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DFAT COUNTRY INFORMATION REPORT INDIA

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ACRONYMS

ACL	Anti-conversion law
AFSPA	Armed Forces Special Powers Acts
AI	Amnesty International
BBC	British Broadcasting Commission
BD	Bajrang Dal (part of Hindu nationalist movement)
BJP	Bharatiya Janata Party
CAA	Citizenship (Amendment) Act, 2019
CEDAW	Convention on the Elimination of All Forms of Discrimination Against Women (1993)
CIA	Central Intelligence Agency
Congress	Indian National Congress Party
CTA	Central Tibetan Administration
DFID	UK Department for International Development
DMHP	District Mental Health Programme
DPA	Dowry Prohibition Act, 1961
EPG	Eminent Persons Group
FCRA	Foreign Contribution Regulation Act
GDP	Gross Domestic Product
HRW	Human Rights Watch
ICJ	International Commission of Jurists
ILO	International Labour Organization
IMF	International Monetary Fund
IPC	Indian Penal Code
IRB	Immigration and Refugee Board of Canada
ITD	Income Tax Department
J&K	Jammu and Kashmir
LGBTI	Lesbian, gay, bisexual, transgender and/or intersex

LOC	Look-Out Circular
MHA	Ministry of Home Affairs
MHC	Mental Health Care Act, 2017
MMA	Ministry of Minority Affairs
NCM	National Commission for Minorities
NCP	Nationalist Congress Party
NCRB	National Crime Records Bureau
NDA	National Democratic Alliance
NGO	Non-government organisation
NHRC	National Human Rights Commission
NRC	National Register of Citizens
OBCs	Other Backward Castes
OECD	Organisation for Economic Co-operation and Development
PAN	Permanent Account Number
PDS	Public Distribution System
PM	Prime Minister
RSF	Reporters Without Borders
RSS	Rashtriya Swayamsevak Sangh (part of Hindu nationalist movement)
SATP	South Asia Terrorism Portal
SCs	Scheduled Castes
SSN	Sikh Siyasat News
STs	Scheduled Tribes
TPPRA	Transgender Persons (Protection of Rights) Act, 2019
UAE	United Arab Emirates
UK	United Kingdom
UN	United Nations
UNHCR	Office of the United Nations High Commissioner for Refugees
UNICEF	United Nations Children's Fund
US	United States
USCIRF	United States Commission on International Religious Freedom
VHP	Vishva Hindu Parishad (part of Hindu nationalist movement)
WGEID	UN Working Group on Enforced or Involuntary Disappearances
WHO	World Health Organization

GLOSSARY

<i>Aadhaar</i>	12-digit unique identity number issued by the Government of India to provide access to government services (literal meaning: foundation or base)
<i>Adivasi</i>	Collective term for aboriginal tribes on the Indian subcontinent, who are considered indigenous to places within India and predate other arrivals including the Dravidians and the Aryans
<i>Dalit</i>	A Sanskrit term used to denote people outside India's four-tier caste system, who were once considered 'untouchable' (literal meaning: broken or trampled upon)
<i>Detenues</i>	Persons detained in prison on the orders of the competent authority under the relevant preventive laws
<i>Dharma</i>	The moral precept and code of living that governs duty, religion and law in Hinduism
<i>Ghar Wapsi</i>	A series of reconversion activities by certain Indian Hindu organisations to facilitate conversion of Christians and Muslims to Hinduism and Sikhism (literal meaning: back to home)
<i>Haq tyag</i>	Renunciation of inheritance rights, where a woman relinquishes her claim on ancestral property.
<i>Hijra</i>	A male to female transgender identity recognised in traditional South Asian cultures
<i>Khap</i>	A community organisation representing a clan or a group of related clans, predominantly found in northern India. <i>Khaps</i> are not affiliated with formally elected government bodies.
<i>Khap Panchayat</i>	An assembly of <i>Khap</i> elders. A <i>Khap Panchayat</i> has no official government recognition or authority, but can exert significant social influence within the community it represents. Members of <i>Khap Panchayats</i> are all male, though they often make decisions affecting women.
<i>Kirpan</i>	A term used in the Sikh faith for a small sword, worn in a sheath on a strap or belt. The <i>kirpan</i> is an article of faith initiated Sikhs are supposed to wear at all times.
<i>Kitabia</i>	A term used in the Muslim faith to refer to members of the Christian or Jewish religions
<i>Lok Sabha</i>	The Peoples', or lower, house of parliament (analogous to the Australian House of Representatives)

<i>Other Backward Classes</i>	Official term used by the Government of India to classify castes that are educationally or socially disadvantaged under the constitution, and do not fall under Scheduled Castes or Scheduled Tribes
<i>Panchayat Raj</i>	A multi-tier system of local governance found in rural India, usually at the village, block and district levels (also known as <i>Panchayat</i>). This system was introduced by a constitutional amendment in 1992.
<i>Rajya Sabha</i>	States', or upper, house of parliament (analogous to the Australian Senate)
<i>Sahukar</i>	Moneylender or 'loan shark' who operates outside the formal credit sector
<i>Sati</i>	The act or custom of a Hindu widow immolating/burning herself to death (or being burned to death) on her husband's funeral pyre
<i>Scheduled Caste</i>	Official term of the Government of India to represent <i>Dalits</i> under the constitution.
<i>Scheduled Tribe</i>	Official term of the Government of India to represent <i>Adivasi</i> and other indigenous people of India under the constitution.
<i>Triple talaq</i>	A form of divorce practised in Islam, whereby a Muslim man can legally divorce his wife by pronouncing ' <i>talaq</i> ' (Arabic for divorce) three times in any form, including by email or text message (also known as <i>talaq-e-biddat</i> , instant divorce and <i>talaq-e-mughallazah</i>)

Terms used in this report

high risk	DFAT is aware of a strong pattern of incidents
moderate risk	DFAT is aware of sufficient incidents to suggest a pattern of behaviour
low risk	DFAT is aware of incidents but has insufficient evidence to conclude they form a pattern

official discrimination

1. legal or regulatory measures applying to a particular group that impede access to state protection or services that are available to other sections of the population (examples might include but are not limited to difficulties in obtaining personal registrations or identity papers, difficulties in having papers recognised, arbitrary arrest and detention)
2. behaviour by state employees towards a particular group that impedes access to state protection or services otherwise available, including by failure to implement legislative or administrative measures

societal discrimination

1. behaviour by members of society (including family members, employers or service providers) that impedes access by a particular group to goods or services normally available to other sections of society (examples could include but are not limited to refusal to rent property, refusal to sell goods or services, or employment discrimination)
2. ostracism or exclusion by members of society (including family, acquaintances, employers, colleagues or service providers)

1. PURPOSE AND SCOPE

1.1 The Department of Foreign Affairs and Trade (DFAT) has prepared this Country Information Report for protection status determination purposes only. It provides DFAT's best judgement and assessment at time of writing and is distinct from Australian government policy with respect to India.

1.2 The report provides a general, rather than an exhaustive, country overview. It has been prepared with regard to the current caseload for decision makers in Australia, without reference to individual applications for protection visas. The report does not contain policy guidance for decision makers.

1.3 Ministerial Direction Number 84 of 24 June 2019, issued under s 499 of the *Migration Act 1958* states that:

Where the Department of Foreign Affairs and Trade has prepared [a] country information assessment expressly for protection status determination purposes, and that assessment is available to the decision maker, the decision maker must take into account that assessment, where relevant, in making their decision. The decision maker is not precluded from considering other relevant information about the country.

1.4 This report draws on DFAT's on-the-ground knowledge and discussions with a range of sources in India. It takes into account information from government and non-government sources, including but not limited to those produced by: the United Nations and its agencies; the US Department of State; the UK Home Office; the World Bank; leading human rights organisations, such as Human Rights Watch and Amnesty International; non-government organisations; and reputable news sources. Where DFAT does not refer to a specific source of a report or allegation, this may be to protect the source.

1.5 This updated Country Information Report replaces the previous DFAT report on India published on 17 October 2018.

2. BACKGROUND INFORMATION

RECENT HISTORY

2.1 Contemporary India came into existence in August 1947. The majority of British India, consisting of areas governed directly by the United Kingdom and more than 500 princely states whose individual rulers owed allegiance to the British Crown, was partitioned into the independent countries of India and Pakistan. The princely states were given the option to accede to either India or Pakistan. The present constitution came into force on 26 January 1950. The country's official name is the Republic of India.

2.2 The partition of India and Pakistan in 1947 resulted in the displacement of an estimated 14 million people, according to the Office of the United Nations High Commissioner for Refugees (UNHCR). Millions of Muslims moved from India to the new state of Pakistan and millions of Hindus moved to India. Mass displacement also occurred on the northeastern border as Hindus moved from East Pakistan (now Bangladesh) to India and Muslims went from India to East Pakistan. Violence associated with the partition led to civil unrest. The death toll from that unrest is unknown but is thought to be in the hundreds of thousands. Similar displacement occurred in 1971 when Bangladesh became independent from Pakistan.

2.3 Tension between India and Pakistan has continued since independence. The two countries have fought four wars (in 1947, 1965, 1971 and 1999), and there have been many skirmishes across the disputed border. Tensions in the region have grown since 2016 following an increase in attacks and civil unrest in the former Indian state (now union territory) of Jammu and Kashmir (J&K).

2.4 On 5 August 2019, the government revoked the 'special status' of J&K by abolishing article 370 of the country's constitution. The former state was divided into two union territories subject to central government laws and controls. J&K is now defined as a union territory with a legislative assembly, while Ladakh is now a union territory without a legislative assembly (see [Jammu and Kashmir](#)).

2.5 India and China share a 4,056km border, which has long been a source of friction. A number of unresolved territorial disputes remain, which led to a brief Sino-Indian war in 1962, and several stand-offs, including in 2013, 2017 and 2020. The border is undefined and encounters between border patrols on the 1996 agreed 'Line of Actual Control' (LAC) are common; however, most incidents are resolved locally by implementing standard operating procedures set out in five agreements between the states since 1993. Tensions rose in May 2020, with multiple incursions reported along the border. In June 2020, clashes between Indian and Chinese soldiers reportedly resulted in at least 20 Indian fatalities. These were the first deaths on the LAC since 1975. The two sides have conducted a number of talks at the political, diplomatic and military level; however, the situation remains at a stalemate.

2.6 India's Prime Minister Narendra Modi of the Bharatiya Janata Party (BJP) was first elected in May 2014 on a platform of nationalism, development and growth, pledging to cut red tape. The Modi government was re-elected for a further term in 2019, on a platform with greater emphasis on rural development, Hindu nationalism and national strength.

2.7 On 30 May 2020, the BJP government completed one year of its second term. In an open letter to the people of India to mark the occasion, PM Modi wrote that empowering the poor, farmers, women and

youth remained his government's priority. He pledged to improve service delivery in rural communities and strengthen India's agricultural sector, such as water access, electricity connection, hygiene and sanitation, and livestock vaccination programs. PM Modi highlighted the steps taken to deliver core BJP party policies: to build a temple on the contested site in Ayodhya (see [Ayodhya – Babri Mosque and Hindu Temple](#)); to fully integrate J&K into the rest of India; to implement the [National Register of Citizens \(NRC\)](#); to enact the [Citizenship \(Amendment\) Act, 2019](#); and to criminalise *triple talaq*, the Muslim practice of instant divorce (see [Muslims](#)). These policies have been longstanding demands of the BJP and the associated Rashtriya Swayamsevak Sangh (RSS) (part of the Hindu nationalist movement).

DEMOGRAPHY

2.8 India has conducted a comprehensive census every ten years since 1951. India's population at the most recent 2011 Census was approximately 1.21 billion with an average annual population growth rate of 1.64 per cent (or decadal growth rate of 17.7 per cent) between 2001 and 2011. While 31.14 per cent of the population lives in urban areas, the rest lives in rural areas. Population densities are highest along India's southeastern and southwestern coastlines, and the Indus-Gangetic plain south of the Himalayas.

2.9 The sex ratio (number of females per 1000 males) in the country has grown from 933 in 2001 to 943 in 2011, and is higher in rural than in urban areas. While 28.5 per cent of the population is aged between 0-14, only 8.3 per cent is above the age of 60. The next census is due in 2021.

2.10 India is a diverse, multi-ethnic and multilingual society, with 22 languages recognised as 'scheduled languages' in the constitution. States may also legislate their own official languages. According to the 2011 census, a total of 121 languages and 270 'mother tongues' (an Indian specific term that can identify distinct dialects within language groups) were identified. The most widely spoken languages are Hindi (41 per cent of the total population), Bengali (8.1 per cent), Telugu (7.2 per cent), Marathi (7 per cent), Tamil (5.9 per cent), Urdu (5 per cent), Gujarati (4.5 per cent), Kannada (3.7 per cent), Malayalam (3.2 per cent), Oriya (3.2 per cent), Punjabi (2.8 per cent), Assamese (1.3 per cent) and Maithili (1.2 per cent). Although only a relatively small number speak English as their first language, an estimated 125 million people speak English as either a first, second or third language. Information on the most common scheduled languages spoken in states in India is listed in the Appendix (see [State-By-State Breakdown of Scheduled Languages Spoken](#)).

2.11 Although the population is majority Hindu, in some states the majority of the population identifies with a single religion other than Hinduism. Muslims are a majority in the union territory of Lakshadweep (a tiny island chain off the southwest coast of India) and the far northern border union territory of J&K (particularly in the Kashmir valley). Christians are a majority in the three northeastern states of Nagaland, Mizoram and Meghalaya. Sikhs are a majority in Punjab. (For a breakdown of religious demography see [Religion](#).)

2.12 Hindu tradition divided society into hereditary groups associated with occupation, commonly called 'castes'. The caste system had four principal groups: Brahmin priests and teachers; Kshatriya warriors and rulers; Vaishya farmers, traders and merchants; and Shudra labourers. Each group encompassed thousands of sub-groups within a hierarchy. While Hindu in origin, caste has become a cultural phenomenon that also exists within other religions and across India's many social, linguistic and religious communities. A group known as '*Dalits*' or 'untouchables', due to their historical association with undesirable work such as cleaning or waste disposal, fell outside the four castes. In recognition of traditional discrimination against those outside the principal castes, the constitution includes special provisions for 'Scheduled Castes' (SCs) (mostly *Dalits*), '[Scheduled Tribes](#)' (STs) (tribal and indigenous groups), and 'Other Backward Classes' (OBCs) (see [Caste System](#)).

Refugees in India

2.13 Approximately 210,000 refugees and asylum seekers of various origins reside in India, according to UNHCR. Anecdotal evidence suggests the actual number of refugees and asylum seekers resident in India is likely to be higher. Many of these refugees and asylum seekers originate from regional countries, including Afghanistan, China (stateless Tibetans), Myanmar, Nepal and Sri Lanka.

2.14 India is not a party to the 1951 Refugee Convention or its 1967 Protocol and does not have a national refugee protection framework. In practice, however, India has granted asylum to a large number of refugees from neighbouring countries and has respected UNHCR's mandate for other nationals, mainly from Afghanistan and Myanmar. While India deals differently with various refugee groups, it generally respects the principle of non-refoulement for holders of UNHCR documentation. India is a source, transit and destination country for trafficking both internationally and inter-state.

2.15 UNHCR reported in 2011 that Indian concerns about security had led to a tightening of the asylum space, and mixed migration flows had further complicated identification and protection. To address this UNHCR significantly increased its registration activities to support the government. Since 2017, UNHCR has reported a continued narrowing of the traditional protection space afforded by India, affecting refugee claimants' access to documentation and basic services. There has also been increased reporting of incidents of harassment and evictions, particularly of Rohingya refugees. In 2017, there was a 12 per cent increase of refugee and asylum seekers over 2016 figures, with refugees from Myanmar representing over half that figure. Reports suggest government policies introduced in 2018, requiring identity documents to access public services, impacted refugees' access to education, health and financial services.

