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## India

### Country Reports on Human Rights Practices - [2005](#)

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India is a longstanding multiparty, federal, parliamentary democracy with a bicameral parliament and a population of approximately 1.1 billion. Manmohan Singh was named prime minister following his Congress party-led coalition's victory in the April-May 2004 general elections in which 675 million citizens participated. The 2004 general elections, the various 2004 state assembly elections, as well as the February state elections in Arunachal Pradesh Jharkhand, Bihar and repoll in October/November, and Haryana, were considered free and fair, despite scattered episodes of violence. While the civilian authorities generally maintained effective control of the security forces there were frequent instances in which elements of the security forces acted independently.

The government generally respected the rights of its citizens; however, numerous serious problems remained. Government officials used special antiterrorism legislation to justify the excessive use of force while combating active insurgencies in Jammu and Kashmir and several northeastern states. Security force officials who committed human rights abuses generally enjoyed de facto impunity, although there were reports of investigations into individual abuse cases as well as punishment of some perpetrators by the court system. Corruption was endemic in the government and police forces, and the government made little attempt to combat the problem, except for a few instances highlighted by the media. The lack of firm accountability permeated the government and security forces, creating an atmosphere in which human rights violations often went unpunished. Although the country has numerous laws protecting human rights, enforcement was lax and convictions were rare. Social acceptance of caste-based discrimination remained omnipresent, and for many, validated human rights violations against persons belonging to lower castes. The additional following human rights problems were reported:

- extrajudicial killings and killings of persons in custody
- torture and rape by police and security forces
- poor prison conditions, lengthy pretrial detention without charge, and prolonged detention while undergoing trial
- occasional limits on press freedom and freedom of movement
- harassment and arrest of human rights monitors
- corruption at all levels of government
- legal and societal discrimination against women
- forced prostitution, child prostitution, and female infanticide and feticide
- trafficking in women and children
- discrimination against persons with disabilities
- discrimination and violence against indigenous people and scheduled castes and tribes
- violence based on caste or religion
- exploitation of indentured, bonded, and child labor.

Separatist guerrillas and terrorists in Kashmir and the northeast committed numerous serious abuses, including killing armed forces personnel, police, government officials, and civilians. Insurgents also engaged in widespread torture, rape, and other forms of violence, including beheadings, kidnapping, and extortion.

### RESPECT FOR HUMAN RIGHTS

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

##### a. Arbitrary or Unlawful Deprivation of Life

Government forces continued arbitrary and unlawful deprivation of life of those in custody. Police and prison officers also committed extrajudicial killings of suspected insurgents and suspected criminals by the use of staged encounter killings. Terrorist and militant groups killed members of rival factions, government security forces, government officials, and civilians in Jammu and Kashmir, several northeastern states, and in the Naxalite belt in the eastern part of the country (see section 1.g.).

The Home Ministry reported that security forces killed 927 insurgents and terrorists during the year. The ministry also reported that insurgent and terrorist attacks in Jammu and Kashmir declined in 2004 with 733 civilians (including 92 women, 32 children, and 62 political workers), 330 security force members, and 976 insurgents killed. Security forces often used staged encounter killings to cover up the murders of captured non-Kashmiri insurgents and terrorists from Pakistan or other countries, often after torturing them. Human rights groups accused security forces of targeting suspected terrorists, militants and their suspected supporters. There were no widely accepted data on the

magnitude of extrajudicial killings in Jammu and Kashmir, with estimates or reports depending on the political orientation of the source. In 2003 the Jammu and Kashmir state human rights commission received 15 complaints relating to custodial deaths and 27 complaints relating to disappearances. Human rights organizations sought to clarify these cases by submitting numerous requests to Jammu and Kashmir authorities, but they received inadequate and unsatisfactory responses.

According to human rights activists, press reports, and anecdotal accounts, the bodies of persons suspected of terrorism and detained by security forces in Jammu and Kashmir often had bullet wounds and/or marks of torture. The South Asian Human Rights Documentation Center (SAHRDC) reported that the number of such custodial deaths decreased slightly during the year, most likely due to the overall decline in infiltrations, as well as a new emphasis by the government on reducing human rights violations. Custodial deaths however, remained a serious problem.

On October 4, the Laopora Police lodged a First Information Report against 10 army officers accused of the February 2004 killing of 5 civilian porters used as human shields by security forces in Kashmir. The case remained open at year's end. In November residents of Pattan, a village 17 miles from Srinagar alleged that militants killed 2 village men after the army used them as human shields in an operation. After protests erupted, the authorities promised to investigate and the investigation remained open at year's end.

In July security forces killed three teenaged boys they mistook for terrorists in the Kupwara area of Kashmir. Security forces maintained that the boys were outside at night during a curfew and ran away when challenged by the officers. The killing sparked widespread protests in the area, and the state government ordered an inquiry, which was not completed by year's end. On July 26, the army offered compensation and an apology to the boys' families.

At year's end no action was taken on the Manorama Devi rape/custodial death case from July 2004. The Upendra Commission, formed in November 2004 to investigate the Devi case, submitted its report to the state government. The inquiry was concluded without the DNA fingerprints and blood samples of the Assam Rifles personnel on duty the night of the incident, and the contents of the report were not made public. On June 23, the state high court directed the Manipur government to send the report to the Union Home Ministry for the Center's action and to make the report public. On August 31, the Manipur government appealed the New Delhi High Court's decision. The appeal was pending at year's end.

Authorities often delayed prosecutions in custodial death cases. In November the National Crime Records Bureau reported two cases of custodial rape in 2004 and noted that authorities completed two trials in 2003 and 2004 with no convictions.

In an attempt to expedite prosecutions, in May authorities updated a law requiring a coroner to conduct a medical examination within 24 hours of a death in custody.

The Asian Center for Human Rights (ACHR) reported the Jammu and Kashmir government ordered 54 inquiries into alleged extra-judicial killings and other human rights violations in 2004 and completed only one. The Home Ministry reported in December that custodial deaths decreased from 183 in 2002-03 to 136 for the 2004 calendar year. In April 2004 Chief of Army Staff General N.C. Vij reported that of 1,340 allegations of human rights abuses reportedly committed from 1990 to 2000 in Jammu and Kashmir, evidence substantiated 33, and 71 personnel had been punished. In May 2004 the National Human Rights Commission (NHRC) reported that during the past 14 years of insurgency in Jammu and Kashmir, the army had punished 131 of its personnel for human rights violations, sentencing 2 persons to life sentences and 33 others to jail terms of 11 to 12 years; the army dismissed 11 personnel and ordered various other punishments for the remainder. The Ministry of Defense stated that since its establishment in 1993, the army human rights office received 342 reports of human rights violations by armed forces in the northeast. The office investigated 318 cases and determined that 290 allegations were baseless. The army acted on the remaining 28 cases, punishing 63 army personnel with penalties ranging from life imprisonment to dismissal and censure. Human rights activists commented that the actual number of abuses was much higher than those reported by the military.

In August the Central Bureau of Investigation recommended the prosecution of four army officers for the killing of five civilians in a staged encounter killing in 2000. The Central Administrative Tribunal ruled the related 2003 suspension of Senior Superintendent of Police Khan was illegal and reinstated him.

In January soldiers engaged in an altercation with passengers on a train near Shikohabad railway station in Uttar Pradesh and pushed five passengers off the moving train, killing them. The Railway Police arrested the soldiers and ordered an investigation which remained open at year's end.

According to press reports, members of the security forces rarely were held accountable for staged encounter killings. In February security forces killed Zahoor Ahmed Bhat, a car mechanic, in Magam, Kashmir, while he was returning home from a holiday. On May 6, the army ordered an inquiry into the deaths of two women and a child killed in an encounter between the Assam Rifles and Kuki insurgents in Manipur the day before. The inquiry continued at year's end.

Although the authorities generally did not report encounter deaths that occurred in Jammu and Kashmir to the NHRC, the Association of Parents of Disappeared Persons (APDP) claimed that as of June 2004, there had been 54 custodial deaths since the current Jammu and Kashmir state government assumed office in 2002.

The NHRC reported 136 deaths in police custody and 1,357 deaths in judicial custody countrywide from the beginning of 2004 until March. The NHRC recommended approximately \$10 thousand (Rs. 400 thousand) as compensation in 5 cases of death in police custody, and \$5,681 (Rs. 250 thousand) in the three cases of deaths while in judicial custody.

During the year the killing of civilians continued in the course of counterinsurgency operations in Jammu and Kashmir. Human rights activists

stated that accurate numbers were not available due to limited access to the region, but ACHR alleged that 733 civilians were killed in 2004.

The Armed Forces Special Powers Act (AFSPA) and the Disturbed Areas Act remained in effect in Jammu and Kashmir, Nagaland, Manipur, Assam, and parts of Tripura, where active and violent secessionist movements existed. The Disturbed Areas Act gives police extraordinary powers of arrest and detention, and the AFSPA provides search and arrest powers without warrants (see section 1.d.). Human rights groups alleged that security forces operated with virtual impunity in areas under the act.

Accountability by the Jammu and Kashmir government remained a serious problem. Human rights groups estimated that 30 to 35 thousand persons died during the two decades of conflict in Jammu and Kashmir, but there were no reliable estimates of the number of deaths resulting directly from abuses. The Jammu and Kashmir governor, Lt. General S.K. Sinha, reported 39 thousand deaths during the conflict.

Security forces committed thousands of serious human rights violations over the course of the insurgency, including extrajudicial killings, disappearances, and torture (see section 1.g.).

Human rights groups noted that police officials often refused to turn over bodies of dead suspects in cases of suspected staged encounters. The bodies of dead suspects were often cremated before their families could view them. Despite a 2002 Supreme Court order requiring the central government and local authorities to conduct regular checks on police stations to ascertain the incidence of custodial violence, most police stations failed to comply.

There were reports of deaths in custody resulting from alleged torture and other abuses. For example, in June in West Bengal, a human rights nongovernmental organization (NGO) reported that Sunil Roy was detained for allegedly being a pickpocket and was later found dead in the police station. While police claimed he had hanged himself with his belt, the NGO claimed that, per regulations, belts were required to be removed prior to incarceration, and that Roy had other injury marks on his body.

During the year deaths in custody were common, especially for alleged insurgents. From 2002-03, the Home Ministry reported that custodial deaths increased from 1,340 in 2002 to 1,462 by the end of 2003. According to the NHRC, state governments had not investigated at least 3,575 previous deaths in custody cases.

In January the Mumbai high court sentenced 11 policemen to life imprisonment for the custodial death of Dilip Ghosale, who was beaten and killed while in police custody in 1987. In February Punjab authorities filed a case against three policemen for the custodial death of a *dalit*, a person belonging to a low caste, named Satpal. The death sparked widespread protests in the area. Also in February, the army killed two civilians in Shopian, Kashmir. The security forces claimed they were militants and buried them without a proper investigation. The district magistrate ordered the exhumation of the bodies and an inquiry, but at year's end no action was taken.

In February police killed Faisal Siddiqui in Delhi in an alleged encounter. At year's end police had not filed any charges. In March violence erupted between police and residents of east Delhi following the death of Parmeshwar Dayal, a businessman in police custody. Police claimed Dayal was kidnapped by unknown persons, later rescued by the police, and then committed suicide.

In March the Maharashtra central investigation division arrested four Mumbai police officers and charged them with the August 2004 custodial killing of Khwaja Yunus. At year's end, the four remained in police custody awaiting trial. According to media reports, Mumbai police transferred officers linked to encounter killings from the crime branch, decreasing staged encounter killings in Maharashtra state from 94 reported in 2001 to 11 in 2004.

In May Mumbai police arrested two Railway Police Protection Force (RPF) constables for the killing of railway porter Vijay Singh. After the discovery of Singh's body on the terrace of the Mumbai Central Railway Police Station, police stated there was no record of his arrest, but eye-witnesses reported seeing the two constables taking him into custody. At year's end, both constables were suspended and charges were pending.

In June Assam Rifles soldiers shot and killed Kesarjit Singh, the nephew of a minister in Manipur, after picking him up from his residence. His bullet-ridden body was found in the outskirts of Nongada village. No charge had been filed in the case.

Human rights activists reiterated during the year that there was uneven compliance with a 1993 NHRC directive requiring district magistrates to report to the commission all deaths in police and judicial custody. The NHRC had emphasized that it regarded failure to report as tantamount to a cover-up. The NHRC had not released information detailing which states had attempted to comply with the directive, but the NHRC reported that no state fully complied with this order at year's end.

Despite the purported integration of former Special Operations Group (SOG) personnel into regular police units in Jammu and Kashmir in 2003, former SOG personnel continued to operate in cohesive anti-insurgency units, and regular reports of human rights violations by its members persisted. For example, in August 2004, a unit consisting of former SOG personnel, in coordination with the Border Security Force, raided the house of Manzoor-ul Islam, a suspected insurgent, and allegedly took him into custody. The unit reportedly killed him in an encounter the following day. No action was taken in this case and none was expected. ACHR alleged that SOG forces continued to be responsible for arbitrary killings.

Countermilitants were former separatist guerillas who surrendered but who were permitted by the Jammu and Kashmir government to retain their weapons and paramilitary structure and were inducted into police auxiliary units. Government agencies funded, exchanged intelligence with, and directed the operations of countermilitants as part of the counterinsurgency effort. During the year killings and abductions of suspected and other persons by progovernment countermilitants continued to be a significant problem in Jammu and Kashmir, although the number of such instances has declined substantially since the 1990s.

Countermilitants occasionally searched persons at roadblocks (see section 2.d.) and were present in some rural areas of the Kashmir Valley. The Jammu and Kashmir government, through its sponsoring and condoning of extrajudicial countermilitant activities, was responsible for killings, abductions, and other abuses committed by these groups. According to a human rights activist in Jammu and Kashmir, there were approximately 200 countermilitants operating in the region during the year.

Violence, often resulting in deaths, was a pervasive element in Jammu and Kashmir politics (see section 3). Separatist guerrillas and terrorists attempted to kill numerous senior politicians, making several attempts against Chief Minister Mufti Mohammed Sayeed, People's Democratic Party leader Mehbooba Sayeed, National Conference President Omar Abdullah and his father, former chief minister Farooq Abdullah, as well as many ministers and dozens of other activists in an array of political parties.

At year's end, militants and terrorists killed numerous politicians and political workers. ACHR reported that 62 political activists were killed in 2004. For example on October 18, insurgents killed the Jammu and Kashmir Education Minister Ghulam Nabi Lone and wounded secretary of the Communist Party of India-Marxist (CPI-M) Mohammed Yusuf Tarigami in Srinagar. Also in Srinagar on May 3, insurgents killed Muhammad Ramzan Mian, the chairman of the Pattan Municipal Committee in north Kashmir, and three policemen while Mian was shopping in the town market.

Countrywide, there were allegations that military and paramilitary forces engaged in abduction, torture, rape, arbitrary detention, and the extrajudicial killing of militants and noncombatant civilians, particularly in areas of insurgency (see sections 1.b., 1.c., 1.d., and 1.g.). According to human rights activists and journalists, during the year a few Naxalites (Maoist guerrillas) in eastern and central parts of the country (including Madhya Pradesh, Andhra Pradesh, West Bengal, Bihar, Chhattisgarh, Jharkhand, parts of Uttar Pradesh, and Maharashtra) who surrendered were allowed to retain their weapons and worked for the police as "anti-People's War Group (PWG) officers." Human rights groups alleged that police used former Naxalites to kill current Naxalites and human rights activists with Maoist links. Police denied the charges, attributing such killings to internal feuds within the PWG. Several hundred PWG militants surrendered during the year.

During the year, there were numerous instances of abuse by insurgent and terrorist groups in both Jammu and Kashmir and the northeastern states (see section 1.g.).

#### b. Disappearance

Although government complicity was not always confirmed, scores of persons disappeared in strife and insurgency-torn areas during the year.

The latest figures available from the Jammu and Kashmir government from 2003 stated that 3,931 persons had disappeared in the state since the insurgency began in 1990, compared with an APDP estimate which put the number at approximately 8 to 10 thousand. In September ACHR reported that more than six thousand cases of disappearances remain unresolved in the state. In May 2004 the government reported that many of those listed as missing by the APDP in 2003 had joined insurgent groups, had been killed, were in custody, or were in Pakistan.

On May 2, in response to a petition filed by the father of Mohammad Hussain Ashraf, a boy with mental disabilities arrested by an army patrol in Jammu and Kashmir in 2003, the high court issued a non-bailable warrant for the arrest of Pantha Chowk station house officer Ghulam Ahmed Bhat for failing to register a case against troops involved in the disappearance of Ashraf and for disregarding a court order.

In March nine years after the death of human rights lawyer Jalil Andrabi, the Jammu and Kashmir government officially closed the case without any arrests.

Human rights groups maintained that in Jammu and Kashmir and in the northeastern states, numerous persons continued to be held by military and paramilitary forces. Human rights activists feared that many of these unacknowledged prisoners were subjected to torture and some were killed extrajudicially (see sections 1.a. and 1.c.).

The government maintained that screening committees administered by the state governments provided information about the unacknowledged detainees to their families. Other sources indicated that families could only confirm the detention of their relatives by bribing prison guards. In February authorities released 34 former militants from custody, and in October, the Jammu and Kashmir government announced the release of 44 detainees previously held under the 1978 Public Safety Act.

The government failed to hold hundreds of police and security officials accountable for serious human rights abuses committed during the Punjab counterinsurgency of 1984-94, despite the presence of a special investigatory commission. In March prosecution lawyer and human rights activist Brinjinder Singh Sodhi claimed that he was threatened by a police officer accused in the disappearance case of human rights activist Jaswant Singh Kalara. Kalara, who claimed the government was responsible for over two thousand extrajudicial killings of Sikhs during its counterinsurgency campaign, was kidnapped in 1995, and his body was never found. On November 18, 10 years after the crime, 2 police officers, Jaspal Singh and Amarjit Singh, were found guilty of murdering Kalara and destroying evidence related to the case, and they were sentenced to life imprisonment. The courts found four other officers guilty of kidnapping with the intent to murder and sentenced them to seven years imprisonment. No action was taken against the police official who had threatened Sodhi.

