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U.S. Department of State

India Country Report on Human Rights Practices for 1997

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INDIA

India is a longstanding parliamentary democracy with a bicameral parliament. Prime Minister I.K. Gujral, whose Janata Dal Party was part of the 16-party United Front (UF) coalition, took office in April and heads the Government. President R.K. Narayanan, who was elected by an electoral college made up of Members of Parliament and members of state assemblies, is Head of State and also has special emergency powers. President Narayanan dissolved the lower house of Parliament on December 4. Elections are scheduled for February and March 1998. The judiciary is independent.

Although the 25 state governments have primary responsibility for maintaining law and order, the central Government provides guidance and support through use of paramilitary forces throughout the country. The Union Ministry for Home Affairs controls most of the paramilitary forces, the internal intelligence bureaus, and the nationwide police service; it provides training for senior police officers for the state-organized police forces. The armed forces are under civilian control. Security forces committed significant human rights abuses, particularly in Jammu and Kashmir and in the northeastern states.

India is in a transition from a government-controlled economy to one that is largely market-oriented. The private sector is predominant in agriculture, most nonfinancial services, consumer goods manufacturing, and some heavy industry. Economic liberalization and structural reforms begun in 1991 continue, although momentum has slowed. The country's economic problems are compounded by rapid population growth of 1.7 percent per year with a current total above 950 million. Income distribution remained very unequal. Forty percent of the urban population and half the rural population live below the poverty level.

There continued to be significant human rights abuses, despite extensive constitutional and statutory safeguards. Many of these abuses are generated by intense social tensions, violent secessionist movements and the authorities' attempts to repress them, and deficient police methods and training. These problems are acute in Jammu and Kashmir, where the judicial system has been disrupted by terrorist threats, by judicial tolerance of the Government's heavy handed antimilitant tactics, and by the refusal of security forces to obey court orders. Separatist insurgent violence in the northeastern states increased, along with reported incidents of security force abuses.

Serious human rights abuses include: Extrajudicial executions and other political killings and excessive use of force by security forces combating active insurgencies in Jammu and Kashmir and several northeastern states; torture and rape by police and other agents of government, and deaths of suspects in police custody throughout the country; poor prison conditions; arbitrary arrest and incommunicado detention in Jammu and Kashmir and the Northeast; continued detention throughout the country of thousands arrested under special security legislation; lengthy pretrial detention; prolonged detention while under trial; legal and societal discrimination against women; extensive societal violence against women; female bondage and prostitution; discrimination and violence against indigenous people and scheduled castes and tribes; widespread intercaste and communal violence; child prostitution, trafficking, and infanticide; and widespread exploitation of indentured, bonded, and child labor.

During 1997 India made further progress in resolving human rights problems. In Punjab serious abuses of the early 1990's were acknowledged and condemned by the Supreme Court. The Supreme Court's investigation of serious abuses in the Punjab in the early 1990's continues. Continuing International Committee of the Red Cross (ICRC) prison visits in Jammu and Kashmir demonstrated some government transparency on human rights problems. However, researchers for international human rights organizations like Amnesty International (AI) and Human Rights Watch (HRW) were not permitted to visit Jammu and Kashmir or the northeast. The Government's signing of the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment was welcomed by human rights activists. However, its decision not to accept Articles 20, 21, and 22 of the Convention means effectively that the U.N. Human Rights Commission will not be able to investigate allegations of torture in India. However, insurgency-related deaths were slightly higher than last year, due largely to an increase in violent encounters in the Northeast. The proportion of civilian deaths increased slightly apparently due to militant efforts to disrupt the newly elected government in Jammu and Kashmir.

Separatist militants were responsible for numerous, serious abuses, including extrajudicial executions and other political killings, torture, and brutality. Separatist militants were also responsible for and extortion in Jammu and Kashmir and northeast India.

RESPECT FOR HUMAN RIGHTS

Section 1 Respect for the Integrity of the Person, Including Freedom From:

a. Political and Other Extrajudicial Killing

Political killings by government forces (including deaths in custody and faked encounter killings), progovernment countermilitants, and insurgents continued at a high level in the state of Jammu and Kashmir and the seven northeastern states, where separatist insurgencies continued. Security forces offered bounties for wanted militants brought in dead or alive.

Security forces committed an estimated 100-200 extrajudicial killings of suspected militants in Jammu

and Kashmir. Although well-documented evidence to corroborate cases and quantify trends is lacking, most observers believe that the number of killings attributed to regular Indian forces declined slightly from the previous year. According to press reports and anecdotal accounts, those killed typically had been detained by security forces, and their bodies, bearing multiple bullet wounds and often marks of torture, were returned to relatives or were otherwise discovered the same day or a few days later. In early March, for example, three leaders of the Hizbul Mujahadin militant group were arrested in Srinagar by the Special Operations Group of Jammu and Kashmir state police; they were later found dead. Although the arrest took place in the presence of eyewitnesses, police claimed that the killings occurred in an armed encounter. Nongovernmental organizations (NGO's) active in Jammu and Kashmir reported that the bodies of two youths taken into custody by the Special Operations Group on March 22 were found shortly thereafter in Bemina; the bodies bore the marks of torture and bullet wounds. On June 5, the bodies of three young men arrested by soldiers in Chanpora were later found dumped in a nearby village; in this case too, their bodies bore the marks of torture. Security forces claim that these killings, when acknowledged at all, occur in armed encounters with militants. The National Human Rights Commission (NHRC) has directed that all deaths in encounters be immediately investigated by an independent agency, but members of the security forces are rarely held accountable for these killings. The NHRC itself may inquire into alleged human rights abuses by security forces in Jammu and Kashmir, but does not have the statutory power to investigate such allegations if it is not satisfied with the responses to its inquiries. Authorities have generally not reported so-called encounter deaths occurring in Jammu and Kashmir to the NHRC.

Security forces also held persons in incommunicado detention; on occasion, as in the 1996 case of human rights activist Jalil Andrabi, such missing persons were later found dead (see Section 1.b.).

Impunity has been and remains a serious problem in Jammu and Kashmir. Security forces have committed thousands of serious human rights violations over the course of the conflict, including extrajudicial killings, disappearances, and torture. Yet, during the period January 1, 1990 to June 30, 1997, only ten members of the security forces were tried and sentenced to 10 or more years imprisonment for violations of human rights in Jammu and Kashmir and Punjab (separate figures for Jammu and Kashmir are not available.) An additional fourteen received sentences of between 1 and 10 years, and 73 received sentences of less than 1 year. During the same period, 42 members of the security forces were dismissed or compulsorily retired and 20 were reduced in rank or seniority following conviction on charges of human rights violations. Seventy-one members of the security forces who are alleged to have committed human rights violations are currently under investigation, according to the Ministry of Home Affairs. Scrutiny by the NHRC and international human rights organizations, when permitted, and the persistence of individual magistrates have resulted in greater accountability of the security forces in Jammu and Kashmir over the years. However, the vast majority of violations by security forces have gone and continue to go uninvestigated and unpunished.

There were many allegations that military and paramilitary forces in the northeast engage in arbitrary detention, abduction, torture, and extrajudicial execution of militants, as well as rape (see Sections 1.c. and 1.g.). The Armed Forces Special Powers Act of 1958 and the Disturbed Areas Act remained in effect in several states, i.e., in Jammu and Kashmir, Nagaland, Manipur, Assam and parts of Tripura. Human rights activists remain concerned about the reports of deaths that are described as having occurred during "encounters" between insurgent groups and security forces. Several activists allege that the "encounters" are staged and that those insurgents reported dead were killed after being detained by security forces. In March an Amnesty International report concluded that the pattern of killings in the Northeast point to an official policy sanctioning extrajudicial killing. It noted that "a pattern of apparently unlawful killings of suspected members of armed opposition groups (in Manipur) has resulted from the systemic use of lethal force as an alternative to arrest by the security forces." The report, *Official Sanction for Killings in Manipur*, cited the following examples of killings carried out

with impunity by police and security forces in Manipur: the killing of Mayanglambam Ibotombi and Thondam Muhindro, two forest officers, on 26 December 1996; the killing of Ms. Kehtrumayum Ongbi Prabhahmi Devi and injury to her daughter on 3 May 1996; the killing of Ms. Oinam Ongbi Amina Devi and injury to her baby on 5 April 1996; the killing of Netaji on 28 February 1996; and the killing of nine civilians at the regional medical college hospital in the state capital, Imphal, on 7 January 1995. However, precise information on human rights violations in this relatively remote region is rare.