2.16 In 2019, there were around 41,000 UNHCR-recognised refugees and asylum seekers (known as mandate refugees) living in India. Rohingya and Afghan refugees make up the largest caseloads under UNHCR's mandate in India, with a smaller number from the Middle East and Africa mostly residing in urban areas. India has a large population of stateless people and, while UNHCR is working to identify and map stateless groups, no accurate estimates of the number are available.

2.17 According to UNHCR, origin countries for significant refugee and asylum seeker populations in India at end-2018 included: China (108,008); Sri Lanka (60,802); Myanmar (18,813); and Afghanistan (6,984) (see [Race/Nationality](#)). Of these, around 39,000 were in urban individual accommodation across the country; 108,000 were dispersed across the country in various/unknown locations in planned or managed camps; and a further 60,800 were in Tamil Nadu in various/unknown locations in planned or managed camps.

2.18 According to UNHCR statistics for the year 2018, there were 110 voluntary repatriation/returnee movements from India to Afghanistan and 1,380 to Sri Lanka. In the same period, there were 339 resettlement departures to Afghanistan and 734 to Myanmar.

2.19 An estimated 95,000 Tibetans live in India, based in Himachal Pradesh, Karnataka, Uttarakhand and Delhi. Dharamshala in the northern state of Himachal Pradesh hosts the Dalai Lama and his office. The Central Tibetan Administration (CTA) (self-proclaimed Tibetan government in exile) claims to have witnessed a steady decrease of Tibetan arrivals to India, from 3,000 annually from 1996-2008 to 80 in 2017. UNHCR does not provide support to Tibetans in India. (See also [Identity certificates issued by India to stateless persons](#).)

2.20 Thousands of Sri Lankan Tamils fled to the state of Tamil Nadu during the 26-year Sri Lankan civil war. Of a total 300,000 who had travelled to India during the conflict, an estimated 100,000 Sri Lankan Tamil refugees remain. An article in *Forced Migration Review* in October 2019 estimated around 62,000 live in 107 camps dispersed throughout Tamil Nadu, and receive monthly cash and in-kind assistance from the Indian and Tamil Nadu governments. Just under 37,000 Tamil refugees live outside the camps as 'non-camp refugees'. India's [Citizenship \(Amendment\) Act, 2019 \(CAA\)](#) does not apply to this group.

2.21 In 2016, thousands of Rohingya travelled overland from Myanmar to India via Bangladesh. The number of Rohingya in India is not clear. In 2019, UNHCR India data reported approximately 18,000 UNHCR registrations of Rohingya refugees and asylum seekers. The Indian government estimates about 40,000 Rohingya in India. In October 2018, the Indian Government deported seven Rohingya men to Myanmar and, in January 2019, deported a Rohingya family of five persons. UNCHR stated it 'regretted India's decision' and had sought repeated access to the family, but had received no response from Indian authorities.

2.22 A large number of Nepalis live and work in both the formal and informal sectors in India, including a substantial community in Delhi. It is impossible to calculate overall numbers because of the large and regular movement of Nepalis into India. One snapshot is India's 2011 census data, which noted just over 2.92 million people indicating their mother tongue as 'Nepali'. Nepali citizens in India are not required to register their presence with the government and can enter India without a travel document (see [2019 DFAT Country Information Report on Nepal](#) for information on India-Nepal Treaty of Peace and Friendship: Rights of Nepalis in India). The Eminent Persons Group (EPG) mandated to review past bilateral treaties between India and Nepal and provide (non-binding) recommendations completed its work in June 2018. Nepal first proposed the formation of the EPG in 2011. DFAT understands the EPG is still waiting to submit the report officially to the Indian and Nepali prime ministers, after which it can be released publicly.

ECONOMIC OVERVIEW

2.23 India's economy is of global importance. It has been one of the world's fastest-growing large economies in recent years – although 2019 marked a slowdown, with the International Monetary Fund (IMF), Moody's and the Reserve Bank of India downgrading GDP growth estimates to 5 per cent from a high of 7 per cent in 2018. At that time, across industry, several sectors faced a slowdown, most notably in the automotive industry, resulting in job losses and fears other labour-intensive sectors may follow suit. The slowdown has been evident by the lack of growth particularly in wages, jobs, sales and consumer demand. Boosting private sector investment and FDI has been a key focus for the Modi government in its first and second term, and it is charting an ambitious economic reform agenda. This has resulted in India rising in the World Bank's Ease of Doing Business rankings from 130 in 2016 to 63 in 2020.

2.24 India's economy has been impacted sharply by the COVID-19 pandemic, resulting in it entering its first ever technical recession in its second quarter of FY2020-21. Its recovery continues to gather pace, however, and is widely expected to return to sustained levels of growth from 2021 onwards (the IMF expects India to recover to 8.8 per cent in 2021, with growth moderating afterward).

2.25 The Indian Government has passed three fiscal stimulus packages in response to COVID-19. Total spending has amounted to around AUD478 billion, with most initiatives focusing on liquidity support and risk underwriting for small and medium-sized enterprises. PM Modi's '*Atmanirbhar Bharat*' ('Self-Reliant India') agenda seeks to boost domestic manufacturing, attract foreign investment, encourage domestic consumption, and reduce reliance on imports.

2.26 Unemployment rates pre-COVID-19 were high, particularly among the youth. Pre-COVID data suggests employment rates in the agriculture, manufacturing and construction sectors had been declining since 2012 resulting in a significant rise in youth unemployment, including among those who are educated (see [Employment](#)). Researchers note rural consumption rates have been falling faster than urban consumption rates as a continued knock-on effect on the rural economy from demonetisation (in 2016 the Indian Government withdrew certain currency as legal tender from the Indian economy) and implementation of a goods and service tax.

2.27 The World Bank classifies India as a lower middle-income country. Gross National Income on a per capita basis was USD2,130 in 2019. There are significant disparities between income levels across the country. India ranked 129 out of 189 in the UN's 2019 Human Development Index. Since 2000, India has made significant progress in reducing absolute poverty, although gains from economic growth and poverty reduction remain uneven.

Corruption

2.28 India is a party to the *United Nations Convention Against Corruption*. The landslide victory of the BJP in 2014 was attributed among other factors to a strong focus on rooting out corruption. The Indian government's aim with demonetisation of the Indian economy in 2016 was to remove corruption and curb the circulation of 'black money' in the Indian economy. However, reports on the effectiveness of demonetisation to meet its stated objectives have been mixed. Some critics argue demonetisation affected the rural and informal cash-based economy more than other sectors. In 2018, parliament passed the *Prevention of Corruption (Amendment) Act*, which is the major legislative tool covering corruption offences.

2.29 Prime Minister Modi has publicly expressed a zero tolerance policy for corruption in government and punitive action has been taken against bureaucrats in departments such as revenue, income tax and customs. Mainstream media and opposition parties, however, have criticised a perceived lack of commitment to take action on high-profile alleged graft cases.

2.30 GAN Integrity's India Corruption Report claims corrupt practices such as facilitation payments and bribes persist in India, with corruption particularly prevalent in the judiciary, police, public services and public procurement sectors. The World Justice Project Rule of Law (WJP ROL) Index 2020 measured the rule of law based on a range of factors, including absence of corruption. Factors considered included bribery, improper influence by public or private interests, and misappropriation of public funds or other resources across the executive, judiciary, military, police and legislature (see also [Police](#) and [Judiciary](#)). In 2020, India ranked 85 out of 128 countries on the index for absence of corruption in government. Within this category, the report found the legislature the most corrupt, followed by the police/military and executive branch. The judiciary was perceived to be the least corrupt. Since 2014, India has consistently ranked low on the WJP ROL indices measuring absence of corruption across government. Similarly, India ranked 80 out of 198 countries on Transparency International's Corruption Index, 2019 (down from 78th place in 2018).

2.31 The presence of corruption in India can lead to high levels of cynicism about new government initiatives and makes anti-corruption a common electoral theme. Access to justice, particularly dealing with [Police](#), is a common complaint, although people's experience varies greatly from state to state and within states. DFAT assesses corruption remains a part of daily life across India, with facilitation payments and bribes common, particularly at the local level.

Health

2.32 India's health system faces a number of challenges including a diverse health profile, an acute shortage of infrastructure and a lack of skilled health sector workers. Article 47 of the constitution devolves responsibility to the states to raise the level of nutrition and the standard of living, and to improve public health. Consequently, a large disparity exists between the services and health outcomes of each state, and between urban and rural areas. According to World Bank data, India has 70 beds for every 100,000 people (compared to 380 in Australia, or a global average of 270). Brookings India reports 12 Indian states, accounting for around 70 per cent of India's population, have less than the national average of 55 public

hospital beds per 100,000 people (Bihar, Jharkhand, Gujarat, Uttar Pradesh, Andhra Pradesh, Chhattisgarh, Madhya Pradesh, Haryana, Maharashtra, Odisha, Assam and Manipur).

2.33 Domestic public health expenditure was 1.0 per cent of GDP in 2017 (compared to 6.3 per cent in Australia), according to the World Health Organization. The Modi government has set a goal of increasing public health expenditure to 2.5 per cent of GDP by 2025.

2.34 Low public health investment has led to a heavy reliance on a weakly regulated private sector. With the majority of health care expenditure in the private sector – non-profit and private hospitals provide 70 per cent of health care in India – a large proportion of the population is vulnerable to poverty in the event of a catastrophic illness. India liberalised the health sector in 2000 to allow the private sector into the market, and health insurance is a growing market segment. Health insurance pays for in-patient hospitalisation and treatment at hospitals.

2.35 Life expectancy, national immunisation coverage, infant mortality and maternal mortality rates have improved nationally, however, the rural-urban disparity is considerable. Life expectancy is 70 years for females (68.7 in rural areas; 73.5 in urban) and 66.9 years for males (65.6 rural; 70.5 urban). Nationally, infant mortality is around 37 per 1000 live births (41 per 1000 in rural settings; 25 per 1000 in urban settings). Fertility is declining rapidly, including among the poor and illiterate. The total fertility rate has fallen below two children per woman in 12 states, while nine states have reached replacement levels of 2.1 and above. Delhi, Tamil Nadu and West Bengal have the lowest fertility rates. Overall, maternal mortality has decreased. Assam has the highest maternal mortality rate at 300 per 100,000 live births, while Kerala has the lowest at 61 per 100,000 live births. The government attributes improved health indicators to the increasing penetration of health care services across the country, extensive health campaigns and sanitation drives, an increase in the number of hospitals in India, improved immunisation and growing literacy.

2.36 In April 2018, the government announced the *Ayushman Bharat* health insurance scheme to provide cashless and paperless treatment in participating public and private hospitals to India's poorest households. The scheme covers three days of hospitalisation and 15 days post-hospitalisation, including diagnostic care and medication expenses. An estimated 500 million persons, or 40 per cent of the country's population, are eligible beneficiaries. While welcoming its intent, some commentators have expressed concern the scheme does not go far enough; it does not cover indirect costs associated with hospitalisation, such as transport costs and lost wages. Other concerns include the benefit ceiling (500,000 rupees; approx. AUD9,250) leaving patients with a large gap for some procedures; the scope for corruption; and insufficient budget allocation.

2.37 Since 2017, the government has turned its attention to increasing health spending, improving the availability and efficiency of services, and allowing individual states more autonomy to implement health programs. Disparities between public health services in India's diverse states remain stark.

2.38 The COVID-19 pandemic has placed strain on India's health infrastructure, particularly in the more densely populated and less well-equipped states of northern and central India. As at 26 November 2020, India had exceeded 9.2 million cases of COVID-19 (and over 135,000 deaths), and was the second-ranked country by the number of confirmed cases globally. India's cumulative confirmed cases equate to around 6,880 per one million of population (compared to around 41,400 per million in the United States and 1,095 per million in Australia). In April 2020, the government amended the *Epidemic Diseases Act* to introduce fines and jail terms for assaults on health workers, after reports of workers facing ostracism, harassment and assault throughout the COVID-19 response.

Mental Health

2.39 Access to mental health care is difficult and patients are subject to stigma and discrimination. In July 2017, the *Mental Healthcare Act* (MHC Act) came into force, repealing the earlier *Mental Healthcare Act* (1987), which had been widely criticised for not recognising patients' rights. Interest groups consider the MHC Act an improvement as it contains a 'right to mental health care' and repeals section 309 of the *Penal Code* (1860), which had criminalised attempted suicide by a mentally ill person. Other policy and programmatic interventions in this area include the National Mental Health Programme, 1982; and the District Mental Health Programme, 1996. In 2014, the government released the first National Mental Health policy of India, 'New Pathways New Hope', and in 2016 undertook the first National Mental Health Survey of India.

2.40 Access to mental health care is not uniform across the country, with availability of services significantly more limited in rural areas than in urban cities and large towns. Across the country, an estimated 150 million people (12.5 per cent of the population) are in need of active interventions for mental illnesses, including nearly 12 million who are living with serious mental disorders. Given the shortfall of specialist and health services for mental illness, treatment is often unavailable or inaccessible even for those who actively seek health care.

2.41 According to India's National Health Profile 2018, there are 43 government mental health hospitals in India. West Bengal has five facilities; Gujarat and Maharashtra have four; Kerala and Uttar Pradesh have three; Jharkhand, J&K, Karnataka, Madhya Pradesh and Rajasthan have two; and the remaining states have one facility each. India has fewer than 4,000 mental health trained professionals – fewer than one per 100,000 population. Most services are located in major cities, which often leads to local healers and non-qualified providers being the first point of care, even for serious mental health conditions.

2.42 In practice, mental health programs continue to suffer from severe constraints in technical, human and material resources, and remain a low priority on the public health agenda. A 2017 WHO report that examined improving access to, and the appropriate use of, medicines for mental disorders found significant barriers to accessing medicines at all levels of the health care system. Many barriers are linked to stigma associated with mental disorders, duration and costs of treatment, and, in many areas, the geographical distance from health care providers.

Education

2.43 Children aged 6 to 14 are entitled to free and compulsory education under the constitution (Article 21-A), with responsibility devolved to the states/union territories. The *Right of Children to Free and Compulsory Education Act, 2009* provides that every child has a right to full-time elementary education of satisfactory and equitable quality in a formal school which satisfies certain essential norms and standards.

2.44 Literacy rates in India are improving, but are uneven across gender, caste, STs, socio-economic status, and rural and urban areas. Official data in 2018 put India's overall literacy rate at 73 per cent, with males at 80.9 per cent and females at 64.6 per cent. Rural literacy was 67.8 per cent and urban literacy was 84.1 per cent.

2.45 According to UNICEF in 2019, primary school age enrolment is near universal and there is a consistent increase in upper primary (lower secondary) attendance. However, problems persist. Around 6 million children do not attend school, the majority of whom are from SCs, STs and religious minority groups. Most are concentrated in the states of Uttar Pradesh, Rajasthan, Bihar, Madhya Pradesh, Odisha and West Bengal. The standard and quality of teaching practices vary from state to state, with teacher

absenteeism a concern. UNICEF reports around 29 per cent of children who start primary school do not finish and, of those who finish, nearly half do not achieve basic proficiency in numeracy and literacy.

2.46 According to UNICEF, gender inequality in education remains, especially for girls from rural and lower socioeconomic backgrounds. The states of Uttar Pradesh, Bihar, Manipur, West Bengal and Madhya Pradesh reported female student attendance rates of between 50 and 60 per cent.

2.47 Education performance is also uneven between Indian states as educational outcomes correlate with economic performance. According to Census 2011, the wealthy southern state of Kerala reported a literacy rate of 93.91 per cent, compared to 63.82 per cent in the poorer state of Bihar.

