

India bulletin 2/2005

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1. Introduction

1.1 This Bulletin has been produced by the Country Information & Policy Unit, Immigration & Nationality Directorate, Home Office and evaluates information in the October 2004 Country Report on India and the Report of the July 2004 Fact Finding Mission to India. The bulletin provides guidance on the handling of asylum and human rights applications from Indian women based on ill-treatment as a result of their gender. It must be read in conjunction with the Country Report of October 2004 and the Report of the Fact Finding Mission to India from 11-24 July 2004.

1.2 This Bulletin is intended to summarise all the information on the treatment of women in India in those two documents and to provide guidance on whether specific types of claim from women are or are not likely to justify the grant of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers should refer to the appropriate Asylum Policy Instructions (APIs) for further details. This Bulletin is publicly disclosable.

1.3 The information contained in this bulletin is intended to be a summary of the situation, for more detailed information caseworkers should refer to the relevant sections in the Country Report and the Fact Finding Mission Report.

1.4 Claims should be considered on an individual basis, but taking full account of the information set out below.

2. Background

2.1 India covers an area of 3,166,414 square kilometres (1,269,219 square miles) and whilst it occupies only 2.4% of the world's land area it supports over 15% of the world's population. It has the world's 12th largest economy, and the third largest in Asia behind Japan and China. 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. According to July 2002 estimates out of a population of 1,045 million, 506 million are female and 539 million are male. [October 2004 Country Report paras 2.1, 2.2, 3.2, 6.249]

2.2 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 include Buddhist, Jain and Parsi 2.5%. [Country Report paragraph 2.4]

2.3 India is a patriarchal society where the concept of the family is important. Within marriage women are viewed as property and taught from an early age to put the importance of the family unit above that of their own concerns. It is reported that patriarchal attitudes are deeply ingrained in Indian society and are more prevalent in the north than the south of the country. [Fact Finding Mission Report paras 3.1 to 3.15]

2.4 Only 54% of Indian women are literate as compared to 76% men. 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, Jharkland Madhya Pradesh, Andra Pradesh and Bihar almost 50% of women do not know how to read and write." Rural women generally have lower literacy rates than elsewhere and women in the higher strata of society tend to be better educated. [Country Report para 6.250] [Fact Finding Mission Report paras 3.20 to 3.23]

2.5 Generally the economic status of women is reported to be low, the law prohibits discrimination in the workplace, but enforcement is reported to be inadequate. In both rural and urban areas women were reportedly paid less than men for the same work. [Country Report para 6.302 Fact Finding Mission para 3.35 to 3.49] While legislation allows for women to inherit and own property in many instances women are not afforded equal property rights. It has been reported that Muslim women can and do own property, and that in the higher classes women own property and collect rent from it without the requirement to account to their husbands. [Fact Finding Mission Report paras 3.50 to 3.58] Although the Hindu Succession Act gives widows rights over their husband's property these rights are often not upheld, custom and tradition being followed instead. As a result widows may lose the right of ownership resulting in economic deprivation. [Fact

Finding Mission Report 3.59 to 3.63]

2.6 As stated above according to population estimates for 2002 there are some 33 million less women than men in India. The India Census for 2001 defines the sex ratio as the number of females per 1000 males and the sex ratio for the entire country stood at 933 based on 2001 census figures, this compares with a figure of 927 in the previous 1991 census. Sex ratio varies by State and in addition by age, so the 2001 census figures show a sex ratio for states varying between 821(Delhi) and 1058(Kerala). The sex ratio figures for the 0-6 age group show an all India figure of 927 also with wide state variations, 798(Punjab) and 979 (Dadra & Nagar Haveli). The Census document itself notes that the sex ratio of 927 in this lower age group does not auger well for the future of the country.[Fact Finding Mission Report paras 3.71 to 3.80]

2.7 There is reported to be a traditional preference for male children. Termination of pregnancy is legal but the use of pre-natal sex-determination tests is illegal, however the law on this issue has not been effectively enforced, and as a result the termination of a disproportionate number of pregnancies with female fetuses occurs. Other contributory factors to the sex ratio are female infanticide, and in areas where food has to be rationed girls may receive unequal rations and consequently die from malnutrition or neglect. [Country Report para 6.260][Fact Finding Mission Report paras 3.82 to 3.86]

2.8 Within India in recent years there is reported to be an increase in awareness of women's issues including gender issues and gender sensitisation. A number of organisations, including the statutory body the National Commission for Women, run programmes to raise women's knowledge of their legal rights however not all women are aware of their legal rights, in particular women in the lower castes and Dalits.[Fact finding Mission Report paras 3.91 to 3.101]

2.9 According to statistics published by the National Crime Records Bureau (NCRB) in 2002 a total of 147,678 crimes against women were reported in 2002 compared with 143,795 during 2001. This represents an increase of 2.7% over the previous year and shows an increase of 12.3% over 1998. These NCRB figures record crimes specifically categorised as "Crimes Against Women", although women may additionally be the victims of other crimes, robbery, murder etc. Crimes against women are categorised as rape, kidnapping and abduction, dowry death, torture, molestation, sexual harassment, importation of girls, (all of which are crimes under the Indian Penal Code IPC) Sati Prevention Act, Immoral Traffic Act, Indecent Representation of Women Act, and Dowry Prohibition Act(all of which are crimes under Special and Local Laws(SLL). The NCRB notes the proportion of IPC crimes committed against women (IPC) towards total IPC crimes increased continually during the past years from 6.7% in 1998 to 7.4% in 2002.[Fact Finding Mission Report paragraphs 4.12 and 4.14]

