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**BACKGROUND PAPER ON
REFUGEES AND ASYLUM SEEKERS FROM
INDIA**

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PREFACE

India has been an important source country of refugees and asylum-seekers over a number of years. This paper seeks to define the scope, destination, and causes of their flight.

The first part of the paper contains information regarding the conditions in the country of origin, which are often invoked by asylum-seekers when submitting their claim for refugee status. The Country Information Unit of UNHCR's Centre for Documentation and Research (CDR) conducts its work on the basis of publicly available information, analysis and comment, with all sources cited.

In the second part, the paper provides a statistical overview of Indian refugees and asylum-seekers in the main European asylum countries, describing current trends in the number and origin of asylum requests as well as the results of their status determination. The data are derived from government statistics made available to UNHCR and are compiled by its Statistical Unit.

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1. COUNTRY PROFILE OF INDIA

1.1 Basic Country Information

The Republic of India (also known constitutionally in Hindi as *Bhārat Varsha*, or *Bhāratavarsha*) is the seventh largest country in the world, covering an area of 3,287,263 sq km (1,269,219 sq miles), including the Indian part of Jammu and Kashmir (Regional Surveys of the World, 1997, 322). On the north it shares frontiers with Tibet, Nepal and Bhutan; on the north-west it borders Pakistan; on the north-east it borders on Myanmar, and on the east on Bangladesh. Its southern peninsula reaches far down into the Indian Ocean, where its territorial boundaries extend to the Andaman and Nicobar Islands in the Bay of Bengal, and the Lakshadweep archipelago in the Arabian Sea (Ibid.; Encyclopaedia Britannica, Micropaedia, 1993, 285). The country has four distinct geographic regions: the northern mountain zones known as the Himalayas, comprising three parallel ranges interspersed with large plateaus and valleys such as Kashmir and Kulu; to its south the Indo-Gangetic Plain formed by the basins of the Ganges, the Indus and the Brahmaputra river systems; the desert region in the west, and the Indian (or Deccan) Peninsula in the south (Encyclopedia of the Third World, 1992, 807; Family Atlas of the World, 1988, 19-20).

India is the second most populous country in the world: at the last census taken in 1991, which included Sikkim and parts of Jammu and Kashmir, the country had a total of 846,302,688 inhabitants, with a population density of over 257 persons per square kilometre, albeit with great variations in the countryside (Regional Surveys of the World, 1997, 323). In 1996 the population was estimated to be around 945 million (The World Bank, World Development Indicators, 1998, 43). Almost 40 per cent of the population is concentrated in the Ganges basin states of West Bengal, Bihar, Uttar Pradesh, Punjab and Haryana, with the highest density recorded in the southern state of Kerala (Encyclopedia of the Third World, 1992, 807). Of India's 5,653 communities, 635 are tribal, and nearly 200 of these are found in Northeast India. In 1991, the seven states that make up this region had a population of 31,547,314, of whom 8,142,624 were "Scheduled Tribes" and 2,161,161 were "Scheduled Castes" (The Indigenous World 1997-98, 1998), categories which constitutionally entail them to government compensatory programmes (World Directory of Minorities, 1997, 556).

Unlike in most developing countries men outnumber women in India: there are reportedly 92 women for every 100 men throughout the country, except in the state of Kerala, which has a higher birth rate for females than males (Office fédéral des réfugiés, octobre 1997; Encyclopaedia Britannica, Macropaedia, 1988, 10). The proportion of women in the population decreases in the north and west (Encyclopedia of the Third World, 1992, 809). The rate of female infant mortality is higher than that of males, "reflecting the greater economic value associated with males, especially in northern India, and consequent nutritional health-care neglect of females in poorer homes" (Ibid.). In 1995, the rate of female illiteracy was reported at 62 per cent, compared to 35 per cent for males (The World Bank, 1998, 17).

Hindi is constitutionally designated as the official language of India, with English as an associate official language. However, English, which is spoken by some 15 million people in India, is "for practical purposes . . . the official language of India, the principal medium of communication among the educated classes" (Ibid.). Out of 1,652 languages and dialects spoken throughout the country, only the 15 that are spoken by 91 per cent of the population are recognized as regional languages: Sindhi, Urdu, Punjabi, Assamese, Bengali, Gujarati,

Kashmiri, Marathi, Oriya, Sanskrit and Rajasthani from the Indo-European family, and Kannada (or Kanarese), Tamil, Malayalam and Telugu from the Dravidian family (Ibid., *Encyclopaedia Britannica*, , Macropaedia, 1988, 10). 18 regional languages are recognised by the 8th Schedule of the Constitution read with Articles 344(1) and 351 namely: Assamese, Bengali, Gujarati, Punjabi, Sanskrit, Sindhi, Tamil, Telgu and Urdu.

Religion, however, is said to be a 'pervasive influence in India, permeating all aspects of national life . . . [including] . . . political and economic movements' (*Encyclopedia of the Third World*, 1992, 811). India is not only the birthplace of many of the world's religions, such as Hinduism, Jainism, Buddhism and Sikhism, but it has become the home of many others, such as Islam, Christianity, Judaism and Zoroastrianism (*Encyclopaedia Britannica*, Macropaedia, 1988, 12). Yet, as stated by the Minority Rights Group,

[While] India could in many ways be described as a nation of minorities . . . it is nevertheless overwhelmingly Hindu. Although Hinduism may be seen as the one unifying thread running through the country as a whole, Hinduism is not a homogeneous religion. Its centuries-old traditions have been shaped by, and have in turn shaped, several different religious and social traditions. More importantly, cultural traditions often have much deeper resonances in India than those shaped by religion (*World Directory of Minorities*, 1997, 554).

Almost all non-tribal Hindus and many followers of other faiths are divided into castes. Caste is the basis of the Hindu social structure and determines into which of one of the four endogamous hierarchical social groups each Hindu is born. These four groups, known as Varnas, are the *Brahmin*, (priestly caste), the *Kshatriyas* (warrior caste), *Vaisyas* (trading caste), and the *Sudras* (artisan caste) (*Britannica Book of the Year*, 1998, 15; *Encyclopedia of the Third World*, 1992, 811). While the rigidity of the caste system is said to have been mitigated since independence both by a constitutional prohibition against discrimination on the basis of caste and by the equalizing effects of urbanization, industrialization, education, as well as the vast majority of voters from the lower castes, caste considerations are reported to play a significant role in politics and account for much of the internal conflict in the country (Ibid.). A fifth group of 'untouchables' feature outside the formal structure of the caste system but is considered to be the lowest in the Hindu system (Quid 1996, 1996 1193). editions Robert Laffont, France, under 'Inde', at p 1193.

1.2 National Institutions

The January 1950 Constitution established the Indian Union as an sovereign, socialist, secular democratic republic. At present, it consists of 26 states and six union territories under central rule (*Economist Intelligence Unit, Country Profile* 1997-98, 6; *Regional Surveys*, 1997, 325; *Encyclopedia of the Third World*, 1992, 808). Federalism enables secessionist or other movements, as well as parties based on linguistic or ethnic identity, to rule at the state level without recourse to secession (Ibid.). The Constitution thus delineates central, state and shared ('concurrent') powers (EIU Country Profile 1997-98, 6). Foreign policy, defense, transportation, financial allocations and nuclear energy are the purview of the central government, while member states have jurisdiction over the police, public health and education (*Encyclopedia of the Third World*, 1992, 808). States can also enact their own laws, such as penal, marriage and social welfare laws, provided that they conform with those of the central government (Ibid.). The central government is constitutionally empowered, under

Article 356, to dismiss a state government under certain circumstances and institute direct rule (Ibid.; Constitution of India, amended 1994). Laws governing foreigners and the penal system are also issues that are controlled by the central government.

The Legislature

India has a bicameral Parliament: the Upper House (*Rayja Sabha*, or Council of States), twelve of whose members are nominated by the President on the basis of their special knowledge or practical experience in respect to literature, science, art and social service, and a maximum of 38 are elected for six-year terms (with one-third retiring every two years) by their state legislatures in fulfilment of state quotas (Constitution of India, amended 1994, 40, 80; Encyclopedia of the Third World, 1992, 818; EIU Country Profile 1997-98, 6). The Lower House (*Lok Sabha*, or House of the People) consists of 20 representatives of the Union territories, and a maximum of 530 members who are elected by universal adult suffrage every five years (Ibid.). Article 245(1) of the Constitution enables Parliament to "make laws for the whole or any part of the territory of India, and the Legislature of a State may make laws for the whole or any part of the State" (Constitution of India, amended 1994, 115). Article 245(2) states that "no law made by Parliament shall be deemed to be invalid on the ground that it would have extra-territorial operation" (Ibid.). Legislation must be approved by both houses of Parliament (Encyclopedia of the Third World, 1992, 818).

