condemns Indian top court's decision as 'devoid of merit'" noted that the Constitution of India upholds the right to life except according to procedure established by law. **[57]** A report in the Guardian Unlimited newspaper dated 5 August 2004, entitled "Girl's killer to hang in India", indicated that Indian courts rarely award the death penalty and only about 40 people have been executed in the past 30 years. There are more than a dozen convicts on death row across the country and an appeal to the president is the final step for prisoners condemned to death. **[40a]**

**5.50** The Amnesty International 2004 country report for India (covering events in 2003), noted that at least 33 people were sentenced to death in 2003. **[3k](p5)** As reported by Keesings in January 2004, The Supreme Court suspended the death sentences on 19 January, imposed on 2 men convicted of planning the December 2001 attack on the Indian parliament. **[5e]**

**5.51** BBC reported on 14 August 2004 that India carried out its first execution since1995 after the president, Abdul Kalam, rejected a plea for clemency from a man convicted for raping and murdering a 14 year old schoolgirl in 1990 **[32cy]** In a press release dated 13 August 2004, the

Asian Human Rights Commission condemned the Supreme Court for its decision to uphold the death sentence. **[57]**

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## Internal security

### Military

**5.52** As reflected in the US Background Note for India, August 2004, "The supreme command of the Indian armed forces is vested in the President of India. The policy concerning India's defense, and the armed forces as a whole, is formulated and confirmed by the Union Cabinet. The Cabinet, headed by the Prime Minister, consists of ministers, one of whom holds the portfolio of defense and is known as the Defence Minister." **[2f](Defense)**

**5.53** As noted in Keesings News Digest for November 2004, Lt-Gen Joginder Jaswant Singh was named as the next chief of the army staff on 27 November 2004. Singh will be the first Sikh to lead the Indian army. **[5v]**

**5.54** As cited in the CIA World Factbook, updated 11 May 2004, the military consists of the army, navy, air force, Coast Guard, various security or paramilitary forces (including Border Security Force, Assam Rifles, National Security Guards, Indo-Tibetan Border Police, Special Frontier Force, Central Reserve Police Force, Central Industrial Security Force, Railway Protection Force and Defence Security Corps). **[35](p12)**

**5.55** As reflected in the US Background Note for India, August 2004,

> "The Indian Army numbers over 1.1 million strong and fields 34 divisions. Its primary task is to safeguard the territorial integrity of the country against external threats. The Army has been heavily committed in the recent past to counterterrorism operations in Jammu and Kashmir, as well as the in the Northeast… The Indian Navy is by far the most capable navy in the region. They currently operate one aircraft carrier with two on order, 14 submarines, and 15 major surface combatants… The Indian Air Force is in the process of becoming a viable 21st century western-style force through modernization and new tactics."**[2f](Defense)**

### Police & intelligence agencies

**5.56** Information sourced from the Federation of American Scientists (FAS) website on 19 August 2004 indicates that the Police are a civil authority controlled by the Union Ministry of Home Affairs and subordinate to the Executive, represented in the Union Government by the Prime Minister and in the States by the Chief Minister, and their respective Councils of Ministers. The 25 state governments have primary responsibility for maintaining law and order. Each State has its own force headed by a Director-General of Police (DGP) and a number of Additional Directors-General or Inspectors-General of Police (IGP) who look after various portfolios. **[58]**

**5.57** As noted in the FAS website, India's intelligence agencies include the Central Bureau of Investigation (CBI), the premier investigation agency of India responsible for a wide variety of criminal and national security matters; the Intelligence Bureau (IB), India's

domestic intelligence agency, which is particularly tasked with intelligence collection in border areas; and the Research and Analysis Wing (RAW), India's external intelligence agency, particularly active in Pakistan. **[58]**

**Militias**

**5.58** As cited in the Indian Ministry of Home Affairs website [undated], a total of 32 terrorist organisations were listed in the Schedule to the Prevention of Terrorism Ordinance (POTO). These were: Babbar Khalsa International, Khalistan Commando Force; Khalistan Zindabad Force; International Sikh Youth Federation; Lashkar-e-Taiba/Pasban-e-Ahle Hadis; Jaish-e-Mohamed/Tahrik-e-Furqan; Harkat-ul-Mujahideen/Harkat-ul-Ansar/Karkat-ul-Jehad-e-Islami; Hizb-ul-Mujahideen/Hizb-Ulmujahideen Pir Panjal Regime; Al-Umar-Mujahideen; Jammu and Kashmir Islamic Front; United Liberation Front of Assam (ULFA); National Democratic Front of Bodoland (NDFB); People's Liberation Army (PLA); United National Liberation Front (UNLF); People's Revolutionary Party of Kangleipak (PREPAK); Kangleipak Communist Party (KCP); Kanglei Yaol Kanba Lup (KYKL); Manipur People's Liberation Front (MPLF); All Tripura Tiger Force; National Liberation Front of Tripura; Liberation Tigers of Tamil Eelam (LTTE); Students Islamic Movement of India; Deendar Anjuman; Communist Party of India (Marxist-Leninist), People's War and all its formations and front organisations; Maoist Communist Centre, all its formations and front organisations; Al Badr; Jamiat-ul-Mujahidden; Al-Qaida; Dukhtaran-e-Millat (DEM); Tamil Nadu Liberation Army (TNLA); Tamil National Retrieval Troops (TRNT); and Akhil Bharat Nepali Ekta Samaj (ABNES). **[39a](p28-29)**

**5.59** A BBC report of 24 May 2004 noted that the new government is determined to find a peaceful solution to the 14-year insurgency in Kashmir where around 40,000 people have been killed. However, military officials in Indian administered Kashmir have pledged to step up action against militants after recent rebel attacks left a number of soldiers and civilians dead.**[32dd]**

For further information please see Section 6B: Human Rights Specific Groups, Kashmir and the Kashmiris.

**5.60** The banned People's War Group, according to a BBC report of 23 June 2004, is an armed peasant movement active in a number of states that advocates revolution in the countryside. The rebels have been fighting for 20 years for a communist state and have been accused of targeting wealthy landlords. **[32db]**

For further information please see Section 6A: Human Rights, Political Activists

**5.61** A BBC news report of 16 July 2004 indicated that the United Liberation Front of Assam (ULFA) is targeting oil and gas installations to prevent the exploitation of Assam's natural resources by the federal government. **[32da]**

**5.62** A BBC news report dated 30 July 2004 noted that the Indian government and Naga rebels in the north east of the country have extended their cease-fire by another year until 31 July 2005. The Naga insurgency is five decades old and talks have continued since 1997. The agreement was reached with the main faction of the National Socialist Council of Nagaland (NSCN).**[32cz]**

**5.63** As reported by BBC news on 2 October 2004, at least 100 people were injured, many seriously and police reported 15 fatalities when two bombs exploded in the main commercial center of India's north-eastern state of Nagaland. One explosion went off at

the railway station, the other at the Hong Kong market. It was not clear which of the many separatist rebel groups was responsible for the explosion. “There has been separatist insurgency in Nagaland since 1956, but for the last seven years the state’s major separatist group, the National Socialist Council of Nagaland (NSCN), has been negotiating with the Indian government, and its fighters are observing a ceasefire with the government’s security forces.” **[32fo]**

## External security

**5.64** Information sourced from a BBC news report dated 24 May 2004 indicated that, "The Kashmir dispute is at the heart of decades of animosity between India and Pakistan, and two of the three wars between them have been over the region." **[32dd]** As reflected in a further BBC report of 11 August 2004, India accuses Pakistan of backing Islamic militants in Indian-administered Kashmir while Pakistan denies the charges. At the root of improving security in the region is the disputed area of Kashmir which has long divided the countries. **[32df]** A BBC report of 5 August 2004 noted that despite the cease-fire last November, India, like Pakistan, maintains forces on the icy Siachen Glacier high up in the Himalayas in Kashmir. **[32de]** BBC reported on 11 August 2004 that India has expressed concern over infiltration across the LoC (Line of Control), the de facto border. Relations between the nuclear armed neighbours have improved since the peace initiatives between the Pakistani President and the Indian Prime Minister in 2003. A number of confidence building measures have been introduced over the year including a resumption of rail, air and bus links and a strengthening of diplomatic ties. **[32df]**

For further information please see Section 6B: Human Rights Specific Groups, Kashmir and the Kashmiris.

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## Prisons and prison conditions

**5.65** As reported by The Hindu on 20 April 2004, according to the Prison Statistics Report 2000, prisons in India are still governed by the century old Prisons Act 1894 and the Prisoners Act 1900**.** **[60b]** According to the International Centre for Prison Studies, Prison Brief for India, the State governments and Union Territories are responsible for the prison administration. At mid-2003, there were 1,119 prisons including juvenile camps. The total prison population, including pre-trial detainees and remand prisoners at mid-2003 was 313, 635. Official capacity was 229,713 and the occupancy level, 136.5%. **[63]**

**5.66** The same report indicated that the Centre undertook a project on Human Rights and Prison Management in India in collaboration with the Indian Bureau of Police Research and Development, the National Human Rights Commission, the Penal Reform and Justice Association of India and the British Council. The project was funded by the UK Foreign & Commonwealth Office. "The aim of the project was to raise awareness of human rights amongst prison officials, and to improve prison management systems with special reference to promoting good practice and gender sensitivity in jail management. Training has been used as a tool for change initiatives in jail management." **[63]**

**5.67** As stated in the US State Department report for 2004,

> “Prison conditions were harsh and life-threatening. Prisons were severely overcrowded, and food and medical care inadequate. For example, the Mumbai-based Criminal

Justice Initiative reports that there were 3,000 inmates in Bombay Central Jail, which has an actual capacity of 800…" **[2c](section 1c)** "At the end of September (2004), New Delhi's Tihar jail housed over 10,000 inmates, three times its sanctioned capacity of 3,637. In 2002, the Government announced plans to address overcrowding by building four additional prisons. In December (2004), the Rohini District Jail, the first of the new prisons opened in Delhi, had a capacity of 1,050 prisoners. The Governemnt reported it has acquired land for a second new jail in the capital." **[2c](section 1c)**

**5.68** The same report continues,

"According to one NHRC report a large proportion of the deaths in judicial custody were from natural causes, in some cases aggravated by poor prison conditions. Tuberculosis caused many deaths, and HIV/AIDS remained a serious health threat in the prison system. The NHRC's Special Rapporteur and Chief Coordinator of Custodial Justice was charged to help implement a directive to state prison authorities to perform medical check-ups on all inmates. At year's end, medical checks were only available to a few inmates." **[2c](section 1a)**

**5.69** The USSD report 2004 notes that, "Deaths in custody were common both for suspected militants and criminals. The Home Ministry reported that, nationwide, deaths in custody had increased from 1,340 in 2002 to 1,462 by the end of 2003. According to the NHRC, state governments had not investigated at least 3,575 previous deaths in custody cases." **[2c](section 1a)**

**5.70** The USSD 2004 report states that,

"NGO sources alleged that deaths in police custody, which occurred within hours or days of initial detention, often implied violent abuse and torture…Human rights activists reported during the year that compliance varied from state to state regarding a directive issued by the NHRC in 1993 requiring district magistrate to report all deaths in police and judicial custody to the commission. The NHRC regarded failure to do so as an attempted cover-up." No information was released by the NHRC as to how many or which states have complied with the directive and no state fully complied with this order by the end of 2004.**[2c] (section 1c&a)**

**5.71** As further reported in the USSD 2004 report, "Prosecutions in custodial death cases were often subject to lengthy delays. In February, for instance, a Delhi police constable was sentenced to life imprisonment for a custodial death at Lahori Gate police station that occurred 12 years earlier." **[2c] (section 1a)**

**5.72** USSD 2004 also reported that, "According to human rights activists, press reports, and anecdotal accounts, the bodies of persons detained by security forces in Jammu and Kashmir were often returned to relatives or otherwise discovered with mulitiple bullet wounds and /or marks of torture. The South Asian Human Rights Documentation Center (SAHRDC) reported that the total number of such custodial deaths decreased slightly during the year, but remained a serious problem." **[2c] (section 1a)**

**5.73** As cited in the same report, "Women were housed separately from men. By law juveniles must be detained in rehabilitative facilities; however, at times they were detained in prison, especially in rural areas. Pretrial detainees are not separated from convicted prisoners." **[2c] (section 1c)**

**5.74** The report continues,

> "Some NGOs were allowed to work in prisons, within specific governmental guidelines, but their findings remained largely confidential, as a result of agreements they concluded with the Government. Although custodial abuse is deeply rooted in police practices, increased press reporting and parliamentary questioning provided evidence of growing public awareness of the problem. The NHRC identified torture and deaths in detention as one of its priority concerns."**[2c](section 1c)**

**5.75** The 2004 USSD report further stated,

> "According to the Home Ministry's annual report, the International Committee of the Red Cross (ICRC) visited 55 detention centers and over 7,000 detainees during the year, including all acknowledged detention centers in Jammu and Kashmir, and all facilities where Kashmiris were held elsewhere in the country. However, the ICRC was not authorized to visit interrogation or transit centers, nor did it have access to regular detention centers in the northeastern states. During the year, the ICRC stated that it continued to encounter difficulties in maintaining regular access to persons detained in Jammu and Kashmir. The NHRC received authorisation from 15 states and union territories to conduct surprise visits to jails." **[2c](section 1c)**

**5.76** As cited in the USSD report 2004, "In a report issued in January, the U.N. Special Rapporteur on Torture commented that torture and detentions continued in the country, especially in Jammu and Kashmir, and noted the Government's continued refusal to extend him an invitation to conduct investigations." **[2c](section 1c)**

**5.77** As reported in the Daily Dawn newspaper dated 22 August 2003, in August 2003 the Supreme Court ordered the federal authorities to free incarcerated Pakistani nationals who had already served their full term in prison, some had complained that they had completed their terms as far back as 1992. The court directed the release and deportation of Pakistani prisoners who had served their sentence and were not detained under any orders passed under the Foreigners Act. **[41c]**

**5.78** It was reported in Keesings Record of World Events for June 2003, on 23 June 2003 that Jammu and Kashmir Minister of State for parliamentary affairs Abdul Tehman Veeri had told the State Assembly that there had been 144 alleged custodial killings by local police and Indian security forces since the beginning of the separatist insurgency in the northern state in 1989. This was the first time that the state authorities had acknowledged the problem of deaths in custody.**[5q]** It was reported by BBC on 9 August 2004 that India and Pakistan had carried out a rare exchange of prisoners of war**.** Such transfers are unusual - particularly because both sides had earlier denied holding prisoners of war. **[32dk]**

**5.79** As reported by The Hindu on 1 March 2005, "Pakistan President Pervez Musharraf, ordered the releaseof 200 Indian civilians from his country's jails. "In an impromptu decision, Musharraf ordered the release of prisoners during an hour-long meeting with Indian Left Front leaders Harkishen Singh Surjeet and A B Bardhan, here." **[60f]**

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## Military service

**5.80** As noted in the Child Soldiers Global Report for 2001,

> "The 1950 Constitution (art. 51A) states: "It shall be the duty of every citizen of India … to defend the country and render national service when called upon to do so." However there is currently no compulsory recruitment in India. According to the 1972 National Service Act, certain persons can be called to perform national service but no minimum age is specified. The Armed Forces are governed by the Army Act, the Air Force Act, and the Navy Act, respectively, none of which regulate minimum enlistment age.

**5.81** Information provided by the Indian Government indicates that the minimum age of recruitment into the Army is 16. 'Persons who are recruited at the age of 16 years undergo basic military training for up to two and a half years from the date of enrolment and are then inducted into regular service'. In its report to the Committee on the Rights of the Child, India claimed that, 'children are not inducted into the armed forces and hence do not take a direct part in hostilities.' During the 1998 session of the UN Working Group negotiating the Optional Protocol, the representative of India reported that: "discussion was going on within the Government about the possibility of raising the age limit for voluntary recruitment from 16." …

**5.82** India also has a Territorial Army (TA) – a voluntary part-time civilian force consisting of departmental and non-departmental units raised from among the employees of government departments and the public sector. The TA is reportedly used in support of the armed forces in areas of insurgency." **[67]**

**5.83** As cited in War Resisters International 1998, there is no known legal provision for conscientious objection. **[21]**

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## Medical services

**5.84** As indicated in the World Health Organisation's (WHO) Project Atlas Country Profile for India, 2002, the proportion of health budget to GDP is 5.2%(WHO, 2000). The life expectancy at birth is 60.4 years for males and 61.2 years for females. **[62](p1)**

**5.85** In a letter dated 7 June 2001, the British High Commission in New Delhi outlined the standards of medical facilities in India. In the larger cities, particularly the State capitals, there are hospitals offering care in a wide range of medical specialities. These include: general medicine and surgery, obstetrics and gynaecology, paediatrics, neurology, gastro-enterology, cardiology, cardiothoracic surgery, neurosurgery, dental surgery, dermatology, ENT surgery, endocrinology, renal and liver transplant, orthopaedic surgery, nephrology, nuclear medicine, oncology, ophthalmology, plastic surgery, psychiatry, respiratory medicine, rheumatology and urology. Outside these cities medical care can be more variable, but most districts are served by referral hospitals. **[7g]**

**5.86** As cited in the US State Department report 2004, "The Constitution provides free medical care to all citizens; however, availability and quality were problems, particularly in rural areas." **[2c](section 5)** But most care is provided within the private sector. Private health care costs are less than in the UK, but vary according to the type of ward and tests needed. The

private hospitals are expected to offer free treatment to a proportion of poor patients, according to FCO correspondence dated June 2001.[7g]

**5.87** As noted on the US Department of State, Bureau of Consular Affairs, Consular Information Sheet for India, dated 22 February 2005, with regard to medical facilites, "Adequate to excellent medical care is available in the major population centers, but is usually very limited or unavailable in rural areas." **[93](Medical Facilities & Health Information)**

**5.88** As reported by BBC news on 22 December 2004, "Health workers in Indian-administered Kashmir have launched an awareness and screening campaign to try to prevent cancer amid a severe lack of faciliites. There are very few units where the condition can be treated." None of the hosptials in the region have a separate unit for surgical oncology. Patients from SMHS hospital, the oldest and second biggest in Srinagar, go to the Sher-e-Kashmir Institute of Medical Sciences or to Delhi or other places for radiotherapy and have to spend a lot of money. "The Sher-e-Kashmir in Srinagar has one radiotherapy unit for a population of at least 5.5 million people." The Indian government has promised funds for a state-of-the-art regional cancer centre with capacity for 120 patients but it was reported that this will take years. **[32ey]**

**5.89** The same report states that, "Desite the Sher-e-Kashmir's limited facilities, it has still treated an increasing number of sufferers – up from 1,325 cancer patients in 2000 to more than 2,000 in the first 10 months of this year alone." A group of 50 doctors have set up the Kashmir Cancer Society (KCS) and plan to build a cancer hospital in the Kashmir valley but have no land for the project as yet. "The KCS has organised camps in remote villages where people do not have access to endoscopy – the internal viewing of patients." Four thousand endoscopies have been conducted so far. The KCS has also conducted awareness campaigns in villages, schools and colleges and educate people that cancer is preventable and as a result women are coming in earlier for treatment. **[32ey]**

**5.90** As reported in an article featured on the Indian Army in Kashmier website accessed on 1 March 2005,

> "The Armed Forces, with the assistance of the State Adminsitration, has been regularly holding Medical Camps in the remote and inaccessible areas to bring health care to the doorstep of the Kashmiri people. Free Medical, Gynaecological, Surgical, Eye and dental checkups and advice and medicines are being distributed in these camps. Immunization Camps for the children are also being conducted as part of the nation wide campaign to eradicate various diseases. In addition people are being educated on health care, hygeine and sanitation…In addition to these camps, a number of Health Centers, equipped with modern equipment and medical facilities have been established for the rural people." **[94]**

**5.91** The FCO advice of 2001 indicated that there is good availability of medications and many are cheaper than in the UK. Some are imported from abroad but there are many firms now producing drugs under licence in India. The standard of nursing and social care is not as high as in the UK, but with support from family this can be overcome. There are very few medical problems for which suitable care cannot be found in India. **[7g]**

**5.92** A BBC report dated 29 September 2003 noted that "Experts believe India is poised to become a major health care destination for international patients, offering quality medical service at low cost…. The other attraction is that there is no waiting period for major medical procedures. The Healthcare Mission highlighted India's medical facilities and skills especially in the areas of Cardiology, Oncology, Minimal Invasive Surgery and Joint Replacement." **[32ca]**

**5.93** As reported by the BBC on 10 February 2004, a Medical Tourism Council (MTC) was launched in Maharashtra by the state's business sector and private health-care providers, aiming to make India a prime destination for medical tourists. The MTC plans to also work with state-run systems, such as the NHS. **[32cv]**

**5.94** As stated in a BBC report of 6 August 2004, "As India becomes a preferred destination for cheap and good quality medical treatment, foreign governments are tying up with hospitals to send their patients who cannot be treated at home. The Tanzanian government, for example, has tied up with three private Indian hospitals to sponsor and send their patients for operations and treatment." **[32dg]**

**5.95** As reported in an article in the Times of India Online dated 16 February 2005, "A reversal of medical tourism now has Americans making a beeline for India, seeking treatment." It used to be the other way around but with the state-of-art medical procedures, equipment and facilities now available in India, patients from countries like Canada and Britan are flocking to Indian hospitals. Americans have started going to India for procedures which are either not available in their own country or too expensive. The Apollo group is one of Asia's largest private healthcare providers who treated 43,000 foreign patients over the last 3 and a half years in India. **[13g]**

**5.96** As reported in The Hindu on 28 February 2005, "There is a significant increase of Rs. 1,860 crores for the health sector in the budget proposals for the year 2005-2006. The increase will finance the National Rural Health Mission (NRHM) to be launched in the next fiscal. The NRHM would focus on strengthening primary health care through grassroots-level public health interventions based on community ownership. Training of health volunteers, providing more medicines and strengthening the primary and community health care system are some important components of the mission. The total allocation for the Departments of Health and Family Welfare has been hiked from Rs. 8,420 crores to Rs. 10,820 crores."**[60d]**

**5.97** As reported by BBC news on 2 October 2004, "A nationwide polio vaccination campaign has started in India as part of a World Health Organization initiative to eradicate the virus around the world. **[32gd]**

**HIV/AIDS**

**5.98** BBC news reported on 30 November 2003 that, "The Indian Government is to provide low-priced drugs for treating HIV/Aids, it was announced in Delhi." More than $40 million would be allocated from April 2004 to provide drugs in government run hospitals. The drugs will come from three big pharmaceutical companies in India. It was also announced that measures were planned to protect HIV sufferers in other ways, such as legislation to prevent discrimination against those with the disease. New laws were proposed to make it a criminal offence for situations such as doctors refusing to treat patients and children not being admitted to schools. **[32ci]**

**5.99** As reflected in the report of a World Bank Study released in 2004 on HIV/AIDS Treatment and Prevention in India, India is burdened with a larger HIV/AIDS epidemic than any other country in the world. More than 4 million Indian adults are infected with HIV according to official government estimates and the actual number of people with HIV may be as high as 6.5 million. **[70](p1)** The highest prevalence rates are in Andhra Pradesh, Karnataka, Maharashtra, Manipur, Nagaland, and Tamil Nadu. **[70](Executive Summary xvi)** The WHO estimates that HIV/AIDS caused 2 per cent of all deaths and 6 per cent of deaths due to infectious

disease in India in 1998 and by 2033 it will account for 17 per cent of all deaths and 40 per cent of deaths due to infectious diseases. **[70](Executive Summary xvi-xvii)**

**5.100** As noted in Human Rights Watch in the World Report 2005, "The government estimates that 5.1 million people in India are living with HIV/AIDS, though many experts suggest the number is much higher." **[26e] (Rights of those living with HIV/AIDS)** Human Rights Watch World Report 2005 note that, "India faces a burgeoing HIV/AIDS problem, as people with HIV and their families face government and social discrimination." **[26e]**

**5.101** DFID state in their July 2004 report,Taking Action - The UK's strategy for tackling HIV and AIDS in the developing world, "DFID has provided £123 million to support India's National AIDS Control Programme. This funds targeted interventions with high-risk groups, technical assistance at national and state level, innovative media work through the BBC World Service Trust and support to UNAIDS. Since the original DFID support was designed, the epidemic in India has moved on and treatment has been introduced. We have agreed with the government of India to review support for the remaining three years of the programme. Issues under active consideration include treatment and care and advocacy." **[99](chapter 5)**

**5.102** As reported in a BBC report of 14 July 2004, "India is looking at ways to contain the spread of the Aids epidemic – but many of its citizens don't want to talk about the issue. The world's second most populous country has one of the highest infection rates – and more than five million HIV/Aids cases. To counteract the spread of the virus, the government recently launched its biggest anti-Aids initiative to date. But efforts are hampered by the fact that most Indians still find sex and AIDS taboo subjects…The new Indian government has identified AIDS as one of its priorities." **[32fl]**

**5.103** As reported in a World Bank Study released in 2004 on HIV/AIDS Treatment and Prevention in India,

> "The government of India has made a commitment to design and implement HIV protection and control activities in all states. Phase I of the prevention effort began in 1992, supported by a World Bank credit of $84 million….
>
> Phase II of the National AIDS Control Programme (NACP) began in 1999, supported by a World Bank credit of $191 million plus Indian government funding of $14 million…. Substantially decentralized, the program is being implemented in 35 states and union territories.
>
> In 2002 the government finalised and released the National AIDS Control Policy and the National Blood Policy…. The objective of the national policy is to prevent the epidemic from spreading farther and to reduce its impact on infected people and the general population. The policy envisages zero new infections by 2007…." **[70](p17-18)**

**5.104** As indicated in the World Bank report, the Indian antiretroviral drugs are now available from generic manufacturers in India for less than a $1 a day. Access to these drugs remains limited partly because even this modest cost is high for Indians. **[70](Executive Summary xiv)**

**5.105** As cited in an excerpt dated 13 August 2004, by the World Bank Group on the treatment and Prevention of AIDS in India, "As the Government of India takes stock of its first four months of distributing free antiretroviral medications for HIV/AIDS, the World Bank has released a study of various public funding options for the months and years ahead, designed

to help the government maximize the positive impact of the drugs on the growing epidemic." **[70a]**

**5.106** As reported in an article in The Hindu dated 1 December 2003, the then Union Health Minister said that anti-retroviral drugs would be made available free to HIV/AIDS patients in Tamil Nadu, Andhra Pradesh, Karnataka, Maharashtra, Manipur and Nagaland from 1 April 2004. The supply would initially be to three categories of patients: children of parents living with HIV, women having the infection and men, who have full-blown AIDS and would be provided through Government hospitals and antenatal clinics. "The programme would be extended to other parts of the country." The six states were chosen because they had the highest rate of prevelance of the disease and because they had the right infrastructure. **[60l]**

**5.107** Information sourced from the website of the Bill & Melinda Gates Foundation indicates that Avahan ("call to action"), the $200 million grantmaking initiative of the Foundation that supports programmes to prevent the spread of HIV in India, announced $47 million in new grants on 16 March 2004. **[44]**

**5.108** A 209-page report by Human Rights Watch, titled "Future Forsaken: Abuses Against Children Affected by HIV/AIDS in India", July 2004, indicated that the epidemic is being fuelled by widespread abuses against children who are affected by HIV/AIDS. It called upon the government to ensure that HIV infected children are protected from abuse. According to the report released on 29 July 2004, many doctors refuse to treat or even touch HIV-positive children. "Some schools expel or segregate children because they or their parents are HIV-positive. Many orphanages and other residential institutions reject HIV-positive children or deny that they house them. Children from families affected by AIDS may be denied an education, pushed onto the street, forced into the worst forms of child labor, or otherwise exploited, all of which puts them at greater risk of contracting HIV." Some experts calculate that more than 1 million children under the age of 15 have lost one or both parents to HIV/AIDS. **[26c](p1)**

**5.109** A BBC report of 16 July 2004 noted that Sonia Gandhi, the leader of the ruling Congress Party vowed that India would do more to fight AIDS in an address to a conference in Bangkok. She said India had developed cheaper drugs, made blood supplies safer and had increased spending on HIV/AIDS but efforts were hampered because the subject was taboo among the people. **[32dn]**

**5.110** As recorded in a Human Rights Watch letter to the European Union dated 8 November 2004, "Legislation is currently being drafted to end discrimination against those affected by HIV/AIDS, but unless properly implemented, people affected with HIV/AIDS will continue to be denied jobs, shelter, medical attention and access to education." HRW called on the EU to support the Indian government's efforts to end the stigma and discrimination against people living with HIV/AIDS in India through age-appropriate awareness and education campaigns. **[26g]**

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## Disabled persons

**5.111** As reported in the US State Department report 2004,

> "The Persons with Disabilities Act provides equal rights to all persons with disabilities; however, advocacy organizations admitted that its practical effects have so far been minimal, in part due to a clause that makes the implementation of programs dependent

on the "economic capacity" of the Government. Widespread discrimination occurred against persons with physical and mental disabilities in employment, education, and in access to health care. Neither law nor regulation required accessibility for persons with disabilities. Government buildings, educational establishments, and public spaces throughout the country have almost no provisions for wheelchair access." **[2c](section 4)**

**5.112** The same report continues,

"The Disabled Division of the Ministry of Welfare delivered rehabilitation services to the rural population through 16 district centers. A national rehabilitation plan committed the Government to put a rehabilitation center in each of more than 400 districts, but services were concentrated in urban areas. Moreover, the impact of government programs was limited. Significant funding was provided to a few government organizations such as the Artificial Limbs Manufacturing Corporation of India, the National Handicapped Finance and Development Corporation, and the Rehabilitation Council of India. With the adoption of the Persons with Disability Act, a nascent disabled rights movement slowly raised public awareness of the rights of persons with disabilities." **[2c](section 4)**

**5.113** As stated in the same source,

"The Government provided special railway fares, education allowances, scholarships, customs exemptions, budgetary funds from the Ministry of Rural Development, and rehabilitation training to assist the disabled; however, implementation of these entitlements was not comprehensive." **[2c](section 4)**

**5.114** The report continues,

"The National Commission for Persons with Disabilities (NCPD) had the responsibility to recommend to the Government specific programs to eliminate inequalities in status, facilities, and opportunities for disabled persons, review the status and condition of institutions delivering services and submit annual reports with recommendations. In February, the Government constituted a new NCPD headed by a former Governor, Sunder Singh Bhandari. In April, the Rajasthan High Court directed the State Government to promote the establishment of special schools for disabled children in both the public and private sectors; however, a majority of teachers have not been trained on how to meet the special needs of disabled children. Also, the National Center for Promotion of Employment for Disabled People stated in September that there was a shortage of educational institutions for the disabled and that the admissions process was marked by harassment." **[2c](section 4)**

**5.115** As reported in the US State Department report 2004,

"In July, disabled rights NGOs reported that the disabled were not able to obtain duty free imports of artificial limbs, crutches, wheelchairs, walking frames, and other medical needs. They also claimed that no effort was being made to make railway compartments, platforms, and railways accessible to the disabled, and noted that less than 1 percent of the disabled were employed. The Equal Opportunities, Protection of Rights and Full Participation Act of 1995 stipulates that 3 percent of all education slots be reserved for the disabled; however, statistics showed that only about 1 percent of students were disabled. The Times Insight Group reported in September that most colleges and universities did not know about this law." **[2c](section**

**4)**

### Mental health

**5.116** As noted in the WHO Project Atlas Country Profile for India, 2002, there has been a national mental health programme since 1982 aimed at ensuring the availability and accessibility of minimum mental health care. “The Mental Health Act [1987] has provided with new definitions, simplified admission and discharge procedures, introduced licensing of psychiatric hospitals, separated state and central mental health authorities, separated facilities for children and persons with addiction and promoted human rights of the mentally ill.” **[62](p1-2)**

**5.117** As indicated in the same source, the Government spends 0.83% of its budget on mental health. Financing for health services is provided both by the states and the centre. “There are about 40 mental hospitals operating in India with a varying amount of bed strength. They still have a large proportion of long-stay patients. Funding is poor and there is inadequate staff. All these add to the problem of stigma against mental disorders. During the past two decades, many mental hospitals have been reformed through the intervention of the judiciary (courts).” **[62](p2-3)** Over the years there has been a growth and development of general hospital psychiatry units. There is a growing involvement of the private sector along with different NGOs. **[62](p4-5)**

**5.118** As cited in the US State Department Report for 2004, “Mental health care was a problem. Hospitals were overcrowded and served primarily as a "dumping ground" for the mentally handicapped. Patients generally were ill-fed, denied adequate medical attention, and kept in poorly ventilated halls with poor sanitary conditions. In July (2004), the NHRC announced that insufficient attention was paid to issues of the mentally handicapped and called for better enforcement of the nations laws. At year's end, no action was taken in the 2001 NHRC recommendation to remove all persons with mental illness from jails.” **[2c](section 4)**

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## Educational system

**5.119** As reflected in the US State Department Background Note for India, August 2004, the literacy rate in the country is 55.2%. **[2f](People)** According to Europa 2005, “Educational work is being undertaken for the eradication for illiteracy… A National Board for Adult Education has been set up, but the state govenments are largely responsible for adult education programmes. The main emphasis is on improving literacy rates, especially in rural areas.”**[1](p232)**

**5.120** Information sourced from the US State Department report 2004 indicated that,

> “The Government does not provide compulsory, free, and universal primary education, and only approximately 59% of children between the ages of 5 and 14 attend school. According to Government’s statistics from 2003, 165 million of the 200 million children between the ages 6-14 attend school. The upper house of Parliament failed to take any action on the constitutional amendment passed by the lower house of Parliament in 2002 that provided all children aged 6 to 14 the right to free and compulsory education provided by the State. In contrast to the Government’s figures, UNICEF reported that of a primary school-age population of approximately 203 million, approximately 120 million children

attended school. However, UNICEF reported that 76.2% of all children aged 11 to 13 years were attending school. A significant gender gap existed in school attendance, particularly at secondary school level, where boys outnumbered girls 59 to 39 percent, according to the latest government statistics released in 2001." **[2c](section 5)**

Refer to section on women for further information

**5.121** As stated in Europa 2005, "Under the Constitution, education in India is primarily the responsibility of the individual state governments, although the Central Government has several direct responsibilities, some specified in the Constitution…There are facilities for free primary education (lower and upper stages) in all the states… An amendment to the Constitution, approved in May 2002, ensures free and compulsory education for children from the age of six to 14." **[1](p231)**

**5.122** As reported by the Human Rights Watch World report 2005, "Both literacy and school enrollment rates overall have improved in the last decade, but according to UNESCO, approximately half of students completed grade five. Proportionately fewer girls than boys attend school, and those that do drop out at higher rates. Dalits also have higher illiteracy and drop-out rates and face significant discrimination in education." **[26e](p3, Rights of children)**

**5.123** An article in The Hindu dated 22 February 2005 reported that,"Four years after the Government of India adopted the "mission mode" to universalise elementary education through the Sarva Shiksha Abhiyan (SSA), only 47 of the 100 children enrolled in Class I reach Class VIII." The high dropout reate was attributed to a "lack of adequate facilities, large-scale absenteeism of teachers and inadequate supervision by local authorities." The dropout rate among girls was 53.45 percent at the elementary level and 33.72 percent at primary level. Among boys, the rate stood at 52.28 percent at elementary and 35.85 per cent at Primary level. **[60j]**

**5.124** As cited in the US State Department report 2004,

"In January 2003, the Ministry of Human Resources Development (HRD) passed strict academic guidelines to regulate academic partnerships between local and western universities and academics, in line with Hindutva philosophy. The guidelines, issued to all central universities, required HRD permission to organize "all forms of foreign collaborations and other international academic exchange activities," including seminars, conferences, workshops, guest lectures, and research. These guidelines remained in force during the year." **[2c](section 2a)**

**5.125** The UNESCO website, accessed 19 August 2004, details the levels of university education in India. First degrees generally require three years' full-time study leading to Bachelor of Arts, Science and Commerce degrees. Entrance to an Honours course may require a higher pass mark in the higher secondary or pre-university examinations. A Master's Degree in Arts, Science and Commerce generally requires two years of study after a first degree. One and a half-year MPhil programmes are open to those who have completed their second stage postgraduate degree. It is a preparatory programme for doctoral level studies. The Doctor of Science (DSc) and the Doctor of Literature (Dlitt) degrees are awarded by some universities two to three years after the PhD for original contributions. **[59]**

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# 6. HUMAN RIGHTS

# 6.A HUMAN RIGHTS ISSUES

## Overview

**6.1** As cited in the US State Department Report 2004 (USSD),

> "India is a longstanding parliamentary democracy with a bicameral parliament…The judiciary is independent; however, it faced a serious backlog, and NGOs alleged that corruption influenced some court decisions…. The Government generally respected the human rights of its citizens; however, numerous serious problems remained. Police and security forces were sometimes responsible for extrajudicial killings, including staged encounter killings and custodial deaths. Government officials often used special antiterrorism legislation to justify the excessive use of force while combating active insurgencies in Jammu and Kashmir and several north eastern states. Security force officials who committed human rights abuses generally enjoyed de facto legal impunity, although there were numerous reports of investigations into individual abuse cases as well as punishment of some perpetrators. Other violations included: torture and rape by police and other government agents; poor prison conditions; lengthy pretrial detention without charge; prolonged detention while undergoing trial; occasional limits on press freedom and freedom of movement; harassment and arrest of human rights monitors; extensive societal violence and legal and societal discrimination against women; forced prostitution; child prostitution and female infanticide; trafficking in women and children; discrimination against persons with disabilities; serious discrimination and violence against indigenous people and scheduled castes and tribes; widespread intercaste and communal violence; religiously motivated violence against Muslims and Christians; and widespread exploitation of indentured, bonded, and child labor."**[2c](introduction)**

**6.2** In a report dated 26 April 2000, Amnesty International highlighted their concerns about a range of abuses against the actual human rights defenders themselves. Amnesty acknowledged that steps had been taken by the Indian Government over a number of years to support the work of human rights defence, for example through the establishment of statutory human rights institutions and the ratification of international human rights treaties, and acknowledged the support that Government agencies have given to sectors of social activism through government-funded programmes and government-NGO co-operation. **[3i](p3)** However, Amnesty International (AI) in its 2004 annual report (covering events in 2003), noted that, "Human rights defenders continued to face accusations of "anti-national" activities, harassment by state agents, political groups and private individuals, including threats, preventive arrest and detention, and violence." In an example of the harassment of human rights defenders, AI noted that,

> "There were reports that following an assassination attempt on the Chief Minister of Andhra Pradesh in October, allegedly by naxalites, retaliatory harassment was initiated against human rights defenders. At least six members of the Andhra Pradesh Civil Liberties Committee (APCLC) were detained for questioning in October in connection with the assassination attempt and APCLC activists were put under constant surveillance and were repeatedly detained for questioning. In November there were growing concerns the APCLC could face a ban following statements by the Director General of Police indicating that the organization was

sympathetic to the naxalites." **[3k](p.4)**

**6.3** The USSD 2004 states that,

> "The main domestic human rights organization operating in the country was the Government-appointed NHRC. The Commission acted independently of the Government, often voicing strong criticism of government institutions and actions. However, the NHRC faced numerous institutional and legal weaknesses, which human rights groups said hampered its effectiveness. The NHRC does not have the statutory power to investigate allegations and can only request a state government to submit a report. The NHRC was able to investigate cases against the military; however, according to a May order of the Home Ministry, it could only recommend compensation, and NHRC recommendations were not binding. Each state has its own human rights commission, and the NHRC only has jurisdiction if the state commission fails to investigate. Human rights groups alleged that state human rights commissions were more likely to be influenced by local politics than the NHRC and less likely to give a fair judgement."**[2c](Section 4)**

