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## U.S. Department of State

### India Country Report on Human Rights Practices for 1998

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#### INDIA

India is a longstanding parliamentary democracy with a bicameral parliament. Prime Minister Atal Bihari Vajpayee, whose Bharatiya Janata Party (BJP) led a 13-party coalition, took office in March and heads the Government. Parliamentary elections were held in February and March after the President dissolved the lower house of Parliament in December 1997. President K.R. 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. 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 of 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 judicial tolerance of the Government's heavy-handed anti-militant tactics, the refusal of security forces to obey court orders, and terrorist threats have disrupted the judicial system. Separatist insurgent violence in the northeastern states continued, 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 the 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 undergoing trial; occasional limits on freedom of the press and freedom of movement; legal and societal discrimination against women; extensive societal violence against women; female bondage and prostitution; trafficking in women; child prostitution, trafficking, and infanticide; discrimination and violence against indigenous people and scheduled castes and tribes; widespread intercaste and communal violence; increasing societal violence against Christians; and widespread exploitation of indentured, bonded, and child labor.

During 1998 India made further progress in resolving human rights problems. In Punjab the serious abuses of the early 1990's were acknowledged and condemned by the Supreme Court. The Supreme Court delegated responsibility for investigation of these abuses in the Punjab to the National Human Rights Commission (NHRC), whose investigation 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; local nongovernmental organizations were permitted access to these areas. The NHRC continued to play an important role in investigating and redressing human rights abuses.

The number of insurgency-related deaths in Jammu and Kashmir and the northeast was slightly lower than the previous year, due in part to negotiated cease-fires in the northeast between the Government and insurgent forces and between some tribal groups. However, the proportion of civilian deaths in Jammu and Kashmir increased markedly due to a concerted campaign of brutal, execution-style killings of civilians by Kashmiri militant groups. Separatist militants were responsible for numerous, serious abuses, including extrajudicial executions and other political killings, torture, and brutality. Separatist militants also were responsible for kidnaping 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) continued at a high level in the state of Jammu and Kashmir and several northeastern states, where separatist insurgencies continued. Security forces offered bounties for wanted militants brought in dead or alive.

The Government stated that security forces killed 999 militants in Jammu and Kashmir during the year, many in armed encounters. Kashmiri separatist groups maintain that many such "encounters" are faked and that suspected militants offering no resistance are summarily executed. Human rights groups allege that this is particularly true in the case of security force "encounters" with non-Kashmiri militants who have crossed into Jammu and Kashmir illegally. 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 showed no improvement 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. On May 16, for example, 18-year-old Murshid Ali failed to return to his Baghat Barzalla, Srinagar, home after a day's work. When his father reported the disappearance to police the following day, he was told that his son had crossed the line of control into Pakistan for guerrilla training. On May 24, police handed over Murshid Ali's body to his family; the body bore signs of torture, and police told the family they had found it in the Jehlum river.

Nongovernmental organizations (NGO's) active in Jammu and Kashmir reported that on May 18, Abdul Rashid Rather of Sanglor Tangmarg district, Baramulla, was arrested by the Special Operations Group (SOG) of the Jammu and Kashmir police, who turned the victim's body over to the police post at Bemina, Srinagar, on May 24. Several witnesses saw the victim's arrest by the SOG, but a police spokesman maintained that Rather was killed in an armed encounter with the SOG. On June 13, Mohammad Ramzan Wani was arrested at his Nai Bagh, Tral district home in Pulwama by SOG members in the presence of relatives. One day later, his body was handed over to family members; it bore bullet holes and marks of torture. The arresting SOG personnel have not been held accountable for this crime. The National Human Rights Commission 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 generally have not reported so-called encounter deaths occurring in Jammu and Kashmir to the NHRC. Human rights groups alleged that security forces summarily executed a number of captured non-Kashmiri militants in Jammu and Kashmir.

Civilians also were killed by soldiers during military counterinsurgency operations. For example, on January 30, soldiers killed at least nine villagers in Qadrana, Jammu and Kashmir, after the villagers began throwing rocks at them during a search operation. On March 1, the bodies of six residents of a Manipur fishing community, including two women, were found in a river near Serou village in Thoubal district; they were last seen alive near the village on February 25. Evidence suggests that soldiers who were hunting for members of the People's Liberation Army of Manipur, who had been active in the area, killed them. In a 1997 report, Amnesty International concluded that the pattern of killings in the northeast pointed to an official policy sanctioning extrajudicial killings.

According to the Government, 867 civilians, 232 members of the security forces, and 999 militants were killed in Jammu and Kashmir during the year. In its 1996-1997 report, the NHRC stated that 1,375 armed forces personnel had been killed and 2,237 injured in Jammu and Kashmir between January 1, 1988 and April 30, 1997. In 1997 the totals were 918 civilians, 189 security force personnel and 1,114 militants, according to reliable press reports. In the northeastern states, the Government acknowledged that 632 civilians, 126 members of the security forces, and 270 militants were killed during the year. The NHRC report also noted that between January 1, 1995 and April 30, 1997, 459 army and police personnel had been killed and 250 injured in the northeast.

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. Despite this record of abuse, the Indian Defense Minister told Parliament that during the period from January 1 to July 22, no members of the army had been prosecuted and punished for any of these crimes, nor had any compensation been paid to the victims or their families. According to the Union Home Ministry, between January 1990 and September, 1998, only 295 members of the security forces were punished for human rights violations in Jammu and Kashmir. Between January 1, 1990 and June 30, 1998, 113 members of the security forces were punished for human rights abuses in the northeastern states. Punishments ranged from reduction in rank to imprisonment for up to 10 years. According to the NHRC's most recent report, released in 1998, 259 complaints of alleged human rights violations by the border security force had been registered between January 1, 1990 and March 31, 1997. During the same period, only 31 investigations into allegations of human rights abuses by members of the army had been completed, resulting in the conviction and sentencing of 81 armed forces personnel, including 29 officers.

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, in July, the Government rejected the NHRC's recommendations to bring the army and paramilitary forces under closer scrutiny by the NHRC to allow it to probe complaints of their excesses. The NHRC in its 1996-1997 report noted that the security forces are making a conscious and serious effort to exercise restraint. Despite this effort, the NHRC continues to receive complaints alleging human rights violations by the security forces, especially from Jammu and Kashmir and the northeastern states. 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. On March 18, United Liberation Front of Assam (ULFA) militant Deepak Das was killed by the army in Bhalukmari in Nagoan district; on March 21, an ULFA cadre was killed in an encounter with police in Guwahati when he came to collect ransom money from a local businessman; on April 6, an ULFA militant was killed in an encounter with police in Surajnagar in Guwahati; on April 10, an ULFA militant was killed in Nalbari district in an encounter with the army and two other persons were killed in the cross-fire. On May 28, at least three National Democratic Front for Bodoland (NDFB) militants were killed in an encounter with the army in Nalbari district. On May 31, army troops reportedly killed six members of the Harkat-ul-Ansar (HUA) outside of the town of Rajouri in a counterinsurgency operation. In October, authorities killed 2 ULFA militants and 1 NDFB militant in encounters in Assam and 10 National Liberation Front of Tripura (NLFT) militants in Tripura. On August 27, army major Jamir Khan reportedly confessed to killing three former ULFA members whom he believed knew the whereabouts of a significant sum of money held by an ULFA leader who himself had been killed in an encounter several days earlier. Khan is expected to be court-martialed and tried for murder. Between mid-October and mid-December, 12 insurgents and 2 policemen were killed in clashes in Assam; 4 militants and two policemen were killed in Tripura, 1 policeman and an insurgent were killed in Manipur, and 6 insurgents were killed in Bihar. For example, two policemen were killed when their vehicle was shot at in Garopara in West Tripura; and on November 23, 3 Bodo Liberation Tiger Force (BLTF) militants were killed in an encounter with army personnel near Musalpur in Nalbari district.

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 organizations. According to local human rights groups, 174 persons were killed in police "encounters" in the first 8 months of the year. 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 the 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 rarely if ever are held accountable for human rights abuses. The Andhra Pradesh Civil Liberties Union documented more than 100 encounter killings by police that were not prosecuted.

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 of so-called "fake encounter deaths" allegedly committed by the Andhra police in connection with anti-Naxalite operations. In its 1996-97 report (the latest available), the NHRC stated that the evidence on record did not show in any of the cases "that any prior attempt" was made by the police to arrest the deceased persons. The report observed that in "none of these encounters, did police personnel receive any injury", while one or more persons from the other side died. The Commission further observed that "no attempt whatsoever" was made to ascertain the identity of the police officers who fired the bullets that caused the deaths, and that no attempt was made to investigate the circumstances under which the police opened fire. "As this appeared to be the pattern of the procedure followed by the police", the report concluded, "the Commission felt it necessary to conclude that the procedure followed by them was opposed to law".

Police also used excessive force indiscriminately against demonstrators, killing many citizens. For example, on January 12, 19 demonstrators were killed when police opened fire on a group of protesters in Multai, Betul district, Madhya Pradesh. The victims were farmers protesting a lack of government compensation for crops lost to bad weather; police alleged that the victims were part of a violent mob and that several police officers had been injured in the encounter. On August 11, Bihar police opened fire on a group of approximately 1,000 protesters who had gathered to demonstrate against the state government's failure to provide adequate relief to flood victims. Four persons were killed and more than a dozen wounded in the incident, which the NHRC is investigating.

Throughout the country, numerous accused criminals continue to be killed in encounters with police. For example, the West Bengal Human Rights Commission (WBHRC) in August found evidence to support a charge of murder against a police official who allegedly killed Khagen Majhi of Kalyani Thana, West Bengal, after taking him from his home in the early morning of April 30, 1997. Police alleged that Majhi died when unknown persons armed with bombs attacked the arresting officer. The WBHRC reportedly found no evidence to support the police contention that Majhi had been killed accidentally in the exchange of fire, finding instead that he had been shot at point blank range.

According to the Government, 462 civilians and 106 police died in exchanges of gunfire involving police in 1997 (the most recent statistics available). In December 1997, human rights organizations and victims' families in Mumbai petitioned the High Court to look into the circumstances surrounding the deaths of three persons in alleged "fake encounters" with police: A peanut seller named Javed Sayama, and two members of a criminal gang, Sada Pawale and Vijay Tandel. In June, the NHRC directed the

Bihar government to pay \$2,500 in immediate interim relief to the widow of a Ranchi-based businessman who had been shot and killed by police in December 1993.

Security forces also held persons in incommunicado detention; on occasion, as in the 1996 case of human rights activist Jalil Andrabi, such missing persons later were found dead (see Sections 1.b. and 4). As of December 1997, 55 cases of disappearance and custodial death were still pending against Border Security Force (BSF) personnel in Jammu and Kashmir (see Section 1.c.).

While extrajudicial killings continued in areas buffeted by separatist insurgencies, the press and judiciary also continued to give attention to faked encounter killings and to deaths in police custody. According to NHRC statistics, 188 persons died in police custody and 700 persons died in judicial custody between April 1, 1996 and March 31, 1997 (latest statistics available). 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 therefore are not required to--and do not--report custodial deaths in Jammu and Kashmir or the northeast. In May the Central Bureau of Investigation (CBI) probed the custodial death of Hari Shankar at the hands of the Hauj Kazi police. A criminal complaint was filed against the deputy commissioner of police.