2.10 Whilst these figures clearly show an increase in the recorded numbers of crimes against women it is difficult to be certain if they reflect an increase in violence against women or an increase in reporting violence against women. It has been suggested that the increased awareness of the issue of violence against women may have increased the reporting of such crimes. Additionally it is suggested these crimes continue not to be reported by women due to the social pressures and a general acceptance of violence within marriage. One source suggested that only 11.5% of incidences of serious sex offences in Gujarat are reported. [Fact Finding Mission Report paras 4.15, 4.21, 4.23, 4.26, 4.29, 4.32]

2.11 In India 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. [Country Report para 5.44]

2.12 For an individual to pursue a case in India the first necessary step in the legal process is the completion of a First Instance Report (FIR). It is reported that, lack of literacy, a reluctance to approach the police, and police officers suggesting reconciliation or compromise in preference to registering a case, may make it difficult for women to register FIRs. However NGOs provide assistance to some women in registering FIRs and in some cases police may send women to NGOs for assistance. [Fact Finding Mission Report paras 6.6, 6.9, 6.13,6.18- 6.26, 6.36-6.39]

2.13 In an effort to address these problems Crime Against Women Cells started to be set up in 1989 and continued to be set up during the following decade resulting in every police district having such a cell headed by a Deputy Superintendent of Police (DSP). The main purpose of these is to ensure women have access to the police and to give assistance in crimes relating to women. [Fact Finding Mission Report para 6.41] However there are mixed views on the effectiveness of these with reports that they work well in Delhi, Punjab and the south, whereas in Ahmedabad they are not regarded as successful. [Fact Finding Mission Report para 6.42-6.52]

2.14 It is reported that some women police stations (Mahila Thanas) have been set up but there are mixed views on their effectiveness. [Fact Finding Mission Report para 6.42, 6.44, 6.50]

2.15 According to reports it has been recognised that action is needed to improve the way police deal with women and Government agencies and NGOs have instituted some programmes. It is reported that a lot of gender sensitisation training for police is taking place, much of this with assistance from NGOs. According to the Ministry of Home Affairs gender sensitisation forms an important part of police training. [Fact Finding Mission Report paras 6.61- 6.79]

2.16 It has been reported that the majority of judges are male and approach cases involving women with conventional Indian ideas with regard to the treatment and status of women, resulting in an attitude of compromise and a concern to keep the family together. [Fact Finding Mission Report paras 6.80 - 6.87]

2.17 Whilst by law all women are entitled to legal aid it is reported that access to this is limited and may be affected by a number of issues including a woman's access to funds to pay a lawyer. [Fact Finding Mission Report paras 6.88 to 6.94] It is generally reported that the Indian legal system is extremely slow and that cases can take a number of years to be completed, although there is no distinction in the time it takes to prosecute crime against women or men. National Crime Bureau (NCRB) statistics whilst showing a decrease in the percentages of total cases investigated over the period 1961 (84.2%) to 2002(79.5%) show an appreciable increase in the percentage of cases charge-sheeted, 1961 (53.6%) compared to 2002 (80%). With regard to police investigation of crimes against women the NCRB state that in most cases investigation rates were better than for other crimes. [Fact Finding Mission Report paras 6.95 to 6.110]

2.18 It is reported that for a variety of reasons women may feel forced to agree to a compromise rather than see prosecution through, and this may happen at the initial police stage or later at the judicial stage. [Fact Finding Mission Report paras 6.111 to 6.116] A Family Court system aimed at the resolution of family disputes amicably without the intervention and help of lawyers is in existence but there are only Family Courts in some areas. [Fact Finding Mission Report paras 6.117 - 6.124] Other forms of alternative methods for dispute resolution exist, for example Parivarik Mahila Lok Adalats (PMLA) which can dispose speedily of cases under the Legal Service Authority Act. Their purpose is to provide timely justice, to encourage the public to settle disputes outside the formal set-up and to empower the public, in particular women, to participate in the justice delivery system. [Fact Finding Mission Report paras 6.118, 6.141 to 6.145 and 7.105] Panchayats are traditional village councils made of elected members which seek to settle disputes locally in a cost-effective manner. Recent legislation has instituted a one third reservation of seats on these for women. Panchayats settle mainly land issues and their effectiveness and success is reported to be variable. [Fact Finding Mission Report para 6.125 - 6.145][Country Report para 6.296]

3. Legislative and Constitutional Provisions

3.1 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 or 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)"[Country Report para 6.251]

3.2 India is a signatory to the Convention on Elimination of All Forms of Discrimination Against Women (CEDAW). A report commissioned by the Office of the United Nations Resident Co-ordinator in India in 2001 notes that although India has led the world in ratifying UN Conventions like CEDAW and the Beijing platform and the last few years have seen dramatic increases in the space available for women in Indian society as a result of affirmative policies and programmes by the government, NGOs and civil society groups, these changes are mainly the result of years of determined advocacy, campaigning and action by

women themselves. The report continues however that gaps still remain, 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, while others face a very different reality.[Country Report para 6.256]