In addition, every state also has unicameral Legislative Assemblies, with the exception of Andhra Pradesh, Jammu and Kashmir, Karnataka, Bihar, Maharashtra, Tamil Nadu and Uttar Pradesh, which have bicameral legislatures: in these, the upper chamber is called the Legislative Council (*Vidhan Parishad*), and the lower chamber is called the Legislative Assembly (*Vidhan Sabha*) (Ibid.). Five-sixths of the members of State Legislative Councils are elected and the remainder are named by the governor, while members of the Legislative Assembly are elected to five-year terms by direct voting of territorial constituencies (Ibid.). A December 1988 Constitutional amendment lowered the voting age from 21 to 18 years (EIU Country Profile 1997-98, 6).

The Executive

The centre, or union executive, consists of the President, the Vice-President and the Council of Ministers headed by the Prime Minister. The President is the constitutional head of the Republic. He is elected to a five-year renewable term by both the upper and lower houses of parliament and the state legislatures, and acts on the advice of the Council of Ministers, which is selected by the Prime Minister. The Vice-President is also elected by an electoral college from both houses of parliament; he presides over the *Rayja Sabha*. The Prime Minister is elected by the lower house of parliament (EIU Country Profile 1997-98, 6; Encyclopaedia Britannica, Macropaedia, 1992, 22). The Council of Ministers, which is headed by the Prime Minister and consists of ministers who are members of the cabinet, ministers of state who are not members, and deputy ministers, is responsible to the House of the People (*Lok Sabha*). A December 1988 Constitutional amendment lowered the voting age from 21 to 18 (parliament (EIU Country Profile 1997-98, 6). The current president of India, whose role is considered to be mostly ceremonial, is Kocheril Raman Narayanan. The Prime Minister is Atal Bihari Vajpayee (EIU Country Report, 2nd Quarter, 1998).

The Judiciary

The legal system is based on English common law, and the Constitution provides for an independent judiciary, consisting of the Supreme Court at its head, followed by the State High Courts and the Lower Courts (EIU Country Profile 1997-98, 6; Regional Surveys, 1997, 356-7; Encyclopedia of the Third World, 1992, 831). The Supreme Court consists of a Chief Justice and a maximum of 25 judges appointed by the President, and has sole jurisdiction in disputes between the Union and the states. It also has appellate jurisdiction over any judgement, decree or order of the High Court where the latter requests a decision on a point of law or the interpretation of the Constitution, as well as advisory jurisdiction on questions referred to it by the President for opinion (Ibid.). The State High Courts are the courts of appeal of the Lower Courts, and their decisions are final unless referred to the Supreme Court. The Lower Courts are also known as Courts of Session and Courts of Magistrates, whose competence is to try all persons duly brought to trial before them (Ibid.). Inferior civil courts can be constituted according to regulations within each state (Ibid.). The Indian court system is said to have more than 20 million pending cases: of these, 200,000 cases are pending in the Supreme Court alone, and 3,077,162 cases are waiting to be heard in the High Courts, of which 1,068,246 have been pending for more than five years and 376,922 have waited more than ten years (South Asia Human Rights Documentation Centre, July 1997).

The Armed Forces

In 1996, India's total armed forces numbered 1,145,000: of these, 980,000 constituted the army, 55,000 the navy (including naval air force), and 110,000 the air force. The paramilitary Border Security Force numbered 185,000 (Regional Surveys, 1997, 384). Each of the services is said to consist only of volunteers, headed by a "well-trained, highly professional corps of officers" (Encyclopaedia Britannica, Macropaedia, Vol. 21, 1992, 23). Military service is voluntary, although the Constitution states that every citizen has a fundamental duty to perform national service if called upon to do so (Regional Surveys, 1997, 384). The armed forces have traditionally not been involved in domestic politics, and have never instigated a *coup d'état* (Encyclopaedia Britannica Macropaedia, Vol. 21, 1992, 23).

India has developed considerable nuclear capability: it exploded its first nuclear device in 1974 and conducted a further five tests in May 1998 (Regional Surveys, 1998, 327; EIU Report, 2nd Quarter 1998, 7; Keesing's, May 1998, 42268; Malik, J. Mohan, August 1998). Although India is not a signatory of the Nuclear Non-Proliferation Treaty, it has signed non-discriminatory treaties banning chemical and biological weapons (The Economist, 16 May 1998). However, in his 24 September 1998 address to the United Nations General Assembly, Indian Prime Minister Atal Bihari Vajpayee is reported to have stated that India was "willing to sign the Comprehensive Test Ban Treaty before September 1999" (BBC Online Network, 24 September 1998(a)).

India has also developed a substantial defense production capability, which includes "small arms and armaments, tanks, frigates and submarines, aerospace equipment, helicopters, trainers, radar and radio systems, air and ground defense electronics, machine guns, heavy mortars and anti-tank guided weapons" (Encyclopedia of the Third World, 1992, 830).

Law Enforcement

While each state controls its own police forces through its own home ministry, coordination of the activities of the all-India bodies is done by the Home Ministry of the Union Government and includes the Central Bureau of Investigation (CBI) (the main law enforcement body in India), the Central Detective Training School, the Central Forensic Laboratory, the Central Fingerprint Laboratory, and the Sardar Ballabhbhai Patel National Police Academy, in Mount Abu, Rajasthan, where the Indian police service is trained (*Encyclopaedia Britannica, Macropaedia*, 1988, 20). It also has jurisdiction over the Central Reserve Police Force (CRP) "as the nucleus of a federal police force, the Railway Protection Force and the Border Security Force" (*Encyclopedia of the Third World*, 1992, 832; *Encyclopaedia Britannica, Macropaedia*, 1992, 23).

1.3 Recent Political Developments

In 1997, India commemorated 50 years of independence from British rule amidst concerns over widespread corruption and crime in public life (*Britannica, Book of the Year* 1998, 435). This sentiment was again voiced by President Kocheril Raman Narayanan in August 1998 when he stated that "Indians were disillusioned and cynical of politics and the administration, and that standards of behaviour in parliament had fallen" (*Reuters*, 15 August 1998). The administrative and political elite that ruled the country for at least two decades after independence is being increasingly challenged by what some observers refer to as "the real India", which has emerged especially since the late 1980s (Adhikari, Gautam, in *Current History*, December 1997, 409). As the country's experience with democracy advances, the masses have enlarged their representation in both the parliament and state assemblies, while the growing criminalization of society has resulted in "the increasing influence of a new breed of legislators and politicians" (*Ibid.*).

Since the 1996 elections, India has gone through four changes of government: in April 1997, the Congress (I) forced the resignation of United Front (UF) Prime Minister H.D. Deve Gowda, ostensibly because he failed to consult other members of the coalition as well as the Front's failure to stop the growth of sectarian forces in the country (*Asian Survey*, February 1998; *Britannica Book of the Year*, 1998). This was followed by a fragile Bharatiya Janata Party (BJP) coalition which lasted only 13 days because it failed to attract secular allies (*Ibid.*, *Freedom in the World*, 1997-1998, 279). A new UF coalition government was installed under a compromise candidate as Prime Minister, Inder Kumar Gujral, which was in turn dissolved in December 1997 when the Congress withdrew its support because of the UF's refusal to oust the Dravida Munnetra Kazakham (DMK) from the coalition (*Ibid.*). The DMK, which originated from Tamil Nadu, was linked by the Jain Commission to the 1991 assassination of former Prime Minister Rajiv Gandhi (*Ibid.*). After both the Congress and the (BJP) failed to form a new coalition, President K.R. Narayana called for new elections to be held in early 1998 (*Freedom in the World*, 1997-1998, 279). These took place in February-March 1998, at which a 14-party coalition headed by the BJP won 181 out of 545 seats in the *Lok Sabha* and Atal Bihari Vajpayee became the new Prime Minister, in a transfer of power that was described as "relatively peaceful" (*EIU Country Report*, 2nd Quarter 1998, 13). However, the BJP was still in a minority, and the party will continue to depend on support from other parties and will need to broaden its political appeal beyond upper-caste Hindus, who form the BJP's traditional support base (Thackur, Ramesh, in *Asian Survey*, June 1998).

Economy

Since the early 1990s, India is undergoing a transition from a government-controlled economy to one that is largely market oriented. The private sector is predominant in agriculture, most non-financial services, consumer goods, manufacturing and some heavy industry (U.S. DOS Country Reports for 1997, 1998), although the State dominates the economy through public ownership in sectors such as finance, energy, capital goods and heavy industry, and infrastructure (EIU Country Profile, 1997-98, 14). The State also employs nearly 70 per cent of the 28 million workers in organized employment (Ibid.).

India is the world's fifth largest economy in terms of gross national product (GNP), but its *per capita* GNP brings it to 90th place (EIU Country Profile 1997-98, 12). Economic growth has surpassed five per cent in the last four financial years, reaching 6.2 per cent in 1996 (Ibid., 18). Agriculture, together with fishing and forestry, contribute approximately one-third of GNP. About 70 per cent of the population are involved in cultivation activities. Nearly 33 per cent of cultivated land is under assured irrigation while the rest depends on the annual monsoon. The main crops are food grains for domestic consumption such as rice, wheat and sorghum, making the country almost entirely self-sufficient: in the 1990s net food imports have been less than two per cent of total food supply, compared with eight to ten per cent in the 1960s and five to eight per cent in the 1970s (Regional Surveys, 1998, 338). Nevertheless, large-scale poverty limits the growth in purchasing food grains (Ibid.), considering that out of the 1.13 billion people living below the poverty line throughout the world, 40 per cent are found in India (EIU Country Profiles, 1997-98, 20).