Employment

2.48 According to the International Labour Organization (ILO), approximately 67.7 per cent of the population is of legal working age (15 to 64 years). In 2018, the labour force participation rate was 48 per cent (men 74.6 per cent; women 20.8 per cent). The ILO estimated a total unemployment rate of 5.4 per cent in 2019, with youth unemployment at 23.3 per cent (see [Economic Overview](#)). Much of India's labour market is not organised and these figures may not accurately reflect the rates of unemployment. As noted above, unemployment rose significantly in the first half of 2020 as a result of job losses sustained during the COVID-19 pandemic. India's October 2020 unemployment rate was 6.98 per cent (urban rate 7.15 per cent; rural rate 6.90 per cent), according to data from the Centre for Monitoring Indian Economy.

2.49 The vast majority of working people are employed in the informal sector. Individuals in this sector experience low job and income security, as well as lower coverage by social protection systems and employment regulation. Over time, workers have been shifting out of the agriculture sector and into the services and manufacturing sectors. However, many of those who are more educated, particularly graduates, cannot find suitable employment. In 2019, graduates aged 20-24 years reported an unemployment rate of over 60 per cent, with non-graduates in this age-group reporting 37 per cent unemployment.

Land Issues

2.50 As a predominantly agrarian economy where land continues to be a primary source of direct and indirect livelihoods and income for 70 per cent of the population, land acquisition remains a politically and socially contentious issue and has been a challenge for successive governments. Analysts assess reforming India's land acquisition laws and policies is key to unlocking the productive capacity of India's rural and agrarian economy, as well as supporting industrial development and manufacturing. India's land reform laws date back to the colonial era and successive efforts to bring about amendments and changes have been consistently opposed.

2.51 In 2015 the government introduced the Land Acquisition Amendment Bill, which civil society groups criticised as 'anti-farmer', 'anti-poor' and undermining the rights of farmers and rural landowners in favour of industry and corporate actors. After passing the Lower House of Parliament (*Lok Sabha*) in the last term of parliament, the Bill lapsed with the end of the previous *Lok Sabha* in May 2019. The Modi government abandoned the bill and there are no reports of its resurrection. In its second term, the BJP-led government has come under criticism from civil society groups for perceived efforts to amend existing environmental laws and regulations to fast-track approval and environmental clearance processes for large infrastructure and development projects, many of which are being planned in states and areas where tribal and other disadvantaged communities have traditional rights to land, forests and other natural resources.

POLITICAL SYSTEM

2.52 India is a federal republic with 28 states and 8 union territories, controlled by the central government. It is a parliamentary democracy, which operates under its 1950 constitution. The federal parliament is a bicameral system with an upper house (the *Rajya Sabha*) and a lower house (the *Lok Sabha*).

2.53 The *Lok Sabha* has 543 members, plus two members of the Anglo-Indian community nominated by the President. Of the 543 representing the states and union territories, 79 seats are reserved for SCs and 40 for STs. Members are elected on a first-past-the-post system in single-member constituencies, every five years or less, based on universal suffrage.

2.54 The *Rajya Sabha* has up to 250 members, 12 of whom are presidential appointments, with the remaining members elected indirectly by the assemblies of the states and union territories for a six-year term, with one-third retiring every two years. Legislation may be introduced in either house, but the *Lok Sabha* has the final say in financial matters. The Prime Minister is elected by the members of the *Lok Sabha* and then appoints and heads-up the Council of Ministers. An electoral college consisting of members of the federal parliament and state assemblies elects the President for five years. The President of India has formal executive power over the central government but acts on the advice of ministers.

2.55 According to the Election Commission of India, India has more than 1,600 registered political parties (including eight national parties and 47 state-recognised parties), representing diverse political, ethnic and religious interests. Most of these parties have a regional focus and do not stand candidates nationwide. This diversity of representation means broad coalitions are often required to form governments at the federal level. Electoral commission statistics recorded 8,251 candidates participating in the 2014 polls (latest available data).

2.56 For much of the post-independence era, the Indian National Congress Party (Congress) was in power. However, the Bharatiya Janata Party (BJP) led by Narendra Modi won 282 seats out of 543 elected seats in the 2014 general election, the first time a single party obtained a parliamentary majority since 1984. In May 2019, securing a second election victory, Modi became the first non-Congress prime minister in India to return to power after a full five-year term. Official data from the Election Commission showed Modi's BJP winning 303 of 543 seats (up from the 282 it had won in 2014). The BJP formed government along with its National Democratic Alliance (NDA) partners, with the alliance winning 352 seats in total. The opposition Congress party won 52 seats in 2019, after having been reduced to 44 seats in 2014, its lowest ever performance at an election. About 67 per cent of more than 900 million eligible voters voted in the staggered national elections that commenced on 11 April 2019 and were conducted over seven phases, with votes counted on 23 May 2019. Prime Minister Modi and his cabinet were sworn in on 30 May 2019 (see also [Recent History](#)).

HUMAN RIGHTS FRAMEWORK

2.57 India is a party to most of the core international human rights conventions. It has ratified the International Covenant on Civil and Political Rights (1979); the Convention on the Elimination of All Forms of Discrimination Against Women (1993) (CEDAW); the International Covenant on the Elimination of All Forms of Racial Discrimination (1968); the International Covenant on Economic, Social and Cultural Rights (1979); the Convention on the Rights of the Child (1992); and the Convention on the Rights of Persons with Disabilities (2007). India has signed but not ratified the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (1997), and the Convention for the Protection of All Persons from Enforced Disappearance (2007). India has not signed or ratified the second optional protocol

to the International Covenant on Civil and Political Rights aiming at the abolition of the death penalty, or the International Convention on the Protection of the Rights of all Migrant Workers and Members of their Families.

2.58 Section 15 of the constitution protects citizens from state discrimination on the basis of religion, race, caste, sex or place of birth. The same section protects people with those attributes from discrimination in access to shops, restaurants, hotels and places of public entertainment. In spite of these protections, local sources told DFAT discrimination on the basis of sex and gender, religious affiliation, caste, refugee status and tribe continues to occur (see [Race/Nationality](#), [Religion](#) and [Groups of Interest](#)).

2.59 Legal protections exist for people living with disabilities including under the *Persons with Disabilities Act* (2016), which protects access to education, employment and welfare, however the opportunities are reportedly limited. Sexual orientation and gender identity, apart from *hijra* status, are not protected attributes (see [Sexual Orientation and Gender Identity](#)).

2.60 India underwent its third Universal Periodic Review (UPR) at the UN Human Rights Council in May 2017. Of the 250 recommendations made, the Indian Government accepted 152 and noted 98. India's next UPR is due in 2022.

National Human Rights Institution

2.61 India's National Human Rights Commission (NHRC) was established in 1993 and has a broad mandate to inquire into and make recommendations about violations of human rights by the central and state governments, including through intervention in court proceedings. The NHRC can initiate inquiries on any of the issues under its remit. Governments are required to respond to the NHRC's reports within a period of one month for general complaints, and three months for complaints relating to the armed forces; however, government responses are often delayed. The NHRC consults with civil society representatives, some of whom sit on NHRC committees. The NHRC is accredited by the UN-affiliated Global Alliance of National Human Rights Institutions as 'fully compliant' with the Paris Principles for national human rights bodies.

2.62 The NHRC received around 86,000 complaints in 2018, with around a third of these relating to the police. Almost half (45.9 per cent) of the 2018 complaints came from Uttar Pradesh, with the NHRC recommending monetary compensation in around a third of cases. In the last five years, the average number of annual complaints was around 100,000, peaking in 2015 at 120,607. In April 2020, the NHRC received 2,582 new complaints and had nearly 23,000 registered matters under consideration. Critics claim the NHRC does not investigate every complaint and suffers from a lack of investigative capacity. The NHRC relies on information provided by India's states, which withhold it in some cases.

2.63 The NHRC does not have the power to investigate acts committed by the military and paramilitary forces. It does, however, investigate and report on extrajudicial killings (see [Extrajudicial Killings](#)).

SECURITY SITUATION

2.64 The security situation in India varies over time and from place to place due to its size and diversity. Civil unrest, including violent rioting, is not uncommon. Drivers of civil unrest are complex and varied and may include: tensions between different religious, social and ethnic communities (see [Religion](#), [Caste System](#) and [National Register of Citizens](#)); insurgencies, terrorist attacks or protests motivated by ideological or political objectives; tensions along disputed border areas; and tensions within communities over issues such as land ownership and marriage-related disputes.

2.65 Crime rates across India vary. Over 5 million cognisable crimes (crimes allowing arrest without a warrant) were reported in 2018, according to government statistics. This represented a rise of 1.3 per cent over the previous year. Crime rates are significantly higher in large cities. Most Indians live their lives with a relatively moderate risk of criminal violence, although violence against women and LGBTI individuals occurs at higher incidences (see [Women](#) and [Sexual Orientation and Gender Identity](#)).

2.66 Misinformation spread on social media occasionally leads to violence. Rumours spread using social media platforms, such as Facebook, Snapchat, Twitter, WhatsApp and YouTube, about alleged crimes including child sexual abuse or human trafficking have led to occasional vigilantism. These events are unpredictable, but tend to occur in rural areas and tend to be localised. In 2020, there was a proliferation of unverified messages and misinformation communicated on digital platforms about the COVID-19 pandemic, contributing to a sense of panic and alarm during the crisis.

Jammu and Kashmir

2.67 On 5 August 2019, the Indian government revoked the 'special status' of the state of Jammu and Kashmir (J&K) by abolishing Article 370 of the constitution, and reorganising J&K into two union territories (J&K and Ladakh) under the *Jammu and Kashmir Reorganisation Act, 2019*. With the abolition of Article 370, J&K is now subject to all Indian laws, including in relation to citizenship and land-ownership. This allows, for the first time, Indian citizens to permanently settle, buy land and hold local government jobs in J&K. Local media claims the government wants to change the demographic character of Muslim-majority Kashmir. The Indian Government said the decision was internal to India, with no external ramifications, and no change to the 'Line of Control'.

2.68 Around the time of the revocation announcement, Indian authorities deployed thousands of additional security personnel to the region, detained political leaders and activists, restricted public gatherings, and shut down the internet and telephone lines (see [Media](#)). Over 5,000 people were reportedly detained between August and November 2019 under the *Public Safety Act*. Many have since been released. Internet access was restored in March 2020, but restrictions on speed and availability remain, which some observers claim have hampered the local response to the coronavirus pandemic.

2.69 In an address to the nation on 8 August 2019, Prime Minister Modi said his government's strategy on J&K was to improve governance and transparency, spur development, investment and trade, and generate employment opportunities...to help defeat separatism, eliminate terrorism and generate peace and security for the region. Security has long been a concern in J&K. A range of militant groups are active in J&K, with the most lethal being Lashkar e-Tayyiba and Jaish e-Muhammad (LeT and JeM) (both listed as terrorist organisations under Australia's *Criminal Code Act 1995*). A strong body of independent academic research has established the role of these Pakistan-based groups in the Kashmir insurgency. These groups seek to split J&K from India. Global jihadist groups ISIL and Al Qaeda take an interest in Kashmir and mention it in their propaganda, but analysts suggest their influence is secondary to the long-standing Kashmir-focused groups such as LeT and JeM. DFAT is not aware of militants being forcibly recruited; however, DFAT is aware of claims of the recruitment of a small number of children as fighters.

2.70 Violence and civil unrest has escalated since 2016 following an increase in cross-border firing, militant attacks and political protests. According to official data in 2019 there were 3,168 ceasefire violations (up from 2,140 in 2018; 881 in 2017; and 449 in 2016). The use of local recruits has increased considerably following the Indian government's revocation of J&K's special status under Article 370. According to the South Asia Terrorism Portal (SATP), of the 152 militants killed in 2019, 120 were locals. From January-March 2020, out of 24 militants killed, 21 were locals.

2.71 Terrorism-related activities and fatalities in J&K have been decreasing. In part, analysts attribute this to the lockdown of J&K following the abolition of its special status on 5 August 2019. According to SATP, between 5 August 2019 and 15 March 2020 there were a total of 102 fatalities (23 civilians, 10 security force personnel, and 69 terrorists) in 51 incidents (down from 238 fatalities in 109 incidents in the immediately previous corresponding period). Overall, the number of terrorism-related incidents reduced from 598 in 2018 to 369 in 2019.

Northeast Separatism

2.72 Militancy in India's northeast region has a long history. However, violence has declined significantly. According to SATP, the northeast (comprising eight states: Arunachal Pradesh, Assam, Manipur, Mizoram, Meghalaya, Nagaland, Tripura and Sikkim) recorded 34 fatalities in 2019 (18 civilians, five security force personnel and 11 insurgents) compared to 73 in 2018 (20 civilians, 15 security force personnel and 38 insurgents). SATP data reports around 44 active terrorist/insurgent groups operating across the northeastern states. Their objectives are largely political and include secession and the protection of rights of religious and ethnic communities. Many have suspended operations to engage in separate peace processes. The sixth schedule of the constitution created 16 autonomous administrative divisions to ease tensions in Assam, Meghalaya, Mizoram and Tripura. The 2015 Naga Framework Agreement, signed between the Indian government and some Naga militant groups, established a ceasefire to facilitate peace negotiations, which continue. Some militant movements persist in areas of Assam, Meghalaya, Manipur and Nagaland.

2.73 Ethnic militancy in the northeast also targets Bengali immigrants. Sources report indigenous groups are concerned their identity, land and livelihoods are threatened by the arrival of migrants. Some arrived during the Bangladesh war of independence in 1971 and others more recently. According to the SATP, the situation in Assam remains 'volatile' due to the citizenship issues arising out of the [Citizenship Amendment Act, 2019](#) and the [National Register of Citizens \(NRC\)](#).

National Register of Citizens (NRC)

2.74 In 2018, a National Register of Citizens (NRC) initiative was rolled out in the northeastern state of Assam, which aimed to identify 'illegal' residents of Assam, allegedly migrants from Bangladesh. Four million people were excluded from the draft list in 2018, causing widespread anxiety among non-Assamese residents of Assam. On 31 August 2019, the Indian government published the final NRC. More than 1.9 million people (from a population of 31 million, on 2011 Census figures) were left off the list. These people have reportedly been asked to prove their citizenship or risk being declared foreigners and stripped of rights, including the right to vote.

2.75 This is the second time the NRC has been updated since its inception in 1951, when it was undertaken during the 1951 Census. The NRC was originally devised to manage tensions in the state over the perceived influx of illegal migrants from East Pakistan (later Bangladesh) after partition, and subsequent competition over land, language and culture. According to census data, the proportion of Assamese speakers had declined from 58 per cent of the state population in 1991 to 48 per cent in 2011, while the Bengali-speaking population had increased from 22 to 30 per cent. Estimates of the number of illegal migrants in Assam have ranged from 4 to 10 million. The future of persons excluded from the final NRC is uncertain. Those excluded have to appeal through Foreigners Tribunals, likely a lengthy process. It is unclear how the government intends to respond if 'foreigners' are identified.

Citizenship (Amendment) Act, 2019 (CAA)

2.76 The *Citizenship (Amendment) Act, 2019* (CAA) was passed by the Indian Parliament (*Lok Sabha*) on 11 December 2019. The CAA came into force on 10 January 2020. The CAA makes religion a criterion for citizenship for the first time. It provides a shorter residence period of five years for a citizenship application (over the normal 12 years) for persons who belong to the Hindu, Buddhist, Christian, Sikh, Jain or Parsi communities from Pakistan, Bangladesh and Afghanistan, and who had entered India illegally before 31 December 2014. Muslim communities are not included. Seven states have reportedly announced they will not implement the CAA; however, the government insists these state governments do not have the power to override the Act.