According to the Government, 817 persons died in prisons between January 1 and September 30, many from natural causes, in some cases aggravated by poor prison conditions (see Section 1.c.).

During the year, an army major was arrested for the 1996 killing of human rights activist Jalil Andrabi. The case was still in progress at year's end. There were no developments in the 1996 killing of human rights activist Parag Das, who was allegedly killed by a militant who had previously surrendered and was supported by the Government (see Section 4.).

Killings and abductions of suspected militants and other persons by progovernment countermilitants continued as a significant pattern in Jammu and Kashmir. Counter-militants are former separatist militants who have surrendered to government forces but have retained their arms and paramilitary organization. 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. Although precise numbers are unavailable, the Hizbul Mujahideen, a Kashmiri militant group, told the press in June that progovernment countermilitants had killed 350 of its members. The Government has recruited countermilitants into the Special Operations Group of the Jammu and Kashmir police and into the border security force.

Militant groups in Jammu and Kashmir targeted members of the security forces and civilians during the year. On February 12, militants in Baramulla district entered the house of a special police officer and killed three members of his family and injured a fourth. On February 17, a senior national conference political activist was killed by suspected militants in Anantnag district. One soldier was killed on February 24 near Wakoora when security forces reportedly foiled an attack on the life of the Jammu and Kashmir Chief Minister (who was not hurt in the incident). On March 22, All Tripura Tiger Force (ATTF) militants at the Dhoopcherra-Gogomoni Para in Khowai killed six soldiers of the Tripura State Rifles. Militants killed a Congress party worker on April 30 in Anantnag district and two BJP political

workers in a drive-by shooting at a restaurant in Udampur town. On May 13, militants killed a National Conference worker in Baramulla. On May 18, suspected ATTF militants attacked a police outpost and killed a constable in West Tripura. On May 31, militants murdered the brother-in-law of former Union Home Minister Maqbul Dar. In a separate incident, militants kidnaped Ghulam Nabi Dar, brother of Maqbul Dar, on May 29.

Between January and August, militants carried out six mass killings of Hindu villagers in Jammu and Kashmir. The execution-style killings were carried out with ruthless efficiency and the victims often included women and children. In a seventh incident, unidentified gunmen killed 19 Muslim villagers, including 14 children, on August 4. (see Section 1.g.). On April 12, suspected ATTF militants killed two persons in south Tripura. On May 16, suspected ATTF militants killed three persons in Khowai. On August 3, suspected militants executed 35 migrant road workers while they slept in the Chamba district of Himachal Pradesh.

Insurgency and increased ethnic violence took a heavy toll in the northeast. 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 ULFA and the Bodo Security Force in Assam; and the ATTF and the 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 Government range from charges of neglect and indifference to the endemic poverty of the region, to allegations of active discrimination against the tribal and nontribal 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, 1997, a cease-fire between the Government and the Isak-Muivah faction of the NSCN (NCSN-IM) went into effect and has been largely observed by the Government and all insurgent groups in the state. In August, the cease-fire was extended for another year. The Kuki and Paite ethnic tribes also entered into a cease-fire in March, which was signed in the presence of Manipur's Chief Minister. Both sides observed the cease-fire, and in October a peace accord between them was signed. In 1997 violence between the Kuki and Paite communities led to hundreds of deaths and the burning of many homes. Elsewhere in the northeast, the upsurge in Bodo-Santhal ethnic clashes, which began in April, intensified in July and August. More than 260,000 persons are currently living under poor conditions in relief camps in Assam's Kokrajhar, Gosaigaon, and adjoining districts as a result of the ongoing violence between Bodos and Santhals. The brutal killings of relatives of ULFA leaders renewed concerns about the situation in Assam. In Nagaland clashes between the Naga groups not participating in the cease-fire and the NSCN-IM occurred (albeit with less frequency than in 1997), leading to a number of deaths. There were also encounters between security forces and the NSCN-Khaplang faction throughout the year.

In Tripura, there was a noticeable increase in the number of kidnappings committed by militant groups operating in the state. For example, Human Rights Watch reported that on April 30 an armed group abducted bus passengers; 24 were released, and 6 were held for ransom. Even after ransom is paid for captives, many are murdered. According to a compilation of newspaper accounts, more than 230 persons have lost their lives in insurgency-related violence in Assam; 142 in Manipur; 81 in Tripura and 19 in Nagaland. On March 31, NLFT insurgents killed Tripura minister of health and urban development Bimal Sinha and his brother, Vidyut. The minister and his brother were seeking the release of another brother who had been kidnaped by the militants. On April 5, the personal security guard of the Additional Deputy Inspector General of the Border Security Force (ADIG) was killed in Guwahati when ULFA militants attempted to kill the ADIG. On May 25, suspected ULFA militants killed 5 paramilitary personnel in Churachandpur. On May 30, suspected NLFT militants killed a CPI (M) leader and a state intelligence officer in West Tripura; on May 31, a lieutenant of the Assam Rifles was killed by the NLFT Dalanbari in West Tripura. On June 30, ULFA militants killed two policemen in Imphal, Manipur. On July 14, Meitei militants belonging to the People's Liberation Army in Manipur killed eight

Central Reserve Police Force personnel in an ambush. Also in July, Bodo militants killed seven policemen in Kokrajhar district.

The kidnapping of NGO environmental activist Sanjay Ghosh in 1997 and his death at the hands of his ULFA captors continued to attract wide public criticism. On August 6, 1997, ULFA confirmed that Ghosh died in captivity after being "arrested and tried." ULFA still has not produced Ghosh's body. In May, two persons were killed by Bodo militants in Barpeta district, and on May 31, suspected NDFB militants killed a Santhal woman in Kokrajhar. In June, suspected Bodo militants killed a student and wounded another in Nagoan district. In mid-June, ULFA militants killed 16-year-old Rashmi Bora, alleging that she had been an army informant. An ULFA member had earlier warned her to stop dancing in public; her body was not returned to her family. In Assam, 32 persons died in Santhal-Bodo clashes. On October 5, suspected NDFB militants killed a man accused of raping several women in his village, and during the first two weeks of October, killed 8 other persons.

Groups representing several ethnic tribal peoples in Assam, including the Santhals, Mundas, Oraons, Gonds, Savars, Bhils, Koyas, Kharias, Lohars and Parjas, allege that they have been the target of systematic violence at the hands of the National Democratic Front for Bodoland. For example, NGO's state that 14 tribal people, including 6 women, were hacked to death by NDFB militants after being dragged from a bus on May 3 in Kokrajhar. On June 17, four tribal people were abducted by NDFB militants in Kachgaon forest in Kokrajhar district and later killed. On June 27, suspected NLFT militants killed two tribal women in a forest in the Atharomura range. In September, 700 homes reportedly were burned in clashes between the Bodos and Santhals in Assam. Between October and mid-December, 51 persons were killed by insurgents in Assam. For example, on December 12, suspected NDFB militants killed 20 ethnic Bengali Muslim woodcutters and injured several others in Panijani forest near Gosaigaon in Kokrajhar. During the same period, two civilians were killed by insurgents in Tripura, two in Bihar, and one in Manipur.

Naxalite Maoist revolutionaries of the Peoples' War Group (PWG) have killed dozens of persons, declaring them "class enemies" or police informers. In June, Naxalites attacked a tribal village in Andhra Pradesh's east Godavari district, where they killed the village chief and beat eight women and shot two men. On February 22, an Orissa policeman was killed by suspected PWG militants, who had entered the state from neighboring 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 also extort money from businesses. 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. The PWG also used land mines to kill police (see Section 1.g.), and insurgents used bombs to kill government officials, police, and civilians.

On November 19, 1997, 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. On January 28, a designated lower court in Chennai sentenced to death all 26 persons accused in the assassination. The Central Bureau of Investigation originally charged 41 persons in the case; 12 have since died, and 3 have evaded capture (including LTTE leader Velupillai Prabhakaran). Many of those sentenced, who include both Indian and Sri Lankan nationals, were alleged to have played a peripheral role in the assassination plot, but the court upheld the CBI contention that all of them were aware that they were conspiring in a common cause.

## b. Disappearance

According to human rights groups, unacknowledged, incommunicado detention of suspected militants continued in Jammu and Kashmir, although the practice decreased compared with previous years.

The Jammu and Kashmir police acknowledged that 1,228 suspected militants were arrested during the year and that an additional 187 had surrendered. Of this number, 529 were released after preliminary questioning, 457 were charged under special security laws, and the remainder were released at a later stage of judicial review. In addition, the Jammu and Kashmir police stated that they held 514 persons at year's end under the Public Safety Act (PSA). The Government was unable to provide complete statistics for the number of persons held under special security laws in the northeast, but acknowledged that 43 persons were in detention under the National Security Act at year's end. In April a Home Ministry official stated publicly that 354 suspected militants were being held in Assam alone. 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 2,000 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 which are nominally intended for only short-term confinement. Human rights groups fear that many of these unacknowledged prisoners are subject to torture and extrajudicial killing. According to one NGO, there were 300 to 350 writs of habeas corpus pending in the Jammu and Kashmir High Court at year's end. The United Nations Special Rapporteur on Torture reported in 1997 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 1998, the Working Group on Enforced or Involuntary Disappearances of the U.N. Commission on Human Rights transmitted 28 newly reported cases of disappearance to the Government, 7 of which reportedly occurred in 1997. The Government submitted information on seven cases of disappearance to the working group in 1998. In one prominent case in Jammu and Kashmir, the Government responded to the U.N. Special Rapporteur on Extrajudicial, Summary, or Arbitrary Executions in 1997 and stated 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. During the year, an army major was arrested for the killing of Andrabi, and the case was still in progress at year's end (see Sections 1.a. and 4). In April the Government stated that it would investigate the fate of eight persons reported to have disappeared in Jammu and Kashmir during 1997: Fayaz Ahmad Beigh, Fayaz Ahmad Khan, Abdula Rashid Wahid, Mohammed Ashraf Dar, Mohammed Afzal Shah, Nisar Ahmad Wani, Manzoor Ahmad Dar, and Bilal Ahmad Sheikh. By September the Government could account for only one of the eight, claiming that Fayaz Ahmad Beigh had escaped police custody on September 9, 1997, and was believed to have crossed the line of control into Pakistan. As of December 1997, 55 cases of disappearance and custodial death were still pending against Border Security Force (BSF) personnel in Jammu and Kashmir (see Section 1.c.).