India is also regarded as 'a giant' in technological achievements and industrial output: it has significant expertise in nuclear energy, communication satellites, vehicles, software design, combat aeroplanes and helicopters, oceanography, and deep-sea oil drilling, as well as machinery and manufactured goods (Ibid.; Regional Surveys, 1998, 339).

Foreign Relations

India's relations with some of its neighbours are described as being "fraught with difficulties" (Regional Surveys, 1998, 334), most notably with Pakistan and China.

Relations with Pakistan have been historically problematic, especially over the issue of Kashmir (Asian Review, February 1998). While tensions have mostly manifested themselves in border skirmishes across the 'line of control', the *de facto* border separating Indian and Pakistani-controlled areas of Kashmir (Keesing's Record of World Events, June 1998, 42344; The Economist, 30 May 1998), the two countries have fought three wars since independence in 1947: shortly after partition over Muslim Kashmir; in 1965 when India attempted to integrate Kashmir more into its borders (The Economist, 3 October 1998), and again in 1971 when India assisted East Pakistan in becoming the independent nation of Bangladesh (Regional Surveys, 1998, 326). Moreover, India and Pakistan have frequently traded accusations that each is supporting terrorist groups inside the other's territory (The Economist, 13 June 1998).

In May 1998 tensions again mounted between the two countries when India reportedly detonated five underground nuclear devices (ostensibly over the perceived threat by China), to which Pakistan responded with six underground explosions (The Economist, 30 May 1998).

Thereafter, the situation in Kashmir was reported as 'extremely volatile', with Indian and Pakistani troops exchanging fire on a large number of occasions across the line of control (Keesing's, June 1998, 42344).

China, according to Defense Minister George Fernandes, is India's greatest enemy (*Le Monde Diplomatique*, juin 1998). The two countries have an unresolved border dispute that brought them to war in 1962 in which India was defeated (*The Economist*, 9 May 1998). They are moreover said to be engaged in a contest to control and dominate South, Southeast and Central Asia and the Malacca Strait in the northern Indian Ocean (Malik, M.J., August 1998, 193). India's nuclear detonations earlier this year are said to reflect its concerns about China's military alliances with Pakistan and Myanmar and the increase in its troops and installation of nuclear weapons in Tibet along the Indian border (*Ibid.*; *Le Monde Diplomatique*, juin 1998). China is reported to have supplied Pakistan with missiles and nuclear technology, as well as military equipment to all of India's neighbours, whose purchases are said to account for 90 per cent of China's arm sales (Malik, M.J., August 1998, 195).

The last ten years of Sino-Indian rapprochement (1988-1998) have failed to alleviate India's security worries (*Ibid.*). While a slight improvement in relations reportedly occurred after President Jiang Zemin's visit to India in late 1996, concerns over China's growing influence in Myanmar have prompted India to sign a regional cooperation pact with Bangladesh, Sri Lanka and Thailand (BISTEC) in June 1997 (*Asian Survey*, February 1998).

Internal Strife

India's democratic structures and the state's ability to protect minority rights are coming under scrutiny by the country's diverse religious, ethnic and cultural minorities in light of "the rise of an aggressive Hindu fundamentalism which has taken political root in the last decade or so" (*World Directory of Minorities*, 1997, 555). Additional tensions are said to be caused by policies (or the lack of them) to transform the economy, which have reportedly given rise to militant movements in various parts of India (*Ibid.*). In Kashmir, Punjab and the Northeast states, religious, language and other cultural differences have reportedly been "sustained or been used to sustain subnational identities, promote political movements for greater autonomy or secession, and mobilize groups for violent action" (Bajpai, K., 1997, 63). The Indian government's response has been to devolve power through federations, and to contain secessionism and violence when federalism has failed to satisfy regionalist demands (*Ibid.*). However, when the government's grant of autonomy to various borderland groups have not sufficed, or when it has not fulfilled its promise to grant further autonomy, "regionalist feelings have turned into secessionist demands" (*Ibid.*).

Kashmir

India's policy towards Kashmir has so far consisted of four phases: in the first phase (1947-64), the government tried to formally grant and then curtail regional autonomy; the second phase (1965-81) saw the government relax the reins of central control; in the third phase (1982-89) the government attempted to manipulate internal politics and establish tighter control over the state, resulting in repression when Kashmiris protested, and in the fourth phase (1990-96) the government "unleashed a massive counter-insurgency force against a full-blown rebellion" (Bajpai, K., 1997, 69). The violence in Kashmir has caused the displacement of 200,000 to 250,000 Kashmiris, most of whom live in camps located primarily near Jammu

and New Delhi (World Refugee Survey, 1998, 128). Following select killings of community members and widespread anarchy (U.S. DOS Country Reports for 1997, 1998), almost the entire Hindu community (Pandits) of Kashmir valley is reported to have fled during 1989-90 when numerous secessionist groups took control of the region (*Internally Displaced People: A Global Survey*, 15 January 1998). The secessionist movement, previously led by secular groups advocating 'Kashminyat', based on the Kashmir valley's distinct ethnic identity and encompassing both Hindus and Muslims, reportedly came under serious attack with the rise of 'fundamentalist' secessionist groups such as the Jammu and Kashmir Liberation Front and the *Hizbul Mujahidden* (Ibid.; Ganguly, Sumit, in *Current History*, December 1997).

Punjab

The conflict in Punjab is said to stem from religious differences and land issues, as well as the Sikh community's desire to exert greater political control over the region (Bajpai, K., 1997, 70). In terms of religion, the insurgency is reportedly dominated by a leadership attempting to harness popular nationalistic sentiments in order to establish theocratic rule (Banerjee, S., 1996, 87). Their goal is said to be the subjugation of their community to conservative norms and practices selected from their religious scriptures and systems in order to restore their religion's 'fundamental purity' (Ibid.). Moreover, due to their "strong attachment to the land" (Bajpai, K., 1997, 70), Sikh nationalism is also seen as a means of articulating the problems of the peasantry: in Punjab, peasants are basically Sikh, while traders and merchants are mostly Hindu, and the state, "which is a necessary party to the agrarian situation, is that of the Hindu big bourgeoisie" (Nathan, Dev, 1996, 27). Consequently, inequalities in exchange due to high prices of industrial commodities and relatively low prices of agricultural commodities tend to be perceived as a problem of exploitation of Sikhs by Hindus (Ibid.). The divisions between the two communities are evidenced by their respective reactions to important political developments: whereas Hindus celebrated the fall of the Golden Temple to the Indian army in 1984, the incident caused Sikhs to further distance themselves from the central government in New Delhi and the Indian nation (Ibid.). Conversely, the Sikhs reportedly welcomed the assassination of Indira Gandhi as an act of revenge, while Hindus regarded it as a betrayal of the 'nation' and countered with "large-scale massacres of Sikhs" particularly in Delhi (Ibid.).

The conflict in Punjab is also said to have gone through four phases: in the first one (1947-66), the government reorganized the state in an attempt to satisfy Sikh demands for autonomy; in the second phase (1967-79) the Sikhs engaged in 'normal' agitational politics, which became more violent when the government failed to respond. The third phase saw the government counter with political responses: appeasement, elections and negotiations, an approach that was deemed a failure by 1992. Thereafter, following the election of a new state government, the central government pursued a strategy of counter-terrorism "based on the massive use of force . . . [which] . . . succeeded in tiring out the militants" (Ibid.) and a return to normalcy with none of the rebel demands being met (Ibid.).

The Northeast

The Northeast of India is comprised of seven states (Arunachal Pradesh, Meghalaya, Assam, Manipur, Tripura, Bihar, Mizoram), five of which have had movements seeking greater autonomy or political independence which have turned violent (Bejpai, K., 1997, 74). The government's policy has reportedly followed familiar lines: initial unresponsiveness; the

initiation of negotiations when ethnic protests turn violent; the massive use of force against insurgents, and a return to negotiations and electoral politics when the rebels tire (Ibid.).

The state of Assam is said to represent the most complex ethnic problem in the northeast. While some of these were solved through the creation of the separate states of Arunachal Pradesh, Meghalaya, Mizoram and Nagaland from Assam, ethnic difficulties are said to remain:

The numerically and politically dominant Hindu Assamese are arrayed against Muslim and Hindu Bengalis; the former are also resented by plains tribes such as the Bodo, Karbis and Mishings. The Bodos, in turn, are feared by non-Bodo tribes inhabiting areas the Bodos want to control (Ibid.).

For example, more than 150,000 Adivasis, mainly Santhals, are said to have been left homeless by violence in the districts of Kokrajhar, Bongaigaon and Dhubri in May 1996 (IDP Global Survey, 15 January 1998). The violence, which allegedly included plunder, arson and a massacre, was reported to be the third major attack against the non-Bodo communities in the proposed Bodo Autonomous Council area of Western Assam, established as part of a 1993 agreement (Ibid.). Two groups advocating a separate Bodoland -- the Bodo Liberation Front (BLF) and the All Bodo Students Union (ABSU) - are said to be behind the attacks to spark off an exodus from villages in the council areas where the Bodos are not in the majority (Ibid.).