3.3 It is reported that many laws exist for the protection of women's rights however implementation and enforcement pose a barrier. However one report notes that legislative attempts within the last decade and a half indicate a positive State response to lobbying from women's groups in the form of multiple legislations dealing with various issues concerning women. The report mentions the Sati Prevention Act, amendment to rape laws, additions to the Indian Evidence Act to the benefit of women, the Indecent Representation of Women Act, and the Prenatal Diagnostic Techniques Act as major legislative contributions to women's issues. Similarly another publication notes that certain older legislation has brought about an upward trend in the status of women in India resulting in women enjoying and gaining better status recognition and respect. This report cites the Hindu Widow Re-marriage Act of 1956, the Child Marriage Restraint Act 1929, The Hindu Women Right to Property Act 1937, The Hindu Marriage Act 1955, The Hindu Succession Act 1956, The Suppression of Immoral Traffic Act Women and Girls of 1956-7 and The Dowry Prohibition Act 1961. [Fact Finding Mission Report paras 5.1, 5.7,5.8]

3.4 The Dowry Prohibition Act prohibits the giving or taking of dowry which is defined as meaning any property or valuable security given or agreed to be given directly or indirectly by one party to a marriage to the other or by the parents of either party to a marriage or by any other person. [Fact Finding Mission Report para5.9]

3.5 The Pre-Natal Diagnostic Techniques (Regulation and Prevention of Misuse) Act 1994 provides for the regulation of the use of pre-natal diagnostic techniques and for the prevention of such techniques for the purpose of pre-natal sex determination leading to female foeticide. [Fact Finding Mission Report para 5.11]

3.6 The Protection of Human Rights Act provides for the constitution of a National Human Rights Commission, State Human Rights Commissions in States and Human Rights Courts for the better protection of human rights and matters connected with them. [Fact Finding Mission Report para 5.14]

3.7 The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act 1989 is intended to prevent atrocities against these groups and provides for the constitution of special courts for trial of such offences and provides for relief and rehabilitation to victims. [Fact Finding Mission Report para 5.16]

3.8 The Code of Criminal Law (Amendment) Act 1983 introduced Section 498A to the Indian Penal Code to combat the menace of dowry. Under this section the prosecution has to prove that the accused committed acts of harassment, or cruelty was the cause of suicide. Cruelty includes both mental and physical, and cruelty means wilful conduct that is of such a nature likely to drive a woman to commit suicide or to cause grave injury or danger to life, limb, health (mental and physical) or to harass or coerce her or any person related to her to meet such a demand. The cruelty has to be of such gravity as to drive a woman to take her own life. The onus lies with the prosecution to show that she was subjected to cruelty. [Fact Finding Mission Report paras 5.18 and 5.21] Section 113A of the Indian Penal Code lays down that if a woman commits suicide within 7 years of marriage and her husband or any relative of her husband subjected her to cruelty the court may presume, having regard to all of the circumstances of the case, that such suicide had been abetted by her husband. [Fact Finding Mission Report para 5.19]

3.9 The Hindu Marriage Act 1955 recognised the equal rights of men and women in matters of marriage and divorce. It is reported to deal with the matter of domestic violence but only in the context of judicial separation and divorce. The Act provides for maintenance for either party seeking a decree or judicial separation, however this is a summary remedy only available whilst proceedings are pending. [Fact Finding Mission Report paras 5.24 ? 5.25]

3.10 The Child Marriage Restraint Act 1929 originally made the minimum age for girls to marry 15 but this was later amended to 18 for girls and 21 for boys. [Fact Finding Mission Report para 5.33]

3.11 The Protection from Domestic Violence Bill was introduced to the Lok Sabha (the lower house of the Indian Parliament) in March 2002. In May 2002 the Bill was referred to the Standing Committee for examination. The report of the Committee on the Bill containing recommendations to Parliament is currently with the Department of Women and Children for consideration. It is reported that the Bill is intended to protect the rights of women who are victims of violence of any kind occurring within the family and to provide for matters connected therewith or incidental thereto. It has been reported that inclusion of the Bill in the new 'Common Minimum Programme means that it is likely to be passed. However in answer to a parliamentary question in August 2004 it was stated that the Bill had lapsed on dissolution of the 13th Lok Sabha and the Government has initiated a new examination of the Bill. [Fact Finding Mission Report paras 8.1 to 8.4] The Bill has been criticised on account of its use of the term "habitual abuser" and on the way it

is drafted and defines domestic violence. [Fact Finding Mission Report paras 8.5 - 8.9]

3.12 The Representation of Women Bill which sought to reserve one third of seats in the Lok Sabha for women was stalled in the Lok Sabha in May 2003 when the speaker adjourned the discussion which effectively ensured its deferral. However in answer to a parliamentary question in August 2004 it was stated that the National Common Minimum Programme provides that the new Government will take the lead to introduce legislation for one-third reservation for women in Vidhan Sabhas and the Lok Sabha. [Fact Finding Mission Report paras 8.10 - 8.11]

4. Bodies concerned with Women's Human Rights Issues

4.1 The National Human Rights Commission was set up under the Protection of Human Rights Act 1993, the Act defines Human Rights as rights relating to life, liberty, equality and dignity of individuals guaranteed by the Constitution or embedded in the International Covenants and enforceable by Courts in India. According to the Act the Commission has a number of powers including the power to inquire into complaints of violation or abetment of human rights of individuals or negligence in the prevention of such violations, intervening in allegations of human rights pending before any court with the approval of that court, visits to places of detention and reviewing constitutional provisions and laws covering human rights. [Fact Finding Mission Report paras 7.49 and 7.50]