Throughout the country, numerous accused criminals continue to be killed in encounters with police. In March police shot and killed two businessmen and another individual in downtown New Delhi after mistakenly identifying the unarmed businessmen as wanted criminals. The Delhi Police Commissioner was transferred and the Central Bureau of Investigation (CBI) is pursuing murder charges against 10 police officers involved in the incident. The most recent statistics, for 1995, show that 525 civilians and 159 police died in exchanges of gunfire involving police.

While extrajudicial killings continued in areas buffeted by separatist insurgencies, the press and judiciary continued to give attention to deaths in police custody and faked encounter killings elsewhere. According to NHRC statistics, 201 persons died in police custody in 1996. Many such persons were tortured (see Section 1.c.). The NHRC has focused on torture and deaths in custody. It has directed district magistrates to report all deaths in police and judicial custody and stated that failure to do so would be interpreted as an attempted coverup. Magistrates appear to be complying with this directive. However, the NHRC has no authority directly to investigate abuses by the security forces, and security forces are therefore not required to--and do not--report custodial deaths in Jammu and Kashmir or the Northeast. In early March, two former Ahmedabad officials, including a district superintendent of police, received unprecedented life sentences for their involvement in a June 1996 custodial death incident. Four New Delhi policemen were suspended and face charges of negligence in connection with the death of an inmate in Tilak Nagar Police Station on April 23. In December 1996, the Supreme Court placed tighter controls on arrest and interrogation procedures. According to NHRC reporting, more than 700 persons died in prison between April 1996 and March 1997, many from natural causes, in some case aggravated by poor prison conditions (see Section 1.c.).

Killings and abductions of suspected militants and other persons by progovernment countermilitants continued as a significant pattern in Jammu and Kashmir. Countermilitants are former separatist militants who have surrendered to government forces but have retained their arms and paramilitary organization. Although precise numbers are unavailable, progovernment countermilitants may have committed 100 to 200 extrajudicial killings in Jammu and Kashmir during of the year. Human rights groups believed that the number was slightly lower than in 1996. Government agencies fund, exchange intelligence with, and direct operations of countermilitants as part of the counterinsurgency effort. Countermilitants are known to screen passersby at roadblocks and guard extensive areas of the Kashmir Valley from attacks by militants. In sponsoring and condoning countermilitant activity, which takes place outside the legal system, the Government cannot avoid responsibility for killings, abductions, and other abuses committed by these irregulars. Perhaps as many as 3,000 continue to operate in Jammu and Kashmir, particularly in the countryside, outside major towns. During the year, the Government took steps to organize Kashmiri counter-militants as a battalion in the paramilitary forces as a means of bringing them under enhanced control and military discipline.

Extensive, complex patterns of violence continued in the seven states of northeastern India. The main insurgent groups in the northeast include two factions of the National Socialist Council of Nagaland (NSCN) in Nagaland; Meitei extremists in Manipur; the United Liberation Front of Assam (ULFA) and the Bodo Security Force in Assam; and the all Tripura Tiger Force (ATTF) and the National Liberation Front of Tripura (NLFT) in Tripura. The proclaimed object of many of these groups is to break out of the Indian union, creating new, independent nations. Their stated grievances against the Indian

Government range from charges of neglect and indifference to the endemic poverty of the region, to allegations of active discrimination against the tribal and non-tribal peoples of the region by the center. The oldest of these conflicts, involving the Nagas, started with India's independence in 1947. On August 1, a ceasefire between the Government and the ISAC-Muivah faction of the NSCN went into effect and has been largely observed by the Government and all insurgent groups in the state. However, factional feuds among rival Naga insurgent groups claimed an estimated 120 lives during the first 3 months of the ceasefire. The Government extended the ceasefire for another 3 months on November 1, unilaterally including even those armed groups in Nagaland which had not been party to the original ceasefire.

According to the Union Home Ministry, 918 civilians, 189 members of the security forces, and 1,114 militants were killed in Jammu and Kashmir during the period January 1 to December 15. In 1996 the totals were 1,214 civilians, 94 security force personnel and 1,271 militants, according to reliable press reports. NGO and other sources agree that civilian deaths attributed to security forces have decreased. Press reports indicate that the increase in civilian deaths is attributable to militant efforts to disrupt the new government.

Since 1980 clashes between police and Naxalite Maoist revolutionaries of the Peoples' War Group (PWG) have taken place in northwestern Andhra Pradesh. Over the past few years, hundreds of policemen and suspected Naxalites have been killed, according to press reports and human rights organization. As of September police had killed 102 Naxalites in approximately 80 "encounters." Seventeen years of guerrilla-style conflict have led to serious human rights abuses by both sides. Human rights groups allege that "encounters" are usually faked by the police to cover up the torture and subsequent murder of Naxalite suspects, sympathizers, or informers. These groups cite as evidence the refusal of police to hand over corpses of suspects killed in "encounters," which are often cremated before families can view the bodies. Villagers in PWG-dominated areas complain of regular harassment and arbitrary detention by police. Police officials are rarely if ever held accountable for human rights abuses.

The Disturbed Areas Act has been in force in a number of districts in Andhra Pradesh for more than a year. It gives police extraordinary powers of arrest and detention. Human rights groups allege that security forces have been able to operate with virtual impunity in parts of Andhra Pradesh under the act. They further allege that Andhra police have contributed to the establishment of an armed vigilante group known as the "Green Tigers," whose mission is to combat Naxalite groups in the state. The NHRC is investigating some 285 reported cases so-called "fake encounter deaths" allegedly committed by the Andhra police in connection with anti-Naxalite operations. Amnesty International reported that T. Puroshotham, joint secretary of the Andhra Pradesh Civil Liberties Committee and a lawyer, was attacked and beaten on May 27 by persons he believed to have been plain-clothes police. The Green Tigers group claimed responsibility for this attack a few days later. Amnesty also reported that on April 6, Gadder, who had been campaigning against the police practice of cremating as 'unidentified' the bodies of suspected Naxalites killed in 'encounters' with police, was shot five times at his home in Andhra Pradesh. Again, the Green Tigers claimed responsibility for this attack, alleging that Gadder and APCLC activists were 'Naxalite sympathizers.'

As of September, Naxalites had killed 44 police personnel and 202 civilians. Naxalites killed two senior BJP party workers in September, and some politicians have given up campaigning in Naxalite areas because of the security threat. On November 17, about 150 armed members of the Maoist Communist Center (MCC) overpowered Bihar military police (BMP) patrolling a cattle fair, killing three BMP members and one assistant sub-inspector of police. On March 2, suspected Naxalites shot dead a ruling Telegu Desam party leader, Bhimreedy Mohan Reddy, outside his residence in Chautuppal in Nalgonda district, 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, and railway services in one area had to be canceled in July and August due to PWG destruction of stations, track and signaling equipment. The MCC and the CPI(M-L) Party Unity and Liberation factions are essentially engaged in caste warfare. Their victims, in addition to police and local government officials, include suspected police informers, village headmen, and landlords whom they accuse of oppressing scheduled caste members.

Insurgency and increased ethnic violence took a heavy toll in the northeast and in the case of Assam, led to the installation of a "unified command" of civilian, military and paramilitary forces in the state.