During the year the Central Bureau of Investigation (CBI) claimed to be pursuing charges against dozens of police officials implicated in the 1980s for hundreds of murders and secret cremations. NGOs and Human Rights activists alleged that police in Amritsar, Majitha, and Tarn Taran districts secretly disposed of approximately two thousand bodies of suspected Sikh insurgents they had murdered. Security forces abducted, extrajudicially executed, and cremated the alleged insurgents without the knowledge or consent of their families during the height of Sikh insurgency in Punjab.

The NHRC continued to investigate 2,097 cases of illegal murder/cremation that occurred between 1984 and the early 1990s. The NHRC asked families whose members had disappeared to come forward and provide evidence. The NHRC has not released its findings, and no significant progress was made in bringing to justice those responsible for the killings. Families of victims petitioned the NHRC for redress, and a small percentage received a response in July 2004.

In July the NHRC directed the CBI to give the Punjab government access to documents regarding the illegal murder and cremation of 64 persons by the Punjab police during the insurgency.

There were credible reports that police throughout the country often failed to file legally required arrest reports, resulting in hundreds of unsolved disappearances in which relatives claimed that an individual was taken into police custody and never heard from again. Police usually denied these claims, pointing to the lack of an arrest record.

Insurgents in Jammu and Kashmir and the northeastern states continued to use kidnappings to terrorize the population, obtain the release of detained comrades, and extort funds. At the end of 2004 the government verified that few kidnappers were arrested or prosecuted. Insurgents and terrorists in Jammu and Kashmir and the northeast killed some kidnapping victims (see sections 1.a. and 1.g.). In March in Rajouri district, insurgents kidnapped Mohameed Naseeb, who was later killed during a fight between militants and security forces. Also in March, militants belonging to the insurgent group Hizbul Mujahidin killed three security force members in Srinagar.

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

The law prohibits torture and generally did not allow for confessions extracted by force to be admissible in court; however, authorities often used torture during interrogations to extort money and as summary punishment.

The ACHR alleged that deaths in custody were a severe problem and that police regularly used torture. Because many alleged torture victims died in custody, and other victims were afraid to speak out, there were few firsthand accounts. Marks of torture, however, were often found on the bodies of deceased detainees. The prevalence of torture by police in detention facilities throughout the country was reflected in the number of deaths in police custody (see section 1.a.). Police and jailers typically assaulted new prisoners for money and personal articles. In addition, police commonly tortured detainees during custodial interrogation. Although police officers were subject to prosecution for such offenses, the government often failed to hold them accountable. According to Amnesty International (AI), torture usually took place during criminal investigations and following unlawful and arbitrary arrests.

In February the Jalandhar district police tortured and killed a dalit youth when he refused to confess to theft. In May in Tamil Nadu, police arrested Mariappan, a person belonging to a lower caste, for stealing valuables from the house where he was employed. Mariappan told media that police inflicted serious injuries on him while he was in their custody.

In June two persons were killed and a dozen injured when RPF personnel fired at a mob that formed after the RPF severely beat a ticketless traveller at Dadri railway station in Uttar Pradesh. The government ordered an inquiry and awarded compensation to those injured and to the next of kin of the deceased.

In August eye-witnesses told the media that Mumbai assistant commissioner of police Arun Desai beat Taj Mohammed, a shopkeeper, on the head with a hockey stick, causing a severe head injury. Desai then arrested Mohammed for assault and the use of criminal force to deter a public servant from discharge of his duty. No action was taken against Desai.

There were incidents in which police beat journalists (see section 2.a.), demonstrators (see section 2.b.), and Muslim students (see section 2.c.). Police also committed abuses against indigenous people (see section 5).

Police used violence or the threat of violence to extort money and favors. In January Mumbai police constable Sunil Kamble beat a local shopkeeper, Roop Narayan Yadav, until he was unconscious, after Yadav asked Kamble to pay for his purchases. After an internal probe, the Mumbai police suspended Kamble, and charges were pending at year's end.

In Jammu and Kashmir, torture victims or their relatives reportedly had difficulty filing complaints, as local police allegedly were instructed not to open a case without permission from higher authorities. In addition, under the Armed Forces (Jammu and Kashmir) Special Powers Act of 1990, 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," without the approval of the central government. The act gives security forces the authority to shoot suspected lawbreakers and those disturbing the peace, and to destroy structures suspected of harboring militants or containing weapons. Human rights organizations alleged that this provision allowed security forces to act with virtual impunity (see section 1.d.).

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

In February a soldier with the Tripura State Rifles raped a minor girl in West Tripura district. Public outrage led to his arrest.

According to 2002 records from the National Crime Records Bureau (NCRB), the latest available, courts tried 132 policemen for custodial rape, but only 4 were convicted. The Ministry of Defense reported that it filed 17 rape cases and 10 murder cases against army personnel

from 2003-2004. To date, one rape case and five murder cases ended in guilty verdicts. In the remaining cases, the investigations remained ongoing or the charges were proved false.

In January a report prepared by retired judge Chanambam Upendra Singh found 2 members of the 12th grenadiers army unit guilty of raping 15-year-old Nandeibam Sanjita Devi in Manipur in 2003. Devi committed suicide after recounting her ordeal to her mother.

In February an Assam Rifles constable allegedly raped a 12-year-old girl in the Karbi Anglong district of Assam, sparking widespread protests from various women's organizations. Medical examination confirmed the rape, and a case was filed against the constable. Police arrested the soldier and the two women who assisted in the rape, and all three were in custody at year's end.

In September authorities charged two members of the Bihar police with the custodial rape of a 35-year-old widow who was detained on a murder charge. The court ordered an inquiry in the case, which remained ongoing at year's end.

There was a pattern of rape by paramilitary personnel in Jammu and Kashmir and the northeast as a means of instilling fear among non-combatants in insurgency-affected areas (see section 1.g.), but these incidents were not included in NHRC statistics, as the NHRC does not have direct investigative authority over the military.

A Major Rehman was dismissed in January from military service after being convicted by a court martial for his involvement in the November 2004 rape of a mother and daughter during a search operation near Handwara in Kashmir. Also in January, the army dismissed a rifleman from service after a court martial convicted him of molestation of an elderly woman in Pahalgam.

In July 2004 the National Commission for Women (NCW) directed all mental hospitals to check the legitimacy of insanity certificates after receiving reports of husbands falsely committing their wives to obtain divorces. The NCW issued the edict after authorities accused a resident psychiatrist at the Agra Mental Asylum of issuing false insanity certificates for this purpose. On July 23, the Agra police arrested the doctor, who remained in judicial custody at year's end.

In 2004 the government gave the NHRC the authority to recommend interim compensation in cases relating to human rights abuses by the armed forces. Officers of the rank of colonel were designated at the command, corps, division and counter-insurgency headquarters to monitor human rights issues. Under the guidelines, the NHRC cannot charge a member of the armed forces of a human rights abuse without government permission. The NHRC reported a continued decline in reported human rights abuses by the military, with 16 cases reported in 2003, and only 4 in 2004. The NHRC reported that it registered 756 cases against the military, 172 against paramilitary forces, and 109,902 against the police since 2001.

#### Prison and Detention Center Conditions

Prison conditions were harsh, life-threatening, and did not meet international standards. Prisons were severely overcrowded, and food and medical care inadequate. For example, the Mumbai-based Criminal Justice Initiative reported that there were three thousand inmates in Bombay Central Jail, which has an actual capacity of 800. Human rights organizations reported that 60 to 75 percent of all detainees were in jail awaiting trial, drastically contributing to overcrowding. They also asserted that approximately 65 percent of those detained were found innocent. Due to persistent inefficiencies in the judicial system, there were numerous instances in which detainees spent more time in jail under pretrial detention than they would have if found guilty and sentenced to the longest possible term (see section 1.d.).

In June 77-year-old Machang Lalung was released after spending 54 years in jail without a trial. Lalung was arrested in 1951 from Silsilang in Assam for "causing grievous hurt," a crime which carries a maximum of 10 years' imprisonment. Shortly after his arrest, according to human rights activists, police withdrew the charges against him due to a lack of evidence, and transferred him to a psychiatric institution, and then forgot him. In 1967, the authorities at the institution certified Mr. Lalung as "fully fit" and said he should be released. Instead of releasing Lalung, police transferred him to another jail, once again without trial. Lalung was released only after human rights activists learned of his case, brought it to the attention of the NHRC, and paid a personal bond of two cents (one rupee). Magistrate HK Sarma, who released Mr. Lalung, stated "Neither the executive nor the judiciary avoid responsibility for Machang Lalung's detention for so long on the grounds of mere procedure or technicalities."

The case of Machang Lalung was the most egregious case out of five of the lengthiest cases of prisoners held without trial for extended periods. The others were: Khalilur Rehman, incarcerated for 35 years; Anil Kumar Burman, incarcerated for 33 years; Sonamani Deb, incarcerated for 32 years; and Parbati Mallik, incarcerated for 32 years.

The NHRC subsequently requested Assamese authorities to submit reports on five other pretrial prisoners presently detained at the LGB Regional Institute of Mental Health in Tezpur, Assam.

As of July, the 8 central prisons, including Tihar Jail and the Rohini district jail in Delhi, had an official capacity of 5,648, but held 13,160 prisoners.

According to one NHRC report, a large proportion of the deaths in judicial custody were from natural causes, in some cases aggravated by poor prison conditions (see section 1.a.). Tuberculosis caused many deaths, as did HIV/AIDS. The NHRC assigned its special rapporteur and chief coordinator of custodial justice to ensure that state prison authorities performed medical check-ups on all inmates. By year's end, only a few examinations had been performed.

By law juveniles must be detained in rehabilitative facilities, although at times they were detained in prison, especially in rural areas. Pretrial detainees were not separated from convicted prisoners.

During the year custodial deaths at the hands of police continued. In September the Assam Human Rights Commission asked the state government to take appropriate action against jail authorities for failing to properly treat Mithinga Daimary and Ramu Mech, United Liberation Front of Assam (ULFA) leaders who were ill while awaiting trial. Mech was subsequently taken to Delhi for treatment. In August in Tezpur, ULFA Chief Advisor Robin Handique died in detention after he was allegedly denied proper medical care. An inquiry was pending at year's end.

In June 2004 the Delhi High Court found several police officers guilty in the custodial death of an auto-rickshaw driver, and fined them each approximately \$11 thousand (Rs. 530 thousand).

While local authorities often attempted to hide custodial killings, the NHRC and the courts investigated those cases brought to their attention and prosecuted some perpetrators. In most cases, the courts awarded monetary compensation of between \$400 (Rs. 17,500) and \$2,200 (Rs. 96 thousand) to the next of kin. NGO sources stated that relatives often had to pay bribes to receive the compensation awarded, and in many cases never received it at all.

Some NGOs were allowed to work in prisons, within specific governmental guidelines, but their findings remained largely confidential as a result of agreements made with the government. Although custodial abuse was deeply rooted in police practices, increased press reporting and parliamentary questioning provided evidence of growing public awareness of the problem. The NHRC identified torture and deaths in detention as one of its priority concerns.

According to the Home Ministry's 2004 annual report, the International Committee of the Red Cross (ICRC) visited 55 detention centers and over 7 thousand detainees during the year, including all acknowledged detention centers in Jammu and Kashmir, and all facilities where Kashmiris were held elsewhere in the country. During the year the ICRC visited 28 places of detention in Jammu and Kashmir and found that 1,356 persons were detained--524 of them newly registered. The ICRC was not authorized to visit interrogation or transit centers, nor did it have access to regular detention centers in the northeastern states (see sections 1.c. and 4). During the year the ICRC stated that it continued to encounter difficulties in maintaining regular access to persons detained in Jammu and Kashmir.

In a report issued in January 2004 the UN Special Rapporteur on Torture commented that torture and detentions continued in the country, especially in Jammu and Kashmir, and noted the government's continued refusal to extend him an invitation to conduct investigations. A report published during the year of the Special Rapporteur Civil and Political Rights, listed cases of torture by the government. It noted that in June 2004 police beat Gulzar Ahmed Daded of Sangerwani, Pulwama District, Kashmir, until he was unconscious because he protested against a death in custody. Daded was taken to a hospital in Srinagar, where he died in July 2004. It also reported that in March 2004, police used excessive force during a march held by the APDP in Srinagar, Jammu and Kashmir. The police dispersed the march and hit participants with canes, dragged women by their hair, beat them and ripped off their clothes. Police arrested several APDP members, human rights activists, as well as family and friends of the disappeared and took them into police custody for unlawful assembly and assault of police officers; they were released on bail after seven hours.

#### d. Arbitrary Arrest or Detention

The law prohibits arbitrary arrest and detention, but both occurred during the year.

#### Role of the Police and Security Apparatus

Although the 28 state governments have primary responsibility for maintaining law and order, the central government provides guidance and support. The Ministry for Home Affairs controls most paramilitary forces, the internal intelligence bureaus, and the nationwide police service, and provides training for senior police officers of the state-organized police forces. The civilian authorities maintained effective control of the security forces. Members of the security forces committed numerous serious human rights abuses.

Corruption in the police force was commonplace and severely diminished its effectiveness. Officers at all levels acted with relative impunity and were rarely held accountable for illegal actions. When an officer was found guilty of a crime, the most common punishment was transfer to a different position or post. Human rights activists and NGOs reported that bribery was often necessary to receive police services.

For example on November 3, the NDTV news channel caught Delhi Police Inspector Satya Raj demanding \$600 (Rs. 26 thousand) from a dead man's family for return of his body. At year's end, police had not filed charges against Raj.

Corruption in the police force led to cases of illegal and arbitrary arrest during the year. For example in January, authorities in Mumbai suspended five police officers for planting evidence and framing a merchant in October 2004. The merchant was wrongfully made to spend five months in pretrial detention. At year's end, charges against the officers were pending.

In April two scrap dealers, Sadaf Nazar Khan and Azaz Khan complained to Mumbai police that a police inspector kidnapped them, illegally detained them, robbed them of approximately \$2,800 (Rs. 120 thousand), and asked for further payment from relatives for their release. The Mumbai police suspended the inspector and two other police officers, and at year's end, an inquiry was ongoing.

In July authorities arrested B.B. Patre, a senior superintendent of police in Maharashtra, for threatening a Dhule city kerosene dealer with arrest if Patre was not paid a \$23 thousand (Rs. 1 million) bribe.

NGOs and human rights activists alleged that police often committed human rights violations with impunity and that police corruption was

pervasive and acknowledged by many government officials. The NHRC reported that the majority of complaints it received were against police. Although the Malimath Committee on Judicial Reform issued a report in 2003 proposing police reforms, measures had not been implemented at year's end. Some human rights activists maintained that the committee's main goal was to increase arrests and prosecutions instead of protecting the rights of the accused. Punjab Director General of Police A.A. Siddiqui reported that police had received 17 thousand complaints in 2004, including 6,261 from the Punjab State Human Rights Commission, 376 from the NHRC, and 46 from the NHRC for Scheduled Castes and Scheduled Tribes. The media reported that courts found 59 police officers guilty of violating human rights in Punjab in 2004

#### Arrest and Detention

The law requires that detainees be informed of the grounds for their arrest, be represented by legal counsel, and, unless held under a preventive detention law, arraigned within 24 hours of arrest, at which time the accused must either be remanded for further investigation or released. However, thousands of criminal suspects remained in detention without charge during the year, adding to already over-crowded prisons.

The law provides arrested persons the right to be released on bail, and prompt access to a lawyer; however, those arrested under special security legislation received neither bail nor prompt access to a lawyer in most cases. Court approval of a bail application is mandatory if police do not file charges within 60 to 90 days of arrest. In most cases, bail was set between \$11 (Rs. 500) and \$4,500 (Rs. 200 thousand).

In September 2004 the government repealed the Prevention of Terrorism Act (POTA) and replaced it with the Unlawful Activities Prevention Act (UAPA). Nonetheless, SAHRDC reported that more than 1,000 persons remained in detention awaiting prosecution under lapsed special terrorism legislation, and that cases opened under POTA and Terrorism and Disruptive Activities Act (TADA) continued through the judicial system. On November 8, the Supreme Court acquitted two men, Daljit Singh Bittu and Gursharan Singh Gama, previously sentenced to life imprisonment under TADA in June 2004. The defense argued successfully that the deputy superintendent of police had a personal vendetta against the two men and used TADA to imprison them.

TADA courts curtailed many legal protections provided by other courts. For example, defense counsel was not permitted to see prosecution witnesses, who were kept behind screens while testifying in court, and confessions extracted under duress were admissible as evidence (see section 1.c.).

POTA contained a sunset feature, which gave the central POTA review committee one year to review all existing POTA cases. The government established three central review committees to review the cases registered under POTA. The committees were required to review all cases registered under POTA by September 20, but at year's end, numerous cases remained unreviewed. This clause also allowed the government to make new arrests under POTA, despite its repeal, if the arrests were tied to an existing POTA case. The government could issue a new indictment on a case opened five years earlier under POTA, even if the government was never associated with the case. It can also extend the one-year limit for reviews; however, at year's end, it had not done so. The law provides that the review committees constituted by the government shall review all cases registered under POTA by September 20. In June the POTA review committee reported that there were 11,384 persons wrongfully charged under POTA who instead should be charged under the regular law.

UAPA and POTA continued to be used to hold people in jail for extended periods prior to the filing of formal charges. Human rights groups reported that the revised UAPA contained important improvements over the POTA. For example, it does not allow coerced confessions to be admitted as evidence in court.

In February the NHRC announced comprehensive guidelines regarding arrest, which included establishing reasonable belief of guilt; avoiding detention if bail is an option; protecting the dignity of those arrested; not allowing public display or parading, and allowing access to a lawyer during interrogation. Police often ignored these guidelines.