4.2 Within the NHRC the Law Division handles complaints from women, the types of complaints received cover custodial and domestic violence, dowry deaths and demands, rape, immoral trafficking of women, non investigation by the police, sexual harassment in the workplace, complaints from scheduled castes and tribes and investigations into the treatment of Dalits. Within the Law Division the Commission has set up a Women's Human Rights Cell which scrutinises all complaints and cases relating to the death or harassment of women and girl children and rape and dowry demand cases.[Fact Finding Mission Report para 7.53 and 7.62] There is a fast track system for processing rape complaints which generally take about a month however gang-rape cases are placed before the Commission within 24 hours. The Commission has the power to investigate cases, make recommendations and pass individual cases to Magistrates for the complaint to be heard. The NHRC reports that only 3-4% of complaints result in prosecution attributing the low prosecution rate to the length of time taken to prosecute. The NHRC reports that in the case of allegations they issue a notice regarding the woman concerned and often this intervention ensures that the behaviour complained of stops. [Fact Finding Mission Report paras 7.54 - 7.56 Annex 4]

4.3 The 1993 Protection of Human Rights Act recommended the establishment of State Human Rights Commissions and these have been established in 14 out of 25 states. The Punjab Human Rights Commission receives some 14,000 complaints annually, out of these some 45% are found not to be maintainable and 65% of complaints are seen by the Investigation wing. 15-20% of complaints are from women. [Fact Finding Mission Report paras 7.74 to 7.75 and 7.78]

4.4 In Andhra Pradesh, where there is no State Human Rights Commission, a State Human Rights Committee has been formed following guidelines from the Supreme Court. This Committee oversees, in Andhra Pradesh, the implementation of Supreme Court Guidelines with regard to the arrest and detention of individuals. [Fact Finding Mission Report para 7.87]

4.5 The National Commission for Women is a statutory body constituted in 1992 under the National Commission for Women Act 1990. The Commission is charged with protecting and promoting the interests and safeguarding the rights of women. The Commission reviews laws and investigates specific complaints of atrocities, harassment, denial of rights and exploitation of women, taking remedial action to restore rights. The Commission deals with complaints by expediting and monitoring police investigations, dealing with family disputes through resolution or compromise through counselling; in the case of serious crimes an Inquiry Committee is constituted which carries out inquiries, examines witnesses, collects evidence and submits a report with recommendations. The Commission monitors the implementation of the recommendations. The Commission also provides recommendations to the Government on legislation and other issues although not all their recommendations have been acted upon. It has been reported that 23 States have State Commissions for Women.[Fact Finding Mission Report paras 7.95 to 7.100] The Commission has been criticised on account of the Government's failure to follow its recommendations and it has been suggested that it is an inactive and obstructive arm of the State. [Fact Finding Mission Report paras 7.114 - 7.116]

4.6 The National Commission for Women evolved an alternative justice system, the Parivarik Mahila Lok Adalats (PMLA) which can dispose speedily of cases under the Legal Service Authority Act. Their purpose is to provide timely justice, to encourage the public to settle disputes outside the formal set-up and to empower the public, in particular women, to participate in the justice delivery system. [Fact Finding Mission Report para 7.105]

4.7 Numerous NGOs play a prominent role in India helping women. A core group of these have been set up to bring issues to the National Human Rights Commission. [Fact Finding Mission Report paras 7.120 to 7.123]

5. Specific Issues

5.1 Domestic Violence

Treatment

5.1.1 Domestic violence is reported to be a common and serious problem, prevalent in all categories of Indian society. [Fact Finding Mission Report paras 4.36 to 4.53][Country Report paras 6.271, 6. 272] There is reported to be under-reporting of the crime of domestic violence and combined with ineffective prosecution this has made progress against domestic violence difficult. The under-reporting is attributed to the patriarchal society which places value on the family over and above individual concerns. [Fact Finding Mission Report 4.36, 4.45, 4.46]

5.1.2 Indications of the numbers of Indian women facing domestic violence vary considerably. Based on a small survey of 400 respondents carried out in Ahmedabad 67% of women reported some kind of abuse indicating they were victims. [Fact Finding Mission Report 4.42] A 1998 National Family Health Survey shows that a least one in five of all married women above the age of 15 experienced physical violence, and most of these women were beaten by their husbands. [Fact Finding Mission Report 4.49] Other sources suggest that a figure of some 40% of women in the whole country might be victims of domestic violence. [Fact Finding Mission Report 4.51, 4.52]

5.1.3 Until 1983 there were no specific legal provisions in India pertaining to domestic violence although women could have recourse to the general laws with respect to crimes such as murder, abetment to suicide and grievous injury. In 1983 a new section was added to the Indian Penal Code Section 498A. See para 3.8 above. [Fact Finding Mission Report paras 4.49, 5.18 ? 5.21]

Sufficiency of Protection

5.1.4 In India the first step in the legal process is the completion of a First Instance Report (FIR). Lack of literacy, a reluctance to approach the police, and police officers suggesting reconciliation or compromise in preference to registering a case, may present difficulties for some women attempting to register FIRs. However NGOs provide assistance to some women in registering FIRs and in some cases the police may send women to NGOs for assistance. [Fact Finding Mission Report paras 6.4, 6.27, 6.19, 6.21, 6.22, 6.26] In an effort to ensure that women have access to the police, Crime Against Women Cells have been set up in every police district. The main purpose of these is to ensure that women have access to the police and to give assistance in crimes relating to women from indecent exposures, trafficking, abetment of suicide, to dowry harassment and other crimes. [Fact Finding Mission Report para 6.41]