While there were numerous allegations of human rights violations directed against security forces, public attention began to focus on the actions of insurgents. The kidnaping of NGO environmental activist Sanjay Ghosh in July and his death at the hands of his United Liberation Front of Assam (ULFA) captors led to wide public criticism. On August 6, the ULFA confirmed that Ghosh died in captivity; he had been "arrested and tried" by the ULFA on July 4. The Chief Minister of Assam and a High Court judge in Meghalaya survived attempts to kill them during the year. According to the Union Home Ministry's 1996-97 report, a total of 201 persons were killed in Assam between April 1996 and March 1997. The ULFA was responsible for 107 deaths, and the National Democratic Front of Bodoland (NDFB) was responsible for 174 deaths during this period. However, Mass, a human rights organization in Assam with a credible record, claims that during the period January 1 through July 21, a total of 202 people were killed in the state (of which 68 died at the hands of security forces and 57 were killed by the ULFA). Compilation of reports of killings from the press suggests that the numbers may be even higher. On March 15, ULFA insurgents shot and killed an army lieutenant colonel and wounded his wife at a temple in Tezpur, Assam. Members of the same group killed an army brigadier and colonel on August 8 in Guwahati in front of the brigadier's teenage daughters.

On November 19, an independent commission of inquiry set up by Parliament in August 1991 to investigate the May 21, 1991 assassination of former prime minister Rajiv Gandhi tabled an interim report of its findings in the Lok Sabha. The report pointed clearly to the Liberation Tigers of Tamil Eelam (LTTE) as having been responsible for the assassination, but was inconclusive on the question of whether the LTTE had received assistance in carrying out the murder. It criticized the then-Indian government for an alleged failure to provide comprehensive security for the former prime minister. The commission is expected to conclude its work in February 1998.

b. Disappearance

According to human rights groups, unacknowledged, incommunicado detention of suspected militants continued in Jammu and Kashmir although the practice again decreased compared with previous years. Between January and June, 197 new writs of habeas corpus were filed with the Jammu and Kashmir High Court and the Supreme Court, most by family members of disappeared persons in Jammu and Kashmir. The Government acknowledges that, as of August, it held about 1,600 persons in connection with the insurgency in 5 detention centers in Jammu and Kashmir, compared with 2,070 persons acknowledged held in 1995. Of these 1,298 were held under the Public Safety Act and 772 under other laws, including the Terrorist and Disruptive Activities Act (TADA). The Government acknowledged holding 112 persons in the northeast at year's end under special security acts. Although the Government allowed the TADA to lapse in 1995, several hundred persons remained in detention awaiting prosecution under the law. Several thousand others are held in short-term confinement in transit and interrogation centers.

Human rights groups maintain that as many as 3,000 more are held by the military and paramilitary forces in long-term unacknowledged detention in interrogation centers and transit camps in Jammu and

Kashmir and in the Northeast nominally intended for only short-term confinement. Jammu and Kashmir courts currently have a backlog of more than 600 pending habeas corpus cases filed by family members of those who are missing, according to credible human rights groups. The U.N. Special Rapporteur on Torture reported that more than 15,000 habeas corpus petitions have been filed in India since 1990, "but that in the vast majority of these cases the authorities had not responded to the petitions." In one prominent case in Jammu and Kashmir, the Government responded to the U.N. Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions stating that human rights activist Jalil Andrabi was not arrested by security forces, as alleged by human rights groups, but was abducted by "unidentified armed persons." Andrabi was last seen alive in the presence of countermilitants and members of the security forces on March 8, 1996 in Srinagar. Despite the Government's statement, the army in February 1996 identified to a Srinagar court a major with a temporary commission as the individual primarily responsible for Andrabi's death. Andrabi's body was dumped in the Jhelum River, allegedly by security forces. His case is also the subject of inquiry by the NHRC, and there were no significant developments in the case by year's end.

The Government maintains that screening committees run by the state government provide information about detainees to their families. However, other sources indicate that families are able to confirm the detention of their relatives only by bribing prison guards. A program of prison visits by the ICRC, which began in October 1995, is designed in part to help assure communications between detainees and their families. Between July 1996 and April 1997, the ICRC visited 3,249 detainees in Jammu and Kashmir. All acknowledged detention centers in Jammu and Kashmir and Kashmiri detainees elsewhere in the country have been visited. The ICRC is not authorized access to interrogation centers or transit centers, nor does it have access to regular detention centers in the Northeast.

In Punjab the pattern of disappearances prevalent in the early 1990's appears to be at an end. Hundreds of police and security officials have not been held accountable for serious human rights abuses committed during the counterinsurgency of 1984-94. However, steps have been taken against a few such violators. The CBI actively is pursuing charges against dozens of police officials implicated in the "mass cremations" case. Police in the Tarn Taran district secretly disposed of bodies of suspected militants believed to have been abducted and extrajudicially executed, cremating them without the knowledge or consent of their families. The Central Bureau of Investigation (CBI) has reported that 984 unidentified bodies were cremated by Punjab police in Tarn Taran. Most reportedly were killed by border security forces while trying to cross into India from Pakistan, were unidentified victims of accidents or suicide, or died in clashes between militant factions. However, 424 were apparently militants killed in the interior of the district, 291 of whom were subsequently identified. These numbers demonstrate the extent of the bloodshed during those years and, given the pattern of police abuses prevalent during the period, credibly include many killed in extrajudicial executions. The NHRC is seeking to obtain compensation for the families of those victims whose remains have been identified, but the government has challenged the NHRC's jurisdiction in the case. The Supreme Court has yet to rule on this question.

In June the former Tarn Taran senior superintendent of police, Ajit Singh Sandhu, died in an apparent suicide. At the time of his death, Sandhu was free on bail after having been charged with the abduction and murder of human rights activist Jaswant Singh Khalra, who had been investigating the cremation of unidentified bodies by Tarn Taran police. Sandhu's suicide prompted extended public debate over the accountability of Punjab police for excesses during the suppression of a bloody insurgency. According to the Ministry of Home Affairs, as of June, 29 members of the Punjab police were being held pending trial on charges of human rights violations, 34 members had been suspended and faced possible charges, and investigations had been ordered into the actions of at least 122 additional members of the force.

There are credible reports that police throughout the country often do not file required arrest reports. As a result, there are hundreds of unsolved disappearances in which relatives claim an individual was taken

into police custody and never heard from again. Police usually deny these claims, countering that there are no records of arrest.

Militants in Jammu and Kashmir and the Northeast continued to use kidnappings to sow terror, seek the release of detained comrades, and extort funds. According to the Government, terrorists in Jammu and Kashmir kidnaped 422 persons during the year, of whom 181 were killed by their captors, 82 were released, and 158 remained unaccounted for. The July 1995 kidnaping of American, British, German, and Norwegian nationals by terrorists remains unresolved. The Norwegian captive was beheaded in August 1995. A captured terrorist stated that the remaining hostages--one American, two Britons, and a German--were murdered by their captors in December 1995. There has not been a verifiable contact with the hostages for more than 2 years.

c. Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment

The law prohibits torture, and confessions extracted by force are generally inadmissible in court. Nevertheless, torture is common throughout the country and authorities often use torture during interrogations. In other instances, they torture detainees to extort money and sometimes as summary punishment.

On October 14, the Government signed the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the decision to accede was welcomed by human rights organizations. However, the Government's decision not to accept Articles 20, 21, and 22 of the Convention means effectively that the U.N. Human Rights Commission will not be able to investigate allegations of torture in India.

In 1997 the U.N. Special Rapporteur on Torture reported that torture was practiced systematically by the security forces against persons in Jammu and Kashmir "in order to coerce them to confess to militant activity, to reveal information about suspected militants, or to inflict punishment for suspected support or sympathy with militants." According to the Rapporteur, "on no occasion had information been made public regarding instances of action taken against security force personnel in Jammu and Kashmir for acts of torture."