In Manipur, large-scale movements resulting from the 'severe strife' between Tangkhul Nagas and Kukus are reported in parts of Manipur (IDP Global Survey, 15 January 1998). While more than 1,000 people are believed to have been killed in this region since 1992, it is not known how many others have been forced to relocate (Ibid., World Refugee Survey, 1998, 128). The worst-affected areas are said to be the districts of Senapati, Chandel, Churachandpur and Ukhrul (IDP Global Survey, 15 January 1998). Kukis have been forced to leave many Naga-inhabited areas, while non-Kukis are said to be migrating to Mizoram from the Churachandpur district (Ibid.). Additional displacement may result from further clashes between the Paites and Kukis in Manipur, as well as the potential violence between Nagas and Meiteis stemming from demands for a "United Nagaland" (Ibid.).

In Tripura, which borders Bangladesh, tribal unrest is said to exist for over a decade (Reuters, 25 September 1998). A policy of displacement of non-tribal people, mostly Bengalis, has been reportedly adopted by two 'militant' groups -- the National Liberation Front of Tripura (NLFT) and the All Tripura Tiger Force (ATTF) -- both to protest what they consider to be 'domination by outsiders' and to bolster their demand to convert the Tripura tribal areas autonomous district into a full tribal state (IDP Global Survey, 15 January 1998). An influx of Bengali Muslims from India and Bangladesh is said to have created tensions with the large indigenous Christian population because of the Bengalis' domination of local politics and the economy (Keesing's, February 1997, 41499). According to the U.S. Department of State, 36 people were killed and 200 homes were burned in January 1997 when tribal militants attacked Bengali settlers in the Khowai district, and in four similar incidents between 12-15 February 1997, "tribal extremists killed 37 people, including eight children, and destroyed 66 homes in Khowai district and Jharul-Bachal" (U.S. DOS Country Reports for 1997, 1998). In February 1997, the army, together with paramilitary reinforcements, was reportedly given shoot-to-kill orders after rebels belonging to the All-Tripura Tiger Force (ATTF) killed 22 Bengali settlers (Ibid.). By the end of the month, violence linked to the ATTF had reportedly

resulted in a further 40 deaths (Ibid.). Also in February 1997, the government-run Gouranga Tilla relief camp was attacked, leaving 32 people dead (IDP Global Survey, 15 January 1998). Approximately 30,000 non-tribal inhabitants have reportedly been forced to flee their villages in the Khowai district (Ibid.).

In Bihar, several armed groups characterized as 'extreme leftist' and commonly known as Naxalites have reportedly taken control of many villages across the state "[e]spousing the cause of the landless poor [and] forcibly redistributing excess land owned by the rich" (IDP Global Survey, 15 January 1998). Deaths from Naxalite activities during 1997 reportedly left a death toll of 100 villagers, 192 Naxalites and five policemen (Ibid.). Moreover, upper-caste private armies and lower-caste armed groups are said to be engaged in a bitter struggle in which both groups have "committed massacres with impunity on a monthly basis" (U.S. DOS Country Reports for 1997, 1998). For example, on 23 March 1997 ten members of a lower-caste community in Hawaspur were killed by alleged members of an upper-caste private army; this was allegedly avenged on 20 April, when six upper-caste villagers in Raghapur were killed by members of the Naxalite group, and in turn avenged on 1 December by a private army of landlords and upper-caste Hindus known as *Ranvir Sena*, who reportedly killed from 63 to 75 low-caste persons in Lakshampur Bathe village (Ibid.). The incident is said to have led to emergency consultations between the state and central governments (Ibid.).

In Mizoram, approximately 15,000 Reang tribals are said to have fled from western Mizoram in fear of death threats and persecution from a militant group of the Mizos ethnic majority (IDP Global Survey, 15 January 1998). The Mizoram government, on the other hand, reportedly argues that ethnic harmony is being impaired by violence at the hands of the Bru (Reang) Revolutionary Army, which is leading the Reangs in their demands for an autonomous district council (Ibid.).

1.4 Profiles of Political Parties

India's governmental system is characterized by a high degree of fragmentation: nearly 40 parties are represented in parliament, with regional parties such as the *Rashtriya Janata Dal* (in Bihar) or the *Telugu Desam Party* (in Andhra Pradesh) gaining significance as regional issues gain greater prominence and the country's development increases (Office fédéral des réfugiés [Suisse], octobre 1997). Both national and regional parties tend to get votes on the grounds of personalities rather than their political programmes, as evidenced by Sonia Gandhi's recent entrance to politics as president of the Indian National Congress (EIU Country Report, 2nd Quarter 1998, 12). The diversity of the political spectrum, along with the need to gain an overall majority, leads to the creation of fragile multi-party alliances: the ruling BJP alliance, the strongest faction out of the February-March 1998 elections to the *Lok Sabha*, is said to be unstable, its main opponents being the Congress Party alliance and the United Front alliance (Ibid.). Following is an overview of only the most important political parties in India at the national level.

Bharatiya Janata Party (BJP) - Indian People's Party

Founded in 1980, its current leadership includes Prime Minister Atal Behari Vajpayee, Human Resources Minister Shri Murli Manohar Joshi, Home Minister Lal Krishna Advani, Finance Minister Yasavat Sinha, and Broadcasting and Information Minister Sushma Swaraj (EIU Country Report, 2nd Quarter 1998, 17). The BJP is said to strongly emphasize right-wing the Hindu religion and family values. It is reportedly popular in the northern parts of India

(Hindu Belt) and among members of the high castes (Brahmins and land owners), educated males and city dwellers (Political Parties of Asia and the Pacific, 1992). Aiming to create a national identity, the BJP claimed in its 1996 election manifesto that it was "committed to the concept of one nation, one people, one culture", and asserted that "its nationalistic vision is defined by the nation's ancient cultural heritage" (Dutt, Sagarika, in *Third World Quarterly*, No. 3, 1998, 413).

Two Hindu organizations said to be closely linked with the BJP, the *Rastriya Swayamsewak Sangh* (National Union of Selfless Servers) and the *Vishva Hindu Parishad*, were responsible for the December 1992 destruction of the Babri Mosque in Ayodhya (Office fédéral des réfugiés [Suisse], octobre 1997). At present, the BJP is said to be committed to stabilizing India's position in the global market (*India Today*, 28 September 1998), as well as seeking recognition for India as a nuclear, space and information technology power (EIU Country Report, 2nd Quarter 1998, 17; Malik, J.M., August 1998).

India National Congress (INC)

Originally founded in 1885 as a social movement against colonial oppression and for India's independence, the INC under the leadership of Mahatma Gandhi advocated non-violent resistance, democracy, socialism and secularism. After independence in 1947, the INC became the government party led by Jawaharlal Nehru, and has been highly influenced by his socialist ideals such as the abolition of poverty, nationalization of home industries, non-alignment in external relations (Office fédéral des réfugiés [Suisse], octobre 1997).

In 1969 the INC split into two factions: the Congress-Organization(O) and the Congress-Indira(I), with the latter splitting again in 1978 after Indira Gandhi proclaimed a state of emergency during 1975-1977. In 1981 Congress(I) was confirmed as the official Congress Party. After Indira Gandhi's assassination by Sikh extremists in October 1984, her son Rajiv Gandhi took over the leadership of Congress as well as the post of Prime Minister, advocating "pragmatic economic and social policies designed to encourage foreign investment and private economic initiative" (Political Parties of Asia and the Pacific, 1992, 105). The INC's popularity began to decline in 1987, and it was defeated in the 1990 elections (EIU Country Report, 2nd Quarter 1998, 18). It regained sympathy votes in the elections following the May 1991 assassination of Rajiv Gandhi, whereupon V.P. Narashima Rao became Prime Minister of a new minority government. The INC was again defeated in the 1996 elections. At present, the party's president is Rajiv Gandhi's widow, Sonia, an Italian-born who is not fluent in Indian languages but who benefits from the appeal of the family name (*Ibid.*). Congress(I) is especially popular among the lower castes, Muslims, illiterates and women (*Ibid.*). Other party leaders are Sharad Pawar (party leader), and former Finance Minister Mahonman Singh (*Ibid.*).