The Government maintains that screening committees run by the state governments 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. Authorities have been able to provide no clue as to the fate of Sajad Ahmad Bazaz, who was arrested by members of the 30th Battalion of the Border Security Force at his Hazratbal, Srinagar home on February 12, 1992, despite persistent efforts by family

members to discover his whereabouts. 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 January and August, the ICRC visited approximately 1,200 detainees in 28 places of detention. All acknowledged detention centers in Jammu and Kashmir and Kashmiri detainees elsewhere in the country have been visited. The ICRC is not authorized to enter 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 Central Bureau of Investigation is actively 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 CBI, in its report to the Supreme Court of December 9, 1996, stated that more than 2,000 bodies had been secretly cremated by Punjab police in Tarn Taran; of this number, 585 bodies had been fully identified, 274 partially identified, and 1,238 were unidentified. 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. In September, the Supreme Court upheld the right of the NHRC to investigate the case. In August, the Committee for the Coordination on Disappearances in Punjab (CCDP) member and former Supreme Court justice Kuldip Singh presented the chief minister of Punjab with a list of some 3,000 people who either were missing or had died in encounters with security forces during the period of unrest in Punjab. Former justice Singh also announced that the CCDP would form a three-member commission to look into the mass cremations.

In April Amnesty International expressed its concern that the judicial inquiry into the death of human rights activist Jaswant Singh Khalra was being obstructed by police in Punjab. Khalra had been investigating the cremation of unidentified bodies by Tarn Taran police. Several witnesses observed Punjab police arrest Khalra outside his Amritsar home on September 6, 1995. Police subsequently denied they had arrested Khalra and he has not been seen since. On July 30, 1996, following its investigation, the CBI identified nine Punjab police officials as responsible for Khalra's abduction and recommended their prosecution. One of the suspects subsequently died, reportedly by suicide; none of the others has yet been charged. In July Jaspal Singh Dhillon, another member of the CCDP who was active in the Tarn Taran investigation, was arrested by Punjab police on suspicion of conspiring to free several convicted Sikh separatists from a Chandigarh jail. At year's end, Dhillon remained in remand custody but had not been charged with any crime. These events prompted extended public debate over the accountability of Punjab police for excesses during the suppression of a bloody insurgency. According to human rights activists in Punjab, approximately 100 police officials were either facing charges, had been prosecuted, or were under investigation for human rights abuses at year's end.

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 that 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. In Manipur 14-year-old Yumlembam Sanamacha of Thoubal district has been missing since his arrest by soldiers on February 12. The army reportedly detained him because of his alleged links with insurgent groups. The All Manipur Students' Union petitioned the Guwahati High

Court for Sanamacha's release. The court ordered the army to produce the boy, but it has failed to do so and his whereabouts remain unknown.

In August a retired Supreme Court Justice set up a People's Commission to investigate the fate of persons who disappeared in Punjab, but it received little cooperation from state government authorities (see Section 4.).

Militants in Jammu and Kashmir and the northeast continued to use kidnappings to sow terror, seek the release of detained comrades, and extort funds. Between February 17 and the end of April, there were 63 abductions carried out by suspected militants in Tripura, many for the purpose of extorting ransom money. In November 1997, the Home Secretary reported that militants had engaged in 1900 kidnappings since 1989, and that 700 persons were released, 700 were killed, and the fate of 500 was uncertain. There were no new developments in the case of the 1995 kidnapping of American, British, German, and Norwegian nationals.

### 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.

Although human rights organizations welcomed the Government's decision to accede to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, they believe that its decision not to accept Articles 20, 21, and 22 of the Convention would effectively undermine the U.N. Human Rights Commission's ability to investigate allegations of torture once the Convention is ratified. In July the Home Minister told Parliament that "the question of ratifying the Convention is engaging the Government." By year's end, the Government had not ratified the Convention.

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 Special 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." As of December 1997, 55 cases of disappearance and custodial death were still pending against Border Security Force (BSF) personnel in Jammu and Kashmir. According to human rights organizations active in the state, 12 young men from Kurhama Ganderbal were arrested by personnel of the Dogra regiment in July and taken to an army camp, where they were beaten severely and had a mixture of water and chili powder poured on their genitals. On June 12, personnel of the 19th Rashtriya Rifles arrested and severely tortured Shabir Ahmed Malik of Galmoona district, Kupwara. He was admitted to SMHS hospital, Srinagar, following his release on June 13; examination revealed extensive damage to internal organs. In May army personnel from Malangam Bandipora district, Baramullah, invaded the home of Ghulam Rasool Bhat in Malangam and tortured Bhat and his wife Nisara. According to human rights groups, both were stripped and subjected to electric shocks and cigarette burns. Human rights activists maintain that there is a similar pattern of abuse by security forces in the northeast. Police atrocities against indigenous people include torture (see Section 5.).

The U.N. Special Rapporteur on Extrajudicial Executions received responses from the Government to several inquiries. In the case of Purushottam Kumar and Monoj 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 Special Rapporteur that those in question had died of cardiac arrest or other illness, or by mishap during altercations with police. The Special Rapporteur also made new inquiries into allegations of extrajudicial executions during the year. 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 1998, 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 1.a.). Delhi's Tihar jail is notorious for mistreatment of prisoners, with 1 of every 11 custodial deaths taking place there. Police and jailers typically assault new prisoners for money and personal articles. In addition police commonly torture detainees during custodial interrogation. Although police officers are subject to prosecution for such offenses under Section 302 of the Penal Code, the Government often fails to hold them accountable. The NHRC has ordered a CBI investigation of the torture death of Delhi leather merchant Hari Shankar Pal, who was arrested along with five other persons and beaten by Hauz Kazi police on December 8, 1997. After 2 days of abuse, police took Pal to the city's Ram Manohar Lohia hospital, where he was pronounced dead on arrival. On April 26, three Tibetan hunger strikers were arrested and taken to a local hospital in New Delhi where they were forcibly given intravenous fluids (see Section 2.b.). On August 24, 1997, Ramesh, a 14-year-old boy from Chennai, was arrested by city police on suspicion of stealing a bicycle. Ramesh and his 12-year-old brother allegedly were chained together and beaten with wooden poles. The brother was released, but Ramesh's body was found on a nearby railway track later that evening. In March the Chennai High Court reprimanded the former Tamil Nadu chief secretary for having ignored an earlier NHRC directive to the state of Tamil Nadu to pay \$125 compensation to a lawyer tortured by police in 1994. In censuring the former chief secretary, the court ordered the state government to pay \$375 in additional costs for the "irresponsible attitude adopted by the then-chief secretary."

The U.N. Special Rapporteur on Torture stated in 1997 that torture victims or their relatives reportedly have 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.

In February newspapers reported a police attack on Gundupatti village, Tamil Nadu. According to these accounts, the villagers had decided to boycott the Lok Sabha elections to protest government negligence in providing essential services. Villagers allegedly detained and intimidated a local leader of the ruling Dravida Munnetra Kazhagam (DMK) party who had come to the village to canvass votes. On February 26, a force of some 200 policemen entered the village and reportedly attacked unarmed persons with iron rods, destroyed property, and threw children into thorny bushes. A four-member team headed by the Tamil Nadu Home Secretary investigated, but its members could not agree on their findings. The National Commission for Women criticized the police for taking sides with a political faction, and recommended that steps be taken to punish those responsible. In Mumbai, the Police Commissioner announced in May that the police could use armed force "bullet for bullet" against gangsters in response

to growing mafia style crime. Several "encounter" deaths were reported in the city during the year (see Section 1.a.). There also were incidents in which police beat journalists (see Section 2.a.) and demonstrators (see Section 2.b.).

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 between April 1, 1996 and March 31, 1997. 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. The National Commission for Women in July reported that it had sought an explanation from the Director General of Police, Hyderabad, as to why no action had been taken to investigate allegations that a police officer earlier had raped a 12-year-old girl. The Advocate General of Orissa, Indrajit Roy, was forced to step down in August, nearly 1 year after attempted rape charges were filed against him. The victim had gone to him seeking assistance in a dowry case against her husband (see Section 5.).

Human rights activists allege that army personnel entered the village of Samoo, Kulgam district, Anantnag, in the early morning hours of May 25 and raped several of the village women. On June 27, members of the Special Operations Group are alleged to have gang-raped a 16-year-old girl in Hanjipora, Kupwara district. The army has initiated an inquiry into the alleged rape of two women by army personnel on June 16 in Paikarkuchi, Nalbari district, Assam. In Manipur a soldier raped a pregnant woman on April 5. The assailant since has been court-martialed, convicted, and sentenced to 5 years' rigorous imprisonment. In Assam two army soldiers were tried on July 8 for the June 8 rape of a woman. Both were court-martialed, dismissed from service, and sentenced to 10 years in prison. In June, soldiers molested women in Sogam village, Kupwara district (see Section 1.g.).

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.

Militants used rape as a tactic to terrorize the populace (see Section 5).

Prison conditions are severely overcrowded, and provision of food and medical care is inadequate.

Prisons operate above capacity, because of thousands of trials awaiting hearings. In Calcutta, a 17-year-old girl was recently released after awaiting trial for 10 years. Overcrowding in jails also is severe. Tihar jail, with a capacity of 3,300, houses 9,000 prisoners. The states are waiting for a national jail manual to facilitate reform; however, aside from distributing financial aid to the states, the central Government has not initiated any standard reforms. The Prison Act of 1894 remains unamended. According to the South Asia Human Rights Documentation Center, in the poorest states, such as Bihar, where 265 stations have no lock-up facilities, the lack of prison infrastructure has led police to shackle prisoners to trees. An NHRC investigatory team visiting Meerut jail in Uttar Pradesh found some 3,000 inmates in a facility designed to hold 650. As a result of this and other jail visits, the NHRC has contracted for the preparation of a draft prison reform bill to be submitted to the Government. 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 detention, 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.

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. However, 15 states and union territories have authorized the NHRC to conduct surprise check-ups on jails. 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. It has also created a panel to conduct uniform medical check-ups, and to make recommendations to states for implementation.

In addition to the 888 complaints of custodial death (700 in judicial custody and 188 in police custody) and 3 cases of custodial rape received by the NHRC between April 1, 1996 and March 31, 1997, 1,643 complaints of other police excesses were filed with the NHRC. As a result of NHRC action during this period, criminal prosecutions have been brought against 144 police officials and 23 civilians and monetary compensation in amounts ranging from \$1,250 to \$3,750 has been recommended for payment in 55 cases. In its annual report for the period, the NHRC remarked that more than half of the more than 20,000 complaints it received "relate to the conduct of the police."

#### d. Arbitrary Arrest, Detention, or Exile

During the early 1980s, the Government implemented 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, 1,502 persons previously arrested under the act continued to be held as of January 1, 1997 in a number of states, according to the NHRC most recent report. A small number of arrests under TADA continued for crimes allegedly committed before the law lapsed. In 1997, the Government asserted that all TADA cases would be reviewed. However, few persons have been released as a result of government review of their cases. 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 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 1997, 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.

On May 31, the Tamil Nadu state assembly passed a bill, the "Prevention of Terrorist Activities Act," which resurrects provisions of the lapsed TADA. The bill had not yet been signed into law by year's end. It provides for special courts to try offenses under the act, places the burden of proof at the bail stage on the accused, makes confessions to a police officer of the rank of superintendent of police admissible as evidence, extends the period of remand from 15 to 60 days, and sets mandatory sentences for terrorism-related offenses.

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 either must 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). According to the Government, 1,163 were being held under the NSA at the end of 1997 (latest statistics available). 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. Jammu and Kashmir police stated that 514 persons were being held under the PSA at year's end.