In June Daljit Singh Bittu, president of the Shiromani Dal Khalsa, a group that supported a separate Sikh state, and an associate were sentenced to life imprisonment by a special TADA court for the killing of Ashok Bedi, son of a former police officer, in June 1986.

In September Simranjit Singh Mann, president of the Shiromani Akali Dal (Mann), was released from the Ludhiana central jail after 78 days in prison. He had been arrested for making pro-Khalistan statements in Sangrur, Punjab. Human rights activist and lawyer Ranjan Lakhanpal alleged that Punjab police beat and tortured Mann while in custody.

At year's end the Bihar government did not respond to a September 2004 petition urging the withdrawal of all TADA cases filed against landless laborers.

Police routinely resorted to arbitrary and incommunicado detention, denied detainees access to lawyers and medical attention, and used torture or ill treatment to extract confessions (see section 5.). Human rights experts claimed that discrimination and custodial torture of those too poor to afford legal assistance was common. During the year the media reported that lower caste individuals were more likely to be illegally detained than others. Human rights activists maintained that the government increasingly avoided prosecuting security officers involved in illegal conduct, by providing financial compensation to victims' families in lieu of punishment. In some instances victims or their families who distrusted the military judicial system petitioned to have their cases transferred to a civil court. The NHRC has no jurisdiction over any courts, including military courts.

During the year the media reported that 217 Muslims arrested in connection with the 2002 Tiffin bomb case, the 2003 killing of former Gujarat chief minister Haren Pandya, the 2003 Akshardham temple bombing, and the 2002 Godhra train arson case, remained in custody in Gujarat under POTA. On June 29, a special POTA court dismissed POTA charges related to the 2002 Tiffin Bomb case against Munawar

Beg Mirza; however, he continued to be an accused in the same case under the penal code. In June the POTA review committee recommended that 131 of the Godhra accused not be charged under POTA. The Gujarat government rejected the recommendation, contending that there was clear evidence of conspiracy in the train arson.

Throughout the year authorities in Jammu and Kashmir repeatedly detained Kashmiri separatist leaders such as Shabir Shah, Chairman of the Jammu and Kashmir Democratic Freedom Party, Yasin Malik, Chairman of the Jammu and Kashmir Liberation Front (JKLF), and Syed Ali Shah Geelani, Chairman of the hardline faction of the All Parties Hurriyat Conference (APHC), for short periods of time ranging from several hours to one day, usually to prevent their participation in demonstrations, funerals, or other public events. For example in January, Mohammed Yasin Malik and Shabir Ahmed Shah were among 30 people detained in Baramuula while participating in a demonstration against civic elections. They were released later in the day.

There were several incidents during the year in which Tamil Nadu police arrested activists and demonstrators without a proper warrant. In September according to media reports, Chennai police arrested over three thousand activists belonging to the Communist Party of India (Marxist), including a state unit secretary and other legislators.

In September the Madras High Court ordered the Tamil Nadu chief of police to investigate the illegal detention and custodial torture of four persons allegedly taken into custody to pressure an associate to withdraw a writ petition against the state government. The high court judge granted bail to the four on September 14.

In August 2004 the home minister informed parliament that the POTA review committee had received 262 complaints during the year. Of these, the committee ruled in favor of the accused in 18 cases, rejected 33 complaints, and disposed of 10 for unspecified reasons. The remaining 201 remained pending at year's end.

The National Security Act (NSA) permits police to detain persons considered security risks anywhere in the country--except for Jammu and Kashmir--without charge or trial for as long as one year on loosely defined security reasons. State governments must confirm the detention order, which was reviewed by an advisory board of three high court judges within seven weeks of the arrest. NSA detainees were permitted visits by family members and lawyers, and must be informed of the grounds of their detention within 5 days (10 to 15 days in exceptional circumstances). According to press accounts, 32 persons were detained under the NSA in 2004.

Human rights groups alleged that the NSA allowed authorities to order preventive detention at their own behest after only a cursory review by an advisory board, and that no court would overturn such a decision.

The Public Safety Act (PSA), which applies only in Jammu and Kashmir, permits state authorities to detain persons without charge and judicial review for up to two years. During this time, detainees do not have access to family members or legal counsel. Between March and April, the PSA was invoked against 12 persons. The government estimated that approximately 600 persons were in custody under the PSA or related charges in January. In April two Kashmiri separatist leaders, Shabir Ahmad Khan and Firdous Ahmad Shah, were released after several months' detention under the PSA.

In September the government used the PSA to arrest Sayeda Assiya Andrabi, the head of the all-female Dukhtaran-e-Millat, and eight of her associates for her campaign against adultery, prostitution, and drug addiction. At year's end, she remained in pretrial detention.

During the year the Jammu and Kashmir government released 326 persons held under PSA since 2002.

In May according to press reports, two Maoist support organizations, the All India Peoples Resistance Forum (AIPRF) and the Struggling Forum for Peoples Resistance (SFPR), claimed the West Bengal state government illegally detained Maoist activists Sushil Roy and Patit Paban Haldar. The Maoist support organizations alleged that police arrested the 2 men on May 21 but did not produce them in court until 3 days later, violating their right to a court appearance within 24 hours after arrest. According to the two groups, over 700 suspected Maoists have been detained without charge during the year.

AFSPA remained in effect in Nagaland, Manipur, Assam, and parts of Tripura, and a version of the law was in effect in Jammu and Kashmir. Under AFSPA, the government can declare any state or union territory a "disturbed area." This allows the security forces to fire on any person in order to "maintain law and order" and to arrest any person "against whom reasonable suspicion exists" without informing the detainee of the grounds for arrest. Security forces are also granted immunity from prosecution for acts committed under AFSPA.

In February the Tis Hazari Court in New Delhi dropped a case filed under the Official Secrets Act (OSA) against 8 people booked 14 years ago for allegedly stealing classified papers from a government press in Ranchi, Bihar. The press also reported that 28 people remained in Delhi's Tihar jail under the OSA, and that some of their cases have been in the courts for 15 years.

In June a committee created by the Home Ministry to review AFSPA submitted its report, and its recommendations were under review at year's end. Press reports indicated that the review committee recommended the repeal of AFSPA and suggested the incorporation of its provisions into the UAPA.

The law provides a person in detention the right to a prompt trial; however, due to a severe backlog, this was not the case in practice.

There were no reports of political detainees during the year, although the government detained hundreds of suspected terrorists, insurgents, and separatists. In November the government released 44 of these detainees following a meeting between the prime minister and leaders of the APHC in New Delhi.

As a result of severe overloading of the courts, thousands of persons awaiting trial spent longer in prison than the maximum sentences for the crimes for which they were charged. In July 2004 the Ministry of Law and Justice reported that there were 29,622 cases pending before the Supreme Court, and 3,269,224 before the state high courts. The NHRC reported in 2004 that 75 percent of the country's inmates, some 217,659 persons, were in pretrial detention. Human rights groups claimed that because of the extensive case backlog and rampant corruption the judicial system no longer met its constitutional mandate.

#### e. Denial of Fair Public Trial

The law provides for an independent judiciary, and the government generally respected this provision in practice; however, serious problems remained. In Jammu and Kashmir, members of the judiciary were subject to threats and intimidation by insurgents and terrorists.

The judicial system is headed by a Supreme Court, which has jurisdiction over constitutional issues, and includes the court of appeals and lower courts. Lower courts hear criminal and civil cases and send appeals to the court of appeals. The president appoints judges, who may serve until the age of 62 on state high courts and 65 on the Supreme Court.

#### Trial Procedures

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

There was continued concern about the failure of the Gujarat government to arrest and convict those responsible for the widespread communal violence in 2002 following the burning in Godhra of the S-6 coach of the Sabarmati Express train, in which 59 men, women, and children died. In the days following the train burning, Hindu mobs killed hundreds of Muslims, displaced tens of thousands, and destroyed property.

In many cases, attempts to hold perpetrators of the Gujarat violence accountable were hampered by the allegedly defective manner in which police recorded complaints. Victims related that police refused to register their complaints, recorded the details in such a way as to lead to lesser charges, omitted the names of prominent people involved in attacks, and did not arrest suspects, particularly supporters of the Bharatiya Janata Party (BJP). According to an affidavit submitted to the Supreme Court in January 2004 by the Gujarat government, of 4,252 complaints filed, 2,032 were closed without action, even though abuses were substantiated. In August 2004 the Supreme Court instructed the Gujarat High Court to appoint a committee of high-level police officials to re-examine the 2,032 closed cases and determine whether any should be reopened. The media reported that officials attempting to conduct a serious investigation into the incidents were promptly removed from the case. At year's end, no report specifying the number of cases that should be re-opened had been submitted to the Supreme Court.

The Gujarat government claimed that police had re-opened investigations against 5,384 people in the city of Ahmedabad and 24,683 people in the state as a whole. However, analysis by the Islamic Relief Committee of Gujarat revealed that only a small number of these investigations actually led to convictions. As of May there were only 2 convictions out of 217 cases concluded in the lower courts of Gujarat. The Gujarat government's legal department advised against appealing most of the acquittals in the remaining cases. As a result, only a handful of cases were appealed to higher courts. On December 14, the Godhra fast-track court sentenced 11 persons to life imprisonment for killing 11 members of a minority community in Panchmahal district of Gujarat.

At year's end, the special court in Mumbai had not ruled in the Best Bakery case.

Human Rights Watch (HRW) reported that Hindu extremists threatened and intimidated victims, witnesses, and human rights activists attempting to prosecute those who committed crimes during the 2002 Gujarat riots. It asserted that instead of pursuing the perpetrators of violence, the Gujarat government nurtured a climate of fear. The report alleged that the Gujarat government launched selective tax probes against some Islamic organizations to pressure Muslim witnesses to withdraw murder and arson charges against Hindu nationalists. The Gujarat government denied the charge.

According to the Home Ministry, as of March there were 1,700 fast track courts in the country. Fast track courts concentrated on a specific type of case, allowing judges to develop expertise in a given area of law. These courts gave preference to cases pending for extended periods and often focused on civil issues. Court fees were generally lower for these courts, since the trials were shorter.

The government does not interfere in the personal status laws of minority communities, including those laws that discriminate against women. There are separate laws for Muslims and Hindus on a number of issues. For example, Muslim personal status law governs family law, inheritance, and divorce (see section 5, Women).

Unlike in previous years, court was regularly in session and the judicial system began to normalize in Jammu and Kashmir. Nevertheless, the judicial system was hindered because of judicial tolerance of the government's anti-insurgent actions and because of the frequent refusal by security forces to obey court orders.

Due in part to intimidation by militants and terrorists, courts in Jammu and Kashmir were often reluctant to hear cases involving insurgent and terrorist crimes and failed to act expeditiously, if at all, on habeas corpus cases. In March 2004, Jammu and Kashmir Chief Minister Mufti

Mohammad Sayeed announced that there were 533 persons of unidentified ethnicity, 361 Kashmiris, and 172 foreigners in custody. During the year, the government released 85 detainees.

#### Political Prisoners

While the government maintained that there were no political prisoners, the APHC claimed there were approximately 500 political prisoners in Jammu and Kashmir, and human rights activists based in the state placed the number at 150, although among these were persons whom the government claimed had engaged in violent acts.

#### f. Arbitrary Interference with Privacy, Family, Home, or Correspondence

The law prohibits such actions, and the government generally respected these prohibitions in practice; however, at times the authorities infringed upon them. Police must obtain warrants to conduct searches and seizures, except in cases where such actions would cause undue delay. Police must justify such warrantless 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 Information Technology Act grants police power under certain circumstances to search premises and arrest individuals without a warrant. The act specifies a one-year sentence for persons who fail to provide information to the government on request and a five-year sentence for transmitting "lascivious" material (see section 2.a.). The act also requires Internet cafes to monitor Internet use and inform the authorities of offenses (see section 2.a.).

The Indian Telegraph Act authorizes the surveillance of communications, including monitoring telephone conversations and intercepting personal mail, in cases of public emergency, or "in the interest of the public safety or tranquility." The central government and every state government used these powers during the year.

Although the telegraph act gives police the power to tap phones to aid an investigation, they were not allowed to use such evidence in court. The UAPA allows such evidence to be used in terrorist cases, and some human rights activists noted that the new UAPA ordinance confers additional powers on police to use intercepted communications as evidence in terrorism cases. While there were elaborate legal safeguards to prevent police from encroaching on personal privacy, there were no such protections in terrorist cases.

Eight states (Andhra Pradesh, Rajasthan, Orissa, Haryana, Chhattisgarh, Madhya Pradesh, Himachal Pradesh, and Maharashtra) have enacted two-child laws for village council members. The laws provide government jobs and subsidies to those who have no more than two children and sanctions against those who do. For example, in 2004 village council members in Chhattisgarh who violated this prohibition reportedly were dismissed from their positions. National health officials in New Delhi noted that the central government was unable to regulate state decisions on population issues.

#### g. Use of Excessive Force and Other Abuses in Internal Conflicts

Security force personnel enjoyed extraordinary powers under the Jammu and Kashmir Disturbed Areas Act and the Armed Forces (Jammu and Kashmir) Special Powers Act, which includes the authority to shoot suspected lawbreakers on sight and destroy structures suspected of harboring insurgents or arms.

There were continuing reports of civilians killed in crossfires in Jammu and Kashmir during the year. In February two insurgents attacked the divisional commissioner's office in Srinagar, killing five. Both insurgents were killed after a four-hour gun battle. On November 2, militants in Srinagar killed 10 people and wounded 15 others in a car bomb attack. On November 14, also in Srinagar, insurgents killed three bystanders during an attack on a police vehicle.

In January Jammu and Kashmir Finance and Law Minister Muzaffar Hussain Beig escaped a militant attack while attending an election rally in Baramulla, north Kashmir. Also in January, militants attacked People's Democratic Party (PDP) President Mehbooba Mufti and Urban Development Minister Ghulam Hassan Mir while they were campaigning in Khalilpora. Insurgents killed six persons and injured three dozen in pre-election related violence.

Terrorists and militants operating in Rajouri, Poonch, Udhampur, and Doda areas of Jammu and Kashmir repeatedly targeted the minority Hindu community, stabbing and killing entire families at a time in numerous incidents throughout the year. For example on July 29, insurgents stabbed and killed a Hindu woman and five Hindu men in Jammu and Kashmir's Rajouri district after segregating them from Muslims in the village. On August 27, in two separate attacks, insurgents killed five members of a family in Mehrot and two Hindu priests at a temple in Dundak, Poonch district.

Civic elections were held in February in Jammu and Kashmir. Despite threats and boycott calls, polling was largely peaceful, and the army and police presence was not overbearing. After the declaration of results, terrorists killed two newly elected members and several of their relatives and friends. Several elected counselors resigned following threats from terrorists. Insurgents killed an official in Kulgam, a National Conference counselor in Ikhrajpora, and a PDP counselor in Beerwah, Budgam district.

Members of the security forces continued to abduct and kill suspected insurgents, and security forces were not held adequately accountable for their actions. Reliable data on such cases were difficult to obtain.

According to credible reports, in addition to harassment during searches and arbitrary arrests (see section 1.d.), security forces abducted and sometimes used civilians as human shields and while clearing minefields. Such abuses occurred mostly in the Kupwara and Doda districts. On January 25, nine civilians were killed when an army team opened fire on a remote area of Assam's Kamrup district, which they believed was an insurgent hideout.

Unlike in previous years, tension along the Line of Control (LOC) in Kashmir was minimal. The Home Ministry reported no cases of artillery shelling, mortar, or small arms fire across the LOC or on the Siachen glacier during the year.

During the year insurgents and terrorists committed political killings, kidnappings, and rapes of politicians and civilians (see sections 1.a., 1.b., and 1.c.), engaged in extortion, and carried out acts of random terror that killed hundreds of Kashmiris. In May Attiqullah Shan, nephew of Jammu and Kashmir Chief Minister Mufti Mohammed Sayeed, was shot and killed in Anantnag district. No group claimed responsibility for the attack. Killings of security force members by insurgents and terrorists in Jammu and Kashmir declined to 330 for the year, according to home ministry statistics. As of August 15, the Jammu and Kashmir police claimed fighting in Kashmir had resulted in the deaths of 167 security forces, 359 civilians, and 622 insurgents.

In January in Srinagar, a 25-hour gun battle between insurgents and security forces in the passport office complex resulted in the deaths of two security officers and two insurgents and the wounding of eight security personnel.

In March in Rajouri district, insurgents kidnapped a civilian who was later killed in a crossfire between security forces and the insurgents.

In April insurgents attacked the tourist reception center complex in Srinagar. Both insurgents were killed in the subsequent gun battle, and seven government employees were injured.

In Manipur an insurgency involving up to 19 militant groups resulted in the deaths of 133 civilians, 46 security forces, and 135 insurgents, according to the South Asia Terrorism Portal. For example, on January 26, suspected United National Liberation Front members triggered two explosions in the Chandrapur village of Imphal, injuring seven persons, including two security force members. On February 17, separatists killed five Assam Rifles personnel and injured two others in an ambush at Kumbi in the Bishnupur district. In a separate attack the next day, insurgents attacked a senior police officer but wounded his escort. On July 10, People's Liberation Army members detonated a bomb, killing three Assam Rifles personnel and wounding seven persons, including two civilians in the Waitout area of Thoubal district in Assam.

According to SATP.org, separatists in Nagaland killed nine civilians during the year. Human rights groups observed that violence persisted despite ongoing talks between separatist groups and state government officials and an April 2004 government ceasefire. Factional violence between the National Socialist Council of Nagaland Isak-Muivah (NSCN-IM) and the National Socialist Council of Nagaland Khaplang (NSCN-K) continued during the year, resulting in numerous deaths. For example, NSCN-K members killed two NSCN-IM cadres in a February 25 attack at the Athibung area of Peren district. On March 12, NSCN-IM cadres attacked the Cease Fire Supervisory Board office of the NSCN-K located in Mon town, killing one NSCN-K cadre and wounding two others. On June 28, an elderly woman and two insurgents reportedly were injured in a factional clash between NSCN-IM and NSCN-K militants in the Athibung area of Peren district.