2.77 Widespread protests occurred across India in response to the CAA. The protests reflected two views: one opposing the permanent settlement of migrants of any kind in India's northeast, and the other opposing perceived discrimination against Muslims. In the northeast, protesters fear that further permanent settlement of migrants there will alter the states' strong local identity. Recognising this sensitivity, the government has specifically excluded tribal areas of Tripura, Mizoram, Assam and Meghalaya, and parts of Arunachal Pradesh, Mizoram and Nagaland from the CAA. This has implications for the implementation of the [National Register of Citizens \(NRC\)](#). The NRC excludes 1.9 million residents of Assam, including up to 1.2 million non-Muslims, many of whom now have the right to apply for citizenship under the CAA. To local Assamese, this represents an abrogation of a 1985 commitment to preserve the state's identity and way of life. The Assam Accord, agreed between the central government and Assamese protesters in 1985, promised to exclude and take practical steps to expel all foreigners who had entered Assam on or after 25 March 1971 (while providing amnesty for those who had entered earlier).

2.78 In the rest of India, protestors have opposed the exclusion of Muslims from the CAA, which they perceive as a violation of principles of non-discrimination and secularism in the constitution. The CAA will still apply to the majority of Assam, where protests that started on 11 December 2019 were most widespread. DFAT is not aware of official data on nationwide deaths and arrests stemming from the protests. Media reports suggest over 80 deaths across India (in Uttar Pradesh, Assam, Karnataka and Delhi), and several thousand arrests and preventive detentions. Parts of Assam and neighbouring states were placed under curfew in December 2019; additional army and central security forces were deployed; and internet services were suspended.

Naxal Movement (Maoists)

2.79 The Naxal or Maoist movement originated in 1967 as a violent peasant uprising over land reforms in Naxalbari village in West Bengal. It uses guerrilla warfare against security forces to seek to overthrow what it perceives to be a semi-colonial, semi-feudal system that oppresses and exploits the masses. The insurgency ebbed and flowed during the 1970s and 1980s, but became stronger in 2004 when the Communist Party of India (Marxist-Leninist) People's War—commonly known as the People's War Group—joined forces with the Maoist Communist Centre of India. Violence escalated and the Naxal threat became a greater security concern for policymakers. Naxals continue to operate in central and eastern states including Andhra Pradesh, Bihar, Chhattisgarh, Jharkhand, Madhya Pradesh, Maharashtra, Odisha, Telangana, West Bengal and Uttar Pradesh. Sources agree Naxal does not represent a political force that effectively challenges the Indian state and note a declining influence over the last decade.

2.80 Forced recruitment and village-level intimidation campaigns do occur, but the success rate is reportedly low. Insurgent groups reportedly ask each family in a village to provide one son to fight, but local sources say the groups rarely threaten families, as they do not want to lose their small support base. The philosophy of the movement mandates the support of the people. There have been reports in recent years



of Naxalite recruitment of children in Chhattisgarh and Jharkhand. DFAT is not able to verify these reports. The Indian government has a reintegration program for Naxal fighters who lay down their arms and surrenders do occur.

2.81 According to SATP, while there has been an overall decline in Maoist violence and activity across India, Maoist insurgents have a proven capability for resurgence and maintain significant operational and on-the-ground capacity. SATP reports 61 fatalities due to Maoist violence (18 civilians, 25 security force personnel and 18 Naxalites) in 2020 (as at 19 April 2020). These figures include the 17 security personnel killed on 21 March 2020 by Maoist rebels in Chhattisgarh in the deadliest attack in three years. In 2019, SATP reported 302 fatalities (99 civilians, 12 security force personnel and 47 Naxalites).

3. REFUGEE CONVENTION CLAIMS

- 3.1 The Indian Constitution sets out fundamental rights to equality designed to prevent discrimination in the public sector under Articles 14 to 18. The right to equality includes equality before the law; prohibition of discrimination on the grounds of religion, race, caste, gender or place of birth; equality of opportunity in matters of employment; abolition of untouchability; and abolition of Indian honorific titles.
- 3.2 Indian law does not cover situations where discrimination on various grounds is practised in private sector organisations including clubs, societies, NGOs, educational institutions, hospitals, and *Khap Panchayats* (assemblies of male elders who assert considerable influence over village/clan affairs). Indian law does not cover discriminatory attitudes based on marital status, caste-affiliation, sexual orientation, disability, religion or food preferences.
- 3.3 In 2017, a comprehensive anti-discrimination bill was introduced to the *Lok Sabha*, seeking to cover direct and indirect discrimination, harassment, segregation and boycott (economic, social, and cultural) in both the public and private sectors. The bill has since lapsed. Multiple sources told DFAT discrimination is an everyday part of life in India.

RACE/NATIONALITY

- 3.4 India is a party to the UN Convention on Elimination of all forms of Racial Discrimination. Section 29(1) of the constitution guarantees citizens the right to conserve their distinct language, script or culture. Section 30(1) gives all religious and linguistic minorities the right to establish and administer educational institutions of their choice. The constitution has recognised 22 different languages prevalent in the country, of which Hindi is the official language, spoken in most urban cities of India (see [Appendix](#)). In addition to these 22 scheduled languages, there are hundreds of dialects across the country.
- 3.5 Ethnicity and language are defining features in India and have been the most important factors for the creation of new states. The *States Reorganisation Act* (1956) created several new states, including Hindi-speaking Rajasthan, Marathi-speaking Bombay State, Kannada-speaking Mysore, Telugu-speaking Andhra Pradesh and Malayalam-speaking Kerala. In 1960, Bombay State was dissolved and split along linguistic lines into Gujarati-speaking Gujarat and Marathi-speaking Maharashtra. The former state of Punjab was divided in 1966 into the Punjabi-speaking state of Punjab, Pahari-speaking Himachal Pradesh and the Hindi-speaking state of Haryana, with Punjab and Haryana states sharing a centrally administered capital, Chandigarh. Pahari-speaking Himachal Pradesh became a state in its own right in 1971.
- 3.6 More recently, in 2000 the states of Chhattisgarh, Uttarakhand and Jharkhand were formed along tribal lines. Chhattisgarh was carved out of Madhya Pradesh, Uttarakhand from Uttar Pradesh and Jharkhand from Bihar. In 2014, the state of Telangana was formed on linguistic lines out of the state of Andhra Pradesh.
- 3.7 In May 2019, several UN special rapporteurs wrote a joint letter to the Indian government expressing their concerns over the perceived shortcomings of the [National Register of Citizens \(NRC\)](#) process and its alleged violations of obligations under international human rights law. UN High

Commissioner for Refugees Filippo Grandi expressed concern the publication of the NRC may put large numbers of people in Assam at risk of becoming stateless if they do not possess another nationality. India is not a signatory to the 1954 UN Convention of the Status of Stateless Persons or the 1961 Convention of the Reduction of Statelessness.

3.8 The terms ethnicity and religion can be used interchangeably at times. For example, in some instances 'Muslim' in India can denote both ethnicity and religion (see [Religion](#)).

3.9 DFAT assesses India has effective constitutional protections against official discrimination on the basis of ethnicity and language.

Scheduled Tribes

3.10 The constitution sets out officially designated groups of people within India, which are known as 'Scheduled Tribes' (STs). These indigenous peoples number more than 84.4 million (8.2 per cent of the population) and are also known as '*Adivasi*'. There are over 700 STs recognised in the constitution. Broadly, they are divided into three groupings: Central Indian *Adivasis*, Himalayan and Northeastern groupings. Census 2011 recognised 645 districts with tribes.

3.11 Articles 15 and 16 of the constitution provide reservations – a system of affirmative action that provides representation in education, employment and politics – for STs and other historically and currently disadvantaged groups in Indian society (SCs known as *Dalits* and subject to the practice of untouchability; and 'other backward classes' OBCs (see [Caste System](#)).) These groups are eligible to receive special benefits and to compete for reserved seats in legislatures, government and educational institutions.

3.12 Central India is home to the country's largest *Adivasi* tribes, and, taken as a whole, roughly 75 per cent of the India's tribal population lives there. STs are found predominantly in Madhya Pradesh, Maharashtra, Odisha, Jharkhand, Chhattisgarh, Andhra Pradesh, Telangana and West Bengal. By proportion, however, populations of states in the northeast have the greatest concentrations of STs. Other heavy concentrations of STs are in the union territories of Dadra and Nagar Haveli, and Lakshadweep.

3.13 Most tribal villages and settlements reportedly have limited access to electricity, schools and medical care. Members of STs generally live in remote forest areas, surviving solely on the forest environment in which they live. Very few ST communities are connected with all-weather roads.

3.14 Over 72 per cent of *Adivasis* live below the poverty line, despite resources such as coal and hydro-power projects being located in tribal regions, such as mineral-rich Odisha. Many tribal teak and sal forests have reportedly been eradicated. According to civil society representatives, lack of knowledge about forest rights and ownership over these resources has led to the exploitation and forced displacement of many forest-dwellers.

3.15 Civil society groups report only 59 per cent of those aged over seven and belonging to STs can read and write compared with the national average of 73 per cent. Children from STs rarely progress beyond the primary level, leading to lower employment chances and long-term poverty.

3.16 Under-five mortality for ST groups is substantially above the national average: 96 out of 1000 children from ST groups die before their 5th birthday, as against the national average of 74 out of 1000.

3.17 In 2016, a UK DFID funded program, PACS (Poorest Areas Civil Society), reported STs are socially excluded in India and face discrimination based on their ethnicity. PACS listed cultural, health, economic and educational discrimination and multiple forms of exclusion as part of STs' day-to-day life.

3.18 Despite government reservations, DFAT assesses STs face a moderate risk of official discrimination and a moderate risk of societal discrimination.

RELIGION

3.19 Religion plays a significant role in daily life in India. According to 2011 census data, almost 80 per cent (more than 1 billion people) in India are Hindus. Another 14.2 per cent are Muslims (just under 200 million), 2.3 per cent are Christians (around 32 million), 1.7 per cent are Sikhs (just over 23 million) and less than 1 per cent are Buddhists (just under 10 million). A further 1.3 per cent (around 18 million) follow other religions including Jain, Zoroastrian, Jewish and Baha'i faiths, and tribal religions.

3.20 The level of communal violence (between different religious communities) has ebbed and flowed since independence, but remains an issue in India. Official data shows more than 822 incidents of communal violence in 2017, with around 7,484 communal incidents reported over the 2008-17 period, or two incidents a day, killing more than 1,110 people. The actual figures are likely higher as many incidents go unreported. Religious minorities are especially vulnerable to the threat of communal violence. Muslims, while less than 15 per cent of the population, have typically made up the majority of victims.

3.21 Article 15 of the constitution prohibits discrimination against any citizen on the grounds of religion. Article 25 guarantees the right to freely profess, practise and propagate religion, and Article 26 guarantees every religious denomination or any sect the freedom to manage its own religious affairs. National law provides minority community status to six religious groups: Muslims, Sikhs, Christians, Parsis, Jains and Buddhists. State governments can grant minority status to religious groups that are minorities in a particular region.

3.22 In 1992, the Government of India set up the National Commission for Minorities (NCM), under the *National Commission for Minorities Act*. The Act extends to the whole of India and has the powers of a civil court. Five religious communities were included under the Commission's remit: Muslims, Christians, Sikhs, Buddhists and Zoroastrians (Parsis). Since 2014, the Jain community has also been included. State Minorities Commissions exist in Andhra Pradesh, Assam, Bihar, Chhattisgarh, Delhi, Jharkhand, Karnataka, Maharashtra, Madhya Pradesh, Manipur, Rajasthan, Tamil Nadu, Uttarakhand, Uttar Pradesh and West Bengal. The functions of these Commissions, like the NCM, are to safeguard and protect the interests of minorities provided in the constitution and laws enacted by Parliament and the State Legislatures. Aggrieved persons belonging to minority communities may approach the relevant State Minorities Commission for redressal of their grievances. They may also approach the NCM, after exhausting all other remedies available to them.

3.23 In 2018-19, the NCM received 1,871 complaints and heard 44 cases. In 2013-14 (the period encompassing the May 2014 national election), 2,638 complaints were received, the highest number over a ten-year period (2009-19). The top three complaints consistently relate to matters of law and order, service and education. The top three minority complainant communities are Muslim, Sikh and Christian.

3.24 In 2006, the Ministry of Minority Affairs (MMA) was established. Its mandate is to formulate overall policy and planning, coordination, evaluation and review of the regulatory framework and development of programs for the benefit of minority communities. Like the NCM, minority communities under its remit are Muslim, Christian, Buddhist, Sikh, Parsis and Jain. The MMA implements various national schemes across educational and economic empowerment, infrastructure development, special needs and financial support to institutions.

3.25 The *Lok Sabha* passed the *Citizenship (Amendment) Act* (CAA) on 11 December 2019. It came into force on 10 January 2020 and makes religion a criterion for citizenship for the first time. International

observers have expressed concern about the CAA. The UN High Commissioner for Human Rights said the law was ‘fundamentally discriminatory’.

3.26 Researchers and lobby groups state government officials can be indifferent or complicit in acts of targeting religious minorities. In 2019, Forbes Magazine claimed ‘the discrimination of religious minorities in India is far-reaching and deeply enshrined in law.’ The article cited anti-conversion and anti-cow slaughter laws being used to discriminate against religious minorities or ‘to justify extrajudicial killings, violence and forced conversions of non-Hindus to Hinduism.’ In 2019, Amnesty International reported ‘scores of hate crimes’ against Muslims and other religious and ethnic groups across the country. Human Rights Watch (HRW) reported incidents of mob violence against minorities, especially Muslims, by extremist Hindu groups, and claimed the government was criticised ahead of the 2019 elections for failing to stop such attacks. HRW notes, however, that PM Modi called for inclusive politics after the elections. The Indian Government has rejected as ‘biased’ the United States Commission for International Religious Freedom (USCIRF) 2019 report, which designates India as a country of particular concern for engaging in or tolerating religious freedom violations.

Conversion and anti-conversion laws

3.27 Seven Indian states have almost identical laws regulating religious conversion and require notification, or sometimes permission, of the local government before an individual can change their religion. These states are home to almost 90 per cent of India’s STs, have high populations of *Dalits* and OBCs, high levels of poverty and illiteracy, and poor health care. Some analysts claim anti-conversion laws are linked to Hindu nationalists’ fear that *Dalits* and others treated as low-caste will leave Hinduism and shed their caste status, which is deeply entrenched in Hinduism.

3.28 State anti-conversion laws (ACLs) were first adopted in 1967 in Odisha, followed by Madhya Pradesh, Gujarat and Himachal Pradesh. Chhattisgarh inherited Madhya Pradesh’s law when the state was partitioned in 2000. ACLs have also been passed in Jharkhand (September 2017) and Uttarakhand (April 2018). While Arunachal Pradesh has ACL laws dating back to 1978, they have not implemented rules for enforcement. Tamil Nadu adopted ACLs in 2002, but repealed them in 2004. Rajasthan’s 2006 ACL laws, remain unsigned by the State’s Governor. Assam, Manipur and Maharashtra are also reportedly considering adopting ACLs.

3.29 ACLs do not directly ban conversion; instead, they ban conversions by means of ‘force, allurement, inducement or fraud’. These terms have no precise definition and in practice provide the administration and its agents wide powers of arrest. For example, Jharkhand’s penalties are three years imprisonment and a 50,000 rupee fine (approx. AUD1,000) or, if the convert is a minor, woman, or member of a SC or ST, four years’ imprisonment and a 100,000 rupee fine (approx. AUD2,000). The laws of Gujarat, Madhya Pradesh and Himachal Pradesh make it incumbent upon neighbours or villagers to inform the administration and the police of any activities of pastors, nuns and clergymen, which could give rise to a suspicion of proselytising motives. Christian advocacy group Open Doors claims ACLs are used to make false accusations of coercion against ‘those who have genuinely become Christians from a Hindu background’ and those who have introduced them to Christianity. While conversion from Hinduism to other minority religions is closely scrutinised and can trigger criminal charges, conversion (including forced conversions) of non-Hindus to Hinduism occurs, with no legislation addressing ‘reconversion’.