**6.4** The report continues,

> "The 1993 Protection of Human Rights Act recommends that each state establish a state human rights commission. As of October, Commissions existed in Assam, Chhattisgarh, Himachal Pradesh, Jammu and Kashmir, Kerala, Madhya Pradesh, Manipur, Maharashtra, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, and West Bengal. The Jammu and Kashmir state legislature established a state human rights commission, but it had no authority to investiate alleged human rights violations committed by members of the security forces. In addition to these state human rights commissions, legislative action established special courts in Tamil Nadu, Uttar Pradesh, and Andhra Pradesh to hear human rights cases. However, the courts in Uttar Pradesh did not function, despite a 1999 court order that they be reactivated." **[2c](Section 4)**

> "The NHHRC was active throughout the year, highlighting human rights abuses throughout the country, and recommending compensation for victims of human rights abuses. For example, in May, the NHRC ordered the State of Kerala to pay $222 (Rs. 10,000) to two Adivasi (tribal) youths who were allegedly detained illegally by police. Also in May, the Home Ministry authorized the NHRC to recommend relief payments to victims of human rights abuses by security forces. The decision was in response to a petition filed by widows of two men killed by a drunken BSF officer. The NHRC subsequently ordered the Government to pay the surviving families approximately $4500 (Rs.200,000) each." **[2c](Section 4)**

**6.5** As recorded in the USSD 2003, "The NHRC has also influenced the legislative process, particularly by issuing recommendations on women's issues, persons with disabilities, and children's rights. The NHRC encouraged the establishment of human rights cells in police headquarters in some States; however, this policy was not implemented in any meaningful way." **[2h](Section 5)**

**6.6** As cited in a Human Rights Watch letter to the EU dated 8 November 2004, with regard to monitoring mechanisms, HRW identified the NHRC as having emerged as one of the best such institutions and as a powerful means of protecting human rights. "However its capacity is limited because it is only allowed funding through government and is

severely short-staffed. In addition, the Commission is not allowed to investigate abuses committed by the armed forces." **[26g](p2)**

**6.7** Amnesty International noted in a 1998 submission that the NHRC is also empowered to study treaties and other international instruments on human rights and recommend measures for their effective implementation. The NHRC has suggested that the Protection of Human Rights Act should be amended to incorporate International Covenants. **[3c](p79)**

**6.8** Amnesty International (AI) in its 2004 annual report (covering events in 2003), noted that,

> "The government failed to consider the recommendations made by the NHRC in 2002 for amendments to the Protection of Human Rights Act 1993 under which the NHRC operates. These amendments would have permitted the NHRC to investigate allegations of human rights violations committed by the army or paramilitary forces, as well as those committed by the police, and incidents that took place more than a year before the complaint was made. The government's failure to deal with these amendments served to strengthen impunity for human rights violations. State human rights commissions, established in 13 of the 28 states, continued to suffer from lack of resources and expertise." **[3k](p.3)**

**6.9** Amnesty International in a Submission to the Human Rights Committee in July 1997 noted that, "In several high profile cases, the NHRC has disregarded this limitation in its mandate and intervened in incidents of human rights violations by security forces, for example in Jammu and Kashmir in the case of the killing of lawyer Jalil Andrabi in March 1996 and the killing of civilians by security forces in Bijbehara in October 1993." **[3c] (p.79)**

**6.10** As noted in Amnesty International's India Submission to the Advisory Committee 1998, Section 36(2) of the Protection of Human Rights Act limits the NHRC to investigating allegations of abuses only up to a year after the alleged abuse took place. This has been overlooked in certain cases, but other cases over a year old have been disregarded. Amnesty International considers this problematic, as many victims approach the NHRC as a last resort, after using other mechanisms such as the courts. Lack of resources is often an obstacle to filing a complaint within the time frame required. A human rights violation may not come to light until over a year after the original incident or a rape victim may have compelling reasons not to come forward immediately. **[3d](p15-16)**

**6.11** However, as reported in a news article in The Tribune, in September 1998, the Supreme Court ruled that the NHRC's probe into the alleged mass cremation of 2,000 bodies by the Punjab police in 1994-5 could not be barred by the one-year time limit. The Supreme Court ruled that the jurisdiction exercised by the NHRC in these matters is of a special nature not covered by the enactment of law and thus acts sui generis (a case of its own kind). **[12c]**

**6.12** As cited by Indian news agency PTI on 8 July 1998, one of the NHRC's first actions was to request that it be informed of death or rape in police custody within 24 hours of occurrence, and while it had not succeeded in implementing this directive in states such as Jammu and Kashmir, the NHRC has become an important monitor of the extent of custodial violence. **[3c]** As reported by the Indian news agency on 8 July 1998, the NHRC has recommended that army and paramilitary forces should also follow the same procedure and report any death or rape in custody to the NHRC within 24 hours. The Indian Government rejected this, saying that the existing procedures laid down in the Protection of Human Rights Act 1993 were sufficient. **[10c]**

**6.13** Amnesty International noted in a 1998 submission, that while the NHRC is conducting enquiries, it has the powers of a civil court, including summoning attendance of witnesses, compelling the provision of information and referring cases of contempt to a magistrate. There have been occasions when the NHRC's work has been hampered by delays in receiving reports from State authorities. **[3d](p8)**

**6.14** Amnesty International in a 1998 submission note, "The NHRC has been active in recommending the granting of compensation in many cases in which it has found prima facie evidence of human rights violations… and it has actively pursued the granting of compensation with the authorities to ensure that victims or their relatives are provided with prompt financial redress". **[3d](p10)**

**6.15** Amnesty International's submission to the Advisory Committee 1998 states that the NHRC has recommended changes to existing legislation to ensure that human rights are protected, as part of its mandate to review safeguards provided under the Indian Constitution or legislation. The NHRC played a significant role in calls for the abolition of the Terrorist and Disruptive Activities (Prevention) Act (TADA), which was allowed to lapse in 1995. The NHRC, in a submission to the Supreme Court, has expressed the view that the Armed Forces (Special Powers) Act is unconstitutional. The NHRC played a key role in encouraging the Indian Government to ratify the Convention against Torture. Nevertheless, Amnesty International believes that the NHRC should adopt a more systematic and consistent approach in reviewing existing or proposed legislation. **[3d](p20-21)**

**6.16** As cited by the USSD 2004, "In addition to these state human rights commissions, special courts to hear human rights cases were established in Tamil Nadu, Uttar Pradesh, and Andhra Pradesh. However, the courts in Uttar Pradesh did not function, despite a 1999 court order that they be reactivated." **[2c](section 4)**

**6.17** The USSD 2004 states that, "The 1993 Protection of Human Rights Act recommends that each state establish a state human rights commission, but not all states have done so… The Jammu and Kashmir state legislature established a state human rights commission, but it had no authority to investigate alleged human rights violations committed by members of the security forces. " **[2c](section 4)** According to the National Human Rights Commission website accessed May 2004, State Human Rights Commissions exist in: Assam, Himachal Pradesh, Jammu & Kashmir, Kerala, Madhya Pradesh, Maharashtra, Manipur, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, West Bengal and Chhattisgarh.**[47c]**

**6.18** As noted in the USSD 2004 report, " The Nanavati Commission , which was tasked with conducting a re-inquiry into the 1984 massacre of Sikhs in Delhi, did not complete its report and was issued another extension during the year. A two-member judicial commission to investigate riot-related violence in Gujarat, formed in 2002, also did not complete its report, and it too was issued an extension. It is unknown whether the findings of either report will be made public." **[2c](section 4)**

**6.19** The USSD 2004 noted that, "In 2002, the Supreme Court ordered the central government and local authorities to conduct regular checks on police stations to ascertain the incidence of custodial violence; however, the overwhelming majority of police stations failed to comply. There were reports of deaths in custody resulting from alleged torture or other abuse… According to the NHRC, by August, 45 deaths in police custody and 438 deaths in judicial custody occurred throughout the country. Uttar Pradesh ranked the highest, with 6 custodial deaths." **[2c](section 1a)**

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## Freedom of Speech and the Media

**6.20** As noted in the USSD 2004,

> "The Constitution provides for freedom of speech and of the press, and the Government generally respected these rights in practice; however, there were some limitations… A vigorous press reflected a wide variety of political, social, and economic beliefs. Independent newspapers and magazines regularly published, and television channels broadcast investigative reports and allegations of government wrongdoing, and the press generally promoted human rights and criticised perceived government lapses."**[2c](section 2a)**

**6.21** As reported in India Today dated 19 August 2002, there are over 100 satellite [television] channels, over 5,000 daily publications, 16,000 weekly publications, and more than 6,000 fortnightly publications in various Indian languages. **[11d]**

**6.22** As stated in Reporters without Borders Annual Report 2003, "The diversity of news is undeniable. India has more newspapers than any other country and the number of readers has increased by 17 million since 1999." **[42a](p1)**

**6.23** The USSD 2004 noted that,

> "Foreign media was, for the most part, allowed to operate freely, and private satellite television was distributed widely by cable or satellite dish, providing serious competitions for Doordarshan, the government-owned televison network. Doordarshan frequently was accused of manipulating the news in the Government's favour; however, some privately-owned satellite channels also promoted the platforms of political parties their owners supported." **[2c](section 2a)**

**6.24** As noted in the same report, "AM radio broadcasting remained a Government monopoly. Private FM radio station ownership was legalised in 2000, but licences only authorized entertainment and educational content. Authorities did not permit privately owned radio stations to broadcast news". **[2c](section 2a)**

**6.25** The USSD 2004 report states that, "In September, the Governemt renewed its permission for the Arabic-language satellite news channel, Al Jazeera, to transmit. The government had halted Al Jazeera broadcasts in 2002 to express displeasure with its reporting on the February-March 2002 riots in Gujarat and the insurgency in Jammu and Kashmir." **[2c](section 2a)**

**6.26** The same source further reported, "In the electronic media, 80 percent of the television channels were privately owned. Government –controlled radio remained the main source of news for much of the population." **[2c](section 2a)**

**6.27** According to BBC news Country Profile, 2 May 2002, only state-run All India Radio (AIR) is permitted to broadcast news on the radio. In late 2002 the Government agreed to educational institutions setting up their own low-power FM stations.**[32av]**

**6.28** As reported by Reporters Without Borders annual report 2003, the government opened up the print media to foreign investment in 2002 by allowing up to 26 per cent to be internationally owned, ending a situation under which all newspapers and magazines had to

be owned by Indians. A law on access to information was adopted for the first time on 4 December 2002. It aimed to end the secrecy cloaking government activity but significantly exempted information about defence, national security and many aspects of foreign policy. Nonetheless, the files of other ministries which had until then been inaccessible could now be made available to journalists. **[42a](p1)** According to Reporters Without Borders annual report 2004, "In 2003, the government promised to scrap a 47-year-old ban on international news agency dispatches being directly published or broadcast by the Indian news media." **[42b](p1)**

**6.29** Reporters sans frontieres – Third Annual Worldwide Press Freedom Index, 2004, reports that India figures in the bottom half of the index despite having a "free and lively independent media, since killings and physical attacks on journalists, along with outdated laws, still prevent a full flowering of the press." **[42c]** The same report continues, " "Violence against the media in India rarely comes from the authorities but from political activists and in Kashmir from armed groups." **[42c]**

**6.30** The USSD 2004 cites that , "A Government censorship board reviewed films before licensing them for distribution. The board censored material deemed offensive to public morals or communal sentiment."**[2c](section 2a)**

**6.31** The same report continues, "In June (2004), the country's Censor Board granted a censor certificate, allowing public viewing to the film "Aakrosh" (lament) after the Mumbai High Court ruled in favor of the film's producer. In 2003, the Board had denied a certificate to the film, which covered the 2002 Gujarat riots, effectively preventing public showings." **2c](section 2a)**

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**Treatment of Journalists**

**6.32** As noted in the US State Department Report 2004 (USSD),

> "The Newspapers Incitements to Offenses Act remained in effect in Jammu and Kashmir. Under the Act, a district magistrate may prohibit the publication of material likely to incite murder or any act of violence; however, newspapers in Srinagar reported in detail on alleged human rights abuses by the Government and regularly published press releases of separatist Kashmiri groups." **[2c](section 2a)** "The authorities generally allowed foreign journalists to travel freely in Jammu and Kashmir, where they regularly spoke with separatist leaders and filed reports on a range of issues, inlcuding government abuses. In October (2004) the Government permitted the first delegation of Pakistani journalists to visit Jammu and Kashmir in more than 50 years. The correspondents, on a trip sponsored by the South Asia Free Media Association, had access to the entire spectrum of government and separatist opinion." **[2c](section 2a)**

**6.33** The BBC Country Profile May 2003 states that "India's private press is independent and active. The Official Secrets Act empowers the authorities to censor security–related articles. The authorities occasionally use the act to limit criticism of the government." **[32av]**

**6.34** According to Reporters Without Borders annual report 2004, the federal authorities were responsible for harassing a number of staff at the news website 'Tehelka.com' after the website published details of Government corruption. There were further reports of journalists being subject to harassment from national and regional politicians and harassment and

obstruction from police. [42b]p2-6) The US State Department Report 2004 cites, “Authorities occasionally beat, detained, and harassed journalists.” [2c](section 2a)

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## Freedom of Religion

### Introduction

**6.35** As cited in the 1997 report of the Special Rapporteur on religious intolerance, the preamble to the Indian Constitution proclaims India's commitment to democracy and secularism and guarantees all citizens freedom of religion and belief as well as the right to practise religion freely. [6b](p3) As reported in the US Department of State International Religious Freedom report 2004 (USIRF), “There are many religions and a large variety of denominations, groups, and subgroups in the country, but Hinduism is the dominant religion.” [2b](p4)

**6.36** The Special Rapporteur’s 1997 report notes, the Penal Code prohibits and punishes any violation of tolerance and non-discrimination based on religion or belief: promoting enmity between different groups on grounds of religion (Section 135A); injuring or defiling a place of worship with intent to insult the religion of any class (Section 295); deliberate and malicious acts intended to outrage the religious feeling of any class by insulting its religion (Section 295A); disturbing religious assembly (Section 296); and uttering words with deliberate intent to wound religious feelings (Section 298) [6b](p4)

**6.37** The Special Rapporteur’s 1997 report states, under the Representation of the People Act 1951, it is an offence for a candidate to call upon someone to vote or to abstain from voting by playing on his religion, or using religious symbols as a means of promoting that candidate's election prospects. [6b](p5)

**6.38** The USIRF 2004 states,

> “According to the latest government estimates, Hindus constitute 82 percent of the population, Muslims 12 percent, Christians 2.3 percent, Sikhs 2.0 percent, and others, including Buddhists, Jains, Parsis (Zoroastrians), Jews, and Baha'is, less than 2 percent. Hinduism has a large number of branches, including the Sanatan and Arya Samaj groups. Slightly more than 90 percent of Muslims are Sunni; the rest are Shi'a. Buddhists include followers of the Mahayana and Hinayana schools, and there are both Catholic and Protestant Christians. Tribal groups (members of indigenous groups historically outside the caste system), which in government statistics generally are included among Hindus, often practice traditional indigenous religions. Hindus and Muslims are spread throughout the country, although large Muslim populations are found in the states of Uttar Pradesh, Bihar, Maharashtra, West Bengal, Andhra Pradesh, and Kerala, and Muslims are a majority in Jammu and Kashmir. Christian concentrations are found in the northeastern states, 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”. [2b]( p2)

**6.39** In the USIRF 2004, the U.S. State Department concluded that despite the incidents of violence and discrimination during the period covered by the report, relations between various religious groups are generally amicable among the substantial majority of citizens. “There are

efforts at ecumenical understanding that bring religious leaders together to defuse religious tensions."…"Prominent secularists of all religions make public efforts to show respect for other religions by celebrating their holidays and attending social events such as weddings. Institutions such as the army consciously forge loyalties that transcend relgion. After episodes of violence against Christians, Muslim groups have protested against the mistreatment of Christians by Hindu extremists." Christian clergy and spokespersons for Christian organizations issued public statements condemning the Gujarat violence.**[2b](p23)** In their Human Development Report, 2004, the United Nations Development Programme noted that, when reviewing levels of communal violence in India over the past 50 years, the period 1990 – 2002 accounts for over 36% of all recorded violence. **[71] (p.74)** The report further notes that, regarding religious difference, "Recent communal violence raises serious concerns for the prospect for social harmony and threatens to undermine the country's earlier achievements". **[71] (p.48)** In May 2004, the United States Commission on International Religious Freedom published a report that found that, "In India, the government's response to violence against religious minorities in Gujarat and elsewhere continues to be inadequate. In addition, several government leaders have publicly allied themselves with extremist Hindu organizations that have been implicated in that violence. In 2003, the Commission again recommended that India be designated a "country of particular concern," or CPC. To date [United States] State Department has not named India a CPC". **[72] (p.1)**

**6.40** As noted in the USIRF 2004,"The National Commission for Minorities and the National Human Rights Commission (NHRC) have appointed members and are tasked respectively with protecting the rights of minorities and protecting human rights. These governmental bodies investigate allegations of discrimination and bias, and can make recommendations to the relevant local or central Government authorities. These recommendations generally are followed, although they do not have the force of law." **[2b](p4)**

**6.41** As stated in the USIRF 2004, "The legal system accommodates minority religions' personal status laws; there are different personal status laws for different religious communities. Religion-specific laws pertain in matters of marriage, divorce, adoption, and inheritance. For example, Muslim personal status law governs many noncriminal matters involving Muslims, including family law, inheritance, and divorce." **[2b](p4)**

**6.42** The USSD 2004 stated that, "Legally mandated benefits were assigned to certain groups, including some groups defined by their religion. For example, minority institutions were able to reserve seats for minorities in educational institutions. Minority run institutions also were entitled to funding, although with restrictions; however, benefits accorded Dalits (formerly known as "untouchables") were revoked if Dalits converted to Christianity, but not Buddhism." **[2c](secction c)**

**6.43** The USSD 2004 cited that, "The Religious Institutions (Prevention of Misuse) Act of 1988 makes it a criminal offence to use any religious site for political purposes or to use temples for harbouring persons accused or convicted of crimes. While specifically designed to deal with Sikh places of worship in Punjab, the law applies to all religious sites. The Religious Buildings and Places Act requires a state government-endorsed permit before construction of any religious building may commence." **[2c](section 2c)**

**6.44** As reported in the USIRF 2004, in March 2003 the Gujarat Freedom of Religion Act was passed by the Gujarat state assembly. "The act requires those involved with a conversion to seek the permission, both before and after the conversion ceremony, of the district collector, who is the sole arbiter of the validity of each conversion. This act also requires the police to investigate cases of forced or induced religious conversions. As with

the Tamil Nadu anticonversion law, punishments are greater for women, scheduled castes, and "tribals."[2b](p8) A BBC news report dated 26 March 2003 reported that politicians in India's western state of Gujarat approved the controversial bill ostensibly designed to stop forced religious conversions. Many opponents fear it could be used to target Christian and Muslim minority communities. The Freedom of Religion bill has been modelled on similar legislation introduced in the state of Tamil Nadu and already on the statute books in the states of Madhya Pradesha and Orissa. The text of the proposed bill is not yet widely available but there are indications that it may be more stringent than existing legislation in other states. Penalties for people convicted of carrying out conversions using allurement or force include up to three years in prison and a fine of 50,000 rupees. Under the terms of the bill, a conversion must be assessed by officials and prior permission given by the District Magistrate to be lawful. Conversions, which are found to be genuine and voluntary, but where prior permission was not secured from the District Magistrate could also be punished with up to one year in prison and a fine of 1,000 rupees. [32bk]

**6.45**As noted in the USSD report 2004, "In May (2004), the Government of Tamil Nadu repealed a 2003 Ordinance banning religious conversion carried out by "force, allurement or fraudulent means." [2c](section 2c)

**6.46** Freedom House - Centre for Religious Freedom (in Hinduism and Terror, published 1 June 2004), noted that, Hindus, particularly lower cast groups such as Dalits (untouchables), who convert to another religion are likely to face, in practice, legal discrimination. [43b](p.3) As reported by Human Rights Watch (in Context of Anti-Christian Violence, published in 1999) it noted that, "Upon converting to Christianity, Dalits lose all privileges previously assigned to them under their scheduled caste system." [26d] (p.1) Scheduled caste status is a system of 'positive discrimination' that sets aside a minimum number of government (both central, provincial and local) jobs for lower caste groups. [71] (p.70-71)

**6.47** As reported by the BBC on 23 February 2005,

> "The government in India's western state of Rajasthan says it is to introduce a law banning religious conversion. It follows tension between Hindus and a Christian mission holding its annual convention in Kota, 250 km (155 miles) from the state capital, Jaipur." Hindu activists say the Kota convention is being used for conversion to Christianity. The police used force to disperse Hindu activists trying to enter the premises. "The state has a very small Christian population of 0.11%. State governments in India do have the power to introduce anti-conversion laws. The southern state of Tamill Nadu had similar legislation but it was scrapped amid polictical controversy and opposition from religious minorities." [32fb]

**6.48**As stated in the USIRF 2004,"There were no reports of religious prisoners or detainees." [2b](p14) The report also stated that,

> "Despite the incidents of violence and discrimination during the period covered by the report [2004], relations between various religious groups generally are amicable among the substantial majority of citizens. There are efforts at ecumenical understanding that bring religious leaders together to defuse religious tensions. The annual Sarva Dharma Sammelan (All Religious Convention) and the frequently held Mushairas (Hindu-Urdu poetry sessions) are some events that help improve inter community relations. Prominent secularists of all religions make public efforts to show respect for other religions by celebrating their holidays and attending social events such as weddings. Institutions such as the army consciously forge loyalties

that transcend religion." **[2b](p23)**

**6.49** As reported in the USSD 2004 report,

> "During the year, the status of religious freedom improved; however, problems remained in some areas. While the Government took some steps to decrease attacks and bring about justice, attacks against religious minorities persisted. However, no new anti-conversion laws were enacted during the year, and Tamil Nadu repealed its anti-conversion law. Hindutva, the politicized inculcation of Hindu religious and cultural norms to the exclusion of others, remained a subject of national debate and influenced some governmental policies and societal attitudes." **[2c](section 2c)**

**6.50** The same report continues, "Tensions between Muslims and Hindus, and between Hindus and Christians, continued during the year. Attacks on relgious minorities decreased overall but occurred in several states, which brought into question the Government's ability to prevent sectarian and religious violence or prosecute those responsible for it." **[2c](section 2c)**

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## Muslims

**6.51** A 1997 report of the Special Rapporteur states that "Muslims constitute India's largest minority as well as the second largest Muslim community in the world after Indonesia, and before that of Pakistan." **[6b](p7)** As reported in a BBC news item dated 9 February 2005, "Of the 145 million Muslims in India, about 20 million are Shias." **[32ew]**

**6.52** The Special Rapporteur's 1997 report noted that the Indian authorities do not restrict the religious activities of Muslims. Muslims have freedom of religious practice and freedom to organise their services according to their codes, religious teachings and customs. **[6b](p7)**

**6.53** The Special Rapporteur noted that Muslims in India have their own educational establishments, including the madrasa religious schools responsible for disseminating the teachings of Islam. Muslims possess a large number of places of worship as well as the Waqf Board, which is responsible for the management of property belonging to religious communities and charitable institutions. **[6b](p8)** According to the United Nations Background Paper 1998, Muslims are reportedly under-represented in the civil service, the military and institutions of higher education. **[6e](p20)**

**6.54** As reported by BBC on February 2005, Indian Shias recently broke away from the country's most important Muslim organisation, the All India Muslim Personal Law Board (AIMPLB). "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. The Shias say they don't believe in the controversial "triple talaq" or instant divorce – a system wherein a Mulsim man can divorce his wife in a matter of minutes. There are also differences in inheritance laws. Among the Sunnis, a man's sister – along with his children - is entitled to a share of inheritance after his death. When a Shia man dies, his property is only inherited by his children. No other family member has any claim." According to a Shia priest interviewed, they also have different mosques and burial grounds. **[32ew]**

**6.55** As reported further by the same source, "The newly formed All India Shia Personal Law Board has 69 members compared to 204 members in the AIMPLB…. Earlier this month, a

group of women formed the All India Muslim Women's Personal Law Board alleging that the religion's top body of [sic] had been ignoring the rights of Muslim women." It was founded with 35 members. **[32ew]**

**6.56** The United Nations Background Paper 1998 states that Jammu and Kashmir are the only State in India where Muslims are in the majority. **[6e](p7)** The 1997 report of the Special Rapporteur notes that here, the religious situation is seriously affected by the armed conflict between the Indian army and the militant extremists. Several mosques have been destroyed in India, including the Babri Masjid in Ayodhya on 6 December 1992 and the Charar-e-Sharief sanctuary in Jammu and Kashmir on 11 May 1995. The UN Rapporteur stated that according to official and non-governmental observers, the destruction of the Babri Masjid was an aberration, which could not be interpreted as evidence of an official policy of religious intolerance directed against Muslims. **[6b](p9)**

**6.57** The BBC reported on 17 April 2003 that a Muslim woman had been elected as the mayor of Ahmedabad, Gujarat, becoming the first Muslim mayor of Ahmedabad. **[32au]**

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### Ayodhya Mosque

**6.58** Keesings Record of World Events, December 1992 notes the BJP and its allies had called repeatedly for the mosque at Ayodhya (built in the 16th century by the Mughal emperor Babar) to be replaced by a temple honouring the Hindu deity, Lord Ram. **[5a](p1)** According to The Europa World Year Book in 1990 the then BJP leader, Lal Krishna Advani, led a procession of Hindu devotees to the town to begin construction of a Hindu temple. Paramilitary troops were sent to Ayodhya and thousands of Hindu activists were arrested in an attempt to prevent a Muslim-Hindu confrontation. However following repeated clashes between police and crowds, Hindu extremists stormed and slightly damaged the mosque and laid siege to it for several days. V P Singh, the Prime Minster of India at the time of the incident, accused Advani of deliberately inciting inter-communal hatred. **[1a] (p.1649)**

**6.59** Keesings Record of World Events for December 1992, notes that on 6 December 1992 around 100,000 Hindu kar sevaks (construction volunteers) responded to a call by the BJP and other Hindu organisations, including the Rashtriya Swayamsevak Sangh (RSS) and the Vishwa Hindu Parishad (VHP) - World Hindu Council - to resume construction work on the temple at Ayodhya. A small mob of Hindu zealots stormed past guards and razed the mosque to the ground. Within hours of the mosque's destruction, Ayodhya was gripped by fighting between Hindus and Muslims. By the following day there were reports of numerous deaths and arson attacks on Hindu and Muslim shrines across India despite strict security arrangements in most States. The worst affected cities were Bhopal, Bombay, Calcutta, Delhi, Jaipur, Kanpur and Surat. Southern States were also affected. **[5a]**

**6.60** As cited in Europa, the Indian Government strongly condemned the desecration and demolition of the holy building and pledged to re-build it. The leaders of the BJP, including L.K. Advani and the party's President, Dr. Murli Manohar Joshi, and the leaders of the VHP were arrested, the BJP Chief Minister of Uttar Pradesh resigned, the State legislature was dissolved and Uttar Pradesh was placed under President's Rule. On 8 December 1992 the security forces took full control of Ayodhya, including the disputed complex, meeting with little resistance. **[1a]**

**6.61** As cited in an unstarred question to the Rajya Sabha, a few days later the Government

banned five communal organisations, 3 Hindu and 2 Muslim, under the Unlawful Activities (Prevention) Act 1967 [27] on the grounds that they promoted disharmony among different religious communities, as stated by Europa World Year Book. [1a] As cited in an unstarred question to the Rajya Sabha the banned organisations were: VHP, RSS, Bajrang Dal, Islamic Sevak Sengh (ISS) and Jamaat-I-Islami Hind. [27] The ban on these groups has since been lifted, as cited in the statement in reply to the Lok Sabha unstarred question. [28]

**6.62** As reported by Reuters in 1997, it was not until September 1997 that a court indicted 49 people on criminal charges over the demolition of the mosque. Among them were Lal Krishna Advani, then BJP President; Murli Manohar Joshi, former BJP President: and Bal Thackeray, the leader of Shiv Sena. The charges included rioting, creating hatred between two religious communities, defiling a place of worship and causing grievous hurt by threatening and damaging the life and safety of others. The BJP leaders claimed they were innocent and that the party was not responsible for destroying the mosque.[8b] According to a BBC news article dated 19 September 2003, in September 2003 a court in India ruled that Deputy Prime Minister LK Advani would not be tried in relation to the 1992 destruction of the mosque at Ayodhya. However the court recommended that seven other leading Hindus should be charged with inciting Hindu mobs to destroy the Babri mosque.[32bl]

**6.63**As cited in correspondence from the Foreign and Commonwealth Office in 1992, various parts of India have suffered inter-communal violence between Hindus and Muslims. In the State of Gujarat, such violence pre-dates Indian independence and has worsened in recent years. The antagonism has also been exacerbated by non-religious considerations. [7a]

**6.64** Reuters reported in 1999 that at the end of December 1998, 5 people were killed and 50 wounded in Karnataka, and 3 were killed in religious clashes in Amod in Gujarat. [8c] CNN reported in June 2000, a bomb had exploded in a mosque in Guntur, Andhra Pradesh, wounding two people and prompting mob attacks that injured five others. [33c] According to a BBC report on 11 July 2000 10 people died in Malpura, Rajasthan after clashes between Hindu and Muslim groups. The riots were sparked by the fatal stabbing of a Hindu man who was facing charges relating to several killings that occurred in Malpura after the destruction of the Ayodhya mosque. [32q]

**Gujarat riots - 2002**

**Godhra train incident**

**6.65** Keesings Record of World Events, February 2002 reported that on 27 February 2002, a campaign of sectarian violence was triggered in Godhra, Gujarat by an attack on a train carrying Hindu activists. At least 58 passengers were burnt to death and 43 injured, the fatalities included 26 women and 14 children. The Hindus were returning from a visit to the disputed religious shrine at Ayodhya. News of the massacre sparked a number of retaliatory attacks by Hindus the same day, swelling the following day to a wave of violence in towns and cities across the State. In the State capital, Ahmedabad, crowds looted and burned Muslim-owned shops, hotels, restaurants, and petrol stations. In one incident, 38 Muslims were said to have burnt to death when a mob isolated and burnt down six bungalows. [5j] Keesings reported in 2002 that by 12 March 2002, mob attacks and arson had claimed an estimated 700 lives, most of them Muslim. [5k]

**6.66** Keesings news digest for April 2002 reported that during April 2002, the sporadic violence spread through Gujarat State to Kutch in the west, which had been previously

untouched. An estimated 100,000 Muslims were in relief camps having been driven from their homes. **[5l]**

**6.67** The US State Department Report 2002 (USSD) notes that ”In its final report on Gujarat, released on June 1 [2002], the NHRC held the Gujarat government responsible for the riots and accused it of "a complicity that was tacit if not explicit." The report concluded that "there is no doubt, in the opinion of this Commission, that there was a comprehensive failure on the part of the state government to control the persistent violation of rights of life, liberty, equality, and dignity of the people of the state." The report recommended a CBI inquiry into the communal riots, which the state government subsequently refused to allow.” **[2d] (p20)**

**6.68** BBC News reported on 17 January 2005 that a government inquiry has said that the fire on the Indian train which killed 59 Hindus and provoked deadly religious riots in 2002 was started by accident. “Evidence suggests the fire began inside the train, not that it was fire-bombed, an investigating judge decided. Most accounts from the time and since said a Muslim mob threw petrol bombs at the train, starting the blaze. The incident set off days of rioting in Gujarat state in which at least 1,000 people, most of them Muslims, died.” Justice UC Banerjee stated that, “The possibility of an inflammable liquid having been used is completely ruled out.” Since the train fire, more than 100 Muslims have been arrested by state police in connection with the incident and approximately 75 of them remain on remand awaiting trial. No-one has been convicted over the fire. Gujarat’s state authorities say that Muslims torched the train but doubts have persisted about how the fire began. The judge criticised the railway authorities for not conducting a thorough inquiry and said they had “pre-judged” the incident. The investigation was set up by the Congress party-led government following its election victory. Gujarat’s inspector-general of police has challenged the findings of the inquiry along with the BJP. **[32fz]** This information is also repeated in an article in The Hindu on 18 January 2005 in which it is reported that the Justice UC Banerjee Committee said the fire on 27 February 2002 was purely “accidental.” **[60k]**

### Bilqis Yakoob Rasool

**6.69** As noted in Amnesty International’s report: India: Justice, the victim – Gujarat state fails to protect women from violence, “In Randhikpur village, Limkheda taluka (sub-district), Dahod district, violence against the Muslim community began in the night of 28 February 2002 with the looting and burning of Muslim owned shops…” On 1 March, a mob burned houses, livestock and crops owned by Muslims and the local mosque. Muslim residents sought assistance from the police but received none. Nineteen-year old Bilqis Yakoob Rasool, then five months pregnant, fled the village on 28 February with her three-year old daughter and her family. On 3 March 2002 they were caught by right-wing Hindus from their own and neighbouring villages. All eight women were raped or gang raped and were hacked to death along with male relatives. Bilqis’s daughter was killed in front of her, Bilqis lost consciousness and was left for dead. On regaining consciousness she found herself naked and, injured, surrounded by the 14 dead bodies of her relatives, the two surviving children had run away. On 4 March she was taken to Limkheda police station where she lodged a complaint. She stated she was raped but the First Information Report (FIR) recorded that some 500 hundred unknown attackers had killed several people after raping two women but had spared Bilqis on account of her pregnancy. On reaching Godhra relief camp Bilqis filed a further FIR stating her rape and naming the rapist. A police inquest was conducted on 5 March and they recovered 7 bodies, the other family members were recorded as missing. A medical examination conducted on 7 March established that Bilqis had been physically and sexually assualted and injured. **[98](9.Appendix-9.1 Bilqis Yakoob Rasool)**

**6.70** The same report records that the police acted on the first FIR claiming that the Code of Criminal Procedure did not allow for the filing of numerous complaints. She clarified that she had reported the rape but the police had disbelieved the names of the attackers she gave, claiming them to be "respectable persons in the village" and that were she to go to hospital for an examination she would be adminstered a poisonous injection. The National Human Rights Commission (NHRC) took up her case and arranged legal aid for her and appointed a former Solicitor General and a former Supreme Court Bar Association secretary to assist her. Her petition to the Supreme Court requested the magistrate's order closing her case to be set aside, and a request for the Central Bureau of Investigation (CBI) to investigate the case afresh was admitted. On 8 September 2003 the Supreme Court issued notice to the Government of Gujarat and the Dahod police to respond to Bilqis' allegations whereupon she was harassed by the police. Despite a direction from the Supreme Court on 25 September 2003 to keep away from Bilqis, the harassment continued. In fear of their lives and safety, Bilqis and her husband left Gujarat with the help of social service organisations. A status report submitted by the CBI to the Supreme Court in March 2004 listed details of a police cover-up. On 19 April 2004, the CBI filed criminal charged against 20 people for the rape of Bilqis, the murder of her relatives and for criminal conspiracy in obstructing the course of justice. On 6 August 2004, the Supreme Court directed that the case be transferred to Bombay High Court for trial and the trial began on 2 September 2004. Bilqis and her family were reportedly moved to a secure location to avoid any unlawful pressure being brought on her. **[98](9.Appendix-9.1 Bilqis Yakoob Rasool)**

**Best Bakery Case**

**6.71** As noted in a BBC news report of 12 September 2003, India's Supreme Court launched a scathing attack on the authorities in the state of Gujarat over their handling of a riot in 2002 in which 12 Muslims were burned to death in a bakery by a Hindu mob (now known as the Best Bakery case). Twenty-one Hindus were acquitted of killing the Muslims in a controversial ruling in June 2002 after many of the prosecution witnesses withdrew their evidence. The incident came during rioting in Gujarat in which more than 1,000 people, most of them Muslims were killed.**[32bm]** A BBC news report for 19 September 2003 reported that Gujarat's State Government later agreed to seek a re-trial of the 21 Hindus acquitted following criticism from the Supreme Court.**[32bn]** The United States Commission on International Religious Freedom, in its May 2004 annual report, noted that, "Finally, in April 2004, in what was described as an indictment of Modi's Gujarat government, the Supreme Court overturned the acquittal of the 21 accused in the bakery store case and ordered a new trial of those indicted. India's highest court ordered a transfer of the trial to neighbouring Maharashtra state and directed both state governments to provide protection to witnesses and victims, appoint a new public prosecutor, and institute new police investigations into the case." **[72] (p.2)**

**6.72** As noted in a BBC article of 4 November 2004, "A court in the Indian city of Mumbai (Bombay) has issued a summons against a key witness in what is known as the Best Bakery trial. Zahira Sheikh is the main witness to an attack in Gujarat two years ago, when a Hindu mob set the bakery on fire, killing 12 Muslims. She has been summonsed after failing to appear in court at the scheduled time. " She claimed that human rights workers had used threats to force her to make false statements to the Supreme Court. She and her brother failed to attend a fast-track court in Mumbai to give evidence. The human rights organisation Citizens for Justice and Peace strongly deny the allegations. It is reported to be unclear why she backtracked on an earlier statement made to the Supreme Court. An earlier trial collapsed in Gujarat when Sheikh and other witnesses withdrew statements made to the police and saying they did not recognise the accused. Sheikh admitted lying in court during

those proceedings. She also stated that she had not testified against the accused due to threats received from local politicians and police. On the collapse of the case the 21 accused walked free. India's human rights bodies demanded the case be retried. **[32fh]**

**6.73** As reported by Keesings in November 2004,

> "The key witness in the so-called Best Bakery Case, Zahira Sheikh, failed to attend court in Bombay (Mumbai) on Nov 4, the day she was due to testify, having the day before retracted her earlier witness statement. The case was a retrial ordered by the Supreme Court of 21 Hindu defendants accused of murdering 14 people who died when a Muslim bakery burnt down in the city of Vadodara (formerly Baroda) on March 1, 2002, during anti-Muslim riots in western Gujarat state. The original trial collapsed in June 2003 and Sheikh and other witnesses subsequently claimed that they had been pressurised into retracting their evidence identifying those responsible for arson of the bakery. On the basis of its severe crtiticisms of the police, judiciary, and civil authorities in Gujarat, the Supreme Court had ordered that the retrial be held in neighbouring Maharashtra state. Now Sheikh claimed that Teesta Setalvad of the group Citizens for Justice and Peace (CJP) had "kidnapped" her and "compelled" her to make false statements of identification."