Janata Dal (JD) - People's Party

The Janata Dal was founded in 1988 by former INC member V.P. Singh as a fusion of five diverse parties. After winning 141 seats in the 1989 elections, JD led the fragile National Front coalition government with V.P. Singh as Prime Minister, supported by parties ranging from Communists to the Hindu fundamentalist BJP. Its political agenda aimed to eradicate poverty, reduce ethnic divisions, strengthen regional governments and improve the status of the Untouchables (*harijan*) and lower castes. It also advocated non-alignment and the reduction of external (IMF) debt through tight fiscal policies (Office fédéral des réfugiés [Suisse], octobre 1997; Political Parties of Asia and the Pacific, 1992, 105). The JD coalition broke

down in 1990 amidst internal divisions. A splinter group headed by Chandra Shakar formed the Janata Dal-Shakar (JD-S). Following Mr. Singh's resignation after a no-confidence vote, Chandra Shakar became Prime Minister of a minority government. Further splits occurred between 1992 and 1996. After the 1996 elections the JD was at the centre of the leftist United Front coalition which nominated JD member Gowda as Prime Minister (who was subsequently replaced by Inder Kumar Gujral). Another splinter group, the Rashtriya Janata Dal (RJD) was formed by former JD party chief Laloo Prasad Yadav. The multiple splits within the JD reportedly account for the party's "massive" loss in the 1998 elections (EIU Country Report, 2nd Quarter 1998, 12)

Communist Party of India (CPI)

Founded in 1920, the party is currently led by its general-secretary Indrajit Gupta. It is thought to advocate a pro-Soviet line. It has frequently changed alliances: in 1977 it collaborated with its splinter group, the Communist Party of India-Marxist (CPI-M). CPI was represented in several CPI-M state territories between 1980 and 1987, but it had low representation at the national level. In 1989 the CPI formed part of a Left Front coalition which went on to back the *Janata Dal* coalition. Since 1994, CPI has been part of the United Front alliance which lost its government status in 1988 (Office fédéral des réfugiés [Suisse], octobre 1997; EIU Country Report, 2nd Quarter 1998, 18).

Communist Party of India-Marxist (CPI-M)

This party was founded in 1964 as a pro-Chinese splinter group of the CPI. In 1967, its radical Maoist wing split off to form the Communist Party of India-Marxist/Leninist (CPI-ML), whereupon in 1968 the CPI-M broke away with China. The party's central policy goal is said to be to "complete the people's democratic revolution in the country, go over to the socialist revolution and ultimately build a communist society" (Political Parties of Asia and the Pacific, 1992, 104). It is particularly strong in West Bengal, Kerala and Tripura. The CPI-M is the largest communist party in India and, having won 37 seats in the 1998 election, the dominant member of the United Front coalition (EIU Country Report, 2nd Quarter 1998, 14). Some of the party's leaders are Jyoti Basu and Harkishen Singh Surjeet.

Rashtriya Swayamsewak Sangh (RSS) (National Union of Selfless Servers)

Founded in 1925 "as a club . . . of Hinduva-worshippers" (India Today, 28 September 1998), it is a widespread ultra-fundamentalist Hindu organization which was banned in 1992 because of the violence following the December 1992 destruction of the Ayodhya mosque (Amnesty International, Annual Report 1993, 154). On 18 May 1993 the Allahabad High Court suspended the ban against the RSS and on 4 June 1993 the ban was lifted by the Unlawful Activities Tribunal (Keesing's, May 1993, 39467; June 1993, 39512). At present the RSS is said to exert considerable pressure on the BJP government to which it is said to be closely connected (India Today, 28 September 1998). In general, it aims to roll back recent reforms and modernizing processes such as trade liberalization urbanization and imported technologies (Ibid.). It is also reported to be "demanding control in the seven states where the BJP is in power, either on its own or in a coalition with others (Ibid.).

2. THE HUMAN RIGHTS SITUATION

2.1 International Legal Framework

India has ratified or acceded to a number of international conventions. It has ratified the 1965 International Convention on the Elimination of All Forms of Racial Discrimination (3 December 1968), the 1948 Convention on the Prevention and Punishment of the Crime of Genocide (27 August 1959), the 1952 Convention on the Political Rights of Women (1 November 1961), and the 1979 Convention on the Elimination of All Forms of Discrimination Against Women (9 July 1993). It has acceded to the 1966 International Covenant on Civil and Political Rights (10 April 1979), the 1966 International Covenant on Economic, Social and Cultural Rights (10 April 1979), the 1973 International Convention on the Suppression and Punishment of the Crime of Apartheid (22 September 1977), and the 1990 Convention on the Rights of the Child (11 December 1992). It has signed the 1984 Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (14 October 1997). India is not a state party to the 1951 Convention Relating to the Status of Refugees (UNHCR, Refworld, January 1998).

2.2 National Legal Framework and Legislation

The Constitution

The 1950 Constitution of India is said to be possibly the longest and most detailed written constitution of the world, containing 395 articles, 11 schedules (clarifications and expansions of a number of articles) and numerous amendments (*Encyclopaedia Britannica*, *Macropaedia*, Vol. 21, 1992, 20). It includes a detailed list of "fundamental rights", a long list of "directive principles of state policy" (goals that the State is required to promote in an unspecified period of time and cannot be enforced in a court of law), and a short list of "fundamental duties" of the citizen (*Ibid.*). It also includes provisions to protect the rights and promote the interests of disadvantaged social groups known as "Scheduled Castes" and "Scheduled Tribes" (*Ibid.*).

One of the most contested articles of the Constitution concerns the supremacy of the Union Government over the states. Under article 356, the central government is empowered to dismiss the state government if the latter is deemed incapable of maintaining law and order and suspend fundamental rights listed in Article 19 of the Constitution including the freedom of speech and expression, peaceful assembly without arms, to form associations or unions, to move freely throughout the territory of India, to reside and settle in any part of the territory of India and to practice and profession, or to carry out any occupation, trade or business (*Constitution of India*, amended 1994; Dutt, 1998, 420).

The Constitution allows for the enactment of preventive detention laws against threats to the public welfare and national security: these laws provide for limits on the length of detention, generally for a maximum of 12 months, and for a review of such detention. The two most frequently invoked preventive laws are the National Security Act and the Terrorist Affected Areas Act (*Encyclopedia of the Third World*, 1992, 831).

The National Security Act of 1980

The National Security Act (NSA) permits the detention of persons considered security risks, and police anywhere in the country (except Jammu and Kashmir) may arrest suspects under NSA provisions and detain them without charge or trial for as long as one year on loosely

defined security grounds (U.S. DOS Country Reports for 1997, 1998). NSA objectives were stated by the government as follows:

In the prevailing situation of communal disharmony, social tensions, extremist activities, industrial unrest and increasing tendency on the part of various interested parties to engineer agitation on different issues, it was considered necessary that the law and order situation of the country is tackled in a most determined and effective way (National Security Act 1980)

NSA has reportedly been amended to make its provisions more stringent: in order to release a person detained under this act, the courts are required to find all grounds for detention to be invalid, as opposed to just any one of them, as had been previously the case (U.S. DOS Country Reports for 1997, 1998).

The Terrorist Affected Areas Act of 1984

This act empowers the government to declare any part of the country as "terrorist affected", and allows it to set up special courts where trials can be held *in camera* (Encyclopedia of the Third World, 1992, 831).

The Terrorist and Disruptive Activities (Prevention) Act of 1987

Also known as TADA, this Act prohibited not only 'terrorist acts' but also 'disruptive activities' which questioned or threatened the sovereignty and territorial integrity of India (Amnesty International, November 1994). TADA was allowed to lapse in 1995, but police reportedly continue to detain persons "through the spurious backdating of violations" (HRW World Report 1998, 1997). TADA is also said to be "unconstitutional in its arbitrariness and its removal of safeguards against the conviction of the innocent" (South Asia Human Rights Documentation Centre, July 1997).

The Protection of Human Rights Act

Approved by Parliament in 1993, this Act provided for the constitution of a national human rights commission, state human rights commissions and human rights courts. The National Human Rights Commission is tasked with investigating petitions by victims or any other person on their behalf, including violations attributed to the armed forces, in which case the Commission is empowered to request a report by the central government (National Human Rights Commission, September 1993). The Commission's mandate also includes investigating and recommending policy changes, punishment and compensation in cases of police abuse, as well as promoting the establishment, growth and functioning of non-governmental organizations (U.S. DOS Country Reports for 1997, 1998). Despite being seriously understaffed, the NHRC is said to have actively fostered a culture of human rights awareness by, *inter alia*, promoting human rights education in schools and universities, supporting and encouraging human rights NGOs, as well as training programmes for the police, military and paramilitary forces (Ibid.). Up until the end of 1997, state human rights commissions had been established in West Bengal, Himachal Pradesh, Assam and Madhya Pradesh, while special courts to hear human rights cases were operating in Tamil Nadu, Uttar Pradesh, and Andhra Pradesh (Ibid.). However, in Jammu and Kashmir the human rights commission established on

30 May 1997 had not yet shown effective, independent protection of human rights in the state, and "its powers to independently investigate human rights violations committed by members of the security forces were severely limited" (Ibid.).