The U.N. Special Rapporteur on Extrajudicial Executions received responses from the Government to several inquiries. In the case of Purushottam Kumar and Manoj Kumar, who reportedly died in police custody as a result of torture, the Government stated that four police officers had been found guilty and that further investigations by the state police were under way. The Government denied wrongdoing by the police in several other cases involving allegations of death from torture while in police custody, telling the Rapporteur that those in question had died of cardiac arrest or other illness, or by mishap during altercations with police. The Special Rapporteur on Torture noted that methods of torture included beating, rape, crushing the leg muscles with a wooden roller, burning with heated objects, and electric shocks. Because many alleged torture victims die in custody, and others are afraid to speak out, there are few firsthand accounts, although the marks of torture have often been found on the bodies of deceased detainees. The U.N. Special Rapporteurs on Torture and on Extrajudicial Killings renewed their requests to visit Jammu and Kashmir to the Government in 1997, but they were not permitted to do so.

The prevalence of torture by police in detention facilities throughout the country is borne out by the number of cases of deaths in police custody (see Section I.a.). In May human rights activists reported that Srinagar's S. K. Institute of Medical Sciences treats six to seven cases of renal failure weekly as a result of police torture. On March 2, it was announced in the West Bengal state assembly that there had

been 84 custodial deaths in the state in the 5 previous years; others claim that the figure is much higher.

According to the U.N. Special Rapporteur, torture victims or their relatives have reportedly had difficulty in filing complaints because police in Jammu and Kashmir were issued instructions not to open a case without permission from higher authorities. In addition, Section 7 of the Armed Forces (Jammu and Kashmir) Special Powers Act provides that unless approval is obtained from the central Government, no "prosecution, suit, or other legal proceeding shall be instituted....against any person in respect of anything done or purported to be done in exercise of the powers of the Act." This provision reportedly allows the security forces to act with virtual impunity.

The rape of persons in custody is part of the broader pattern of custodial abuse. Limits placed on the arrest, search, and police custody of women appear effectively to limit the frequency of rape in custody, although it does occur on occasion. The NHRC received reports of only three cases of custodial rape during the 1995-96 fiscal year. The 24-hour reporting requirement applies to custodial rape as well as custodial death. However, the requirement does not apply to rape by policemen outside police stations. NGO's claim that rape by police, including custodial rape, is more common than NHRC figures indicate. Although evidence is lacking, a larger number appears credible, in light of other evidence of abusive behavior by police and the likelihood that many rapes go unreported due to a sense of shame.

A pattern of rape by paramilitary personnel allegedly exists in Jammu and Kashmir and the northeast (see section 1.g.), but is not included in NHRC statistics because it involves military forces. Human rights activists allege that Indian army personnel raped two sisters of a suspected militant on January 8 in the village of Hakura, Anantnag district, Jammu and Kashmir. Human rights activists alleged that on February 4, security force members tortured and humiliated several girls and women in Waloo Noorabad Kulgam, Jammu and Kashmir.

On March 30, a soldier from the 15th Maratha Light Infantry raped a 12-year-old girl in the Mokukchnag District of Nagaland; a court of inquiry found him guilty and recommended court martial. On March 27, a police constable was sentenced to death for the rape and murder of a minor girl in North Dinajpur, West Bengal in 1995.

Although custodial abuse is deeply rooted in police practices, increased press reporting and parliamentary questions provide evidence of growing public awareness of the problem. The NHRC has identified torture and deaths in detention as one of its priority concerns.

Between April 1996 and March 1997, 888 cases of custodial death were reported to the NHRC, including 188 deaths in police custody. The 700 deaths in judicial custody, occurring in a prison population of approximately 155,000, many of whom are held for years, include a large proportion of deaths from natural causes, in some cases aggravated by poor conditions in prisons. Deaths in police custody, which typically occur within hours or days of initial apprehension, more clearly imply violent abuse. The NHRC has no authority to investigate abuses by security forces directly, and security forces in Jammu and Kashmir and the Northeast are not required to report custodial deaths to the Commission.

As a result of NHRC investigations during the fiscal year, 22 police personnel were prosecuted during the fiscal year and 79 were suspended, most in both cases due to involvement in custodial abuse. Charges against police prosecuted for custodial abuse include murder.

Prison conditions are poor. Prisons are seriously overcrowded, often housing over three times their designed capacity. The largest class of prisoners typically sleeps on bare floors, has inadequate sanitary facilities, and receives inadequate food and medical care. Prisoners with privileged status or with the

personal or family means can supplement what is normally provided. There are three classes of prison facilities. Prisoners are not classified by the nature of their crimes, but by their standing in society. Class "C" prisoners are those who cannot prove they are college graduates or income taxpayers. Their cells are overcrowded, often have dirt floors, no furnishings, and poor quality food. The use of handcuffs and fetters is common. Class "B" prisoners--college graduates and taxpayers--are held under markedly better conditions. Class "A" prisoners are prominent persons, as designated by the Government, and are accorded private rooms, visits, and adequate food, which may be supplemented by their families. Class "A" prisoners are usually held in government guest houses.

Overcrowding in jails is severe. According to a statement in Parliament in 1994 by the Minister of State for Home Affairs, New Delhi's Tihar jail, considered one of the best-run in the country, housed 8,577 prisoners in facilities designed to hold 2,487. According to the Minister, 7,505 detainees awaited the completion of their trials, while 672 others had been on trial for 3 years or longer. As a result of an NHRC inquiry into the causes of 46 custodial deaths reported at Tihar Prison between April 1994 and June 1995, a new building was constructed at the prison in 1996 to house 750 inmates. In addition, about 130 new staff members were hired and the medical staff was augmented. Elsewhere in India, prison conditions remain little changed from previous years.

Nevertheless, prison conditions are a subject of press reports and court cases and have received attention from human rights groups. Press accounts of prison conditions include reports of sexual abuse of prisoners, the use of prisoners by prison officials as domestic servants, the sale of food and milk for prisoners on the black market, the sale of female prisoners to brothels, and the marketing and export of prison-made goods. Women constitute 3 percent of the prison population, the Union Ministry of Home Affairs said at year's end. Although Parliament passed a Children's Act in 1960 to safeguard young prisoners against abuse and exploitation and a Juvenile Justice Act in 1986 provides that boys under 16 and girls under 18 are not to be held in prison, most states have not implemented these acts. The Supreme Court has criticized the state governments for not providing reformatories and separate detention facilities for children. In March the NHRC recommended that the Government enact a central law regulating state prisons, in order to replace the Prison Act of 1894.

With the exception of an agreement with the ICRC for visits to detention facilities in Jammu and Kashmir, the Government does not allow NGO's to monitor prison conditions.

Over the course of the conflict in Jammu and Kashmir, security forces have destroyed more than 800 homes of suspected militants and their family members as a form of "collective punishment," according to credible human rights groups.

d. Arbitrary Arrest, Detention, or Exile

The Government implemented during the early 1980's a variety of special security laws intended to help law enforcement authorities fight separatist insurgency. There were credible reports of widespread arbitrary arrest and detention under these laws.

Although the law that had been subject to the most extensive abuse--the Terrorist and Disruptive Practices (Prevention) Act (TADA)--lapsed in May 1995, 3,785 persons previously arrested under the act continued to be held in a number of states at year's end, and a small number of arrests under TADA continued for crimes allegedly committed before the law lapsed. Criminal cases are proceeding against most of those still held under TADA, with more than 3,000 charged under other laws in addition to TADA. In March, the Government asserted that all TADA cases would be reviewed. In February 1996, the Supreme Court eased bail guidelines for persons accused under TADA, taking into account the large

backlog of cases in special TADA courts. In reply to a question in the Jammu and Kashmir state assembly in May, the Government reported that 15,826 people were detained under TADA in the state between 1990 and 1995. TADA courts use abridged procedures. For example, defense counsel is not permitted to see witnesses for the prosecution, who are kept behind screens while testifying in court. Also, confessions extracted under duress are permitted in evidence.