5.1.5 India has an independent judiciary, but this is reported to be under funded and overburdened generally. NGOs allege that corruption may influence some court decisions. In general it is reported that the judiciary enforces the right to a fair trial, although there is a backlog of cases and some courts barely function. [Country Report para 5.19 - 5.21] It is reported that these delays apply equally to the speed with which crimes against men and women are dealt with.[Fact Finding Mission Report paras 6.97 - 6.108]

5.1.6 Although the Protection from Domestic Violence Bill has not yet been passed women suffering domestic violence, which is dowry related, can rely on Section 498A of the Indian Penal Code, to prosecute in cases of domestic violence. [Fact Finding Mission Report paras 5.21 -5.22]

5.1.7 The Central Social Welfare Board is implementing a scheme of Short Stay Homes, which provide temporary shelter, counselling of psychiatric treatment to women and girls who are the victims of mental adjustment, emotional disturbances and social ostracism and have either escaped or been made to leave their homes due to family problems, mental or physical torture or who have been sexually assaulted or have been forced into prostitution. [Fact Finding Mission Report para 7.1] In addition there are some shelters, crisis centres and short stay homes run in some places by NGOs. [Fact Finding Mission Report paras 7.3 - 7.21] It is generally reported that whilst these institutions do exist there are not enough of them currently in existence. [Fact Finding Mission Report para 7.2 - 7.6, 7.22]

5.1.8 The Government through the Social Welfare board has also funded help-lines. In Delhi the police advertise a help line for Women and Children in Distress, stating that specially trained women Police Officers are on hand to assist women and that a police van is available to rescue them. There are also help lines in Jalpur, Bombay, and Ahmedabad. [Fact Finding Mission Report 7.29 - 7.32]

5.1.9 The National Human Rights Commission has the power to inquire into complaints of violations or abetment of human rights of individuals. Within the NHRC the Law Division handles complaints from women and has a Woman's Human Rights Cell which scrutinises amongst other categories all complaints relating to the death or harassment of women or girl-children. [Fact Finding Mission Report paras 7.49 - 7.50 and 7.53 - 7.62] The Commission has the power to investigate cases, make recommendations and pass individual cases to Magistrates for the complaint to be heard. [Fact Finding Mission Report paras 7.54 - 7.56 and Annex 4]

5.1.10 In conclusion there are laws in place in India to assist victims of domestic violence in prosecuting perpetrators and there are some organisations both Governmental and non-governmental to whom victims can turn for help and assistance. The provision of these however may be inadequate to ensure that every individual woman who needs assistance and protection is able to access it. Additionally some women's ability to access this help and assistance may be limited by such factors as their location, lack of literacy and lack of awareness of their rights.

Internal Flight/Relocation

5.1.11 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. Indian citizens enjoy freedom of movement within the country except in certain border areas where, for security reasons, special permits are required. Therefore as a general rule, an internal relocation option exists from one Indian state to another. [Country Report para 6.160]

5.1.12 However the situation as regards internal relocation for single women, divorcees with or without children, and widows may differ from the situation for men as it may be difficult for women on their own to find and secure accommodation. It is reported that although it is generally difficult for women to live on their own some women are able to do so particularly in urban areas. Although rents are expensive and landlords are often unwilling to rent to single women there are hostels in some urban areas. In particular it is reported that single women live alone in Hyderabad and Ahmedabad and Bombay where the existence of a large number of call-centres provides employment. [Fact Finding Mission Report paras 9.1 - 9.16] It is reported that in the big cities it is becoming common for women to work away from home. On behalf of the Government the Department of Women and Child Development are involved in hostel schemes for working women wanting to move away from their hometowns. One thousand hostels have been recommended, half of which have so far been built. [Fact Finding Mission Report para 7.33 - 7.34] One NGO also runs Working Women's Hostels one in Delhi and a further 22 across the country which provide board, lodging and recreational facilities to working women. [Fact Finding Mission Report paras 7.35 - 7.37] There are also 18 homes and hostels for working women in Andhra Pradesh where women pay for the cost of their keep. [Fact Finding Mission Report para 7.38]

5.1.13 Divorcees, widows and women with children are likely to find it even more difficult to find accommodation than single childless women as children may not be accepted in hostels. [Fact Finding Mission Report paras 7.17, 7.25, 7.27, 9.5] However there are some homes run specifically for widows, by a voluntary organisation in north India. [Fact Finding Mission Report paras 9.25 - 9.26] Illiterate women from rural areas would also find it particularly difficult to obtain accommodation as a lone woman. [Fact Finding Mission Report paras 9.1 - 9.16]

5.1.14 In conclusion, whilst there is freedom of movement within India some lone women may find it difficult to obtain accommodation on their own whatever the reasons for their move. Whilst there are some facilities available the situation is likely to be particularly difficult for illiterate women from rural areas and less educated or lower class divorcees, widows and women with children.

IAT Determination: Balvir Kaur [2002] UKIAT03387 The Tribunal found that it would be unduly harsh to expect a woman from a rural background to relocate to another part of India because in reality she would be destitute, without accommodation, without housing and with no one to turn to.