2.3 General Respect for Human Rights

Serious human rights abuses are said to continue despite the existence of extensive constitutional and statutory safeguards. According to the U.S. Department of State, "many of these abuses are generated by social tensions, violent secessionist movements and the authorities' attempts to repress them, and deficient police methods and training" (Country Reports for 1997, 1998). The most widely reported violations are extrajudicial executions; torture and rape by police; deaths in custody; poor prison conditions, arbitrary arrest and detention; disappearance; long pre-trial detention; discrimination against women; discrimination against members of indigenous groups and scheduled tribes and castes; intercaste and communal violence (Amnesty International, Annual Report, 1998; Human Rights Watch, World Report 1998, 1997; U.S. DOS Country Reports for 1997, 1998). Other violations are said to be societal violence against women, female bondage and prostitution, child prostitution, trafficking and infanticide and bonded labour by children (U.S. DOS Country Reports for 1997, 1998), armed opposition attacks against civilians, and attacks against human rights activists (HRW World Report 1998, 1997). Victims of human rights violations often include "those seeking to end discrimination on the basis of race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (Amnesty International, July 1997). The UN Special Rapporteur on the independence of judges and lawyers, Param Cumaraswamy, indicates that a number of lawyers and members of civil liberties or human rights organizations, namely Jasved Singh, Thokchom Ibohal Singh, Kaideem Mani Singh and Ravi Nair, had their homes searched or received threats of arrest for their activities (UN Commission on Human Rights, E/CN.4/1998/39, 12 February 1998). Moreover, in January 1998 the UN Working Group on enforced or involuntary disappearances expressed its concern over "the number of cases of disappearance in India in which the fate of the victim remains unknown and in which the perpetrators have not been brought to justice" (UN Commission on Human Rights, E/CN.4/1998/43, 12 January 1998).

In the state of Bihar, armed groups with suspected links to state officials and political parties were reportedly involved in violence against rival political groups and their alleged supporters, with women and children among the victims (Amnesty International, Annual Report 1998). In Jammu and Kashmir, despite the restoration of elected local rule in October 1996, the armed conflict between government forces and armed political opposition groups continued, and there were allegations that armed groups ("renegades") cooperating with the security forces were responsible for abuses (Ibid.). In the state of Punjab, the courts continued to hear evidence in cases of torture in custody, killings and 'disappearances' by senior police officers, and prosecutions of senior officers continued despite protests by police following the June 1997 suicide of police superintendent Ajit Singh Sandhu, who had been charged in a number of human rights cases (HRW World Report 1998, 1997). In the north-eastern states of Assam, Tripura and Manipur, armed opposition groups were involved in attacks on villagers or ethnic rival groups, kidnapping and extortion, while security forces, acting under the Armed Forces (Special Powers) Act, engaged in arbitrary arrests and detention, extrajudicial executions, torture and rape (Amnesty International, Annual Report 1998).

Extrajudicial executions

In December 1997, the UN Special Rapporteur on extrajudicial, summary and arbitrary executions, Bacre Waly Ndiaye, referred to reports he had received of violations of the right to life pertaining to India, which included "deliberate killings, deaths in custody and deaths resulting from excessive use of force" (UN Commission on Human Rights, E/CN.4/1998/68/Add.1, 19 December 1997). Extrajudicial executions continue to be reported in Jammu and Kashmir, the states in the Northeast, Andhra Pradesh and other parts of the country. In the state of Assam, the conflict between Bodo militants and Santal tribesmen continues: on 3 May 1998, at least 12 Santal tribesmen were killed and five others critically wounded when their bus was attacked by Bodo militants in Kokrajhar district; another ten Santals were killed on May 9 when Bodo militants attacked the village of Borbi in Kokrajhar, burning houses and firing indiscriminately. The upsurge in violence reportedly forced some 10,000 people belonging to both the Bodo and Santal communities to flee their villages (Keesing's, May 1998, 42271). In Jammu and Kashmir, on 19 June 1998, Muslim militants reportedly ambushed and massacred the groom and 25 guests at a Hindu wedding in Champnari, north of Jammu (Keesing's, June 1998, 42344). In the state of Maharashtra, Home Minister Gopinath Munde is reported to have vowed that a policy of 'encounters' (extrajudicial executions) would continue in order to restore law and order: in July 1997, Bombay police opened fire on low-caste protesters demonstrating against discriminatory state policies (HRW World Report 1998, 1997). In Punjab, Sikh separatist groups were involved in a number of surprise attacks, such as the 8 July 1997 detonation of a bomb on a train in the state which left 38 passengers dead (Ibid.).

Torture

India has signed the UN Convention against Torture in October 1997, but did not declare its adherence to articles 20, 21 and 22, thereby precluding the jurisdiction of the Committee to deal with individual or inter-state complaints, or the authority of the Committee to undertake *suo moto* enquiries (U.S. DOS Country Reports for 1997, 1998). Confessions extracted by force are reportedly inadmissible in court, but torture is said to be used frequently during interrogations and the practice is common throughout the country, and is evidenced by the number of cases of deaths in police custody (Ibid.). The U.S. Department of State indicates that between April 1996 and March 1997, the National Human Rights Commission received reports of 888 cases of custodial death, including 188 deaths in police custody, while Amnesty International reported that over 300 people died in police custody during 1997 (Annual Report 1998). Among the victims were suspected political activists, criminal suspects, members of vulnerable groups and those defending economic and social rights (Ibid.). In February 1997 seven detainees in police custody in a remote part of the state of Gujarat were reportedly blinded when police rubbed a concoction of *Tiger balm* (which is used for treating headaches), and chili powder into their eyes (Amnesty International, 14 February 1997).

Arbitrary Arrest and Detention

Preventive detention provisions in state and national legislation are said to be widely used throughout India: in the state of Tamil Nadu, about 2,000 *habeas corpus* petitions are said to be filed each year for the release of men and women detained under state legislation allowing detention without trial for 12 months (Amnesty International, Annual Report 1998). In Assam, four human rights defenders and journalists were arrested on 4 August 1997 under the

National Security Act for speaking out against government corruption and the increased powers granted to the armed forces; they were charged with having links to armed opposition groups and publishing their statements (*Ibid.*). According to a local non-governmental organization, police in Punjab take advantage of the fear of a revival in insurgency activity in order to "facilitate illegal detentions during which torture remains endemic (UN Commission on Human Rights, E/CN.4/1998/NGO/121, 24 April 1998). The same NGO adds that charges are sometimes levied against the detainee for incidents that occurred after the detention (*Ibid.*). Thousands of political prisoners and prisoners of conscience are said to be held in prisons characterized by severe overcrowding, lack of medical facilities, poor sanitation and ill-treatment by prison staff (Amnesty International, Annual Report 1998).

Freedom of Expression

Article 19(a) of the Constitution guarantees freedom of speech and expression that by the judgement of the Supreme Court in cases such as *Express Newspapers (P) Ltd. v. UOI* (AIR 1958 SC 578) include the freedom of the press (Regional Surveys, 1997, 358). A second Press Commission appointed in 1980 is responsible for looking into the growth and status of the press, which has reportedly been inhibited by cultural barriers due to differences in religion, social status and language, resulting in the dominance of the English-language press, whose readership is the urban educated middle class (*Ibid.*). Radio and television, the most powerful mass communication and publicity media in the country, are said to be operated under a government monopoly and controlled by the central government (*Encyclopaedia Britannica, Macropaedia*, 1988, 20).

According to *Index on Censorship*, journalists, publishers and artists are targeted by numerous groups: on 7 July 1998, Matthew Marak, editor of the daily *Achik Mnikasal*, received a letter containing death threats from rebels belonging to the separatist *Achik National Volunteer Council*, who claimed he had written several reports which were "not correct" (No. 5, September-November 1998). Three paintings by the artist *Maqbook Fida Hussain* are under investigation for insulting Hinduism by depicting Hindu goddesses in the nude, and his home in Bombay was attacked by alleged Hindu militants (*Ibid.*). Media magnate *Rupert Murdoch* has also been the subject of three court summons because his television network showed "obscene" films which "could damage the country's social fabric" (*Ibid.*). Assaults on journalists are said to be on the increase in the north-eastern states: on 12 July 1998 in Manipur, soldiers assaulted and injured *Puyam Theiba*, a reporter for the newspaper *Panhungfam* because of his alleged involvement in anti-Indian activities. On 17 July 1998 in Assam, *Arup Kumar Sarma*, editor of the magazine *Chitranjalee*, was also reportedly assaulted by soldiers for unspecified reasons (*Ibid.*). On 18 July 1998 the government of Maharashtra decided to stop the Bombay performance of a play dealing with independence leader *Mahatma Gandhi*, because he is depicted as 'soft and helpless' (*Ibid.*).

2.4 The Situation of Specific Groups

Indigenous Groups and Scheduled Tribes

India's aboriginal inhabitants, or *Adivasis*, are said to make up from three to seven-and-a-half per cent of the population, comprising nearly 200 ethnic and culturally distinct peoples who speak more than 100 languages (*World Directory of Minorities*, 1997, 559). While many still retain much of their culture, some groups have reportedly lost their language to regionally

dominant groups (Mallick, R., 1988, 233). The vast majority of them were classified as Scheduled Tribes by the Constitution¹, and they are represented in Parliament: however, as theirs is usually a minority vote, legislation favourable to their interests can be impeded by vested interests (World Directory of Minorities, 1997, 559).