**6.74** The same report further states that her brothers did testify on 18-19 November 2004 but also retracted their witness statements, saying that it had been too smoky during the attack at the bakery for them to identify any of the defendants. However on 16 November 2004, Zahira's sister-in-law identified 11 of the defendants as being amongst the mob who attacked the bakery and also testified that her sister-in-law had been bribed to change her testimony. **[5v]**

**6.75** BBC news reported on 22 January 2004, federal police arrested 12 people on charges or murder and gang rape during the 2002 Gujarat riots. They face charges in connection with an attack on a Muslim group by a Hindu mob in March 2002.**[32cs]** BBC reported on 12 February 2004 that India's Central Bureau of Investigation submitted a report to the Supreme Court on an alleged gang rape and murder of Muslims during the 2002 Gujarat riots. It is alleged that 3 women were raped and fourteen Muslims killed in the incident. The CBI was asked to follow up the case as a result of India's National Human Rights Commission's support of a key eyewitness. Thirteen people have been arrested by the CBI including a policeman for allegedly tampering with evidence. The case is due before the Supreme Court with more than 10 Gujarat riot cases currently before the Supreme Court.**[32ct]**

**6.76** BBC news reported on 17 August 2004, that India's Supreme Court ordered Gujarati police to review and re-open 2,000 closed cases relating to Hindu – Muslim rioting of 2002. The BBC reported that, "In its order, the Supreme Court called for the establishment of a cell headed by a senior police official to look into the circumstances in which the cases were closed." Witnesses to the rioting have reported that they were threatened and forced to withdraw statements made to the police. Around 4,000 cases were registered, but two years on no one has been convicted, and around half of the cases have been closed. **[32em]**

**6.77** Human Rights Watch Annual Report 2005 stated, "The Gujarat government's failure to bring to justice those responsible for massive communitarian riots in the state, in which thousands of Muslims were killed and left homeless, continues to be a source of tension throughout the entire country. However, the Supreme Court and the National Human Rights Commission have taken several positive steps to secure justice for the victims of the riots. " **[26e]**

## Other Incidents

**6.78** The BBC reported on 27 September 2002 that on 24 September 2002, two gunmen attacked the Swaminarayan Temple in Gandhinagar, Gujarat. A total of 31 people were killed in the attack. The two gunmen who carried it out were also killed. Hundreds of Muslims in Gujarat again took temporary refuge in camps or in Muslim-majority areas, after officials announced that the temple attackers were Islamic radicals. **[32aj]**

**6.79** According to BBC news dated 21 November 2003, at least 26 people were wounded when unknown attackers threw an explosive device into a mosque in Prabhani, (250 miles east of Mumbai). **[32cu]**

**6.80** According to BBC news dated 27 August 2004, at least 19 people were reported wounded after attackers threw explosives into mosques as Friday prayers were held. There were two bomb blasts, one in the town of Jalna and the other in the nearby town of Parbhani. Both towns are about 500km from Mumbai (Bombay). **[32k]**

**6.81** As reported by BBC news on 18 February 2005 a Shia march was dispersed in Kashmir. "Police in Srinagar, the summer capital of Indian-administered Kashmir, have used batons and teargas to break up a Shia mourning procession. Several mourners were arrested as they marched through a part of the city where processions have been banned since 1988." The mourners were dispersed for security reasons. Two other routes have been provided for processions away from densley populated areas. **[32eu]**

**6.82** A BBC news report dated 21 February 2005 stated that, "A curfew has been imposed in a part of the northern Indian city of Lucknow after sectarian violence. Three people died and several were hurt when Shia and Sunni Muslims clashed at a Shia mourning procession in the Husainabad area on Sunday, police said." The curfew was imposed to prevent further escalation of tension in the area. "Lucknow has a history of clashes between Shias and Sunnis over the mourning processions." Officials said that rival groups threw stones, shot at each other and set vehicles and shops alight following a dispute over the route of a Shia Muharam festival procession. **[32et]**

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## Christians

**6.83** According to a report on religious intolerance by the Special Rapporteur in 1997, Christians constitute the second largest minority in India, after Muslims. The Indian authorities do not interfere with their internal religious activities, which may be conducted freely. Christians are well integrated into Indian society. **[6b](p10&12)**

**6.84** The Special Rapporteur's report of 1997 noted that the public schools provide secular education. Minorities can establish their own schools; these include schools providing a general education but in addition offering religious instruction to Christian pupils. Also religious establishments such as seminaries provide religious instruction. **[6b](p11)**

**6.85** According to a report by the Special Rapporteur in1997, there is constitutional freedom to produce and disseminate religious publications, including the Bible. **[6b](p12)**

**6.86** Freedom House / Centre for Religious Freedom in a report entitled 'Hinduism and Terror'

published, June 2004, noted that, " BJP lawmakers have also attempted to restrict minority religious groups' [mainly Christian groups] international contacts and to reduce their rights to build places of worship." **[43b] (p.3)**

**6.87** As noted in the US State Department Report 2004 (USSD), "There is no national law that bars a citizen or foreigner from professing or propagating his or her religious beliefs… During the year, state officials continued to refuse permits to foreign Christian missionaries to enter some northeastern states, on the grounds of political instability in the region." **[2c](section 2c)** As noted in the US Department of State report on International Relgious Freedom, 2004,"The Unlawful Activities Prevention Act empowers the Government to ban a religious organization if it has provoked intercommunity friction, has been involved in terrorism or sedition, or has violated the 1976 FCRA, which restricts funding from abroad. **[2b](section II)** A BBC news report dated 26 March 2003 reported that in March 2003, a bill to stop forced religious conversions was introduced in Gujarat. The Freedom of Religion Bill was modelled on similar legislation introduced in December 2002 in Tamil Nadu, and legislation already on the statute books of Madhya Pradesh and Orissa. Under the terms of the bill, a conversion must be assessed by officials and prior permission given by the District Magistrate to be lawful. **[32at]** A further BBC news report dated 6 June 2003 reported the laws forbid any religious conversions carried out under "force, fraud or allurement". **[32aw]**

**6.88** According to a report published in May 2004 by the United States Commission on International Religious Freedom, "Since 1998, there have been hundreds of attacks on Christian leaders, worshippers, and churches throughout India. These attacks have included killings, torture, rape and harassment of church staff, destruction of church property, and disruption of church events." **[72] (p.2)**

**6.89** It was reported in December 2002 by the BBC that police arrested 10 people in Tamil Nadu who were organising a mass baptism and cordoned off the site. BBC news also reported in December 2002 that thousands of low-caste Hindus (Dalits) were to be converted to Christianity and Buddhism and the event was being planned by Christian and Dalit groups to counteract a tough new anti-conversion law. The Christian leaders insist the conversions are voluntary but some Hindu leaders accuse the Christians of bribing the poor by offering inducements to convert. **[32ax]**

**6.90** Reuters reported in 1999, in Orissa an Australian missionary, Graham Staines, and his 2 sons were burnt alive in their jeep in late January 1999. **[8d]** The Indian news agency PTI reported in February 1999, the Indian Government ordered a judicial inquiry into the incident to be conducted by a sitting Supreme Court judge. **[10d]**

**6.91** According to a Reuter's report dated 8 June 1999, the Wadhwa Commission, which investigated the murder of Graham Staines and his sons, presented its report on 6 August 1999. The report concluded that Dara Singh, a Hindu fundamentalist, was responsible for leading and inciting a crowd into the murder of Staines and his sons and that there was no evidence that any authority or organisation was involved. **[8g]** A press release of 12 August 1999 by Christian Solidarity World-wide noted that the President of the All India Christian Council, Dr Joseph D'Souza, and the National Convenor of the United Christian Forum for Human Rights, John Dayal, expressed disappointment in the Commission's findings. They deplored the State authorities and central Government for their failure to provide the Commission with all the facts about the violence against the Christian community in India. They stated that the Commission had not been given a free hand to investigate and the Government had rejected demands that the terms of reference of the Commission be

expanded to examine the totality of anti-Christian violence which culminated in the murder of Graham Staines. **[17]**

**6.92** As reported in a BBC news report dated 1 February 2000 Dara Singh was finally arrested on 31 January 2000 in a village in Orissa. **[32g]**

**6.93** A BBC news report dated 2 October 2000 reported that in October 2000 a 13 year-old boy was sent to a juvenile detention centre for 14 years for his role in the murder of Staines. Sudarshan Hansda was tried separately because of his age. His was the first conviction in the case. **[32w]** BBC news reported on the same day that on 15 September 2003 Dara Singh and twelve others were convicted at a special court in the eastern state of Orissa and another acquitted due to lack of evidence.**[32by]** According to a BBC news report on 22 September 2003 the ringleader received the death sentence and twelve others received life imprisonment for burning Graham Staines and his two sons alive. The death sentence is used rarely in India and is reserved for the most serious crimes, defendants have the right to appeal all the way to the Supreme Court and can then ask for a presidential pardon. **[32bp]**

**6.94** A CNN news report dated 2 December 1999 stated that on 1 December 1999, Junior Home Minister I.D.Swami said an investigative report into the murder of Graham Staines had found that Staines did not try to convert villagers. **[33b]** As reported by BBC News on 26 January 2005, "Gladys Staines, the widow of a mudreed Australian missionary, was given the Padma Shri award for social work." She was one of 96 people honoured to mark the 56th Republic Day celebrations with top civilian honours. Mrs Staines stayed on in India after the death of her sons to oversee the completion of a hospital for leprosy in Orissa but then returned to Australia following its opening. The hospital was named after her husband. "In 2003, a court sentenced one man to death and 12 others to life imprisonment over the killings." **[32fy]**

**6.95** According to a report published in May 2004 by the United States Commission on International Religious Freedom, "In January 2003, armed members of a Hindu extremist group attacked an American missionary and seven others with swords: two activists from Rashtriya Swayamsevek Sangh (RSS), a part of the Sangh Parivar, were later arrested in the state where the attack took place." **[72](p.2)**

**6.96** Freedom House / Centre for Religious Freedom in a report entitled 'Hinduism and Terror' published, June 2004, noted that, "India's Home Ministry (internal security) and its National Commission for Minorities officially list over a hundred religiously motivated attacks against Christians per year, but the real number is certainly higher, as Indian journalists estimate that only some ten percent of incidents are ever reported." **[43b](p.4)** Freedom House / Centre for Religious Freedom considered that there had been an increase in the number of attacks on Christians in the past ten years. **[43b](p.1)** The United Nations noted in their Human Development Report, 2004, that, "In South Asia organised violent attacks on Christian Churches and missions have increased. India, despite its long secular tradition, has experienced considerable communal violence, with rising intensity: 36.2% of casualties due to communal violence since 1954 occurred in 1990 - 2002" **[71](p.74)**

**6.97** A BBC news item dated 26 September 2004 reported, "Police in the southern Indian state of Kerala have detained 15 people following two attacks on nuns and priests of the Missionaries of Charity." It was reported that three priests and six nuns were attacked in separate incidences on the outskirts of Kozhikode. A representative of Indian Christians blamed the attacks on members of right-wing political parties, the Rashtriya Swayasevak Sangh (RSS) and Bharatiya Janata Party (BJP). The attackers accused the nuns of

converting Dalit Hindus. [32fn]

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## Sikhs and the Punjab

### Sikh religion and historical background

**6.98** As stated in the US Department of State International Religious Freedom Report 2004 (USIRF), according to the latest government estimates Sikhs constitute 2.0 percent of the population. [2b](p2)

**6.99** As noted in a background paper published in 1990 by the Immigration and Refugee Board Documentation Centre, Ottawa, Canada, the Sikh religion was founded by Guru Nanak (1469-1539), a high caste Hindu who denounced social and State oppression. He took monotheism from Islam, but rejected Ramadan, polygamy and pilgrimages to Mecca. He also rejected Hindu polytheism, the caste system and sati (sacrificing a widow on her husband's funeral pyre). Nine gurus succeeded Nanak. The Sikh commandments include certain prohibitions, notably against alcohol and tobacco. For men the Sikh religion requires observance of the "5 Ks": Kes (uncut hair and beard); Kacch (breeches); Kirpan (a double-edged sword); Kangha (a steel comb); and Kara (an iron bangle). [4a](p7-8)

**6.100** As noted in a background paper published in 1990 by the Immigration and Refugee Board Documentation Centre, Ottawa, Canada, new religious ideologies early in the 20th century caused tensions in the Sikh religion. “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](p9)

**6.101** According to an Asia Watch report (undated) following the partition of India in 1947, the Sikhs were concentrated in India in east Punjab. Sikh leaders demanded a Punjabi language majority State that would have included most Sikhs. Fearing that a Punjabi State might lead to a separatist Sikh movement, the Government opposed the demand. [22](p12-13) As noted in a background paper published in 1990 by the Immigration and Refugee Board Documentation Centre, Ottawa, Canada, “in 1966 a compromise was reached, when two new States of Punjab and Haryana were created. Punjabi became the official language of Punjab, and Chandigarh became the shared capital of the two States. However the agreement did not resolve the Sikh question.” [4a](p10)

**6.102** The IRB Background paper 1990 reported that tensions between Sikhs and New Delhi heightened during the 1980s, as the Government did not respond to Sikh grievances. Over the years that followed, Punjab was faced with escalating confrontations and increased terrorist incidents. Akali Dal only achieved limited concessions from the Government and Sikh separatists prepared for battle. Renewed confrontations in October 1983 resulted in Punjab being placed under central Government authority. [4a](p12-13)

**6.103** According to a 2003 Amnesty International report: India Break the cycle of impunity and torture in Punjab,

> “The militancy period began in the early 1980’s when a movement within the Sikh community, in Punjab, turned to violence to achieve an independent state of the Sikhs, which they would call Khalistan. Some sections of the ruling Congress party, whose support base included urban Hindu traders, fomented this radicalization in order to

weaken their main parliamentary opposition in the state, the Akali Dal party, which represented the Sikh peasantry with a more moderate agenda. In 1982 the Akali Dal launched a civil disobedience campaign against a decision to divert a river vital to Sikh farmers in the state. A number of Sikh organizations were banned and several leaders of militant groups took shelter in the Golden Temple in Amritsar."[51](p4)

**6.104** As noted in the Amnesty report on the Punjab 2003, "The radicalisation of the movement for Khalistan was met with arrests under a series of national security laws that were introduced during the 1980's to meet the terrorist threat in Punjab but were enforced also in other parts of India and maintained for several years after the end of the militancy period in Punjab."[51](p4)

**6.105** As reported by Asia Watch report entitled 'Punjab in Crisis' (published May 1994) the violence continued and hundreds of Sikhs were detained in the first part of 1984. Followers of Jarnail Singh Bhindranwale established a terrorist stronghold inside the Golden Temple in Amritsar. The Prime Minister, Indira Gandhi, then initiated Operation Blue Star which took place on 4-6 June 1984. The Golden Temple was shelled and besieged by the army to dislodge the terrorists. The fighting continued for five days. Bhindranwale was killed and there was serious damage to sacred buildings.[22](p18)

**6.106** The Asia Watch report stated that official figures put the casualties at 493 "civilians/ terrorists" killed and 86 wounded and 83 troops killed and 249 wounded. Later in the year official sources put the total number killed at about 1,000. Unofficial sources estimated that the civilian casualties alone were much higher. There were apparently more than 3,000 people in the temple when Operation Blue Star began, among them 950 pilgrims, 380 priests and other temple employees and their families, 1,700 Akali Dal supporters, 500 followers of Bhindranwale and 150 members of other armed groups. [22](p18)

**6.107** According to a Canadian IRB issue paper dated 1989, the intervention had disastrous consequences for the Sikh community and the whole country. Sikh-Hindu communalism was aggravated, Sikh extremism was reinforced, and political assassinations increased. [4a] (p15)

**6.108** As cited in Asia Watch report on 31 October 1984 Indira Gandhi was assassinated in New Delhi by two Sikh bodyguards. In the days that followed, anti-Sikh rioting paralysed New Delhi, ultimately claiming at least 2,000 lives; unofficial estimates were higher. Sikhs were also attacked in other cities in northern India. [22](p19)

**6.109** Asia Watch in the Punjab in Crisis report, noted that a peace agreement was concluded between the Indian Government and moderate Akali Dal Sikhs led by Harchand Singh Longowal in July 1985, which granted many of the Sikh community's longstanding demands. However the extremists regarded Longowal as a traitor to the Sikh cause and he was assassinated in August 1985. Moreover the promised reforms did not take place. [22](p22)

**6.110** As recorded in the The Europa World Year Book, 1998, in 1987 the State Government was dismissed and Punjab was placed under President's Rule. Despite the resumption of discussions between the Government and the moderate Sikh leaders, the violence continued. [1a]

**6.111** It was reported in The Europa World Year Book, 1998, that President's Rule was finally brought to an end following elections in February 1992, which were won by Congress (I). However the elections were boycotted by the leading factions of Akali Dal and attracted an extremely low turnout (only about 22% of the electorate). Beant Singh of the Congress (I) was

sworn in as Chief Minister, but his Government lacked any real credibility. Despite the continuing violence between the separatists and the security forces, the large turnout in the municipal elections in September 1992, the first in 13 years, afforded some hope that normality was returning to Punjab. The local council elections in January 1993, the first for 10 years, also attracted a large turnout. **[1a]**

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**Militant violence in Punjab**

**6.112** According to an Asia Watch report, Punjab in crisis, virtually all of the militant groups in Punjab pursued their campaign for a separate State of Khalistan through acts of violence directed not only at members of the police and security forces but also specifically at Hindu and Sikh civilians. After they first emerged in the early 1980s the militants assassinated civil servants, politicians, journalists, businessmen, other prominent individuals and ordinary Hindu and Sikh civilians. There were also indiscriminate attacks apparently designed to cause extensive civilian casualties, in some cases firing automatic weapons into residential and commercial areas, derailing trains, and exploding bombs in markets, restaurants and other civilian areas. Some of these attacks occurred outside Punjab in neighbouring States and in New Delhi. **[22](p170)**

**6.113** The Asia Watch report states that most of the militant groups in Punjab traced their origins to Sant Jarnail Singh Bhindranwale. After the storming of the Golden Temple the number of militant groups operating in Punjab grew. The militants were organised into at least seven major groups and all theoretically operated under the authority of one of the Panthic Committees which functioned as decision making bodies and issued instructions. The main militant organisations were: the Khalistan Commando Force (Paramjit Singh Panjwar faction); Khalistan Commando Force (Zaffarwal); Khalistan Commando Force (Rajasthani group); Babbar Khalsa; Khalistan Liberation Force (Budhisingwala); Bhindranwale Tiger Force of Khalistan (Sangha); Bhindranwale Tiger Force (Manochahal); All India Sikh Student Federation (Manjit); All India Sikh Student Federation (Mehta Chawla); and the Sikh Student Federation (Bittu). **[22](p170,172-173)**

**6.114** Asia Watch reported in their Punjab in Crisis report that motives for the attacks varied. “Moderate Sikh political leaders were assassinated for opposing the militants. Other leaders were killed as a result of militant group rivalries. A number of militant groups tried to impose a Sikh fundamentalist ideology, issuing directives that stipulated appropriate conduct for Sikhs and prohibiting the sale of tobacco and alcohol. Failure to obey these orders meant punishment, including death. In late 1990 and early 1991 militant groups issued "codes of conduct" for journalists which also carried a death penalty for those who dared to disobey. Sikhs belonging to minority sects, which advocated practices perceived as heretical by orthodox Sikhs, were also murdered.” **[22](p175)** Attacks on civilians were claimed as acts of retaliation for Government violence. Other killings appeared to represent executions of suspected collaborators or informers. Militants also kidnapped civilians for extortion, frequently murdering their victims when their demands were not met. Threats were made to the minority Hindu population in an effort to drive them out of Punjab. As a result thousands of Hindus fled the State. **[22](p175)**

**6.115** According to a Canadian IRB report dated 8 July 1998, the Sikh militant movement is no longer active in Punjab. The hard core militants have either been physically wiped out or are no longer in India. There is no obvious support for the militants. **[4h]** According to an expert report written by Cynthia Keppley Mahmood in 1998, two militant organisations retain a capacity for activism, namely the Babbar Khalsa under the leadership of Wadawa Singh and

the Khalistan Commando Force led by Paramjit Singh Panjwar. They are believed to retain bases in Pakistan and to have an international circle of support. [19a]

**6.116** The Documentation, Information and Research Branch (DIRB) of the Canadian Immigration and Refugee Board interviewed four specialists on the situation in Punjab in January 1997. "The panel broadly agreed that Sikh militancy in Punjab had been virtually eliminated". Militant organisations had been shut down, reduced in size, key leaders arrested, gone underground or had abandoned the movement, and those supporters who remained have struggled to maintain funding and morale". Other indications were apparent of a weakened Sikh militancy. Nevertheless the Sikh search for some sort of political supremacy in the region remained a powerful ideology, and although the militants' ability to assert themselves had been suspended, future Sikh militant action could not be discounted. [4f](p3-4)

**6.117** As cited in a statement dated May 1998 by Dr. Cynthia Keppley Mahmood of the University of Maine reports that, "Overt support for the militants has slipped dramatically, but the grievances that prompted the Khalistan movement are still there". [19b](p2)

**6.118** According to Satp.org in its Punjab Assessment – 2002, it noted that, "In the year 2002, till May 30, five persons were killed and 39 others injured in terrorism related violence in the Punjab. During this period, a total of four terrorists were arrested and another surrendered." In the previous year (2001), only one terrorist related fatality was reported. [85] (p.1)

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**Human rights concerns in Punjab**

**6.119** Various human rights organisations have strongly criticised the Punjab police for their misuse of power during the 1980s and early 1990s. Amnesty International reported in a 1991 report on Human Rights Violations in Punjab: Use and Abuse of the law, that those who were arrested were…" detained for months or years without trial under provisions of special legislation suspending normal legal safeguards…", and reports of torture during interrogation were said to be common. "The arrest and detention of some detainees remained unacknowledged for weeks or months. Amnesty had received reports that many people simply "disappeared", with the security forces refusing to admit that they had ever been arrested. It was feared that many of them had been killed in custody". [3a](p2)

**6.120** According to Amnesty International's 2003 report India, Break the cycle of impunity in Punjab, "Torture and custodial violence continue to be regularly reported in Punjab, despite the end of the militancy period." Amnesty state that torture continues in police custody and says that the majority of the armed opposition groups are inactive in Punjab today and AI has received no reports of acts of torture perpetrated by their members after the end of the militancy period. "Similarly, the issue of impunity for abuses committed by these groups during the militancy period is marginal, as most of their members in the state were arrested or killed by security forces in counter insurgency operations in the early 1990's."[51](p2)

**6.121** Amnesty International's January 2003 report on the Punjab stated that,

> "The 1980 National Security Act (NSA) amended in 1984 because of "the extremist and terrorist elements in the disturbed areas of Punjab and Chandigarh", provided powers to preventively detain people suspected of activities "prejudicial to the defence of India, the relations of India with foreign powers or the security of India" for up to two years in Punjab and up to one year in the rest of India. The Terrorist Affected Areas (special Courts) Act followed the NSA in 1984. The Terrorist and Terrorist and

Disruptive Activities (Prevention) Act, in force from 1985 to 1995, subsequently provided the police in Punjab with sweeping powers of arrest and detention. These laws left the heaviest legacies of the militancy period on policing methods in the state and the rest of the country. They explicitly freed the police from accountability to the criminal justice system for actions undertaken in "good faith", allowing officers to believe themselves beyond the reach of law."**[51](p4-5)**

**6.122** Amnesty International reported in 2003 in the Punjab report that ,

"Human rights violations by the police during the decade of militancy were widespread. Indiscriminate and arbitrary arrests continued in this period, setting a pattern that continued until the mid-1990s. Civilians were often arrested solely for being related to or living in the same village as members of armed opposition groups." Unofficial blacklists were circulated to all police stations and persons on this list were liable to be rearrested during militant activity in the area. Arrests often occurred when a quick solution for a case was needed or simply to fulfil an arrest quota. Arrest procedures were frequently not followed and the arrest was often not recorded in the daily log of the police station, thus remaining completely unofficial and leaving detainees vulnerable to further abuses. Detainees were frequently moved from one police station to another, or to unofficial interrogation centers, making it difficult for their families and lawyers to trace them. Torture was widespread and used both as a substitute for investigation and as punishment. The police routinely disregarded court orders to bring detainees before a court, and judges were threatened to deter them from taking action against the police. When detainees died in police custody, the police organized the post-mortems and the cremations before any independent investigation could be carried out into the cause of death. Undercover agents were also unofficially recruited: these were often former members of armed opposition groups offered not to be killed or tortured in exchange for their collaboration with the police. They were reportedly used to infiltrate militant groups, to kill militants or to discredit them with violent actions in their names. Disappearances and the killing of members of armed opposition groups and their supporters by the police in real or staged "encounters" were frequent. They were tolerated by the police authorities and government as part of a policy to eliminate armed opposition groups."**[51](p5)**

**6.123** Amnesty International stated in their 1991 Punjab report, "Most detainees in Punjab were arrested under the Terrorist and Disruptive Activities (Prevention) Act (TADA) [which lapsed in 1995], which allowed detention for up to one year without charge for investigation into broadly defined offences. Prisoners held under the Act could be tried in camera [i.e. in private] and the burden of proof was shifted onto the accused to prove his or her innocence". **[3a](introduction-p2)**

**6.124** As cited in a statement dated May 1998 by Dr. Cynthia Keppley Mahmood of the University of Maine agrees that "Conditions in Punjab have greatly improved since the worst days of the early 1990s," and that "it is no longer accurate to say that any Sikh is at risk of persecution simply because of his or her religion". **[19b](p2)**

**6.125** Amnesty cited in an August 1999 report, India: a Vital Opportunity to End Impunity in Punjab, " in the aftermath of the violence, many relatives of victims came forward to pursue redress in the courts through the filing of petitions in cases of "disappearance" and other human rights violations… However in attempting to pursue redress through the courts, many families have faced direct harassment from the police and long delays in the judicial process." **[3g](p2)**

**6.126** Amnesty International reported in the 2003 report on the Punjab "In January 1995 the human rights wing of the Shiromani Akali Dal party alleged that it had evidence showing that, during the period of militancy, Punjab Police had carried out secret cremations of hundreds of "unclaimed" bodies in the crematoria of Amritsar district." Some of the bodies were allegedly those of people who had disappeared and been extrajudicially executed in police custody."**[51](p9)**

**6.127** According to Amnesty International's (AI) 2003 report, "In April 1995 the Committee for Information and Initiative on Punjab (CIIP), a non-governmental human rights organization based in New Delhi, successfully petitioned the Supreme Court for an investigation of these allegations." The Supreme Court instructed the CBI to carry out investigations into the allegations and on analysis of the evidence available in three crematoria in Amritsar, found that police had illegally cremated 2,097 bodies. In December 1996 the Supreme Court ordered the National Human Rights Commission (NHRC) to examine the CBI's findings. In January 1999 the NHRC stated that it would limit its investigations to the cremations of 2,097 bodies investigated by the CBI in Amritsar district and invited claims for monetary compensation from victims' families. In fact, at the time that AI's report was published, only 18 cases had been forwarded for consideration. In those 18 cases, the NHRC was content with the State of Punjab's position; in that, it would not accept any liability, but compensation would be considered in the 18 cases without examination of the correctness of the claims or going into the merits of the matter. The NHRC further considered that, "For this conclusion, it does not matter whether the custody was lawful or unlawful, or the exercise of power of control over the person was justified or not; and it is not necessary even to identify the individual officer or officers responsible/concerned." AI reported that in January 2001, all 18 claimants to whom compensation had been offered complained that the NHRC had failed in its original intent of conducting a thorough investigation and demanded that justice be done or that the proceedings should cease. In February 2001 the NHRC ordered that investigations should be reopened in all 2,097 cases. **[51] (p.6-7)**

**6.128** The US Citizenship and Immigration Services in a response to a query, (last updated on 22 September 2003) noted that,

> "Several observers suggest, though, that while Punjab police may be serious about pursuing Sikhs anywhere in India whom they view as hard-core militants, in practice only a handful of militants are likely to be targeted for such long-arm law enforcement. While noting that Sikhs who are on police lists for past involvement with armed groups could be at risk even if not presently active, the Indian human rights attorney said in his May 2003 e-mail to the RIC that, "[t]he number of persons who figure in such lists is really very small and I do not think the police and intelligence agencies have in the last years been adding many names" (Indian human rights lawyer 4 May 2003). A South Asia expert at the U.S. State Department's Bureau of Intelligence and Research said that it is unlikely that Punjab police are currently pursuing many Sikhs for alleged militant activities given that the insurgency there was crushed in the early 1990s (U.S. DOS INR 25 Apr 2003)." **[86](p.2)**

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### Methods of ill treatment

**6.129** The Medical Foundation for the Care of Victims of Torture, 1999, examined 95 male Sikhs between 1991 and 1999, of whom all but eight were educated to at least secondary school level, and roughly half came from farming families and worked on the farm after

finishing their education or had farming related jobs. The majority had belonged to an organisation such as the All India Sikh Student Federation. Most had been arrested on many occasions, usually for a short time ranging from 1 to 10 days, but the total time in custody ranged from 2 days to 8 months. Most were held by the police in the village police station, and a large majority were never charged with any offence. Some of the Sikhs in the study stated that in addition to their detentions, they had been arrested, questioned and threatened many times, but not detained overnight. **[30](p11-14)**

**6.130** All of the Sikhs examined by the Medical Foundation as part of the study as cited in the 1999 Care of Victims of Torture report, reported that they had been severely ill-treated, usually worse in the first few days of detention. The methods of ill treatment included being beaten unconscious; being beaten with truncheons, fists, boots, lathis (bamboo canes), leather belts with metal buckles, pattas (leather straps with wooden handles), rifle butts, metal rods or a metal chain, and branches torn from a thorn bush. They were beaten on various parts of the body, but principally on the back, the legs or the buttocks. Beatings over the head and on the soles of the feet were also prevalent. Many had been suspended by the wrists, ankles or hair, and beaten; some had had their wrists tied behind their back and then were suspended, causing injuries to the shoulder joints. Eleven men had their arms twisted behind the back and 22 had their hands trodden on or hammered, ten were thrown against a wall or on the floor repeatedly. Electric shocks were given; the infliction of burns and the removal of fingernails. Another torture method consisted of forcing the hips strongly apart, often to 180 degrees, repeatedly or continuously. A thick wooden roller or a ghotna (a pestle 4 feet long and 4 inches in diameter used for grinding corn) was often rolled down the calves or thighs with one or more of the heaviest policemen standing on it. **[30](p14-15)**

**6.131** As noted in the 1999 Medical Foundation Report, much of this abuse took place during interrogation sessions, but beatings also occurred randomly at other times, including late at night when the policemen were drunk. As well as physical abuse, many suffered psychological abuse such as threats of further punishment, death or harm to their families, mock executions and extreme humiliation. **[30](p15-16)**

**6.132** The Medical Foundation report of 1999 found that most of the Sikhs in their study were released without charge after representations by the village elders, a politician or lawyer, but on many occasions only after the payment of a large bribe. **[30](p17)**

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**Prosecution of security force personnel**

**6.133** The US State Department Report 2004 (USSD) noted that,

> "In Punjab the pattern of disappearances prevalent in the early 1990's ended; however, during the year, the Government failed to hold accountable hundreds of police and security officials for serious human rights abuses committed during the counterinsurgency of 1984-94, despite the presence of a special investigatory commission. No action was taken and no new information was available on the 634-page report filed in June 2003 by the Punjab-based human rights organization, Committee for Coordination of Disappearances in Punjab (CCDP), which documnted 672 cases of disappearance stemming mostly from the peroid of the countersinsurgency. The Government took no action in any of these cases, and none was expected." **[2c] (section 1b)**

**6.134** As noted in the same report, "During the year, no action was taken by the Central Bureau of Investigation (CBI), which claimed to be actively pursuing actively charges against dozens of police officials implicated in the 1980's, for mass cremations in which it is alleged that police in Amritsar, Majitha, and Tarn Taran district secretly disposed of approximately 2,000 bodies of suspected militants." **[2c] (section 1b)**

**6.135** The Times of India in September 1997 reporting Union Home Ministry figures stated that 123 police officials were facing trial for taking alleged illegal steps against terrorists, while 2,555 petitions had been filed against Punjab police officers by individuals and human rights organisations. The same article referred to a protest by Punjab police which said that police officers who had played a key role in containing terrorism in Punjab were now being harassed and hounded for alleged excesses and human rights violations. The protest gained momentum following the suicide of the former Tarn Taran SSP Ajit Singh, who the police claim was driven to this step because of a "witch hunt". **[13f]**

**6.136** India Today June 1997 reported that police officers in Punjab felt abandoned by the Government and frustration was mounting in the force as more than 2,000 officers were being brought to account for the extra-judicial methods that were employed in fighting terrorism. In 1995, 585 petitions were filed in different courts. The number had doubled by June 1997, by which time the Punjab police were facing 85 CBI and 91 judicial probes. 30 policemen were in jail, around 100 were out on bail and 140 were facing prosecution. **[11a]**

**6.137** According to the Documentation, Information and Research Branch (DIRB) after interviewing four specialists in 1997: The panel agreed that, "The central Government had been attempting to rein in the Punjab police, who during the insurgency were responsible for large numbers of extrajudicial executions and disappearances". Investigations into allegations of human rights abuses," have sent a strong signal that the climate of impunity for the Punjab police is ending…even though that climate has been deeply ingrained over many years and will take a long time to change"… Reference is also made to the extensive human rights training for the police in India, which is seen as an example of the general trend in India towards recognising and addressing systemic problems with the police. One of the panel members "acknowledged that occasional violations might still take place, he predicted that the likelihood of future disappearances at the hands of the Punjab police is very low". **[4f](p6-7)**

**6.138** In a letter to the UN Special Rapporteur on Extrajudicial, Summary or Arbitrary Executions (dated 27 September 2003) Ram Narayan Kumar, Convener of the Committee for Co-ordination on Disappearances, accused the Indian government of perpetuating human rights violations by failing to take action against those responsible for the violations. Mr Kumar highlighted a number of reasons why impunity in the Punjab prevail, one of the main reasons being that security officials were often promoted instead of being brought to justice. Mr Kumar cited the case of Sanjiv Gupta who is believed to be responsible for the disappearance **[83] (p.4-6)** and murder of Sukhdev Singh in 1993. **[12d] (p.9)** Despite the Central Bureau of Investigation indicting and recommending criminal sanctions against Sanjiv Gupta, Gupta was recently promoted to the rank of Inspector General, the second highest position in the Punjab police. **[83] (p.4-6)**

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**Punjab State Human Rights Commission**

**6.139** According to the Punjab Tribune dated August 1998, the Punjab State Human Rights Commission started work in July 1997 under the chairmanship of Justice V.K. Khanna, a former Chief Justice of the north east States. The Commission had intervened in a number of

cases of police excesses, torture and custodial deaths, and the Punjab Government has been forced to pay compensation. The Commission had started to inspect jails, with prior notice being given to the State Government, but the Commission wanted the power to make unannounced visits. **[12a]**

**6.140** According to an article published on 'Human Rights in India' (last updated on 23 January 2004), the Punjab State Human Rights Commission (PSHRC) receives between 200 and 300 complaints per day. It is reported that the powers of the PSHRC are severely limited, in that, it can only examine cases that fall within the one-year statute of limitations. **[73]**

**6.141** Keesing's News digest for November 2004 noted that, police in the northern state of Punjab had agreed to pay compensation of Rs 250,000 to 109 families of people who had died in police custody following operations against Sikh separatists in the 1980's and early 1990's. By order of the National Human Rights Commission (NHRC), following an investigation into cremations carried out by the police and undertaken by the CBI at the behest of the Supreme Court. **[5v]**

**6.142** As noted by BBC news on 11 November 2004, "Police in the Indian state of Punjab have agreed to pay compensation to the families of people who died in police custody in the 1980's and early 1990's. The victims were arrested in police operations against Sikh separatists in the Punjab. A Police spokesman in the state capital, Chandigarh, said compensation of 250,000 rupees ($5,500) would be disbursed to 109 families. The move was ordered by India's National Human Rights Commission. The NHRC's order was issued in response to what has come to be referred as the Cremations Cases. This refers to dozens of people cremated by Punjab police in the city of Amritsar who the police had declared to be "unidentified bodies." **[32](fa)**

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### The Committee for Co-ordination on Disappearances in Punjab (CCDP)

**6.143** As cited in a report on Current Human Rights Efforts dated 1 October 1998, this Committee came into existence in November 1997, when a variety of human rights organisations and political groups came together. Its purpose was to develop a voluntary mechanism to collect and collate information on disappearances in Punjab; to evolve a workable system of State accountability; and to lobby for India to change its domestic laws to conform to UN instruments on torture, enforced disappearances and accountability. The Committee was set up following the demand of Indian human rights groups that the independent and thorough investigation into complaints of disappearances in Punjab be allowed to proceed unhampered. **[20](p13)**

**6.144** When asked for their views on the occurrence of disappearances, by the Danish Immigration Service on their fact-finding mission of March - April 2000, two members of the Committee observed that extrajudicial executions no longer took place in Punjab. However, a third member of the committee interviewed by the Danish mission did not believe that disappearances and extrajudicial executions had stopped. Therefore, "there was general agreement between the sources [we] asked that disappearances and extrajudicial executions almost never occur, or only in very small numbers. This applies to both ordinary criminals and political activists." This conclusion was found not to be because of a change in the attitude of the police but because there was no terrorism left in Punjab. **[37](p42)**

**6.145** As noted in USSD 2004,

"At year's end, the CCDP, a Punjab-based human rights organization, had not heard testimony involving its report documenting 672 disappearance cases currently pending before the NHRC. In 1998, the Supreme Court had directed the NHRC to investigate 2,097 cases of illegal cremation in Punjab's Amritsar district . However, of the 2,097 cases, the NHRC has identified and named 693 of the missing youth. In November, the NHRC held the Punjab state government liable for the deaths of 109 persons and asked the Government to pay $5,555 (Rs. 242,725) in compensation to each of the victims' next of kin. This is the first time that compensation has been awarded for the alleged cremation in Amritsar of 2,097 unclaimed or unidentified bodies. The Punjab police have admitted that 109 persons were in its custody before they died and were cremated." **[2c](section 3)**

**6.146** The same report continues, "The Nanavati Commission, which was tasked with conducting a re-inquiry into the 1984 massacre of Sikhs in Delhi, did not complete its report and was issued another extension during the year." **[2c](section 3)**

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## The People's Commission on Human Rights

**6.147** According to Amnesty International's report India – Break the cycle of impunity and torture in Punjab January 2003, in December 1997 the CCDP called on the new Punjab government to set up a Truth Commission, following the refusal by the Government of Punjab to set one up. Its purpose was to investigate all complaints of human rights violations, according to its election manifesto. In April 1998 the CCDP announced its intention to set up a three person People's Commission on Human Rights Violations in Punjab, headed by a former Chief Justice of the Calcutta High Court. "The first hearing of the People's Commission was therefore held from 8-10 August 1998". However further hearings were cancelled because in 1999 the Punjab and Haryana High Court set limits on the work of the People's Commission claiming that it set up a parallel judicial system. Subsequently in May 2000 the People's Commission was wound up following the Supreme Court upholding the High court judgement that the CCDP was establishing a parallel judicial system. **[51](p.13)**

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## The current situation in Punjab

**6.148** As noted by Amnesty International in their report India – Break the cycle of impunity and torture in Punjab January 2003, the majority of the armed opposition groups are currently inactive in Punjab and AI have received no reports of acts of torture perpetrated by their members after the end of the militancy period which was mid 1990s. "Similarly, the issue of impunity for abuses committed by these groups during the militancy period is marginal, as most of their members in the state were arrested or killed by security forces in counter insurgency operations in the early 1990s." However Amnesty International raised concerns about the continuation of abuses committed by the police in the Punjab. **[51](p1)** This opinion was confirmed by the USSD 2004, who noted that, "In Punjab the pattern of disappearances prevalent in the early 1990s ended, however, during the year, the Government failed to hold accountable hundreds of police and security officials for serious human rights abuses committed during the counterinsurgency of 1984-94, despite the presence of a special investigatory commission." **[2c](section 1b)**