3.30 Reconversion (*‘ghar wapsi’* programs) are carried out by a number of Hindu organisations. In January 2019, media reported 96 Christians were converted in a *ghar wapsi* ceremony in Tripura. According to media reporting in 2014, the Hindu nationalist organisation Dharm Jagram Samiti (DJS) claimed to have re-inducted over 600,000 people into Hinduism since 1966, with DJS’s head in Uttar Pradesh stating their

target was to make India a Hindu state by 2021. Some commentators view the government's silence on the issue of *ghar wapsi* as tacit approval of the practice.

3.31 Local sources report instances of violence linked to religious conversion. According to Indian non-profit organisation Persecution Relief, in February 2019, 40-year old Anant Ram Gand, a Christian convert, was beheaded in Raigarh Tehsil, Odisha. Villagers who had opposed his conversion nine months earlier allegedly armed local Naxals to carry out the murder, claiming the man would reveal Naxal secrets to the police. A week before the attack, seven villagers had reportedly given Gand an ultimatum to renounce Christianity or face death. In February and May 2019 respectively, two men were killed in Chhattisgarh following opposition to their conversion to Christianity. On 24 October 2019, a Christian, Pastor Saanvi, was beheaded in Odisha after warnings to stop his ministry work.

Hindus

3.32 Hindus constitute 79.8 per cent of India's population according to the 2011 census. The population growth rate of Hindus in the decade leading up to the census (2001-11) stood at 16.8 per cent – down from the previous decade's figure of 19.92 per cent. Hinduism is followed as the majority in 28 (out of 36) states and union territories. It is a minority in Manipur, Arunachal Pradesh, Meghalaya, Nagaland and Mizoram (Christian dominated); Punjab (Sikh dominated); J&K and Lakshadweep (Muslim dominated); and Ladakh (Buddhist and Muslim dominated).

Hindu nationalist organisations

3.33 There has been an increase in targeted attacks against religious minorities in recent years. Some observers claim members of the current government have created a permissive environment for Hindu nationalist groups in India to target minorities and engage in hate-speech.

3.34 The *Sangh Parivar* is an umbrella term for the 'Family of the Rashtriya Swayamseval Sangh' volunteer movement, or 'RSS family' which brings together many from the Hindu nationalist movement of India. Founded in 1925, the RSS itself has approximately 5-6 million members. Groups that are affiliated with the RSS or are allied organisations include: the BJP political party; the Vishva Hindu Parishad (VHP) religious organisation, its youth wing Bajrang Dal (BD) and women's wing Durga Vahini; the Akhil Bharatiya Vidya Parishad students' union; and the Bharatiya Kishan Sangh farmers' union.

3.35 At their foundation, these groups have the objective of organising and consolidating a Hindu society and protecting the Hindu *Dharma* (the moral precept and code of living that governs duty, religion and law in Hinduism). The RSS movement and its affiliates have been known to work at the grass roots level to organise Hindus and defend their interests. Participants reportedly engage in lessons that prioritise the Hindu way of life.

3.36 Some RSS affiliates have engaged in militant activities. In 2018, the CIA classified VHP as a militant religious organisation. In 1992, BD participated in the destruction of the Babri Masjid mosque at Ayodhya (see Ayodhya – Babri Mosque and Hindu Temple). For the last 30 years, BD has either been banned or operated on the margins of society. However, since the BJP came to office in 2014, media claims the group has grown more powerful. BD has formed approximately 2,500 cells across India.

3.37 In 2018, Hindu nationalist groups called for a ban on public prayer by Muslims in parks in Gurgaon, which led to mob attacks in the name of enforcement. In June 2019, in Jharkhand, 24-year-old Muslim Tabrez Ansari was tied up, beaten and forced to chant messages in support of Hindu gods. Footage of the attack was shown on national television. Ansari later died from his injuries. Jharkhand police dropped the murder charges of the 13 accused when an autopsy stated Ansari had died of cardiac arrest, but they were

later reinstated. Although there was no evidence of the perpetrators' link to any Hindu right-wing organisation, VHP activists protested their arrests.

3.38 In late 2019 and early 2020, there were extensive riots in major cities across India, including New Delhi, in relation to the [National Register of Citizens and Citizenship \(Amendment\) Act, 2019 \(CAA\)](#). Experts have expressed concern over police complicity in the riots, including their direct participation in support of Hindu mobs (thought to be linked to Hindu nationalist organisations), making the Muslim community vulnerable. According to media reports, one video at the time showed police asking young Muslim men to sing the national anthem as they were being hit by a Hindu mob. DFAT assesses the primary underlying reason for these riots stems from the changes made to India's citizenship laws, which are seen by many to undermine the secular nature of India.

3.39 DFAT assesses that, as the overwhelming majority in India, most Hindus do not face official or societal violence or discrimination on the basis of their religion.

Muslims

3.40 Islam is the second-largest religion in India, with 14.23 per cent of the population identifying as Muslim (approx. 172 million people) (up from 13.4 per cent in the 2001 census). Muslims are the second largest minority group within India after SCs. According to 2019 estimates, India's Muslim population is roughly the world's second largest (sitting at 11 per cent of the world's Muslim population, just behind Indonesia) and the world's largest Muslim-minority population. Based on 2011 census figures, Muslim majority states or territories are (the erstwhile state of) J&K (68.31 per cent, approx. 8.5 million people) and Lakshadweep (96.58 per cent, approx. 62,270 people). Muslims are a minority elsewhere, although are often concentrated in Muslim residential areas. States with significant Muslim populations include Uttar Pradesh (38.4 million), West Bengal (26.4 million), Bihar (17.5 million), Maharashtra (12.9 million), Assam (10.6 million) and Kerala (8.8 million).

3.41 Muslims in India are not a homogenous group; they differ in language (mainly Urdu, but also regional languages), ethnicity, culture and economic position. The vast majority are Sunni Muslims; the remainder are Shia and diverse sects. Indian Muslims are not granted the same constitutional safeguards as SCs or STs, and are not entitled to reservations in employment or education. Although Muslims are not entitled to reserved constituencies in the central or state government assemblies, Muslim parliamentary representation is common, including at the Cabinet level. However, Muslims are under-represented as a proportion of their population. There have been several Muslim Chief Ministers in various states and, to date, two Muslim Presidents of India.

3.42 Despite their large numbers, Muslims in practice are under-represented in some areas of employment and administration – although there have been improvements in representation in the civil service in recent years. Muslims are often employed or self-employed in small businesses, artisanship, fishing and unskilled work. Media reports the rate of Muslim migration to large cities is decreasing because Muslims are 'shut out of the labour market'.

3.43 Reported instances of communal tension involving Muslims in recent years, include violence, assaults, riots, religiously motivated killings and discrimination. According to a July 2019 survey by the Pew Research Center, which researched religious restrictions in the 25 most populous countries, India ranked among the top five countries with the highest levels of social hostilities. Hindu nationalist groups, such as the Shiv Sena or the RSS, have been responsible for some incidents, in what some observers claim is a permissive environment (see [Hindu nationalist organisations](#)). In March 2019, the UN High Commissioner for Human Rights warned India over 'divisive policies' and harassment of minorities, particularly Muslims, *Dalits* and *Adivasis*.

3.44 Indian Prime Minister Modi and other senior government leaders have emphasised the importance of community harmony and religious groups supporting each other during the COVID-19 pandemic. In an address to the HRC on 30 June 2020, however, the UN High Commissioner for Human Rights expressed concern at reports members of India's Muslim minority were being targeted by stigma and hate speech associating them with COVID-19. In March 2020, Indian authorities linked cases of COVID-19 to a Muslim missionary movement, Tablighi Jamaat, that had held a religious gathering in Delhi, allegedly in violation of social distancing rules. Subsequently, tweets with the hashtag #CoronaJihad trended on Twitter in India, with Time Magazine reporting its use nearly 300,000 times between 28 March and 3 April 2020. Digital human rights group, Equality Labs, claimed many of the social media posts had not been removed, despite violating Twitter's rules on hate speech and coronavirus.

Cow-related attacks

3.45 The cow is considered sacred within Hinduism. Cow slaughter is forbidden in much of India, although beef is consumed by certain minority groups. India has witnessed attacks by cow protection groups on people believed to be involved in slaughtering cows, selling beef or illegally transporting cows. A 2019 Human Rights Watch (HRW) report claims members of the BJP have used rhetoric that has spurred violence against beef consumption and those deemed linked to it. A database tracking cow-related hate crimes recorded 120 such crimes nationwide between 2010 and 2018, resulting in 45 deaths and at least 245 injured. Over 98 per cent of the crimes took place after 2014. Muslims were disproportionately affected, accounting for 50 per cent of the victims (compared with Hindus at 9 per cent, *Dalits* at 10 per cent, *Adivasis* at 3 per cent, and 28 per cent of unknown religion or caste).

3.46 Observers have linked the rise in cow-related attacks to growing Hindu nationalism. Most reported attacks in the nine years from 2010 to 2018 occurred in Uttar Pradesh, Haryana, Karnataka, Jharkhand and Gujarat states. According to HRW, many of the attacks have been led by 'cow protection groups' reportedly affiliated to militant Hindu groups with ties to the BJP.

3.47 In July 2018, with the rise of cow-related attacks, the Indian Supreme Court reportedly demanded that the legislature formulate laws against the practice. DFAT understands this has not yet occurred. Media reports few perpetrators of cow-related violence are punished, creating a culture of impunity. In some instances, attacks have been filmed and posted on social media channels associated with militant Hindu groups. For example, a 2017 mob attack on Muslim dairy farmer Pehlu Khan and his two sons in Rajasthan was posted on a YouTube channel linked to BD. Of the nine accused in this case, six were acquitted in August 2019. At the same time, charges were brought posthumously against Pehlu Khan under section 6 of the Rajasthan *Bovine Animal (Prohibition of Slaughter and Regulation of Temporary Migration or Export) Act, 1995*. Human rights observers report counter-complaints against witnesses and family members can make them afraid to pursue justice and, in some cases, alleged perpetrators enjoy open political patronage.

Ayodhya – Babri Mosque and Hindu Temple

3.48 The centuries-old Babri Mosque, in Ayodhya, Uttar Pradesh, was destroyed in 1992 by Hindu mobs. This led to thousands of deaths across India – mostly Muslims – in subsequent riots. Hindus believe the mosque was built on the same spot Hindu God, Lord Ram, was born, and where a Hindu temple had stood centuries earlier.

3.49 In the lead-up to the May 2019 federal election, the BJP made the construction of a new temple at the site an election promise. On 9 November 2019, the Supreme Court ruled that, while the demolition of the mosque was illegal, the site of the destroyed mosque must be handed over to a trust to oversee the construction of a Hindu temple, with land allocated to the trust for construction of a new mosque nearby. Prime Minister Modi welcomed the court's decision. Following the judgement, the Modi government constituted the 15-member trust (Shri Ram Janambhoomi Teertha Kshetra Trust), with construction initially

due to commence in April 2020; however, the nation-wide lockdown due to COVID-19 delayed commencement. On 5 August, a ground-breaking ceremony was held.

3.50 During the civil case over the site, union and state governments deployed Special Forces extensively and restricted access to social media in an attempt to maintain law and order among communities. According to media analysis, the Muslim community's relatively low-key reaction to the ruling was partly driven by fear given the large deployment of police in many cities in the days leading up to the judgement. The main opposition parties largely support the construction of a Hindu temple at the site.

Triple Talaq

3.51 In July 2019, *The Muslim Women (Protection of Rights on Marriage) Bill, 2019* became law. The law makes void and illegal *talaq-e-biddat* or any other similar form of *talaq* having the effect of instantaneous and irrevocable divorce pronounced by a Muslim husband. Under the law, it is illegal to pronounce *talaq* (Arabic for 'divorce') three times in spoken or written form, or through SMS, WhatsApp or any other electronic chat in one sitting. Any Muslim who pronounces the illegal form of *talaq* upon his wife can be punished with imprisonment for up to three years, and be liable to a fine. India joins Afghanistan, Bangladesh, Egypt, Morocco, Pakistan, Saudi Arabia, and the United Arab Emirates in banning *triple talaq*. On the passing of the law, Prime Minister Modi stated on Twitter 'An archaic and medieval practice has finally been confined to the dustbin of history! Parliament abolishes Triple Talaq and corrects a historical wrong done to Muslim women. This is a victory of gender justice and will further equality in society. India rejoices today!'. Opponents to the law stated it was 'another attack on Muslim identity under the BJP and marginalises Muslim women even more'.

3.52 Campaigners have stated it is not possible to quantify how many cases of *triple talaq* occur in India. Despite the law, the practice continues, with police investigating cases when reported.

3.53 DFAT assesses Muslims face a low risk of official discrimination. DFAT assesses many Muslims live day-to-day with low levels of societal discrimination and violence. Communal violence has occurred in India for many decades. The Muslim community has often been disproportionately affected and the February 2020 Delhi riots marked the latest episode. Hindu nationalist politics has heightened communal tensions in parts of India in recent years. In this climate, there are higher levels of fear in the Muslim community. The risk of societal discrimination and violence is higher for Muslims who are involved in cow slaughter; however, these incidents, while widely reported, have not affected the day-to-day lives of most Muslims.

Christians

3.54 Christians constitute approximately 2.3 per cent of the total population. According to the 2011 census (latest figures), there are 27.8 million Christians in India. The largest Christian denominations today are Roman Catholics, Syro-Malabar Catholics, Malankara Orthodox Syrians and various Protestant denominations. Christianity is the dominant religion in the northeastern states of Nagaland, Mizoram, Meghalaya and Manipur while they make up substantial populations in the states of Arunachal Pradesh, Kerala, Tamil Nadu, Goa, and Andaman and Nicobar Islands.

3.55 A rise in Hindu nationalism has coincided with increasing incidents of violence and discrimination against Christians. Christians have increasingly faced poorly founded legal proceedings and police reports, difficulties for churches and NGOs dealing with local government authorities, public statements by officials denigrating Christians, and threats or acts of violence. India ranked 10th on Christian support organisation Open Doors' 2020 World Watch List of countries where Christians experience the most discrimination (see [Conversion and anti-conversion laws](#)). The organisation claims discrimination is strongest for converts;

police rarely intervene when Christians are harassed; and Christians are monitored online and in their communities (but did not specify by whom).

3.56 NGOs report Christians' often intersecting identities – as *Adivasis* or as *Dalit* Christians – can exacerbate the socio-economic, political, and cultural discrimination they face. *Dalit* Christians and Muslims face similarly high levels of intersectional discrimination. The lack of official recognition of *Dalit* Christians as SCs according to the *Constitution (Scheduled Caste) Order, 1950*, prevents them from accessing reservations, including certain protections and benefits, available to *Dalit* Hindus, Sikhs and Buddhists. *Dalit* Christians are estimated to comprise 8.1 million (roughly 30 per cent of the 27 million Christian population). Together with tribal people, who form a further 30 per cent, these socially and economically poor groups constitute the majority of Indian Christians.

3.57 US online news agency National Catholic Reporter reports India's Christians, and Muslims have faced increased discrimination in recent years. National Catholic Reporter claimed in October 2019 'coordinated efforts are in place to shut down institutions'. On 8 October 2020, India's National Investigation Agency in Jharkhand arrested elderly Jesuit priest Father Stan Swamy on terrorism charges, in connection with a 2018 incident of caste-based violence and alleged links with Maoists (see [Naxal Movement \(Maoists\)](#)). Swamy, a critic of the government and advocate for indigenous people, denied the charges. The arrest followed raids on his home in June 2019 and August 2018. In a statement on 20 October, the UN High Commissioner for Human Rights raised concerns about human rights in India, including specific mention of Swamy's case.