In July according to the home ministry, government representatives and NSCN-IM leaders met in Amsterdam and agreed to extend the ceasefire for six months starting in August. The government and NSCN-IM held meetings in December to negotiate another extension.

Insurgent groups in the Northeast continued to attack civilians. In April a group based in Manipur, called the People's Revolutionary Party of Kangleipak, executed the parents of two of its members who had surrendered, and seriously wounded the mother of a third. On August 7, ULFA insurgents detonated a bomb at a bus station in Boko, Assam, killing four persons and wounding three others. The insurgents also attacked oil pipelines in the districts of Sibsagar, Dibrugarh and Tinsukia. In September eight people were killed and several wounded when Kuki Revolutionary Army rebels fired on villagers in Karbi Anglong district, Assam.

The killing of civilians by Naxalites (Maoist insurgents) in Andhra Pradesh increased dramatically during the year. According to Andhra Pradesh police, Naxalites killed 123 civilians including political leaders, and 16 policemen between January and July. Police killed 84 Naxalites during the same period.

In March Maoist rebels killed eight persons in Kurnool, Andhra Pradesh. After the Naxalites shot and killed Congress legislator Chittam Narsi Reddy in Mahabubnagar district on August 15, the state government imposed a ban on the Communist Party of India (Maoist) and seven Naxalite front organizations. After the ban, police arrested Vara Vara Rao, who had acted as the Communist Party of India (CPI) emissary in earlier peace talks. Human rights activists claimed that the escalation in violence began in January when police shot and killed three Naxalites in Prakasan district. Reports of encounter killings were highest in Nizamabad district, where police shot and killed nine Naxalites. In September Maoists guerrillas killed 10 persons in a midnight attack in the Ranchi area of Jharkhand. According to SATP, on September 12, cadres of the CPI-M killed 17 civilians at Belwadari village in the Giridih district, Jharkhand. An estimated 510 persons, including 210 policemen, have been killed in the last five years in Maoist/Naxalite violence according to the Indo-Asian News Service.

Insurgents also targeted government officials. On February 13, insurgents ambushed an advance security party of the Manipur chief minister, Okram Ibobi Singh, at Oksu, 8 miles from Imphal; however, no loss of life or injuries were reported. On February 17, insurgents injured three police officers at Naran Sena village. On May 26, ULFA insurgents killed Congress party official Amrit Dutta in Jorhat district of Assam.

## Section 2 Respect for Civil Liberties, Including:

### a. Freedom of Speech and Press

The law provides for freedom of speech and of the press, and the government generally respected these rights in practice, with some limitations. Under the Official Secrets Act, the government may restrict publication of sensitive stories or suppress criticism of its policies, but no cases of government suppression were reported during the year.

Designed to be a self-regulating mechanism for the press, the Press Council is a statutory body of journalists, publishers, academics, and politicians, with a government-appointed chairman, that investigates complaints of irresponsible journalism and sets a code of conduct for publishers. This code includes a commitment not to publish stories that might incite caste or communal violence. The council publicly criticized newspapers or journalists it believed had broken the code of conduct, but its findings carried no legal weight.

A vigorous press reflected a wide variety of political, social, and economic beliefs. Independent newspapers and magazines regularly published and television channels regularly broadcast investigative reports including allegations of government wrongdoing, and the press generally promoted human rights and criticized perceived government lapses. Most print media were privately owned. In the electronic media, 80 percent of the television channels were privately owned. The law does not permit privately owned radio stations to broadcast news, leaving only government-controlled radio stations free to report news over the radio.

With the exception of radio, foreign media was, for the most part, allowed to operate freely, and private satellite television was distributed widely by cable or satellite dish, providing serious competition for Doordarshan, the government-owned television network. While government television frequently was accused of manipulating the news in the government's favor, some privately owned satellite channels often promoted the platforms of political parties their owners supported.

The government often held foreign satellite broadcasters, rather than domestic cable operators, liable under civil law for what it deemed objectionable content on satellite channels--notably, tobacco and alcohol advertisements and adult content.

AM radio broadcasting remained a government monopoly. Private FM radio station ownership was legal, but licenses only authorized entertainment and educational content. In June the government formally cleared the domestic publication of foreign newspapers and periodicals, including the *International Herald Tribune*, although imported copies of such periodicals had been freely available for years. However, local editions of foreign press were still prohibited: country-specific editions were required to be published by a local company to comply with foreign direct investment regulations that stipulated a ceiling of 26 percent for news organizations.

The authorities generally allowed foreign journalists to travel freely in Jammu and Kashmir, where they regularly spoke with separatist leaders and filed reports on a range of issues, including government abuses. In October 2004 the government permitted the first delegation, in more than 50 years, of Pakistani journalists to visit Jammu and Kashmir. The correspondents, on a trip sponsored by the South Asia Free Media Association, had access to the entire spectrum of government and separatist opinion.

The Newspapers Incitements to Offenses Act remained in effect in Jammu and Kashmir. Under the act, a district magistrate may prohibit the publication of material likely to incite murder or any act of violence; however, newspapers in Srinagar reported in detail on alleged human rights abuses by the government and regularly published separatist Kashmiri groups' press releases.

There were no developments in the September 2004 arrest under the Official Secrets Act of a photojournalist with an Urdu newspaper in Srinagar for passing sensitive defense-related material to Pakistan.

No action was taken against the assailants who in June 2004 attacked the Mumbai office of *Aapla Mahanagar* or against those responsible for attacking newspaper editor Sajid Rashid in August 2004.

In July the Committee to Protect Journalists reported that government agents harassed and threatened *South Asia Tribune* correspondent Arun Kumar Rajnath. On July 27, the *Tribune* detailed a series of intimidating phone calls and emails Rajnath received over the previous two months. The caller, identified as an intelligence agent, allegedly offered Rajnath kickbacks in return for publishing articles unfavorable to neighboring countries.

In August Punjab police arrested *Indian Express* correspondent Gautam Dheer. The police failed to inform him of the charge, denied him access to a lawyer, and withheld information about his whereabouts. Police arrested Dheer while he was investigating alleged malfeasance by the inspector general of police, Sumedh Singh Saini. The chief minister of Punjab, Amrinder Singh, ordered Dheer's release on bail and began a probe against the special investigating team that arrested him. Lawyers for Human Rights International petitioned the NHRC, demanding a probe into the arrest, but at year's end, the NHRC had not taken up the case.

In September Reporters Without Borders claimed there was increased violence against the media, and systematic attacks on the freedom of the press during the year. The organization reported that most attacks took place in the northern part of the country. For example, on August 26, individuals attacked Shikha Das, a reporter in Chhattisgarh. Her attackers allegedly were members of a regionally prominent family, which Das had linked to trafficking in persons. The police initially refused to register her complaint and did so only after a delegation of local journalists went to the police station.

No arrests were made in the August 2004 attack against the offices of *Dinamalar* by members of the Pattali Makkal Katchi.

Violent intimidation of the press by militant and terrorist groups in Jammu and Kashmir caused significant self-censorship, according to journalists based in the state. During the year the threat of losing government revenue contributed to self-censorship by smaller media outlets that relied heavily on state government advertising for their survival.

In June the Shillong Press Corps in Meghalaya protested the harassment of journalists by police and the Meghalaya government. According to the press, on June 10, a group of plain-clothed policemen visited the office of *The Meghalaya Guardian* and interrogated senior journalists about a news item alleging that security forces had burned tribal houses. In addition, it was alleged that *The Shillong Times* editor received a midnight call from policemen attempting to interrogate him about the same news item. The issue was resolved informally after a press boycott of government programs led to a negotiated compromise.

On August 8, the Tamil Nadu government issued show cause notices against the editor and publisher of the *Kumudham Reporter*, a bi-weekly Tamil newspaper. The government charged the paper with "breach of privilege" for publishing two controversial articles.

The government maintained a list of banned books that may not be imported or sold in the country. In some cases, such as that involving Salman Rushdie's *Satanic Verses*, censors claimed the book aggravated communal tensions. In March 2004 the Maharashtra state government filed criminal charges against a foreign professor for making allegedly slanderous remarks in a book against Shivaji, a 17th century Marathi warrior, and his mother. The case remained open at year's end, and the Maharashtra state government continued to ban the book. On September 23, the Calcutta High Court removed the April 2004 West Bengal government ban on Bangladeshi author Taslima Nasreen's autobiography, *Dwikhandita, Amaar Meyebela*.

A government censorship board reviewed films before licensing them for distribution, censoring material it deemed offensive to public morals or communal sentiment.

The Information Technology Act provides for censoring the Internet on public morality grounds, and defines "unauthorized access to certain types of electronic information" as a crime. According to Reporters Without Borders, this law theoretically allowed police to search the homes or offices of Internet users at any time without a warrant, but that claim has not been tested in court. The government retained the right to limit access to the Internet, specifically information deemed detrimental to national security.

In 2003 the Ministry of Human Resources Development (HRD) passed strict academic guidelines requiring all central universities to obtain HRD permission before organizing "all forms of foreign collaborations and other international academic exchange activities," including seminars, conferences, workshops, guest lectures, and research. These guidelines remained in force during the year.

#### b. Freedom of Peaceful Assembly and Association

The law provides for freedom of assembly and association, and the government generally respected this right in practice.

##### Freedom of Assembly

The authorities normally required permits and notification prior to holding parades or demonstrations, and local governments ordinarily respected the right to protest peacefully, except in Jammu and Kashmir, where the local government sometimes denied permits to separatist parties for public gatherings and detained separatists engaged in peaceful protest. During periods of civil tension, the authorities may ban public assemblies or impose a curfew under the Criminal Procedure Code.

In May police killed a nine-year-old girl while attempting to disperse a clash between villagers over a graveyard in Dardpora, Srinagar. As crowds gathered over a disputed fence erected around a graveyard, police intervened and fired upon the mob. The deputy commissioner ordered a magisterial inquiry into the death, which remained open at year's end.

In June police killed a 14-year-old boy in Dholpur, Rajasthan, when they fired into an angry mob protesting the death of a person in custody. The state government paid approximately \$2,300 (Rs. 100 thousand) in compensation to the next of kin and ordered an inquiry into the incident.

In June one person was reported killed when police in Keonjhar district in Orissa fired on a crowd of approximately 500 demonstrators, led by members of the Vishwa Hindu Parishad, who stormed a police station protesting the delay in the arrest of the molestor of a minor girl.

On August 16, in Maharajganj, Siwan district in Bihar, two people were killed after police opened fire on locals protesting the removal of a bus stand following the death of a child in a bus accident.

On August 19, in Churachandpur, Manipur, members of the Zomi Students' Federation clashed with police during a demonstration demanding, among other matters, compensation for civilians killed in a landmine explosion and improvement in the educational infrastructure. The clash resulted in injuries to a number of students and police and the destruction of police property and vehicles. After police arrested six demonstrators, hundreds of students stormed the police station, demanding the unconditional release of those arrested. Demonstrators then converged on the deputy commissioner's residence, setting fire to a government vehicle. Guards fired at the mob, injuring three. Police released the arrested students later in the day.

##### Freedom of Association

The law provides for the freedom of association, and the government generally respected this right in practice.

NGOs must secure approval from the Ministry of Home Affairs before organizing international conferences. Human rights groups contended that this provided the government with substantial political control over the work of NGOs and their freedom of assembly and association. NGOs alleged that some members from abroad were denied visas arbitrarily.

### c. Freedom of Religion

The law provides for secular government and the protection of religious freedom, and the central government generally respected these provisions in practice; however, it sometimes did not act effectively to counter societal attacks against religious minorities and attempts by state and local governments to limit religious freedom. This failure resulted in part from legal constraints inherent in the country's federal structure, and in part from shortcomings in the law enforcement and judicial systems. There is no state religion, although the majority of citizens are followers of Hinduism, and this at times adversely affected the religious freedom of others. Some Hindu hardliners interpreted ineffective investigation and prosecution of their attacks on religious minorities as evidence that they could commit such violence with impunity.

During the year there were no significant changes in the status of religious freedom, and problems remained in some areas. Attacks against religious minorities persisted. No new anticonversion laws were enacted during the year. Hindutva, the politicized inculcation of Hindu religious and cultural norms to the exclusion of others, remained a subject of national debate and influenced some governmental policies and societal attitudes.

Human rights groups and others suggested that political links between the BJP and hard-line Hindu groups such as the Rashtriya Swayamsevak Sangh (RSS) influenced some state BJP governments' inadequate responses to acts of violence against religious minorities.

Legally mandated benefits were assigned to certain groups, including some groups defined by their religion. For example, educational institutions administered by minority religions were allowed to reserve seats for their co-religionists even when they received government funding. Benefits accorded dalits (formerly known as "untouchables") were revoked once they converted to Christianity or Islam, but not to Buddhism or Sikhism, ostensibly because once a dalit converted to Christianity or Islam, he would no longer technically be a dalit, although such caste distinctions informally existed in both religions.

The Religious Institutions (Prevention of Misuse) Act of 1988 criminalizes the use of any religious site for political purposes or the use of temples to harbor persons accused or convicted of crimes. While specifically designed to deal with Sikh places of worship in Punjab, the law applies to all religious sites. The Religious Buildings and Places Act requires a state government-endorsed permit before construction of any religious building. The act's supporters claimed that its aim was to curb the use of Muslim institutions by Islamic extremist groups, but the measure became a controversial political issue among religious Muslims.

In 2003 Gujarat passed a "Freedom of Religion" bill that provides penalties of up to three years in prison and a fine of \$1,000 (Rs. 40 thousand) for the use of allurement or force for religious conversion. Under the act, government officials must assess conversions, and the district magistrate must give prior permission. Human rights advocates believed that the law was meant to make it more difficult for poor persons, mistreated minorities, and others ostracized under the caste system to convert from Hinduism to another religion. At year's end, the rules and regulations for the Gujarat bill remain unframed, rendering the legislation inactive. Anticonversion laws have been in effect in Madhya Pradesh and Orissa since the 1960s, and laws against forcible conversions exist in Andhra Pradesh and Arunachal Pradesh. There were no reported convictions under these laws.

There is no national law barring a citizen or foreigner from professing or propagating his or her religious beliefs; however, the law prohibits visitors in the country on tourist visas from engaging in religious proselytization without first obtaining permission from the Ministry of Home Affairs. During the year, state officials continued to refuse permits to foreign missionaries to enter some northeastern states, on the grounds of political instability in the region. Missionaries and religious organizations must comply with the Foreign Contribution (Regulation) Act (FCRA) of 1976, which restricts funding from abroad. The government can ban a religious organization if it violates the FCRA, provokes intercommunity friction, or has been involved in terrorism or sedition.

On June 11, residents of a slum in a Mumbai suburb assaulted four missionaries leading a vacation bible school. The four departed the country on June 12. No formal charges were filed for the assault or against the missionaries for violating the FCRA. On June 13, four other missionaries with tourist rather than missionary visas were deported for conducting religious activities.

The legal system accommodated minority religions' personal status laws, and there were different personal laws for different religious communities. Religion-specific laws pertain in matters of marriage, divorce, adoption, and inheritance. The personal status laws of the religious communities sometimes discriminated against women (see section 5). Some laws, such as the repealed POTA, while not specifically written to target a minority group, affected particular ethnic or religious groups. A July 2004 study carried out by the NGO People's Tribunal in 10 states found that 99.9 percent of those arrested under POTA were Muslims.

### Societal Abuses and Discrimination

Tensions between Muslims and Hindus, and between Hindus and Christians, continued during the year. Attacks on religious minorities occurred in several states, which brought into question the government's ability to prevent sectarian and religious violence or prosecute

those responsible for it. For example, in February two Christian pastors were killed in Orissa within a two-week period. On February 16, suspected Hindu radicals killed Gilbert Raj, a Baptist pastor, who had worked in the state for 13 years. Ten days later, unknown assailants stabbed and killed Pentecostal pastor Dilip Dalai. No charges were filed in either case. Muslims in some Hindu-dominated areas continued to experience intimidation and reported a lack of government protection, resulting in their inability to work, reside, or send their children to schools. In some areas, primarily in Gujarat, Hindutva groups displayed signs stating "Hindus only" and "Muslim-free area." There were also allegations of prohibitions on the Muslim call to prayer.

In May the Orissa High Court reduced Dara Singh's death sentence to to life imprisonment. Singh was the prime suspect in the 1999 murder of Australian missionary Graham Staines and his two minor sons. The court acquitted the other 11 accused in the crime. On August 29, the CBI appealed the high court's reduction of Singh's sentence to the Supreme Court and urged the reimposition of capital punishment. The Supreme Court has yet to hear the case.

Christian organizations also claimed that BJP officials in some localities did not restrain the illegal activities of radical Hindu groups. The All-India Catholic Union (AICU) expressed concern over growing anti-Christian violence in several states ruled by the BJP. The AICU claimed that the perpetrators were members of fundamentalist groups affiliated with the RSS. For example on April 3, a local newspaper reported that senior BJP leader Dilip Singh Judeo threatened Christian missionaries during a public address, stating that "if Christian missionaries don't stop converting people, we will take up arms." In June allegedly in order to prevent violence, the Jodhpur district administration in Rajasthan rescinded permission for the Pentecostal Church of God to hold a gathering in the city after members of the Vishwa Hindu Parishad and Bajrang Dal protested, claiming that the church was converting Hindu children.

Hindu organizations frequently alleged that Christian missionaries forced or lured Hindus, particularly those of lower castes, to convert to Christianity. In Christian majority areas, there were occasional reports that Christians persecuted members of regional minorities.

Press reports indicate that following the December 2004 tsunami, a group of Christian missionaries allegedly refused to provide aid to Hindus in a southern Tamil Nadu village because they would not convert.

The Gujarat government took no action to arrest and convict those responsible for the widespread communal violence that occurred in 2002 following the burning of the Sabarmati Express train in Godhra (see section 1.e.).