The Constitution provides that detainees have the right to be informed of the grounds for arrest, to be represented by counsel, and, unless the person is held under a preventive detention law, to appear before a magistrate within 24 hours of arrest. At this initial appearance, the accused must either be remanded for further investigation or released. The Supreme Court has upheld these provisions. An accused person must be informed of his right to bail at the time of arrest and may, unless he is held on a nonbailable offense, apply for bail at any time. The police must file a charge sheet within 60 to 90 days of arrest; if they fail to do so, court approval of a bail application becomes mandatory.

The Constitution permits preventive detention laws in the event of threats to public order and national security. These laws provide for limits on the length of detention and for judicial review. Several laws of this type remain in effect.

The National Security Act (NSA) of 1980 permits detention of persons considered security risks; police anywhere in the country (except Jammu and Kashmir) may detain suspects under NSA provisions. Under these provisions the authorities may detain a suspect without charge or trial as long as 1 year on loosely defined security grounds. The state government must confirm the detention order, which is reviewed by an advisory board of three high court judges within 7 weeks of arrest. NSA detainees are permitted visits by family members and lawyers and must be informed of the grounds for detention within 5 days (10 to 15 days in exceptional circumstances). At year's end, approximately 500 persons continue to be detained under the NSA. The NSA does not define "security risk." Human rights groups allege that preventive detention can be ordered and extended under the act purely on the opinion of the detaining authority. Such a subjective decision cannot be overturned by any court.

The Jammu and Kashmir Public Safety Act (PSA) of 1978 covers corresponding procedures for that state. Over half of the detainees in Jammu and Kashmir are held under the PSA.

The court system is overloaded. The result has been the detention of persons awaiting trial for periods longer than they would receive if convicted. Prisoners may be held months or even years before obtaining a trial date. According to a reply to a parliamentary question in July 1994, more than 111,000 criminal cases were pending in the Allahabad High Court, the most serious case backlog in the country, of which nearly 29,000 cases had been pending for 5 to 8 years. A statement to Parliament in July 1996 indicated that criminal and civil cases pending before the country's high courts numbered nearly 2.9 million in 1995, roughly the same as in 1994 but an increase from 2.65 million in 1993. The Government acknowledged that 73 percent of all prisoners held at year's end were so-called 'under-trials,' i.e. unconvicted remand prisoners awaiting the start or conclusion of their trials.

In June Rongthong Kunley Dorji, a Bhutanese dissident, was placed in judicial custody pending review of an extradition request from the Government of Bhutan on charges that included political offenses as well as financial malfeasance. Dorji remained in custody in New Delhi at year's end, awaiting conclusion of his extradition hearing.

The Government does not use forced exile.

e. Denial of Fair Public Trial

There is an independent judiciary with strong constitutional safeguards. Under a Supreme Court ruling, the Chief Justice, in consultation with his colleagues, has a decisive voice in selecting judicial candidates. The President appoints the judges, and they can serve up to the age of 62 on the state high courts and up to the age of 65 on the Supreme Court.

Courts of first resort exist at the subdistrict and district levels. More serious cases and appeals are heard in state-level high courts and by the national-level Supreme Court, which also rules on constitutional questions. Subdistrict and district judicial magistrates are appointed by state governments. High court judges are appointed on the recommendation of the federal Law Ministry, with the advice of the Supreme Court, the High Court Chief Justice, and the chief minister of the state, usually from among district judges or lawyers practicing before the same courts. Supreme Court judges are similarly appointed from among high court judges. The Chief Justice is selected on the basis of seniority.

When legal procedures function normally, they generally assure a fair trial, but the process can be drawn out and inaccessible to the poor. Defendants have the right to choose counsel from a bar that is fully independent of the Government. There are effective channels for appeal at most levels of the judicial system.

The Criminal Procedure Code provides for an open trial in most cases, but it allows exceptions 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 in public.

Muslim personal status law governs many noncriminal matters involving Muslims--including family law, inheritance, and divorce. The Government does not interfere in the personal laws of the minority communities, with the result that laws that discriminate against women are upheld.

In Jammu and Kashmir, the judicial system barely functions due to threats by militants against judges, witnesses, and their family members, because of judicial tolerance of the Government's heavy-handed antimilitant actions, and the frequent refusal by security forces to obey court orders. Courts there are not willing to hear cases involving terrorist crimes or fail to act expeditiously on habeas corpus cases, if they act at all. As a result, there have been no convictions of alleged terrorists in Jammu and Kashmir since before 1994, even though some militants have been in detention for years.

There were no reports of political prisoners.

f. Arbitrary Interference With Privacy, Family, Home, or Correspondence

The police must obtain warrants for searches and seizures. In a criminal investigation, the police may conduct searches without warrants to avoid undue delay, but they must justify the searches in writing to the nearest magistrate with jurisdiction over the offense. The authorities in Jammu and Kashmir, Punjab, and Assam have special powers to search and arrest without a warrant.

The Indian Telegraph Act authorizes the surveillance of communications, including monitoring telephone conversations and intercepting personal mail, in case of public emergency or "in the interest of the public safety or tranquillity." These powers have been used by every state government. The Union Government also uses the powers of the Indian Telegraph Act to tap phones and open mail.

g. Use of Excessive Force and Violations of Humanitarian Law In Internal Conflicts

Government forces continue to commit serious violations of humanitarian law in the disputed state of Jammu and Kashmir. Between 350,000 and 400,000 army and paramilitary forces are deployed in Jammu and Kashmir. The Muslim majority population in the Kashmir Valley suffers from the repressive tactics of the security forces. Under the Jammu and Kashmir Disturbed Areas Act, and the Armed Forces (Jammu and Kashmir) Special Powers Act, both passed in July 1990, security forces personnel have extraordinary powers, including authority to shoot suspected lawbreakers and those disturbing the peace, and to destroy structures suspected of harboring militants or arms.

Civilian deaths caused by security forces diminished for the fourth consecutive year in Jammu and Kashmir. This decrease apparently is due to press scrutiny and public criticism of abuses in previous years, increased training of military and paramilitary forces in humanitarian law, and greater sensitivity of commanders to rule of law issues. The improvement has taken the form of increased discipline and care in avoiding collateral civilian injuries and deaths (i.e., deaths in crossfire). The Union Home Ministry reported that 84 such deaths had occurred in Jammu and Kashmir in 1996-97, compared with 171 the previous reporting period. The security forces have not abandoned the abduction and extrajudicial execution of suspected militants, nor accepted accountability for these abuses. However, the inclination of many commanders to distance their units from such practices has led to reduced participation in them and a transfer of some of such actions to countermilitants.

In April the alleged rape by security forces of nine women in the village of Wawoosa, near Srinagar, led to protest demonstrations. There is no evidence that charges have been brought in the alleged rape by security forces of nine women in Wawoosa. Kashmiris asserted that the incident was part of a larger pattern of rape committed by army personnel in the valley. In a separate incident in May, four members of the Rashtriya Rifles were sentenced by military authorities to 10 years in prison for the rape of two women in south Kashmir.

Kashmiri militant groups also committed serious abuses. In addition to political killings and kidnappings of politicians and civilians (see Sections 1.a. and 1.b.), terrorists engaged in extortion and carried out acts of random terror that killed hundreds of Kashmiris. Terrorist acts by Kashmiri groups have also taken place outside Jammu and Kashmir. Many of the terrorists are not Indian citizens, but are of Afghan, Pakistani and other nationalities.

On March 22, seven members of the Hindu Pandit community in the Kashmir valley were abducted and killed. On March 29, at least 16 people were killed and 60 injured when two bombs exploded outside a concert arena in Jammu. Chief Minister Farooq Abdullah was scheduled to attend the concert, but arrived after the blasts and was unhurt. On June 29, an explosion at the heavily guarded Legislative Assembly members' hostel killed three people, including an assembly member who was a former militant. On 31 and November 1, militant separatist organizations exploded bombs in Srinagar, Kashmir, injuring several civilians and killing 2 security forces personnel. On November 30, three persons were killed and 58 were injured, when two bombs exploded in a crowded marketplace in New Delhi.