Conclusion

5.1.15 The position and treatment of women within the family in India is such that a significant percentage of Indian women may be the victims of some kind of domestic violence. There is no evidence to suggest that the Indian Government supports or condones the ill-treatment of women in this way. Despite the current lack of specific legislation on domestic violence there are laws against domestic violence which can be and are used to prosecute perpetrators. For societal reasons women may be reluctant to report instances of domestic violence and seek protection, however in an effort to improve women's access to the police Crime Against Women Cells have been set up in every police district. In addition there are a number of NGOs working on women's issues who are available to provide protection and assistance to individual women suffering domestic violence. Whilst the numbers may be inadequate there are also short stay homes, crisis centres and shelters to which some women can turn for advice assistance and protection. The level of

these may be inadequate but it is clear that there are some organisations to whom women can turn for protection. The National Commission for Human Rights also works in this field and has a specific section which can investigate and make recommendations in specific cases concerning domestic violence.

5.1.16 Some Indian women facing a real risk of domestic violence may be unable to access those protective organisations which are available. For example women from rural areas and those who are illiterate may have particular problems such that they are unable to access protection. Additionally some Indian women, facing a real risk of domestic violence, may be unwilling due to a well-founded fear to access those protective organisations which are available. The most recent information on the situation of women in India does not support the view that women are a particular social group within India, in particular as stated above there is no evidence that the Indian Government supports or condones the ill-treatment of women. Therefore a grant of asylum in either of these circumstances will not be appropriate.

5.1.17 However where an Indian woman is able to show that she faces a real risk of domestic violence amounting to torture or inhuman or degrading treatment and is unable, or unwilling through fear, to access protection a grant of Humanitarian Protection will be appropriate. Where the willingness to seek protection is based on fear a grant of Humanitarian Protection will be appropriate, however where the willingness to seek protection is not based on fear a grant of Humanitarian Protection will not be appropriate.

5.2 Dowry Related Violence

Treatment

5.2.1 Traditionally dowry in the form of gifts of cash given at ceremonies is expected only in the first year of marriage, but it is reported that it may be expected during the first seven years of marriage. Dowry disputes are reported to be a common and serious problem. Although the Dowry Prohibition Act provides that taking or providing a dowry is illegal, dowry is practised widely. Dowry disputes typically involve the harassment of a new wife by the groom's family who believe she may not have provided a sufficient dowry. The harassment sometimes ends in the woman's death which the family try to portray as a suicide or an accident. According to NGOs, approximately 7,000 deaths each year are from dowry-related burnings.[Fact Finding Mission Report 4.55, 4.56][Country Report 6.277]

5.2.2 According to National Crime Bureau statistics covering 1998 to 2002 reported dowry deaths have been running at just under 7,000 per year. The 2002 figure showed a decline of 0.4% over 2001. Reports of torture defined as cruelty by a husband or relative which might be dowry related have, during the period 1998 to 2002, shown an increase from just over 41,000 to just over 49,000.[Fact Finding Mission Report para 4.12]

5.2.3 It has been reported that whilst dowry was traditionally a Hindu middle class practice it is now practiced across society and across different faiths. One source suggested that in Andhra Pradesh dowry disputes present a major problem; particularly there are numbers of dowry deaths which are unreported. The 2001 statistics for the state reported 400 dowry deaths while a survey in one of the 23 districts in Andhra Pradesh revealed 390 such deaths. However the practice of dowry was reported not to be as prevalent in Gujarat as in the north and south of India. [Fact Finding Mission Report 4.58, 4.59, 4.61, 4.66]

Sufficiency of Protection

5.2.4 See paras 5.1.4 and 5.1.5 above for general information on the legal process in India and paras 5.1.7 and 5.1.8 for information on general protections available.

5.2.5 There is specific legislation aimed at dealing with this issue. The Dowry Prohibition Act 1961 prohibits the giving or taking of a dowry, meaning any property or valuable security given or agreed to be given either directly or indirectly by one party to a marriage to the other or by the parents of either party to a marriage or by any other person. (It does not include dower or Mahr in the case of persons to whom the Muslim Personal Law applies.) The penalty for giving or abetting dowry is imprisonment for a term not less than 5 years and a fine not less than 15,000 rupees. The demanding of dowry directly or indirectly is punishable with imprisonment for not less than 6 months but which might extend to 2 years and a fine of 10,000 rupees. [Fact Finding Mission Report para 5.9]

5.2.6 Direct responsibility for implementation of the Dowry Act rests with State Governments and the Government has advised all State Governments to appoint Dowry Prohibition Officers. The National Commission for Women is currently reviewing the Act to make its provisions more stringent and effective. The Government has stated that since the menace of dowry is a reflection of women's low status in society, it has taken a number of steps to raise the status of women and to change the societal attitudes towards girls and women. Amongst other issues these include setting up short stay homes. The Government has also made a number of recommendations to State Governments including setting up women police cells and exclusive women police stations and fast track courts and family courts. [Fact Finding Mission Report

para 4.70]

5.2.7 The National Human Rights Commission has the power to inquire into complaints of violations or abetment of human rights of individuals. Within the NHRC the Law Division handles complaints from women and has a Woman's Human Rights Cell which scrutinises amongst other categories all complaints relating to dowry demand cases. [Fact Finding Mission Report paras 7.49 to 7.50 and 7.53 to 7.62] The Commission has the power to investigate cases, make recommendations and pass individual cases to Magistrates for the compliant to be heard. [Fact Finding Mission Report paras 7.54 to 7.56 and Annex 4]

5.2.8 In conclusion there are specific laws in place in India to make illegal the practice of dowry and prosecute those involved in this practice. In addition to the law a specific section of the Indian Penal Code is available to assist victims of dowry violence in prosecuting perpetrators. There are some organisations, both Governmental and non-governmental, to whom victims can turn for help and assistance. The provision of these however may be inadequate to ensure that every individual woman who needs assistance and protection is able to access it.