There were no reports of anti-Semitic acts during the year against the country's small Jewish community.

For a more detailed discussion, see the [2005 International Religious Freedom Report](#).

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

The law provides for freedom of movement, and the government generally respected this in practice; however, in certain border areas the government required special permits.

Security forces often searched and questioned occupants at vehicle checkpoints, mostly in troubled areas in the Kashmir Valley or after major terrorist attacks. The government also expanded construction of a 330-mile security fence along the LOC in Jammu and Kashmir, causing occasional difficulties for local residents, as it cut through some villages and agricultural lands. By the end of the year, fence construction was nearing completion. The government's purpose for the security fence was to stop arms smuggling and infiltration by Pakistani-based terrorists or insurgents. The government attributed a decline in successful insurgent crossings during the year in part to the fence.

Under the Passports Act of 1967, the government may deny a passport to any applicant who "may or is likely to engage outside India in activities prejudicial to the sovereignty and integrity of India." The government used this provision to prohibit foreign travel by some government critics, especially those advocating Sikh independence and members of the separatist movement in Jammu and Kashmir. Citizens from Jammu and Kashmir faced extended delays, often up to two years, before the Ministry of External Affairs would issue or renew their passports. Government officials regularly demanded bribes before issuing passports, especially for those from Jammu and Kashmir that required special clearances. Applicants born in Jammu and Kashmir—even the children of serving military officers born during their parents' deployment in the state—were subjected to additional scrutiny and police clearances prior to passport issuance.

Unlike in previous years, there were no reports of the government using the issuance of passports or travel documents to restrict travel of separatist leaders in Jammu and Kashmir.

There was no law banning forced exile; however, there were no reports of forced exile during the year.

#### Internally Displaced Persons (IDPs)

According to the Norwegian Refugee Council, at least 650 thousand persons were displaced due to conflicts in Jammu and Kashmir, Gujarat, and the northeast (see sections 1.a., 1.c., and 1.g.). There was no progress on the plight of approximately 300 thousand Kashmiri Pandits (Hindu Brahmins) forced to flee the Kashmir Valley in the early 1990s after the outbreak of separatist violence. The Pandits remained in refugee camps in Jammu and New Delhi, some 15 years after the start of the insurgency, and were unable to return to their homes in Jammu and Kashmir because of safety concerns, including the on-going killings of Hindus in the state.

According to home ministry statistics, there were 55,476 registered Kashmiri Pandit families living in Jammu, 34,088 in Delhi, and 19,338 in other states receiving government support. Government-managed camps housed 5,778 families in Delhi and Jammu. The government

provided monthly cash relief of \$70 (Rs. three thousand) and basic dry rations to the 14,869 families in Jammu. In Delhi, authorities provided \$75 (Rs. 3,200) to 4,100 families.

The Indo-American Kashmir Forum claimed there were 350 thousand internally displaced Pandits living outside the valley. In August 2004 the Jammu and Kashmir government announced plans to help displaced Kashmiri Pandits return to the valley, but at year's end, no Kashmiri had done so.

More than 87 thousand persons lived under poor conditions in relief camps in Assam as a result of ongoing violence in the northeast. According to press reports, nearly two thousand families who were riot victims from the Kokrajhar, Bongaigaon, and Dhubri districts in Assam awaited rehabilitation grants sanctioned by the state government following the 1993-99 riots in these areas. An NGO reported that the state government released part of the grant during the year. The government also provided assistance to IDPs and allowed them access to NGO and human rights organizations during the year. There were no reports that the government attacked or forcibly resettled IDPs. There were no reports of government programs specifically designed to facilitate resettlement.

#### Protection of Refugees

The law does not provide for the granting of asylum in accordance with the 1951 UN Convention relating to the Status of Refugees and its 1967 protocol, and the government has not established a system for providing protection to refugees or asylum seekers. The government provided temporary protection to certain individuals who may not qualify as refugees under the 1951 convention and the 1967 protocol. According to the office of the UN High Commissioner for Refugees (UNHCR), at the end of May, there were 11,124 registered refugees in the country. UNHCR reported during the year that the government hosted over 250 thousand unregistered refugees from Sri Lanka, Burma, and Tibet.

Since 1960, the government hosted approximately 110 thousand de facto refugees from Tibet.

At year's end, Nepal Communist Party leader C.P. Gajurel remained in jail in Chennai.

The government generally denied NGOs and the office of the UNHCR direct access to refugee camps, particularly in Mizoram, but in Tamil Nadu, UNHCR was given access and maintained a local office. The UNHCR had no formal status, but the government permitted its staff access to refugees living in urban centers. The government did not formally recognize UNHCR grants of refugee status, although it provided "residential permits" to many Afghans and Burmese. The government considered Tibetans and Sri Lankans in refugee camps to be refugees, and provided assistance to them, but since it regarded most other groups, especially Bangladeshi refugees, as economic migrants, it did not provide them with aid. However, in recent years, a number of court rulings extended protection to refugees whom the government had formerly considered economic migrants. During the year, the UN high commissioner for refugees was not invited and did not visit the country.

The government permitted recognized refugees to work, and the state and central governments paid for the education of refugee children and provided limited welfare benefits.

Conditions in the Tamil refugee camps were generally acceptable, although much of the housing was badly deteriorated. The UNHCR continued to meet outside the camps with Tamil refugees considering voluntary repatriation. The NGO Organization for Eelam Refugee Rehabilitation had regular access to the camps during the year. The number of "special camps" which house suspected members of the Liberation Tigers of Tamil Eelam) was reduced to one camp. As of November 1, only 11 refugees remained in the single camp.

Those living in the country not formally recognized as refugees included some 80 thousand Chakmas and approximately 200 thousand Santhals, both from Bangladesh, who remained in Arunachal Pradesh, Mizoram, and Assam, respectively, as well as Afghans, Iraqis, and Iranians without valid national passports. The government either chose not to deport them, issue them renewable residence permits, or ignored their status. Due to financial and other reasons, many refugees were unable or unwilling to obtain or renew their national passports and were unable to regularize their status.

In 2004 the UNHCR assisted in the return of three thousand refugees from Tamil Nadu to Sri Lanka.

Ethnic Chins from Burma were among the non-recognized refugees in the northeastern states. An estimated 40 thousand to 50 thousand Chins lived and worked illegally in Mizoram. NGOs estimated that during the year 10 thousand Chins with alleged ties to Burmese insurgent groups were expelled to Burma, where the military government reportedly jailed them. Mizoram human rights groups estimated that some 31 thousand Reangs, a tribal group from Mizoram displaced by sectarian conflict, remained in six camps in North Tripura. Conditions in these camps were poor, and the Tripura government asked the central government to allot funds for their care. In 2004 Reang leaders in the camps pressed for reserved jobs, education benefits, and a comprehensive rehabilitation package. The Mizoram government rejected the demands, maintaining that only 16 thousand of the refugees had a valid claim to residence. After several rounds of negotiations, the Mizoram government and Reang-dominated Bru National Liberation Front insurgents signed a peace accord in June. Mizoram also agreed to take back Reangs who had fled to Tripura to escape the conflict.

In January the Supreme Court ordered the Ministry of Home Affairs, the election commission, and the governments of Mizoram and Tripura to resettle approximately 40 thousand displaced Reangs and add them to the electoral rolls.

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

The law provides citizens with the right to change their government peacefully, and citizens exercised this right in practice through periodic, free, and fair elections held on the basis of universal suffrage.

## Elections and Political Participation

The government changed hands following free and fair national parliamentary elections in April and May 2004 in which approximately 675 million citizens participated. The country has a democratic, parliamentary system of government, with representatives elected in multiparty elections. Parliament sits for five years unless dissolved earlier for new elections, except under constitutionally defined emergency situations. Citizens elected state governments at regular intervals except in states under president's rule.

Election-related violence occurred during the year. In February Naxalite insurgents killed seven policemen and polling officials in Palamu, Jharkhand, on the eve of the first state assembly elections.

Also in February Maoist rebels killed 11 persons in the first phase and 10 persons in the final phase of state assembly elections on Bihar and Jharkhand. Maoists beheaded one person in Giridih in Jharkhand for defying the Maoist call for a boycott.

According to the Jammu and Kashmir chief secretary, there were 109 incidents of violence in the state during the campaigning and voting for the 2004 parliamentary elections in April and May in which 31 civilians and six members of the security forces were killed, and 261 persons injured. In April 2004 the terrorist group Jaish-e-Mohammed (JeM) distributed hand-written notes ordering residents in parts of the Kashmir valley not to participate in elections. JeM also demanded that Kashmiris not work on public works projects and support locally organized strikes. In April 2004 terrorists cut off the ears of a man in Udhampur for voting in the polls. In a similar incident in Pulwama, members of the terrorist group Lashkar-e-Tayyiba cut off the finger of a villager because he had voted (voters' fingers were stained with ink after they cast their ballots).

There were numerous instances of police or security force interference with election-related activity in 2004. In Srinagar the chairman of the JKLF, Mohammad Yasin Malik, and the president of the Jammu and Kashmir Democratic Freedom Party, Shabir Ahmad Shah, were among six separatist leaders detained by police for peacefully campaigning against the 2004 parliamentary elections in Baramulla district in northern Kashmir. Police detained these persons and activists from other groups on a regular basis prior to elections prevent them from campaigning against voting on the grounds that their activities would disturb the peace. As a rule, the periods of detention were short, and detainees were quickly released.

There were 69 women in the 783-seat national legislature, and 7 women in the cabinet of ministers. Numerous women were represented in all major parties in the national and state legislatures. Constitutional amendments passed in 1992 reserved 33 percent of seats for women in elected village councils (Panchayats).

The constitution reserved seats in parliament and state legislatures for scheduled tribes and scheduled castes in proportion to their population (see section 5). Indigenous persons actively participated in national and local politics.

## Government Corruption and Transparency

Corruption was endemic in the executive and legislative branches of government. Transparency International determined that corruption was "all-pervasive" in the country. Election campaigns for parliament and state legislature seats were often funded with unreported money, and the government failed to combat the problem. In December the media highlighted one instance in which 11 members of parliament were videotaped accepting bribes.

On June 15, the government passed the Right to Information Act, mandating stringent penalties for failure to provide information or affecting its flow, and requiring agencies to self-reveal sensitive information. The government took extended periods of time to reply to information requests and often did not provide a response.

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

A wide variety of domestic and international human rights groups generally operated without government restriction, investigating abuses and publishing their findings on human rights cases; however, in a few circumstances, groups faced restrictions. Some domestic NGOs and human rights organizations faced intimidation and harassment by local authorities. The government banned 355 NGOs during the year for misuse of funds. In April 2004 ACHR alleged harassment by local authorities, including denial of government services and numerous intimidating visits from the security forces. Other human rights activists and NGOs also complained of surprise visits and other harassment by police and government officials.

Human rights monitors in Jammu and Kashmir were unable to move around the state freely to document human rights violations due to fear of retribution by security forces and countermilitants. Several individuals involved in the documentation of violations in Jammu and Kashmir, including lawyers and journalists, were attacked in past years, and in some cases, killed. No such cases were reported during the year, although one monitor was killed during the 2004 polls by an improvised explosive device (see sections 1.a. and 1.g.).

International human rights organizations were restricted, and foreign human rights monitors historically have had difficulty obtaining visas to visit the country for investigation purposes. For example, in 2004 the government did not respond when AI's secretary general, Irene Khan Zubeida, applied for a visa. This was her third attempt, following unsuccessful visa applications in 2002 and 2003. AI claimed that the repeated visa denials may be linked to its demand for a retrial of the Best Bakery case and its report critical of state actions during the 2002 Gujarat riots.

The main domestic human rights organization was the government-appointed NHRC. The NHRC acted independently of the government,

often voicing strong criticism of government institutions and actions. However, some human rights groups claimed the NHRC was hampered by numerous institutional and legal weaknesses, including statutory regulations and operational inefficiencies. The NHRC did not have the statutory power to investigate allegations and could only request that a state government submit a report. State governments often ignored these requests and, if a report was submitted, state governments rarely carried out its recommendations. Human rights groups such as ACHR claimed that the NHRC did not register all complaints, dismissed cases on frivolous grounds, did not adequately protect complainants, and did not investigate cases thoroughly.

The NHRC was able to investigate cases against the military; however, it could only recommend compensation for victims of abuse, and NHRC recommendations were not binding. Many states had their own human rights commissions, and the NHRC only has jurisdiction if a state commission fails to investigate. Human rights groups alleged that state human rights commissions were more likely than the NHRC to be influenced by local politics and less likely to offer fair judgments.

According to Home Ministry statistics, the NHRC received 241,368 complaints and closed 186,433 cases. During the year, the Supreme Court at NHRC request ordered the retrial of 10 riot cases from Gujarat, in which the high court acquitted the accused (see section 1.e.).

The Home Ministry examined several amendments to the 1993 Protection of Human Rights Act proposed by the NHRC seeking to increase its powers to investigate allegations of human rights violations by the armed forces. In the last 3 years, the NHRC investigated 289 such cases, resulting in action against 59 officials and the punishment of 19 offenders.

The 1993 Protection of Human Rights Act recommended that each state establish a human rights commission. As of October commissions existed in Assam, Chhattisgarh, Himachal Pradesh, Jammu and Kashmir, Kerala, Madhya Pradesh, Manipur, Maharashtra, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, and West Bengal. The Jammu and Kashmir state legislature established a state human rights commission, but it had no authority to investigate alleged human rights violations committed by members of the security forces.

In April the Jammu and Kashmir human rights commission charged the state government, particularly the deputy commissioners, of diluting its authority and brushing aside its recommendations. The Jammu and Kashmir human rights commission received 305 complaints since its inception, regarding prisoner release, custodial deaths, and alleged security force harassment.

Tamil Nadu and Andhra Pradesh have special courts to hear human rights cases. The Uttar Pradesh government continued to defy a court order to reactivate its special human rights court.

The NHRC was active during year, highlighting human rights abuses throughout the country, and recommending compensation for victims of human rights abuses. For example, in July the NHRC recommended that the Haryana government conduct an independent investigation into police assaults on agitating workers at the Honda Motorcycle and Scooters India factory in Gurgaon. No action has been taken by year's end.

In June the NHRC represented five persons who had been jailed for more than 3 decades in Assam without trial (see section 1.c.).

In recent years the NHRC proposed and lobbied for schools to include a human rights course in their standard curricula, but at year's end no schools had implemented this suggestion. Several universities, however, introduced human rights courses into their curricula at the behest of the NHRC.

At year's end, the CCDP, a Punjab-based human rights organization, had not received an NHRC response to its report documenting 672 disappearance cases (see section 1.b.).

The Nanavati commission, tasked with conducting a re-inquiry into the 1984 massacre of Sikhs in Delhi, released its report in August. It cited several prominent Congress party leaders for complicity in the violence. The report highlighted law enforcement culpability in the deaths due to a deliberate lack of action and noted that only one policeman was convicted for committing atrocities during the riots, in which three thousand Sikhs were killed. Union minister Jagdish Tytler and Member of Parliament Sajjan Kumar were indicted in the report. Tytler resigned from parliament and Kumar resigned from the Delhi Rural Development Board after the report's release, but at year's end no formal punishment resulted from the report. The government set up two committees to provide compensation, promised by Prime Minister Singh to the victims' families.

At year's end, the two-member judicial commission created to investigate riot-related violence in Gujarat received an extension to complete its report.

#### Section 5 Discrimination, Societal Abuses, and Trafficking in Persons

The law prohibits discrimination on the basis of race, sex, religion, place of birth, or social status, and government authorities worked to enforce these provisions with varying degrees of success. Despite laws designed to prevent discrimination, social and cultural practices as well as other legislation had a profound discriminatory impact, and discrimination against women, persons with disabilities, indigenous persons, homosexuals, and national, racial, and ethnic minorities was a problem. The traditional caste system, as well as ethnic, religious, and language differences, deeply divided the society. According to the National Commission for Scheduled Castes and Scheduled Tribes, caste clashes were frequent in Uttar Pradesh, Bihar, Tamil Nadu and Karnataka.

#### **Women**

Domestic violence was common and a serious problem. According to a 2004 National Commission for Women survey, 60 to 80 percent of women were abused in some way by their spouses, 42 percent were beaten physically, and 22 percent were expelled from their homes for at least a day. According to the women's group Majlis, many women were forced to remain in abusive relationships because of social and

parental pressure and to protect their children. According to a survey conducted during the year by the International Institute for Population studies, 56 percent of women believed wife beating was justified in certain circumstances.

Rape and other violent attacks against women continued to be a serious problem. According to the National Crime Records Bureau (NCRB), in 2004 authorities arrested 133,865 persons for violent attacks against women and there were 12,558 convictions. The NCRB reported 1,157 cases of rape against dalit women in 2004 and 523 cases of rape against the scheduled castes in the first six months of the year. Human rights groups claimed that these numbers were much lower than the actual totals.

Ineffective prosecution and societal attitudes made progress against domestic violence difficult. The NCRB confirmed that the number of rapes reported had declined from 16,373 in 2003 to 14,809 in 2004, while reported molestations had decreased from 33,943 to 31,716. However, the NCRB pointed out that the number of rapes increased sharply at the end of 2004 to 17,633 cases. According to the NCRB, 2 rapes take place every hour, 1 in 5 victims was a child, and 19 out of 20 of those arrested for rape went unpunished.

The Home Ministry reported that in New Delhi during 2004, there were 130 reported dowry deaths, 490 rapes, 489 sexual molestations of women, 1,211 instances of cruelty by the husband or in-laws, and 1,599 reports of sexual harassment.

In June a father-in-law raped Imrana, a Muslim woman, in Muzzafarnagar, Uttar Pradesh. After the incident, local community and religious leaders ruled that she must separate from her husband and move in with the father-in law who had raped her. They also determined that she should consider her former husband as her son, because she was now married to his father. The All India Muslim Personal Law Board, responsible for overseeing Muslim family law issues, refused to overturn this decision. Numerous women's organizations protested, but Uttar Pradesh chief minister Mulayam Singh Yadav supported the edict, claiming that the Muslim religious leaders ruling must have been deeply considered. In July police arrested the father-in-law and charged him with rape. He remained in judicial custody at year's end.