On November 27, 1997, the Supreme Court upheld the constitutional validity of the Armed Forces Special Powers Act (AFSPA) of 1958. In a representation made to the NHRC, the South Asia Human Rights Documentation Centre (SAHRDC) asserted that the act's powers were "too vast and sweeping and pose a grave threat to the fundamental rights and liberties of the citizenry of the (disturbed) areas covered by the Act." The SAHRDC asserted that the powers granted authorities under section 3 of the act to declare any area to be a "disturbed area," and thus subject to the other provisions of the act, were too wide. Moreover, SAHRDC noted that section 4(a) of the act empowers any commissioned officer, warrant officer, noncommissioned officer or any other person of equivalent rank in the armed forces to "fire upon and otherwise use force, even to causing death" if he believes that it is necessary for the maintenance of law and order. Further, section 6 of the act states that "no prosecution, suit or other legal proceedings shall be instituted, except with the previous sanction of the central Government against any person in respect of anything done or purported to be done in exercise of powers conferred by this Act."

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 for 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. According to the Union Home Ministry, the total number of civil and criminal cases pending for 3 or more years in all courts throughout the country was 5,116,895 at year's end. In its most recent report, the NHRC reported that nearly 80 percent of all prisoners held between April 1, 1996 and March 31, 1997 were so-called "under-trials," i.e., unconvicted remand prisoners awaiting the start or conclusion of their trials.

In June 1997, 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. On June 12, Dorji was released on bail following the New Delhi High Court's decision to deny a government appeal and let stand a lower court's order to grant bail in the case. Dorji still awaits conclusion of his extradition hearing.

On April 26, three Tibetans staging a hunger strike in an attempt to reinstate talks on the Tibetan issue were arrested by New Delhi police and taken to a local hospital where they were given intravenous fluids by force. The three were arrested on charges of creating a public disorder and attempting to commit suicide. They subsequently were released and the charges were not pursued.

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 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. State governments appoint subdistrict and district judicial magistrates. 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 appointed similarly 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 status laws of the minority communities, with the result that personal status 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 because of the frequent refusal by security forces to obey court orders. Courts there are not willing to hear cases involving terrorist crimes and 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.

In April the Supreme Court criticized the government of Kerala in a case involving the harassment of a foreign national accused of espionage. Miriam Rasheeda, a Maldivian citizen, was arrested in Trivandrum in 1994. The state government asked the CBI to take over the investigation in December 1994. The CBI found that there was no basis to the allegation of espionage and advised acquittal in 1996. A change of government occurred in the state in 1996 and the new Communist-led government reversed the decision of the previous, Congress-led government to grant investigative authority to the

CBI, proposing instead to conduct its own investigation. It was not until April that the original CBI finding was upheld and Rasheeda was released.

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 government Enforcement Directorate (ED) searches, interrogates, and arrests thousands of business people and management professionals each year, often without search warrants. Ultimately, the ED convicts very few persons. In 1997, only 28 persons out of thousands arrested were convicted, according to the Times of India.

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." Every state government has used these powers. The Union Government also uses the powers of the Indian Telegraph Act to wiretap 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 appeared to diminish for the fifth consecutive year in Jammu and Kashmir, although final statistics for 1998 were not available at year's end. 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 was unable to report how many such deaths occurred during the year, but reported that 84 such deaths occurred in Jammu and Kashmir in 1996-1997. 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.

According to Kashmiri human rights groups, personnel of the 197th army field regiment fired on a group of villagers on August 20 in Prang Tehsil, Kangan district, Srinagar, killing one person and injuring four others. The villagers had been attending the funeral of a neighbor whose body had been returned to the village by police after his arrest on August 19; police interference in the funeral caused villagers to protest and led to the firing. On June 25, personnel of the 18th Garhwal unit opened fire indiscriminately on residential buildings in Sogam village, Kupwara district. According to human rights

groups, soldiers of the same unit had earlier threatened to take revenge against the villagers for an earlier massacre of Hindu villagers by Kashmiri militants. After the firing, soldiers moved in to beat many of the villagers and molest many of the women. Finally, the soldiers reportedly set fire to some 50 homes and prevented efforts to extinguish the blazes; 40 persons were injured in the attack.

Government forces fired mortar and artillery shells across the Pakistani border in Kashmir, killing a number of persons. For example, on July 30, government troops fired mortars that killed 11 persons and wounded 20 others in the Pakistan-ruled part of Kashmir, according to press reports. Pakistan government forces fired mortar and artillery shells across the line of control into Jammu and Kashmir, killing a number of persons. In an August 5 statement to Parliament, the Union Defense Minister said that Pakistani firing across the line of control into Jammu and Kashmir on July 27 and 28 had killed 31 civilians and 16 members of the security forces, and wounded 77 civilians and 81 members of the security forces.

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. Militants carried out several execution-style mass murders of Hindu villagers in Jammu and Kashmir. Terrorist acts by Kashmiri groups also have taken place outside Jammu and Kashmir. Many of the terrorists are not Indian citizens, but are of Afghan, Pakistani and other nationalities. On January 25 in Wandama, north of Srinagar, terrorists killed 23 persons from 4 Hindu families; the victims included 10 women and 4 children. The army accused the Harkat-ul-Ansar terrorist organization of the massacre. On March 17, NLFT militants killed 4 persons from the Reang community at Debipur; on April 12, militants killed 2 persons at a police outpost and set fire to homes and shops in south Tripura. On April 17 in Thub, Udhampur district, suspected militants massacred 26 Hindu villagers, including 2 women and 2 children. On May 4-5, militants killed 13 civilians in 2 separate incidents near Poonch in Doda district. In Poonch district, Jammu, on May 6, terrorists killed five family members in the midst of a funeral procession. On May 16, militants killed seven persons in Binola Choura village, north of Jammu. On June 19 in Champnari village, Doda district, Kashmir, militants attacked 2 marriage parties, killing 26 Hindu men; police blame the attack on the Hizbul-Mujahideen organization. On July 28, militants killed 16 Hindu villagers in 2 separate attacks in the villages of Channa and Sarwan, outside of Kishtwar, in Doda district. On March 22, six suspected militants killed three family members, set fire to a Hindu temple, and blew up a van in Punjab. In July Bodo Liberation Tiger Force militants killed 6 persons in a village at Tipkal reserve forest. On August 3 in Chamba district, Himachal Pradesh, suspected militants executed 35 migrant road workers while they slept. On August 4, gunmen killed 19 Muslim villagers, including 14 children and 2 women, in what the press reported as a feud between rival members of the Harkat-ul-Ansar. Clashes between the Bodos and the Santhals continue in Assam. On September 15, 50 persons were killed in a Bodo-Santhali clash in Kokrajhar district. On October 8, Bodo militants killed 13 persons in 4 different villages in Darrang district.

On January 11, a small bomb exploded near the U.S. consulate in Chennai, injuring four persons. The Al-Ummah militant organization claimed responsibility for the blast. On February 14, Muslim extremist groups retaliated for the November 1997 killing of Muslims by police and Hindu rioters in Coimbatore with a series of bombings there that took the lives of 68 persons and left at least 200 others injured (see Section 2.c.). Following the Coimbatore bombings on February 14, police recovered nearly 500 pounds of explosives in Chennai and defused additional bombs in Chennai and Coimbatore. On March 31, one person was killed in Panipat, Haryana, in the bombing of a New Delhi-bound passenger train. On May 23, National Youth Congress President Gulam Nabil Shaheen was injured seriously along with six others in a bomb blast in Srinagar. The Hizbul Mujahideen claimed responsibility. On May 28, 4 persons were killed and 20 injured by an explosion during local elections in West Bengal. ULFA insurgents destroyed an oil depot in Assam on August 11, causing \$18 million in damage. On August

24, a bomb blast at the Guwahati, Assam, railway station killed 2 persons and seriously injured 10 others; ULFA claimed responsibility. On August 3, ULFA set off a remote-controlled device that killed three army personnel traveling by jeep in Nalbari district. On July 30, a bomb exploded in the main market in Nalbari, killing nine; the Bodo Liberation Tiger Force claimed responsibility. On June 5, the BLTF blew up three bridges and brought railway and road traffic in the northeast to a standstill.

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.

## **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. A draft freedom of information bill was forwarded to central ministries and departments and state government administrations in January 1997; in late May 1997, the bill was forwarded to the cabinet secretary. If passed the bill would allow access to information held by the central and state governments and by virtually every institution or department "substantially" funded by the Government. Only records relating to national security and sovereignty and to issues covered by the Official Secrets Act (OSA) would be exempt. At year's end, the bill had not passed. However, in May the Madhya Pradesh legislature passed a bill giving citizens the right to government information, regarding land records and other vital information, but excluding information relating to national security and sovereignty and to topics covered by the Official Secrets Act. During the year, the Tamil Nadu state government also passed a freedom of information bill.

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, 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 to 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.

According to local human rights groups, members of the Special Operations Group of the Jammu and Kashmir police attacked and beat photojournalist Habibullah Naqash on June 5 inside the press enclave in Srinagar. In Punjab, the NHRC in July called for a CBI investigation into the 1992 abduction of journalist Avtar Singh Mander, who has not been seen since his disappearance in Jalandhar. Witnesses allege that police officials picked up Mander, a charge the police deny. A May 1994 investigation by Punjab state authorities found that Mander had not been taken into custody, and no further effort was made by authorities to trace his whereabouts. In Assam the state government has attempted to quiet its critics by filing a number of "criminal defamation" charges against journalists. In April four Doordarshan employees who were covering Bodo-Santhal clashes were detained for allegedly inciting communal tension. Kanak Sen Deka, the editor of Dainik Agradoot (the highest circulation Assamese language daily) was arrested in a defamation case. Prakash Mahanta, a reporter for the Assamese-language daily Natoon Samoy, was attacked at his home, beaten, arrested, and held by police at Nagaon state police station. Press freedom campaigners allege that Mahanta's "crime" was to write an article detailing alleged campaign irregularities by the wife of Assam chief minister Prafulla Kumar Mahanta. According to news reports, the chief minister denied the charge and said that Prakash Mahanta had been involved in "anti-national" activities. In 1997, Ajit Kumar Bhuyan, editor of Natoon Samoy, was arrested by police in Nagaon on suspicion of having links with the militant ULFA. On February 28, approximately 50 armed persons attacked the office of the Tamil daily Dinamalar in Madurai, Tamil Nadu. The attackers hurled a gasoline bomb at the building, attacked the watchman, damaged property, and intimidated the staff. The attack occurred not long after the paper had criticized the ruling DMK party and made allegations that local results of the February-March parliamentary elections had been rigged. The Tamil Nadu chief minister condemned the attack and ordered an investigation. In October, the Manipur state government announced curbs on the publication of insurgency-related news. The publication of insurgent's press releases, public invitations to slain militants' funerals, and calls to boycott Republic Day and Independence Day functions were prohibited. Penalties for violating the prohibition included arrest and criminal prosecution of newspaper owners and editors and cancellation of newspapers' registration.

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 also must submit their products to the board, which occasionally censors stories that portray the Government in an unfavorable light. The board's rulings may be appealed and overturned.