**6.149** As cited in the joint Danish Immigration Service/ Danish Refugee Council fact finding report of April 2000, "According to Ravi Nair, Director of the South Asia Human Rights Documentation Centre, a case involving a human rights violation will usually be reported at the local police station. The police will undertake an investigation and on that basis will decide whether a case should be brought. If no case is brought, the individual may bring a civil suit to the lower (district) court. Nair added that the case often stops there, as the court does not always proceed with the case". However, he remarked that it was easier to have a case heard in the courts than previously. **[37](p30)**

**6.150** The Danish Immigration Service consulted various individuals, authorities and organisations regarding the security situation during their fact-finding mission to Punjab in March and April 2000. According to the UNHCR in Delhi, the security situation in Punjab is now under control, but as the UNHCR does not have a presence in Punjab they could not comment on the situation in detail. Three foreign diplomatic missions in India agreed that the situation in Punjab had considerably improved and that the conflict between various groups had calmed down. Acts of violence in Punjab were becoming less common, and were now at a low level. Two of the missions reported that incidents do occasionally occur, such as explosions caused by bombs on buses and trains, but that such incidents occur in the rest of India, and not exclusively to Punjab. Officials of the Committee for Co-ordination on Disappearances in Punjab (CCDP) considered that Punjab was now peaceful and that there were no problems with militant groups and no political problems either. A foreign Embassy consulted, reported that several people who had previously been militants and who had served their sentences for terrorist activities now lived a normal life in Punjab. **[37](p19)**

**6.151** As cited in their fact finding report of 2000, the Danish Immigration Service also spoke to Chief Minister Prakash Singh Badal, who underlined that there were now no security problems in Punjab. Badal underlined that co-operation between the State Government and central Government was good. Former Advocate-General G.S. Grewal pointed out that cases concerning human rights abuse were different from before in that now the abuse was individual and had specific reasons. Sikhs were not subjected to torture just because they were Sikhs or because of the general political situation. One diplomatic mission also commented that the situation was not perfect but that Sikhs in general were not being persecuted. The problems were of a different nature than before, and were often due to problems in local society, e.g. disputes over land, etc. **[37](p13,39 & 34)**

**6.152** According to Satp.org in its Punjab Assessment – 2002, it noted that "The Indian State of Punjab remains largely free from terrorist violence for the ninth consecutive year after the terrorist secessionist movement for Khalistan was comprehensively defeated in 1993. However, there remain a handful of terrorist groups, mainly sponsored by Pakistan and by some non-resident Indian Sikh groups based in the West, who continue to propagate the ideology of Khalistan." **[85] (p.1)**

**6.153** According to Amnesty International (AI) in their report India – Break the cycle of impunity and torture in Punjab January 2003, "Since 1995 there have been no reports of killings of human rights defenders in Punjab, although AI belives that human rights defenders are still subject to constant surveillance and have been subjected to harassment, threats and violent attacks by the police in attempts to intimidate and silence them." **[51](p17)**

**6.154** The same 2003 AI report states that there has been an overall increase in crimes against women recorded in Punjab in the post militancy period, particularly with regard to matrimonial disputes. In response the police created "women cells" at district level to

specifically deal with offences against women. However it is reported that these units lack staffing and other resources. [51](p24)

**6.155** AI state in their 2003 report that the Supreme Court issued 11 directives known as the "DK Basu guidelines" to be followed in all cases of arrest or detention as preventive measures against torture in custody in addition to the safeguards in the Code of Criminal Procedure. The Director General of Police in Punjab has reportedly instructed the police force that these guidelines should be observed – in accordance with the Supreme Court's request to all DGPs. However they have not been incorporated into the Punjab Police Rules 1935 under which the police act or in any other police manual. Amnesty believes that the 'guidelines' are routinely ignored in most police stations. [51](p18)

**6.156** Amnesty notes in the Punjab 2003 report that the failure to implement the legal safeguards for detainees, cannot be solely attributed to a lack of will of individual police officers but in part is linked to difficult working conditions in which most police operate in Punjab. The police authorities or the Punjab Human Rights Commission have initiated or ordered internal inquiries or taken disciplinary action against offending police officers involved in unlawful practices. However, officers due for suspension have often remained on active duty at the same police station in which that offence was committed. Because police disciplinary action is conducted internally, it is often difficult for the judiciary and civil society to monitor their implementation, as was the view of Amnesty International. [51](p19)

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**Internal flight for Sikhs**

**6.157** As cited in an IRB report dated January 1999, the Indian Constitution guarantees Indian citizens the right to move freely throughout the territory of India, and to settle and reside in any part of the country. These rights are subject to restrictions as imposed by law in the interests of the general public. Punjabi Sikhs are able to relocate to another part of India and as Sikhs are a mobile community, there are Sikh communities all over India. [4i](p1)

**6.158** According to an IRB question and answer series, December 1992, some 4 million Sikhs live in India outside Punjab. Sikh communities are found in most Indian cities and in virtually all States. They are generally urban and prosperous and they control important trades and occupy a prominent position within the central and regional administration. [4c](p1) An IRB response dated 12 January 1999 states that most Sikhs, particularly the better-educated and urban Sikhs, have some knowledge of English and/or Hindi. Punjabi Sikhs would have no more problem enrolling their children in school or obtaining employment than any other Indian relocating to a new area. [4i]

**6.159** According to an IRB response dated 12 January 1999, there are no checks on a newcomer to any part of India arriving from another part of India, even if the person is a Punjabi Sikh. Local police forces have neither the resources nor the language abilities to perform background checks on people arriving from other parts of India. There is no system of registration of citizens, and often people have no identity cards, which in any event can be easily forged. [4i]

**6.160** According to the Danish Immigration Service fact finding report 2000, "The Director of the South Asia Human Rights Documentation Centre believed that a high-profile person would not be able to move elsewhere in India without being traced, but that this would be possible for low-profile people". Sources from foreign diplomatic missions in India considered

that there was no reason to believe that someone who has or has had problems in Punjab would not be able to reside elsewhere in India. Reference was made to the fact that the authorities in Delhi are not informed about those wanted in Punjab. **[37](p53)**

**6.161** The US Citizenship and Immigration Services in a response to a query, (last updated on 22 September 2003) noted that,

> "Observers generally agree that Punjab police will try to catch a wanted suspect no matter where he has relocated in India. Several say, however, that the list of wanted militants has been winnowed [whittled] down to "high-profile" individuals. By contrast, other Punjab experts have said in recent years that any Sikh who has been implicated in political militancy would be at risk anywhere in India. Beyond this dispute over who is actually at risk, there is little doubt that Punjab police will pursue a wanted suspect. "Punjab police and other police and intelligence agencies in India do pursue those militants, wherever they are located, who figure in their lists of those who were engaged in separatist political activities and belonged to armed opposition groups in the past," a prominent Indian human rights lawyer said in an e-mail message to the Resource Information Center (RIC) (Indian human rights lawyer 4 May 2003)." **[86](p.1)**

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**Buddhists and Zoroastrians**

**6.162** According to a report by the Special Rapporteur on religious intolerance, 1997, Buddhist and Zoroastrian minorities are able to practise their religion freely, possess adequate numbers of places of worship and religious publications, and refrain from proselytising among other communities. Buddhists and Zoroastrians are said to be fully integrated into society. **[6b](p6)**

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## Freedom of Assembly and Association

**6.163** As noted in the US Department of State report 2004 (USSD),

> "The Constitution provides for freedom of assembly and association, and the Government generally respected this right in practice. The authorities sometimes required permits and notification prior to holding parades or demonstrations, but local governments ordinarily respected the right to protest peacefully, except in Jammu and Kashmir, where the local government routinely denied permits to separatist parties for public gatherings and detained separatists engaged in peaceful protest. During periods of civil tension, the authorities may ban public assemblies or impose a curfew under the Criminal Procedure Code". **[2c](section 2b)**

**6.164** As cited in the Freedom House Survey report 2003, Section 144 of the Criminal Procedure Code empowers state-level authorities to declare a state of emergency, restrict free assembly, and impose curfews.**[43a]**

**6.165** The USSD 2004, notes that,

> "The Constitution provides for the right of association, and the Government generally respected this right in practice. Workers may establish and join unions of their own choosing without prior authorisation. More than 400 million persons made up the country's active work force and some 30 million of these workers are employed in the formal sector. The rest overwhelmingly were agricultural workers and, to a lesser extent, urban non-industrial labourers. While some trade unions represented agricultural workers and informal sector workers, most of the country's estimated 13 to 15 million union members were part of the 30-million-member formal sector. Of these 13 to 15 million unionised workers, some 80 percent, were members of unions affiliated with 1 of the 5 major trade union centrals."**[2c](section 6a)**

**6.166** BBC news reported on 24 February 2004, "more than a million government employees took part in a one-day strike in India", affecting many government banks, offices and state-owned firms. "Unions called the walk-out in protest at the Supreme Court's ban on the right of government employees to strike because of the disruption caused." **[32cr]**

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## Political Activists

**6.167**As noted in the US Department of State Report 2004 (USSD),

> "Separatist guerrillas in Kashmir and the Northeast committed serious abuses including killing armed forces personnel, police, government officials, and civilians. They also engaged in torture, rape, and other forms of violence, includng beheadings, kidnapping, and extortion. **[2c](introduction)**The same report continues, "In the northeastern states, insurgency and ethnic violence continued to be a problem." **[2c](section 1a)**

**6.168** The same report continutes, "The press published frequent reports of gruesome killings of civilians by militants in Jammu and Kashmir including beheadings, amputation of limbs, and other atrocities." **[2c](section 1a)**

**6.169** As noted in the same report, "The Home Ministry reported that militant attacks in Jammu and Kashmir declined from the previous year, with 733 civilians (including 92 women, 32 children, nad 62 political workers), 330 security force members and 976 militants killed during the year." **[2c](section 1a)**

**6.170** The USSD 2004 reported that, "Militant groups in the Northeast continued to attack civilians. For example, members of ULFA took responsibility for an August 15 Independence Day bomb attack in the town of Dhemaji, which killed 13 civilians, including 10 school children." **[2c](section 1a)**

**6.171** As cited in a BBC News article dated 2 October 2004, "At least 48 people have died in a series of attacks across the states of Nagaland and Assam in north-east India. Two bombs exploded in the main commercial center of Dimapur town in Nagalsnd a- one at a train station and another at a local market. At least 28 people were killed and more than 100 injured in the morning blasts. Hours later, rebels from the Bodo tribe sprayed shoppers with bullets in the neighbouring state of Assam, killing at least 20 people, police said. They suspect the rebels – the National Democratic Front of Bodoland (NDFB) – may have been behind the Nagaland attacks too. There are many separatist rebel groups in north-east India…There has been an insugency in Nagaland since 1956, but for the last

seven years the state's major separatist group, the National Socialist Council of Nagaland (NSCN), has been negotiating with the Indian government, and its fighters are observing a ceasefire with the government's security forces. Both factions of the NSCN have condemned the explosions. **[32ge]**

**6.172** As reported by BBC News on 6 November 2004, "The Indian army says it is conducting a major operation against rebel bases in the north-east of the country. Burma has sealed its border to prevent militants crossing into its territory from the Indian state of Manipur, where the offensive is focused. The north-east of India is home to many groups who often cross back and forth into neighbouring countries… About 40 different rebel groups exist in the north-east of India, with many believed to use bases in neighbouring countries." **[32fv]**

**6.173** As reported by USSD 2004,

**"On July 11, Mnoaram Devi, an alleged member of the People's Liberation Army (PLA) in the northeastern state of Manipur, died while in the custody of the Assam Rifles, a paramilitary unit in the state. Officials initially denied that Devi was killed, tortured, or raped, but the postmortem found that she died of multiple gunshot wounds, was bleeding from the vagina, and had a perforated liver and gall bladder, among other injuries, and forensic tests detected semen stains on her clothes. The case prompted demonstrations and riots, and led to a serious deterioration of the security situation in Manipur. The National Commission for Women (NCW) publicized the case, and the Army ordered an investigation; however, by year's end, culpability for her death had not been established.** [2c](section 1a)

**Naxalites**

**6.174** According to rediff.com (dated 2 October 2003), "The Naxalites or Naxals, is a loose term to define groups waging a violent struggle on behalf of landless labourers and tribal people against landlords and others." The Naxalites claim that they are fighting a class war to free oppressed members of Indian society from exploitation. The Naxalites are Maoists with links to the Communist Party of India (Marxist-Leninist). **[81] (P1)** According to rediff.com, the Naxalites groups operate across a broad swathe across India. "The Naxalites operate mostly in the rural and Adivasi areas, often out of the continuous jungles in these regions. Their operations are most prominent in (from North to South) Jharkhand, Chhattisgarh, Madhya Pradesh, eastern Maharashtra, the Telengana (northwestern) region of Andhra Pradesh, and western Orissa. The People's War is active mainly in Andhra Pradesh, western Orissa and eastern Maharashtra while the Maoist Communist Centre is active in Bihar, Jharkhand and northern Chhattisgarh." **[81] (p.2)** According to a BBC report dated 18 June 2000, Ranvir Sena, a private army sponsored by upper-caste landlords, were blamed for the killing of 34 lower-caste Hindus on 16 June 2000. The massacre, in Miapur, Bihar, appeared to be a revenge attack for the killing of 12 upper-caste Hindus a few days earlier. **[32n]** According to rediff.com (dated 2 October 2003), "At village levels, the Naxalites' terror tactics have spawned local armies to provide protection to the landlords and others. The most infamous of these is the Ranvir Sena in Bihar and Jharkhand, formed by Bhumihar caste landlords, which kill tribals, Dalits and landless labourers either in retaliation or to enforce their domination." **[81](p.3)**.

**6.175**According to India Daily, dated 1 July 2004, "Since 1980 clashes between police and Naxalite Maoist revolutionaries have taken place in north-western Andhra Pradesh. In areas under their control, Naxalites dispense summary justice in "people's courts" which in

some cases condemn to death suspected police informers, village headmen, and others deemed to be "class enemies" or "caste oppressors.""… The Naxalites extort money from business firms, railway services in one area had to be cancelled for months due to PWG destruction of stations, track and signaling equipment…"Over the past few years, hundreds of policemen and suspected Naxalites have been killed, according to press reports and human rights organisations." **[82]** Amnesty International in its annual report (2003) noted that, "In the states of the north-east, abuses included the torture and killings of non-combatants and attacks on civilians by naxalities (armed left wing groups) in areas of Andhra Pradesh, Bihar, Madhya Pradesh, Orissa and West Bengal continued." **[3k] (p.4)** As noted in a BBC news report, dated 1 December 1999, more than 5,000 people have died in violence between Naxalites and police since 1985. **[32d]** A BBC news report dated 23 July 2002 stated that in July 2002 the PWG set off a land-mine explosion in Andhra Pradesh, killing four policemen and seriously injuring 30 others. The attack followed the breakdown of peace talks between the PWG and State Government which had continued for two months making little headway. The State secretary of the PWG also announced the withdrawal of a unilateral cease-fire saying that the Government and the police had failed to reciprocate. **[32ah]**

**6.176** A BBC news report of 8 September 2003 stated that a landmine explosion in Bihar killed 10 police officers and 2 civilians in September 2003. The incident took place in Rohtas district. "More than 6,000 people have died during the rebels 20 year armed struggle for a communist sate in tribal areas of India". The rebels have been accused of targeting wealthy landowners and security forces in Bihar, India's poorest and second-most populous state. **[32bq]**

**6.177** As noted in the USSD 2004, "In the northeastern states, insurgency and ethnic violence continued to be a problem. According to human rights activists and journalists during the year, a few Naxalites (Maoist guerillas) in eastern and central parts of the country (including Madhya Pradesh, Andhra Pradesh, West Bengal, Bihar, Chhattisgarh, Jharkhand, parts of Uttar Pradesh, and Maharashtra) who surrendered, retained their weapons and worked for the police as anti-People's War Group (PWG) officers. Human rights groups alleged that police used former Naxalites to kill current Naxalites and human rights activists with close links to the PWG, although police attributed such killings to internal feuds within the PWG. Several hundred PWG militants surrendered during the year. **[2c](section 1a)**

**6.178** BBC news reported on 15 October 2004 that the first day of historic talks between southern Indian state of Andhra Pradesh and a Maoist rebel group took place in Hyderabad. The state's interior minister met a People's War Group delegation (PWG). **[32ft]**

**6.179** As noted in Keesing news Digest for November 2004, according to the Indian news agency PTI, on 20 November 17 policemen were killed in an ambush by approximately 150 suspected Maoist Naxalite rebels in Chandauli district of Uttar Pradesh. **[5v]**

**6.180** As reported in the same source, it was reported on 29 November 2004 that an offensive in Manipur started by the army in October, employing some 6,000 troops, resulted in the destruction of some 100 separatist rebel camps including the headquarters of the People's Liberation Army (PLA). Most of the camps appeared to have been abandoned by the rebels. An army spokesman claimed on 9 November 2004, that 20 rebels were killed and 59 captured for the deaths of 2 soldiers. **[5v]**

**6.181** As noted by the BBC news report of 17 January 2005, "Left-wing rebels in the southern Indian state of Andhra Pradesh have announced that they are breaking off peace talks with the state government." This was in protest against police killings of their members and the

rebels accused the government of failing to honour a cease-fire which took effect last summer. “Peace prevailed in the state for almost eight months following a ceasfire by the two sides in June. The state government also lifted an 11 year ban on the CPIML People’s War Group in July. Until October last year (2004), the rebels were known as the People’s War Group. But at that time they announced a merger with the Maoist Communist Centre to become the CIP (Maoist). The rebels have been fighting since 1980 for the creation of a communist state compirsing tribal areas in the states of Andhara Pradesh, Maharashtra, Orissa, Bihar and Chhattisgarh.” **[32er]** As noted in another BBC news report dated 8 October 2004, two key Indian Maoist groups decided to merge into a single party. “The People’s War Group (PWG) and the Maoist Communist Centre (MCC), which are active in a number of states, will form a new party, the leader said… The PWG has considerable influence in Andhra Pradesh, Chhatisgarh, Jharkhand, Orissa, Madhya Pradesh and Bihar, while the MCC is strongest in Bihar… Both groups have pockets of influence in West Bengal.” **[32fu]**

**6.182** As further reported by BBC on 20 January 2005, the Maoists announced their withdrawal from the peace negotiations following a series of encounters with police. The rebels were pulling out of the peace process due to “combing operations by the Greyhound.” The Greyhounds are an elite police force set up to fight the insurgents who carry out search operations in Maoist areas. **[32es]**

**6.183** As reported in a BBC news article dated 20 January 2005, police in Andhra Pradesh claimed to have killed three more Maoist guerrillas. The violence took place as a state-wide strike called by Maoist groups evoked only a partial response. This incident followed a series of clashes between police and Maoists in which 15 rebels and six other people, including a policeman and two politicians were killed. It was reported that police recovered weapons and hand grenades after the last encounter with Maoists belonging to the Communist Party of India-Marxist Leninist (CPI-ML) coalition. Up until October 2004, the rebels were known as the People’s War Group but they announced a merger with the Maoist Communist Centre to become the CPI (Maoist). “The rebels have been fighting since 1980 for the creation of a communist state comprising tribal areas in the states of Andhra Pradesh, Maharashtra, Orissa, Bihar and Chhattisgarh.” **[32fs]**

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**Tripura**

**6.184** As reported in a BBC news report dated 15 November 1999, separatist rebels intensified their activities in Tripura during 1999. The outlawed All-Tripura Tiger Force massacred at least 18 Bengali migrants and abducted 5 others from a market on 14 November 1999. Tripura's ethnic rebel groups state that they are upset with the ceaseless influx of Bengali migrants, from what is now Bangladesh, which has reduced the indigenous people of the State into a minority since 1949. **[32a]**

**6.185** A BBC news report of 7 July 2003 stated that on 6 May 2003 the police reported that separatist rebels killed 22 Bengali villagers in indiscriminate firing in Tripura. “In a separate raid carried out later on a village market at Moharcherra, 10 more Bengali villagers were killed…Tripura’s Chief Minister, Manik Sarkar alleged that the rebels who carried out the attack came from one of their bases just across the border in Bangladesh where he says several hideouts of the Tripura rebel groups exist… It is not known which of Tripuras several rebel ethnic groups were responsible for the massacre.” **[32br]**

**6.186** According to a BBC News report, dated 15 April 2004, a faction of the National Liberation Front of Tripura (NLFT) declared a cease-fire with the Indian security forces. "The leader of the NLFT faction, Nayanbashi Jamatia, said his group had taken the decision to suspend military action following several rounds of talks with the Indian government." **[32ei]** In a further report from the BBC on 6 May 2004, it was reported that, "In what is seen as a further break-up of the state's once strongest rebel group, the National Liberation Front of Tripura (NLFT), the group's former general secretary, Mantu Koloi, said more surrenders were expected from the NLFT ranks. This leaves only a small number of fighters with the NLFT Chairman Biswamohan Debbarma, who, the surrendered rebels say, is in a small camp in the remote Chittagong Hill Tracts of Bangladesh." **[32ej]**

**6.187** According to a BBC News report, dated 17 May 2004, Indian security forces patrolling a remote area bordering the Chittagong Hill Tracts in Bangladesh were attacked by Tripura rebel separatists; at least six soldiers were killed in the attack. The BBC reported that, most factions of the rebel group are now involved in peace talks with the Indian government, but some 200 fighters loyal to the chairman have not joined the cease-fire. **[32ek]** On 14 June 2004, BBC News reported that, according to the local police, at least 24 people had been kidnapped and were being held by separatist rebels in or near the north-eastern Indian state of Tripura. In response to the kidnapping, it was reported that a large contingent of police and paramilitary forces were patrolling a key road in Tripura's northern district where the incident took place…The BBC reported that NLFT chairman, Biswamohan Debbarma, is upset over the desertion of hundreds of guerrillas from his faction of the NLFT and it was believed that he was responsible for the kidnapping. **[32el]** Tripura police chief, G M Srivastava, believed to be the architect of the earlier surrenders **[32ej]**, says that he expects more rebels to surrender soon. **[32el]**

### Assam

**6.188** BBC reported in a news article dated 10 December 2004, "A leading rebel organisation in the north-east Indian state of Assam has rejected an offer of peace talks with the Indian Government. The powerful United Liberation Front of Assam, (Ulfa) says it could not accept the offer because of a demand that the group give up violence… India's north-east is home to more than 200 ethnic and tribal communities and more than 20 rebel groups fighting for greater degrees of independence or tribal rights. Ulfa is one of the most powerful groups in the region and has been fighting Indian security forces for more than two decades." It is reported that Ulfa would like the question of Assamese sovereignty discussed but this is unacceptable to Delhi. **[32fg]**

In addition refer to section on Kashmiri militant groups.

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## Employment Rights

**6.189** As noted in the US Department of State report 2004 (USSD),

> "State government laws set minimum wages, hours of work, and safety and health standards. The Factories Act mandates an 8-hour workday, a 49-hour workweek, and minimum working conditions. These standards were generally enforced and accepted in the modern industrial sector; however, they were not observed in less economically stable industries. Minimum wages varied according to the state and

to the sector of industry. Such wages provided only a minimal standard of living for a worker and were inadequate to provide a decent standard of living for a worker and family. Most workers employed in units subject to the Factories Act received more than the minimum wage, including mandated bonuses and other benefits. The state governments set a separate minimum wage for agricultural workers but did not enforce it effectively. Some industries, such as the apparel and footwear industries, did not have a prescribed minimum wage in any of the states in which such industries operated." **[2c](section 6e)**

**6.190** As reported in the USSD 2004,

> "Trade unions often exercised the right to strike, but public sector unions were required to give at least 14 days' notice prior to striking. Some states have laws requiring workers in certain nonpublic sector industries to give notice of a planned strike." **[2c](section 6a)** The USSD 2004 states that, "The law provides for the right to organize and bargain collectively. Collective bargaining is the normal means of setting wages and settling disputes in unionized plants in the organized industrial sector. Trade unions vigorously defended worker interests in this process…The Essential Services Maintenance Act allows the government to ban strikes in government-owned enterprises and requires conciliation or arbitration in specified essential industries; however, essential services never have been defined in law. The act thus is subject to varying interpretations from state to state. State and local authorities occasionally use their power to declare strikes illegal and force adjudication. **[2c](section 6a)** According to the USSD 2004, "In August the Supreme Court declared all strikes by government employees to be illegal; however, in practice this was not enforced."**[2c](section 6a)**

**6.191**The USSD 2004 states that, "The Industrial Disputes Act prohibits retribution by employers against employees involved in legal strike actions, and this prohibition was observed in practice." **[2c](section 6b)**The Trade Union Act prohibits discrimination against union members and organisers, and employers were penalised if they discriminated against employees engaged in union activities. " **[2c](section 6a)**

**6.192** As reported in the USSD 2004,

> "The law prohibits discrimination in the workplace, but enforcement is inadequate. In both rural and urban areas, women were paid less than men for the same job. Women experienced economic discrimination in access to employment and credit, which acted as an impediment to women owning a business. The promotion of women to managerial positions within businesses often was slower than that of males. State governments supported micro credit programs for women that began to have an impact in many rural districts". **[2c](p27)**

**6.193** As cited in the USSD 2004,

> "The Constitution prohibits forced or bonded labour, including by children; however, such practices remained widespread. The Bonded Labour System (Abolition) Act prohibits all bonded labour, by adults and children. Offenders may be sentenced to up to 3 years in prison, but prosecutions were rare. Enforcement of this statute, which is the responsibility of State and local governments, varied from state to state and generally was not effective due to inadequate resources and to societal acceptance of bonded or forced labour." **[2c](section 6c)**

**6.194** As noted in a BBC news article dated 12 November 2004, "Political parties and trade unions in India's eastern state of West Bengal say they will disobey a court order declaring strikes illegal." They announced three strikes in West Bengal despite a Supreme Court order imposing a ban on the right of government employees to strike because of the disruption caused. "The state government has said it will honour a recent Calcutta High Court ruling that government employees absent from work on strike days will lose a day's wages…The Supreme Court ruled last year (2003) that "no political party or organisation can claim a right to paralyse the economic and industrial activities of a state or the nation or inconvenience citizens." The ruling related to cases arising from a major strike in India's southern state of Tamil Nadu, as a result of which the state government sacked 176,000 employees. Most of the employees were reinstated after a Supreme Court intervention but only after providing a written apology and pledging not to take part in strikes in the future." **[32fq]**

See also section on children for employment rights.

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## People Trafficking

**6.195** As recorded in the US State Department report 2004 (USSD),

> "The Constitution and the Immoral Trafficking Prevention Act (ITPA), supplemented by the Indian Penal Code, prohibit trafficking in human beings, and the law contains severe penalites for violations; however, trafficking in persons is a significant problem and some government officials participated in and facilitated the practice…The country was a significant source, transit point, and destination for numerous trafficked persons, primarily for the purposes of prostitution and forced labour…More than 2.3 million girls and women were believed to be working in the sex industry within the country and experts believed that more than 200,000 persons were trafficked into, within, or through the country annually…The NCW reported that organized crime played a significant role in the country's sex trafficking trade and that trafficked women and children were frequently subjected to extortion, beatings, and rape."**[2c](section 5)**

**6.196** As stated in the USSD 2004,

> "Due to selective implementation of the ITPA, the rescue of sex workers from brothels often led to their re-victimization. Using ITPA provisions against soliciting or engaging in sexual acts, police regularly arrested sex workers, extorted money from them, evicted them, and took their children from them. Therefore, although the intention of the ITPA was to increase enforcement efforts against the traffickers, pimps, and border operators, the opposite occurred. Implementation of the ITPA's provisions for protection and rehabilitation of women and children rescued from the sex trade was improving steadily. The Government has increased police training, inter-state coordination of anti-trafficking efforts, studies and maps of trafficking patterns, cooperation with NGOs, and improved the number of shelter facilities available to rescued trafficking victims." **[2c](section 5)**

**6.197** The same report continues,

> "Over the last several years, arrests and prosecutions under the ITPA increased slightly, while all indications suggested a growing level of trafficking into and within the country. The NHRC released a comprehensive 2-year study of trafficking issues

in the country. It included information on cross-border trafficking and extensive data on trafficking victims currently in commercial sex work, rescued victims, concerned NGOs, clients, and traffickers and brothel keepers, and covered all aspects of prevention, protection and prosecution. The Government, the judiciary, law enforcement and NGOs lauded the report for its thoroughness, and the Government said it would use the study's analysis to frame anti-trafficking policy changes." **[2c](section 5)**

**6.198** The same report continues,

"The Government cooperated with groups in Nepal and Bangladesh to deal with the problem and began to negotiate bilateral anti-trafficking agreements. Training and informational meetings took place under the Action Against Trafficking and Sexual Exploitation of Children (AATSEC) and South Asian Association for Regional Cooperation… In February, the NHRC held a 2-day program for judges, law enforcement, and government officials on trafficking, and in August, the NHRC released a study on the trafficking of women, recommending the creation of a national anti-trafficking agency. According to NGOs, there were significant improvements in investigations and arrests of traffickers in Mumbai, New Delhi, Chennai, Hyderabad, and Calcutta. There were roughly 80 NGOs in 10 states working for the emancipation and rehabilitation of women and children trafficked into the sex trade. A group on child prostitution established by the NHRC included representatives from the NCW, the Department of Women and Child Development, NGOs, and UNICEF. It continued to meet throughout the year to devise means of improving enforcement of legal prohibitions." **[2c](section 5)**

**6.199** The US Department of State, Trafficking in Persons report 2003, noted that "India is placed on Tier 2 Watch List this year as the result of its failure to demonstrate increased central government law enforcement response to India's huge trafficking problem and inadequate prosecutions in Mumbai and Calcutta…Trafficking across India's international borders remains significant". The US TIP report also considered that, "The central government in New Delhi has not made sufficient efforts to use its national law enforcement agencies to investigate and prosecute inter-state and international trafficking." **[2g] (Introduction)**

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## Freedom of Movement

**6.200** As recorded in the US Department of State report 2004 (USSD), "The Constitution provides for freedom of movement, and the Government generally respected this in practice; however, in certain border areas border permits were required." **[2c](section 2d)** The Danish Immigration Service fact finding report 2000 states that various diplomatic missions, several human rights lawyers and a former Advocate-General told the Danish Immigration Service on their fact-finding mission of 2000 that there were no restrictions on movement from one State to another. Furthermore, there were no rules that one should register in connection with a move from one State to another. **[37](p48)** According to the USSD 2004, "Under the Passports Act of 1967, the Government may deny a passport to any applicant who "may or is likely to engage outside India in activities prejudicial to the sovereignty and integrity of India." The Government used this provision to prohibit the foreign travel of some government critics, especially those advocating Sikh independence and members of the separatist movement in Jammu and Kashmir." **[2c] (section 2d)**

**6.201** As cited in the Danish Immigration Service fact finding report 2000, regarding application for a passport, a very thorough check is made by the local police to investigate an individual's status, including whether there was a case pending against him or her. However, sources indicate that it would not be impossible for a wanted person to obtain a passport on payment of a bribe, as throughout India it was very easy to obtain false documents. This applied to passports, birth certificates, certificates regarding education and career, marriage certificates and ID cards, arrest orders and so called FIRs (First Information Reports). It was also reported that it was possible to obtain false letters from lawyers. **[37](p50-52)**

**6.202** As reported in the Danish Immigration Service fact finding report 2000, "The Immigration Service, which comes under the Ministry of the Interior, is responsible for checking those leaving the country." **[37](p51)**

**6.203** As noted in the USSD 2004, "The law does not provide for the granting of asylum or refugee status to persons in accordance with the 1951 Convention Relating to the Status of Refugees and its 1967 Protocol, and the Government has not established a system for providing protection to refugees or asylum seekers. The Government provided temporary protection to certain individuals who may not qualify as refugees, under the 1951 convention and 1967 Protocol…The UNHCR office had no formal status, but the Government permitted its staff access to refugees living in urban areas. The Government does not formally recognise UNHCR grant of refugee status (although it has provided "residential permits" to many Afghans and Burmese). The Government considers Tibetans and Sri Lankansin refugee camps to be refugees, but regards most other groups as economic migrants. However, in recent years, a number of court rulings have advanced the protection of refugees whom the Government had considered to be economic migrants." "**[2c](section 2d)**

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# 6.B HUMAN RIGHTS – SPECIFIC GROUPS

## Ethnic Groups

**6.204** India is a mosaic of different cultures and ethnic groups, as stated in The Europa World Year Book. **[1a] (p.1648)**

### Kashmir and the Kashmiris

### Historical Background

**6.205** According to Wikipedia.com (accessed 7 September 2004), the former princely state of Jammu and Kashmir has been disputed by India and Pakistan since both countries gained independence from the United Kingdom in 1947. It has been the cause of two of the three wars between India and Pakistan (1947 – 1948, 1965 and 1971). **[76b] (p.1-5)** According to The Council on Foreign Relations - Terrorism: Q&A, updated in 2004, India controls about two thirds of the disputed territory, which it calls Jammu and Kashmir. Pakistan controls about one-third, which it calls Azad (meaning free) Kashmir. China also controls two small sections of northern Kashmir **[79] (p.2)** called Aksai Chin. **[76b]**. According to an FCO document dated 26 April 1996, Muslims form about 95% of the population of the Kashmir Valley, while Hindus are

in the majority in Jammu region (about 65%). [7c]

**6.206** According to a Reuters News Service report dated 7 September 1996, on Partition in 1947, Kashmir with its largely Muslim population was expected to go to Pakistan. The Hindu ruler wanted Kashmir to stay independent but faced a revolt in the west and invasion by Pathan tribesmen from Pakistan. In October 1947 the Maharajah signed an instrument of accession to India in return for military aid and the territory became a battlefront in fighting between India and Pakistan. A cease-fire came into effect in 1949. [8a] According to FCO correspondence dated 1996, a UN Military Observer Group (UNMOGIP) has been in place monitoring the cease-fire line (that was agreed between India and Pakistan in July 1949) ever since (redefined as the "Line of Control" after the 1971 war). [7c] As noted in the Reuters news report of 7 September 1996, two further wars in 1965 and 1971 left positions virtually unchanged. [8a]

**6.207** As noted in FCO correspondence dated 1996, the status of Kashmir remained highly sensitive for both India and Pakistan; many of the Kashmir Valley's population are not reconciled to being included in India but are divided as to whether they would prefer independence or to join Pakistan. Under the peace agreement signed at Simla in July 1972, both sides agreed "to settle their differences by peaceful means through bilateral negotiations or by other peaceful means mutually agreed on between them", and they committed themselves to a final settlement of the problem. The Indians have since held that, by this agreement, Pakistan is precluded from invoking the United Nations resolutions in an effort to resolve problems with India. Pakistan does not accept this interpretation and regularly calls for a peaceful settlement "on the basis of the UN resolutions and in the spirit of the Simla Agreement". [7c]

**6.208** According to the Norwegian Refugee Council in a report dated 9 June 2004, growing dissatisfaction throughout the 1980s reached a level in 1986 when discontent within the state found wider popular support. “In that year the state’s ruling National Conference (NC) party, widely accused of corruption, struck a deal with India’s Congress Party administration that many in Kashmir saw as a betrayal of Kashmir’s autonomy… Blatant rigging assured a National Conference victory, which was followed by the arrests of hundreds of Muslim United Front (MUF) leaders and supporters. In the aftermath, young MUF supporters swelled the ranks of a growing number of militant groups who increasingly crossed over to Pakistan for arms and training… In the late 1980s, the groups began assassinating NC leaders and engaging in other acts of violence. Some groups also targeted Hindu families, and a slow exodus of Hindus from the valley began… On 19 January 1990, the [Indian] central government imposed direct rule on the state. From the outset, the Indian government’s campaign against the militants was marked by widespread human rights violations, including the shooting of unarmed demonstrators, civilian massacres, and summary executions of detainees.” [87](p.15) As cited in a Reuters news service report 1996, this lasted until the 1996 State assembly elections. [8a] According to a UNHCR background paper 1998, “Following select killings of community members and widespread anarchy, almost the entire Hindu community (Pandits) of the Kashmir Valley was reported to have fled during 1989-90”, as the violence increased. [6e](p8) The Norwegian Refugee Council (NRC) in its report ‘Profile of Internal Displacement: India’ dated 9 June 2004, estimates that between 250,000 and 400,000 Pandits, the term ‘Pandit’ is used to identify Hindu Kashmiris, who fled their homes seeking protection in the cities of Jammu and Delhi. [87](p.14)

**6.209** A BBC news report dated 11 August 2003 reported that, “A key militant group in Indian-administered Kashmir, Hizbul Mujahideen, has appealed to Kashmiri Hindus who fled their homes after the start of armed conflict 13 years ago, to return home.” Supreme Commander

Syed Salahuddin promised full protection to the Hindus and asked for their support in the freedom struggle. This is the first time a militant group has promised to give returnees protection.[32az] A Dawn news report dated 13 August 2003 stated that at least 300,000 Kashmiri Pandits have left the strife-torn valley since a revolt against New Delhi's rule erupted in 1989.[41a]

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**Political Developments in Kashmir**

**6.210** According to an Amnesty International Report 1999, under the National Conference State Government, the State police was restructured, strengthened from 38,000 to 50,000 men and prepared for a counter-insurgency role. The Special Operations Group (SOG), earlier known as the Special Task Force, was given more and better communications and transport facilities, training by security agencies and a supplement of some 12,000 Special Police Officers (SPOs) and local people, including many renegades with good local knowledge and links in the population. Police security operations against the militants became proactive, particularly after the BJP Government came to power in 1998. The new Union Government expressed a will to adopt a proactive approach to what were described as "infiltrators and Pakistani and Afghan mercenaries" carrying out the armed struggle in Jammu and Kashmir. "Security forces were called upon to initiate operations against members of armed opposition groups rather than react to attacks initiated by them." [3f] (p5-6)

**6.211** According to a BBC news report dated 4 July 2003, in July 2000, the Indian cabinet rejected a demand for greater autonomy in the State. The proposal would have seen Jammu and Kashmir return to its pre-1953 status, when it had its own constitution, flag, and Prime Minister, and had control over all its affairs with the exception of finance, defence and communications. Home Minister L.K. Advani admitted that a major factor in the decision was concern that other States too would start to demand the same rights. [32p]

**6.212** As cited in a BBC news report dated 24 July 2000, the leading Kashmiri militant group, Hizbul Mujahedin announced a unilateral cease-fire and said it was willing to enter into negotiations with the Indian authorities, stating that the cease-fire would last 3 months. [32r] As noted in a BBC news report of 2 August 2000, the announcement sparked a wave of attacks by Muslim separatist militants opposed to the cease-fire. Over a period of 2 days starting 1 August 2000: 34 people died and 46 were injured in an exchange of fire between militants and Indian security forces at Pahalgam (30 of the dead were pilgrims en route to a Hindu cave shrine); 19 Hindu labourers were massacred at a brick kiln in Mir Bazar, and a further 7 others were killed in a separate attack in a nearby village; at least 22 Hindus were shot dead in the Doda region; in Baramulla a former militant and six members of his family were also shot dead. [32t]

**6.213** A BBC news report dated 9 August 2000 reported that on 8 August 2000, Hizbul Mujahedin called off the cease-fire after India refused to enter three-way peace talks with the Kashmiri leadership and Pakistan. India and Pakistan blamed each other for the breakdown. [32u] A CNN news article dated14 August 2000 stated that Hizbul Mujahedin immediately recommenced attacks in Kashmir and two days after the end of the cease-fire, set off 2 powerful bombs in Srinagar, killing 14 soldiers and journalists and wounding 25 others. Then on 13 August 2000, a string of landmine explosions and gun battles left 22 dead and 52 wounded. [33d]