The press reported that violence against women was increasing, although some local women's organizations attributed the apparent increase to greater reporting. Only 10 percent of rape cases were adjudicated fully by the courts, and police typically failed to arrest rapists, fostering a climate of impunity. Upper caste gangs often used mass rape to intimidate lower castes, and often gang raped as punishment for alleged adultery, or as a means of coercion or revenge in rural property disputes. The number of reported rape cases and the extent of prosecution varied from state to state.

In Lucknow in February 2004, six tribal women were raped while working in a brick kiln. The police initially refused to lodge a complaint and alleged that three of the six victims had not actually been raped. After higher authorities intervened, police filed charges and arrested two suspects.

In March a 21-year-old woman was tortured, stripped, made to sit on a donkey and paraded through Chandupur village, Uttar Pradesh, after a local mystic accused her of killing a small child. Police intervened, but no arrest was made.

On August 20, according to the AHRC, a rape victim and her child were auctioned off for 13 cents (Rs. 6) in Jharkhand. After four men raped Piary, a tribal woman, she became pregnant and demanded that her rapists take responsibility for her child. The village elders first decided that the perpetrators should pay Piary, but when she rejected this, they auctioned Piary and her child. Newspaper reports stated that a young man present during the auction empathized with Piary's plight, agreed to marry her and take responsibility for her child. The village heads approved and announced that the approximately \$280 (Rs. 12 thousand) collected from the four perpetrators would be given to Piary for the marriage. Human rights groups demanded the arrest of the perpetrators and the village heads, but at year's end, the police had made no arrests.

On September 13, a woman was allegedly gang raped on the Toofan Express train by seven people, three of whom were Railway Protection Force personnel. According to press reports, the Railway Ministry ordered an inquiry into the alleged gangrape and compensated the victim. Railway officials on duty at the time were suspended and a ticket examiner and vendor were arrested.

Women often bore the brunt of caste-based violence. For example on March 31, the NFO People's Watch-Tamil Nadu reported that in Vengamedu village, an upper caste man assaulted and sexually harassed a dalit woman for using a pathway forbidden to dalits. He tore off the woman's clothes, hit her 20 to 30 times, and verbally abused her. The victim attempted to lodge a complaint with the police, but Sub-Inspector Sidhuraj of the Chennimalai police refused to register her complaint. No action was taken and the man remained free at year's end.

The government prosecuted some rape cases during the year, but was not able to enforce rape laws effectively. In May three youths abducted and sexually assaulted a female student from Venkateswara College in South Delhi. Although police arrested one man, who was in judicial custody at year's end, the two other alleged rapists remained at large. In January two years after the gang rape of a student from the Maulana Azad Medical College in Delhi, an additional sessions court gave life sentences to the two accused.

Providing or taking a dowry is illegal under the Dowry Prohibition Act of 1961; however, dowries continued to be offered and accepted, and dowry disputes remained a serious problem. In a typical dowry dispute, the groom's family harassed a new wife for not providing a sufficient dowry. This harassment sometimes ended in the woman's death, which the family often tried to portray as a suicide or accident. In 2004 the government registered 6,250 dowry death cases under the Dowry Prohibition Act, in which husbands or in-laws murdered women for not providing sufficient dowry.

In September the Delhi Commission for Women reported 677 cases of abuse against women from January to July, of which 92 percent were dowry related and 22 percent a result of harassment by in-laws. In 2004 Delhi police's crime against women cell recorded 7,987 dowry-related cases. Of these, police counseled 1,853 families to a compromise, filed criminal charges in another 1,200 cases, and in five thousand

cases the victim did not pursue the matter. In 2004 there were 122 dowry-related deaths in Delhi. In March the West Tripura sessions court sentenced three persons to five years' rigorous imprisonment for abetting the suicide of a woman by torturing her for dowry in 2003.

The Tamil Nadu government reported an increase in cases filed under the Dowry Prohibition Act from 175 in 2003 to 294 cases in 2004. In 2004 the government won convictions in 32 cases of dowry harassment, including 8 involving murder. Lawyers confirmed that wife-battering cut across all religions, caste, and educational levels. Convictions potentially took several years. For example, during the year the Chennai high court convicted two accused persons of a dowry death case initially filed in 1995.

Usually at a disadvantage in dowry disputes, women have begun to speak out against dowry demands. In February a woman from Bhiwani, Haryana, refused to join her husband after her marriage ceremony because of a dowry demand by her in-laws. The local panchayat stood by the woman's decision.

The media often reported cases of dowry murder. On August 19, 19-year-old Charanpreet Kaur was set on fire and killed by her father-in-law because her parents could not meet her in-laws' ever-increasing demands for dowry. Kaur made a statement to police before she died, and her husband and in-laws were arrested. At year's end, all accused were in New Delhi's central jail awaiting formal murder charges.

Under the law, courts must presume that the husband or the wife's in-laws are responsible for every unnatural death of a woman in the first seven years of marriage--provided that harassment was proven. In such cases, police procedures required that an officer of the rank of deputy superintendent or above investigate and that a team of two or more doctors perform the postmortem procedures; however, in practice police did not follow these procedures consistently.

Madhya Pradesh, Kerala, Bihar, and several other states had a chief dowry prevention officer (CDPO), although it was unclear how effective they were. Madhya Pradesh also required that all government servants seeking to marry produce a sworn affidavit by the bride, the groom, and his father that no dowry exchanged hands.

In May the Supreme Court ordered the creation of a commission to end dowry. In August parliament passed the Domestic Violence Bill to deal with dowry-related harassment and murder. The bill provides sweeping powers to magistrates to issue protection orders.

In May parliament amended the Code of Criminal Procedure to stipulate that mandatory DNA tests in all rape cases. In an effort to protect women from sexual assault by police officers, the bill also prohibits the arrest of women after sunset and before sunrise except in "exceptional circumstances."

The government banned *sati*, the practice of burning a widow on the funeral pyre of her husband, in the 1800s, and there were no instances of *sati* in recent years. However, in January according to press reports, the Rajasthan High Court dropped charges against 18 persons in a 1987 case in which 18-year-old Roop Kanwar was killed through *sati* after witnesses recanted their testimony. Women's groups demanded an appeal, but there was no action at year's end.

During the year, honor killings continued to be a problem, especially in the northern states of Punjab and Haryana. Human rights organizations estimated that up to 10 percent of all killings in those two states were honor killings; however, the true number may be much higher. In August Delhi police arrested Jai Singh and four others for the alleged honor killing of his daughter, Sunita. Singh was accused of hiring the four to kill his daughter for living separately from her husband. At year's end, the five were in jail awaiting trial.

Dalit women were often singled out for harassment. For example, they were occasionally stripped naked by mobs and paraded in public for offending persons belonging to higher castes. Police failed to arrest a man in Haryana who in February 2004 cut off a 50 year-old dalit woman's nose. In December in Keraragard, Orissa, upper-caste Hindus and a priest beat four dalit women for entering a temple forbidden to them. The village council then fined the women approximately \$22 (Rs. 1,000). The district collector ordered a probe into the incident.

Numerous laws exist to protect women's rights, including the Equal Remuneration Act of 1976, the Prevention of Immoral Traffic Act of 1956, the *sati* Prevention Act of 1987, and the Dowry Prohibition Act of 1961. However, the government often was unable to enforce these laws, especially in rural areas where traditions were deeply rooted. According to press reports, the rate of acquittal in dowry death cases was high, and due to court backlogs, they took an average of six to seven years to conclude.

In August parliament amended the Hindu Succession Act, which removed discriminatory clauses from the Hindu Succession Act by giving equal inheritance rights to Hindu, Buddhist, Jain, and Sikh women, including giving married daughters the same inheritance rights as male heirs.

The government took a number of steps to assist female crime victims. These included establishing telephone help lines, creating short-stay homes, providing counseling, occupational training, medical aid, and other services, and creating grant-in-aid schemes to provide rehabilitation rescue.

While the act of prostitution is legal, most aspects surrounding prostitution are illegal. The Immoral Trafficking Prevention Act (ITPA) criminalizes the offenses of selling, procuring, and exploiting any person for commercial sex as well as profiting from the prostitution of another individual. Prostitution is only legal when no third party is involved, it is not done in or near a public place, it is not forced, there is no solicitation, or when the prostitute resides alone. Section 8 of the ITPA criminalizes the act of solicitation for prostitution, which has been used in the past to arrest and punish women and girls who were victims of trafficking. According to UNICEF, in 2004 the country contained half of the one million children worldwide who entered the sex trade. Many tribal women, who are particularly vulnerable, were forced into sexual exploitation (see section 6.c.).

In recent years sex workers began to demand legal rights, licenses, and reemployment training. For example, in June 2004 numerous sex workers in Goa were displaced after authorities demolished their homes. According to the chairperson of the NCW, some of the displaced sex workers refused a government compensation offer, claiming that it had not been accurately described to them.

The country is a significant source, transit point, and destination for many thousands of trafficked women (see section 5, Trafficking).

Sexual harassment was common, with a vast majority of cases unreported to authorities. A 2003 study by a senior professor at the Madras Institute of Development Studies chronicled the hazards faced by some women in the workforce. Among these were physical and verbal abuse from male supervisors, restricted use of toilets, and the denial of lunch breaks. In June 2004 a joint report released by the NCW and the national press institute found that most women experienced gender discrimination at their workplaces.

Attempts by women to report harassment often resulted in further problems or dismissal. In January 2004 a female general manager of Dena Bank in Mumbai was suspended after filing sexual harassment charges against senior bank officials; there were no developments in the case at year's end. In April 2004 a Sahara airlines executive employee in Mumbai was fired after filing a sexual harassment complaint. At year's end, the case was ongoing.

In April 2004 the Supreme Court determined that a victim of sexual harassment had a right to compensation based on the findings of an internal departmental report or investigation of the case.

The law prohibits discrimination in the workplace; however, enforcement was inadequate. In both rural and urban areas, women were paid less than men for the same job. Women experienced economic discrimination in access to employment and credit, which acted as an impediment to their owning a business. The promotion of women to managerial positions within businesses often was slower than that of males. State government-supported microcredit programs for women began to have an impact in many rural districts. In March the government amended the law to provide flexibility for women to work in factories on the night shift. Women's organizations welcomed the move but stressed the need to improve security for such women.

In February 2004 the government amended the divorce laws to expand the venues where a woman could file and obtain a divorce. Earlier provisions in the Hindu and Special Marriage Acts forced women to file cases in cities or towns where they had resided during the marriage or where the marriage took place; however, the amendment permits women to file where they currently reside. At year's end, there were no changes to the triple *talaq* provisions, which allowed Muslim men to divorce their wives simply by saying "talaq" three times.

In September 2004 after a request by the All-India Democratic Women's Association, the army allowed female military recruits to be examined by female doctors at their request.

Many tribal land systems, notably in Bihar, denied tribal women the right to own land. Other laws relating to the ownership of assets and land accorded women little control over land use, retention, or sale. However, several exceptions existed, such as in Ladakh and Meghalaya, where women traditionally controlled family property and enjoyed full inheritance rights.

## Children

The government has not demonstrated a commitment to children's rights and welfare and does not provide compulsory, free, and universal primary education. According to government statistics from 2003, 165 million of the 203 million children between the ages 6-14 attended school. The upper house of parliament failed to take action on the constitutional amendment passed by the lower house of parliament in 2002 that provided free and compulsory education to all children aged 6 to 14.

In contrast to the government's figures, UNICEF reported that approximately 120 million of the country's 203 million school-aged children attended primary school, a net primary school enrollment/attendance rate of 77 percent. A significant gender gap existed in school attendance, particularly at the secondary level, where boys outnumbered girls 59 to 39 percent, according to the latest government statistics released in 2001. The government initiated a plan to provide free schooling for girls from single-child families. The program would also provide a \$45 (Rs. 2,005) per month stipend for university studies. Under the scheme, families with only two girls will get a 50 percent reduction in primary education fees.

Government schools were underfunded and understaffed. For example, in August, it was reported that a government school in Sara Village, Bihar, had only 2 teachers for 180 students. Human rights groups asserted that teachers in government schools often did not show up for work or left their jobs early in the day. Government teachers often were not paid on time or in full, were not given adequate training, and worked under very poor conditions. Corruption and misappropriation of educational funds was commonplace.

The law provides for free medical care to all citizens; however, availability and quality of that care remained problems, particularly in rural areas.

The law prohibits child abuse; however, there were societal patterns of abuse of children, and the government did not release comprehensive statistics.

Abuse of children in both public and private educational institutions was a problem. Schoolteachers often used corporal punishment on their students. In January a teacher forced 12 students of the Nalpawand primary school in Bastar to eat human excreta as punishment for allegedly chewing tobacco. The teacher was suspended. In February police arrested the principal of a government school in northwest Delhi and three others for raping a 16-year-old student. The Delhi government suspended two of the accused from their posts, but no criminal

charges were filed at year's end.

In August in Delhi, a six-year-old child suffered multiple fractures when a teacher beat him for not completing his assignment. The teacher was suspended, and the school's principal was transferred after the police were notified.

Buying and selling female children was a common practice in rural Tamil Nadu. For instance, police arrested a 55-year-old man for selling an 18-month old child to a woman in Kancheepuram district in September. The seller informed the police that he had purchased the child for \$23 (Rs. 1,000).

The government was responsive to some incidents of violence against children. In September the juvenile justice court ruled that any failure by school management or teachers to protect students from sexual abuse or provide them with a safe school environment is punishable with a prison term of up to six months. In February the Supreme Court sentenced a man to death for the 2001 rape and murder of a six-year-old girl in Uttar Pradesh. Earlier the Allahabad High Court had acquitted the man.

Children were subjected to abuse during certain religious ceremonies. In April in the Virudhnagar district of Tamil Nadu, police arrested 80 persons for participating in a ritual of burying infants alive as a means of appeasing a goddess. Tamil Nadu enacted a law in 2002 to stop this offense, but the practice continued in the state during the year.

Unlike in previous years, there were no reports of child ordination. In March 2004 child rights activists challenged in the Mumbai high court the ordination of nine-year-old Priyal Bagericha as a Jain nun. Child rights activists alleged that various religious sects ordained children as young as eight years old and that children were not competent to make such decisions on their own. According to media reports, 600 such child monks existed in various Jain sects. The high court ruled that it was acceptable for small children to become monks, as the children had the option to return to their families at any time.

The law prohibits child marriage, a traditional practice that occurred throughout the country, and sets the legal marriage age for girls at 18; however, according to the Health Ministry's Country Report on Population and Development, published during the year, half of all women were married by the age of 15. Each year in April and May during the Hindu festival of Askhay Tiritiya, thousands of child marriages were performed in Madhya Pradesh, Chhattisgarh, and Rajasthan. Although state governments conducted awareness campaigns during the year, enforcement was weak, and the practice was accepted in certain communities. In April the NCW launched the Bal Vivah Virodh Abhiyan (Child Marriage Protest Program), a nationwide awareness program against child marriages with particular focus on the states of Bihar, Rajasthan, Chattisgarh, Madhya Pradesh, Jharkhand, and Uttar Pradesh.

In April the government reported that it prevented 200 child marriages in the Rajnandgaon district of Chattisgarh, a district known for mass child marriages in April and May each year. In 2004, 135 child marriages were prevented in the district, and a priest was sent to jail for presiding over these ceremonies.

In May a villager attacked Shakuntala Verma, a district supervisor in Dhar district of Madhya Pradesh, when she tried to convince the man not to marry his minor daughters on "Akshaya Tiritiya," one of the most auspicious days of the Vedic calendar. Police registered the case, but no further action was taken.

Child marriage was the norm among certain scheduled castes and tribal communities in the Krishnagiri district of Tamil Nadu. Brides were typically between the ages of 8 and 12 years of age, while the groom was generally much older.

According to the 1999 National Family Health Survey, 64.3 percent of women in Andhra Pradesh, 46.3 percent in Karnataka 24.9 percent in Tamil Nadu, and 17 percent in Kerala were married before the age of 18.

Trafficking and commercial sexual exploitation of children was a problem (see section 5, Trafficking).

Although the law prohibits and the government conducted programs to limit the use of amniocentesis and sonogram tests for sex determination, NGOs in the area reported that some family planning centers revealed the sex of fetuses. Both female infanticide and selective feticide targeting female babies occurred during the year as the traditional preference for male children continued. The government did not enforce effectively the law prohibiting termination of a pregnancy for sexual preference. In May the health minister stated to parliament that there were no feticide-related convictions in the past eight years.

Parents often gave priority in health care and nutrition to male infants. Women's rights groups pointed out that the burden of providing girls with an adequate dowry was one factor that made daughters less desirable. The states of Punjab, Haryana, Gujarat, Uttar Pradesh, Himachal Pradesh, Delhi, parts of Tamil Nadu, Maharashtra, and Karnataka reported particularly low female/male ratios, with Punjab reporting the lowest ratio in the country: 793 females to 1,000 males.

### Trafficking in Persons

The Immoral Traffick (Prevention) Act (ITPA) prohibits trafficking in human beings; however, trafficking in persons remained a significant problem. Some law enforcement officials participated in and facilitated trafficking in persons.

The ITPA toughened penalties for trafficking in children, particularly by focusing on traffickers, pimps, landlords, and brothel operators, while protecting underage victims. Conviction for an offense committed against a child (under age 16) was punishable by imprisonment for 7 years

to life. In the case of minors (16 to 18 years), the punishment is from 7 to 14 years imprisonment. Other penalties under the act range from minimum terms of imprisonment of one year for brothel keeping, to minimum terms of 7 years to life imprisonment for detaining a person, with or without consent, for prostitution. During the year there were more than 195 prosecutions against traffickers. The police were charged with enforcing the country's laws on prostitution and trafficking in women and children, NGOs, observers, and women in prostitution said that police actions were often part of the problem. NGOs alleged that corruption at the enforcement level helped perpetuate trafficking. The government cooperated with groups in Nepal and Bangladesh to deal with the problem and began to negotiate bilateral antitrafficking agreements, particularly through the South Asian Association for Regional Cooperation. Numerous NGOs, including the Action Against Trafficking and Sexual Exploitation of Children, provided training and conducted informational meetings.