The Scheduled Tribes are found in pockets in isolated hilly regions concentrated in three "scheduled areas": the Northeast (the states of Mizoram, Manipur, Nagaland, Meghalaya, Assam and Arunachal Pradesh); the hills of Central India (the states of Madhya Pradesh and Orissa), and in the southern part of the Deccan Peninsula (the states of Kerala and Tamil Nadu) (Encyclopedia of the Third World, 1992, 810). The Northeast has Mongoloid tribes speaking Sino-Tibetan languages. Of these, the largest groups outside the state of Arunachal Pradesh are the Khasi of the United Khasi and Jaintic Hills, the Lushai (or Mizo, plus three sub-tribes: Chutiya, Ladung and Moran), the Garo Kuki, Meithei and "the most Christianized and educated of all tribes", the Naga (Ibid.). The state of Arunachal Pradesh (formerly the North East Frontier Agency), has a greater number of tribes, which include the Buddhist Wancho, the Singpho and the Khampti; the Tangsa, Mishmi, Adi, Gallong, Bori, Dafla, Apa Tamni, Miri, Ramo, Pailibo, Aka, Sherdukpan, Monpa, Menba, Khamba and Sulung (Ibid.). South India has "the most primitive tribes of India", believed to be Negrito or Proto-Australoid: the Koyas of Andhra Pradesh, the Kadars of Kerala, the Todas of Nilgiris and the Irulas of Karnataka (Ibid.).

Article 15 of the Constitution prohibits discrimination on grounds of religion, race, caste, sex or place of birth; article 29 protects the cultural and educational rights of minorities; article 46 calls for the promotion of educational and economic interests of Scheduled Castes, Scheduled Tribes and other weaker sections of society and their protection from social injustice and exploitation, and Article 244 sets out the rules and regulations for the establishment and management of Scheduled Areas and Scheduled Tribes (Constitution of India, amended 1994). However, the proper implementation of these constitutional safeguards is said to be impeded by their physical remoteness, poverty and social prejudices (World Directory of Minorities, 1997, 559). Members of indigenous groups, Scheduled Tribes and Scheduled Castes are said to suffer discrimination (Amnesty International, Annual Report, 1998; Human Rights Watch, World Report 1998, 1997; U.S. DOS Country Reports for 1997, 1998).

After independence, the government of India decided to deal with the problems of Scheduled Castes and Tribes and the Other Backward Classes by embarking on a policy consisting of affirmative action quotas, or "reservations" (Bajpai, K., 1997, 53). This policy sets out quotas for Scheduled Castes and Tribes in educational institutions and universities (22 per cent of all places); in public employment (22 per cent of the posts in that sector), and political representation (119 of the 543 seats in parliament are reserved for them) (Ibid.). However, according to one observer, "the tensions between upper castes and Scheduled Castes and Tribes, the material deprivation of the Other Backward Classes, and the increasing political mobilization of all three groups, which between them constitute 70 per cent of the population, could cause political upheavals in India" (Bajpai, K., 1997, 53). The same source adds that

¹ The Constitution of India includes lists, which are called Schedules, aiming to include communities which suffer particular political, economic and social disadvantage. Groups such as *dalit* Christian communities, which are not included in the Schedules, have reportedly voiced their concern over their exclusion (Amnesty International, July 1997).

violence against, and stigmatization of, Scheduled Castes and Tribes remains rampant, and that an estimated 10,000 to 15,000 acts of violence against them every year (Ibid.).

In 1980, a report issued by the second Backward Classes Commission, also known as the Mandal Commission, recommended that "in addition to the 22.5 per cent reservation in educational institutions, government service and political bodies that was already granted to Scheduled Castes and Scheduled Tribes, a 27 per cent reservation should be awarded to Other Backward Castes (OBCs) in these fields" (Vohra, Ranbir, 1997, 273; Bajpai, K., 1997, 55). Other Backward Castes are said to be a series of castes above the Scheduled Castes but below the upper castes, and constituting from 50 to 70 per cent of the total population (Bajpai, K., 1997, 55). Their numbers are said to be the reason for the government's long resistance to instituting reservations for them, as quota levels as high as 70 per cent would have to be established (Ibid.). Mandal had reportedly classified 3,743 lower castes, comprising nearly 53 per cent of the population, as 'backward' (cheap populism, and by the BJP as being divisive to the Hindu community (Vohra, R. 1997, 273). The government reportedly shelved the Mandal report until the late 1980s, when the backward classes emerged as a "cohesive electoral block" (Bajpai, K., 55). The recommendation was implemented by the government (1989-90) of V.P. Singh, whose decision was criticized by certain members of the upper castes as cheap populism, and by the BJP as being divisive to the Hindu community (Vohra, R., 1997, 273).

Untouchables

'Untouchability', the belief that contact with members of the 'Untouchable' hereditary group would defile members of a higher caste, was abolished under Article 17 of the Constitution, but in practice it still prevails (Encyclopaedia Britannica, , Macropaedia, 1988, 18). Untouchables, or *harijans*, or *Dalits*, are a Scheduled Caste occupying the lowest layer of the Hindu caste system (World Directory of Minorities, 1997, 556). They represent 2.56 per cent of the world's population and 16 per cent of India's (Ibid.) Originally an aboriginal people who became acculturated within Hinduism to the point where a separate cultural identity is almost impossible to discern, they are said to be "the last segregated population in the world" (Mallick, R., 1998, 191). Dalits are said to be poor and exploited economically, with 90 per cent of them living in rural areas, the overwhelming majority being marginal farmers or landless labourers (World Directory of Minorities, 1997, 556). Moreover, they have had no political voice as their agenda is said to have been usually led by upper-caste men (Ibid.). In its response to charges of official indifference transmitted by the UN Special Rapporteur on racism, racial discrimination, xenophobia and related discrimination, the Government of India reportedly included a list of measures designed to curb discrimination between castes, maintaining that "a practice that is so old cannot be eliminated rapidly" (UN Commission on Human Rights, E/CN.4/1998/79, 14 January 1998).

2.5 The Situation of Religious Minorities

Article 25 of the Constitution guarantees the right of people to profess, practice and propagate a religion, and Article 26 gives each religious denomination the right to manage its affairs including the establishment of their own religious and charitable establishments and the acquisition of property (Constitution of India, amended 1994, 16). However, according to the South Asia Human Rights Documentation Centre, religious intolerance in India is exemplified by incidents such as the destruction of the Babri Masjid Mosque, the denial of reservations to untouchable Hindus converting to Christianity, the denial of religious freedom

to the untouchable Hindus by the upper caste Hindus, and sanskritization of the Adivasis (July 1997).

Christians

According to the UN Special Rapporteur on religious intolerance, Abdelfattah Amor, Christians in India have allegedly been the victims of violations of religious freedom, and he had received reports of "incidents of intolerance against Christians and Christian converts" (UN General Assembly, A/52/477, 16 October 1997).

Indian Catholics in central and northern states of the country report that, since the arrival of the BJP to power in New Delhi, there has been an increase in attacks against convents, schools and catholic missions in general, especially in the states of Gujarat, Maharashtra, Madhya Pradesh and Uttar Pradesh during which at least two members of religious communities were killed (Eglises d'Asie, 1 octobre 1998). During one week in September 1998 three convents were attacked by armed men in the states of Madhya Pradesh, Uttar Pradesh, and one near Calcutta, resulting in the rape or physical injury of scores of nuns (Ibid.; The Times of India, 1 October 1998(a), (b); The Hindustan Times, 1 October 1998). On 1 October 1998 the secretary-general of the *Vishwa Hindu Parishad* (VHP), Girijaj Kishore, was reported to have called for the removal of Christian missionaries from the country, claiming that they were responsible for forcible conversions in some states and insurgency in the north-eastern state of Nagaland (The Times of India, 1 October 1998(a)). The VHP is reported to object to conversions of Hindus to Christianity, especially "conversions that resulted from incentives such as financial help, education and social work or as a result of inter-religious marriages" (Reuters, 30 September 1998).

Muslims

In his February 1977 report following his visit to India, the UN Special Rapporteur indicated that

"[t]he integration and development of the Muslim minority within Indian society is a process that entails rough going owing to the violent armed conflict in Jammu and Kashmir and also to Hindu political extremism, the common denominator of these two factors being the exploitation of religion for political purposes, which is an alien practice and detrimental to Indian Muslims and to Islam" (UN Commission on Human Rights, 3/CN.4/1997/91.Add.1, 14 February 1997).

India's Muslims are the largest religious minority in India and constitute 11.4 per cent of the country's population (the third largest in the world after Indonesia and Pakistan) (World Directory of Minorities, 1997, 557). As a non-scheduled minority, however, Muslims do not benefit from special reservations in education and employment. Moreover, they are reportedly under-represented in the civil service, the military and institutions of higher education, a situation said to also stem from their historical refusal to adopt the culture and language of the colonial power, which in turn rendered positions of influence and importance inaccessible to them (Dutt, S., 1998, 418). Muslims are a majority only in the state of Kashmir, which is said to be a region of great potential but has remained poor, where investment in education is low and industrial investment practically non-existent (World Directory of Minorities, 1997,

565). This situation is seen as an underlying reason for Muslim separatist activities in the 1980s and 1990s, although tension between Hindus and Muslims date back to the partition of India in 1947 (*Ibid.*).