**6.214** According to a BBC news report dated 22 February 2001, in November 2000 the

Indian Government announced a unilateral cease-fire barring Indian forces from offensive operations against Muslim separatists in Kashmir. Extensions of the cease-fire were made a month at a time, before a three month extension to the end of May 2001. Militant groups rejected the cease-fire and extensions as merely a propaganda stunt. **[32ab]** As reported in the Keesings News Digest for May 2001, the cease-fire was ended on 24 May 2001 after "It was said to have demoralised the security forces without producing any real lessening of violence. Some 1,200 had died in the conflict since November 2000." **[5g]**

**6.215** According to Keesings News Digest report of May 2002, on 21 May 2002, two gunmen shot dead moderate Kashmiri separatist leader Abdul Ghani Lone. One of Lone's bodyguards was also killed in the attack. Lone, a peaceful advocate of Kashmiri independence rather than union with Pakistan, was founder of the People's Conference Party (PCP), and a founder and former chairman of the All-Party Hurriyat Conference (APHC). **[5m]**

**6.216** As reported in a BBC news report dated 11 October 2002, voting in Kashmir State elections concluded in October 2002. The ruling National Conference party, which supports the BJP Government in Delhi, suffered a shock defeat, as it failed to win a majority in the new assembly. The party leader, Omar Abdullah, failed to win a seat. The final results in the 87-seat assembly were: National Conference 28, Congress 20, People's Democratic Party (PDP) 16, Independents 15, and others 8. **[32ak]** It was reported in a BBC news report dated 17 October 2002 that 50 activists of various political parties were killed in separatist violence during the elections, the bloodiest ever held in the State. The Indian Government said that more than 40% of the voters participated in the polls, in defiance of militants who had called for a boycott. **[32al]**

**6.217** As noted in the US Department of State report 2002 (USSD),

> "In November [2002] State Assembly elections in Jammu and Kashmir transferred power to a coalition composed of the People's Democratic Party and the Congress Party. International observers stated that the election took place in a somewhat fair and transparent manner; however, some non governmental organizations (NGOs) alleged that there were some flaws in the election, including that all major separatist groups boycotted the elections and there was a widespread fear of attacks by militants. These two parties defeated the National Conference, a political party that has dominated state-level politics since Indian independence in 1947. Violence remained a pervasive feature of politics in Jammu and Kashmir. The fall elections took place in a climate of sporadic violence and isolated irregularities. Election-related violence killed more than 800 persons." **[2d] (p.2)**

**6.218** As reported by the BBC on 3 November 2002, Mufti Mohammad Sayeed was sworn in as chief minister, to head a coalition of his PDP and the Congress party for three years, before a Congress leader takes over for a second three year period. His programme included the release of militants who have no serious charges against them, as well as a promise of financial help for relatives of separatists killed by Indian forces. **[32am]**

**6.219** Mr Vajpayee made a surprise speech in April 2003, calling for an end to more than 18 months of simmering tensions with Pakistan, prompted by an attack on the Indian parliament, as reported by BBC on 6 January 2004.**[32cj]**

**6.220** According to a BBC news report dated 10 August 2003, a conference of nearly 100 parliamentarians from India and Pakistan took place in August 2003 in Islamabad amid

calls for all avenues for peace between the two adversaries to be explored. It was the largest gathering of elected representatives of India and Pakistan since the two countries came to the brink of all-out war in 2002. It was the first time members of some of the hard-line religious groups had agreed to sit across the table and listen to each others point of view.**[32bs]**

**6.221** The BBC reported on 29 August 2003 that India and Pakistan had been enjoying a thaw in relations in 2003 but the atmosphere soured following the bomb attack in Bombay and violence in Kashmir. India leaders accused Pakistan of "indirect responsibility" following the Mumbai car bomb attack on 25 August 2003. Pakistan denies the accusations. **[32bt]**

**6.222** According to a BBC news report dated 21 September 2003, Indian authorities accused Pakistan of stepping up its efforts to push armoured infiltrators into the Indian side of the Line of Control dividing Jammu and Kashmir between the two countries. India had ruled out bilateral talks with Pakistan unless the latter stopped abetting separatist violence in Indian administrated Kashmir. **[32bu]**

**6.223** As recorded in the USSD 2004, "The Home Ministry reported that militant attacks in Jammu and Kashmir declined from the previous year, with 733 civilians (including 92 women, 32 children, and 62 political workers), 330 security force members and 976 militants killed during the year."**[2c](section 1a)**

**6.224** As reported in the USSD 2004, "During the year, tension along the Line of Control (LOC) was much lower following the November 2003 ceasefire agreement. The Home Ministry reported no cases of artillery shelling or mortar and small arms fire across the LOC or on the Siachen Glacier during the year. **[2c](section 1f)**

**6.225** On 5 January 2004, the leaders of Pakistan and India met for the first time in 2 years, promising to restore normal relations, as reported by Guardian Unlimited. **[40b]** As reported by the Guardian newspaper on 7 January 2004, India and Pakistan announced peace talks over Kashmir, on 6 January 2004. **[52a]**

**6.226** According to a BBC news report dated, 2 June 2004, ties between India and Pakistan have thawed after last year's peace initiatives between Pakistani President Pervez Musharraf and former Indian Prime minister Atal Behari Vajpayee. Since the resumption of dialogue, a number of confidence building measures have been introduced, including a resumption of rail, air and bus links and a strengthening of diplomatic ties. **[32o]**

**6.227** According to a BBC news report dated, 2 June 2004, India's new Congress led government confirmed that it would continue talks on the issues of Kashmir and nuclear security. Senior diplomats from India and Pakistan confirmed that the two countries would hold talks in Delhi on 27 and 28 June. **[32o]**

**6.228** BBC News reported on 7 June 2004 that the Indian and Pakistani foreign ministers will hold talks on the future of Kashmir on the sidelines of the regional summit due to be held in Islamabad on 21 and 22 July. **[32y]** In a further report by BBC News on 10 June 2004, the Indian Foreign Minister, Natwar Singh, indicated that he would not rule out redrawing borders with Pakistan in the search for peace. Mr Singh told the BBC he was seeking a "new beginning" after decades of hostility between the two countries. **[32z]**

**6.229** BBC News reported on 28 June 2004 that India and Pakistan ended two days of bilateral talks by announcing a series of measures aimed at consolidating the peace

process. Both countries agreed to adopt a system of pre-notification of flight testing of missiles. High Commission staff are to be restored to full their complements with Consulates in Karachi and Mumbai re-opening. Both governments also agreed to immediately release fishermen held prisoner and to also take steps to facilitate the early release of civilian prisoners. **[32eb]**

**6.230** According to analysis by a BBC News correspondent, dated 28 June 2004, the Indo-Pakistani peace conference made good progress, living up to reasonable and realistic expectations. Former Pakistani foreign secretary, Tanvir Ahmed Khan told BBC News Online that, "There is a resolve to come to grips with the Kashmir problem, and sustain it in the months ahead…The idea of representation of Kashmiri people in the (peace) process through indirect consultations now and direct consultations in the future augurs well for both countries." **[32ec]**

**6.231** According to a BBC news report dated, 21 July 2004, the Indian and Pakistani foreign ministers met over breakfast before the start of the SAARC regional conference in Islamabad on the 21 July. Officials reported that the 75-minute meeting between the two foreign ministers was "frank and friendly" and that formal talks have been scheduled for September. **[32ed]**

**6.232** According to a BBC news report, dated 7 August 2004, the Indian and Pakistani defence secretaries concluded two days of talks on demilitarising the Line of Control on the Siachen Glacier, the world's highest battlefield. The meeting was the first time in six years that the two countries' defence secretaries had sat down to discuss reducing tension on the glacier. However, a BBC correspondent in Delhi commented that the meeting was unlikely to bring about any immediate breakthrough in the situation. **[32ef]**

**6.233** As reported by Keesings in October 2004, on 4 October a group of Pakistani journalists began a visit to Indian Jammu and Kashmir, the first of its kind ever allowed by the Indian Government. No Indian Journalists had ever been permitted access to Pakistani Kashmir.**[5u]** As noted in a BBC article date 10 January 2005, when governments on both sides allowed journalists to vist the disputed territory of Kashmir, "It seemed to many observers that one of the greatest taboos had been laid to rest… In an unprecedented move, the Indian government allowed a group of Pakistani journalists to visit Srinagar, and the Pakistan government reciprocated by letting Indian journalists into Muzaffarabad." **[32gf]** It was reported in the Hindu on 21 November 2004 that the fourth conference of the South Asia Free Media Association began on 20 November with a resolution to allow free access in South Asian countries for media persons from the region. President Musharraf who inaugerated the conference, said his Government would allow journalists from South Asian countries to visit any part of Pakistan, inlcuding [occupied] Kashmir and visit borders."**[60f]**

**6.234** A further Keesing report for November 2004, noted that, "Prime Minister Manmohan Singh made a personal commitment in November (2004) to the efforts to resolve the separatist conflicts in the northern state of Jammu and Kashmir and India's troubled north-eastern states." He announced the first reduction of Indian security forces (by about 1,000 troops) would occur on 17 November with a further 3,000 troops were withdrawn on 20 November. The total number of troops and paramilitaries maintained by India in Kashmir was commonly estimated to stand at up to 500,000. **[5v]**

**6.235** The Keesings report for December 2004 further noted that on 15 December 2004 a defence spokesman announced that India was withdrawing a further third batch of troops

from Kashmir, comprising 700 personnel. “Indian officials said that infiltration by separatist militants across the de facto border the Line of Control (LoC) had dropped by some 60 per cent.” [5w]

**6.236** Keesings further reported that Pakistan’s Prime Minister visited New Delhi on 23-24 November 2004 for talks with Manmohan Singh, being the first Pakistani Prime Minister to visit India since 1991. He brought no formal proposals but both sides affirmed that the peace process for the disputed state was still on track. “Agreement was reached on starting a new rail service in October 2005 connecting India’s north-western state of Rajasthan with Pakistan’s Sind province.”[5v]

**6.237** As further reported by Keesings News Digest for December 2004, “The “composite dialogue” between Indian and Pakistani officials on a range of subjects continued in December (2004). Talks on the disputed north Indian state of Jammu and Kashmir between the two governments’ respective foreign secretaries were held on Dec. 27-28 in Islamabad, the capital of Pakistan, but no concrete progress was reported.” [5w]

**6.238** As cited in a Reuters report dated 16 February 2005, “A year of peace talks between India and Pakistan finally bore fruit on Wednesday when their foreign ministers unveiled several accords including the start of a bus service across a ceasfire line dividing Kashmir. Before the meeting between Indian Foreign Minister Natwar Singh and the Pakistani leadership, there was growing concern about a lack of progress in the nuclear rivals’ peace process. But the outcome of the talks showed that, despite a recent row over a dam India is building, both governments are keen to keep the thaw in relations going, having almost gone to war for a fourth time just three years ago.” [8i]

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## Militant/Political Groups

**6.239** According to an article Kashmir in Crossfire report 1996, the Jammu and Kashmir Liberation Front was one of the main militant groups operating in Kashmir, but by 1993 it had lost its “military ascendancy to the Hizbul Mujahedin,” although politically it claimed to have retained the support of the majority of the people. In 1994 the JKLF leader, Yasin Malik, renounced the armed struggle and made an offer of political negotiations. This non-violent approach caused a rift with Amanullah Khan, who had continued to operate as chairman of the JKLF in absentia from Rawalpindi and Muzaffarabad. [29](p268)

**6.240** As noted in Kashmir in Crisis, militant groups active in the Kashmir valley include Hizbul Mujahedin, Harkat-ul-Ansar [29](p269)(which has split into the Harkat-ul-Mujahideen and Harkat-ul-Jehad-e-Islami), Lashkar- i -Toiba [23] [5m] Lashkar-e-Toyeba and Jaish-e-Mohammad (Army of Mohammad). It remains to be seen how long these militant groups will remain powerful because many that were prominent some years ago no longer appear to wield influence today, according to a BBC news report dated 10 August 2000. [32v] It was reported by Keesings in January 2000 that, “The war of words between India and Pakistan in the aftermath of the December 1999 hijacking of an Indian airliner by Kashmiri separatists escalated” in January 2000 when Home Affairs Minister L.K.Advani claimed that the interrogation of four accomplices arrested in Bombay had revealed the identities of the hijackers, who were all Pakistani. Mr Advani claimed that the hijacking had been organised by Pakistan's Inter-Services Intelligence agency (ISI) and Harkat-ul-Mujahideen. [5f]

**6.241** As recorded in the Kashmir Herald (May 2002), the All Party Hurriyat Conference

(APHC) is one of the main groupings within Jammu and Kashmir. “An alliance of 26 political, social and religious organisations, the All Party Hurriyat Conference was formed on 9 March 1993, as a political front to further the cause of Kashmiri separatism. The amalgam has been consistently promoted by Pakistan in the latter’s quest to establish legitimacy over its claim on the Indian State of Jammu and Kashmir.” [84](p.1) The Hurriyat was the only secessionist grouping in Indian controlled Kashmir to have responded positively to the former Indian government’s announcement of a unilateral cessation of offensive operations. [84] (p.3) As reported by BBC news on 8 September 2003, in September 2003 the APHC split into two factions. [32bx] As reported in a BBC News report, dated 10 August 2004, moderates within the Hurriyat Conference separatist umbrella group accuse India’s new Congress led government of being insincere about peace. A statement by the Hurriyat accused the Indian government of laying conditions where the former BJP led government had set none. [32eg]

**6.242** As stated in the US State Department report Patterns of Global Terrorism May 2003, as cited in Keesings News Digest 2003, four more militant organisations operating in Jammu and Kashmir have been added to their list of terrorist organisations. Hizbul Mujaheddin; Al-Badr Mujaheddin (said to be a splinter group of HM); Jamiat-ul-Mujaheddin and Harakat-ul-Jehadi-i-Islami.[5p]

**6.243** As cited in a BBC news report of 8 September 2003, India accused Pakistan of arming and training the militants, while Pakistan says it provides only diplomatic support. [32bx]

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### Militant violence

**6.244** As recorded by Keesings News Digest for May 1999, “A serious escalation of the conflict in Kashmir occurred in late May [1999] in response to the largest infiltration of Islamic militants into Jammu and Kashmir in recent years.” India attacked the guerrilla positions with jet fighters and helicopter gunships on May 26. After frequent skirmishes along the Line of Control earlier in the month, a prolonged battle developed after insurgents, under cover of artillery fire from Pakistan, had launched a rocket attack on 9 May 1999 on an Indian ammunition dump near the town of Kargil in northern Kashmir. Pursuing the attackers, Indian troops discovered that at least 600 well-armed militants had occupied bunkers on a ridge overlooking Kargil. It had been reported that the infiltrators' force had been trained in camps in Azad Kashmir by Pakistan's Inter-Services Intelligence Agency (ISI). Pakistan denied that it had any control over the militants, and denied Indian allegations that some of Pakistan's own troops were fighting alongside them. [5d]

**6.245** According to a Reuter’s news report of 1999, by 11 July 1999 Pakistan had agreed on a plan, under US pressure, for the infiltrators to withdraw from Jammu and Kashmir. [8e]. As noted in a Reuters news report, July 1999, on 17 July 1999 India announced that it believed that most of the infiltrators had withdrawn from the Indian side of the Line of Control. [8f]

**6.246** According to an Amnesty International news release dated 21 March 2000, on 20 March 2000, unidentified gunmen killed 36 Sikhs in the village of Chadisinghpoora. The identity of the perpetrators was uncertain as contradictory accounts were reported from Jammu and Kashmir. The Director General of Police believed it to be the work of Muslim rebels, and the Indian Government blamed the attack on Hizbul Mujahedin and Lashkar-i-Toiba. A spokesperson of the APHC claimed that it had been carried out by the State security agencies in order to discredit the separatist movement. No attacks on members of the Sikh community in Kashmir had previously been reported. [3h] According to a BBC news report

dated 23 March 2000, Farooq Abdullah [who was then Chief Minister] admitted his Government had failed in anticipating the risk that the Sikhs faced from militants active in the State. He said he would revamp the State's security system to provide adequate protection for all minority communities in Kashmir. [32h] An independent newspaper article dated 3 November 2000 stated that Abdullah later announced a judicial inquiry into the massacre, which would also investigate the killing of five alleged militants a few days after the atrocity, who local people believed were innocent civilians who had been singled out as scapegoats. [34a] According to a BBC news article of 16 July 2002, in July 2002, the Kashmir State authorities confirmed that DNA tests proved that the five men were local residents of Anantnag District and not foreign militants. Farooq Abdullah said he would be asking the Central Bureau of Investigation (CBI) to look into the killing of the men. [32ag]

**6.247** It was noted in a BBC news article dated 15 May 2000, in May 2000, Minister of Power Ghulam Hasan Bhatt was killed in a landmine explosion, claimed by Hizbul Mujahedin. It was the first time a serving minister had been killed since the start of the armed uprising. [32j]

**6.248** It was reported in the Independent on 26 March 2001, that on 16 January 2001 the militant group Lashkar-I-Toiba tried to storm the airport in Srinagar. In the ensuing gun battle with Indian security forces, 11 were killed and a dozen injured. [34b]

**6.249** According to a BBC news article dated 5 February 2001, on 3 February 2001, a further attack was carried out on the Sikh community in Kashmir. On this occasion, six Sikhs were killed in the provincial capital Srinagar. No group claimed responsibility for the killings. One person was subsequently killed in clashes between police and Sikh protestors. [32aa]

**6.250**According to a BBC news report dated 3 October 2001, on 1 October 2001, a suicide attacker detonated a Government jeep loaded with explosives outside the Kashmir State Assembly building, while at least two other militants wearing police uniforms entered the complex and took over one of the buildings there. Police said the remaining militants were killed after a gun battle lasting several hours. 38 people were killed in the attack. The Jaish-e-Mohammad militant group initially said it carried out the attack, naming the suicide bomber as a Pakistani national. However, it subsequently withdrew the claim. [32af]

**6.251** Keesings News Digest December 2001 reported that “A terrorist attack on the federal Parliament (the bicameral legislature) in New Delhi on 13 December 2001 left 14 people dead.” The attack also precipitated a crisis with Pakistan that threatened to erupt into war, over Kashmir. India held Jaish-e-Mohammad and Lashkar-i-Toiba responsible for the attack, saying that both were supplied and trained by Pakistan’s military Inter-Services Intelligence (ISI) agency. “Pakistan’s President General Pervez Musharraf immediately condemned the attack but demanded evidence that the two groups – which both disclaimed responsibility – were involved and warned India not to take “precipitous action” against Pakistan.” Both India and Pakistan put their armed forces on a state of heightened military alert and moved troop reinforcements not only up to the Line of Control (LoC) dividing the Indian and Pakistani zones of Kashmir, but also to the international border between Pakistan and the Indian north-western States of Punjab and Rajasthan. On 21 December 2001 India recalled its High Commissioner to Pakistan, and announced that from 1 January 2002, it would cut the only land transport links between the two countries. In a further escalation of pressure, India on 27 December 2001 announced the halving of the strengths of both countries’ diplomatic missions and a ban on Pakistan Airlines from flying over India, measures which Pakistan reciprocated. [5i]

**6.252** As noted in Keesings record of World events May 2002, “India and Pakistan moved

closer to outright war in May [2002] over the deteriorating situation" in Kashmir. Up to a million troops had faced each other across both the Line of Control and the international frontier between the two countries." Then on 14 May 2002, 34 people were killed in an attack by militants on Kaluchak army base in Kashmir. The dead included 8 women and 11 children from army families. The three militants themselves were shot dead by Indian troops. "A hitherto unknown militant group called Al-Mansooren claimed responsibility for the attack, but Indian officials said that this could be a cover name for either Lashkar-i-Toiba or Jaish-e-Mohammad." Meanwhile, exchanges of artillery shelling and small arms fire across the Line of Control intensified, causing dozens of deaths, mostly among civilians in border villages. Both the U.K. Foreign and Commonwealth Office and the U.S. State Department on 31 May 2002 issued unprecedented advice to their respective 20,000 and 60,000 citizens living in India to leave the country. They also advised people to cancel plans to travel to India. **[5m]**

**6.253** As cited in Keesings News Digest June 2002, "Tension on the border between India and Pakistan, especially on the Line of Control was lowered during June [2002], largely as a result of international pressure…" Pakistan's President General Pervez Musharraf had ordered that all infiltration of separatist militants across the Line of Control should cease. India had opened its airspace to civilian Pakistani aircraft, and announced the appointment of a new High Commissioner to Pakistan. **[5n]**

**6.254** According to a BBC news report dated 26 March 2003, in March 2003, gunmen dressed in army uniforms killed 24 Kashmiri Hindus in the village of Nadimarg. **[32as]** As noted in Keesings news digest April 2003, on 10 April 2003 the police said they had arrested Zia Mustafa, a local commander of the Islamic militant group Lashkar -i-Toiba in connection with the massacre. However it was reported by the Daily Excelsior on 12 April 2003, that Lashkar-i-Toiba denied all responsibility for the Nadimarg killings. **[5o]**

**6.255** As reported in Keesings News Digest April 2003, in two incidents on April 21-22 2003 security forces killed 18 militants infiltrating into the Poonch district south-west of Srinagar following the loss of one soldier. Five people were killed on 22 April 2003 in the village of Gulshanpora when a civilian vehicle was blown up in a landmine attack. Official sources claimed that 13 foreign militants and six soldiers were killed during a gun battle in the Doda district of Jammu on 29 April 2003. At least 53 people were killed during April 2003 in Kashmir in other incidents of separatist related violence, including at least eight civilians.**[5o]**

**6.256** According to Keesings News Digest April 2003, on 18 April 2003 Prime Minister Atal Bihari Vajpayee made an offer of dialogue with Pakistan during a visit to Srinagar, the summer capital of the northern state of Jammu and Kashmir. Vajpayee stated that "open dialogue" was the only way to bring peace to Kashmir. **[5o]**

**6.257** According to Keesings news digest May 2003, there was no let-up in separatist violence in Kashmir during June 2003. In the single most bloody incident two militants attacked an army camp at Sunjwan, 10km south of Jammu on 28 June 2003, killing 12 soldiers. In incidents on 22-23 June, 11 civilians and five militants were killed including 2 civilians and 36 wounded in grenade attacks in Srinagar. On 20 June 2003, 30 civilians were injured in grenade attacks. The police also stated that militants had killed at least 2 civilians by a new method of poisoned injections.**[5q]**

**Recent militant violence**

**6.258** As reported in BBC news dated 17 September 2003, police in Indian administered Kashmir reported that they had killed one of the most senior members of the Jaish-e-Mohammad militant group, Nasir Mehmood Ahwan, alias Ansar. However a Jaish-e-Mohammad spokesman claimed that it was not Ansar. His leader Ghazi Baba was shot dead by Indian Security forces on 30 August 2003. His death "Sparked an upsurge in violence that has left more than 200 people dead in the state." The police chief of Indian Kashmir stated that the security forces had stepped up their offensive against the militants. **[32bv]**

**6.259** As reported in a BBC news report dated 21 September 2003, the Line of Control saw an increase in exchanges of fire between the Indian and Pakistan armies in September 2003.**[32bu]** However, as reported in the USSD 2004, "During the year, tension along the Line of Control (LOC) was much lower following the November 2003 ceasefire agreement. The Home Ministry reported no cases of artillery shelling or mortar and small arms fire across the LOC or on the Siachen Glacier during the year." **[2c](section 1f)**

**6.260** Amnesty International in its 2004 annual report, covering events in 2003, noted that "There were continuing reports of human rights abuses by armed opposition groups against civilians. In Jammu and Kashmir human rights abuses by militants persisted at a high level with a reported 344 civilians killed in targeted or indiscriminate violence by armed groups in the period from January to the end of November. On 24 March armed men shot dead 24 Kashmiri Pandits, including 11 women and two children, in the village of Nadimarg." **[3k](p.4)** However, according to a BBC news article dated 29 December 2003 it was reported that, "There had been a substantial decline in violence in Indian-administered Kashmir since Pakistan and India began a cease-fire, the Indian authorities say."**[32cc]** As noted in USSD 2004, "The Home Ministry reported that militant attacks in Jammu and Kashmir, declined from the previous year, with 733 civilians (including 92 women, 32 children, and 62 political workers), 330 security force members and 976 militants killed during the year." **[2c](section 1a)** Keesings News Digest for January 2005 also noted that, "A police spokesman announced on Jan. 23 that the number of civilian fatalities in the northern state of Jammu and Kashmir in 2004, 733, was not only reduced from 836 in 2003 but was the lowest figure since the insurgency began in 1989. Security forces, including police and paramilitaries, lost 330 dead in 2004, compared with 384 in 2003 and the lowest number for five years. Security forces killed 976 separatist militants, but no comparison was offered with the previous year. The number of militancy-related incidents in 2004 was 2,565, decreased from 3,401 in 1984." **[5x]**

**6.261** According to an article on PolitInfo.com, dated 26 June 2004, suspected Islamic militants shot and killed 12 people and wounded 12 others in an attack in the Indian administered part of Kashmir. Indian officials reported that armed men burst into several homes on Friday night (25 June) opening fire on residents in a remote village in the Poonch district, about 200 km north of Jammu. The attack came a day before India and Pakistan opened talks on the future of Kashmir. **[77]**

**6.262** According to an article published by ABC 7 News on 3 July 2004, 8 people were killed and a further 44 wounded in terrorist attacks in Srinagar and other towns in the Indian controlled part of Kashmir. The Indian police believe the attacks were in reprisal for a crackdown launched by the security forces against militant group Lashkar-e-Tayyaba. The attacks took place five days after the first meeting between the Pakistan government and the new Congress led Indian government. **[78]**

**6.263** In another report of terrorist violence, INQ7.net reported (5 July 2004) that, eleven people were killed in fresh separatist violence in Indian administered Kashmir. It is reported that the violence erupted following the Indian army's search out operation of Harkat-ul-Jihadi Islami militants. During the operation Ansar Khan, alias Talibani, a commander of Harkat-ul-Jihadi Islam was killed. **[80]**

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**Human Rights Concerns in Kashmir: Summary**

**6.264** According to an Amnesty International report February 1999, "Human rights violations, including arbitrary arrests, torture leading to hundreds of deaths in custody, and extra-judicial executions perpetrated by State police and armed and paramilitary forces, soared in the early 1990s. Armed opposition groups were reported to have taken hundreds of civilians hostage and to have tortured and killed hundreds of unarmed civilians." **[3f](p5)**

**6.265** The Amnesty International report 1999 states that reliable figures of the number of deaths in Jammu and Kashmir as a result of the conflict are impossible to obtain. But according to official reports and figures obtained in September 1998, 19,866 people had died in Jammu and Kashmir since January 1990. This included 9,123 members of armed opposition groups; 6,673 victims of armed opposition groups; 2,477 civilians killed by Indian security forces and 1,593 security personnel. These figures do not reflect the number of victims who were deliberately or arbitrarily killed or died as the result of torture inflicted in the custody of State agents. **[3f](p7)**

**6.266** Amnesty International in an open letter to the Chief Minister of Jammu and Kashmir, dated 2 December 2003, noted that,

> "Over the last year [2003] human rights abuses by armed political groups have also persisted at a high level in Jammu and Kashmir with a reported 344 civilians killed in a targeted and indiscriminate way. Torture, including rape and beatings of the civilian population by members of armed opposition groups also continued to be reported throughout the year. Armed opposition groups failed to abide by standards of international humanitarian law and many civilians were killed as a result of indiscriminate violence during attacks on security forces. Militants were also reportedly involved in criminal activities including extortion." **[3l] (p.1)**

**6.267** The USSD 2004, issued in February 2005 sets out concerns relating to human rights abuses by the security forces in Jammu and Kashmir.

> "Arbitrary and unlawful deprivation of life by government forces (including deaths in custody and staged encounter killings) continued throughout the year. The hightest incidences were in Uttar Pradesh, Andhra Pradesh, Bihar, Chhattisgarh, as well as states with ongoing insurgencies such as Jammu and Kashmir, Manipur and Assam. Police and prison officers also committed extrajudicial killings of criminals and suspected criminals in a number of states. Militant groups killed members of rival factions, government security forces, government officials, and civilians in Jammu and Kashmir, several northeastern states, and in the Naxalite belt in Eastern India (particulary Andhra Pradesh, Chhattisgarh, Jharkhand, Bihar, and West Benga)." **[2c](section 1a)**

**6.268** The UK Foreign and Commonwealth Office in its 2003 annual human rights report, stated that "We continue to receive credible reports of human rights violations by Indian security forces operating in Kashmir, where we remain concerned about the human rights situation." **[7b](p.136)**

**6.269** As cited in USSD 2004, "Human rights groups maintained that in Jammu and Kashmir and in the northeastern states, several hundred persons were held by the military and paramilitary forces in long-term unacknowledged detention in interrogation centers and transit camps intended only for short-term confinement. Human rights activists feared that many of these unacknowledged prisoners were subjected to torture and some were killed extrajudicially." **[2c](section 1b)**

**6.270** As reported in an article published in The Times of India, dated 22 August 2004, the Indian government withdrew future patronage from European Parliament (EP) visits to Jammu and Kashmir. The Indian government was reported to be furious with an allegedly biased and interventionist report by a EP delegation, whose leader, John Cushnahan, called Jammu and Kashmir "the world's most beautiful prison", India reacted to the criticism by withdrawing official patronage to such visits. India has already stopped extending official patronage to the annual visit by the European Union following criticism of the government's human rights record in the state. The EP report branded Jammu and Kashmir as "Indian Occupied Kashmir," and criticised the Indian government's failure to curb human rights abuses by its security forces, which it believes is contributing towards feeding the cycle of violence. The report also highlighted the fact that the huge Indian military presence in Kashmir amounts to one soldier to every 10 civilians. **[13d]**

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## Disappearances

**6.271** According to a United Nations report dated January 1998, there have also been disappearances, most of which occurred between 1983 and 1995. They were attributable to the police authorities, the army and paramilitary groups acting in conjunction with, or with the acquiescence of, the armed forces. In Kashmir numerous people are said to have disappeared after "shoot outs" with security forces. **[6d](p38)** As reported in an Amnesty International report 1999, abduction and hostage taking of unarmed civilians has also been used by armed opposition groups to seek to free arrested associates or to frighten or harass the population. Amnesty International report that the victims of disappearance belong to all ages, including children and juveniles, and all professions and most appear to be ordinary civilians who have no connections with armed opposition groups operating in Jammu and Kashmir. **[3f](p3)**

**6.272** As reported by the UN in 1998, the fate of the victim remains unknown in many cases. Investigations into cases of disappearances were rarely carried out and when they were, they were usually conducted by police or army officials rather than by an independent body. Police often failed to register detentions or file arrest warrants, and they were then able to deny holding a detainee. **[6d](p39)**

**6.273** Amnesty International reported that during 1998 there were fewer disappearances in Jammu and Kashmir than in previous years, but many of the early cases remain unresolved. Amnesty also reported that no effective measures had been taken to end disappearances and to investigate the fate of hundreds of people who had disappeared, including the more

than 100 cases submitted by Amnesty in its 1993 report. **[3f](p32-33)**

**6.274** As reported in the USSD 2004, "In June 2003, the Jammu and Kashmir government announced that 3,931 persons had disapeared in the state since militancy began in 1990. This figure contrasted with that given by the Association of Parents of Disappeared Persons (APDP), which put the number at more than 8,000. In May, the Government reported that many of those listed as missing by the APDP in March of 2003, had joined insurgent groups, had been killed, were in custody, or were in Pakistnan. **[2c](section 1b)**

**6.275** As reported in the USSD 2004, "There were no confirmed reports of politically motivated disappearances due to action by government forces; however, scores of persons disappeared in strife and militancy-torn areas during the year." **[2c](section 1b)**

**6.276** As reported by the USSD 2003, "According to AI, in May [2003], the NHRC asked the Chief Secretary of Jammu and Kashmir for specific information on the systems used by the state government to record and investigate allegations of enforced or involuntary disappearances. In addition, the commission requested the number of such allegations recorded and the measures taken to prevent their occurrence. It recommended compensations relief for 719 persons who disappeared, and relief was paid for 61."**[2h](Section 1b)**

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## Special Security Laws

**6.277** As noted in the USSD 2003, the authorities in Jammu and Kashmir have special powers to search and arrest without a warrant.**[2d](p14)**

**6.278** As noted in the USSD 2004,

> "The Armed Forces Special Powers Act (AFSPA) of 1958 remained in effect in Nagaland, Manipur, Assam, and parts of Tripura, and a version of this law was in effect in Jammu and Kashmir. Under AFSPA, the Government can declare any State or Union Territory a "disturbed area." This allows the security forces to fire on any person for the "maintenance of law and order" and to arrest any person "against whom reasonable suspicion exists" without informing the detainee of the grounds for arrest. Security forces are also granted immunity from prosecution for acts committed under AFSPA." **[2c](section 1d)**

**6.279** The same report continues, "The authorities in Jammu and Kashmir, Punjab, and Assam have special powers to search and arrest without a warrant." **[2c](section 1f)**

**6.280** As reported in USSD 2004,

> "Although the Government allowed the Terrorism and Disruptive Activities Act (TADA) to lapse in 1995, the South Asia Human Rights Documentation Center reported that more than 1,000 persons remained in detention awaiting prosecution under the law, and that cases opened under TADA continued through the judicial system. This remained a problem in Jammu and Kashmir. TADA courts curtailed many legal protections provided by other courts. For example, defense counsel was not permitted to see prosecution witnesses, who were kept behind screens while testifying in court, and confessions extracted under duress were admissible as evidence." **[2c](section 1d)**

**6.281** As cited in the USSD 2004, "Security force personnel enjoyed extraordinary powers under the Jammu and Kashmir Disturbed Areas Act, and the Armed Forces (Jammu and Kashmir) Special Powers Act, which includes the authority to shoot suspected lawbreakers on sight and destroy structures suspected of harboring militants or arms." **[2c](section 1g)**

**6.282** As noted in the USSD 2004,

> "The Public Safety Act (PSA), which applies only in Jammu and Kashmir, permits state authorities to detain persons without charge and judicial review for up to 2 years. In addition, detainees do not have access to family members or legal counsel. The Government estimated that approximately 514 persons remained in custody under PSA or related charges at year's end. In June, 92 PSA prisoners were released."**[2c](section 1d)**

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## Police and Security Force Impunity

**6.283** As noted in the US Department of State report for 2004 (USSD),

> "Accountability by the Jammu and Kashmir Government remained a serious problem. Indian human rights groups estimate that 30,000-35,000 persons have died during the conflict in Jammu and Kashmir, but there were no reliable estimates of the number of deaths resulting directly from abuses. Security forces have committed thousands of serious human rights violations over the course of the 15-year insurgency, including extra-judicial killings, disappearances, and torture." **[2c](section 1a)**

**6.284** As reported in USSD 2004, Security forces forces have committed thousands of serious human rights violations over the course of the 15-year insurgency, including extrajudicial killings, disappearances, and torture. **[2c](Section 1a)** **"**Security force personnel enjoyed extraordinary powers under the Jammu and Kashmir disturbed Areas Act and the Armed Forces (Jammu and Kashmir) Special Powers Act, which includes the authority to shoot suspected lawbreakers on sight and destroy structures suspected of harboring militants or arms ... Members of the security forces continued to abduct and kill suspected militants, and security forces were not adequately held accountable for their actions. Reliable data on such cases were difficult to obtain."**[2c](section 1g)**

**6.285** According to a BBC news report dated 4 October 2000, in October 2000 the Indian army sentenced one of its officers (whose rank was captain) to 7 years' imprisonment for raping a young girl in a village in the Doda district. The case marked a rare departure for the army, both in terms of making the case public and in taking such severe action. **[32x]**

**6.286** As reported in a BBC news report dated 20 March 2003, in April 2003 three members of India's elite National Security Guards (NSG) were to face charges in connection with the disappearance of a Kashmiri civilian in 1990, in the first incident of its kind in Kashmir. **[32ar]**

**6.287** In an open letter to the Chief Minister of Jammu and Kashmir on 2 December 2003, Amnesty International (AI) reminded the administration of promises made a year earlier (November 2002) to introduce a common minimum program to restore law and order. AI charged the Chief Minister of failing to end human rights violations perpetrated by the security

services. AI noted that,

> "No serious cases of human rights violations were reported from the state during the first month in power of the PDP - Congress administration, raising hopes that human rights violations in Jammu and Kashmir would be a thing of the past. However, soon afterwards there were reports from Baramulla district that security forces opened unprovoked and indiscriminate fire killing one person and injuring two others. Since then, human rights abuses by the security forces and police have continued to be reported almost daily". **[3l] (p.1)**

**6.288** According to Amnesty International (AI) in an open letter to the Chief Minister of Jammu and Kashmir, dated 2 December 2003, on a number of occasions, the state government had failed to prosecute alleged human rights violations by security forces. AI noted that,

> "On 16 May Mohammad Ashraf Malik was handed over to the 41st Rastriya Rifles (RR) by his uncle after the soldiers said that they needed him for questioning. The family were assured by the Senior Superintendent of police of Kupwara district that he would be released after questioning. However, after three days, on 19 May, the family of Mohammad Ashraf Malik were informed he was killed in a landmine explosion while he was leading the police to a militant hideout. His family received 40 grams of his flesh as his remains. A First Information Report (FIR) was not registered and an investigation into his death has not been conducted. The family believe that the police are responsible for his death." **[3l] (p.2)**

**6.289** AI also raised concerns that a police officer involved in five extrajudicial executions at Patribal in March 2000 was honoured by the state government despite an earlier recommendation that he should be dismissed from service. **[3l] (p.2-3)**

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## Detention

**6.290** As reported in the US Department of State report 2004 (USSD), "Human rights groups maintained that in Jammu and Kashmir and in the northeastern states, several hundred persons were held by the military and paramilitary forces in long-term unacknowledged detention in interrogation centres and transit camps intended only for short-term confinement. Human rights groups feared that many of these unacknowledged prisoners were subjected to torture and some were killed extrajudicially." **[2c](section 1b)**

**6.291**As stated in the USSD 2004,

> "The Government maintained that screening committees administered by the state governments provided information about these detainees to their families. However, other sources indicate that families could only confirm the detention of their relatives by bribing prison guards. In 2002, the state government of Jammu and Kashmir implemented a screening system to review detention cases and release numerous detainees… In March 2003, the Joint Screening Committee in Jammu and Kashmir recommended the release of 24 persons, of whom 17 were released. According to press reports, during February and March, the government released 118 separatist detainees in conjunction with its dialogue with the moderate faction of the All-Parties Huriyat Conference (APHC), an alliance of political, social, and relgious organizations created to further the cause of Kashmiri separtism." **[2c](section 1b)**

**6.292** The UK Foreign and Commonwealth Office in its 2003 annual report on human rights, welcomed the commitment of the State government in its review of cases of detainees held for long periods without trial and the release of those held on non-specific or less serious charges. **[7b] (p.136)** However, Amnesty International (AI) in an open letter to the Chief Minister of Jammu and Kashmir (dated 2 December 2003), did not consider that the State government had done enough to address the problem of detainees and noted that the screening committee had released only a few political prisoners because the committee had failed to meet consistently throughout the year (2003). AI also expressed concerns about the make up of the committee, after it was announced that the committee would include an officer of the Union Ministry for Home Affairs, thereby changing the nature of the screening whereby the central government was able to determine which candidates were released. **[3l] (p.2)**

**6.293** As noted in the USSD 2004,

> "According to the Home Ministry's annual report, the International Committee of the Red Cross (ICRC) visited 55 detention centers and over 7,000 detainees during the year, including all acknowledged detention centers in Jammu and Kashmir, and all facilities where Kashmiries were held elsewhere in the country… During the year [2004], the ICRC stated that it continued to encounter difficulties in maintaining regular access to persons detained in Jammu and Kashmir. The NHRC received authorization from 15 states and union territories to conduct surprise jail visits."**[2c](section 1c)**

**6.294** Amnesty International (AI) in an open letter to the Chief Minister of Jammu and Kashmir, dated 2 December 2003, expressed concern about the "scores" of people who continued to be held under Prevention of Terrorism Act (POTA) (2002) powers. AI welcomed the fact that POTA powers had not been used to arrest Kashmiris during 2003, but pointed out that the detainees were being arbitrarily detained in violation of Article 9 of the International Covenant on Civil and Political Rights. AI also considered that the state government had failed to live up to an election commitment to release a large number of detainees being held outside Jammu and Kashmir. AI noted that detention outside of Jammu and Kashmir was in violation of the amendments to the Jammu and Kashmir Public Safety Act, 1978 (PSA) which provides that Kashmiris cannot be detained outside the state. In addition, those detained under Terrorism and Disruptive Activities (Prevention) Act, (TADA) which was enforced in the state in 1987, continue to be behind bars even though the law lapsed in Jammu and Kashmir in 1995. TADA continues to be applied retrospectively in the state. **[3l] (p.1-2)**

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### Ineffective Judiciary

**6.295** As reported in the US Department of State report 2004 (USSD), "In Jammu and Kashmir, the judicial system barely functioned due to threats by militants against judges, witnesses, and their family members; because of judicial tolerance of the Government's often heavy-handed anti-militant actions; and because of the frequent refusal by security forces to obey court orders… Courts in Jammu and Kashmir often were reluctant to hear cases involving militant crimes and failed to act expeditiously on habeas corpus cases, if they acted at all. There were a few convictions of alleged terrorists in the Jammu High Court during the year. In March, Jammu and Kashmir Chief Minister Mufti Mohammad Sayeed announced there were 533 persons of unidentified ethnicity, 361 Kashmiris and

172 foreigners, behind bars. During the year, the Government released 85 detainees." **[2c](section 1 e)**

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### State Human Rights Commission

**6.296** As reported by BBC monitoring service on 2 May 1997, the Jammu and Kashmir Protection of Human Rights Act 1997 established a State Human Rights Commission and human rights courts. The Commission is empowered to enquire into any complaint of a violation of human rights presented to it by a victim or any person on his/her behalf. It can also intervene in any proceeding involving any allegation or violation of human rights pending before a court with the approval of the court. **[10b]**

**6.297** The same report continues that the Commission may also visit any jail or detention centre. It can also review human rights legislation and recommend measures for its effective implementation. **[10b]**

**6.298** However, the USSD 2004 states that the Jammu and Kashmir state legislature established a state human rights commission, but it had no authority to investigate alleged human rights violations committed by members of the security forces. **[2c](section 4)**

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## Women

## For more detailed information on the situation of women in India the report of the Home Office Fact Finding Mission to India in July 2004, published in December 2004, should also be consulted.