The country was a significant source, transit point, and destination for numerous trafficked persons, primarily for the purposes of prostitution and forced labor. There were an estimated 500 thousand child prostitutes nationwide. More than 2.3 million girls and women were believed to be working in the sex industry, and experts believed that more than 200 thousand persons were trafficked into, within, or through the country annually. There were approximately three million trafficking victims in the country, and two thousand rescues a year. Women's rights organizations and NGOs estimated that more than 12 thousand and perhaps as many as 50 thousand women and children were trafficked into the country annually from neighboring states for commercial sexual exploitation. According to an International Labor Organization (ILO) estimate, 15 percent of the country's estimated 2.3 million prostitutes were children, while the UN reported that an estimated 40 percent of prostitutes were below 18 years of age. Tribal persons made up a large proportion of the women forced into sexual exploitation.

The country was a destination for Nepali and Bangladeshi women and girls trafficked for the purpose of labor and prostitution. Internal trafficking of women and children was widespread. To a lesser extent, the country was a point of origin for women and children trafficked to other countries in Asia, the Middle East, and the West. The country also served as a transit point for Bangladeshi girls and women trafficked for sexual exploitation to Pakistan and for boys trafficked to the Gulf states to work as camel jockeys. The country was also a growing destination for sex tourists from Europe, the United States, and other Western countries, and NGOs reported that sexual exploitation of children for sex tourism remained a significant problem in the states of Goa and Kerala (see section 5, Women; Children).

The Ministry of Labor and Employment reported in December that it rescued 916 child laborers from Maharashtra and 648 from Delhi.

An estimated 6 to 10 thousand children from Nepal and Bangladesh were trafficked into the country annually for commercial sexual exploitation. Girls as young as seven years of age were trafficked from economically depressed neighborhoods in Nepal, Bangladesh, and rural areas of the country to the major prostitution centers of Mumbai, Calcutta, and New Delhi. NGOs estimated that there were approximately 100 to 200 thousand women and girls working in brothels in Mumbai, and 40 to 100 thousand in Calcutta. In West Bengal, the organized traffic in illegal Bangladeshi immigrants was a principal source of bonded labor. Calcutta was a transit point for traffickers sending Bangladeshis to New Delhi, Mumbai, Uttar Pradesh, and the Middle East.

Within the country, women from economically depressed areas often moved to cities seeking greater economic opportunities, and once there they were often forced by traffickers into prostitution. In many cases, family members sold young girls into prostitution. Extreme poverty, combined with the low social status of women, often resulted in parents handing over their children to strangers for what they believed was employment or marriage. In some instances, parents received payments or the promise that their children would send wages back home.

According to the Indian Center for Indigenous and Tribal Peoples, more than 40 thousand tribal women, mainly from Orissa and Bihar, were forced into economic and sexual exploitation; many came from tribes driven off their land by national park plans. A Haryana-based NGO revealed widespread trafficking of teenaged girls and young boys from poverty-stricken Assam to wealthier Haryana and Punjab for sexual slavery under the pretext of entering into arranged marriages or for forced labor. There was also significant trafficking for real marriages due to decades of large-scale and increasing female feticide.

Boys, often as young as age four were trafficked to the Middle East or the Persian Gulf as jockeys in camel races, and many boys ended up as beggars in Saudi Arabia during Hajj (pilgrimage). The majority of such children worked with the knowledge of their parents, who received \$200 (Rs. 9,300) for their child's labor. Many children were kidnapped for forced labor, with kidnapers earning approximately \$150 (Rs. seven thousand) per month from the labor of each child. The child's names were usually added to the passport of a Bangladeshi or female citizen who already had a visa for the Gulf. Girls and women were trafficked to the Persian Gulf states to work as domestic workers or for commercial sexual exploitation.

The NCW reported that organized crime played a significant role in the country's sex trafficking trade and that trafficked women and children were frequently subjected to extortion, beatings, and rape. Although a few women were abducted forcibly or drugged, most were trafficked through false offers of marriage, employment, or shelter. Poverty, illiteracy, and lack of employment opportunities contributed to the trafficking problem as well as police corruption and collusion. Although corruption was endemic, there was no known anticorruption initiative linked specifically to trafficking. NGOs alleged that issues such as ignorance, a lack of political resolve, and corruption at the enforcement level perpetuated the problem. Police in Chennai, Mumbai, and New Delhi worked actively with NGOs to target traffickers and safeguard victims after their rescue.

Victims of trafficking were subject to threats, including emotional blackmail, violence, and confinement, as well as the threat of apprehension by authorities, detention, prosecution, and deportation. Women involved in prostitution in Mumbai and Calcutta claimed that harassment, extortion, and occasional arrests on soliciting charges usually characterized police intervention. NGOs, victims, and the media continued to identify corruption at the enforcement level as an impediment to swifter and fairer justice for trafficked women and children.

In many cases police or the staff of government remand centers, where rescued victims were housed temporarily, sexually abused trafficking victims. Similarly, arrested prostitutes were quickly returned to brothels after the brothel operators paid bribes to the authorities. In other cases, arrested prostitutes were released into the custody of traffickers and madams posing as relatives. In these cases, the debt owed by the girls to the brothel operators and traffickers increased, as the costs of bribing or legally obtaining release of the girls was added to their

labor debt.

Some NGOs knowledgeable about the trafficking situation identified traffickers and the locations of girls being held captive by brothel owners. However, other NGOs were reluctant to trust police with this information, due to their past conduct in brothel raids and the likelihood that many trafficking victims would be arrested and re-victimized rather than assisted by such raids. Several NGOs had significant successes, however, in working with police to target brothels with children.

The ITPA required police to use only female police officers to interrogate girls rescued from brothels. The ITPA also required the government to provide protection and rehabilitation for these rescued girls. The vast majority of arrests made under ITPA were for solicitation rather than trafficking or trafficking-related crimes. During the year this pattern changed in Delhi, Bangalore and Mumbai. Police reportedly no longer arrested trafficked women and children for soliciting, and in Tamil Nadu, such arrests diminished significantly.

Implementation of the ITPA's provisions for protection and rehabilitation of women and children rescued from the sex trade improved. The government significantly increased police training and modestly improved inter-state coordination of antitrafficking efforts, cooperated with NGOs, supported awareness campaigns, and increased the number of shelter facilities available to rescued trafficking victims.

The Home Ministry and the Bureau of Police and Research Development (BPRD) began a law enforcement training program, considered a significant achievement by NGOs, to sensitize police and improve trafficking arrests and convictions. The Department of Women and Child Development (DWCD) improved delivery of support services through greater coordination with its state counterparts and civil society organizations. Government-run shelters in some localities, specifically Mumbai, expanded significantly under the *Swadhar* (women's home) scheme.

In March the home minister of Maharashtra ordered the closure of all dance bars operating in the state, many of which served as prostitution and trafficking outlets. In recent years, traffickers began favoring these bars as a venue in which to engage in trafficking, instead of the more blatant brothel-based trafficking. However, the government's implementation of this order without a rehabilitation plan caused displacement of women, forcing many to enter direct prostitution in Mumbai, Delhi, Goa, and other major trafficking destinations.

In November the Home Ministry organized a significant conference with the United Nations Office of Drugs and Crime to raise awareness of human trafficking and to state, for the first time, their commitment to addressing this issue with resources and manpower.

Over the last several years, arrests and prosecutions under the ITPA increased slightly. All indications suggested a growing level of trafficking into and within the country. In particular, due to the Maoist instability in Nepal, trafficking increased significantly from that country.

## Persons with Disabilities

The Persons with Disabilities Act provides equal rights to all persons with disabilities; however, advocacy organizations acknowledged that its practical effects were minimal, in part due to a clause that makes the implementation of programs dependent on the "economic capacity" of the government. Widespread discrimination occurred against persons with physical and mental disabilities in employment, education, and access to health care. Neither law nor regulation required accessibility for persons with disabilities. Government buildings, educational establishments, and public spaces throughout the country had almost no provisions for wheelchair access. The Tamil Nadu government introduced a 3 percent reservation for persons with disabilities in education and employment, and government buildings have made arrangements for wheelchair access. However, human rights activists complained that available facilities were not sufficient.

Mental health care was a problem. Hospitals were overcrowded and served primarily as dumping grounds for persons with disabilities. Patients generally were ill-fed, denied adequate medical attention, and kept in poorly ventilated halls with inadequate sanitary conditions. In July the NHRC determined that insufficient attention was paid to issues of the mental illness and called for better enforcement of national laws. At year's end, no action was taken on the 2001 NHRC recommendation to remove all persons with mental illness from jails. In March the NHRC issued guidelines to jails lodging mentally challenged persons stipulating the need for open lawns, daily physical and mental activities, and strict rules limiting the use of force to self-defense and attempted escape.

The government provided special arrangements for voters with disabilities during the April-May parliamentary elections, but it was not able to meet their needs on a countrywide basis. Pursuant to a Supreme Court directive, the election department attempted to make all polling places accessible by providing wooden ramps. However activists criticized the Election Commission's lack of compliance and delay and were physically prevented from protesting outside of the commission's office in April. The government provided access to most polling stations in larger cities like New Delhi, but access in rural areas was uneven.

The disability division of the Ministry of Social Justice and Empowerment delivered rehabilitation services to the rural population through 16 district centers. A national rehabilitation plan committed the government to provide rehabilitation centers to more than 400 districts, but services were concentrated in urban areas. Moreover, the impact of government programs was limited. Significant funding was provided to a few government organizations such as the Artificial Limbs Manufacturing Corporation of India, the National Handicapped Finance and Development Corporation, and the Rehabilitation Council of India. With the adoption of the Persons with Disability Act, a nascent disabled rights movement slowly raised public awareness of the rights of persons with disabilities.

The National Commission for Persons with Disabilities (NCPD) had the responsibility to recommend to the government specific programs to eliminate inequalities in status, facilities, and opportunities for disabled persons, to review the status and condition of institutions delivering services, and to submit annual reports with recommendations. In February the government constituted a new NCPD headed by a former governor, Sunder Singh Bhandari. In April the Rajasthan High Court directed the state government to promote the establishment of special schools for disabled children in both the public and private sectors; however, few teachers were trained to meet the special needs of disabled

children. Also, the National Center for the Promotion of Employment for Disabled People stated in September that there was a shortage of educational institutions for the disabled and that the admissions process was marked by harassment.

In February the country's civil services introduced a quota for the employment of 20 persons with disabilities per year.

In June the central board for secondary education issued guidelines to schools requiring barrier-free education in schools, colleges, libraries, and hostels. It also took steps to provide Braille books to educational institutions.

In July disabled rights NGOs reported that persons with disabilities were not able to obtain duty free imports of artificial limbs, crutches, wheelchairs, walking frames, and other medical needs. They also claimed that no effort was made to make railway compartments, platforms, and railways accessible to the disabled, and noted that less than 1 percent of the disabled were employed.

In August the government began the first disabled-friendly train service between Bhopal and Nizamuddin (Delhi) station. The train had an exclusive coach for persons with disabilities and Braille tags for seat and berth numbers in all coaches.

The Equal Opportunities, Protection of Rights and Full Participation Act of 1995 stipulates a 3 percent reservation in all educational institutions for persons with disabilities; however, statistics showed that only about 1 percent of the students had disabilities. The Times Insight Group reported in September that most colleges and universities did not know about the law.

The government provided special railway fares, education allowances, scholarships, customs exemptions, rehabilitation training and budgetary funds from the Ministry of Rural Development to assist the disabled; however, implementation of these entitlements was not comprehensive. Parents of children with developmental disabilities lobbied the government for a special security fund, but, no action was taken on this request at year's end.

### **National/Racial/Ethnic Minorities**

The 1955 Civil Rights Act made the practice of untouchability, which discriminates against dalits and others defined as scheduled castes, a punishable offense; however, such discrimination remained ubiquitous, stratifying almost every segment of society. Many members of lower castes were relegated to the most menial of jobs and had little social mobility. The widespread belief that dalits and low caste Hindus, Muslims, Christians, and Sikhs were inferior compounded the discrimination they faced. Despite stated efforts by the government to eliminate the discriminatory aspects of caste, the practice remained, and widespread discrimination based on the caste system occurred throughout the country. Human rights groups asserted that the government was not committed to ending caste-based discrimination, pointing at the government's failure to fill over 50 thousand vacant positions specifically reserved for dalits.

The law gives the president the authority to identify historically disadvantaged castes, dalits, and tribal persons (members of indigenous groups historically outside the caste system). These "scheduled" castes, dalits, and tribes were entitled to affirmative action and hiring quotas in employment, benefits from special development funds, and special training programs. The impact of reservations and quotas on society and on the groups they were designed to benefit was a subject of active debate. According to the 2001 census, scheduled castes, including dalits, made up 16 percent (166.6 million) of the population, and scheduled tribes were 8 percent (84.3 million). In June the Andhra Pradesh cabinet approved a 5 percent reservation for Muslims in government jobs and educational institutions, raising total reservations in the state to 51 percent of the state government workforce. By allotting 5 percent to Muslims, the government recognized Muslims as a disadvantaged minority. In December parliament passed a constitutional amendment providing for reservation to scheduled castes, tribes, and the other backward classes in non-minority, unaided, private educational institutions.

Many rural dalits worked as agricultural laborers for caste landowners without remuneration. The majority of bonded laborers were dalits (see section 6.c.). Dalits, among the poorest of citizens, generally did not own land, and often were illiterate. They faced significant discrimination despite laws to protect them, and often were socially prohibited from using the same wells, attending the same temples, and marrying upper-caste Hindus. In addition, they faced social segregation in housing, land ownership, and public transport. Many dalits were malnourished, lacked access to health care, worked in poor conditions (see section 6.e.), and continued to face social ostracism.

Despite a high court order and judicial directives first issued in 1998, dalits continued to be excluded from the Kandadevi car festival, a Hindu temple celebration in Tamil Nadu. During the year, the Tamil Nadu government permitted only 26 dalit families to take part in the festival. NGOs reported that crimes committed by higher caste Hindus against dalits often went unpunished, either because the authorities failed to prosecute such cases or because the crimes were unreported by the victims, who feared retaliation.

The National Campaign on Dalit Human Rights alleged higher-caste Hindus discriminated against dalit fishing communities and that local governments were negligent in providing aid and registering dead or missing dalits in the aftermath of the December 2004 tsunami. NGOs and some government officials concurred, stating that higher-caste fishing communities had discriminated against dalit communities and prevented them from receiving aid. For example, during tsunami relief operations, the Nagapattinam, Tamil Nadu, village council distributed government-supplied aid only to fisherman and not to dalits who were also left homeless. On January 12, as reports of discrimination surfaced, the government deployed 10 trucks of relief supplies specifically for dalit communities.

On October 19, *The Indian Express* reported that Sanjay Nandan, a government official working for the Election Commission in Bihar, actively discriminated against dalits and lower caste members, claiming that Nandan was disappointed that there was no way to determine an employee's caste in the human resources database. Nandan claimed that the Gujarat government, where he previously worked, listed caste as a field in the database, making it easy to pick and choose officials by caste. When the Election Commission learned of his discrimination, they transferred Nandan back to Gujarat. No further action was taken against Nandan, or against the government of Gujarat, at year's end.

Violence against dalits was a problem during the year. For example on May 19, in Gowribindur, Karnataka, upper-caste Hindus clashed with those from lower castes. The South India Cell for Human Rights Education (SICREM) lodged a complaint with the district collector. In July five dalits were killed in caste clashes in Madhya Pradesh. A 21-year-old dalit man was killed in July in Vellore district in Tamil Nadu when he was attacked by 14 caste Hindus. Eight of the attackers were arrested.

In August 50 dalit houses in Gohana, Haryana, were set on fire by a mob after dalits were accused of murdering a caste Hindu. Police intervened to disperse the crowds, and no one was injured. dalits staged protests against the incident in Amritsar, Kapurthala, and Ludhiana in September, and clashed with the police. There were 20 arrests, and 6 policemen were injured. It was alleged that some non-dalits attempted to limit dalit participation in the political process. Human rights lawyers and activists accused police of arresting dalit leaders to keep them away from the polls. A fact-finding mission led by SICREM revealed that in March, in a village in Karnataka, upper caste persons destroyed dalit homes and injured six after a dalit group won local elections. There were no arrests in this case. In October in Mujehra Khurd, Mirzapur, three men set fire to a dalit woman after she refused to withdraw from a village election. Police launched a search for the men, but there were no reports of an arrest. In December in Raisen District of Madhya Pradesh, five upper-caste men chopped off the arm of a dalit woman who refused to withdraw rape charges against their fellow caste members. An investigation was ongoing at year's end.

Christians historically rejected the concept of caste; however, because many Christians were converts from low caste or dalit backgrounds, they continued to suffer the same social and economic limitations as Hindu dalits, particularly in rural areas. Low-caste Hindus who converted to Christianity also lost their eligibility for affirmative action programs, while those who became Buddhists or Sikhs did not.

The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act lists offenses against disadvantaged persons and prescribes stiff penalties for offenders; however, this act had only a modest effect in curbing abuse. Human rights NGOs alleged that caste violence was on the increase, and that it claimed hundreds of lives. Caste violence was especially pronounced in Uttar Pradesh, Bihar, Rajasthan, Madhya Pradesh, Tamil Nadu, and Andhra Pradesh.

Social pressures to enforce caste lines led to episodes of vigilante retribution against dalits who tried to assert their independence. While rare in urban settings, examples of intolerance occurred regularly in rural parts of the country. Complicated social and ethnic divisions in society created severe localized discrimination.