Kashmiris continued to be caught in the crossfire between militants on one side and security forces and countermilitants on the other. Unlike past years, however, there were no large-scale or prolonged clashes resulting in extensive loss of civilian life or property.

Government security forces in the northeast have been responsible for human rights abuses ranging from extrajudicial killings and disappearances to torture and rape. There are approximately 40,000 government security forces deployed in the northeast. Through June, the Government stated that militants in the northeast had killed 163 members of the security forces and 363 civilians. Militant violence directed against civilians resulted in numerous deaths and drove thousands of persons from their homes (see Section 1.a). Bodo militants attempted to blow up a passenger train on August 13. They

also planted explosive devices under a number of bridges in Assam during August.

Section 2 Respect for Civil Liberties, Including:

a. Freedom of Speech and Press

The Constitution provides for these rights, and with some limitations they are exercised in practice. A vigorous press reflects a wide variety of public, social, and economic beliefs. Newspapers and magazines regularly publish investigative reports and allegations of government wrongdoing, and the press as a whole champions human rights and criticizes perceived government lapses.

The Press Council of India is a statutory body of journalists, publishers, academics, and politicians with a chairman appointed by the Government. Designed to be a self-regulating mechanism for the press, it investigates complaints of irresponsible journalism and sets a code of conduct for publishers. This code includes not publishing articles or details that might incite caste or communal violence. The Council publicly criticizes newspapers or journalists it believes have broken the code of conduct, but its findings, while noted by the press community, carry no legal weight. Parliament adopted a freedom of information act in June.

National television and radio, which are government monopolies, are frequently accused of manipulating the news to the benefit of the Government. However, international satellite television is widely distributed in middle class neighborhoods by cable and is gradually eroding the Government's monopoly on television.

Under the Official Secrets Act (OSA), the Government may restrict publication of sensitive stories, but the Government sometimes interprets this broadly to suppress criticism of its policies. Human rights activists state that government pressure caused one national, English-language daily to suppress some stories and transfer a staff reporter. The 1971 Newspapers Incitements to Offenses Act remains in effect in Jammu and Kashmir. Under the act, a district magistrate may prohibit the press from publishing material resulting in "incitement to murder" or "any act of violence." As punishment the act stipulates that the authorities may seize newspapers and printing presses. Despite these restrictions, newspapers in Srinagar regularly publish militant press releases attacking the Government and report in detail on alleged human rights abuses. The authorities allowed foreign journalists to travel freely in Jammu and Kashmir, where they regularly spoke with militant leaders, and filed reports on government abuses.

On June 27 in Srinagar, Jammu and Kashmir police attacked a group of journalists protesting police brutality. On March 16, unidentified gunmen murdered journalist Saidain Shafi in Srinagar. There is no active investigation of the Saidain Shafi murder. In late August, Assam police arrested several members of a local human rights organization on allegations that they were helping the United Liberation Front of Assam (ULFA) insurgents. One of those arrested, Ajit Bhuyan, is also the editor of two Assamese language daily newspapers that had been critical of the state government. Local journalists alleged that the arrests constituted a violation of freedom of speech. In January 1998, the International Federation of Journalists reported that seven journalists were murdered in India in 1997, allegedly because of stories they had written or in order to halt investigations they were conducting.

A government censorship board reviews films before licensing them for distribution. The board deletes material deemed offensive to public morals or communal sentiment. Producers of video news magazines must also submit their products to the board, which occasionally censors stories that portray the Government in an unfavorable light. The board's ruling may be appealed and overturned.

Kashmiri groups threatened journalists and editors and even imposed temporary bans on some publications.

Citizens enjoy complete academic freedom, and students and faculty espouse a wide range of views. In addition to 10 national universities and about 160 state universities, states are empowered to accredit locally run private institutions.

b. Freedom of Peaceful Assembly and Association

The Constitution provides for the right of peaceful assembly, and the Government generally respected these rights in practice.

The authorities sometimes require permits and notification prior to holding parades or demonstrations, but local governments ordinarily respect the right to protest peacefully. At times of civil tension, the authorities may ban public assemblies or impose a curfew under the Criminal Procedure Code.

Srinagar and other parts of Jammu and Kashmir occasionally came under curfew, but were more often affected by strikes called by the militants. The Kerala High Court ruled in July that "bandhs," or forced public closures, as opposed to demonstrations or rallies, forcibly interfered in the affairs of others, and thus represented a violation of the constitutional right to assemble peaceably. Critics of the ruling say that the court overstepped its bounds by restricting the right to protest.

The Constitution provides for the right to form associations, and the Government generally respected these rights in practice.

c. Freedom of Religion

The Constitution provides for freedom of religion, and the Government respects this right in practice. India is a secular state in which all faiths generally enjoy freedom of worship. Government policy does not favor any religious group. There is no national law to bar proselytizing by Indian Christians. Foreign missionaries can generally renew their visas but since the mid-1960's the Government has refused to admit new resident foreign missionaries. Those who arrive now do so as tourists and stay for short periods. As of January 1993, there were 1,923 registered foreign Christian missionaries. As in the past, state officials refused to issue permits for foreign Christian missionaries to enter some northeastern states. Tension between Hindus and Muslims continues to pose a challenge to the secular foundation of the State (see Section 5).

The U.N. Special Rapporteur for all forms of Intolerance and of Discrimination Based on Religion or Belief published a report in February on his visit of December 2-14, 1996 at the invitation of the Government. Having studied the situation of the majority Hindus and minority Muslims, Christians, and Sikh's, the Rapporteur concluded that the country's constitutional and legislative guarantees of religious freedom contributed to religious tolerance in India as did "a conception of secularism implying not the rejection of religion but equality for all religions." He warned, however, that tolerance was susceptible to attack by religious extremists (see Section 5).

d. Freedom of Movement Within the Country, Foreign Travel, Emigration, and Repatriation

Citizens enjoy freedom of movement within the country except in certain border areas where, for security reasons, special permits are required. 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 uses this provision to prohibit the foreign travel of some government critics, especially those advocating Sikh independence.

Citizens may emigrate without restriction.

India is not a party to the 1951 U.N. Convention Relating to the Status of Refugees or its 1967 Protocol. It cooperates with the office of the United Nations High Commissioner for Refugees (UNHCR) in the care of certain groups of refugees (notably Afghans, Iranians, Somalis, Burmese, and Sudanese), but not in the case of other groups, most notably the Sri Lankan Tamils to whose camps in Tamil Nadu the Government has barred access by the UNHCR and NGO's. India does provide first asylum to refugees, most notably in recent years to Tibetan and Sri Lankan Tamil refugees. However, this policy is inconsistently applied. For example, the insistence of some border authorities on the presentation of passport and visas by those claiming refugee status has occasionally resulted in individuals or groups being refused admittance. This has occurred in recent years in cases involving Iranians who had transited Pakistan to enter India, and some Chin and Rakhine refugees from Burma. Human rights groups allege that the Government forced 5,000 to 6,000 Jumma refugees to return to Bangladesh, where no adequate housing was provided for them. Refugees are not required to make claims in third countries. Cramped and unhygienic conditions are reported to exist in some of the camps for Sri Lankan Tamils in Tamil Nadu.

The Government recognizes certain groups, including Chakmas from Bangladesh, Tamils from Sri Lanka, and Tibetans, as refugees, providing them assistance in refugee camps or in resettlement areas. According to a government statement to Parliament in July 1996, there were 98,000 Tibetans, 87,729 Sri Lankan Tamils, 66,234 Chakmas and Hajongs from Bangladesh, and 52 Burmese refugees. In the statement, the Government indicated that 18,932 Afghans, 255 Somalis, and 308 persons of other nationalities were living in India "under the mandate" of the UNHCR. Although the Government does not formally recognize persons in this latter category as refugees, it does not deport them. Instead, these people receive renewable residence permits or their status is ignored.