### Overview

**6.299** According to the July 2002 estimates as cited in the CIA World Factbook 2002, out of a population of 1,045 million, 506 million are female and 539 million are male. **[35](p3)** As reported in the US Department of State report 2001, higher female mortality at all age levels, including female infanticide and sex selective termination of pregnancies, accounts for the higher ratio of males to females. **[2a] (section 5)**

**6.300** A report commissioned by the Office of the United Nations Resident Co-ordinator in India in 2001 entitled Women in India How Free? How Equal? (the 2001 UN report) states that, "Only 54% of Indian women are literate as compared to 76% men."**[50](p8)** The report continues,

> "At the time of the 1991 Census, only 39% of Indian women could read and write. According to the Census of India 2001, female literacy rates have gone up to 54%. In 1951, India's female literacy rate for the entire population over 5 years of age, was barely 9%. In the past 50 years, therefore, it has increased six-fold. Despite this progress, close to 190 million Indian women lack the basic capability to read and write. Female literacy levels vary dramatically between states. The Census of India 2001 results are sobering – only Kerala and Mizoram have even approached universal

female literacy. In Orissa, Rajasthan, Uttar Pradesh, Arunchal Pradesh, Jharkhand, Madhya Pradesh, Andhra Pradesh and Bihar almost 50% of women do not know how to read and write." **[50](p43)**

**6.301** The 2001 UN report notes that

"The Constitution of India guarantees to all Indian women

- 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)" **[50](p11)**

**6.302** The 2001 UN report concludes that on the facts in the report there is evidence of huge gaps between constitutional guarantees and the daily realities of women's lives. The report notes that all women are not equal, women belonging to the privileged and dominant classes and castes enjoy many more freedoms and opportunities than women from the subordinate and less privileged groups. Inequality in India affects men but also Dalits and Adivasis, members of subordinate castes and communities, landless people, disabled people, and many other groups. However the report concludes women have a position at the bottom of the pile in each of these groups thus women have the position of the poorest and most powerless individuals. **[50](p79)**

**6.303** Amnesty International in its 2004 Annual report covering events in 2003 noted,

"Socially and economically marginalized groups, such as *dalits*, *adivasis*, women and religious minorities, including Muslims, continued to face discrimination at the hands of the police, the criminal justice system and non-state actors.

In April a government-appointed committee under the direction of Justice Malimath published its recommendations for reforms of the criminal justice system in India. There were concerns that the Committee's recommendations threatened to weaken protection of women's rights in law. For example the Committee recommended that in cases where the offence of cruelty is committed against a woman by her husband or his relatives, it should be possible to settle the case out of court and bail should be available to the accused. The Committee's reasoning for this proposal was that it would facilitate forgiveness of the husband and the return of the woman to the matrimonial home." **[3k] (p3)**

**6.304** In 2003 the Government of Assam Planning and Development Department issued a Human Development report for the state of Assam. In a chapter entitled Women: Striving in an Unequal World, the report states,

"Despite their contribution, they [women] continue to be severely disadvantaged, and even discriminated against. In most fields of professional endeavour, women have had to struggle to reach the top, in the process of combating indifference, occasionally even obstruction and hostility. At the other end of the economic scale, women are deprived access to basic services, and relegated to subservient yet physically demanding roles. In this context the position of women in Assam is no different from that of women in other regions of the country. In fact, in some respects women in Assam are even more disadvantaged."**[88](p106)**

**6.305** In 2003 the Government of Tamil Nadu issued a report on Human Development in Tamil Nadu which included a chapter entitled Gender. The report states that the performance of Tamil Nadu in a number of areas including female literacy, infant mortality rates, life expectancy and fertility rates shows that the status of women is higher in Tamil Nadu than in other states with the exception of Kerala. However the report acknowledges that their position as regards men has remained unchanged or even worsened as far as the declining sex ratio is concerned.**[18](p93)**

**6.306** A report commissioned by the Office of the United Nations Resident Co-ordinator in India in 2001 entitled Women in India How Free? How Equal? (the 2001 UN report) states that,

"India has led the world in ratifying UN Conventions and international covenants like the convention of the Elimination of All Forms of Discrimination against Women (CEDAW) and the Beijing Platform for Action…The last few years have seen dramatic increases in the space available for women in Indian society – a consequence of affirmative policies and programmes by the government and initiatives by NGOs and other civil society groups. Most of all, these changes are the result of years of determined advocacy, campaigning and action for change by women themselves." **[50](p13)**

However, the report continues "But gaps still remain. While some women are emerging as strong and confident individuals, in control of their own lives and capable of raising their voices to demand their rights, others face a very different reality, prompting the question: 'Is the glass half full or half empty?' " **[50](p13)**

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## Legislation

**6.307** As cited in the AI report India: The battle against fear and discrimination, "The central government and state government have taken several steps to protect woman [sic] through enactment of legislation and to prosecute those who perpetrate violence against them. The Indian Penal Code (IPC) has been amended several times in relation to crimes against women largely as a result of campaigns against violence led by the womens movement in the country."**[3e](p13)**

**6.308** As reported in the US State Department Report 2004 (USSD) published on 28 February 2005, "Numerous laws exist to protect women's rights, including the Equal Remuneration Act of 1976, the Prevention of Immoral Traffic Act of 1956, the Sati (Widow Burning) Prevention Act of 1987, and the Dowry Prohibition Act of 1961. However the Government often was unable to enforce these laws, especially in rural areas in which traditions were deeply rooted." **[2c](section4)**

**6.309**The same report continues, "The Government has taken a number of steps to assist

the victims of crimes against women. These include establishing telephonic help lines, creating short-stay homes, providing counseling, occupational training, medical aid, and other services, and creating grant-in-aid schemes to provide rehabilitation rescue." **[2c](section4)**

**6.310** As noted in a report commissioned by the Office of the United Nations Resident Co-ordinator in India in 2001 entitled Women in India How Free? How Equal?( the 2001 UN report),

> "In response to years of sustained legal activism by the women's movement, the Supreme Court has begun to apply equality principles to address issues of violence against women. Apart from the landmark ruling on sexual harassment in the workplace in 1997, judgements have also begun to apply international conventions like CEDAW and the Convention on Human Rights. Following the declaration of 2001 as the "Year of Women's Empowerment", the Government of India has announced that more stringent civil legislation will be enacted to combat violence against women. The proposed bill will give women victims the rights to protection, relief and custody of their children."**[50](p76-77)**

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**Gender imbalance**

**6.311** As reported in the US State Department Report 2004 (USSD) published on 28 February 2005,

> "Female infanticide was a problem, and the traditional preference for male children continued. According to statistics, the natural pattern of child sex distribution suggested there should be 952 girls for every 1,000 boys, but in the last 2 years in Tamil Nadu, the ratio has been as low as 727 in some rural areas of the state, according to the 2001 Census. Sex selective feticide [sic] was the cause for the drop. Although the law prohibits the use of amniocentesis and sonogram tests for sex determinnation, NGOs in the area reported that family planning centers in the state reveal the sex of the fetus, and the Government did not effectively enforce the law prohibiting termination of a pregnancy for sexual preference. In addition, parents often gave priority in health care and nutrition to male infants. Women's rights groups pointed out that the burden of providing girls with an adequate dowry was one factor that made daughters less desirable. The states of Punjab, Haryana, Gujarat, Uttar Pradesh, Himachal Pradesh, Delhi, parts of Tamil Nadu, Maharashtra, and Karnataka reported particularly low male/female ratios, with Punjab reporting the lowest statewide totals in the country: 793 females to 1000 males. **[2c] (section4)**

**6.312** As stated in the US Department of State report 2003, published on 25 February 2004, "In Tamil Nadu, three persons were sentenced to life imprisonment for killing a newborn girl. Tamil Nadu implemented a "cradle scheme" in 1992 whereby unwanted infants could be left outside the Social Welfare Department."**[2g](p29)**

**6.313** An independent report commissioned by the Office of the United Nations Resident Co-ordinator in India in 2001 entitled Women in India How Free? How Equal? (the 2001 UN report) noted that, "Given the enormous progress India has made in health care and nutrition for its women and children one would expect a steady increase in the number of women in the population. It is shocking that the reverse has happened. The female to male ratio has become worse, not better, in the last 100 years. The adverse male to

female ratio can be explained only by the fact that women in India are still second class citizens. It is proof that, at every stage in their lives beginning from before birth, women are deprived of their rights and entitlements, and discriminated against in a variety of ways."**[50](p.12-13)**

**6.314** As reported in a BBC report dated 24 August 2004 in connection with a man in Rajasthan threatening to kill his third daughter born after the failure of an operation to sterilise his wife, "Female infanticide is rife in Rajasthan, where the birth of a daughter is considered a curse, while the birth of a son is celebrated. The state has a gender imbalance, with just 922 females for every 1,000 males." **[32ee]** A report issued by the Government of Assam in 2003 states that, "The SR [sex ratio] in Assam according to the 2001 Census, is 932 females per 1000 males, marginally below the national SR of 933 females per 1000 males. For Assam as well as for India there has been an improvement in the SR (from 923 to 932 for Assam and from 927 to 933 for India)." However these figures are based on a comparison with the 1991 census, and are marginally more adverse than the 1981 census for India which showed a figure of 934 females per 1000 males. **[88](p112)**

**6.315** As reported by BBC News on 22 January 2005,

> "In some part of India there are so few women that men are having to look away from home to secure a bride. In the worst affected state of the Punjab there are fewer than eight girls to ten boys. Experts blame the outlawed practice of female foeticide (aborting female babies) for the skewed male/female ratio and say that almost a million girl foetuses have been killed because of culture and tradition state that boy babies are preferable. In India, girls can be viewed as a burden, not least because many still believe a family must provide a dowry for their daughter's mariage – even though this practice is now illegal. There is also widespread belief that the family is continued through the male line and an interpretation of Hinduism that says the father's last rites must be carried out by his son." To raise awareness and to try to change opinion, the international charity Plan and the Indian Government with financial backing from the Edward Greene charity are to produce a soap opera in their hope that this will reach a wider audience and start the process of change. "Dr Saarda Jain, from the Indian Medical Association, based in New Delhi, said that although the practice of female foeticide was banned in practice that it was still flourishing in certain areas." He commented that although it is condemned as a crime it is still being carried out. According to the article there is great cause for concern about the female/male ratio in India which is dropping rapidly. "In 1991 there were 945 female to 1,000 males, but by 2001 that was just 927… It is a very male dominated society." Dr Saarda Jain stated that the statute is not making much difference where even the educated and elite are involved in female foeticide. **[32fw]**

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## Marriage

**6.316** According to a World Bank document, Terror as a Bargaining Instrument: A Case study of Dowry violence in rural India, 2002, "In India marriage is almost never a matter of choice for women, but is driven almost entirely by social norms and parental preferences."**[55](p1)**

**6.317** A report commissioned by the Office of the United Nations Resident Co-ordinator in India in 2001 entitled Women in India How Free? How Equal? notes that, "Legally the minimum age for marriage in India is 18 for women and 21 for men, but this law is honoured more in the breach. Close to 60% of women in rural India were married before the age of 18,

when they were still adolescents - and this is in a sample of women in the age group of 20-24 years, not the 'older generation' where this may have been the norm. The fact that the legal provisions for compulsory registration of births and marriages are seldom enforced, allows the prohibition against child marriage to be flouted with impunity." **[50](p.62)**

**6.318** According to the UNHCR Human Rights report 1995, the personal status laws of the religious communities govern matters such as marriage, divorce and property. The Hindu Marriage Act 1955 gives the parties the right to dissolve the marriage according to their custom. Under the Indian Divorce Act 1969, a Christian woman may petition the court for divorce on one or more of several grounds, including bigamy and rape. **[4e](p9)** The BBC, in a news item dated 4 August 2004, reported that following several cases where Indian men had divorced their wives by mail, over the phone and via text messages, the All India Muslim Personal Law Board had taken the matter up at a recent meeting. According to the BBC report although the board does not have the authority to ban the practice there is a consensus among the board that it is a sin and they will try to discourage the practice. An awareness campaign has been started. **[32b]** According to UNHCR Human Rights report 1995, the divorce law applying to secular marriages is included in the Special Marriage Act 1954 and provides for divorce by mutual consent as well as by petition to the court. **[4e](p9)**

**6.319** The USSD 2003 notes that, "The Government continued to review legislation on marriage; it passed the Indian Divorce (Amendment) Act during 2001; the act widely had been criticized as biased against women. The Act placed limitations on interfaith marriages and specified penalties, such as 10 years' imprisonment, for clergymen who contravened its provisions". **[2h](Section 5: Women)**

**6.320** As reported in the US Department of State Report 2004, "In February, the Governemnt amended the divorce laws to expand the venues where a woman could file and obtain a divorce. Earlier provisions in the Hindu and Special Marriage Acts forced women to file cases in cities or towns where they resided during the marriage or where the marriage took place; however, the amendment permits divorce cases where the woman presently resides. At year's end, there were no changes to the triple talaq provisions." **[2c](section4)**

**6.321** The USSD 2001 notes that, "The Hindu Succession Act provides equal inheritance rights for Hindu women, but married daughters are seldom given a share in parental property. Islamic law recognises a woman's right of inheritance but specifies that a daughter's share should only be half that of a son."**[2a](Section 5: Women)**

**6.322** As noted in the USSD 2004, "Under many tribal land systems, notably in Bihar, tribal women do not have the right to own land. Other laws relating to the ownership of assets and land accorded women little control over land use, retention or sale. However, several exceptions existed, such as in Ladakh and Meghalaya, where women could control the family property and inheritance." **[2c](section 4)** A BBC news report dated 24 June 2003 notes that in Meghalaya, women run family businesses, dominate the households and take all key family decisions. However according to a Meghalaya based NGO – North East Network, patriarchal values are gaining ground. Domestic violence against women in Meghalaya was increasing, the number of cases of rape and sexual abuse against women have also been rising.**[32ba]**

**6.323** It was reported on 16 September 2003 by the BBC that India faces a key marriage ruling after a landmark ruling in the Calcutta High Court. An Indian man planned to appeal after the court ruled that he had no right to force his wife to live with his family. Two judges ruled that his wife should live with him but separately from her in-laws. "When her husband refused to move out she sued him in a lower court, with the request that he be legally

compelled to stay with her. When the lower court turned down her request, she took the case to the High Court…They ruled that a wife had the right to live separately with her husband, and could refuse to live with his parents and relatives. Legal experts say this judgement could have a huge impact on conjugal relations in India's male-dominated society and if not overturned by the Supreme Court, could be used as case-law." **[32bw]**

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**Domestic Violence**

**6.324** As noted in the US State Department Report 2004 (USSD) published on 28 February 2005, "Domestic violence was common and a serious problem. According to the National Family Health Survey released in 2002, 56 percent of the women said that domestic violence was justified. These sentiments led to underreporting and, combined with ineffective prosecution and societal attitudes, made progress against domestic violence difficult." **[2c](section 4)** A report commissioned by the Office of the United Nations Resident Co-ordinator in India in 2001 entitled Women in India How Free? How Equal? (the 2001 UN report) also notes that all women, regardless of age, class, caste and community are vulnerable to domestic violence and further notes that marriage, a joint family, education, economic security and social status do not provide any real protection.**[50](p73)**

**6.325** As reported in the Human Rights Watch Annual Report 2005, "Domestic violence includes dowry-related abuses and "bride-burning."**[26e]**

**6.326** AI note in The Battle against fear and discrimination report, violence within the home is widespread in both Uttar Pradesh and Rajasthan and affects women throughout society. It is apparent in both wealthy urban households and the poorest rural households cutting across all religious, class and caste boundaries. Offences include beating, slapping, kicking, rape and even murder, often by burning.**[3 l](p5-6)**

**6.327** In a report issued in 2003 by the Government of Assam it was noted that,

> "All over the country women face harassment and violence at the work place and at home. To a degree, this is also true of Assam where women increasingly need to cope with aggression, especially domestic violence. According to National Health Survey-2 (NFHS-2), 16 percent of women in the State have experienced violence since the age of 15. Although lower than the national average of 21 percent, this is still a matter of concern. Rural illiterate women, according to the survey are most likely to have experienced violence in some form. Of married women, 14 per-cent have been mistreated by their husband. The fact of a 'culture of silence' surrounds the issue of domestic violence makes data collection very difficult. These figures could well be under-estimates."**[88](p132-133)**

**6.328** A Human Development report issued by the Government of Tamil Nadu in 2003 stated, on the issue of gender-based violence,

> "There are several causes of violence against women. The perception that women are their husband's property is strong in Tamil Nadu. Suspicion of infidelity, infertility (of the couple), alcoholism, dowry and instigation by in-laws are some of the immediate causes of violence against women, signalling the deep-rooted patriarchal values that underlie the same. The result is that wife beating is considered normal, even by women themselves." **[18](p101)**

**6.329** The 2001 UN report notes, on the issue of the law protecting women from violence that the laws themselves constitute the greatest barrier against injustice for women. The report states that,

- "The definition of rape excludes all forms of sexual assault other than penetrative intercourse
- The age of consent is defined as fifteen years, contradicting the definition of an adult woman as one above 18 years of age.
- Marital rape is not considered an offence unless the wife is less than 12 years, even though marriage with a minor is itself a crime.
- Women who cannot show physical proof of having resisted the act, in the form of injuries, are generally assumed to have consented to it."**[50](p75)**

**6.330** However the 2001 UN report concludes,

> "Following the declaration of 2001 as the 'Year of Women's Empowerment', the Government of India has announced that more stringent legislation will be enacted to combat violence against women. The proposed Bill will give women victims of violence the rights to protection, relief and custody of their children. The common perception of domestic violence as a "private" issue is also changing. According to a survey conducted by the Times of India in Bangalore, where 250 women and men were interviewed, 81% considered domestic violence to be a serious problem and defined it as verbal and physical abuse, sexual harassment and mental torture. The overwhelming majority of respondents felt that legal action was justified in cases of domestic violence."**[50](p77)**

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**Dowry**

**6.331** As reported by the BBC on 16 July 2003, dowries and the problems associated with them have meant that many Indian families are desperate to avoid having girls. Legislation against sex determination tests was passed nearly a decade ago, but the practice is still widespread. Pre-natal Diagnostics Techniques (Regulation and Prevention of Misuse) 1994 (amended 2002) bans sex determination tests. **[32bb]**

**6.332** As noted in the US State Department Report 2004 (USSD) published on 28 February 2005,

> "Providing or taking dowry is illegal under the Dowry Prohibition Act of 1961; however, dowries continued to be offered and accepted, and dowry disputes were a serious problem. In a typical dowry dispute, the groom's family harassed a new wife whom they believed had not provided a sufficient dowry. This harassment sometimes ended in the woman's death, which the family often tried to portray as a suicide or accident. Data collected by the Ministry of Home Affairs and the NCRB show that there has been an overall decline of reported dowry deaths in the last 3 years, decreasing from 6,851 in 2001 to 6,822 in 2002 and then declining further to 6,285 in 2003. The number of dowry related complaints received by the National Commission for Women (NCW) as reported by the Home Ministry also showed a decline. Dowry harassment complaints in 2002 numbered 1,074; in 2003, complaints numbered 895, and complaints

numbered 453 in the current year. However, this decline may be a result of under-reporting and not a result of an overall decline. Many women allegedly committed suicide because of dowry pressure."

**6.333** As reported in the US Department of State report 2004, "Under the Penal Code, courts must presume the husband or the wife's in-laws are responsible for every unnatural death of a woman in the first 7 years of marriage, provided that harassment was proven; however in practice police did not follow these procedures consistently." **[2c](section 4)** As reported by the BBC news Service on 1 June 2000, if convicted, prison sentences can stretch to 14 years. **[32l]**

**6.334** As noted in a BBC news article dated 16 July 2003, this type of murder is often referred to as "bride burning" in India. Payment and acceptance of a dowry has been illegal in India for 40 years but is still widely practised. Dowry Prohibition Act 1961 (amended in 1984 and 1986) bans paying and receiving dowries. **[32bb]** As reported by the BBC on 16 July 2003, in 2003 a prospective bride from Noida just outside Delhi had her groom arrested after he demanded a dowry, the groom and his mother were arrested under the rarely enforced 1961 Anti-Dowry Act, both were awaiting trial. **[32bb]** According to a BBC news item dated 8 October 2003, Nisha Sharma became an instant celebrity as politicians and non-government organisations honoured her for her boldness in calling the police. **[32cb]** According to the US State Department report 2004, in the case of Nisha Sharma, the potential groom was detained for 14 days while formal charges were filed for violating the country's laws against dowries. The case received considerable publicity and the story has been included in the school curriculum in Delhi to teach children the problems of the dowry system. **[2c](section 4)**

**6.335** As reported in a BBC news article dated 29 September 2004, "The new English textbook for the sixth standard – age 11 to 12 – in schools run by the government of the Indian capital, Delhi, includes a chapter on Nisha Sharma." The State Council of Education Research and Training who prepared the book stated that the story was included to draw children's attention to social problems. Nisha Sharma became a role model after calling off her wedding because her fiance asked her parents for more dowry money. **[32fj]**

**6.336** As recorded in the USSD 2004, "Usually at a disadvantage in dowry disputes, women have begun to speak out against dowry demands."**[2c](section 4)** According to a BBC news report dated 28 November 2003, "Thousands of people in the southern Indian city of Bangalore have staged a march and rally against the system of dowry." The Karnataka State Women's commission (KSWC) organised the rally, apparently the women were joined by many men. **[32cd]**

**6.337** It was reported by the BBC in an article dated 14 November 2003 that India's illegal dowry system was still thriving, leaving women vulnerable to abuse. The Crime Women Cell is a women's crime unit in south Delhi set up to protect women in a male dominated society. "The police unit has been given new powers to arrest and detain suspects… Despite the corruption and bureaucracy, hundreds are convicted of dowry crime every year... Crimes against women have soared in the last 10 years with many more being committed than are recorded, these are serious crimes. The head of the Crime Women Cell stated that dowry was the main problem, with increasing numbers of women going to the unit." **[32ch]**

**6.338** As noted in a BBC news article dated 30 September 2004, a triple suicide attempt was made by three sisters afraid any dowry demands for their potential marriage would finanacially cripple their father. The sisters were from a village in Calcutta. The three drank pesticides whereupon the youngest died and her two sisters survived but were in hospital. One of the sisters said that her mother had a brain disease and her father had struggled for months to get sufficient money together for dowries. In their suicide note the girls said they

wanted to save the family from continuing struggels for dowry money which had led to bitter arguments. The father denied the situation was that bad but admitted that on occasion marriages have broken down because he could not find a dowry. "He said the dowry system - while technically illegal – is a way of life… If you have a daughter, you have to give a dowry, if you have a son, you will receive one when you are married. It is the way of our society." The article further states that although the dowry system is officially illegal in India, it is common outside the main cities." A doctor at the hospital where the girls were admitted stated that a survey was carried out some months earlier whereby it was found that 35-40 people attempted suicide in that area every month. He said that extreme poverty was the principle cause of suicides linked to dowries. **[32gb]**

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### Gender Discrimination

**6.339** AI further report that gender discrimination is a problem within many communities, caste and land rights impact on political, social and economic relationships. In Uttar Pradesh political parties representing dalit and lower-caste communities have played a role in empowering some of these groups in some areas.**[3e](p6)** Despite many positive developments in securing women's human rights, patriarchy continues to be embedded in the social system in many parts of India.**[3e](p5)**

**6.340** As cited in Human Rights Watch Annual Report 2005, "Despite several legal provisions for gender equality, women still struggle to realize equal rights to property, marriage, divorce, and protection under the law. "**[26e]**

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### Societal violence

**6.341** As noted in the US State Department Report 2004 (USSD) published on 28 February 2005,

> "The press reported that violence against women was increasing, although some local women's organizations attributed the increase to increased reporting. Only 10 percent of rape cases were adjudicated fully by the courts, and police typically failed to arrest rapists, thus fostering a climate of impunity. Upper caste gangs often used mass rapes an intimidation tactic against lower castes, and gang rapes often were committed as a punishment for alleged adultery or as a means of coercion or revenge in rural property disputes. The number of reported rape cases and the extent of prosecution varied from state to state."**[2c](section 4)**

**6.342** According to a BBC report dated 16 April 2002, it was reported by a woman's panel visiting Gujarat, that Muslim women were subjected to sexual violence during the communal riots of 2002. The panel reported that many women suffered the worst forms of sexual violence, including gang-rape. They allege that the police refused to file complaints by the victims. **[32bc]** The National Human Rights Commission reported in October 2003, that it has extended legal assistance to a victim of alleged mass rape at Limkheida in Dahod District, Gujarat during the post Godhra communal disturbances. The Commission decided to assist the applicant to pursue legal remedies in her case and indicated it could offer financial assistance to her. The Supreme Court admitted a Writ Petition on her behalf, issuing notice to the Gujarat Government and the Dahod Police administration. **[47a]**

**6.343** As noted in an Amnesty International report 2003, India, Break the cycle of impunity

and torture in Punjab, "There has been an overall increase in crimes against women recorded in Punjab in the post militancy period, particularly in the context of matrimonial disputes, in response, the police in Punjab have created "women cells" at district level to deal specifically with offences against women. However, these units reportedly lack staffing and other resources such as means of transport." **[51](p24)**

**6.344** Amnesty International stated in The battle against fear and discrimination report, "Crimes against Women Cells have also been criticised for not responding appropriately or effectively to cases of violence against women although the majority of crimes referred to these cells relate to violence within the family."**[3e](p18)**

**6.345** As reported in Human Rights Watch Annual Report 2005, "Gender-based violence, including domestic violence, sexual harrassment, sexual assault, and trafficking into forced labor and forced prostitution remain serious and pervasive problems in India." **[26e]**

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**Rape**

**6.346** As noted in the US State Department Report 2003 (USSD), published on 25 February 2004, "The issue of rape received increased political and social attention during the year [2003]. The majority of rapes are never reported to the authorities. The NCRB reported that there were only 16,075 cases of rape from 1998-2001. However, the Home Ministry reported in February that, in 2001, there was a 16.5 percent increase in reported rape cases as compared to 2000."**[2h](Section 5: Women)**

**6.347** The US Department of State report 2004 records that, "The Government prosecuted rape cases." As noted in the same report the Home Minsitry reported that in Delhi during 2004 there were 490 instances of rape.**[2c](section 4)**

**6.348** AI reported in The Battle against Fear and discrimination report that many women victims in India do not report a complaint to the police because they fear it will be dismissed or they will suffer further abuse. Activists told AI in Uttar Pradesh and Rajasthan in December 2000 that the majority of cases were not reported for fear of reprisals and bringing dishonour. Most women will only visit a police station if accompanied by a male relative. As a means of encouraging women to register complaints to the police, Mahila thanas (women's police) stations were established in many states.**[3e](p17-18)**

**6.349** According to an Amnesty International report 2003, India, Break the cycle of impunity and torture in Punjab, "Women are particularly vulnerable to police abuse. Rape and other forms of sexual harassment are reported to be frequent forms of torture in police custody. Their humiliation is often greater as they are often tortured solely as a means of putting pressure on their husbands and families." **[51](p16)**

**6.350** It is noted in the USSD 2004, published in February 2005 that,

> "The rape of persons in custody was part of the broader pattern of custodial abuse. NGOs asserted that rape by police, including custodial rape was more common than the NHRC figures indicated. A higher incidence of abuse appeared credible given other evidence of abusive behaviour by police and the likelihood that many rapes were unreported due to the victims sense of shame and fear of retribution. However, legal limits placed on the arrest, search, and police custody of women appeared effectively to limit the frequency of rape in custody. There were no recent NHRC data on the

extent of this problem." **[2c](section 1c)**

**6.351** As noted in a Penal Reform International report 2003, counselling units are now being operated by PRAJA in women's prisons across Andhra Pradesh. They counsel women and in addition provide legal and social awareness training to the women on the premises. This was one of the recommendations in the PRAJA/PRI report on a mental health and care project for women and children imprisoned in Andhra Pradesh, published in October 2001. The report convinced the State's Prisons Department of the need for counselling units and resource centres in women's prisons.**[53](p4)**

**6.352** According to a BBC news article dated 19 December 2003 Delhi is to set up special courts to hear rape cases that will be prosecuted and judged by women. "The city's police argue that courts dedicated to crimes against women can deliver justice faster. There were over 300 cases or rape filed last year in Delhi. Women's rights activists say the social stigma attached to victims prevents many coming forward with complaints." Even fewer take their alleged attackers to court. "The new move will add to the three current special courts in the capital in which women judges deal with sexual harassment and dowry related offences…The minimum punishment for rape is seven years and a section of society is now demanding the death penalty for rapists."**[32ce]**

**6.353** According to the report commissioned by the Office of the United Nations Resident Co-ordinator in India in 2001 entitled Women in India How Free? How Equal?( the 2001 UN report)

> "The India constitution guarantees to all Indians the right to bodily integrity, personal safety and security. The last ten years have seen a much greater sensitivity within the police and justice systems to the issue of violence against women, and sustained campaigning by women's groups has led to stringent legislation to protect women from bodily harm. Yet the violence against women appears to be a "high growth sector."…The rise in reported crimes has occasionally been interpreted as a positive development, showing that more and more women are "breaking the silence" and an increasingly gender-sensitive police force is recording their complaints with sympathy and efficiency. However the picture becomes disturbing when these statistics are seen side by side with the decrease in the number of convictions and the increasing number of pending cases in the courts."**[50](p71)**

**6.354** According to Amnesty International's report, May 2001 "The battle against fear and discrimination, "Attempts by women to seek justice through the criminal justice system are regularly forestalled…Unless supported by male relatives or a strong social group, women victims of crime are at a severe disadvantage within the criminal justice system. Threats and harassment by perpetrators and their communities and social pressures which exist within families and communities force them towards compromise or withdrawal rather than pursuing justice. Gender biases which exist within institutions of redress are often exacerbated by ingrained caste and other biases against members of disadvantaged communities."**[3e](P16-17)**

**6.355** As reported in the Human Rights Watch Annual Report 2005, "Activists continue to campaign for reform of rape laws to protect women and children from all forms of sexual violence. The pervasive understanding of 'rape' is that it occurs only when a stranger uses force on a woman. A marital exemption protects men from being prosecuted for raping their wives. Marital rape is not recognized or penalized unless the wife is under the age of fifteen or if she lives separately from her husband." **[26e]**

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## Women in Politics

**6.356** As cited in the US State Department Report 2004 (USSD) published on 28 February 2004, "There were 69 women in the 783-seat legislature, and 7 women in the Cabinet of Ministers. Numerous women were represented in all major parties in the national and state legislatures. Consitutional amendments passed in 1992 reserved 30 percent of seats for women in elected village council (panchayats)." **[2c](section 3)**

**6.357** India Today reported in July 1998 that there had been a prolonged debate over the reservation of parliamentary and State assembly seats for women. In recent years Indian Governments have pledged to introduce legislation which would guarantee that at least 33% of MPs would be women. **[11b]** As reported by the BBC on 7 March 2003, a Bill has twice been introduced into Parliament, but has yet to be passed. By March 2003, a consensus had still not been reached among political parties discussing the issue. **[32aq]**

**6.358** According to Keesings Record of World Events for May 2003, the Women's Reservation Bill, which sought to reserve one third of seats in the Lok Sabha for women was again effectively stalled on 6 May 2003 after male legislators opposed to it, engineered a disruption in the Lok Sabha. The speaker of the house adjourned the discussion of the bill, effectively ensuring its deferral. Although the BJP and the main opposition Congress (I) were united in support of the bill some parties in the ruling National Democratic Alliance and other opposition parties were determined to thwart its progress. Only 10 percent of MPs were women as at 2003.**[5p]**

**6.359** As stated in the USSD 2003, "In December [2003], the Jammu and Kashmir State Legislative Assembly passed legislation that reserved 33 percent of its seats for women." **[2h](Section 5: Women)**

**6.360** As reported in a BBC news article dated 20 November 2003, women are on the rise in Indian elections. "High profile female candidates were fighting pitched battles in at least 3 of the four states in key state elections in December 2003. Delhi had 77 female candidates, an increase from 58 in the last elections, Congress party fielded 40 women candidates in Madhya Pradesh. The total number of women candidates was less than 10 % of the total contestants. A study conducted by the Delhi based Centre for Social Research showed the winning percentage of women candidates to be much higher than their male counterparts. The study was based on an analysis of the last five general elections since 1972. Analysts say a slow but definite change is emerging in people's perception of women politicians."**[32cf]**

**6.361** A BBC news report dated 8 December 2003 further states that analysts point out that while India has seen a number of women leaders, they have not overseen any remarkable change in the status of women in Indian society. "The two main national parties, the BJP and Congress, have always advocated strong support for reserving a third of seats for women in national and state parliaments. But these attempts have failed and the national parliament percentage for women stands at only 17. The federal cabinet has less than 10% women."**[32cg]**

**6.362** A report issued by the Government of Tamil Nadu in 2003 noted that despite the differences in participation in voting between men and women in Tamil Nadu being small gender difference in achieving positions of power through elections is higher, with the percentage of female members of parliament being consistently lower than 8%.**[18](p103)**

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## Sexual Harassment in the work place

**6.363** The US State Department Report 2004 (USSD) published on 28 February 2005, notes that,

> "The law prohibits discrimination in the workplace; however, enforcement was inadequate. Women experienced economic discrimination in access to employment and credit, which acted as an impediment to women owning a business. The promotion of women to managerial positions within businesses often was slower than that of males. In a positive development, state governments supported microcredit programs for women that began to have an impact in many rural districts."**[2c](secton 4)** The same report notes that, "On April 27, the Supreme Court determined that a victim of sexual harassment could be awarded compensation based on the findings of an internal departmental report or investigation of the case." **[2c](secton 4)**

**6.364** As noted in the USSD 2004,

> "Sexual harassment was common, with a vast majority of cases unreported to authorities. In June 2003, a senior Professor at the Madras Institute of Development Studies published a study in which she chronicled the hazards faced by some women in the workforce. Among these were physical and verbal abuse from male supervisors, restricted use of toilets, and the inability to take lunch breaks. In June the NCW and the Press Institute of India jointly released a report that found that a majority of women experienced gender discrimination at their workplaces. Often, attempts by women to report harassment resulted in further problems or dismissal… On April 27, the Supreme Court determined that a victim of sexual harassment could be awarded compensation based on the findings of an internal departmental report or investigation of the case." **[2c](section 4)**

**6.365** A report issued by the Government of Assam in 2003 noted, "Harassment of women at the work place is an issue that needs to be confronted, through redressal mechanisms that are sensitively designed and approachable by women, by exemplary action against such cases and through awareness. In this context, 'the work' ethic issued by the Government of Assam, a set of mandatory instructions issued for employees to confirm [sic] to, is a step forward, but only one step along the path to securing an environment in which women can work with dignity." **[88](p134)**

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### Organisations offering assistance to women

**6.366** As noted in the US State Department report 2001, "There are thousands of grassroots organisations working for social justice and economic advancement of women, in addition to the National Commission for Women. The Government usually supports these efforts, despite strong resistance from traditionally privileged groups."**[2a](Section 5:Women)** According to the South Asian Women's Organisations website, several organisations dealing with women's issues can be found on the website of the South Asian Women's Network (SAWNET). **[25a]** As noted in FCO correspondence dated November 2003, in 2001, the Government of India drafted The National Policy for Women after consultation with NGOs, gender experts and sociologists. This policy recognises the constraints women face in the social, economic and political spheres. The Tenth Plan is committed to implementing this policy. **[7h]**

**6.367** According to the UN commissioned report 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." **[50](p79)**

**6.368** As reported in the US State Department Report 2003 (USSD) published on 25 February 2004, the Government addressed womens' concerns primarily through the National Commission for Women, but NGOs were also influential. **[2h](Section 5: Women)**