Kashmiri groups threatened journalists and editors and even imposed temporary bans on some publications. In May and June in Mumbai, Hindu extremists stoned an art gallery and ransacked the apartment of painter M.F. Hussain, to protest the artist's depiction of a Hindu goddess in the nude in a 20-year-old painting entitled "Sita Rescued," which they found offensive. In April, also in Mumbai, Hindu extremists surrounded a concert hall, preventing a performance by Pakistani singer Ghulam Ali.

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 this right 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 more often were affected by strikes called by the militants. The Kerala High Court ruled in July 1997 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. In February Haryana police fired on a group of textile workers peacefully demonstrating outside the Pushupati Textile Mill in Dharuhera, Rewari district, and killed five persons. Labor leaders called on the state government to punish the police officers responsible and to compensate victims' families. On April 26, New Delhi police forcibly removed three of six Tibetan hunger strikers from their protest site and took them to a local hospital where they were given intravenous fluids. In protest, a supporter of the strikers committed self-immolation on April 27 and later died of his injuries.

The Constitution provides for the right to form associations, and the Government generally respected this right 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 generally can 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).

During the year, there was a sharp increase in attacks against Christian communities and Christian missionaries. According to Indian human rights organizations, there were over 90 incidents, primarily of mob violence that took the form of the destruction of churches and religious property and violent attacks on Christian pilgrims and leaders. The National Minorities Commission initiated investigations into many of these cases (see Section 5).

On occasion, Hindu-Muslim violence led to killings and a cycle of retaliation. For example, on November 30, 1997, police in Coimbatore, Tamil Nadu, incensed over the killing of a colleague by Muslim youths, joined forces with armed Hindu rioters; 18 Muslims were killed in clashes with police. The People's Union for Civil Liberties, a prominent human rights organization, reported that police took advantage of the civil unrest to wreak vengeance on Muslim traders who had stopped paying them bribes. Houses and shops owned by Muslims were looted and set ablaze in full view of police; police and Hindu rioters hacked to death riot victims at the government hospital. In February Muslim militants retaliated for this incident with a series of bombings in Coimbatore. (see Section 1.g.).

The U.N. Special Rapporteur for All Forms of Intolerance and of Discrimination Based on Religion or Belief published a report in February 1997 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 Sikhs, the Rapporteur concluded that the country's constitutional and legislative protections 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).

In July Prime Minister A.B. Vajpayee told Parliament that he opposed a proposal by the Delhi Union Capital government to remove churches from a list of tax-exempt religious places because sacramental wine is served there. Vajpayee stated that the proposal was wrong and said that the Government was committed to preserving full religious freedom. The proposal subsequently was dropped.

In October the Union Human Resource Development Minister floated a plan to "Indianize and spiritualize" public school curriculums at all levels and to make the study of Sanskrit compulsory from grade 3 through grade 10. The plan also contemplated the teaching of Hindu texts from the Vedas and Upanishads in secondary school. The plan was withdrawn after protests from educators, most of the country's state Education Ministers, and many members of the public.

#### 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.

Since 1990, 235,000 Bangladeshis have been deported from India, many from Maharashtra and West Bengal. In July the government of Maharashtra initiated a program of rounding up and deporting to Bangladesh suspected Bangladeshi illegal immigrants. According to press reports, on July 1 police in Mumbai began a systematic campaign to remove suspected illegal Bangladeshis. Reports indicated that Bengali-speaking Muslims were rounded up for deportation, and that when some suspected illegals provided documentation of Indian citizenship, police declared them forgeries and tore up the documents. Manish Gupta, Chief Secretary of the government of West Bengal, admitted that at least 50 Indian citizens had been deported to Bangladesh in the last year. On July 24, as a train carrying deportees from Mumbai passed through West Bengal on the way to Bangladesh, it was forced to halt by a large crowd that blocked the tracks and stormed the train. Mumbai police were assaulted and 34 deportees were set free. These events led the Maharashtra government to reassess its deportation policy, and subsequently to announce the suspension of new deportations until October. The Government estimates that there are 10 million Bangladeshis living illegally in the country.

The law does not contain provisions for processing refugees/asylum seekers in accordance with the 1951 U.N. Convention Relating to the Status of Refugees and its 1967 Protocol. The Government 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 provides first asylum to refugees, most notably in recent years to Tibetan and Sri Lankan Tamil refugees. However, this policy is applied inconsistently. For example, the insistence of some border authorities on the presentation of passport and visas by those claiming refugee status occasionally has 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. After initial reports by human rights groups that Jumma

refugees feared repatriation to Bangladesh, members of this group willingly participated in their return to the Chittagong Hill Tracts after the signing of a peace agreement between the Government of Bangladesh and the tribal insurgents of the Shanti Bahini in December 1997; in all, about 43,000 Jumma refugees were repatriated. 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, and provides them with assistance in refugee camps or in resettlement areas. According to UNHCR and Government statistics, there were 98,000 Tibetans, 70,337 Sri Lankan Tamils in 131 camps and perhaps as many as 50,000 Sri Lankan Tamils outside of the camps, and 588 Burmese refugees living in the country at year's end. Many Chakmas from Bangladesh have been repatriated voluntarily, including all of the estimated 56,000 who had been residing in Tripura. Some 80,000 Chakma permanent residents remain in Arunachal Pradesh and Mizoram; their right to citizenship has been upheld by the Supreme Court. The UNHCR reports that 16,058 Afghans, 203 Iranians, 178 Somalis, 81 Sudanese, 44 Iraqis, and 4 Ethiopians were living as refugees in India and were receiving assistance from the UNHCR at year's end. Although the Government does not recognize formally persons these persons as refugees, it does not deport them. Instead, these people receive renewable residence permits or their status is ignored.

There are ethnic Chins among nonrecognized refugees in the northeastern states, particularly Mizoram. They and Chakma refugees in the state have been the targets of student-led demonstrations protesting their presence in the state. Recent tensions between security forces and Chin National Force (CNF) insurgents operating in Burma allegedly have resulted in detention, interrogation, and expulsion of some persons associated with the CNF. In Manipur the Manipur underground attempted to impose a \$3 "tax" on all non-Manipuris above the age of 12 as the price for continued permission for them to live in the state.

NGO's report refugee complaints about deteriorated housing, poor sanitation, delayed dole payments, and inadequate medical care in the Tamil refugee camps. The Tamil Nadu 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. The NHRC has intervened to uphold the right of several Sri Lankan Tamils detained in so-called "special camps" to remain in India. The Government uses these camps to hold suspected members of the Liberation Tigers of Tamil Eelam (LTTE) terrorist organization.

Mizoram human rights groups estimate that some 30,000 Reangs, a tribal group from Mizoram, displaced due to sectarian conflict, are presently sheltering in Tripura; conditions in their camps are poor and the Tripura state government has asked the central Government to allot funds for their care. There were no reports during the year of the forced return of persons to countries where they feared persecution.

### **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. As of September, none of the 25 states was under President's Rule.

President Narayanan dissolved the lower house of Parliament on December 4, 1997, and elections were held in February and March. Some 374 million voters, or 62.04 percent of the electorate, cast ballots. There were reports of election related violence in parts of the country, as well as localized allegations of voter fraud. However, the Election Commission noted at the conclusion of voting that the election had been the most peaceful in recent memory. The new Government, a coalition of 13 parties led by the Bharatiya Janata Party, took office under Prime Minister Vajpayee in March.

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 61 women among the 790 Members of Parliament, including the deputy speaker of the upper house, and there are 4 women in the 40-member Cabinet. However, only 4 percent of elected state assembly representatives are women, according to the National Commission for Women. The 1993 passage of the "Panchayati Raj" constitutional amendments reserved 30 percent of seats in elected village councils (Panchayats) for women. In July debate over the Women's Reservation Bill, which was designed to reserve one-third of Parliamentary seats for women, subsided when the bill's formal introduction was prevented due to opposition from members of both the governing and the opposition parties. However, the Women's Reservation Bill was introduced in parliamentary sessions in November and December despite strong opposition.

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 that 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 due to 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, the authorities denied a visa application by a Human Rights Watch researcher in March. 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 Jalil 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 Sections 1.a. and 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, and the case was in progress at year's end. 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. On June 8, Special Operations Group personnel of the Jammu and Kashmir police arrested Ali Mohammad Sheikh, a researcher for a locally based human rights organization, in Dalgate, Srinagar. Sheikh initially was held at the Khanabal, Anantnag SOG camp and family members were denied permission to see him. Also in June, the state government of Andhra Pradesh issued a directive to faculty members of state universities not to associate with the Andhra Pradesh civil liberties committee (APCLC), a well-respected human rights organization. The state government provided no explanation as to why it had taken this action.

The Government appointed a National Human Rights Commission in October 1993 with powers to investigate and to 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 1, 1996 and March 31, 1997 (the most recent reporting year), the NHRC received 20,514 new complaints of human rights violations. At the end of that period, 4,010 complaints awaited consideration. Of the 16,823 cases considered during the year, 8,048 were dismissed; 2,272 were transmitted to other governmental authorities for disposition; 528 were concluded, and 5,975 were pending. In the preceding 12-month period (April 1, 1995-March 31, 1996), the Commission received 10,195 complaints. The increased number of complaints made to the Commission in its most recent reporting year is thought to be the result of its increased visibility. That trend continued, and the Commission estimated that it would receive more than 70,000 complaints during its 1997-98 reporting year.

On April 16, Human Rights Watch released a report based on the findings of an investigative team that it sent to the Singrauli region of central India to look into allegations that persons protesting the National Thermal Power Corporation (NTPC) project in Singrauli were harassed by police and NTPC officials. Human Rights Watch concluded that there was merit to these allegations. The NHRC also investigated these allegations and in February reported to Human Rights Watch that it had found them without foundation. In June the NHRC ordered the Chief Secretary of Kerala to furnish a report on the allegation that hundreds of families were about to be displaced to make way for a water supply project in Aluva and Kanayannoor. The NHRC is itself investigating a report that police in Karnataka attacked residents of eight villages in Channarayapatna Taluk, Karnataka on July 20-21. The villagers reportedly were demanding compensation for crops lost to a nearby tunnel project.

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 the central and the state governments. During the year, the NHRC carried out, with the assistance of NGO's, a human rights training program, including stress counseling, for state police. The NHRC also has influenced the legislative process (particularly in advocating abolition of the TADA, by proposing prison reform legislation, and by advocating India's accession to the U.N. Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment or Punishment). State human rights commissions have been established in West Bengal, Himachal Pradesh, Assam, and Madhya Pradesh, Tamil Nadu, Punjab, and Jammu and Kashmir; Manipur and Uttar Pradesh have taken legal steps to set up commissions, but have yet to name members. In addition, special courts to hear human rights cases have been established in Tamil Nadu, Uttar Pradesh, and Andhra Pradesh.

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

The state human rights commission established in Jammu and Kashmir by act of the state legislature on May 30, 1997 has no power to investigate independently alleged human rights violations committed by members of the security forces. Credible human rights activists state that the Jammu and Kashmir commission has not yet demonstrated effective, independent protection of human rights in the state.

A People's Commission set up in August by retired Supreme Court Justice Kuldip Singh to bring to light the fate of more than 2,000 persons who "disappeared" during the period of political unrest in Punjab received little cooperation from state government authorities.