3.58 A March 2019 Newsweek report claimed that, in 2018, more than 100 churches were shut across Madhya Pradesh, Rajasthan, Tamil Nadu, Uttarakhand and Uttar Pradesh, citing building codes and/or *panchayat* building rules. Newsweek claims the actual number of churches affected is likely higher as figures do not include remote parts of India where records are more difficult to collect.

3.59 In 2017, one of India's largest Christian charities, the US-based Compassion International, was forced to close its operations in India after 48 years, after the government did not grant approval for it to transfer funds into the country amid allegations the organisation was funding religious conversions. The closure was reportedly part of moves to curtail foreign funding of activities deemed by the government 'detrimental to the national interest' (see [Human Rights Organisations](#)). Until its closure it had repeatedly ranked as India's largest single foreign donor, transferring around USD45 million a year. In 2020, Indian authorities suspended the *Foreign Contribution Regulation Act* (FCRA) licenses of four Christian NGOs working in Jharkhand, Manipur and Mumbai, for unspecified reasons.

3.60 In its 2019 annual report, the Indian organisation Persecution Relief recorded 527 attacks against Christians in India, a 10.27 per cent increase of incidents from 2018. Persecution Relief claims the actual figures for violence are likely much higher than those reported. Uttar Pradesh recorded the most incidents, followed by Tamil Nadu. In the period 2016-2019, Persecution Relief recorded 1,774 incidents. Threats, harassment and intimidation were the most common forms of discrimination, followed by church attacks and physical violence.

3.61 DFAT assesses most Christians live day-to-day with low levels of societal discrimination and violence, although incidents of communal violence against Christians have increased with the rise of Hindu nationalism. DFAT assesses Christian converts and activists, and Christians who are involved (or are perceived to be involved) in proselytisation, particularly to Hindus, face a moderate risk of official and societal discrimination. DFAT assesses the risk is higher for *Dalit* converts and Christians considered to be of a low caste, given their intersectional identities.

Sikhs

3.62 India has a Sikh population of 20.8 million people (2011 census). The growth rate of Sikhism declined since the 2001 census. Sikhism is the dominant religion in the state of Punjab (approximately 16 million people) with significant populations in Haryana (1.2 million), Delhi NCR (570,581), Rajasthan (872,930), Uttar Pradesh (643,500) and Uttarakhand (295,530).

3.63 India's Sikh population has suffered from issues surrounding recognition. The constitution groups Sikhs, Buddhists and Jains with Hinduism; therefore they are not legally recognised as distinct religions.

3.64 One of the points of difference between Sikh groups is the extent to which they support the creation of an independent Sikh state known as 'Khalistan'. The 1966 creation of the Punjabi-speaking Sikh majority state of Punjab went some way to addressing these demands. During the internal struggle within the Sikh community in 1982, separatist leader Jarnail Singh Bhindranwale and his followers moved into the Golden Temple complex in Amritsar. In June 1984, the Indian government ordered the army to eject Bhindranwale and his followers from the complex in an offensive known as 'Operation Blue Star'. The army bombarded the Golden Temple complex, inflicting serious damage. Bhindranwale and many of his supporters were killed during the operation.

3.65 In retaliation for Operation Blue Star, two of then-Prime Minister Indira Gandhi's Sikh bodyguards assassinated her at her home in New Delhi in October 1984. In the days following, mobs seeking revenge for the assassination attacked Sikh homes and businesses, including in New Delhi. Approximately 3,000 people, mostly Sikhs, were killed in the violence. Security forces carried out further operations to suppress Sikh separatism during the late 1980s, during which allegations emerged of torture, extrajudicial killings and deaths in custody carried out by security forces.

3.66 NGOs report communal violence disproportionately affects India's religious minorities, in particular Muslims, but also Christians and Sikhs, who face varying degrees of socio-economic, cultural and legal discrimination. Reports of minor cases of violence against Sikhs occur. Media sources have reported isolated incidents involving Sikhs and the police in recent years:

- After a road accident in Mukherjee Nagar Delhi, in July 2019, an argument broke out between a Sikh 'tempo' driver and police, during which police beat the driver. After an inquiry, the police involved were dismissed from duty for 'unprovoked, indiscreet and highly unprofessional' behaviour.
- A 2018 article by Punjab-based Sikh Siyasat News (SSN) reported a mob attack in Karnataka injured a Sikh man and led to six arrests. The police report indicated the man was mistaken by the mob to be a 'child lifter' and the villagers, 'unaware of [its] significance,' mistook his *kirpan* (small sword used as an article of faith in Sikhism) as a weapon.
- Another 2018 SSN article indicates a family reportedly attacked in Haryana detailed police inaction on their case, and the police threatened to charge the family instead.

3.67 According to information cited by the Immigration and Refugee Board of Canada (IRB), since the late 1980s, Sikhs living outside Punjab mostly do so safely and integrate economically and socially into their communities. IRB notes while there can be localised discrimination, for example blocking entry to public areas or requiring the removal of articles of faith (turbans or *kirpans*) before sitting examination in educational programs, such issues are adequately addressed by local courts or police. Sikhs may face difficulties integrating in areas where a Sikh community does not already exist, and may face discriminatory treatment from law enforcement and government officials for wearing the *kirpan*.

3.68 DFAT assesses Sikhs in India generally face a low level of official and societal discrimination and violence.

Buddhists

3.69 India's 8.4 million Buddhists account for around 0.7 per cent of the population (2011 census). According to Census 2011, most Buddhists are *Dalits* who converted from Hinduism due to discrimination in the Hindu caste system.

3.70 Like Sikhs and Jains, Buddhists are grouped with Hinduism under the constitution, meaning Buddhism is not recognised as a distinct religion. DFAT is unaware of any major incidents of violence targeted specifically towards the Buddhist community in India.

Jains

3.71 India is home to 4.5 million Jains. While the Jain population is just 0.4 per cent of India's total population, their impact on the Indian economy remains high. According to Census 2011, Jains are the most educated and wealthiest community in India. Most Jains belong to the business community and live in the states of Maharashtra, Rajasthan, Madhya Pradesh, Gujarat, Karnataka and Delhi NCR.

3.72 Like Sikhism and Buddhism, Jainism is grouped with Hinduism under the constitution, meaning it is not recognised as a distinct religion. DFAT is unaware of any major incidents of violence targeted specifically towards the Jain community in India.

Dera Sacha Sauda Sect

3.73 Established in 1948, Dera Sacha Sauda (DSS) states it is a social welfare and spiritual organisation. However, media have referred to DSS as a 'religious cult'. DSS has 50 ashrams across India, with its main centre in the northern Indian city of Sirsa, Haryana. It reportedly has international branches of DSS in Australia, Canada, the United Arab Emirates, United Kingdom and the United States. DSS declares itself a 'confluence of all religions' and claims on its website to have 60 million followers worldwide. DFAT is unable to verify this claim. With a large support base across society, DSS has historically played an influential role in elections through its open backing of candidates or parties.

3.74 In August 2017, the current congregation leader Ram Rahim, was sentenced to 20 years' prison for the 2002 rape of two female followers. According to media reports, lawyers for the two victims have reportedly said a further 50 women have come forward with allegations, and there are believed to be other victims. Following his sentencing, protests by Ram Rahim's followers resulted in the deaths of at least 38 people in Haryana. Many more were injured, widescale damage to public property was reported and trains and buses were torched in Delhi.

3.75 In January 2019, Rahim was sentenced to life imprisonment for the 2002 murder of journalist Ram Chander Chattrapati, after Chattrapati's newspaper published an anonymous letter alleging sexual exploitation of women followers.

3.76 Rahim is also standing trial for two other separate murders: the 2002 murder of Ranjit Singh, the brother of one of the rape survivors; and the 1991 murder of Fakir Chand, who went missing in 1991, following Rahim's appointment as congregation leader in 1990. At the time of his murder, Fakir Chand was the manager of DSS.

3.77 India's Central Bureau of Investigation is investigating accusations against Rahim, dating back to 2000, for grievous bodily harm following the castration of at least 400 men in a pledge to 'bring them closer to God'.

3.78 With Ram Rahim in jail and no apparent heir, DSS is reportedly losing influence due to an absence of leadership. The organisation was fined heavily for the destruction of public property and arson following Rahim's jailing, and its future is uncertain. In addition, a further 200 criminal cases were reportedly registered against DSS followers following Rahim's conviction, and over 1,000 followers were arrested. Congregation numbers reduced significantly, depleting DSS income. DSS's political influence has waned since Rahim's conviction, and the sect's impact on the 2019 parliamentary election was negligible.

3.79 DFAT is unaware of any major incidents of violence targeted specifically towards followers of the Dera Sacha Sauda sect in India.

POLITICAL OPINION (ACTUAL OR IMPUTED)

3.80 India's constitution provides for freedom of speech and expression, freedom of assembly, and the right to form associations (Articles 19-22). The Government of India can impose reasonable restrictions to these freedoms in the interests of sovereignty and integrity of India, national security and public order, and to maintain decency and morality. India has laws on sedition and criminal defamation, and laws regulating the use of the internet. According to Human Rights Watch (HRW), these laws curb Indians' constitutional freedoms.

3.81 Democratic elections for the *Lok Sabha*, the lower house of parliament, have been held since 1951. The only exception to this was when the Indian Congress Party's then-Prime Minister Indira Gandhi postponed elections during a period of emergency rule from 1975 to 1977. Notwithstanding the scale and complexity of India's political landscape, and noting some exceptions, elections in India tend to be peaceful, broadly free and fair, reflect the will of the electorate, and result in regular transfers of power at central and state levels. Activists have occasionally called for communities in conflict-affected areas to boycott electoral processes, and low-level violence has sometimes occurred.

3.82 India has a diverse political landscape, which represents different ethnic, religious, secular and political interests. There are no constitutional, legal or other institutional restrictions preventing minorities from participating in politics. Political parties often court ethnic, religious and caste-based minorities for their ability to deliver 'vote banks'.

3.83 Observers assess the government has sought to align Indian nationalism with Hindu nationalism. They claim the BJP has benefited politically from some Hindu organisations' use of violence to polarise the electorate along religious lines. The 2019 USCIRF report – which the Indian Government rejects – claims certain BJP members have affiliations with extremist Hindu groups and have used inflammatory language about religious minorities publicly (see [Recent History and Hindu nationalist organisations](#)). This has led to concerns minority rights and religious freedoms are being threatened, and the link between democracy and secularism is being weakened.

Opposition Parties and Critics of the Government

3.84 India has hundreds of political parties registered with the election commission, with a small group registered as national parties. The BJP and its rival the Indian National Congress (Congress) party are the largest among them. Since independence, the Congress party has dominated the national movement for ending British rule and has formed most of India's governments. The party, which has lost successive general elections to BJP since 2014, is currently led by Sonia Gandhi. Other national parties include:

- Bahujan Samaj Party (BSP) established in 1984 to represent the lower castes such as SCs (also known as *Dalits*), STs, OBCs and the religious minorities. BSP is strongest in Uttar Pradesh, where it has previously formed government.
- Communist Party of India (CPI) a socialist party formed in 1925. It enjoys varying degrees of support in West Bengal, Kerala, Tripura, Manipur and Tamil Nadu.
- Communist Party of India (Marxist) emerged out of a division in the CPI in 1964 over ideological issues. Based on the principles of Marxism-Leninism, it has a strong presence in the states of West Bengal, Tripura and Kerala.
- Nationalist Congress Party (NCP), which formed in 1999 after some of the top Congress Party members, broke away in protest at Sonia Gandhi's leadership. NCP is primarily based in Maharashtra.
- All India Trinamool Congress, founded in January 1998, is a breakaway faction of the Indian National Congress. It is strongest in West Bengal, where it is in government.
- National People's Party, founded in 2013 and accorded national party status in June 2019. It is the first political party from northeastern India to attain this status.

3.85 Besides the national parties, numerous regional movements play an important role in each state. The influence of regional parties has reportedly been growing steadily, often at the expense of the Congress.

3.86 The constitution protects the rights to freedom of speech, and to form associations and unions. This right is subject to 'reasonable' restrictions in the interests of public order, decency or morality. Public demonstrations require advance notice and permission of authorities and frequently occur. Intelligence agencies regularly monitor the activities of civil society actors and individuals engaged in particular areas of sensitivity. According to some commentators, the right to freedom of speech is limited in practice, with government control tightening.

3.87 In January 2020, researcher and student Sharjeel Iman, was arrested and charged with sedition, following a protest speech in which he called for a road blockade to cut off the state of Assam from the rest of country. This followed protests over the government's December 2019 introduction of the [Citizenship Amendment Act, 2019](#). Following Iman's speech, some BJP leaders reportedly labelled him a 'secessionist'. Critics are concerned the government is using the colonial-era sedition law, under which Iman was arrested, to silence dissenters, claiming their acts are a threat to national security.

3.88 Media reports citing official data claim 332 people were arrested under the sedition law between 2016 and 2018, with seven convicted (suggesting police have struggled to gather evidence against the accused). Researchers claim the use of the sedition law has increased under the current government. DFAT is unable to verify these claims.

3.89 In 2019, Indian police filed a sedition case (later dropped) against 49 people who had expressed concern in an open letter to Prime Minister Modi over hate crimes targeting minority communities. Other recent high profile cases include sedition charges against political activist Shehla Rashid for tweets alleging the Indian army's use of torture in Kashmir; and sedition charges (later dropped) against a teacher and a parent for involvement in a school play voicing opposition to the citizenship law.

3.90 There are few publicly available statistics on election incidents. Reports of violence around polling stations do occur during electoral periods. For example, in the 2019 general election campaign, clashes between party supporters, protests and other violent incidents were reported in 11 (of then-29) states. Seven deaths were recorded of voters, party workers and elections officials, including by security forces, with multiple others injured. The Electoral Commission of India (ECI) ordered repolling in around 270 (of 1 million) polling stations due to allegations the booths had been 'captured' and voters intimidated by

supporters of one or another party. The ECI also banned campaigning in West Bengal a day early after a major clash between the supporters of the BJP and the governing All India Trinamool Congress.

3.91 DFAT assesses leaders and members of opposition parties do not face official or societal discrimination on a day-to-day basis. The risk of political violence between rival supporters increases during parliamentary and state elections, especially in states where results are tightly contested. However, in general, given the scale of the Indian election process, elections are conducted peacefully. DFAT assesses people who publicly express views critical of the government face a moderate risk of official discrimination. This may include arrest, harassment and prosecution.

GROUPS OF INTEREST

Human Rights Organisations

3.92 India has nearly 3.4 million non-government organisations (NGOs), both registered and unregistered, working in a variety of fields including disaster relief and advocacy for marginalised and disadvantaged communities. NGOs may register under the national *Societies Registration Act, 1860* or under state-based legislation for registering various not-for-profit entities. There are no accurate figures on NGO registered entities. Successive Indian governments have, at times, tried to curb NGO activities, particularly those working on issues deemed to be sensitive, for example structural discrimination, rights of *Dalits*, tribal people and other deprived groups.

3.93 Some NGOs have been denied permission to accept foreign funding under the *Foreign Contribution Regulation Act* (FCRA) in recent years. In 2010, amendments to the FCRA meant ‘any organisation of a political nature’ was forbidden from taking foreign funding (a broader definition than the ‘political parties’ specified in the 1976 version of the law). Amendments in 2016 required once-permanent licences to be renewed every five years and limited the proportion of foreign funds for an organisation. In September 2020, India’s parliament passed further amendments to the FCRA. These included a prohibition on sub-granting, a 20 per cent cap (down from 50 per cent) on the use of foreign contributions for administrative expenses, and greater oversight and enforcement powers for the Ministry of Home Affairs.

3.94 The UN High Commissioner for Human Rights expressed concern in October 2020 that the FCRA was ‘being used to deter or punish NGOs for human rights reporting and advocacy that the authorities perceive as critical in nature’. In a 2016 analysis, the UN Special Rapporteur on the rights to freedom of peaceful assembly and of association found FCRA norms and regulations ‘are not in conformity with international law, principles and standards’.