**6.369** Amnesty International in their Battle against fear and discrimination report welcomed the Policy on Empowerment of Women as a symbol of the government's commitment to empower women and to bestow rights with equality, however AI criticized the "contradictory character" of the Indian State. **[3e](p30)** Amnesty delegates recognised good administrative policies and practices when they visited Uttar Pradesh and Rajasthan. They saw the idea behind the Zilla Mahila Sahayata Samitis (District Women's support Committees) in Rajasthan as a positive step, however they levied some criticism. In Rajasthan regular meetings are held between members of the women's movement and the Home Commissioner and additional Director General of Police, this was seen as an extremely effective mechanism for ensuring that action is taken in several individual cases, however it is dependent on a measure of goodwill established between the women's movement and organs of government. AI comments that this is absent in many states. **[3e](p31)**

**6.370** As stated in the National Commission for Women website: Legal Awareness Programme, accessed April 2004, "The National Commission for Women regularly extends financial support to NGOs and educational institutions to conduct Legal Awareness Programmes to enable women and girls to know their legal rights and to understand the procedure and method of access to the legal systems." 55 Legal awareness programmes have been conducted.**[47b]**

**6.371** As noted in Amnesty International: India: The battle against fear and discrimination report, "Outside the formal criminal justice system, women in India can turn to other bodies for support and redress. There are a large number of active non-governmental and voluntary organizations which provide legal support to women. However, given their localised nature, the lack of resources available and the vulnerability of such initiatives to pressure from families, police, community or state, these initiatives cannot wholly address the scale of the problem in a country the size of India."**[3e](p29)** According to AI, "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](p6)

**6.372** The Centre of Social Research (an NGO for women in India) website lists non-governmental organizations involved in combating violence in Delhi and it states that the organisation can be contacted for help or counselling. Crime Against Women cells throughout Delhi are listed as are a number of shelter homes and counsellors.[54](p1-3)

**6.373** SAWNET, an NGO in a Domestic violence report list various organisations available to women who suffer domestic violence. Sakshi is based in Delhi and helps as a violence intervention for women and children working on sexual harassment, sexual assault, child sexual abuse and domestic violence; focussing on equality education for judges, implementation of the 1997 Supreme Court Sexual Harassment Guidelines, out reach and education. The Women's Rights Initiative runs a pro bono legal aid cell for domestic violence cases and are associated with law reforms in connection with domestic violence, based in New Delhi. [25b](p1-2)

**6.374** As reported by Amnesty in a report on women in Andhra Pradesh and Rajasthan, many states have set up Mahila thanas (women's police stations) to encourage women to register their complaints with the police. However, the majority of these are in large cities, thus denying access to the most marginalised women in rural areas and there are few of them even in large cities. Rajasthan had 9 and was planning to establish a further 3 as at December 2000.[3e](p18)

**6.375** According to an article in The Times of India dated 15 May 2003, a two day training programme was organised for the Mahila Samajik Suraksha Samiti (MSSS) at the Pune rural police headquarters in May 2003. The first MSSS was formed in 1986 in Mumbai. The main aim of the MSSS is to address such issues related to women and children as domestic violence, sexual harassment etc. "MSSS also helps distressed women seek rehabilitation, education, legal help and social acceptability." The main focus of appointing rural women as MSSS representatives in various rural areas was to develop a good rapport with rural women and it was reported that, "These women will act as immediate mediators between the police force and women from rural areas." It was also hoped that it would help improve law and order and curb crimes against women. [13a]

**6.376** An article published in the Times of India dated 21 July 2004 reported that the Delhi Commission for Women has proposed that a scheme be introduced in the forthcoming budget so that the city's destitute women could be given Rs 500 per month. The Chairman of the Commission indicated that the women are often deserted and have gone through horrific experiences of physical and mental torture and although there has been no study on the numbers of destitute women in Delhi she believed the number to be quite large.[13e]

**6.377** A report issued by the Government of Tamil Nadu in 2003 on Human Development in Tamil Nadu notes that institutional structures including all-women police stations, free legal aid boards, family counselling centres and the State Commission for Women have been established. In addition several NGOs are working to prevent atrocities against women. The report further states, "Recognising that the attitude of the police is one of the barriers to institutional redress, the State Commission for Women has initiated gender sensitization of Tamil Nadu Police functionaries and legal literacy programmes for teachers with the support of NGOs."[18](p111)

**6.378** As noted in the USSD report 2004, "The Government has taken a number of steps

to assist the victims of crimes against women. These include establishing telephonic help lines, creating short-stay homes, providing counseling, occupational training, medical aid, and other services, and creating grant-in-aid schemes to provide rehabilitation rescue." **[2c](section4)**

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## Children

**6.379** As reported in the US State Department report 2004 (USSD),

> "The Government has not demonstrated a commitment to children's rights and welfare. The Government does not provide compulsory, free, and universal primary education. According to the Government's statistics from 2003, 165 million of the 200 million children between the ages 6-14 attend school. The upper house of Parliament failed to take any action on the constitutional amendment passed by the lower house of Parliament in 2002 that provided all children aged 6 to 14 the right to free and compulsory education provided by the state. In contrast to the Government's figures, UNICEF reported that of a primary school-age population of approximately 203 million, approximately 120 million children attended school. However, UNICEF reported that 76.2 percent of all children aged 11 to 13 years were attending school. A significant gender gap existed in school attendance, particularly at the secondary level, where boys outnumbered girls 59 to 39 percent, according to the latest government statistics released in 2001."**[2c](section 4)**

**6.380** According to a UN report dated June 1996, a National Policy for Children has been designed by the Government for the welfare of children and is implemented by the Ministry of Welfare. The Juvenile Justice Act lays down a scheme for the care and protection of neglected and delinquent children. India has ratified the Convention on the Rights of the Child. **[6a](p37)**

**6.381** As cited in the USSD 2004,"The NHRC, continuing its own child labor agenda, organized NGO programs to provide special schooling, rehabilitation, and family income supplements for children in the glass industry in Firozabad. The NHRC also intervened in individual cases. Press reports said that a Madurai NGO had rescued 33 children who had been sold into slave labor during the year." **[2c](section 6d)**

**6.382** As noted in the USSD 2004,

> "The Government participated in the ILO's International Program on the Elimination of Child Labor (IPEC). Approximately 145,000 children were removed from work and received education and stipends through IPEC programs since they began in 1992." The report further states that, "The Government prohibits forced and bonded child labor; however, this prohibition was not effectively enforced, and forced child labor was a problem. The law prohibits the exploitation of children in the work place; however, NHRC officials have admitted that implementation of existing child labor laws was inadequate, that administrators were not vigilant, that children were particulary vulnerable to exploitation, afn that the Commission was focusing on the adequacy of existing legislation." **[2c](section 6d)**

**6.383** The USSD 2004 states that, "There is no overall minimum age for child labor. However, work by children under 14 years of age was barred completely in "hazardous industries,"

which included passenger, goods and mail transport by railway… In occupations and processes in which child labor is permitted, work by children was permissible only for 6 hours between 8 a.m and 7 p.m, with 1 day's rest weekly."**[2c](section 6d)**

**6.384** The USSD 2004 noted that,

> "The Government assisted working children through the Naitonal /Child Labor Project, which was established in more than 3,700 schools. Government efforts to eliminate child labor affected only a small fraction of children in the workplace. A Supreme Court decision increased penalties for employers of children in hazardous industries to $430 (Rs 20,000) per child employed and established a welfare fund for formerly employed children. The Government is required to find employment for an adult member of the child's family or pay $108 (Rs 5,000) to the family…Employers in some industries took steps to combat child labor…The government also cooperated with UNICEF, United Nations Educational, Scientific and Cultural Organization (UNESCO), the United Nations Development Programme (UNDP), and the ILO in its efforts to eliminate child labor."**[2c](section 6d)**

**6.385** As noted in the USSD 2004, "In 2000, the Government issued a notification prohibiting government employees from hiring children as domestic help. Those employers who failed to abide by the law were subject to penalties provided by the Bonded Labor System (Abolition) Act (such as fines and imprisonment) and also to disciplinary action at the workplace."**[2c](section 6d)** As recorded in the Human Rights Watch Annual Report 2005, "India has the largest number of working children in the world, millions of whom work in the worst forms of child labor, including bonded labor." **[26e](p3)**

**6.386** According to a Human Rights Watch (HRW) press release dated 23 January 2003, Human Rights Watch first investigated bonded child labour in India in 1996. Since then, the Supreme Court made rehabilitation of child workers a legal requirement, and India's National Human Rights Commission has successfully pressured some local governments to act. However, HRW considered that the Indian government was failing to protect the rights of hundreds of thousands of children and that there was evidence that the Government was starting to backtrack on earlier commitments. **[26b]**

**6.387** As noted in the USSD 2004, "Estimates of the number of child laborers varied widely. The Government census of 1991 put the number of child workers at 11 million. The ILO estimated the number at 44 million. Most, if not all, of the 87 million children not in school did housework, worked on family farms, worked alongside their parents as paid agricultural laborers, worked as domestic servants, or employed." **[2c](section 6d)**

**6.388** The USSD 2004 noted that the working conditions of some children in the workplace often amounted to bonded labour. "Children sent from their homes to work because their parents could not afford to feed them, or in order to pay off a debt incurred by a parent or relative, had no choice. There were no universally accepted figures for the number of bonded child laborers. However, in the carpet industry alone, human rights organizations estimated that there were as many as 300,000 children working, many of them under condtions that amount to bonded labor. Officials claimed that they were unable to stop this practice because the children were working with their parents' consent." **[2c](section 6d)**

**6.389** As reported in the USSD 2003, "Child Welfare organizations estimated that there were 500,000 street children nationwide living in abject poverty." **[2h](Section 5: Children)** As reported in the USSD 2004 , "There were an estimated 500,000 child prostitutes nationwide… According

to an International Labor Organisation (ILO) estimate, 15 percent of the country's estimated 2.3 million prostitutes were children, while the UN reported that an estimated 40 percent were below 18 years of age." **[2c](section 5)**

**6.390** As cited in the USSD 2004, "The law prohibits child abuse; however, there were societal patterns of abuse of children, and the Government did not release comprehensive statistics regarding child abuse." **[2c](section 5)**

**6.391** The same report continues, "The Government was responsive to some claims of violence against children. In May [2004], a village Panchayat in the state of Uttar Pradesh sentenced a primary school teacher to death for allegedly molesting a minor student." **[2c](section 5)**

**6.392** As noted in the USSD 2003, "The Union Ministry of Social Justice and Empowerment set up a 24-hour "child help line" phone-in service for children in distress in 14 cities. Run by NGOs with government funding, the child help line assisted street children, orphans, destitute children, runaway children, and children suffering abuse and exploitation". **[2h](Section 5: Children)**

**6.393** As reported in the USSD 2004,"The Child Marriage Restraint (Amendment) Act prohibits child marriage, a traditional practice in the northern part of the country, and raised the age requirement for marriage for girls to 18; however, the Government failed to enforce the Act. **[2c](section 5)**

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### Child Care Arrangements

**6.394** According to their website the Ministry of Social Justice provides assistance to State Governments for the establishment and maintenance of a range of children's homes. There are at present 280 "observation homes", 251 "juvenile homes", 36 "special homes" and 46 "after care institutions" in the country. **[14](A Programme For Juvenile Justice)**

**6.395** The majority of orphanages throughout India appear to be supported by charities and religious organisations making it difficult to determine the exact numbers. Orphanage.org, accessed 15 December 2004, lists 62 orphanges throughout India. **[89] (p.3-4)** However, the site is not a fair representation of the number of orphanages throughout India because it only lists orphanages with a direct link to a web site. The Hindu published a report on 7 March 2004 regarding the regulation of orphanages in Tamil Nadu. The report noted that, "More than a year after the State Government made it mandatory for all institutions for the reception, care, protection and welfare of destitute women and children to be registered under the Orphanages and Charitable Homes Act, 1960, only 566 of them have been recognised." **[60c]**

**6.397** As cited in The Hindu on 28 February 2005, according to the law only Hindus are allowed to adopt. Guardianship ends at the age of 18 for girls and 21 years for boys, legally the relationship finishes once the child is an adult. **[60e]**

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## Homosexuals

**6.398** According to Foreign and Commonwealth correspondence dated 1996, homosexuality

as such is not illegal in India. Section 377 of the Indian Penal Code (1860) proscribes "unnatural offences", which are defined as penetrative intercourse "against the order of nature" with man, woman or animal. Certain practices might therefore be deemed illegal in India. However the scope of the definition has not been much tested in the courts and cases under section 377 are rare. **[7b]** According to a report for the Swedish Embassy by a Delhi law firm in 1997, "It is punishable with ten years' imprisonment and a fine; however no-one so far, is known to have been awarded a ten year sentence for having been found guilty of this offence. The maximum punishment reported is two years." **[48](p2)** However, Arvind Narrain of the Alternative Law Forum, in an article entitled – 'Homosexuality in India, Where Tradition Still Rules (published 8 June 2003)' is quoted as saying, "Section 377 is used to criminalise and prosecute homosexuals. It actually legitimises the abuse of homosexuals". **[75] (p1)** The Times of India, in an article dated 18 September 2003, reported the view of another gay rights activist who considered that "Gays are beaten up and even raped under the cloak of this law [Section 377]." **[13c](p2)** As reported in the US State Department report 2004, "Section 377 fo the Penal Code punishes acts of sodomy, buggery and bestiality; however, the law is commonly used to target, harass, and punish lesbian, gay, bisexual, and transgender persons. Human rights groups stated that gay and lesbian rights were not viewed as human rights in the country." **[2c](seciton 4)**

**6.399** The same report continues, "Gays and lesbians faced discrimination in all areas of society, including family, work, and education." **[2c](section 4)**

**6.400** The International Lesbian and Gay Association world legal survey, (last updated in 1999) states that same-sex male sexual activity is illegal and is punishable under Unnatural offences 377 of the Indian penal code. **[49]**

**6.401** As reported in an article on the International Gay and Lesbian Human Rights Commission (IGLHRC) website, dated 31 January 2005, according to reports on news sites an 18 year old bakery worker confessed to stabbing then beheading a male co-worker with whom he had had sex. The young man allegeldy told police he was ashamed after having sex with the man. **[92]**

**6.402** As noted in the same article,

> "According to IGLHRC, India is one of 79 countries that maintain laws directed at or used to outlaw sex between people of the same sex… India's law, Indian Penal code Section 377, criminalizes "voluntary carnal intercourse against the order of nature." Although it bans these acts committed by anyone, the law is commonly used to target, harass and punish sexual minorities. In a 2001 report, "Human Rights violations against Sexual Miorities in India, the People's Union for Civil Liberites- Karnataka documented widespread police harassment, abuse and extortion against LGBT people and other sexual minorities in India… The report also documents in detail the impact of local media and popular psychology instilling fear and creating a hostile climate for LGBT people." **[92]**

**6.403** As noted in the same report,

> "A recent attempt by Indian advocates to challenge the constitutionality of Section 377 was rejected by the Delhi High Court on Septmeber 2, 2004. The Court claimed that the deletion of Section 377 from the Indian Penal Code would "open flood gates of delinquent behaviour and be misconstrued as providing unbridled license to such behaviour." An affidavit submitted by the government in support of the law claimed that

Section 377 was necessary "to provide a healthy environment in the society by criminalizing unnatural sexual activities."[92]

**6.404** According to a report published by the People's Union for Civil Liberties – Karnataka in February 2001,"Many people deny the existence of sexuality minorities in India, dismissing same-sex behaviour as a Western, upper class phenomenon. Many others label it as a disease to be cured, an abnormality to be set right or a crime to be punished. While there are no organised hate groups in India as in the West, the persecution of sexuality minorities in India is more insidious". [74] (p.18)

**6.405** The People's Union for Civil Liberties – Karnataka, reported in February 2001, that "All sexuality minorities, i.e. gays, bisexuals, lesbians, transgender, transvestites, hijras [hermaphrodites or eunuchs] and other homosexual men and women, suffer in different degrees social and political marginalisation due to their sexuality and or gender". The report found a sharp increase in the numbers of attacks on sexuality minorities in Bangalore, including harassment and illegal detention by the police of gay and bisexual men in public places. [74] (p.8)

**6.406** According to the People's Union for Civil Liberties – Karnataka (February 2001), testimonies gathered for the purpose of the report found that oppression by the police counted as the major concern of gay, bisexual and transgender people. Such abuse by the police generally consisted of extortion, illegal detention and abuse. Extortion usually involved the threat of 'outing' to family and the wider community unless a bribe was paid. Reports of illegal detention, varying from overnight to a few days and verbal and physical abuse and / or sexual abuse was reported as common. [74] (p.13)

**6.407** However, according to the People's Union for Civil Liberties – Karnataka (February 2001), one welcome development was the formation in April 2000 of a coalition of sexual minorities (including a lawyer's collective and a woman's group) to resist increasing police violations. [74](p.15)

**6.408** According to a BBC news article dated 29 May 2001, homosexual relationships are not unheard of in India, but they generally exist in the country's larger cities where people can be more open about their sexuality. [32ae] According to the People's Union for Civil Liberties – Karnataka (February 2001), a number of cities and larger towns, such as: Delhi, Mumbai, Calcutta, Bangalore, Hyderabad, Pune, Chennai, Patna, Lucknow, Akola, Trichi and Gulbarga, had a number of resources for gays, lesbians and transgender communities that include - help-lines, publications/newsletters, health resources, social spaces and drop-in centres. [74](p.8)

**6.409**As reported in a BBC News article dated 29 May 2001, in May 2001, it was reported that a lesbian couple had married in a Hindu ceremony, believed to be one of the first gay weddings in the country. The marriage still needed the approval of the local registrar to be legalised. The registry office refused to grant approval because Indian law does not recognise gay marriages. Gay rights campaigners however, welcomed the news. [32ae]

**6.410** India's gay community has begun to assert itself in recent years, according to a BBC news report dated 29 June 2003, cities such as Bombay and Bangalore have become centres for gay culture. [32bd] The BBC reported on 19 June 2003 that there are regular gay parties in bars and pubs. There are other gay clubs in cities such as Delhi and Bangalore. [32be] It was reported by the BBC on 29 June 2003 that up to 100 people marched in a gay rights parade

in Calcutta. [32bd]

**6.411** As reported in a BBC news report dated 4 September 2003, India's eunuchs (Hijra) are demanding the right to be treated with tolerance and respect. [32eh] According to Wikipedia.com (last updated on 14 August 2004), in Indian culture, a hijra is a person belonging to a group that is often called 'the third sex' of India. A hijra is someone who was born with a male body, but with non-male or female gender identity; and also people born with ambiguous genitalia. Some are forced to become hijra or choose to be castrated. The hijra or 'third sex, belong to a special caste and participate in a religious cult with its own mother goddess, Bahuchara Mata. [76a] According to the BBC news report of 4 September 2003, it is estimated that there are between 500,000 and one million hijras living in India. Because of growing societal prejudice, many hijras are unable to find work in their communities and therefore have had to resort to begging and prostitution to survive. It is reported that hijras' face routine harassment and abuse by police and the wider community. [32eh]

**6.412** As cited in a BBC news report of 4 February 2003, "A court has said eunuchs are still technically men in a controversial ruling set to force a mayor from a job held for women. The landmark judgement in the central northern state of Madhya Pradesh has thrown the political status of eunuchs throughout India into doubt… In India Eunuchs often form close-knit and ostracised communitites. Some are castrated men but others are transsexuals or hermaphrodites who have been rejected by their families. Traditionally eunuchs earn money by singing and dancing at weddings and births but recently they have also started to enter politics, standing as independents and offering an alternative to mainstream political parties."[32ev]

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## Scheduled Castes and Tribes

**6.413** The US State Department report 2003 (USSD), notes that "The Country's caste system has strong historic ties to Hinduism. It delineates clear social strata, assigning highly structured religious, cultural, and social roles to each caste and sub-caste. Members of each caste, and frequently sub-caste, are expected to fulfil a specific set of duties (known as dharma) in order to secure elevation to a higher caste through rebirth. Despite longstanding efforts to eliminate the discriminatory aspects of caste, the practice has remained widespread." [2h](Section 5) As noted in the US Department of State report 2001 (USSD), Dalits (formerly known as untouchables) are a Scheduled Caste occupying the lowest layer of the Hindu caste system. [2a](section 5) As noted in the USSD 2004, "The Constitution gives the President the authority to identify historically disadvantaged castes, Dalits and tribal people (members of indigenous groups historically outside the caste system). These "scheduled" castes, Dalits and tribals were entitled to affirmative action and hiring quotas in employment, benefits from special development funds, and special training programmes… According to the 2001 census, scheduled castes, including Dalits, made up 16 percent (166.6 million) of the population, and scheduled tribes were 8 percent (84.3 million) of the country's population."[2c](section 5) According to a UNHCR background paper dated October 1998, they include India's aboriginal inhabitants, or Adivasis, who comprise nearly 200 ethnic and culturally distinct peoples who speak more than 100 languages. They are represented in Parliament but as theirs is usually a minority vote, legislation favourable to their interests can be impeded by vested interests. [6e](p17)

**6.414** As noted in the USSD 2004, "The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act lists offences against disadvantaged persons and provides for stiff penalties for offenders. However, this act had only a modest effect in curbing abuse. Human rights

NGOs alleged that caste violence was on the increase." **[2c](section 5)**

**6.415** According to a United Nations report dated June 1996, the National Commission for Scheduled Castes and Tribes was established in March 1992. It serves to ensure observance of the measures taken to promote the educational and economic interests of these groups. These include reservation of seats in public services, administration, Parliament and State legislatures, and the setting up of advisory councils and separate departments for the welfare of vulnerable groups. The Commission has the powers of a civil court in investigating violations of rights guaranteed to Scheduled Castes and Tribes. Affirmative measures are also being taken for disadvantaged groups belonging to Other Socially and Educationally Backward Classes (OBCs). **[6a](p9-11)**

**6.416** As noted in the USSD 2004, "The Constitution and the 1955 Civil Rights Act outlaws the practice of untouchability, which discriminates against Dalits and other people defined as Scheduled Castes; however, such discrimination remained an important aspect of life. Despite lonstanding efforts by the Government to eliminate the discriminatory aspects of caste, the practice has remained, and widespreasd discrimination based on the caste system occurred throughout the country." **[2c](section 5)**

**6.417** According to Minority Rights Group International bulletin dated 15 March 2004, "Dalits in India who have converted to Christianity not only continue to face caste discrimination, they also lose privileges accorded by the government to Hindu Dalits. Eighty four percent of all Dalits live in rural parts." **[52a]** As noted in the USSD 2001, "Low caste Hindus who convert to Christianity lose their eligibility for affirmative action programs. Those who become Buddhists or Sikhs do not. In some states, government jobs are reserved for Muslims of low caste descent." **[2a](section 5)**

**6.418** As cited by Human Rights Watch in the World Report 2005, "Despite legislative measures to protect marginalized groups, discrimination based on caste, social, or religious grounds continues widely in practice. Local police often fail to implement the special laws set up to protect Dalits and members of tribal groups." **[26e]**

**6.419** Human Rights Watch, World Report 2005, states that,

> "Indigenous peoples, or Adivasis, have suffered from high rates of displacement. Scheduled Tribes that make up 8 percent of the total population constitute 55 percent of displaced people. This has had a serious effect on the overall development of these communities, particularly tribal children. The government continues to use the Land Acquisition Act of 1894 to displace the indigenous peoples from their lands without sufficient compensation, as is evident in the Narmada Valley Development Project. Tribal groups who have converted to Christianity have been targeted for attack by extremist Hindu organizations." **[26e]**

**6.420** As reported by Minority Rights Group (MRG) on 13 January 2005,

> "Dalit communities in tsunami devastated coastal regions of southern India are facing exclusion from relief efforts due to caste discrimination which continues even in the face of massive and indescriminate natural disaster… Reports have been received of Dalit communities being sidelined for aid delivery, neglected by government officials, excluded from relief camps, bypassed in the delivery of food, water and medical care, and forced to carry out the worst tasks of dealing with bodies and clearance of debris with little or no protective clothing. The National Campaign

on Dalit Human Rights (NCHR) has been closely monitoring the situation in the states of Tamil Nadu, Andhra Pradesh and Kerala, and stated that: 'Dalits are doubly victimized, firstly by the natural disaster and secondly by human made discrimination.' "**[52b]**

**6.421** As reported by BBC news in an article dated 1 August 2000, in August 2000, India's ruling Bharatiya Janata Party chose for the first time a lower caste member to be the party's new President. Banguru Laxman, junior Minister for Railways, was the first member of the Dalit community to head a major party. **[32s]** As reported by the BBC on 14 March 2001, Laxman resigned as President of the BJP in March 2001 over a bribery scandal that implicated several senior political figures and bureaucrats. An Indian website accused Laxman of taking money in connection with supposed defence deals. **[32ac]**

**6.422** As noted in the US Department of State report 2004, (published 2005) "There were some positive developments for Dalits during the year. In April, the Orissa state government reportedly began paying compensation to victims under the Scheduled Caste and Tribes (Prevention of Atrocities) Act, 1989, and Rules 1995 following intervention by the NHRC. In January, the first Dalit woman was elected as mayor of the Chandigarh Municipal Corporation. In July, the Finance Minister added an additional $10 million (RS 5 billion) to the National Minorities Development and Finance Corporation." **[2c](section5)**

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# 6.C HUMAN RIGHTS - OTHER ISSUES

## Treatment of Returned Failed Asylum Seekers

**6.423** As reported in the Danish Immigration Service fact finding report 2000, UNHCR observed that judging by their general information on Indian nationals who returned after having their asylum applications abroad rejected, returnees 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 leaving and arriving in 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 could then leave the airport. **[37]**

**6.424** As reported in the Danish Immigration Service fact finding report 2000 UNHCR also remarked that in cases where the Indian authorities became aware that the person returning had been refused asylum, it was likely that the immigration authorities would detain the person briefly for questioning and then release the individual, unless suspicion was aroused by the returnee's behaviour or the individual was being sought by the Indian security services. Those in the latter group would be thoroughly questioned and if they were wanted, would be handed over to the security force in question. According to information available to the UNHCR, such questioning in international airports had not led to the use of violence. **[37]**

> "However, it could not be said with certainty what might eventually happen to those arrivals who were wanted by other security forces and were handed over to them. Strictly speaking they should appear before a judge in 24 hours. However, legal rights were not always observed, eg torture took place, as did other human rights abuses such as a lack of medical treatment during detention, etc" **[37] (p.53)**

**6.425** As reported in the Danish Immigration Service fact finding report 2000, it would not be seen as an offence to have sought asylum in another country unless the person in question had connections with a terrorist group or a separatist movement and could be connected with activities which might damage India's sovereignty, integrity or security, or activities which might have a harmful effect on India's relations with other countries. For Indian asylum seekers who were already wanted by the Indian authorities for earlier offences such as alleged involvement in a terrorist group, arrival in India would certainly lead to prosecution wherever the Indian citizen landed or went afterwards. **[37]**

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## Treatment of Non-Governmental Organisations (NGOs)

**6.426** As reported in the US State Department report 2004 (USSD),

> "A wide variety of domestic and international human rights groups generally operated without government restriction, investigating abuses and publishing their findings on human rights cases; however, in some states and in a few circumstances, human rights groups faced restrictions. Some domestic NGOs and human rights organizations faced intimidation and harassment by local authorities… Human rights monitors in Jammu and Kashmir were unable to move around the state freely to document human rights violations due to fear of retribution by security forces and countermilitants. Several individuals involved in the documentation of violations in Jammu and Kashmir, including lawyers and journalists, have been attacked in past years and in some cases killed." No cases were reported during the year, although one monitor was killed during the April-May polls when the car she was in ran over an improvised explosive devise laid by militants to disrupt the electoral process. The report continues, "International human rights organizations were restricted. Foreign human rights monitors historically have had difficulty obtaining visas to visit the country for investigation purposes. For example, in November 2003, the Government failed to respond to Secretary General of AI Irene Khan Zubeida's visa application. This application followed other unsuccessful visa applications in 2002 and 2003, after an AI campaign demanded a retrial of the Best Bakery case, and after AI released a report critical of state actions during the 2002 Gujarat riots. No visas were issued to representatives of HRW. The UN Special Rapporteur on Extrajudicial Killings did not apply to visit the country, but the Government denied visa requests submitted in previous years." **[2c](section 4)**

**6.427** According to a Freedom House survey report of 2003, "Human rights organisations generally operated freely throughout 2002." However, Amnesty International's 2002 annual report noted that the harassment of human rights defenders by state officials and other actors, including beating, shooting, and the use of excessive force by police, remained a concern. An Amnesty International team hoping to assess the situation in Gujarat was denied visas by the Indian Government in July [2002]…A report issued by Human Rights Watch documented numerous cases of police harassment of HIV/AIDS outreach workers in several states." The work of rights activists could also be hindered by a Home Ministry order issued in July 2001 that requires organisations to obtain clearance before holding conferences or workshops if the subject matter is political, semi-political, communal or religious in nature or is related to human rights." **[43a](p4)**

**6.428** According to Amnesty International's (AI) 2004 annual report, "Human rights defenders continued to face accusations of "anti-national" activities, harassment by state agents,

political groups and private individuals, including threats, preventive arrest and detention, and violence." In an example of the harassment of human rights defenders, AI noted that, "There were reports that following an assassination attempt on the Chief Minister of Andhra Pradesh in October, allegedly by naxalites, retaliatory harassment was initiated against human rights defenders. At least six members of the Andhra Pradesh Civil Liberties Committee (APCLC) were detained for questioning in October in connection with the assassination attempt and APCLC activists were put under constant surveillance and were repeatedly detained for questioning. In November there were growing concerns the APCLC could face a ban following statements by the Director General of Police indicating that the organization was sympathetic to the naxalites." **[3k] (p4)**

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## Humanitarian Issues

**6.429** As reported by the BBC in an article dated 21 May 2004, Congress chief minister of Andhra Pradesh state issued a fresh plea for debt-ridden farmers not to commit suicide. Nearly 3,000 farmers in the state have committed suicide over the past six years. A relief package was announced which will cover families of all the farmers who have taken their own lives since 1999. "A total of 50,000 rupees ($1,100) will be provided for the one-time settlement of debts and another 100,000 rupees will be given for the economic rehabilitation of the family… Mr Reddy has already announced the free supply of electricity to small farmers and poor families." Officials were apprehensive that the relief package was proving counter-productive and encouraging more debt-ridden farmers to take their lives, Mr Reddy stated his government would look into the matter but also stressed the measures would cover farmers who were considering suicide. **[32fp]**

**6.430** As cited in a BBC news article dated 15 November 2004, "India has launched a massive food-for work programme aimed at tackling hunger in poor rural areas. Poor farmers will earn the equivalent of five kilograms of grain for each day's work – mostly paid in food but including a small cash sum… Premier Manmohan Singh said the 20bn ruppee ($445m) scheme was a 'first step to eradicating rural unemployment." The federal government will provide states with the food and funding." Mr Singh launched the scheme in the village of Aloor in Andhra Pradesh which has suffered hundreds of suicides by farmers devastated by drought. "The scheme will target 150 poverty –stricken districts nationwide… Although there is no figure for the number of people the government hopes to help with the new scheme, it does pledge to provide 100 days' work for each person from each rural family." **[32fi]**

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### Indian Ocean Tsunami – 26 December 2004

**6.431** As reported by Global Education, "On the morning of Sunday 26 December (2004) a severe earthquake in the ocean off the coast of northern Sumatra caused tsunamis (tidal waves) that devasted communities in neighbouring countries and other countries in the Indian Ocean." The earthquake measured 9.0 on the Richter scale. **[95]** As reported by the World Health Organization (WHO), with regard to India, "The tsunamis hit the coast of the states of Tamil Nadu, Andhra Pradesh, Orissa, Kerala and Pondicherry on the mainland. Additionally, "The Andaman and Nicobar islands were particularly affected." **[62a]**

**6.432** WHO further reported in their India weekly Tsunami situation report for 24 February 2005, (updated on 25 February 2005) the tsunami caused extensive damage in the states of

Tamil Nadu, Andhra Pradesh and Kerala and the Union Territories of Andaman and Nicobar Islands and Pondicherry. “It affected nearly 2,260 km of the coastline besides the entire areas of Nicobar Islands. Tidal waves as high as 3 to 10 meters penetrated inland ranging from 300m to 3km.” Andaman and Nicobar Islands situated in the Bay of Bengal were hit particularly badly. **[62b]**

**6.433** The report continues, “The Government of India, in association with the affected states/Uts, mounted massive relief and rescue operations on the mainland and in the Andaman and Nicobar group of islands. According to the latest estimates, 157,393 dwelling units in 897 villages were damaged. A total of 638,297 persons were evacuated, and the total affected population is reported to be about 3.6 million.” **[62b]**

**6.434** As noted by the same report, “The administrations of the state governmetns/Uts are implementing rehabilitation measures for the affected populations by providing temporary shelters for all those who lost their houses and living quarters… All schools in the affected districts of Andhra Pradesh have reopened.” As have most of the schools in the affected areas of Tamil Nadu, Kerala and Pondicherry. The A& N administration evacuated people from smaller islands to bigger islands where relief operations were concentrated. The number of deaths reported as at 25 February 2005 stood at 10,872 with 5,746 people reported as missing in Andaman and Nicobar Islands and are feared dead. There were 647,556 displaced persons and 41 districts were affected in total. No outbreak of communicable diseases had been reported by any of the government agencies involved in the rescue and relief operations but there has been sporadic cases of acute respiratory infection and acute diarrhoeal disease in both affected and non-affected areas of Tamil Nadu. No reports of epidemics have been received and the Ministry of Health and Family Welfare are monitoring the situation. **[62b]**

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# ANNEX A

## Chronology of events (Sources: [1] & [4b] unless otherwise stated)

**1947**
**15 August**: India gains independence as a Dominion within the Commonwealth, with Lord Mountbatten as Governor-General and Jawaharlal Nehru as Prime Minister.

**1950**
**26 January**: India becomes a republic.

**1962**
Border dispute with China escalates into brief military conflict.

**1964**
Death of Nehru. Succeeded as Prime Minister by Lal Bahadur Shastri.

**1965**
Second war with Pakistan over Kashmir.

**1966**
Death of Shastri. Nehru's daughter, Indira Gandhi becomes Prime Minister.

**1971**
Third war with Pakistan over Kashmir. The Indian Army occupies East Pakistan, which India recognises as Bangladesh.

**1972**
Mrs Gandhi and President Bhutto of Pakistan meet in Simla and agree that their respective forces should respect the cease-fire line in Kashmir.

**1975**
Mrs Gandhi declares a State of Emergency after she is accused of election fraud.

**1977**
General election: the Janata Party wins and Morarji Desai becomes Prime Minister.

**1978**
Indira Gandhi becomes leader of a new breakaway political group, the Congress (I).

**1979**
Resignation of Desai's Government. Charan Singh becomes Prime Minister at the head of a Lok Dal and Congress coalition, which collapses 24 days later.

**1980**
General election: Congress (I) wins and Mrs Gandhi becomes Prime Minister.

**1982**
Giani Zail Singh elected Indian President, the first Sikh to hold the position.

**1983**
**October**: Following unrest in Punjab, the State is brought under President's Rule.

**1984**
**19 March**: The All India Sikh Student Federation (AISSF) is banned. Jarnail Singh Bhindranwale establishes a terrorist stronghold inside the Golden Temple in Amritsar. In June, Operation Blue Star is launched as the army storm the temple.
**31 October**: Indira Gandhi is assassinated by two of her Sikh bodyguards. Anti-Sikh riots break out. Indira's son, Rajiv Gandhi is appointed Prime Minister.
**December**: Congress (I) win the general election with an overwhelming victory.

**1985**
**11 April**: the ban on the AISSF is lifted.
**September**: The Akali Dal win elections to the Punjab State Assembly and President's Rule is lifted.

**1987**
The Congress Government encounter political setbacks including defeats in State elections, an open dispute between the Prime Minister and the President, and accusations of corruption and financial irregularities against senior Congress figures, including the Bofors affair.
**11 May**: The Punjab State Assembly is suspended and President's Rule is imposed.
**October**: Formation of the Jan Morcha by V.P. Singh and other Congress (I) dissidents.

**1988**
**May**: Operation Black Thunder - Punjab police and Indian paramilitary forces besiege the Golden Temple in Amritsar.
Formation of Janata Dal to oppose Congress at forthcoming elections.

**1989**
**November**: general election in which Congress loses its majority. V.P. Singh is appointed Prime Minister of a National Front coalition with the support of the BJP.

**1990**
**October**: The BJP withdraws support for the Government, following the arrest of the BJP leader Lal Krishna Advani as he led a procession of Hindus to Ayodhya in Uttar Pradesh to begin the construction of a temple on the site of an ancient mosque. Clashes between police and crowds, and Hindu extremists storm and damage the mosque.
**November**: Chandra Shekhar forms his own dissident faction called the Janata Dal (S). The Government loses a vote of confidence in Parliament and V.P. Singh resigns. Chandra Shekhar appointed Prime Minister at the head of a minority Government with Congress (I) support.

**1991**
**March**: Chandra Shekhar resigns as Prime Minister
**May**: General election held, but on 21 May, after the first day's polling, Rajiv Gandhi is assassinated by members of the Sri Lankan militant group, the Liberation Tigers of Tamil Eelam (LTTE). Congress emerges as the largest party and forms a Government with P.V. Narasimha Rao as Prime Minister.

**1992**

**February**: State Assembly elections in Punjab won by Congress (I), but there is a low turnout of the electorate. President's Rule lifted. Municipal elections held in September with a greatly increased turnout. The Congress candidate, Dr Shankar Dayal Sharma is elected President of India.
**6 December**: demolition of the Babri Masjid, the ancient mosque in Ayodhya, Uttar Pradesh, by Hindu mobs. This sparks off widespread communal violence throughout India with Mumbai (Bombay) one of the worst affected areas. BJP leaders arrested, the Uttar Pradesh Chief Minister resigns and the State is placed under President's Rule, as are three other States also under BJP control. Five communal organisations are also banned.

**1993**
**January**: Resurgence of communal violence in Mumbai and in Ahmedabad in Gujarat.
**February**: Thousands of BJP activists are arrested throughout India to prevent a mass rally taking place in New Delhi.
**March**: Bomb explosions in Mumbai.

**1995**
**31 August**: Assassination of the Chief Minister of Punjab, Beant Singh. Harchan Singh Brar appointed Chief Minister.

**1996**
Accusations of corruption come to the fore with leading politicians allegedly receiving bribes from the industrialist Surendra Jain (Hawala scandal).
**April/May**: General election. No party gains an overall majority, but the BJP emerges as the largest party. On 15 May, Atal Behari Vajpayee of the BJP forms a Government, but resigns on 28 May. On 1 June H.D. Deve Gowda is appointed Prime Minister at the head of the United Front coalition of 13 parties, supported by Congress (I).

**1997**
**30 March**: Congress (I) withdraws support for the United Front Government. The crisis is resolved by the resignation of the Prime Minister, Deve Gowda, and the appointment of the External Affairs Minister, Inder Kumar Gujral, as Prime Minister on 21 April.
**July**: K.R. Narayanan elected President of India, the country's first President from an "untouchable" caste.
**November**: Congress (I) demand the withdrawal of the DMK from the Government, following allegations of its involvement in the assassination of Rajiv Gandhi. The Government refuses, and Congress withdraws its support.
**4 December**: Parliament dissolved. Gujral heads a caretaker Government until the general election is held.

**1998**
**February/March**: General election. No party wins a majority, but the BJP emerges as the largest party and Atal Behari Vajpayee forms a Government in coalition with 17 other parties. The Government wins a confidence vote on 28 March. **[5b]**
**May**: Tension rises between India and Pakistan as India conducts five underground nuclear tests, and Pakistan conducts six tests. **[5c]**
**November**: the BJP suffers defeats in the State elections in Delhi and Rajasthan, and fails to dislodge Congress (I) from control of Madhya Pradesh.
**December**: escalation of violence against the Christian minority in Gujarat.