The prison visits program in Jammu and Kashmir by the International Committee of the Red Cross, initiated in October 1995, continued in 1998. ICRC representatives also continued training police and border security force personnel in international humanitarian law. In 1998, the U.N. Special Rapporteurs on Torture and on Extrajudicial Execution renewed their requests to the Government to visit Jammu and Kashmir, but the Government did not permit them 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. According to the National Commission for Scheduled Castes and Scheduled Tribes, caste clashes are frequent in Uttar Pradesh, Bihar, and Tamil Nadu.

#### **Women**

Domestic violence is common. According to a 1996 survey in Uttar Pradesh, 30 percent of married men acknowledge physically abusing their wives. Dowry disputes are also 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 reported that 3,260 dowry deaths occurred during the year. Uttar Pradesh state has the most, with an average of 1,900 deaths per year, followed by Maharashtra, Madhya Pradesh, and Bihar.

Under a 1986 amendment to the Penal Code, the court must presume that 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. According to human rights activists, in practice police do not consistently follow these procedures.

The issue of rape has received greater political and social attention. At Rajasthan University campus, a double gang rape case in January received wide attention, and the media has been critical of the state government's failure to energetically investigate the crimes. Raping women and parading them around a village is a tactic used by militants. The press consistently reports that such violence against women is increasing, although local women's organizations claim that there simply has been increased reporting. Only 10 percent of rape cases make it through the courts, and police typically fail to arrest rapists. The Advocate General of Orissa, Indrajit Roy, was forced to step down in August, nearly 1 year after attempted rape charges were filed against him. The victim had gone to him seeking assistance in a dowry case against her husband. The February 27 rape of a Bangladeshi woman at Calcutta's main

(Howrah) railway station by several railway employees and railway police personnel led to major protests by women's groups throughout the city.

On July 22, Home Minister L.K. Advani told Parliament that there had been 14,341 cases of rape reported in 1997. At year's end, the Union Home Ministry reported that there had been 15,452 cases of rape reported in 1998. In 1995, the last year for which full statistics were available, 11,679 rapes were registered, along with 7,699 abductions, 3,994 dowry deaths, 23,615 cases of molestation, 4,449 cases of sexual harassment, and 23,242 cases of cruelty by husband or relatives. In 1996 a total of 115,723 crimes against women were recorded, a figure that dropped to 112,785 in 1997. Also in 1997, 678 cases of gang rape were recorded. Gang rapes often are committed as punishment for alleged adultery or as a means of coercion or revenge in rural property disputes and feuds.

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.

Prostitution is widespread, with an estimated 2.3 million prostitutes in the country; some 575,000 of them are children. Many indigenous tribal women are forced into sexual exploitation. In Assam's Chars river islands, some women work in prostitution for as little as 10 rupees. In 1998, prostitutes began to demand legal rights, licenses, and rehabilitation provisions, especially in Mumbai and New Delhi. In 1997, Karnataka's government made sexual harassment a criminal offense.

Women's rights organizations and NGO's estimate that more than 7,000 women and children are trafficked into the country annually from neighboring states for the sex trade. Within the country, women from economically depressed areas move into the sex trade in the cities. The number of women being trafficked out of India to other countries is comparatively small. In a study published in 1996, the National Commission for Women reported that organized crime plays a major role in the sex trafficking trade in the country and that women and children who are trafficked frequently are subjected to extortion, beatings, and rape. The law, notably the Immoral Traffic Prevention Act, makes such trafficking illegal. However, enforcement of the law is inadequate. In its 1996-97 annual report, the National Commission for Women stated that "The Immoral Traffic Prevention Act has not made any significant difference either in preventing or in suppressing the crime or rehabilitating the women. The police has failed to crack the mafia working at both the inter-state and international levels." The same report noted that there are 80 NGO's in 10 states around the country that are working for the emancipation and rehabilitation of women and children trafficked into the sex trade.

Higher female mortality at all age levels, including female infanticide and gender selective abortion, accounts for an increase in the ratio of males to females to 107.9 males per 100 females in 1991, from 104.7 males per 100 females in 1981, and from 102.9 males per 100 females at the turn of the century.

Literacy rates for women are significantly lower than for men; one recent study found that 38 percent of women were literate, compared to 66 percent of men.

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 in the case of certain categories of adultery; for a Christian man, adultery alone is sufficient. In May 1997, the Mumbai 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 Government does not provide compulsory, free, and universal primary education, and only approximately 59 percent of children between the ages of 5 and 14 attend school. There is a significant gender gap in school attendance, particularly by secondary school. According to UNICEF, 59 percent of boys and 38 percent of girls were enrolled in secondary school. On taking office in March, the Bharatiya Janata Party-led government pledged to "implement the constitutional provision (article 45) of making primary education free and compulsory," and to do so, stated that it would increase gradually "Government and non-government" spending on education to 6 percent of gross domestic product (GDP). The Government further pledged to present a "national charter for children," to "take measures to eliminate child labor," and to ensure that "no child remains illiterate, hungry, or lacks medical care. Budgetary allocations for this work have not been forthcoming, and little has been done to fulfill this pledge.

There are an estimated 500,000 street children nationwide. Child prostitution occurs in the cities, and there are an estimated 575,00 child prostitutes nationwide. There is also 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 drawn into this traffic annually. According to an International Labor Organization estimate, 15 percent of India's estimated 2 million prostitutes are children. The traffic is largely controlled by organized crime. Corruption at the enforcement level and lack of government resolve to combat the problem tend to perpetuate it. A core group on child prostitution set up by the NHRC and comprised of representatives from the National Commission for Women, the Department of Women and Child Development, NGO's and UNICEF continued to meet throughout the year to devise means of improving enforcement of legal prohibitions.

Runaway children, especially in larger cities, are at high risk for sexually transmitted diseases and HIV. They work 18 to 20 hour days and suffer sexual and mental abuse. Many children also suffer abuse at school, specifically beatings by teachers. In Maharashtra 23 students walked 66 kilometers to the Tribal Development Commission to complain about their poor facilities, including bad food and the absence of school uniforms.

In its most recent annual report, the NHRC detailed its efforts to examine conditions in juvenile homes and to recommend improvements. The Commission also issued directions to all state governments to report within 24 hours of occurrence any instance of death or rape in such institutions. The Commission reported that it had taken this initiative following receipt of reports of the death of a young boy in such a home in Delhi in early 1996.

The Child Marriage Restraint (Amendment) Act of 1929, as amended in 1978, 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 Union Home Ministry reported that just 21 cases were registered under the Child Marriage Restraint (Amendment) Act during the year. On April 29, a large number of child marriages took place in several villages in Rajasthan, prompting an investigation by the National Human Rights Commission. In addition, the NHRC, in consultation with the National Commission for Women and the Department of Women and Child Development, recommended that a new draft "marriage bill" be enacted to strengthen the prohibitions of the 1929 act. The NHRC, in its 1996-1997 report, criticized the then-government for rejecting this suggestion, a response that the Commission concluded amounted, "essentially, to a total disinclination to strengthen or alter the law, in any respect, or indeed to see to its better implementation in any manner."

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, the tests are widely misused for this purpose, and termination of a disproportionate number of pregnancies with female fetuses occurs. In the 10 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. Parts of Tamil Nadu (Dharmapuri, Salem, and Madurai districts) still have high rates of female infanticide. According to statistics compiled by the Dharmapuri office of the Directorate of Health Services, 1,260 female infants were killed in the district in 1997. Police have not investigated these cases. The Tamil Nadu Human Rights Commission has suggested creation of a separate mandatory police investigation into death of every female infant. 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 still is practiced widely.

The Government continued previous governments' efforts initiated in 1994 to pass more laws banning child labor and to enhance the 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 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 Bharatiya Janata Party-led government did not renew the pledge of the previous government to eliminate child labor by 2010. A 1996 Supreme Court decision raised penalties for employers of children in hazardous industries and established a welfare fund for formerly employed children (see Section 6.d.).

### 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 still are 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. In June activists held a workshop in Delhi on changing the city's architecture to ensure equal access to roads and public facilities. Save the

Children facilitated an international conference in Agra in March to discuss integrating disabled children into the educational mainstream.

The National Human Rights Commission continued its efforts to improve conditions in mental hospitals and enhance awareness of the rights of those with mental disabilities during the year. In 1997 it commissioned an assessment of conditions at mental hospitals throughout the country, to be conducted by the National Institute of Mental Health and Neuroscience. 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 "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 the northeast. They are in effect in Arunachal Pradesh, Nagaland, Manipur, and Mizoram, but not in Tripura, where the tribal population has been reduced to 30 percent of the total population due to increased Bengali migration since partition. 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 often are ignored. Indigenous people suffer discrimination and harassment, have been deprived wrongly of their land, and have been subject to torture and to arbitrary arrest. 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. Mob lynchings, arson, and police atrocities against tribal people occur in many states. In Khandwa, Madhya Pradesh, a group of tribal youths have complained of impotency caused by police torture and electric shocks.

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.

The 1991 census, the last conducted, showed that 8.08 percent of citizens belonged to scheduled tribes. According to the Indian Confederation of Indigenous and Tribal People (ICITP), 80 percent of the tribal population lives below the poverty line. The NHRC in May set up a panel to look into the condition of

the country's 20 million denotified tribal people. These are tribal people who, in 1871, were labeled by the British colonial power as belonging to "criminal tribes." The Colonial Act listing these tribes was repealed in 1951, but the stigma remains and many of these tribal people still are actively discriminated against. According to the ICITP, more than 40,000 tribal women, mainly from Orissa and Bihar, have been forced into economic and sexual exploitation; many come from tribes driven off the land by national park schemes. Special courts to hear complaints of atrocities committed against tribal people were to have been set up under the protection of civil rights act of 1976, but this has not been done.

## Religious Minorities

Controversy between Hindus and Muslims continues with regard to three sites where mosques were built centuries ago on sites where temples are believed to have stood previously. The potential for renewed Hindu-Muslim violence remains considerable. In February the Sri Krishna Commission, set up by the Government to inquire into the cause of Hindu-Muslim riots in Mumbai in December 1992 and January 1993, released its report. The riots, which followed the destruction of an historic mosque in Ayodhya in December 1992, left more than 1,000 people, mostly Muslims, dead. Maharashtra's Bharatiya Janata Party-Shiv Sena ruling coalition rejected the report, which laid responsibility for much of the violence on leaders of both of those parties. Several Muslim organizations have requested that the Supreme Court reverse the Maharashtra government's rejection of the report. On June 5, Hindu-Muslim clashes occurred in Hyderabad, Andhra Pradesh, following the distribution of leaflets that "hurt religious sentiment," according to the press. More than 30 persons were injured in the violence.

The Religious Institutions (Prevention of Misuse) Act makes it an offense to use any religious site for political purposes or to use temples for harboring persons accused or convicted of crimes. While specifically designed to deal with Sikh places of worship in the Punjab, the law applies to all religious sites. In western India, Hindu extremists set fire to Muslim shops and forced Muslims to flee their homes in retaliation for the intermarriage of Muslim men and Hindu women, and the alleged forced conversion of Hindu women to Islam.