In December 1992, the worst outbreak of sectarian violence since independence was sparked by the destruction of the Babri Masjid mosque at Ayodhya (Uttar Pradesh) by thousands of Hindu 'fanatics' (Keesing's, September 1997, 41820). The nationwide violence that followed left a casualty toll of nearly 2,000 deaths and over 5,000 injuries (*Ibid.*). Official and non-governmental observers reportedly regarded this as "an incident, an aberration, the result of the political exploitation of religion by ultra-nationalist political parties . . . [which] . . . cannot be interpreted as evidence of an official policy of religious intolerance directed against Muslims" (UN Commission on Human Rights, E/CN.4/1997/91.Add.1, 14 February 1997). However, The UN Special Rapporteur notes that evidence he collected during his visit to India confirmed the responsibility of the state government of Uttar Pradesh then in office and of 'ultranationalist' parties such as *Hindu Vishwa Hindu Parishad* (VHP), *Bajrangdal* and *Bharathija Janata* (BJP) and *Rashtriya Swayamsevak Sangh* (RSS), whose members "infiltrated the crowd, planned the destruction of Babri-Masjid and brought about the death of Muslim demonstrators, the pillage of Muslim houses and shops as well as the Bombay riots" (*Ibid.*), thereby gaining political advantage among the population (*Ibid.*).

Despite the existence of the Religious Institutions (Prevention of Misuse) Act, which makes it an offense to use any religious site for political purposes or to use temples for harbouring persons accused or convicted of crimes, conflict between Hindus and Muslims is said to continue over the three sites where mosques were built centuries ago on land where temples are believed to have stood (U.S. DOS Country Reports for 1997, 1998). The UN Special Rapporteur expressed his concern over the potential for violence over places still disputed by Hindus and Muslims, such as the Matura mosque, which is claimed by ultra-nationalist Hindu parties as being the birthplace of Krishna (UN Commission on Human Rights, E/CN.4/1997/91.Add.1, 14 February 1997).

2.6 The Situation of Women

Although the law provides for equal rights and protection for women in India, in practice there are long-standing cultural biases which result in their having fewer educational and career opportunities (*Encyclopedia of the Third World*, 1992, 809).

The U.S. Department of State reports that India has developed an elaborate system of laws to protect the rights of women, including the Equal Remuneration Act, the Prevention of Immoral Traffic Act, the Sati (widow burning) Prevention Act, and the Dowry Prohibition Act. However, the government is reportedly unable to enforce these laws, especially in rural areas where traditions are said to be deeply rooted (*Country Reports for 1997, 1998*). There is reportedly a high incidence of "dowry deaths", women who have died in suspicious circumstances when their parents are unable to pay a supplementary dowry demanded by the husband's family after marriage. Most of these cases are said to occur in northern India, the majority of them among lower middle-class urban families (*Encyclopedia of the Third World*, 1992, 809). In the state of Orissa, 710 cases of dowry torture had been reported by mid-1997 (U.S. DOS Country Reports for 1997, 1998). While the Indian Divorce Act of 1869 grants a Christian woman the right to demand a divorce in cases of spousal abuse and certain categories of adultery, under Islamic law a man may divorce his wife spontaneously and

unilaterally, with no such provision for women (Ibid.). Moreover, when her husband dies, a woman often remains dependent on her husband's family, whom she has joined after marriage, frequently severing ties with her own relatives. Although the practice of *sati*, or immolation of widows on their husband's funeral pyres was banned in 1829, it is said to survive as such or a variation thereof, whereby widows have doused themselves with fuel and set themselves on fire, either under duress or voluntarily (International Herald Tribune, 30 March 1998).

In urban areas, however, middle class women are increasingly occupying leading social, economic and political positions, and numerous women's and non-governmental organizations are said to be promoting the advancement of women and the enactment of legislation on equality of the sexes anchored on the Constitution (Office fédéral des réfugiés, octobre 1997). Women's participation in politics, however, reportedly suffered a setback in July 1998 when the *Lok Sabha* postponed legislation that would have allocated to women 33 per cent of seats in parliament and state assemblies, after political parties professing their commitment to women were unable to reach a consensus (Reuters, 15 August 1998).

The situation of *Dalit* (Untouchable) women is reported to be especially difficult, as they are allegedly discriminated against because of their sex as well as the "religious, social and cultural structures which have given them the lowest position in the social hierarchy" (World Directory of Minorities, 1997, 556). They rarely own land and are required to perform menial services, such as collecting cow dung, which is their exclusive preserve (Nathan, Dev, 1996, 30). As further explained by the Minority Rights Group,

in areas of health, education, housing, employment and wages, application of legal rights, decision-making and political participation, and rural development, *Dalit* women have been almost entirely excluded from development policies and programmes. The national population policy, which is geared to population control and in the process targets *Dalit* women for family planning programmes, does so on the grounds that they are the cause of the population 'explosion' and of poverty (Ibid.).

2.7 The Situation of Children

The traditional preference for male children is said to continue in India. Despite the existence of a 1994 law prohibiting the use of amniocentesis and sonogram tests for sex determination, "they are widely misused for this purpose and termination of a disproportionate number of pregnancies with female foetuses occurs" (U.S. DOS Country Reports for 1997, 1998). Human rights groups estimate that 10,000 cases of female infanticide occur yearly, primarily in poor rural areas" (Ibid.).

India's work force includes an estimated 60 to 115 million working children, the largest such group in the world (Amnesty International, Annual Report, 1998; HRW/Asia, September 1996). Child labourers are said to work in places such as stone quarries, or labouring 16-hour days in the fields, picking rags in city streets, or as domestic servants (HRW/Asia, September 1996). Many of them have begun to work at the age of four or five, and most are said to work "under some form of compulsion from their parents, from the expectations attached to their caste, or [out of] economic necessity" (Ibid.).

On 10 December 1996, the Supreme Court of India reached a decision aimed at freeing child labourers from hazardous industries by promoting compulsory education through the creation of a trust fund from employers and the government. It also recommended a programme of job replacement aimed at providing jobs to adult family members instead of children (Amnesty International, Annual Report 1998). However, these programmes are said to have reached only a small fraction of children in the workplace (U.S. DOS Country Reports for 1997, 1998), and there is "no blanket prohibition on the use of child labour, nor any universal minimum age set for child workers" (HRW/Asia, September 1996). At least 15 million children are said to be working as virtual slaves in an arrangement known as 'bonded child labour' whereby children work in conditions of servitude in order to pay off a debt, which has usually been incurred by a parent, a relative or a guardian (Ibid.). As bonded labourers, these children are likely not to go to school and over half of them "will never learn the barest skills of literacy" (Ibid.).

Moreover, India has an estimated 18 million street children, either living or working on the streets as porters at bus and railway terminals, selling food, tea or handmade articles, as mechanics in informal auto-repair shops, as street tailors, or picking through garbage to sell usable materials to local buyers (HRW/Asia, November 1998). These children are said to be generally regarded by police as vagrants and criminals, and are sometimes involved in petty theft, drug-trafficking, prostitution, or accused of them when they occur (Ibid.). Consequently, these children are said to be routinely detained illegally, beaten and tortured and sometimes killed by police: being young, small, poor, ignorant of their legal rights and without family members to defend them, these children are said to be easy targets of police abuse, and frequently for extortion purposes (Ibid.). Children in certain areas of the country are also susceptible to abuses by armed groups: members of the Naxalites armed group in the state of Andhra Pradesh have reportedly begun to recruit eight to 15-year-old boys, usually from Scheduled Castes or Tribes or the socially or economically disadvantaged classes, while many young girls in Jammu and Kashmir have been subjected to sexual harassment or rape (Amnesty International, 22 April 1998).

3. TRENDS IN ASYLUM APPLICATIONS AND ADJUDICATION OF INDIAN NATIONALS IN EUROPE

Asylum applications

During the period 1990-1997, some 71,000 Indian citizens applied for asylum in the 19 European countries listed in the tables. The number of Indians applying for asylum in Europe continues to decrease: it reached around 12,000 during 1990-91, and was less than 6,000 in 1997. Germany received the largest number of applicants (34,000 or almost 50 per cent), followed by the United Kingdom (21 per cent), Belgium (11 per cent) and France (8 per cent). However, since 1995, the percentage of asylum seekers received by Belgium declined significantly, to less than five per cent each year (see page 1 of tables).

Recognitions

During 1990-1997, the 19 European countries under consideration gave Convention status recognition, mostly in first instance, to some 220 Indian asylum seekers. Two-thirds of these were granted by France and Germany (see page 2 of tables).

Rejections

Approximately 52,000 requests for asylum by Indian nationals were rejected during 1990-1997, of which nearly 5,000 were rejected in 1997 (see page 3 of tables).

Humanitarian Status

During 1990-1997, approximately 1,100 Indian asylum seekers were allowed to remain in Europe on humanitarian grounds; of these, 980 were allowed to stay in the United Kingdom (cases only) (see page 4 of tables).

Recognition Rates

In each year from 1990 to 1997, one per cent or less of all Indian asylum seekers were granted refugee status under the 1951 Convention. Including grants of humanitarian status, the recognition rate for Indian asylum seekers in Europe does not exceed two per cent (see page 5 of tables).

Percentage of Indian asylum seekers of total asylum applications

During 1990-1997, Indian asylum seekers constituted about two per cent of all asylum applications submitted in Europe (see page 7 of tables).

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