According to the UNHCR, as of August, there were about 65,000 Tamil refugees from Sri Lanka living in 115 camps in India, including approximately 6,000 who fled the upsurge in fighting in Sri Lanka during 1996 and 338 suspected of militant activities, who are detained in special camps. An estimated 30,000-60,000 more Sri Lankan Tamils are not registered as refugees and are living outside the camps. The Government states that there are some 57,000 Sri Lankan Tamil refugees in camps in India and a few thousand more living outside the camps. NGO's report refugee complaints about deteriorated housing, poor sanitation, delayed dole payments, and inadequate medical care. The state government, using central government resources, provides shelter and subsidized food for those in the camps. Enforcement of a Tamil Nadu government ban on NGO assistance to the camps has been relaxed and NGO's have visited the camps.

There are Chin ethnics among nonrecognized refugees in the northeastern states, particularly Mizoram. Their presence is generally tolerated. However, recent tensions between security forces and Chin National Force (CNF) insurgents operating in Burma have allegedly resulted in detention, interrogation, and expulsion of some persons associated with the CNF. More than 100,000 Buddhist Chakma refugees live in uncertainty over their futures in Tripura, Arunachal Pradesh, and Mizoram. About 40,000 in Arunachal Pradesh live under the threat of deportation following a series of acts of student-led agitation against their presence in the state. Human rights activists alleged that the government forcibly repatriated 5,000 to 6,000 Jumma refugees from the eastern state of Tripura to Bangladesh in March, despite evidence that they would face reprisals there. The Government maintained that there was not sufficient evidence to suggest a possibility of reprisal on return. Militant organizations in Manipur are forcing all non-Manipuris above the age of 12 to pay a \$3 "tax" in order to continue to live in the state.

Section 3 Respect for Political Rights: The Right of Citizens to Change Their Government

Citizens exercise this right freely. India has a democratic, parliamentary system of government with representatives elected in multiparty elections under universal adult suffrage. A parliament sits for 5 years unless dissolved earlier for new elections, except under constitutionally defined emergency situations. State governments are elected at regular intervals except in states under President's Rule, i.e., rule by the central Government.

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, external aggression, or armed rebellion. Similarly, President's Rule may be declared in the event of a collapse of a state's constitutional machinery. The Supreme Court in May 1995 upheld the Government's authority to suspend fundamental rights during an emergency.

President Narayanan dissolved the lower house of Parliament on December 4. Elections are scheduled for February and March 1998.

There are no legal impediments to participation by women in the political process. A large proportion of women participate in voting throughout the country, and numerous women represent all major parties in the national and state legislatures. There are 59 women in the Parliament, including the deputy speaker of the upper house, and 5 women in the 45-member Cabinet. The 1993 passage of the "Panchayati Raj" constitutional amendments, reserved 30 percent of seats in elected village councils (panchayats) for women. Debate over the reservation of parliamentary and state assembly seats for women continued throughout 1997.

The Constitution reserves seats in Parliament and state legislatures for "scheduled tribes" and "scheduled castes" in proportion to their population (see Section 5). Indigenous people participate actively in national and local politics, but their impact depends on their numerical strength. In the northeastern states, indigenous people are a large proportion of the population and consequently exercise a dominant political influence in the political process. In Maharashtra and Gujarat, on the other hand, tribal peoples are a small minority and have been unsuccessful in blocking projects they oppose.

Section 4 Governmental Attitude Regarding International and Nongovernmental Investigation of Alleged Violations of Human Rights

Independent human rights organizations operate throughout most of the country investigating abuses publishing their findings. Human rights activists in Jammu and Kashmir, however, have been unable to move around the state to document human rights violations for fear of threats by countermilitants and security forces. Since 1992 several individuals closely involved in the documentation of violations there, including lawyers and journalists, have been attacked and in some cases killed. International human rights groups have had difficulty in obtaining visas to visit India for research purposes. For example, a visa application by Amnesty International researchers was pending throughout the entire year. Moreover, the police and security forces have targeted human rights monitors for arrest and harassment. No definitive resolution of the case of abducted and murdered Kashmir human rights activist Jilil Andrabi was reached. The army and other branches of the Government have issued conflicting statements as to the responsibility of security forces in this death (see Section 1.b). A warrant for the arrest of an army major has been issued in connection with the case. He reportedly resigned his commission shortly after the crime was committed and is now in custody. In Assam the investigation into the murder of human rights activist and journalist Parag Das has yielded no definitive information on the identity of his killer. Das was killed in May 1996. The assailant was allegedly a militant who had previously surrendered and was supported by the Government. Human rights activists in Andhra

Pradesh were attacked by unidentified assailants in April and May. The director of the South Asian Human Rights Documentation Center was questioned and threatened in September by persons claiming to be police officers but who refused to properly identify themselves. The evidence suggests that this was an attempt to intimidate the director and obstruct the work of the South Asian Human Rights Documentation Center.

The Government appointed a National Human Rights Commission in October 1993 with powers to investigate and recommend policy changes, punishment, and compensation in cases of police abuse. In addition, the NHRC is directed to contribute to the establishment, growth, and functioning of nongovernmental human rights organizations. The Government appoints the members and finances the operations of the NHRC. The NHRC is seriously understaffed and prohibited by statute from directly investigating allegations of abuse involving army and paramilitary forces.

Between April and November, the NHRC received more than 30,000 complaints. It considered 15,086 of these complaints, of which it dismissed 7,474 and transmitted 2,991 to other governmental authorities for disposition. It held inquiries into 4,050 complaints, concluding 571 cases. During the entire 1995-96 fiscal year, the Commission received about 20,000 complaints, considering 9,751 of them. The number of complaints made to the commission this year is thought to be the result of its increased visibility.

Human rights groups alleged that persons protesting the World Bank-sponsored National Thermal Power Corporation (NTPC) project in Singrauli were harassed by police and NTPC officials, but these allegations could not be verified. Human rights groups also reported that the NTPC project displaced a number of people, causing them to lose their homes and livelihoods without compensation. According to Amnesty International, groups protesting the construction of a power plant by the Dabhol Power Company in Maharashtra were harassed by police.

The NHRC has pursued the building of a culture of human rights by fostering human rights education in schools and universities, by offering support and encouragement to human rights NGO's, by supporting training programs for the police, military forces, and paramilitary forces, and by making recommendations to central and state governments. In November the NHRC recommended the preparation of a human rights training program, including stress counseling, for state police. The NHRC has also influenced the legislative process (particularly in advocating abolition of the TADA and by proposing prison reform legislation). State human rights commissions have been established in West Bengal, Himachal Pradesh, Assam, and Madhya Pradesh. In addition, special courts to hear human rights cases have been established in Tamil Nadu, Uttar Pradesh, and Andhra Pradesh.

The NHRC was also involved in programs to eliminate child labor (see Section 6).

A state human rights commission was established in Jammu and Kashmir by act of the state legislature on May 30. Its powers to independently investigate alleged human rights violations committed by members of the security forces are strictly limited. Credible human rights activists state that the Jammu and Kashmir commission has not yet demonstrated effective, independent protection of human rights in the state.

The prison visits program in Jammu and Kashmir by the ICRC, initiated in October 1995, continued in 1997. ICRC representatives also continued training police and border security force personnel in international humanitarian law. The U.N. Special Rapporteurs on Torture and Extrajudicial Execution renewed their requests to the Government this year to visit Jammu and Kashmir, but were not permitted to do so.

Section 5 Discrimination Based on Race, Sex, Religion, Disability, Language, or Social Status

The traditional caste system as well as differences of ethnicity, religion, and language deeply divide society. Despite laws designed to prevent discrimination, there are other laws as well as social and cultural practices that have a profound discriminatory impact. More than 60 persons were killed in caste-related violence in Bihar State and a score or more died as a result of incidents in Tamil Nadu.