Fear of political violence drove most Hindus in the Kashmir Valley (Pandits) to seek refuge in camps in Jammu or with relatives in New Delhi or elsewhere. The Pandit community criticizes bleak conditions in the camps and fears that a negotiated solution giving greater autonomy to the Muslim majority might threaten its own survival in Jammu and Kashmir as a culturally and historically distinctive group. Throughout the year, separatist militants in Jammu and Kashmir targeted members of the state's remaining Hindu community with violence (see section 1.a.). In his report on his 1996 visit, the U.N. Special Rapporteur for All Forms of Intolerance and of Discrimination Based on Religion or Belief cited the "traumatic situations" in Jammu and Kashmir and Punjab, as well as intercommunal rioting in Mumbai and incidents of religious extremism. The Special Rapporteur warned that the country's tradition of religious tolerance is susceptible to attack by religious extremists (see Section 2.c.).

There were several attacks by violent Hindu extremists on Christian communities and Christian missionaries during the year. Commenting on the phenomenon, a member of the National Minorities Commission told the press that "in the past year, we've got many more complaints regarding attacks on the Christian community and encroachment on church properties. There is a definite trend." Such attacks occurred in Bihar, Madhya Pradesh, Maharashtra, Punjab and Gujarat. The press reported the following incidents: In December 1997 and January 1998 in Ahwa-Dang, Gujarat, there was a series of attacks on Christian tribal people allegedly carried out by the Vanvasi Kalyan Parishad. On January 6 in Bongaon, Bihar, Vilian Topno, a priest, was attacked and seriously injured. His assailants were never identified. In February in Hansi, Haryana, a 200-year-old Christian cemetery was occupied and a tomb was damaged. On February 15, in Latur, Maharashtra, a Catholic Hospital Association of India camp was attacked, allegedly by members of the Rashtriya Swayamsevak Sangh (RSS), a Hindu extremist organization. On

March 13, in Khanvel, Dadra, and Nagar Haveli, Holi revellers attacked Christian pilgrims. On April 3, in Baroda, Gujarat, a Christian convention held on the polo grounds was attacked. In April in Kurnool, Andhra Pradesh, Gipson's Central Baptist Church was threatened with demolition, allegedly by members of the Vishwa Hindu Parishad (VHP), a Hindu religious organization affiliated with the RSS. On April 11, in Palanpur, Gujarat, worshipers at a prayer meeting were attacked. On April 16, in Naroda, Gujarat, a 200-member mob allegedly led by activists of the Bajrang Dal, a Hindu extremist organization, demolished a chapel. On May 5 in Koshippilly, Kerala, the Little Flower Church was vandalized and a crucifix desecrated.

Christian groups in India reported a number of other incidents later in the year. For example, on September 23, four Catholic nuns in Jabhua, Madhya Pradesh, were victims of a gang rape. Also on September 23, a Catholic priest was attacked by a crowd led by a local politician belonging to the Bharatiya Janata Party in Jhamli, Madhya Pradesh. On September 26, members of three extremist Hindu organizations broke into the Union Church in Amaun, Uttar Pradesh, and placed a statute of the Hindu god Shiva in the church. On September 30, the Secretary General of the Vishwa Hindu Parishad warned Christian missionaries to leave India. On October 16, a gathering in a prayer hall in Kumbale village, Nasik, Maharashtra was attacked by armed assailants and the prayer hall was demolished. On October 30, delegates attending the National Christian Conference in Baroda, Gujarat were attacked and beaten with belts, chains, and sticks. On November 4, a group of unidentified assailants attempted to set fire to a church in Borigautha village, Dans district, Gujarat. On November 5, a church was burned down in Gadhavi village, Gujarat. On November 9 in Kheda Khummar village, Haryana, assailants broke into a Catholic covenant and threatened 2 nuns. On November 12, a church was burned down in Kamath village, Gujarat. On November 14, a church was burned down in Lahanchariya village, Gujarat. On November 22 in Kulai, Karnatka, a Christian prayer service was at St. Thomas Evangelical Church of India was attacked by approximately 40 armed persons; the pastor and several worshipers were beaten. The Union government reacted with statements criticizing the violence against Christians, but efforts to prevent such incidents from occurring and to prosecute those responsible at the state and local levels were inadequate. In some instances, local police and government officials abetted the violence. Other violence included attacks on convents in Baghpat and West Bengal; the demolition of a chapel in Malad; Bible burning in Rajkot; disruption of Christian prayer meetings in Baroda and Rajkot; the burning of a church in Nasik, Maharashtra; and the exhumation of a Christian grave in Kapdwanj. Priests and nuns also have been killed in Bihar.

At year's end, a wave of apparently organized attacks against Christians began. On December 25, 12 armed members of the Hindu extremist Bajrang Dal organization accosted 1,000 persons attending a dance at the St. Francis school in Borivili, Bombay; several of the assailants were detained by police and later released. Also on December 25, three members of the Christian community in Ahwa, Dangs district, Gujarat, were attacked and seriously injured by members of the Hindu Dharmajagaran Manch organization. On December 25, assailants set fire to several vehicles in the parking lot of the Seventh Day Adventist church in Subir village, Gujarat, while worshippers were inside. During Christmas week in Ahmedabad, Gujarat, members of the Shiv Sena political party attempted to disrupt local Christian observance of Christmas by decorating Christian neighborhoods with Hindu symbols and directing shop owners in commercial districts to remove Christmas decorations. On December 26, approximately 30 members of the Hindu extremist Bajrang Dal organization attacked the Navjyot school in Subir village, Gujarat, setting fire to a jeep and a motorcycle on the premises and assaulting the school principal.

On December 4, Christians staged a nationwide protest against the recent wave of attacks. In New Delhi, six thousand protestors marched on Parliament and demanded that the Government intervene with Hindu groups that are allegedly behind the attacks. In Gujarat, the state government threatened to cease giving aid to educational institutions that closed to observe the protest; there were no reports that the state government carried out this threat.

Hindu Dalits lose their minority status upon conversion to Christianity, but not upon conversion to Buddhism or Sikhism.

In July the government of Maharashtra initiated a program of rounding up and deporting to Bangladesh suspected Bangladeshi illegal immigrants. According to press reports, on July 1 police in Mumbai began a systematic campaign to remove suspected illegal Bangladeshis. Reports indicated that Bengali-speaking Muslims were rounded up for deportation; and that when some suspected illegals provided documentation of Indian citizenship, police declared them forgeries and tore up the documents. Manish Gupta, Chief Secretary of the government of West Bengal, admitted that at least 50 Indian citizens had been deported to Bangladesh in the last year (see Section 2.d.). A case currently is pending in the Bombay High Court which claims that these actions were taken in contravention of the law.

#### 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" castes and tribes 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 Scheduled Tribes (Prevention of Atrocities) Act of 1989 specifies new offenses against disadvantaged people and provides stiffer penalties for offenders. However, this act has had only a modest effect in curbing abuse. The Union Home Ministry reported that 14,109 crimes against scheduled castes and 2,413 crimes against scheduled tribes were recorded during 1998. This represents a significant decrease from the 20,312 crimes against scheduled castes and 3,193 crimes against scheduled tribes recorded in 1997.

The practice of untouchability was outlawed in theory by the Constitution and the 1955 Civil Rights Act, but it remains an important aspect of life. Intercaste violence claims hundreds of lives each year; it was particularly pronounced in Uttar Pradesh, Bihar, and Tamil Nadu states.

In Bihar violence spilled over in the early part of the year from the December 1, 1997 massacre of 63 Dalits (formerly "untouchables") in Lakshmanpur Bathe village by the Ranvir Sena, a militia controlled by high-caste landlords. There were reports that five teenage girls were raped and mutilated before being killed in the attack. On January 9, members of a violent left-wing organization, the Communist Party of India-Marxist-Leninist (Liberation), killed nine persons belonging to the upper-caste Bhumihar and Brahmin community of Rampur-Chauram village, Jahanabad district, in apparent retaliation for the Lakshmanpur Bathe killings. More than 60 people died in caste-related violence in the state during the first 9 months of 1998. On February 26 in Gundupatti, Tamil Nadu, police and other armed persons attacked Dalits and bonded laborers in two villages in Kukool Panchayat. Homes were looted and destroyed in the incident, which was apparently carried out in retaliation for the villagers' boycott of national elections. In Andhra Pradesh, the NHRC launched an investigation into the killing of at least eight Dalit villagers in Vempenta village, Kurnool district on July 16. In a complaint filed with the NHRC, Human Rights Watch alleged that the murders were carried out by high-caste landlords of a neighboring village in the belief that the Vempenta villagers were sympathetic to the People's War Group, a radical Marxist-Leninist organization. In February the National Commission for Scheduled Castes and Scheduled Tribes warned that increasing caste violence could force Dalits into militancy. "Whenever Dalits have tried to organize themselves or assert their rights, there has been a backlash from the feudal lords resulting in mass killings of Dalits, gang rapes, looting and arson," the Commission wrote.

## Section 6 Worker Rights

### a. The Right of Association

The Constitution provides for the right of association. Workers may establish and join unions of their own choosing without prior authorization. There are five major recognized national trade union centrals, each of which is associated with, but not necessarily controlled by, a political party. Some 15 to 20 percent of the approximately 28 million persons employed in the so-called "organized sector," that is, "all public sector and non-agricultural establishments employing more than 10 people," according to government definition, belong to unions. The vast majority of the country's approximately 397.2 million workers are employed in the "informal," i.e., not the "organized," sector.

Trade unions often exercise the right to strike, but public sector unions are required to give at least 16 days' notice prior to striking. Some states have laws requiring workers in certain nonpublic sector industries to give prior strike notice.

The Essential Services Maintenance Act allows the Government to ban strikes and requires conciliation or arbitration in specified essential industries. Legal mechanisms exist for challenging the assertion that a given dispute falls within the scope of this act. The Industrial Disputes Act prohibits retribution by employers against employees involved in legal strike actions. This prohibition is observed in practice.

When abuses, such as intimidation or suppression of legitimate trade union activities, are perpetrated against nationally organized or other large-scale unions or unionized workers, civil authorities generally respond by prosecuting and punishing those responsible. Unaffiliated unions of low caste or tribal workers are not able, in all instances, to secure for themselves the protections and rights provided by law. However, six men were convicted in June on charges related to the 1991 killing of tribal union leader Shankar Guha Niyogi. The gunman was sentenced to death, while industrialist Chandrakant Shah and four others received life sentences. On appeal, the Madhya Pradesh High Court released four of the six, including Shah. The Government is now considering whether to appeal the High Court judgment to the Supreme Court.

Unions are free to affiliate with international trade union organizations. The Indian National Trade Union Congress and the Hind Mazdoor Sabha are affiliated with the International Confederation of Free Trade Unions, while the All India Trade Union Congress is affiliated with the World Federation of Trade Unions.

### b. The Right to Organize and Bargain Collectively

The right to bargain collectively has existed for decades. The Trade Union Act prohibits discrimination against union members and organizers, and employers may be penalized if they discriminate against employees engaged in union activities.

Collective bargaining is the normal means of setting wages and settling disputes in unionized plants in the organized industrial sector. Trade unions vigorously defend worker interests in this process. Although a system of specialized labor courts adjudicates labor disputes, there are long delays and a backlog of unresolved cases. When the parties are unable to agree on equitable wages, the Government may set up boards of union, management, and government representatives to determine them.