Internal Flight/Relocation

5.2.9 See paras 5.1.11 to 5.1.14 above.

Conclusion

5.2.10 Despite legislation proscribing it the practice of dowry continues in India and violence and death as a result of this practice continue to occur. There is no evidence to suggest that the Indian Government condones or supports the continuation of this practice or the violence that occurs to women in connection with the practice. The Government has specifically legislated against the offence and recently has asked specifically for the provision of Dowry Prohibition Officers in states.

5.2.11 For societal reasons women may be reluctant to report instances of violence related to dowry and seek protection, however in an effort to improve women's access to the police Crime Against Women Cells have been set up in every police district. In addition there are a number of NGOs working on women's issues who are available to provide protection and assistance to individual women suffering violence. Whilst the numbers may be inadequate there are also short stay homes, crisis centres and shelters to which some women can turn for advice, assistance and protection. The level of these may be inadequate but it is clear that there are some organisations to which women can turn for protection. The National Commission for Human Rights also works in this field and has a specific section that can investigate and make recommendations in specific cases concerning domestic violence.

5.2.12 Some Indian women facing a real risk of dowry related violence may be unable to access those protective organisations which are available. For example women from rural areas and those who are illiterate may have particular problems such that they are unable to access protection. Additionally some Indian women facing a real risk of dowry related violence may be unwilling, due to a well-founded fear, to access those protective organisations which are available. The most recent information on the situation of women in India does not support the view that women are a particular social group within India, in particular as stated above there is no evidence that the Indian Government supports or condones the ill-treatment of women. Therefore a grant of asylum in either of these circumstances will not be appropriate.

5.2.13 However where an Indian woman is able to show that she faces a real risk of dowry related violence amounting to torture or inhuman or degrading treatment and is unable, or unwilling through fear, to access protection a grant of Humanitarian Protection will be appropriate. Where the willingness to seek protection is based on fear a grant of Humanitarian Protection will be appropriate, however where the willingness to seek protection is not based on fear a grant of Humanitarian Protection will not be appropriate.

5.3 Societal and communal violence

Treatment

5.3.1 Societal violence against women has been reported as a serious problem. According to the US State Department Report 2003 mass rapes often were tactics of intimidation used by upper caste gangs against lower castes or as a means of coercion or revenge in rural property disputes. [Fact Finding Mission Report 4.110][Country Report para 6.282]

5.3.2 In February 2002, a mob of Muslims attacked a train carrying Hindu volunteers returning from Ayodhya to the state of Gujarat, and 57 people 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. [Country Report para 4.9] During the 2002 communal violence in Gujarat women were both perpetrators and victims of the abuse. [Fact Finding Mission Report 4.114] A National Commission for Women report stated that of 100

reported cases of rape only 5 cases have been registered and none have yet reached trial. The Bilkis Banu case concerning the alleged rape of a six-month pregnant woman and the killing of her relatives by a mob the case was closed by the police but re-investigated by order of the Supreme Court. It is reported that 12 - 14 of those accused have now been arrested including police and a doctor. [Fact Finding Mission Report para 4.119]

Sufficiency of Protection

5.3.3 See paras 5.1.4 and 5.1.5 above for general information on the legal process in India and paras 5.1.7 and 5.1.8 for information on general protections available.

5.3.4 The Indian constitution guarantees all citizens the freedom of religion and belief and the right to practice their religion freely. 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). [Country Report para 6.27-6.28]

5.3.5 The National Human Rights Commission has the power to inquire into complaints of violations or abetment of human rights of individuals. Within the NHRC the Law Division handles complaints from women and has a Woman's Human Rights Cell, which scrutinises amongst other categories, all complaints received by the Commission relating to rape cases. [Fact Finding Mission Report paras 7.49 - 7.50 and 7.53 - 7.62] The Commission has the power to investigate cases, make recommendations and pass individual cases to Magistrates for the complaint to be heard. [Fact Finding Mission Report paras 7.54 - 7.56 and Annex 4]

5.3.6 With particular regard to the communal riots in Gujarat in 2002 the National Human Rights Commission took suo moto action (not in relation to a specific complaint made to it but on its own behalf). The Commission noted that news items suggested there was inaction on the behalf of the police and higher State officials. The Commission took the matter to the Supreme Court and took up one individual case as a result of which it was re-investigated and all 24 suspects re-arrested including police and doctors who had colluded. [Fact Finding Mission Report para 7.65]

Internal Flight/Relocation

5.3.7 See paras 5.1.11 to 5.1.14 above.

Conclusion

5.3.8 There is no evidence to suggest that the Indian Government condones or supports societal violence against religious minorities or against women. In general those experiencing religious intolerance including women can reasonably seek protection from the Indian authorities and there is no evidence to suggest that such protection is not provided. As evidenced by the NHRC findings in respect of the extreme violence in February 2002 in Gujarat, there is monitoring, investigation and redress for those who are victim to religious violence even in the most extreme circumstances. Some perpetrators of religious violence against Christians and Muslims have been prosecuted for their actions and there are avenues open for individuals to seek protection from the authorities where they experience ill-treatment. The National Commission for Human Rights also works in this field and acted specifically in connection with the communal violence in Gujarat to ensure that in a particular case prosecution was brought against the alleged perpetrators.