**1999**

**April**: The AIADMK withdraws support from the Government coalition, which resigns after losing a vote of confidence in the Lok Sabha. The President dissolves Parliament and calls an election.
**May-July**: A serious escalation of the conflict with Pakistan in Kashmir occurs in response to the largest infiltration of Islamic guerrillas into the State in recent years. On 11 July India and Pakistan had agreed on a plan for the infiltrators to withdraw. **[5d] & [8e]**
**September/October**: General election. BJP re-elected under Vajpayee. **[33a]**

**2000 March**: 36 Sikhs killed by unidentified gunmen in Chadisinghpoora, the first such attack on the Sikh community in Kashmir. **[3h]**

**July-August**: Militant group Hizbul Mujaheddin announces a unilateral cease-fire in Kashmir **[32r]** but calls it off after India refuses to enter three-way peace talks with the Kashmiri leadership and Pakistan. **[32u]** Violence ensues during **[32t]** and immediately after the cease-fire. **[33d]**

**November**: The Indian Government announces a unilateral cease-fire barring Indian forces from offensive operations against Muslim separatists in Kashmir. Extensions of the cease-fire were made a month at a time, before a three month extension to the end of May 2001. Militant groups reject the cease-fire. **[32ab]**

**2001**

**May**: The cease-fire in Kashmir announced in November 2000 by the Government is ended as some 1,200 people had died during its period of operation. **[5g]**

**July**: Talks between India and Pakistan fail after the two countries fail to reach an agreement over Kashmir. **[15]**

**13 December**: A terrorist attack on the federal Parliament in New Delhi leaves 14 dead and 16 wounded. The attack precipitates a crisis with Pakistan which threatens to erupt into war over the disputed Kashmir region. **[5j]**

**2002**

**13-21 February**: Elections to four State assemblies (Manipur, Punjab, Uttaranchal and Uttar Pradesh) result in heavy losses for the BJP. **[5j]**

**27 February**: At least 58 passengers are burnt to death and 43 injured when a train carrying Hindu activists is attacked in Godhra, Gujarat. A wave of communal violence is triggered across the State. **[5j]** By 12 March 2002, mob attacks and arson had claimed an estimated 700 lives, most of them Muslim. **[5k]**

**26 March**: The Prevention of Terrorism Ordinance (POTO) is passed into law. **[5k]** Having been promulgated in October 2001, the POTO replaced the TADA. **[5h]**

**21 May**: Moderate Kashmiri separatist leader Abdul Ghani Lone is shot dead. **[5m]**
**May-June**: India and Pakistan move closer to outright war over the deteriorating situation in Kashmir. Up to a million troops face each other across both the Line of Control and the international frontier between the two countries. The situation worsens when, on 14 May 2002, 34 people are killed in a militant attack on an army base in Kashmir, the dead including

8 women and 11 children from army families. Tensions are lowered somewhat in June 2002, largely as a result of international pressure. **[5m] & [5n]**
**July** Dr A.P.J. Abdul Kalam, a Muslim, is sworn in as India's 12th President. **[32ai]**
**October**: Voting concludes in Kashmir State elections. The ruling National Conference party fail to win a majority. **[32ak]** Mufti Mohammad Sayeed is sworn in as chief minister to head a coalition of his PDP and the Congress Party for three years, before a Congress leader takes over for a second three year period. **[32am]**
**December**: The BJP wins State elections in Gujarat. **[32an]**

## 2003

In 2003 both India and Pakistan continued testing missiles.**[32bg]**
**March:** Twenty four Hindu villagers were murdered in Kashmir.**[32bg]**
**April:** Prime Minister Vajpayee to hold talks with Pakistan **[32bg]**
Mr Vajpayee made a surprise speech calling for an end to more than 18 months of simmering tensions with Pakistan, prompted by an attack on the Indian Parliament, as reported by BBC on 6 January 2004.**[32cj]** Atal Behari Vajpayee offers the "hand of friendship" to Pakistan in a landmark address in Indian-administered Kashmir. **[32fm]**

**May**
India announces the resumption of a bus service between Delhi and Lahore, described by Pakistan as a "positive gesture." Both sides resume diplomatic links and Delhi states it will release Pakistani prisoners following a similar move by Islamabad. **[32fm]**

**June**
India, China reach de facto agreement over status of Tibet and Sikkim in landmark cross-border trade agreement.**[32bf]**

The state assembly in Gujarat passed a Freedom of Religion Bill introduced by the BJP government, ostensibly designed to prevent forced religious conversions.**[5o]**

**August**
**25 August:** Blast at Zaveri Bazaar, 34 killed and 112 injured. Blast in a taxi parked near the Gateway of India, 18 killed, 37 injured. **[11e]**

Four people were arrested and charged in connection with the twin bomb attacks in Mumbai. India has blamed the attacks on an outlawed Islamic militant group – Lashkar-e-Toiba- in the Pakistani controlled part of the disputed region of Kashmir. **[32bi]** Four Muslims are charged under the anti-terrorism laws. **[41b]**

For the first time in history, Indians and Pakistanis hold joint independence day celebrations in a further sign of the thaw in relations. **[32fm]**

**September:** saw a sudden upsurge in separatist violence across the state. Indian troops claimed to have foiled at least 18 infiltration bids by militants in September alone.**[32bu]**

The Line of Control witnessed increased exchanges of fire between the armies of India and Pakistan.**[32bu]**

1 September **–** Blast near key Kashmir tunnel killed a bomb disposal expert and injured 2 security force members. **[32bj]**

Indian police claimed to have shot dead the mastermind behind the twin bomb blasts in Mumbai that killed 53 people and wounded more than 150 on 25 August 2003. Five people have been detained in connection with the bombings.**[45][32bz]**

**October**
India unveils a series of measures aimed at improving relations with Pakistan and forging progress in the Kashmir dispute. **[32fm]**

**13 November:** At least 50 train passengers were injured in attacks by armed mobs in Bihar. Youths were protesting over alleged discrimination against Biharis who had tried for jobs with Indian railways in neighbouring Assam, as reported by BBC news on 13 November 2003**[32cL]**

**November:** 12 Hindus given life prison sentences in Gujarat state for killing Muslims in religious riots last year, as reported by BBC on 21 November 2003.**[32cq]**

**25-26 November 2003:** A ceasefire came into effect at midnight on 25-26 November between the armies of India and Pakistan on the LoC in Kashmir. The ceasefire was reportedly fully implemented by both sides, as noted by Keesings.**[5r]**

**5 December:** India's Hindu-nationalist BJP celebrated sweeping election wins in three states held by the Congress party, as reported by BBC news on 5 December 2003.**[32ck]** Keesings News Digest for December 2003 reported that the BJP secured administrations in Rajasthan, Madhya Pradesh and Chattisgarh giving rise to speculation that Prime Minister Vajpayee would bring forward the date of the general elections due in October 2004. **[5s]**

**7 December 2003:** Ayodhya anniversary sparks riots as reported by BBC news 7 December 2003. At least 3 people were killed and more than 20 injured in clashes between Muslims and Hindus in Hyderabad when trouble erupted on the 11th anniversary of the razing of the Babri mosque in Ayodhya.**[32cn]**

India and Pakistan agree to resume direct air links from 1 January following a 2 year ban. **[32fm]**

**2004**
**1 January:** Direct air links were resumed between India and Pakistan after a gap of more than 2 years.**[Keesings]**

**5 January:** The leaders of Pakistan and India met for the first time in 2 years, promising to restore normal relations, as reported by Guardian Unlimited.**[40b]**

**6 January:** Pakistan and India have agreed to discuss the Kashmir issue in historic talks due to start in February. It came a day after President Musharraf hosted talks with India's Atal Behari Vajpayee, reported by BBC on 6 January 2004.**[32cj]**

**9 January:** At least 15 Muslims were wounded in Indian administered Kashmir in a grenade attack on a mosque, as reported by BBC news on 9 January 2004.**[32cm]**

**27 January:** The Prime Minister conveys to the President on 27 January the recommendation of the Cabinet to dissolve the 13th Lok Sabha on 6 February to pave the way for early legislative elections in April. The final parliamentary session began on 29 January. **[5e]**

**18 February:** 3 days of talks in February in Islamabad starting on 16 February with disputed region of Kashmir top of the agenda. India and Pakistan agree to a "roadmap" for peace that will begin with high-level talks in May or June.**[30co]**

**March:** Around 30,000 cricket fans watch India beat Pakistan in the historic first contest of their first tour of Pakistan since 1989. **[32fm]**

**12 April:** The Supreme Court orders a retrial of a riot case in which 12 Muslims were burned to death by a Hindu mob two years ago in Gujarat. It rules that the new trial must take place in neighbouring Maharashtra state and calls for a fresh investigation. **[32cp]**

**19-29 April:** BJP campaign slogan is "India Shining".**[32 dt]** Polling is held in five phases: April 20-May10. Electronic voting machines are used for the first time.**[33e][32ay]** India's autonomous election commission orders an inquiry into complaints of widespread vote-rigging and other irregularities in Bihar.**[32dj]** Violence and ballot box theft requires reballoting in some areas. **[33e]** Surprise victory for Congress Party in general elections.**[32bf]** The Congress needs to seek support from smaller parties to form a government. India's financial markets slump initially and recover.**[32dt]**

**18 May:** India's Congress party leader Sonia Gandhi says she will not be the country's next Prime Minister. **[32dl]**

**20 May:** Pakistan welcomes the pledge made by incoming Prime Minister Manmohan Singh to seek friendly relations.**[32dq]**

**22 May:** Manmohan Singh is sworn in as Prime Minister.**[32bf]**

**27 May:** The Congress-led government says it will scrap the Prevention of Terrorism Act (POTA). **[32cw]**

**1-2 June:** The BJP, the main opposition party elects L.K. Advani, the former deputy Prime Minister as its new leader. **[32dr]** New Parliament is sworn in. **[32dk]**

**8 June:** Parliament closes for two days after the opposition demands that the new government sack ministers it deems unfit for office. **[32bf]**

**24 June:** The first budget of the newly elected United Progressive Alliance is presented and is labelled "please-all". **[32dn]**

**June**: India and Pakistan renew a ban on nuclear weapons tests and set up a hotline to alert each other to potential nuclear risks. **[32fm]**

**23 July:** Pakistani President Pervez Musharraf meets India's new foreign minister, Natwar Singh to push forward the peace process. **[32do]**

**11 August:** India and Pakistan end two days of talks on terrorism and drug trafficking. Pakistan announces it will release 400 prisoners**. [32dp]**

**14 August:** India carries out first execution in nine years. **[32cy]**

**27 August:** The World Bank agrees to lend India a maximum of $12bn (£6.6bn) over the four years, or $3bn a year. **[32ad]**

**30 August:** The Indian central bank warns that drought and the high global price of oil may force it to lower its GDP forecasts. **[32ds]**

**September: "**The two countries' (India & Pakistan) foreign ministers meet in Delhi – the first official meeting at such high level for three years. Both sides say they have made some progress but there are few results to show for it." **[32fm]**

**26 December:** A very severe earthquake measuring a magnitude of 8.9 on the Richter scale struck northern Sumatra, Indonesia. "The earthquake was felt widely along the east coast of India." **[97]** India's south-east coast, especially the state of Tamil Nadu, was the worst affected area on the mainland. More than 8,800 people are confirmed dead in mainland India, 7,968 of them in Tamil Nadu and almost 600 in Pondicherry (see below for data on the Andaman and Nicobar islands). Thousands more are still missing. At least 140,000 Indians, mostly from fishing families, are in relief centres. Repairing the damage is expected to cost about $1.2bn - but India is in fact providing aid to other countries hit by the tsunami, including medical workers, supplies and cash. **[32ex]**

Andaman & Nicobar Islands
Salt water, which washed over the islands, contaminated many sources of fresh water and destroyed large areas of arable land. Most of the islands' jetties have also been destroyed. At least 1,894 of the islands' 400,000 people are confirmed dead and more than 5,500 are missing - 4,500 from Katchall island alone. India has refused assistance from international aid agencies because of the presence of a military base on one island and indigenous tribes on some others. The military has been building extra landing fields on the islands to help with relief. About 12,000 people have been moved to relief camps on larger islands.**[32ex]**

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# ANNEX B

## Political organisations (Sources [1a] [5l] [7f] [32dh][32de] unless otherwise stated)

**Akali Dal**
A Sikh party it was formed in 1920 and demanded an independent Sikh state. This demand has been dropped since the Punjab peace accord of 1985. Formed an alliance with the BJP in 1997, lost the Punjab state elections in 2002. Strong performance in the 2004 elections, winning 10 out of 13 seats in Punjab. [32dh]

**All India Anna Dravida Munnetra Kazhagam** (All India Anna Dravidian Progressive Association: AIADMK)
A Tamil Nadu party, with its headquarters in Chennai (Madras). Founded in 1972 as a breakaway group from the DMK. It went into the 1998 national elections in alliance with the BJP and joined the BJP-led Government afterwards. However its withdrawal of support in April 1999 led to the collapse of the Government and another national election. Leader: Jayaram Jayalalitha, party secretary general. Its alliance with the BJP failed to win a single seat in Tamil Nadu in the 2004 elections. [32dh]

**All India Forward Bloc**
Founded in 1940 by Netaji Subhash Chandra Bose and has socialist aims, including nationalisation of major industries, land reform and redistribution. A minor Marxist-Leninist ally of CPI-M in West Bengal. General Secretary: Debabrata Biswas. (900,000 members.) [1](p196)

**All India Trinamool Congress**
Breakaway group of the Congress (I) in West Bengal. Part of the BJP-led NDA Government. Led by: Mamata Banerjee.

**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 Prafulla Kumar Mahanta. [1](p196)

**Bahujan Samaj Party**
Formed in 1980 as the champion of scheduled castes and is strong in Uttar Pradesh, where it briefly formed the Government in alliance with the BJP in 1996. President: Mayawati. The party won 19 seats (5.4% of the vote) in the recent elections. [66]

**Bharatiya Janata Party** (Indian People's Party)
The leading political party of the 24-party National Democratic Alliance (NDA) governing coalition, which has downplayed its Hindutva associations since coming to power in 1998 in order to accommodate secular NDA partners. The BJP was formed in 1980 from the former Bharatiya Jana Sangh, founded in 1951 as the political wing of the extremist Hindu nationalist organisation Rashtriya Swayamsevak Sangh (RSS) responsible for outbreaks of communal violence in which a mosque was destroyed at Ayodhya. The BJP and its allies (NDA) were routed in a surprise defeat in the 2004 elections. The former PM Atal Behari Vajpayee is

viewed as the leading moderate while former deputy PM and current BJP parliamentary leader LK Advani fronts the hardline faction. **[5l] [66]**

**Biju Janata Dal (BJD)**
Made up of almost the entire Janata Dal unit of Orissa, which formed the BJD because of neglect by the Janata Dal national leadership. Main Government party in Orissa. An ally of the BJP. Led by Naveen Patnaik (Chief Minister of Orissa).

**Communist Party of India (CPI)**
Founded 1925 and advocates the establishment of a socialist society led by the working class, and ultimately of a communist society. Support in West Bengal, Bihar and Kerala. General-Secretary: Ardhendu Bhushan Bardhan. CPI is recognized by the Election Commission of India as a "National Party". On the national level it supports the Indian National Congress-led United Progressive Alliance government, but without taking part in it. The CPI won 43 seats (5.7% of the vote) in the recent elections. **[66]**

**Communist Party of India - Marxist (CPI-M)**
Formed in 1964, as a breakaway faction of the Communist Party of India because of what it describes as the latter's revisionism and sectarianism. In October 2000, the Election Commission demoted CPI-M's status from that of a national party to a State party. CPI(M) took 5,5% of vote in last legislative election (May 2004) and it has 43 MPs. They support the Indian National Congress-led United Progressive Alliance government but without taking part in it. In West Bengal and Tripura it participates in Left Front. In Kerala the party is part of Left Democratic Party. In Tamil Nadu it is part of the Progressive Democratic Alliance. General-Secretary: Harkishan Singh Surjeet. The CPI (M) MP Somnath Chatterjee is the speaker of the Lok Sabha (2004).

**Dravida Munnetra Kazhagam (DMK)**
Founded in 1949. Supports greater federalism; resents northern domination. Exclusive to Tamil Nadu and supported primarily by locally dominant scheduled castes. In 1972, a faction of the party broke away to form the AIADMK. Member of National Democratic Alliance. Led by Muthuvel Karunanidhi (President). The DMK won all the 16 seats it contested in the 2004 elections. **.[32di]**

**Indian National Congress (INC)**
Party of Indian independence, then of Government for 45 of the following 50 years under Nehru, his daughter Indira Gandhi (Congress I) and grandson Rajiv Gandhi. Had support throughout India, but suffered massive losses in the North and partially in the West in 1998 and lost the confidence of traditional voters such as Muslims and scheduled castes. Sonia Gandhi, widow of Rajiv Gandhi, took over as President of Congress (I) in April 1998. In December 2003, Congress began actively seeking alliance partners. The 2004 national elections ended governance by the BJP and brought in a new left-leaning coalition government, the United Progressive Alliance led by Prime Minister Manmohan Singh after Sonia Gandhi declined the post. The INC with its allies won 217 seats (35.8% of the votes) in the parliamentary election. **[66]**

**Indian Union Muslim League**
Concerned with the interests of the Muslims of Kerala.

**Jammu and Kashmir National Conference (JKNC)**
Headquarters in Srinagar. Formerly All Jammu and Kashmir National Conference. Founded 1931, renamed 1939, reactivated 1975. A State-based party campaigning for internal

autonomy and responsible self-government. Accepts accession to the Indian Union. President: Omar Abdullah, (1m members.) **[1](p196)**

**Janata Dal (United)**
Formed on the eve of the 1999 Lok Sabha election due to a split in the Janata Dal over whether to ally with the BJP in the National Democratic Alliance. The JD(U) favoured the alliance. Merged with another regional party, the Samata. Strong support base in Bihar. Led by George Fernandes. Suffered a major setback in the elections winning only eight seats.**[32dh]**

**Janata Dal (Secular)**
A smaller section of the Janata Dal did not agree with an alliance with the BJP and formed the Janata Dal (Secular). Led by former Prime Minister, H.D. Deve Gowda.

**Kerala Congress (M)**
Concerned with the interests of the Christians of Kerala.

**Nationalist Congress Party**
Formed in 1999 by Sharad Pawar, a senior Congress (I) leader from Maharashtra, and others expelled from Congress (I) for being unwilling to accept Sonia Gandhi, a non-Indian born citizen, as Congress' candidate for Prime Minister. Formed coalition Government with Congress (I) after State elections in Maharashtra. The NCP won half of the 18 seats it contested in the 2004 elections. **[32di]**

**Rashtriya Janata Dal (RJD)** (National People's Party)
Formed in 1997 by a breakaway group of former Janata Dal MPs from Bihar. Supported by the backward Yadav caste and Muslims of Bihar. Led by Laloo Prasad Yadav. Leading an alliance with Congress, the RJD won 19 of the 23 seats it contested in the 2004 elections. The Congress-RJD alliance won 26 of the 40 seats in Bihar. **[32di]**

**Revolutionary Socialist Party**
Minor Marxist-Leninist party allied with CPI-M, and supported in West Bengal.
Leaders: Debarata Bandopadhyay, Abani Roy

**Samajwadi Party** (Socialist Party)
Emerged from V.P. Singh's Janata Dal as an aggressive champion of specific backward castes and Muslims. Supports reservations for jobs and education. Support confined to Uttar Pradesh. Led by Mulayam Singh Yadav.

**Samajwadi Janata Party**
The one-man party of Chandra Shehkar, a former Prime Minister.

**Samata Party**
A breakaway from V.P. Singh's Janata Dal. Supported by backward castes mainly in Bihar and also in Uttar Pradesh. It is led by George Fernandes. In October 2003, it announced that it will be merging with the Janata Dal (United) Party.

**Shiromani Akali Dal**
A moderate Sikh party controlled by the dominant Jat Sikh farming community of Punjab. Supports greater federalism and is a strong ally of the BJP. Main leader is Prakash Singh Badal.

**Shiv Sena** (Shiva's Army)
A member of the NDA and more hard line than the BJP, Shiv Sena is based in Mumbai (Bombay), the capital of Maharashtra State, and is led by Bal Thackeray. **[5l]** An important ally of the BJP. **[32dh]**

**Tamil Maanila Congress (TMC)**
Broke away from Congress (I) in 1996 in protest against Rao's decision to fight elections with the AIADMK. Policies not otherwise distinct from Congress (I). Confined to Tamil Nadu.

**Telugu Desam Party (NAIDU)** (Telugu Nation)
Founded in 1982 by Telugu film star N.T. Rama Rao, who died in 1996. Based in Andhra Pradesh, and is supported by locally dominant middle castes. Led by N. Chandrababu Naidu, Chief Minister of Andhra Pradesh. His defeat in the 2004 elections has cast him in the political wilderness, continues to back the BJP at the federal level. .**[32dh]**

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## Other organisations

**Rashtriya Swayamsevak Sangh (RSS) - (Association of National Volunteers)**
A Hindu supremacist umbrella organisation, founded in 1925 by Keshav Baliram Hedgewar. Prime Minister Vajpayee, most BJP ministers and leading members of the party are RSS members. The RSS was banned between December 1992 and June 1993 for its role in the destruction of the Babri mosque at Ayodhya in 1992. **[5l]**

**All India Sikh Student 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]** The organisation was banned between 19 March 1984 and 11 April 1985. **[4b]**

**Bajrang Dal**
The youth wing of the [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. **[5l]**

**The People's War Group (PWG)**
Banned guerrilla organisation. Campaigns to establish Communist state in the tribal areas of Andhra Pradesh, Maharashtra, Orissa, Bihar and Chhattisgarh. Peace talks between the PWG and the Government broke down in July 2003 when the government decided to renew its ban on the group. **[43a]**

**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. **[5l]**

**Vishwa Hindu Parishad (VHP) – World Council of Hindus**
Led by Ashok Singhal. **[5n]** 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. **[5l]**

**Organisations proscribed in the United Kingdom under the Terrorism Act 2000 [68]**
International Sikh Youth Federation: ISYF is an organisation committed to the creation of an independent state of Khalistan for Sikhs within India.

Babbar Khalsa: BK is a Sikh movement that aims to establish an independent Khalistan within the Punjab region of India.

Harakat Mujahideen (alternatively Harkat-ul-Mujahideen): 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.

Jaish e Mohammed (alternatively Jaish-e-Mohammad): 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.

Lashkar e Tayyaba (alternatively Lashkar-i-Toiba): LT seeks independence for Kashmir and the creation of an Islamic state using violent means.

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# ANNEX C

# Summary of election results

## National summary of votes and seats

Votes and seats are compared with those won in the 1999 election

| Party | Votes | % | Change | Seats | Change |
|---|---|---|---|---|---|
| All India Forward Bloc | 1,367,280 | 0.3 | 0.0 | 3 | +1 |
| All India Trinamool Congress | 8,047,771 | 2.1 | -0.5 | 2 | -6 |
| Asom Gana Parishad | 2,069,610 | 0.5 | - | 2 | - |
| Bahujan Samaj Party | 20,713,468 | 5.3 | +1.1 | 19 | +5 |
| Bharatiya Janata Party | 85,866,593 | 22.2 | -1.5 | 138 | -44 |
| Biju Janata Dal | 5,084,428 | 1.3 | +0.1 | 11 | +1 |
| Communist Party of India | 5,434,738 | 1.4 | -0.1 | 10 | +6 |
| Communist Party of India (Marxist) | 22,061,677 | 5.7 | +0.3 | 43 | +11 |
| Dravida Munnetra Kazhagham | 7,064,393 | 1.8 | +0.1 | 16 | +4 |
| Indian National Congress | 103,405,272 | 26.7 | -1.6 | 145 | +32 |
| Jammu and Kashmir National Conference | 493,067 | 0.1 | 0.0 | 2 | -2 |
| Jammu and Kashmir People's Democratic Party | 267,457 | 0.0 | - | 1 | - |
| Janata Dal (Secular) | 5,732,296 | 1.5 | +0.6 | 3 | +2 |
| Janata Dal (United) | 9,924,209 | 2.6 | -0.5 | 8 | -11 |
| Jharkhand Mukti Morcha | 1,846,843 | 0.5 | - | 5 | - |
| Kerala Congress | 353,529 | 0.1 | 0.0 | 1 | - |
| Marumalarchi Dravida Munnetra Kazhagam | 1,679,870 | 0.4 | 0.0 | 4 | - |
| Mizo National Front | 182,864 | 0.0 | - | 1 | - |
| Muslim League of Kerala | 770,098 | 0.2 | 0.0 | 2 | +1 |
| Nagaland People's Front | 715,366 | 0.2 | - | 1 | - |
| Nationalist Congress Party | 6,915,740 | 1.8 | -0.5 | 9 | +1 |
| Pattali Maltltal Katchi | 2,169,020 | 0.5 | -0.1 | 6 | +1 |
| Rashtriya Janata Dal | 8,613,302 | 2.2 | -0.5 | 21 | +12 |
| Revolutionary Socialist Party | 1,717,228 | 0.4 | 0.0 | 3 | - |
| Samajwadi Party | 16,645,356 | 4.3 | +0.5 | 36 | +10 |
| Shiromani Akali Dal | 3,506,681 | 0.9 | +0.2 | 8 | +6 |
| Shiv Sena | 7,056,075 | 1.8 | +0.2 | 12 | -3 |
| Sikkim Democratic Front | 153,409 | 0.0 | 0.0 | 1 | - |
| Telugu Desam Party | 11,844,811 | 3.0 | -0.6 | 5 | -24 |
| Other parties and independents | 45,751,173 | 11.8 | - | 25 | - |
| **Total** | **387,453,223** | - | - | **543** | - |

Source: Election Commission of India, collated by http://www.worldhistory.com/wiki/I/Indian-general-elections,-2004.htm [69]

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# ANNEX D

# Political make up of government
# Cabinet Ministers/Ministers of State

| Name | Constituency/State | Portfolio |
|---|---|---|
| **Dr. Manmohan Singh, INC** | Assam - Rajya Sabha | **Prime Minister** |
| **Cabinet Ministers** | | |
| **Pranab Mukherjee, INC** | West Bengal, Lok Sabha | Defence |
| **Arjun Singh, INC** | Madhya Pradesh, Rajya Sabha | Human Resource Development |
| **Sharad Pawar, NCP** | Maharashtra, Lok Sabha | Agriculture, Food & Civil Supplies, Consumer Affairs and Public Distribution |
| **Lalu Prasad Yadav, RJD** | Bihar, Lok Sabha | Railways |
| **Shivraj Patil, INC** | Maharashtra | Home |
| **Ram Vilas Paswan, UNSP** | Bihar, Lok Sabha | Chemicals & Fertilisers, Steel |
| **Ghulam Nabi Azad, INC** | Jammu & Kashmir, Rajya Sabha | Parliamentary Affairs, Urban Development |
| **Jaipal Reddy,INC** | Andhra Pradesh, Lok Sabha | Information & Broadcasting, Culture |
| **Sis Ram Ola, INC** | Rajasthan, Lok Sabha | Labour & Employment |
| **P. Chidambaram, INC** | Tamil Nadu, Lok Sabha | Finance |
| **Mahavir Prasad, INC** | Uttar Pradesh, Lok Sabha | Small scale, Agro & Rural Industries |
| **P.R. Kyndiah, INC** | Meghalaya, Lok Sabha | Tribal Affairs, Development of North East |
| **T.R. Baalu, DMK** | Tamil Nadu, Lok Sabha | Road Transport & Highways & Shipping |
| **S. Vaghela, INC** | Gujarat, Lok Sabha | Textiles |
| **K.Natwar Singh, INC** | Rajasthan, Rajya Sabha | External Affairs |
| **Kamal Nath, INC** | Madhya Pradesh, Lok Sabha | Commerce & Industry |
| **H.R. Bhardwaj, INC** | Madhya Pradesh, Rajya Sabha | Law & Justice |
| **P.M. Sayeed, INC** | Lakshadweep | Power |

| | | |
|---|---|---|
| **Raghuvansh Prasad Singh, RJD** | Bihar, Lok Sabha | Rural Development |
| **P. R. Dasmunshi, INC** | West Bengal, Lok Sabha | Water Resources |
| **Mani Shankar Aiyar, INC** | Tamil Nadu, Lok Sabha | Petroleum & Natural Gas, Panchayati Raj |
| **Sunil Dutt, INC** | Maharashtra, Lok Sabha | Youth Affairs & Sports |
| **Meira Kumar, INC** | Bihar, Lok Sabha | Social Justice & Empowerment |
| **K. Chandra Shekhar Rao, TRS** | Andhra Pradesh, Lok Sabha | Without Portfolio |
| **A Raja, DMK** | Tamil Nadu, Lok Sabha | Environment & Forests |
| **Shibu Soren, JMM** | Jharkhand, Lok Sabha | Coal, Mines & Minerals |
| **Dayanidhi Maran, DMK** | Tamil Nadu, Lok Sabha | Communications & Information Technology |
| **Dr. Anbumani Ramdoss, PMK** | Tamil Nadu, Lok Sabha | Health & Family Welfare |
| **Ministers of State (Independent Charge)** | | |
| **Santosh Mohan Dev, INC** | Assam, Lok Sabha | Heavy Industries, Public Enterprises |
| **Jagdish Tytler, INC** | Delhi, Lok Sabha | Non-Resident Affairs |
| **Oscar Fernandes, INC** | Karnataka | Statistics & Programme Implementation |
| **Renuka Choudhury, INC** | Andhra Pradesh, Lok Sabha | Tourism |
| **Subodh Kant Sahay, INC** | Jharkhand, Lok Sabha | Food Processing |
| **Kapil Sibal, INC** | Delhi, Lok Sabha | Science & Technology, Ocean Development |
| **Vilas Muttemwar, INC** | Maharashtra, Lok Sabha | Non-Conventional Energy Sources |
| **Praful Patel, NCP** | Maharashtra, Rajya Sabha | Civil Aviation |
| **Kumari Selja, INC** | Haryana, Lok Sabha | Urban Employment, Poverty Alleviation |
| **Prem Chand Gupta, RJD** | Bihar, Rajya Sabha | Company Affairs |

| Ministers of State | | |
|---|---|---|
| **E. Ahamed, IUML** | Kerala, Lok Sabha | External Affairs |
| **Suresh Pachauri, INC** | Madhya Pradesh, Rajya Sabha | Personnel, Parliamentary Affairs |
| **B.K. Handique, INC** | Assam, Lok Sabha | Defence, Parliamentary Affairs |
| **Panabaka Lakshmi, INC** | Andhra Pradesh, Lok Sabha | Health & Family Welfare |
| **Dasari Narayan Rao, INC** | Andhra Pradesh, Rajya Sabha | Coal & Mines |
| **Rao Inderjit Singh, INC** | Haryana, Lok Sabha | External Affairs |
| **Naranbhai Rathwa, INC** | Gujarat, Lok Sabha | Railways |
| **K Rehman Khan, INC** | Karnataka, Rajya Sabha | Chemicals & Fertilizers |
| **K.H. Muniyappa, INC** | Karnataka, Lok Sabha | Road Transport, Highways |
| **M.V. Rajashekharan, INC** | Karnataka, Rajya Sabha | Planning |
| **Kantilal Bhuriya, INC** | Madhya Pradesh, Lok Sabha | Agriculture, Food & Civil Supplies, Cons Affairs |
| **Manik Rao Gavit, INC** | Maharashtra, Lok Sabha | Home Affairs |
| **S.P. Jaiswal, INC** | Uttar Pradesh, Lok Sabha | Home Affairs |
| **Prithviraj Chavan, INC** | Maharashtra, Rajya Sabha | Prime Minister's Office |
| **Taslimuddin, RJD** | Bihar, Lok Sabha | Agriculture, Food & Civil Supplies, Cons Affairs |
| **Suryakanta Patil, NCP** | Maharashtra, Lok Sabha | Rural Development, Parliamentary Affairs |
| **Md. Ali Ashraf Fatmi, RJD** | Bihar, Lok Sabha | HRD |
| **R. Velu, PMK** | Tamil Nadu, Lok Sabha | Railways |
| **S.S. Palanimanickam, DMK** | Tamil Nadu, Lok Sabha | Finance |
| **S. Regupathy, DMK** | Tamil Nadu, Lok Sabha | Home Affairs |
| **K. Venkatapathy, DMK** | Tamil Nadu, Lok Sabha | Law & Justice |
| **J. Subbulakshmi Jagadeesan, DMK** | Tamil Nadu, Lok Sabha | Social Justice & Empowerment |

| | | |
|---|---|---|
| **E.V.K.S. Elagovan, INC** | Tamil Nadu, Lok Sabha | Commerce & Industry |
| **Kanti Singh, RJD** | Bihar, Lok Sabha | HRD |
| **Namo Narayan Meena, INC** | Rajasthan, Lok Sabha | Environment & Forests |
| **Jay Prakash Narayan Yadav, RJD** | Bihar, Lok Sabha | Water Resources |
| **Akhilesh Prasad Singh, RJD** | Bihar, Lok Sabha | Agriculture, Food & Civil Supplies, Cons Affairs |
| **Shakeel Ahmed, INC** | Bihar, Lok Sabha | Communications & IT |
| **A Narendra** | Andhra Pradesh, Lok Sabha | Rural Development |

**As on 7 June 2004** **[11f](p22-23)**

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# ANNEX E

# Prominent people

**ABDULLAH Farooq**
Chairman of the National Conference, was sworn in as Chief Minister of Jammu and Kashmir in October 1996 following the party's win in the State elections. On 23 June 2002, he handed on the presidency of the National Congress (Conference) party to his son, Omar Abdullah. Farooq Abdullah's family have dominated the Kashmiri political landscape for the best part of the last 50 years. He supported union with India, but pressed for greater autonomy for the state. **[32m]**

**ADVANI Lal Krishna**
Deputy Prime Minister in the Bharatiya Janata Party-led coalition Government which took office in March 1998 and a former President of the BJP, LK Advani is credited with scripting the BJP's swift rise as a major political force from its two parliamentary seats in 1984. In 1990, he travelled across the country whipping up support for a campaign to build a Hindu temple on the site of the 16th century Babri mosque in the northern town of Ayodhya. He was subsequently cleared of inciting a mob which destroyed the mosque, sparking nationwide bloodshed. After the shock election defeat of 2004, Advani was elected by the BJP as its new leader in Parliament. He has often been seen as Mr Vajpayee's natural successor if the BJP is returned to power.**[32dr]**

**CHIDAMBARAM P**
Beginning as a congressman, Mr Chidambaram first got elected to parliament from Tamil Nadu in 1984. He went on to hold the Commerce portfolio in the Congress party government of PV Narasimha Rao. Later on he left Congress on account of differences with the leadership and became finance minister in 1996 under the United Front government. Economists acclaimed his budget for 1996-97, in which he brought discipline in government spending and launched an ambitious tax reform programme. He lost the elections in 1999, which he contested on behalf of the erstwhile Tamil Maanila Congress party, the latter merged with Congress in 2002. After the election victory of 2004, Chidambaram was appointed India's new finance minister.**[32dv]**

**GANDHI Sonia**
Italian-born widow of former Prime Minister Rajiv Gandhi. She refused to become involved in politics after her husband's assassination but officially took charge of the Congress party in 1998 and was elected to parliament in the last elections in 1999. She declined prime ministership following her surprise general election success and was re-elected Party President in May 2004.**[32dz][2f](Political Conditions)**

**JAYALALITHA Dr J**
Chief Minister of Tamil Nadu and popular film star-turned-politician, her party, the All India Anna Dravida Munnetra Kazakham (AIADMK) suffered a huge defeat in recent national elections. The AIADMK-BJP alliance could not win even one of the 40 seats in Tamil Nadu and Pondicherry and lost heavily to a powerful alliance comprising the regional Dravida Munnetra Kazakham (DMK) party and the Congress party. Jayalalitha is also known as

Amma or Puratchi Thallaivi (Revolutionary Leader). Jayalalitha is one of India's most colourful and controversial politicians. She spent two months in jail in 2001 after being convicted for corruption, a ruling which was later overturned. In 2002 she won a massive victory in state elections in Tamil Nadu and made a triumphant return to the post of chief minister.**[32dw][32dx]**

**KALAM Abdul Dr APJ**
Sworn in as India's 12th President in July 2002. A Muslim, an eminent scientist and architect of India's missile programme.**[32ai]**

**MUKHERJEE Pranab**
Finance minister in Indira Gandhi's cabinet after Congress' return to power in 1980, he has been a member of the Rajya Sabha for 24 years. He has been appointed defence minister in the new cabinet after the 2004 elections **[65]**

**PATIL Shivraj**
Former Speaker of the lower house, he is responsible for the interior ministry in the new cabinet after the recent elections. **[32ea]**

**PAWAR Sharad**
A former federal defence minister, Mr Pawar has a reputation for being an efficient administrator. A powerful regional politician, he broke away from the Congress party a few years ago, but agreed to ally with it during the recent elections. Mr Pawar is looking after the crucial food and agriculture ministry, one of the areas in which the new government really hopes to make a difference. **[32ea]**

**SINGH Beant**
Took office as Chief Minister of Punjab following the State elections of February 1992. His Government pursued a counter-insurgency policy which saw normality return to Punjab. He was assassinated in August 1995 in a car bomb explosion.

**SINGH Natwar**
Natwar Singh, a former career diplomat who studied history in Cambridge, is a Congress loyalist and the new external affairs minister. A former ambassador to Pakistan and junior minister in Rajiv Gandhi's cabinet he is a prolific writer and has written a book on EM Forster. **[32ea]**

**SINGH Dr Manmohan**
Manmohan Singh, India's new Prime Minister, is widely regarded as the architect of the country's economic reform programme. He is the first Sikh to hold the position. The academic-turned-civil servant, who studied economics at Cambridge and Oxford, became India's finance minister in 1991 when the country was plunging into bankruptcy. Under his stewardship, the economy revived and inflation was checked. A trusted confidante of Congress leader Sonia Gandhi, Dr Singh piloted the economic manifesto for the Congress party during this year's election campaign. **[32du]** The new Prime Minister leads a coalition government called the United Progressive Alliance. **[32bf]**

**VAJPAYEE Atal Behari**
Prime Minister of India (1996, 1998-2004). He was a founding member of the Bharatiya Jana Sangh, the Hindu nationalist precursor of the Bharatiya Janata Party (BJP). When the BJP won the largest number of parliamentary seats in 1996, Vajpayee became Prime Minister; failing to form a coalition, he resigned 13 days later. After the 1998 elections gave

the BJP a greater representation in parliament, Vajpayee again became Prime Minister; he was returned to office in 1999. Vajpayee has softened some of the more strident nationalist and anti-Muslim rhetoric of other BJP members and has pressed for the continuation of free-market reforms, the eradication of untouchability, and the rights of women. He also advocates the development of India as a nuclear power; several nuclear tests were conducted in 1998. He has written a number of books, including collections of his speeches, a work on Indian foreign policy, and poetry. **[66]**

**YADAV Lalu Prasad**
Former Bihar chief minister and leader of the RJD party, known for his eccentricities and is now the railway minister in the United Progressive Alliance government. His wife is the present chief minister of Bihar

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