In practice legal protections of worker rights are effective only for the 28 million workers in the organized industrial sector, out of a total work force of more than 397.2 million. Outside the modern

industrial sector, laws are difficult to enforce. Union membership is rare in the informal sector and collective bargaining does not exist.

There are seven export processing zones (EPZ's). Entry into the EPZ's ordinarily is limited to the employees. Such entry restrictions apply to union organizers. While workers in the EPZ's have the right to organize and to bargain collectively, union activity is rare. In addition unions, content with their role in public sector enterprises, have not pursued vigorously efforts to organize private-sector employees anywhere in the years since EPZ's were established. Women constitute the bulk of the work force in the EPZ's.

### c. Prohibition of Forced or Compulsory Labor

Forced or compulsory labor is prohibited by both the Constitution and specific statute. Bonded labor, as a form of compulsory labor, also is prohibited by statute. The Bonded Labor System (Abolition) Act of 1976 prohibits all bonded labor, by adults and children. Offenders may be sentenced to up to 3 years in prison, but prosecutions are rare. Enforcement of this statute, which is the responsibility of state governments, varies from state to state and has not been effective due to lack of adequate resources available to the government machinery and, to some extent, to societal acceptance. Estimates for the number of bonded laborers range as high as 5 million; an unknown number of these bonded laborers are children.

A Supreme Court decision defined forced labor as work at less than the minimum wage, which is usually set by the state governments. Under this definition, which differs from that of the International Labor Organization (ILO), forced labor is widespread, especially in rural areas.

Bonded labor, the result of a private contractual relationship whereby a worker incurs or inherits debts to a contractor and then must work off the debt plus interest, is illegal but widespread. The Government estimates that between enactment of the Bonded Labor (Regulation and Abolition) Act in 1979 and March 31, 1993, 251,424 bonded workers were released from their obligations. Other sources maintain that those released constituted only one-twentieth of the total number of bonded laborers. State governments are responsible for enforcing the act. In February 1997 the Supreme Court required state governments to file detailed affidavits on the status of bonded labor. Some press reports indicate that Tamil Nadu alone has an estimated 25,800 bonded laborers, in response to which the state government working on rehabilitation plans. It has allocated \$1.25 million for these plans.

The situation of some domestics and some children in the workplace amounts to bonded labor. Children sent from their homes to work because their parents cannot afford to feed them, or in order to pay off a debt incurred by a parent or relative, have little choice in the matter. There are no universally accepted figures for the number of bonded child laborers. However, in the carpet industry alone, human rights organizations estimate that there may be as many as 300,000 children working, many of them under conditions that amount to bonded labor. A press report in June stated that parents in Orissa allegedly are selling their children to "contractors" for \$20 to \$38. The children reportedly have been sent to work as servants in the states of Gujarat and Kerala. Officials claim that they cannot stop this traffic because the children are going with their parents' consent.

Female bondage, forced prostitution, and the trafficking of children for prostitution are a problem (see Section 5.). There were press reports that prison officials used prisoners as domestic servants, and that they sold female prisoners to brothels (see Section 1.c.). In Punjab, persons are sold in an organized trade in weekend bazaars for the purposes of forced domestic labor and forced sexual service. In April, one person was arrested in connection with this human trade. He was released later on bail.

#### d. Status of Child Labor Practices and Minimum Age for Employment

Article 24 of the Constitution and the Child Labor (Prohibition and Regulation) Act of 1986 are the principal protections from exploitation of children in the workplace. Provisions for the protection of children in the workplace also are made in the Beedi and Cigar Workers (Condition of Employment) Act of 1966, the Factories Act of 1948, the Mines Act of 1952, the Motor Transport Workers Act of 1961, the Plantations Labor Act of 1951, and the Minimum Wages Act of 1948. The Government prohibits forced and bonded labor by children, but does not enforce this prohibition effectively (see Section 6.c.).

The enforcement of child labor laws is the responsibility of the state governments. Enforcement is inadequate, especially in the informal sector where most children who work are employed. The continuing prevalence of child labor may be attributed to social acceptance of the practice and to the failure of the state and federal governments to make primary school education compulsory.

Work by children under 14 is completely barred in "hazardous" industries," which include passenger, goods, and mail transport by railway; carpet weaving; cinder picking, cleaning of ashpits; cement manufacturing; building and construction; cloth printing; dyeing and weaving; manufacturing of matches, explosives, fireworks; catering within railway premises or port limits; beedi (cigarette) making; mica cutting and splitting; abattoirs; wool cleaning; printing; cashew and cashew nut descaling and processing; and soldering processes in electronics industries. In July the Government announced its intention to increase the number of industries and occupations where child labor is prohibited from 18 to 54, and it completed such action by year's end.

Industries that utilize child labor include hand-knotted carpets, gemstone polishing, brass and base metal articles, glass and glassware, footwear, textiles, silk, and fireworks.

In occupations and processes in which child labor is permitted, work by children is permissible only for 6 hours between 8 a.m. and 7 p.m. with 1 day's weekly rest.

Primary school education is not compulsory, free, and universal.

Of a primary school-age population (between the ages of 5 and 14) of approximately 203 million, about 120 million children attend school. No significant sectors or groups actively are excluded, but the economic reality is that children of more well to do families are more likely to attend school than those of poor families. According to a United Nations Development Program study conducted in 1993, the dropout rate from primary school was 34 percent.

Estimates of the number of child laborers range widely. The government census of 1991 puts the number of child workers at 11.3 million. The ILO estimates the number at 44 million, while NGO's state that the figure is 55 million. Interpolation of census figures by the National Labor Institute indicates that of a total of 203 million children between the ages of 5 and 14, 116 million are in school, 12.6 million are in full-time employment, and the status of 74 million is unknown. Most, if not all, of the 87 million children not in school do housework, work on family farms, work alongside their parents as paid agricultural labor, work as domestic servants, or are otherwise employed.

The Bharatiya Janata Party-led coalition Government has continued its predecessors' comprehensive plan to eliminate child labor from hazardous industries and eventually from all industries, but it has not repeated the previous government's pledge to accomplish the first by 2000, and the second by 2010. This program, for which approximately \$260 million has been budgeted, includes enhanced enforcement of child labor laws, income supplements for families, subsidized school lunches in areas where child labor

is concentrated, and a public awareness campaign. Recognizing a need to ensure that primary education is made universal and compulsory by state governments, the Government has committed itself to fulfilling the constitutional directive (article 45) to provide free, universal, and compulsory primary education. It also has pledged to increase "Government and non-government" spending on education to 6 percent of GDP. At present, about 59 percent of school-age children go to school.

The actual percentage of the union budget spent on education is approximately 5.9 percent. The state governments also spend on education, but no comprehensive figure of combined federal-state expenditure is available. A 1993 study commissioned by the UNDP estimated that India as a whole (states and federal government) devoted about 3.7 percent of gross national product (GNP) to education. The NHRC, continuing its own child labor agenda, organized NGO programs to provide special schooling, rehabilitation, and family income supplements for children in the glass industry in Firozabad. The NHRC also intervened in individual cases. A December 1996 Supreme Court decision imposed a penalty of about \$570 (20,000 rupees) on an employer who violated constitutional and statutory prohibitions on the use of child labor in hazardous industries and ordered the creation of a child labor rehabilitation fund out of which parents and guardians would receive an income supplement payment on condition that the children removed from employment attend school. A survey of child labor throughout the country ordered by the Supreme Court in this judgment was completed during 1997 and documented the existence of some 150,000 wage-earning child laborers. However, this number understates the true dimension of the problem. The Government undertook a survey of children working in hazardous industries throughout the country, but by year's end the results had not been released.

According to Government estimates, inspectors in Uttar Pradesh conducted about 50,000 inspections between 1993 and the end of 1997, releasing about 8,000 children from illegal workplaces and bringing charges against approximately 4,000 employers. Since promulgation of the 1987 National Child Labor Policy, the Government has established 77 "rehabilitation" centers for the education and care of children removed from illegal workplaces throughout the country. Some 200,000 to 250,000 children have received care and schooling at these facilities, during which time their families have received a small stipend--usually \$2.35 to \$4.70 (Rs. 100 to Rs.200) monthly, at an estimated cost to the Government of approximately \$17.68 million (Rs.750 million) per year. In the hand-knotted carpet producing area of Uttar Pradesh, the NHRC and NGO's have worked with the state government to establish a Task Force for the Elimination of Child Labor. Employers in some industries also have taken steps to combat child labor. The Carpet Export Promotion Council (CEPC), a quasi-governmental organization which receives funding from the Ministry of Textiles, has a membership of 2,500 exporters who have subscribed to a code of conduct barring them from purchasing hand-knotted carpets known to have been produced with child labor. The CEPC conducts inspections to insure compliance, and allows members to use a government-originated label to signify adherence to the code of conduct. The Government also cooperates with UNICEF, UNESCO, the UNDP, and the ILO to eliminate child labor. Since 1992, it has participated in the ILO's International Program on the Elimination of Child Labor (IPEC). Through February, approximately 90,000 children were removed from work and received education and stipends through IPEC programs. NGO's also have helped to free children from the work force. The South Asia Coalition on Child Servitude (SACCS) has freed over 34,000 children from the work force, and operates an education and training center for children in New Delhi. Since November 1997, the SACCS and the NHRC have freed 200 children and brought charges against several employers in eastern Uttar Pradesh.

On March 5, approximately 50 child marchers and adult organizers marched into India from Nepal to begin a 5-week long trek through India to publicize the plight of child laborers. They marched into Pakistan on April 13.

#### e. Acceptable Conditions of Work

The directive principles of the Constitution declare that "the State shall endeavor to secure...to all workers...a living wage, conditions of work ensuring a decent standard of life and full enjoyment of leisure and social and cultural opportunities." Laws set minimum wages, hours of work, and safety and health standards. Laws governing minimum wages and hours of work generally are observed in industries subject to the Factories Act but are largely unenforced elsewhere and do not ensure acceptable conditions of work for the ninety percent of the work force not subject to the Factories Act.

Minimum wages vary according to the state and to the sector of industry. Such wages provide only a minimal standard of living for a worker, and are inadequate to provide a decent standard of living for a worker and family. Most workers employed in units subject to the Factories Act receive much more than minimum wage, including mandated bonuses and other benefits. The state governments set a separate minimum wage for agricultural workers but do not enforce it well.

The Factories Act establishes an 8-hour workday, a 48-hour workweek, and various standards for working conditions. These standards generally are enforced and accepted in the modern industrial sector, but tend not to be observed in older and less economically robust industries. State governments are responsible for enforcement of the Factories Act. However, the large number of industries covered by a small cadre of factory inspectors and their limited training and susceptibility to bribery result in lax enforcement.

Enforcement of safety and health standards also is lax. Although occupational safety and health measures vary widely, in general neither state nor central Government resources for inspection and enforcement of standards are adequate. Safety conditions tend to be better in the EPZ's. The law does not provide workers with the right to remove themselves from work situations that endanger health and safety without jeopardizing their continued employment. The courts, however, have begun to take work-related illnesses more seriously.

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