In January the dalit-based Bahujan Samaj Party announced that it distributed axes to its workers in Rajasthan to strengthen 'dalit power,' and counter violent attacks by upper caste Hindus. Also in January upper caste landlords in Ferozepur, Punjab, forced three dalit boys to drink urine after a fight over a cricket match. The boys were later handed over to the police and kept in custody for eight days.

Discrimination against dalits covered the entire spectrum of social, economic, and political activities, from withholding of rights to killings and was not solely practiced by high-caste Hindus against the lower castes and dalits. The stratification within the dalit community also resulted in discrimination by higher-level dalits against lower-level dalits. There was also discrimination within the Christian community by older, established ancestral Christians against more recent dalit Christian converts.

In 2004 the newly elected BJP government in Rajasthan selectively withdrew a large number of caste discrimination cases filed against the RSS and other Hindu nationalist groups during the tenure of the previous Congress-led government.

## Indigenous People

The Innerline Regulations enacted by the British in 1873 provide the basis for safeguarding tribal rights in most of the northeastern border states, and in practice the regulations were followed. These regulations prohibit any nontribal person, including citizens from other states, to cross 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 were allowed to own land in tribal areas without approval from tribal authorities.

The 2001 census indicated that 8.2 percent of the population belonged to scheduled tribes. According to the Indian Confederation of Indigenous and Tribal Peoples, 80 percent of the tribal population lived below poverty level, and more than 40 thousand tribal women, mainly from Orissa and Bihar, were forced into situations of economic and sexual exploitation (see section 5, Trafficking, and section 6.c.). The 1955 Protection of Civil Rights Act prescribed special courts to hear complaints of atrocities committed against tribal people. In February 2004 the Supreme Court decided that the [Scheduled Castes and Scheduled Tribes \(Prevention of Atrocities\) Act of 1989](#) still applied to crime victims from scheduled tribes and castes, even if they had converted from Hinduism to another religion. The decision was in response to an appeal of a Kerala high court decision, which held that because a rape victim had converted to Christianity she was no longer covered by the act.

Despite constitutional safeguards, the rights of indigenous groups in eastern parts of the country often were ignored. The NCRB reported 26,252 crimes committed against Scheduled Castes and Scheduled Tribes in 2003. Indigenous peoples suffered discrimination and harassment, were deprived of their land, and subjected to torture and to arbitrary arrest. For example, in December in Kalahandi District, Orissa, 4 tribals who had worked for 3 months without pay were seriously beaten and locked in a shed when they asked for their wages, while 15 others were forced to stand naked for hours during a cold night. The four tribals escaped and complained to the district labor office, which reportedly inquired into the charges. No other action took place.

There was encroachment on tribal land in almost every eastern state, including by illegal Bangladeshi immigrants, and by businesses that illegally removed forest and mineral products. In July 2004 forest department staff ignored a Supreme Court order and forcefully evacuated a tribal village in the Betul district of Madhya Pradesh. Persons from other backgrounds often usurped places reserved for members of tribes and lower castes in national educational institutions. Mob lynching, arson, and police atrocities against tribal persons occurred in many states (see section 1.c.).

Numerous tribal movements demanded the protection of tribal land and property rights. The Jharkhand movement in Bihar and the Bodo movement in Assam reflected deep economic and social grievances among indigenous peoples. As a result of complaints, tribal-populated states were created in 2000 from the Jharkhand area of Bihar and the Chhattisgarh region of Madhya Pradesh and authorities provided local autonomy to some tribal people in the northeast.

### **Other Societal Abuses and Discrimination**

Section 377 of the Penal Code punishes acts of sodomy, buggery and bestiality; however, the law is commonly used to target, harass, and punish lesbian, gay, bisexual, and transgender persons. Human rights groups stated that gay and lesbian rights were not considered legitimate human rights in the country. In November the government declined to change provisions of Section 377 outlawing homosexuality. In a response to a case being heard by the Supreme Court, the government stated, "public opinion and the current societal context in India does not favor the deletion of the said offense from the statute book." Gays and lesbians faced discrimination in all areas of society, including family, work, and education. Activists reported that in most cases, homosexuals who do not hide their orientation were fired from their jobs. Homosexuals also faced physical attacks, rape, and blackmail. Police committed crimes against homosexuals and used the threat of Section 377 to coerce victims into not reporting the incidents. The overarching nature of Section 377 allowed police to arrest gays and lesbians virtually at will. However, in July in Jharkand, two lesbians belonging to the scheduled tribes married in defiance of both law and tradition.

In September 2004 the Delhi High Court dismissed a legal challenge to Section 377. Plaintiffs filed the case in 2001 after police arrested four gay and lesbian rights workers at the NAZ Foundation International and National Aids Control Office premises in Lucknow, Uttar Pradesh. Police charged the workers with conspiracy to commit "unnatural sexual acts" and possession of "obscene material," which was reportedly safe-sex educational materials. The workers were detained for more than 45 days and denied bail twice. The court dismissed the case, ruling that the validity of the law could not be challenged by anyone "not affected by it," as the defendants had not been charged with a sex act prohibited by law. In April despite the September 2004 challenge of Section 377 by two gay and lesbian NGOs, the NAZ Foundation International, and the National Aids Control Office, the government submitted a petition to the Supreme Court reaffirming the validity of Section 377.

Homosexuals were detained in clinics against their will and subjected to treatment aimed at curing them of their homosexuality. The NAZ Foundation filed a petition with the NHRC regarding a case in which a man was subjected to shock therapy. The NHRC declined to take the case as gay and lesbian rights were not under its purview.

Authorities estimated that HIV/AIDS had infected approximately 4.5 million persons, and there was significant societal discrimination against persons with the disease. According to the ILO, 70 percent of persons suffering from HIV/AIDS faced discrimination.

In Ahmedabad in April 2004, an HIV positive woman committed suicide at her home after allegedly being harassed by her co-workers.

HRW said that many doctors refused to treat HIV-positive children and that some schools expelled or segregated children because they or their parents were HIV-positive. Many orphanages and other residential institutions rejected HIV-positive children or denied them housing. In August the media reported that an AIDS patient, Arjun Debnath, who was initially refused admission in several hospitals in West Bengal, was chained to his hospital bed until a human rights group intervened.

In January 2004 a Mumbai High Court ruled that HIV-positive persons could not be fired on the basis of their medical status.

## **Section 6 Worker Rights**

### **a. Right of Association**

The law provides for the right of association, and the government generally respected this right in practice. Workers may establish and join unions of their own choosing without prior authorization. More than 400 million persons made up the country's active work force, and some 30 million of these workers were employed in the formal sector. The rest overwhelmingly were agricultural workers and, to a lesser extent, urban non-industrial laborers. While some trade unions represented agricultural workers and informal sector workers, most of the country's estimated 13 to 15 million union members were part of the 30-million-member formal sector. Of these 13 to 15 million, some 80 percent of the unionized workers were members of unions affiliated with 1 of the 5 major trade union centrals.

In practice legal protections of worker rights were effective only for the organized industrial sector. Outside the modern industrial sector, laws were difficult to enforce. The authorities generally prosecuted and punished those persons responsible for intimidation or suppression of legitimate trade union activities when the victims were members of nationally organized unions. Unaffiliated unions were not able, in any instance, to secure for themselves the protections and rights provided by law. Union membership was rare in the informal sector.

The Trade Union Act prohibits discrimination against union members and organizers, and employers were penalized if they discriminated against employees engaged in union activities.

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

The law provides for the right to organize and bargain collectively. Although a system of specialized labor courts adjudicates labor disputes, there were long delays and a backlog of unresolved cases. When the parties were unable to agree on equitable wages, the government may establish boards of union, management, and government representatives to make a determination. The legislation distinguishes between civil servants and other workers. Public service employees have very limited organizing and collective bargaining rights.

Trade unions often exercised the right to strike, but public sector unions were required to give at least 14 days' notice prior to striking. Some states had laws requiring workers in certain nonpublic sector industries to give notice of a planned strike.

The Essential Services Maintenance Act allows the government to ban strikes in government-owned enterprises and requires conciliation or arbitration in specified essential industries; however, essential services never have been defined in law. Legal mechanisms exist for challenging the assertion that a given dispute falls within the scope of this act. Thus the act is subject to varying interpretations from state to state. State and local authorities occasionally used their power to declare strikes illegal and force adjudication. The Industrial Disputes Act prohibits retribution by employers against employees involved in legal strike actions, and this prohibition was observed in practice.

The Supreme Court upheld a Kerala high court verdict declaring all general strikes illegal and making organizers of such protests liable for losses caused by the shutdowns, drawing attention to the difference between a complete closedown of all activities and a general strike. While it is likely that the ruling was introduced to discourage political strikes, unions stated that it remained a potential threat to their activities. Other court rulings also declared strikes illegal and made striking workers pay damages because consumers and the public suffered during strikes. In August 2004 the Supreme Court declared all strikes by government employees to be illegal; however, in practice this was not enforced.

There are seven Export Processing Zones (EPZs). Entry into the EPZs ordinarily was limited to employees, and such entry restrictions applied to union organizers. While workers in the EPZs have the right to organize and to bargain collectively, union activity was rare. In addition, unions did not vigorously pursue efforts to organize private-sector employees in the years since EPZs were established. Most EPZ workers were women. The International Confederation of Free Trade Unions reported that overtime was compulsory in the EPZs, that workers often were employed on temporary contracts with fictitious contractors rather than directly by the company, and that workers feared that complaints about substandard working conditions would result in their being fired.

#### b. Prohibition of Forced or Compulsory Labor

The law prohibits forced or bonded labor, including by children; however, such practices remained widespread. The Bonded Labor System (Abolition) Act prohibits all bonded labor by adults and children. Offenders may be sentenced up to three years in prison, but prosecutions were rare. Enforcement of this statute, which was the responsibility of state and local governments, varied from state to state and generally was not effective due to inadequate resources and societal acceptance of bonded or forced labor. On the occasions when inspectors referred violations for prosecution, long court backlogs and inadequate funding for legal counsel frequently resulted in acquittals. NGOs estimated that there were 20 to 65 million bonded laborers in the country, including a large number of children (see section 6.d.). According to an ILO report published during the year, an overwhelming majority of bonded laborers belonged to the scheduled castes and scheduled tribes.

Some press reports in 2002 indicated that Tamil Nadu alone had 25,800 bonded laborers, in response to which the state government began planning and implementing rehabilitation programs. Government officials worked to release other bonded laborers in many states. In West Bengal, organized traffic by illegal Bangladeshi immigrants was a source of bonded labor (see section 5, Trafficking). According to press reports, an NGO in Madurai rescued 33 children sold into slave labor during the year. According to the Ministry of Labor and Employment, 266,283 bonded laborers were identified and rehabilitated in recent years.

Female bondage, forced prostitution, and trafficking in women and children for the purpose of prostitution were widespread problems (see section 5, Trafficking). According to press reports from 2004, prison officials used prisoners as domestic servants and sold female prisoners to brothels (see section 1.c.). *Devadasis*, defined as prepubescent girls given to a Hindu deity or temple as "servants of God," were taken from their families and required to provide sexual services to priests and high caste Hindus. Many of the girls eventually were sold to urban brothels (see section 5).

#### c. Prohibition of Child Labor Practices and Minimum Age for Employment

The government prohibits forced and bonded child labor; however, this prohibition was not effectively enforced, and forced child labor was a problem. The law prohibits the exploitation of children in the workplace; however, NHRC officials admitted that implementation of existing child labor laws was inadequate, that administrators were not vigilant, that children were particularly vulnerable to exploitation, and that the commission was focusing on the adequacy of existing legislation.

There is no overall minimum age for child labor. However, work by children under 14 years of age was barred completely in factories, mines, and other hazardous industries. In occupations and processes in which child labor is permitted, work by children was permissible only for six hours between 8 a.m. and 7 p.m., with one day's rest weekly. In addition to industries that utilize forced or indentured child labor (see section 6.c.), there was evidence that child labor was used in the following industries: hand-knotted carpets; gemstone polishing; leather goods; sari weaving; beadwork; and sporting goods. The government assisted working children through the National Child Labor Project, established in more than 3,700 schools. Government efforts to eliminate child labor affected only a small fraction of children in the workplace. The law stipulates penalties for employers of children in hazardous industries to be \$430 (Rs. 20 thousand) per child employed, and establishes a welfare fund for formerly employed children. The government is required to find employment for an adult member of the child's family or pay \$108 (Rs. five thousand) to the family. According to the South Asian Coalition on Child Servitude, authorities were pursuing over six thousand cases against employers. NGOs noted that requiring the government to pay the family of a child laborer or finding the adult family member a job could be a disincentive to investigating crimes.

Estimates of the number of child laborers varied widely. According to the Ministry of Labor and Employment census, there were 12.7 million child laborers in the country. The government reported that Delhi had 41,899 child laborers. Through the Child Labor (Prohibition &

Regulation) Act, 1986, the government convicted 1,799 offending employers in 2001-02, 325 in 2002-03 and 3,910 in 2003-04. The ILO estimated the number at 44 million. However, NGOs asserted the number of child laborers is closer to 55 million. Most, if not all, of the 87 million children not in school did housework, worked on family farms, worked alongside their parents as paid agricultural laborers, or worked as domestic servants.

The working conditions of domestic servants and children in the workplace often amounted to bonded labor. Children were often sent away to work because their parents could not afford to feed them or in order to pay off a debt incurred by a parent or relative. There were no universally accepted figures for the number of bonded child laborers. However, in the carpet industry alone, human rights organizations estimated that there were as many as 300 thousand children working, many of them under conditions that amount to bonded labor. Officials claimed that they were unable to stop this practice because the children were working with their parents' consent. In addition, there was a reasonable basis to believe that products were produced using forced or indentured child labor in the following industries: brassware; hand-knotted wool carpets; explosive fireworks; footwear; hand-blown glass bangles; hand-made locks; hand-dipped matches; hand-broken quarried stones; hand-spun silk thread and hand-loomed silk cloth; hand-made bricks; and beedis (hand-rolled cigarettes). A number of these industries exposed children to particularly hazardous work conditions.

In 2000 the government issued a notification prohibiting government employees from hiring children as domestic help; however, this did not prevent nongovernment employees from employing children as domestic help, and many children were employed as domestic help throughout the country. On February 23, in West Bengal, according to the Asian Human Rights Commission, a police sub-inspector tortured an eight-year-old girl he employed after accusing her of stealing cookies. The girl was hospitalized for serious head injuries and at year's end, the sub-inspector was not charged.

On June 29, police and an NGO rescued children from Bihar working in an embroidery factory in New Delhi. Two persons were arrested.

Those employers who failed to abide by the law were subject to penalties specified in the Bonded Labor System (Abolition) Act (such as fines and imprisonment) and also to disciplinary action at the workplace. For example, in June 2004 the Allahabad high court ordered the release of nine children working with the Great Roman Circus. At year's end the case was still pending.

In 2003 the labor commissioner estimated that there were 3 thousand bonded child laborers in the Magadi silk twining factories. In January 2004 HRW interviewed children in three states, Karnataka, Uttar Pradesh, and Tamil Nadu, and found that production of silk thread still depended on bonded children.

State governments were responsible for the enforcement of laws against child labor, but oversight was generally lax, especially in the informal sector, which employed most children. The continuing prevalence of child labor was attributed to social acceptance of the practice, the failure of state and federal governments to make primary school education compulsory, ineffective state and federal government enforcement of existing laws, and economic hardships faced by families.

Employers in some industries took steps to combat child labor. The Carpet Export Promotion Council (CEPC), a quasi-governmental organization that received funding from the Ministry of Textiles, has a membership of 2,500 exporters who subscribed to a code of conduct barring them from purchasing hand-knotted carpets knowingly produced with child labor. The CEPC conducted inspections to insure compliance and allowed members to voluntarily use a government-originated label to signify adherence to the code of conduct. However, the CEPC stated that even with its programs, it was impossible to ensure that a carpet had been produced without child labor, given the difficulties of monitoring a decentralized and geographically dispersed industry. A private-sector research and consulting firm conducted the inspections, which covered only 10 percent of registered looms. The inspectors had difficulty locating unregistered looms. The government also cooperated with UNICEF, the UN Educational, Scientific and Cultural Organization, the [UN Development Programme](#), and the ILO in its efforts to eliminate child labor.

The government participated in the ILO's International Program on the Elimination of Child Labor (IPEC). Approximately 145 thousand children were removed from work and provided with education and stipends since IPEC programs began in 1992. The NHRC, continuing its own child labor agenda, organized NGO programs to provide special schooling, rehabilitation, and family income supplements for children in the glass industry in Firozabad. The NHRC also intervened in individual cases. Press reports said that a Madurai NGO rescued 33 children who had been sold into slave labor during the year.

#### d. Acceptable Conditions of Work

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

Minimum wages varied according to the state and to the sector of industry. Such wages provided only a minimal standard of living for a worker and were inadequate to provide a decent standard of living for a worker and family. Most workers employed in units subject to the Factories Act received more than the minimum wage, including mandated bonuses and other benefits. State governments set a separate minimum wage for agricultural workers but did not enforce it effectively. Some industries, such as the apparel and footwear industries, did not have a prescribed minimum wage in any of the states in which they operated.

State governments were responsible for enforcement of the Factories Act. However, the large number of industries covered by a small number of factory inspectors, and the inspectors' limited training and susceptibility to bribery resulted in lax enforcement.

The enforcement of safety and health standards also was poor.

Industrial accidents continued to occur frequently due to improper enforcement of existing laws. Chemical industries were the most prone to accidents. According to the director general of mines' safety rules, mining companies must seal the entrances to abandoned underground mines, and opencast mines must be bulldozed and reforested. However, these rules seldom were obeyed.

Safety conditions were better in the EPZs than in the manufacturing sector. 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. Legal foreign workers were protected under the law; however, illegal foreign workers had no protection.

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