3.95 Some NGOs have had their foreign funding licences cancelled or not renewed, or claim tax investigations or other bureaucratic actions prevent them from operating. Civil society groups claim this method is used to silence organisations, including Lawyers Collective, an organisation that represents activists in cases against the government. On 29 September 2020, the Indian office of human rights organisation Amnesty International (AI India) announced it had halted its activities in the country after authorities froze its bank accounts. This followed a raid on AI India by India’s Enforcement Directorate (a government agency that investigates financial crimes) in 2018. In the same year, the general secretary of the Chhattisgarh People’s Union for Civil Liberties was arrested and accused of being a Maoist and working against the state. In 2017, US-based Christian organisation Compassion International closed its operations in India after 48 years, after its foreign funding was curtailed under the FCRA (see [Christians](#)). In 2015, a Greenpeace staff member was reportedly removed from a flight on her way to a UK meeting on the

impacts of coal exploration licences on tribal people. The government suspended Greenpeace India's licence in April 2015 under the FCRA.

3.96 In 2011, there were 40,000 NGOs registered under the FCRA. Between 2014 and 2018, around 20,000 lost their licenses to accept foreign funds. According to a report on India's philanthropic landscape by consultancy firm Bain & Company, there was a 40 per cent decline in foreign funding between 2015 and 2018.

3.97 Sources told DFAT they consider the government has further intensified efforts against NGOs, and there is now a greater use of the FCRA to 'crack down on the freedom of expression [and] to pursue all forms of dissent'. Civil society claims this has made them less able to hold the state accountable.

3.98 In a July 2019 statement, in response to Indian authorities' raids on the Lawyers Collective, the Bar Human Rights Committee of England and Wales wrote 'there is considerable evidence that the FCRA is being misused and exploited to narrow the space for civil society activists and human rights defenders in India whose goals may differ from those of the government.' It claimed the raids are 'the hallmarks of a political attempt to silence critical activism and work'.

3.99 DFAT assesses people working for NGOs do not face societal discrimination or violence on a day-to-day basis. Those who operate NGOs that are critical of the government or deal with politically sensitive issues face a high risk of official discrimination. This may take the form of monitoring, harassment, raids, or cancellation or denial of funding licences.

Media

3.100 The constitution guarantees all citizens the right to 'freedom of speech and expression'. These rights are limited by section 19(2), which allows 'reasonable restrictions' to protect the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence. A series of legal amendments, rules and guidelines, such as the *Unlawful Activities (Prevention) Amendment Act, 2012*, exist to limit media content and monitor communications, particularly in response to security threats.

3.101 While India has a vibrant media sector and the constitution guarantees the right to 'freedom of speech and expression', many in India consider this a narrowing space. In recent years media personnel have been subject to threats, physical attacks, detention and arrest in the line of duty.

3.102 In 2020, India ranked 142nd out of 180 countries in Reporters Without Borders' (RSF's) annual World Press Freedom Index (dropping two places). RSF reported no murders of journalists in India in 2019 (compared to six in 2018), but noted there had been constant press freedom violations, including police violence against journalists, ambushes by political activists, and reprisals instigated by criminal groups or corrupt local officials. Local Indian media reported one targeted murder of a journalist in 2019 and several in 2020.

3.103 The Government of India has broad control over the country's telecommunications infrastructure via the provisions of the *Telegraph Act, 1885* and the *Wireless Telegraphy Act, 1933*. In practice, this allows the government to determine access to the internet (when and by whom), block content, stop access to services, and monitor internet traffic. The *Cable Television Network (Regulation) Act, 1995* gives the government a similar power over cable news. Media content is subject to censorship for obscenity, to discourage the publication of sensitive material, particularly on national security issues, and for anything deemed disrespectful to religion. Authorities have charged journalists under various laws, including for sedition and 'outraging religious sentiment'. Local sources told DFAT that, in effect, these laws can lead to self-censorship.

3.104 According to National Crime Records Bureau (NCRB) data, Indian police registered 191 cases of sedition across the country between 2015 and 2018, of which trials were completed in 43 cases, leading to four convictions. Sedition cases were most common in Jharkhand, Bihar, J&K and Kerala.

3.105 In January 2020, incoming Jharkhand Chief Minister Hemant Soren ordered the dropping of sedition charges against over 3,000 anti-Citizenship (Amendment) Act protesters in Dhanbad.

3.106 On 31 March 2020, the Indian Supreme Court passed a directive making it compulsory for news outlets to carry the government's official version of any news related to the COVID-19 pandemic. In Uttar Pradesh, police commenced criminal investigations against the editor of the news website *The Wire* for 'creating discord among common people by accusing the state's chief minister of participating in a religious ceremony, following the PM's announcement of a national lockdown' during the pandemic.

3.107 Journalists covering protests in India are at risk of harassment and violence. Over a dozen journalists were reportedly harassed or physically attacked while covering riots that broke out in northeast Delhi in late February 2020 in response to the introduction of the [Citizenship \(Amendment\) Act, 2019 \(CAA\)](#). Some media workers claim they were asked about their religious identity, while others were forced to delete pictures and videos from their phones. In one case, Mohammed Mubashiruddin Khurram, a reporter with a local Urdu-language newspaper in Hyderabad, was arrested while covering a protest in February 2020, reportedly in relation to his previous reporting that had been critical of the government. According to the press freedom organisation Committee to Protect Journalists (CPJ), a number of journalists in India were attacked, detained or arrested while covering protests in 2019 and 2020:

- In December 2019, a BBC reporter claimed police pulled her hair, broke her phone, and hit her with a baton when she attempted to cover student protests at Jamia Millia Islamia University in New Delhi. Two other journalists covering the protests for local Indian media (*Maktoob Media* and *Pal Pal News*) claim police hit them with batons, confiscated press cards and attempted to break their mobile phones. A video of the alleged attack was shared on social media.
- In January 2020, *NDTV* reporter Randadip Choudhury was reportedly attacked by protesters in Guwahati, Assam. Protesters damaged his vehicle and attempted to set it alight.
- In Uttar Pradesh, police allegedly detained Omar Rashid, a journalist with *The Hindu* newspaper, threatening to charge him with criminal conspiracy for being 'part of the arsonists who vandalised police property and engaged in violence during the protest against the *Citizenship Amendment Act*'.
- In Karnataka, police allegedly detained eight journalists reporting for Kerala-based television outlets *Asianet News*, *News 18*, *MediaOne* and *TwentyFour News24*, for around seven hours, confiscating their equipment before releasing them without charge.
- In March 2020, the Ministry of Information and Broadcasting allegedly issued a 48-hour ban to Malayalam-language news channels *Asianet News* and *MediaOne TV*, ordering them to stop airing programs as a penalty for their coverage of riots in Delhi, which the ministry said was 'biased and constituted incitement'.
- In J&K, police allegedly attacked online news journalists Azaan Javaid and Anees Zargar while they were covering protests at Srinagar's Islamia College of Science and Commerce. Police allegedly punched and slapped the journalists, and confiscated their mobile phones.

3.108 Media representatives seen as critical of the government have faced arrest. In April 2020, the Indian Supreme Court directed Gautam Navlakha to surrender to the Sessions Court in Pune, western India, in relation to alleged Maoist links and conspiring to assassinate Prime Minister Modi. Navlakha, who maintains his innocence, has written frequently on issues related to Kashmir and Maoist separatism. In August 2019, the Ministry of Home Affairs (MHA) cancelled the overseas Indian citizenship of New York-based Indian journalist Aatish Taseer. Taseer believes he was targeted because of his criticism of the Modi Government in his May 2019 cover story in *Time* magazine.

3.109 CPJ claims journalists in J&K have been operating in a ‘state of crisis’ since August 2019, when the Indian Government imposed a complete communication shutdown in the region (see [Jammu and Kashmir](#)). Police reportedly detained and intimidated reporters during that time. The shutdown was lifted in part in January 2020, when the government restored limited internet access, which did not extend to social media. Access to 2G internet with no restrictions was permitted from March 2020. In August 2020, two districts were given access to 4G internet. However, DFAT understands intermittent internet blackouts have happened on the basis of security assessments.

3.110 Journalists in Kashmir continue to attract adverse police attention. In April 2020, J&K police launched investigations into an alleged ‘fake news item’ against journalist Masrat Zahra and alleged ‘anti-national posts’ against photo-journalist Peerzada Ashiq, over their reporting of tensions between Kashmiris and the police. In April 2020, cyber police in Srinagar launched an investigation of journalist Gowhar Geelani over his political commentary on social media, claiming his involvement in ‘unlawful activities’ that were ‘prejudicial to the national integrity, sovereignty and security of India.’

3.111 Some sources told DFAT self-censorship is ‘essential’ under the BJP government, with media unable to report the facts or be critical of the government. One journalist told DFAT they are categorised as either ‘with the government or not’, and that media independence is ‘muted’ as a result.

3.112 DFAT assesses journalists reporting on politically sensitive issues, such as the CAA or J&K, or those who openly criticise the government and its policies, face a high risk of official discrimination or harassment. At times, harassment can be violent. DFAT assesses journalists reporting on issues that are not deemed to be sensitive face a low level of official and societal violence and discrimination, in the context of a vast and active media industry.

Women

3.113 Traditional social practices and the low status of women in many parts of India can result in domestic and gender-based violence. Child marriage and *sati* (widowed women committing suicide on their husband’s funeral pyre) are illegal, but both practices continue in rural areas. The tradition of a bride’s family paying a dowry – prohibited under the *Dowry Prohibition Act* (DPA) (1961) – can lead to female infanticide, sex-selective abortions and dowry deaths (women murdered or driven to suicide in the attempt to extort a higher dowry). Available data likely understates the true extent of violence against women due to underreporting of cases.

3.114 According to the World Economic Forum (WEF), the condition of women in large fringes of India’s society is ‘precarious’. India ranked 112th out of 153 countries on the WEF’s Global Gender Gap Report 2020 (down four places since 2018). The report states the economic gender gap ‘runs particularly deep’ in India and has widened significantly since 2006. India is the only country of the 153 studied where the economic gender gap exceeds the political gender gap. WEF reports only one-quarter of women, compared with 82 per cent of men, engage actively in the labour market, while female estimated earned income is one-fifth that of males. While India has had a female prime minister for 15 of the past 55 years, female political representation is low: women make up around 10 per cent of the cabinet and the broader ministry.

3.115 The constitution provides a number of guarantees in relation to women’s rights, including equality of treatment between men and women (Article 14); prohibiting difference in treatment between men and women on the grounds of race, religion, caste, sex or place of birth (Article 14); and the right to live with human dignity (Article 21). India is a party to most of the core international human rights conventions (see [Human Rights Framework](#)), including the Convention on the Elimination of all forms of Discrimination against Women (CEDAW). India’s Supreme Court guidelines on sexual harassment in the workplace draw on CEDAW, and legislation relating to violence against women is contained within the *Indian Penal Code* (IPC),

civil laws and special laws. These include the *Dowry Prohibition Act (DPA)* (1961), the *Indecent Representation of Women (Prohibition) Act* (1986) and the *Commission of Sati (Prevention) Act* (1987).

3.116 The *Protection of Women from Domestic Violence Act, 2005* (PWDVA) was enacted to provide more effective protection for female victims of any kind of violence occurring within the family, including physical, verbal, emotional, economic and sexual violence. The PWDVA defines domestic violence as any act, omission or commission or conduct of the respondent, which includes threat or actual abuse.

3.117 Despite the plethora of laws to prevent crimes against women, in practice violence against women in India continues. Violence can occur throughout the life cycle from pre-birth to infancy, childhood, adolescence and adulthood, and can include sexual, domestic and dowry-related violence.

3.118 According to NCRB data for 2018 (latest available), there is one dowry death in the country every 78 hours, one act of sexual harassment every 59 minutes, one rape every 34 minutes, and one act of torture every 12 minutes. Almost one in every three married women experiences domestic violence. The NCRB reports women are most at risk in the states of Assam, Haryana and the union territory of Delhi.

3.119 There are sociodemographic and sociocultural risk factors for various forms of violence and abuse towards women in India. These include patriarchal attitudes towards marriage and motherhood; stigmatisation of unmarried, separated or divorced women; illiteracy and low education levels; low socioeconomic status; and lack of independent income. The custom of dowry and gifts for husbands and in-laws has been found to be strongly related to violence against women in India. According to academics, there is a high risk of violence against women who have a higher economic status than their husbands and who are seen as having sufficient power to challenge the traditional gender roles.

3.120 Media reports COVID-19 lockdowns in 2020 led to an increase in domestic violence incidents. National Legal Services Authority data from 25 March to 15 May showed a 50 per cent increase in reported cases compared to the same period in 2019. One Mumbai charity reported a four-fold increase in calls from women, many reporting a rise in abuse after their husbands lost their jobs. According to women's rights organisation Swayam, by mid-May helpline complaints had increased by 60 per cent since the start of the national lockdown. There are multiple hotlines available to report abuse, but DFAT understands operating hours are restricted and some women may not be able to access services. Volunteers staffing helplines stated they received calls from both married and unmarried women.

3.121 There have been reported acid attacks and so-called 'honour killings' against women in India, with sulfuric acid used to disfigure and sometimes kill women and girls over family feuds, inability to meet dowry demands or rejection of marriage proposals. 'Honour killings' of women (purportedly to uphold the family honour) have also been carried out in cases of alleged adultery, premarital relationships, rape or falling in love against family wishes. Media reported Indian police registered 251 'honour killings' in 2015, compared with 28 a year earlier when India began counting them separately from murder. In 2019, media claimed the newly-released NCRB's 2017 Crime in India report had left out 'honour killings' because it found the available data 'unreliable' and 'vague'. Most 'honour killings' are reportedly from the northern states where the influence of conservative *Khap Panchayats* over communities is greater. Although official statistics on 'honour killings' are not readily available, DFAT understands the practice is not widespread.

3.122 Single women reportedly make up 21 per cent of India's female population, at around 73 million. These include unmarried, divorced, separated and widowed women. The 2011 Census recorded an almost 40 per cent increase in their numbers over the preceding decade.

3.123 According to UNICEF, around one in four girls in India is married before her 18th birthday (see [Children](#)). However, UNICEF reports the practice of early marriage is less common in India today than in previous generations. Girls who live in rural areas, come from poorer households or have lower levels of education are considered most at risk.

3.124 During a 2018 hearing, India's Supreme Court said female genital mutilation (FGM) violated Articles 15 and 21 of the constitution. The practice is common to the Bohra community, a Shia sub-sect, who live in Gujarat, Maharashtra, Rajasthan, Madhya Pradesh and Kerala. In 2018, a study published by WeSpeakOut, a survivor-led movement, claimed 75 per cent of daughters (aged seven years and above) of all respondents in the sample from the Bohra community had been subjected to FGM. DFAT understands the practice is not widespread among the broader Indian society.

3.125 The PWDVA requires the states to provide shelters, counselling services and legal aid to survivors of domestic violence; however, the quality and availability of services are limited in practice. Local sources claim women's shelters in India are run very strictly and do not always provide a safe environment. Shelter residents have reportedly described conditions as 'unhygienic' and 'jail-like'. Shelters were first established to 'protect' vulnerable women from prostitution and trafficking rackets under the *Immoral Traffic and Prevention Act, 1956*. As such, there is stigma associated with attending shelters, with women seen as 'immoral' or 'deviants' for doing so. Researchers report a shortage of data on the facilities available across states, and on the experiences of women residents in state and NGO-run shelters.

3.126 Local sources told DFAT there are about twenty shelters across the state of West Bengal, with many women staying more than a decade in the shelters. Sources report rehabilitation is difficult and few women have viable options to leave. Women accessing shelter services are often stigmatised and their families 'will not take them back'. DFAT is not aware of shelter numbers in other states.