Women

Domestic violence in the context of dowry disputes is a serious problem. In the typical dowry dispute, a groom's family members harass a woman they believe has not provided a sufficient dowry. This harassment sometimes ends in the woman's death, which family members often try to portray as a suicide or kitchen accident. Although most "dowry deaths" involve lower and middle-class families, the phenomenon crosses both caste and religious lines. The Government stated at year's end that 3,899 dowry deaths had occurred during the year.

Under a 1986 amendment to the Penal Code, the court 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 is proven. In such cases, police procedures require that an officer of deputy superintendent rank or above conduct the investigation and that a team of two or more doctors perform the post mortem procedures.

There is an elaborate system of laws to protect the rights of women, including the Equal Remuneration Act, the Prevention of Immoral Traffic Act, the Sati (widow burning) Prevention Act, and the Dowry Prohibition Act. However, the Government often is unable to enforce these laws, especially in rural areas where traditions are deeply rooted. Female bondage and forced prostitution are widespread in parts of society.

National Crime Record Bureau statistics show that registered cases of violence against women--including molestation, rape, kidnaping, and wife murder (dowry deaths)--numbered 83,964 in 1993, 98,948 in 1994 and 100,846 in 1995 (the last year for which such statistics are available.) In Orissa State alone, 710 cases of dowry torture were reported by mid-year. There were continued reports during 1997 of gang rapes as penalties for alleged adultery or as means of coercion or revenge in rural property disputes and feuds.

Higher female mortality at all age levels, including female infanticide, accounts for a decline in the ratio of females to males to 927 per 1,000 in 1991, from 955 per 1,000 in 1981 and 972 per 1,000 at the turn of the century.

The personal status laws of the religious communities discriminate against women. Under the Indian Divorce Act of 1869, a Christian woman may demand divorce only in the case of spousal abuse and certain categories of adultery while for a man adultery alone is sufficient. In May the Bombay High Court recognized abuse alone as sufficient grounds for a Christian woman to obtain a divorce. Under Islamic law, a Muslim husband may divorce his wife spontaneously and unilaterally; there is no such provision for women. Islamic law also allows a man to have up to four wives but prohibits polyandry.

The Hindu Succession Act provides equal inheritance rights for Hindu women, but married daughters are seldom given a share in parental property. Islamic law recognizes a woman's right of inheritance but specifies that a daughter's share should be only one-half that of a son.

Under 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 accord women little control over land use, retention, or sale.

There are thousands of grassroots organizations working for social justice and the 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.

Children

The United Front coalition Government pledged in 1996 to enact legislation making free and compulsory elementary education a fundamental right and to increase funding for primary education, but such legislation has not yet been passed. The Government continued efforts initiated in August 1994 to pass more laws banning child labor and to enhance enforcement of existing laws. The Government's program to eliminate child labor is aimed at progressively withdrawing children from the workplace in hazardous industries and placing them in schools by 2000 through initiatives in education, rural development, woman and child development, health, and labor programs. Government efforts to eliminate child labor have touched only a small fraction of children in the work place. The United Front government pledged in 1997 to eliminate child labor by 2010. A Supreme Court decision in December 1996 raised penalties for employers of children in hazardous industries and established a welfare fund for formerly employed children (see Section 6.d.).

There are an estimated 500,000 street children nationwide. Child prostitution is occurring in the cities, and there is a growing pattern of traffic in child prostitutes from Nepal. According to one estimate 5,000 to 7,000 children, mostly between the ages 10 and 18, are victims of this traffic annually. In a well publicized case, poor Muslims from Murshidabad District, West Bengal, were found to be sending their children (usually maimed or disabled girls) to Saudi Arabia to beg, in return for payment of about \$1,400. Authorities arrested three traffickers and prosecuted them under the Immoral Traffic Act.

The Child Marriage Restraint (Amendment) Act of 1976 prohibits child marriage, a traditional practice in northern India. The act raised the age of marriage for girls to 18 from 15, but the Government does not enforce it effectively. According to one report, 50 percent of the girls in Bihar, Rajasthan, Uttar Pradesh, and Madhya Pradesh are married at or before age 16.

The traditional preference for male children continues. Although a law passed in September 1994 prohibits the use of amniocentesis and sonogram tests for sex determination, they are widely misused for this purpose and termination of a disproportionate number of pregnancies with female fetuses occurs. In the 9 years since the southern state of Maharashtra passed a law banning the use of such tests for sex determination, the state government has filed charges against one doctor; he was acquitted. Human rights groups estimate that at least 10,000 cases of female infanticide occur yearly, primarily in poor rural areas. In addition, parents often give priority in health care and nutrition to male infants. Women's rights groups point out that the burden of providing girls with an adequate dowry is one factor that makes daughters less desirable. Although abetting or taking dowry is theoretically illegal under the Dowry Prohibition Act of 1961, it is still widely practiced.

People With Disabilities

The Ministry of Welfare has principal responsibility for programs for the disabled, and it delivers comprehensive rehabilitation services to the rural population through 16 district centers. A national rehabilitation plan commits the Government to putting a rehabilitation center in each of more than 400 districts, but services are still concentrated in urban areas. The Government reserves 3 percent of

positions in official offices and state-owned enterprises for people with visual, hearing, or orthopedic disabilities. The Government provides special railway fares, education allowances, scholarships, customs exemptions, and rehabilitation training to assist people with disabilities. There is no legislation or otherwise mandated provision of accessibility for the disabled. The National Human Rights Commission sought to improve conditions in mental hospitals and enhance awareness of the rights of those with mental disabilities during the year. It commissioned an assessment of conditions at mental hospitals throughout the country, to be conducted by the National Institute of Mental Health and Neuro Science. The rights of the mentally ill and mentally retarded are protected by the Constitution and the Mental Health Act of 1987. The NHRC noted, however, that despite these protections, "conditions in many mental hospitals in the country are far from satisfactory. They continue to embody old concepts of mental health care and function essentially as custodial rather than therapeutic institutions. Overcrowded and serving as 'dumping grounds' by desperate relatives, some of them lack even basic amenities and have poor medical facilities."

Indigenous People

The Innerline Regulations enacted by the British in 1873 still provide the basis for safeguarding tribal rights in most of the border states of northeastern India. These regulations prohibit any person, including Indians from other states, from going beyond an inner boundary without a valid permit. No rubber, wax, ivory, or other forest products may be removed from the protected areas without prior authorization. No outsiders are allowed to own land in the tribal areas without approval from tribal authorities.

Despite constitutional safeguards, the rights of indigenous groups in eastern India are often ignored. Indigenous people suffer discrimination and harassment, have been wrongly deprived of their land, and have been subject to arbitrary arrest and torture. There has been encroachment on tribal land in almost all the states of eastern India, including by illegal immigrants from Bangladesh, and by businesses that have removed forest and mineral products without authorization. Moreover, persons from other backgrounds often usurp places reserved for members of tribes and lower castes in national education institutions.

Such violations have given rise to numerous tribal movements demanding protection of land and property rights. The Jharkhand Movement in Bihar and Orissa, and the Bodo Movement in Assam, reflect deep economic and social grievances among indigenous people. In the Jharkhand area, tribal people complain that they have been relegated to unskilled mining jobs, have lost their forests to industrial construction, and have been displaced by development projects. The Government has considered the creation of an independent Jharkhand State, but the affected state governments oppose the idea.

However, there is some local autonomy in the northeast. In Meghalaya tribal chiefs still wield influence in certain villages. The Nagaland government controls the rights to certain mineral resources, and autonomous district councils in Tripura, Assam, and Meghalaya control matters such as education, rural development, and forestry in cooperation with the state governors.

National/Racial/Ethnic Minorities

The Constitution gives the President authority to specify historically disadvantaged castes and tribes, which are entitled to affirmative action in employment and other benefits. These "scheduled" tribes and castes benefit from special development funds, government hiring quotas, and special training programs. According to the 1991 census, scheduled castes made up 16 percent and scheduled tribes 8 percent of the country's 1991 population of 846 million.

The Scheduled Castes and Schedu