5.3.9 For societal reasons women may be reluctant to report instances of violence and to seek protection, however in an effort to improve women's access to the police Crime Against Women Cells have been set up in every police district. In addition there are a number of NGOs working on women's issues who are available to provide protection and assistance to individual women suffering violence. Whilst the numbers may be inadequate there are also short stay homes, crisis centres and shelters to which some women can turn for advice assistance and protection. The level of these may be inadequate but it is clear that there are some organisations to whom women can turn for protection.

5.3.10 Some Indian women facing a real risk of societal or communal violence may be unable to access those protective organisations which are available. For example women from rural areas and those who are illiterate may have particular problems such that they are unable to access protection. Additionally some Indian women, facing a real risk of societal or communal violence, may be unwilling due to a well-founded fear to access those protective organisations which are available. Where the risk of societal or communal violence to an individual woman is as a result of that individual woman's religion, race or political opinion a grant of asylum may be appropriate. For the reasons stated in para 5.1.16 where ill-treatment feared is not on these grounds a grant of asylum will not be appropriate.

5.3.11 However where an Indian woman is able to show that she faces a real risk of societal or communal violence, not related to her religion, race or political opinion, amounting to torture or inhuman or degrading treatment and is unable, or unwilling through fear, to access protection a grant of Humanitarian Protection will be appropriate. Where the willingness to seek protection is based on fear a grant of Humanitarian Protection will be appropriate, however where the willingness to seek protection is not based on fear a grant of Humanitarian Protection will not be appropriate.

5.4 Dalit Women

Treatment

5.6.1 India'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. [Country Report para 6.345] The Constitution gives the President 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 are entitled to affirmative action and hiring quotas in employment, benefits from special development funds, and special training programmes. Dalits (formerly known as untouchables) are a scheduled caste occupying the lowest layer of the Hindu caste system. According to the 2001 census, scheduled castes, including Dalits, made up 16 percent, and scheduled tribes were 8 percent of the country's 2001 population of 1.027 billion. The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act lists offences against disadvantaged persons and provides for stiff penalties for offenders. However it is reported that this act had only a modest effect in curbing abuse. Human rights NGOs have alleged there has been an increase in caste violence. It is reported that 84% of all Dalits live in rural parts.[Country Report para 6.345 to 6.351][Fact Finding Mission Report paras 3.24, 3.25]

5.6.2 Although the Dalit communities are governed by the Hindu Personal Law, the various sub-castes within the community have their own constitution; entire communities will be governed by laws formed by community leaders. These laws are one of the main reasons for violence on Dalit women who refer to their subcaste's customary practices in settling matrimonial disputes. Dalit women face violence from within their own community as well as from other castes as a result of rigid social laws and customs. [Fact Finding Mission Report paras 3.31 - 3.33]

5.6.3 Government schemes for education and empowerment of Dalit women are reported not to have been particularly successful. [Fact Finding Mission Report para 3.32]

Sufficiency of Protection

5.6.4 See paras 5.1.4 and 5.1.5 above for general information on the legal process in India and paras 5.1.7 and 5.1.8 for information on general protections available.

5.6.5 There is no evidence to suggest that Dalit women are specifically excluded from access to any of the protections that are available in India to women, however due to their lack of education, lack of awareness of rights and laws and an inability to file complaints due to ignorance Dalit women suffering violence or intimidation for any reason are likely to find accessing support, assistance and protection particularly difficult.

Internal Flight/Relocation

5.6.6 See paras 5.1.11 to 5.1.13 above.

5.6.7 In conclusion, whilst there is freedom of movement within India some lone women may find it difficult to obtain accommodation on their own. Whilst there are some facilities available the situation is likely to be particularly difficult for illiterate women from rural areas and less educated or lower class divorcees, widows and women with children. The situation is likely to be particularly difficult for Dalit women who are mainly rural and likely to be poorly educated.

IAT Determination: Balvir Kaur [2002] UKIAT03387 The Tribunal found that it would be unduly harsh to expect a woman from a rural background to relocate to another part of India because in reality she would be destitute, without accommodation, without housing and with no one to turn to.

Conclusion

5.6.8 The position of Dalit women, who are members of the lowest caste in India and tend to be governed by the customary practices of their particular sub-caste, is likely to be particularly difficult. Not only might Dalit women face violence from within their own community they might also face this from members of other

castes as a result of rigid social laws and customs. There is legislation in place specifically which lists offences against disadvantaged persons and provides for stiff penalties for offenders. However that is reported to have had only a modest effect in curbing abuses. There are no specific reasons why Dalit women should not be able to access the protection which is available to other Indian women. However due to their position in society, some Dalit women particularly those who are illiterate might find it especially difficult to obtain protection. In these circumstances a grant of asylum or Humanitarian Protection may be appropriate.

5.6.9 In considering whether to grant asylum or Humanitarian Protection caseworkers will need to consider in each individual case whether the fear relates to one of the reasons laid down in the Refugee Convention. Where the fear does relate to one of the reasons laid down in the Refugee Convention and the applicant is unable or unwilling through fear to access protection then a grant of asylum will be appropriate. Where the fear does not relate to one of the reasons laid down in the Refugee Convention and the applicant is unable or unwilling through fear to access protection then a grant of Humanitarian Protection will be appropriate.

Asylum and Appeals Policy Directorate
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