3.127 Counselling services tend to be of poor quality and limited availability. Lawyers Collective Women's Rights Initiative reports a mismatch between the availability of counselling services 'on paper', and the quality, nature and professionalism of such services. The provision of counselling services as mandated by PWDVA envisions empowering survivors. However, in practice, women often choose 'reconciliation' with perpetrators of domestic violence due to a lack of alternative options, such as economic and housing support or reliable social security schemes.

3.128 Inequality in inheritance also negatively impacts women in India. There is a lack of uniformity in inheritance laws, with various religious communities governed by personal laws and different states' scheduled tribes by their customary laws. Many such laws discriminate against women in relation to property or agricultural rights. The basic framework for inheritance differs on the basis of religion rather than the nature of assets. Religions have their own inheritance laws – inheritance rights of other groups are governed by the *Indian Succession Act, 1925*.

3.129 Media reports strong patriarchal traditions have translated into a fear of violence that prevents women from claiming their inheritance rights. Other factors include a low awareness among women of their rights. In several northern and western states, women have reportedly given up their claims over ancestral property due to the custom of '*haq tyag*' or voluntary renunciation. Although there is no official data on inheritance claims made by women in India, the latest census data (2011) notes only 13 per cent of farmland is owned by women.

3.130 Amendments in 2005 to the *Hindu Succession Act*, which governs matters of inheritance among Hindus, made women's inheritance rights equal to those of men. Several states, including Haryana, have lowered registration charges and taxes on properties that are in women's names. Global land rights advocacy group, Landesa, states this has had minimal impact on women's property ownership rates. While rising property prices could push more women to claim their inheritance, they still had little control over the property they inherited.

3.131 DFAT assesses women across India generally face a low risk of official discrimination, in that there are constitutional and legal protections for women. However, women have reported weak property rights,

discriminatory regulations and infrastructure constraints to equal business participation, and barriers to reporting crimes.

3.132 Although, in general, urban women from higher class and caste backgrounds tend to have better access to legal protections, these women may still be pressured by family to hide family violence for fear of maligning their family's honour and reputation. Other factors that may affect the situation for a woman experiencing violence include the state in which she lives, her class, caste, ethnicity, religion, education and age. Access to services is typically better in urban areas than in rural regions. In addition to the geographic advantages of urban-based communities, education and the standard of literacy has a significant impact on access to services.

3.133 DFAT assesses women across society, but particularly in rural areas and from lower castes, face a moderate risk of societal discrimination and violence. This can include sexual, domestic and dowry-related violence. The COVID-19 pandemic has highlighted the risk of domestic and family violence towards women in India. Longstanding traditional values and gender roles can restrict the participation of women in the workforce and community, and impact their inheritance rights and access to health and mental health care.

Marriage (inter-faith, inter-caste)

3.134 India is officially a secular and multi-ethnic country, and inter-faith and inter-caste marriages are legal. However, many Indian families still prefer marriages arranged within their own religion and caste. According to researchers, around 10 per cent of all marriages in India take place between different castes while around 2.1 per cent of marriages are inter-faith.

3.135 The *Special Marriage Act 1954* (SMA) is the secular marriage law in India, which enables inter-faith and inter-caste marriages, and is an alternative to each of the personal laws. The SMA is available to all citizens who choose to marry outside their faith, and the religion of the parties to an intended marriage is immaterial under the Act. However, few people use the SMA, favouring traditional personal laws that provide solemnisation of marriage under religious rites. As an example, in 2019, according to official data, of the 19,250 marriages registered in Delhi, 3 per cent were inter-faith marriages (and registered under the SMA).

3.136 The *Hindu Marriage Act* allows members of the Hindu, Buddhist, Jain or Sikh religions to intermarry without declaring detachment from their religion. Under Muslim personal status laws, only Muslim men are permitted to marry *kitabia* (members of the Christian or Jewish religions); Muslim women are prohibited from marrying non-Muslims. If a partner is a Christian, it may be possible to marry under Christian rites through the Indian *Christian Marriage Act, 1872*.

3.137 Despite their legality, in practice, there is a continued and growing intolerance in Indian society to inter-caste and inter-faith marriages. Many families cut off social relations with sons or daughters who undertake such unions, while other families commit or instigate acts of violence against the person who undergoes the marriage. Communal tensions and violence can also result. In August 2019, in Haryana, when a shopkeeper's daughter reportedly left her family to marry a tailor of a different religious community, people blocked a highway and forced shopkeepers to keep shutters down, demanding the bride be 'returned' to her parents. The couple sought protection from the state High Court. In May 2019, a newlywed couple was reportedly set on fire in a village in Maharashtra because the woman's family was opposed to their inter-caste love marriage.

3.138 In some parts of the country, informal social systems like the male-only *Khap Panchayats* (or *Khaps*) pass decisions and judgements on marriage, based on traditions. (DFAT understands *Khap Panchayats* are mainly found in Haryana and parts of Rajasthan, Uttar Pradesh, Punjab and Madhya Pradesh.) Such

punishments in marriage cases include fines, social ostracism, public humiliation and expulsion from the village. Despite the Supreme Court ruling against the practice, intrusions by *Khaps* to stop a legal marriage between consenting adults continue. Analysts have claimed there is a lack of political will to act against *Khap Panchayats* given their influence over large numbers of voters.

3.139 One reason for social disapproval of mixed marriages in India is that inter-faith marriage generally takes place after one of the parties converts to the other's religion, despite this being unnecessary under the SMA. While the constitution guarantees freedom of conscience and free profession to all (Articles 25-28), for some sections of the majority community, conversion has been and remains a sensitive issue.

3.140 Hindu nationalists have used the term 'love jihad' to allege Muslim extremist groups are leading an organised campaign to coerce Hindu women to marry Muslim men and convert to Islam. DFAT has found no evidence of Muslim men coercing Hindu women into marriage for the purposes of proselytisation.

3.141 Other intermixed unions perceived to be less socially accepted are those between rich and poor, and *Dalit* and non-*Dalit* Hindus.

3.142 Practical matters such as renting property, obtaining a passport or boarding flights can be difficult for such mixed unions. Some report the need to remain vigilant against being found, as their extended family is 'still on the lookout for them'. To support such couples there are limited initiatives such as Love Commandoes, Pratibimb Mishra Vivah Mandal, Dhanak of Humanity, Adhalinal Kaadhal Seiveer and Chayan which provide a mix of legal advice, counsel and shelter. In 2019, Dhanak of Humanity self-reported it had handled 2,000 cases since 2005. An analysis of roughly half their cases showed 58 per cent were inter-caste and 42 per cent were inter-faith couples.

3.143 Couples from rural areas who marry inter-caste or inter-faith may attempt to move to the anonymity of urban areas. However, factors that can affect couples moving to a larger city include their financial capacity, the degree to which their families have the power to find them, their educational background and employability, availability of a personal support network, and whether they appear 'visibly different'.

3.144 DFAT assesses the treatment of people in inter-faith and inter-caste marriages varies according to the families involved. It can range from approval in some families, to disapproval, ostracism, harassment, or violence (sometimes lethal). DFAT assesses that, in most cases, couples in mixed unions will experience some form of societal and official discrimination. DFAT assesses the risk of violence that can result in death of one or both of the parties to the mixed marriage is higher in communities in which *Khap Panchayats* operate.

Caste System

3.145 Hindu tradition divided society into a hierarchy of hereditary caste groups associated with particular occupations. Four main groups exist within the system's hierarchy: Brahmin priests, intellectuals and teachers; Kshatriya warriors and rulers; Vaishya farmers, traders and merchants; and Shudra labourers. These main groups are further divided into about 3,000 castes and 25,000 sub-castes, each based on their specific occupation. While caste is predominantly a Hindu concept, it has become a cultural phenomenon that exists within other religions and across India's many social, linguistic and religious communities. The influence of caste has declined over time, especially in cities where castes now live side-by-side, and inter-caste marriage does occur. However, caste identity remains, and last names usually indicate to what caste a person belongs.

3.146 A group known as '*Dalits*' (sometimes referred to as 'Untouchables' or 'outcastes') fell outside the caste structure. *Dalits* were historically associated with work seen as less desirable; including work

involving cleaning or waste, and traditional taboos existed against members of the four castes touching them. Many *Dalits* continue to work as sanitation workers, manual scavengers, cleaners of drains, garbage collectors and road sweepers. In 2019, it was estimated 40-60 per cent of the 6 million households of *Dalit* sub-castes were engaged in sanitation work.

3.147 The government uses the official term 'scheduled castes' (SCs) to describe *Dalits*. The term *Dalit* encompasses more communities than the official term, and can include nomadic tribes and STs. SC communities exist across India, and comprise 16.6 per cent of the country's population (2011 Census). When combined, SCs and STs make up just over a quarter of India's total population. Populations are concentrated in India's northern states (Punjab, Himachal Pradesh, West Bengal, Uttar Pradesh and Haryana).

3.148 In recognition of entrenched disadvantage, the constitution contains several provisions relating to SCs (mainly *Dalits*), STs (tribal and indigenous groups) and 'Other Backward Classes' (OBC) (Articles 15-16 and Part XVI: Articles 330-342). These include the establishment of separate National Commissions for SCs, STs and OBCs; reservation of seats in the *Lok Sabha* and state government legislatures; public service appointments; and access to higher education. Article 17 abolishes the practice of untouchability. OBCs are separate from SCs or STs, and are determined by the central government on a rolling basis with castes and communities added or removed depending on social, educational and economic factors. OBCs are considered educationally or socially disadvantaged. OBCs have an income cap; once reached, they are no longer entitled to reservation. Those who belong to ST/SC communities continue to receive the benefits of reservation irrespective of their socioeconomic status.

3.149 Reservation or quota policies have been unpopular with upper castes and dominant groups, including the Jats, Marathas and Patels or Patidars. In Haryana, the Jats, an agrarian middle caste, have sought OBC status since the late 1990s. In 2016, Jat protests included a blockade of the capital city, Delhi. In Gujarat, the Patels, a dominant caste, have sought the removal of quotas for SCs/STs, declaring them unfair and unmeritorious. The Patels have sought OBC status and have engaged in protests (at times violent) over the issue. In Maharashtra, the politically and economically dominant Marathas, have sought OBC status since the 1990s. To date, none of these groups has been afforded OBC status.

3.150 Some *Dalits* have achieved high office, helped in some cases by quotas for educational, public service and political representation. *Dalit* NGOs, community groups and chambers of commerce exist. India's President, Ram Nath Kovind, is a *Dalit* from the ruling BJP and is the second *Dalit* to hold that position. Nonetheless, human rights observers note the problem of social ostracism remains for *Dalits*.

3.151 The International Dalit Solidarity Network (IDSN) claims, while legal mechanisms are in place to protect *Dalits*, their implementation is weak and inconsistent. IDSN reports instances of bonded labour, abuse of *Dalit* women and girls and the hereditary occupation of 'manual scavenging' (removing human excreta from dry latrines). Official crime statistics show violence towards *Dalits* continues, with the rate of crime against SCs by non-SCs/STs around 21 per cent in 2018. Examples of alleged caste-related crime, based on media reports, include:

- In September 2018 in Madhya Pradesh, a *Dalit* man was scalped after he had tried to speak to his son's upper-caste employers.
- In October 2018 in Tamil Nadu, a 14-year old *Dalit* girl was beheaded by an upper-caste man whose wife said he hated the girl because of her caste.
- In May 2018 in Gujarat, a *Dalit* scavenger was tied up and fatally whipped outside a factory. The incident was captured on video and broadcast across India.
- In May 2019 in Uttarakhand, a *Dalit* man died after he was beaten up at a wedding reception for eating in front of upper-caste men.

- In September 2019 in Rajasthan, a *Dalit* man was beaten to death for allegedly stealing a water pump.

3.152 According to National Family Health survey data, health indicators for India's more than 80 million *Dalit* women lag behind those of higher-caste women. One in four *Dalit* women is reportedly undernourished, and 70 per cent report facing discrimination accessing health care.

3.153 IDSN reports the conviction rate for rape against *Dalit* women is under 2 per cent compared to a conviction rate of 25 per cent across Indian society. According to NCRB data, four *Dalit* women are raped everyday. They also reportedly face regular incidents of verbal abuse, physical assault, sexual harassment and assault, and domestic violence. IDSN has reported *Dalit* women are almost always punished by police officers when they try to file a complaint, and may be threatened with physical assault or rape, or denied medical treatment for their injuries.

3.154 DFAT assesses *Dalits* and other people considered to be of a low caste face a high risk of official and societal discrimination, including social segregation, exclusion, compromised access to education and health care, and a higher risk of sexual assault in the case of women and girls.

Sexual Orientation and Gender Identity

3.155 Local sources told DFAT lesbian, gay, bisexual, transgender and/or intersex (LGBTI) persons lack protection, have poor education and health outcomes, and face intolerance, abuse and violence in their daily lives. Attitudes towards and experiences of LGBTI individuals can vary, in part due to disparities between urban and rural India, language, caste, class and gender. According to a 2019 International Commission of Jurists (ICJ) report, LGBTI persons face extensive rights violations in relation to:

- housing and within the home, including discrimination in the rental market, denial of housing, segregation into poorly resourced neighbourhoods, violence and harassment (from landlords, neighbours, family and police), and homelessness;
- all stages of the employment process, including unequal access to educational opportunities, discrimination during the recruitment process, discriminatory and gendered work conditions, and lack of job security; and
- access to public spaces, including harassment, physical and verbal violence, denial of access, invasive surveillance and discriminatory pricing.

3.156 In urban areas, there are reportedly venues for the LGBTI community to meet and socialise, although not openly. In 2016, an online dating platform for the LGBTI community, 'Amour Queer Dating', was launched. There are also groups focused on support and advocacy for LGBTI women in Bangalore (ASQ), Mumbai (Labia), Kolkata (Sappho for Equality) and Chennai (Sahodaran) and trans-specific groups including Sampoorana, Tweet Foundation and Telangana Hijra Trans Intersex Samiti.

3.157 The constitution (Articles 14 and 21) guarantees the right to equality before the law and equal protection under the law. Article 15 prohibits discrimination on the grounds of sex. In 2014, the Supreme Court of India ruled the rights and freedoms of transgender people were protected under the constitution, including the right to self-perceived gender identity in the absence of gender reassignment surgery. In August 2020, the Government of India formed a National Council for Transgender Persons, to advise on relevant policy and legislation affecting transgender persons.

3.158 The Indian Armed Forces ban LGBT persons from openly serving. In December 2018, a member's bill was introduced into parliament to amend the *Army Act, (1950)*, *Navy Act, (1957)* and the *Air Force Act, (1950)* to allow LGBT persons to serve in the Armed Forces. In 2019, however, the Indian Army Chief

General stated homosexuality would continue to be considered an offence in the armed forces. Under the *Army Act*, any person found guilty of unbecoming or, disgraceful conduct of a 'cruel, indecent or unnatural kind' can be imprisoned for up to seven years. Despite not detailing such conduct explicitly, the euphemistic language in the Act is interpreted to include same-sex sexual relations.

3.159 According to Human Rights Watch (HRW), LGBTI youth face harassment and bullying, and often skip school or drop out altogether to avoid humiliation and violence. HRW claims educators lack training to respond to the needs of LGBTI students and, at times, participate in harassment against them. In 2019, UNESCO reported bullying, harassment and violence resulted in the denial of educational training opportunities to LGBTI students. According to ICJ, barriers to LGBTI students' participation include gender specific uniforms, lack of access to toilets and difficulties in obtaining accurate identity documents. ICJ cited cases of teachers beating and berating 'effeminate' male students and forcing transgender students to sit separately from their peers.

Gay men

3.160 Until a September 2018 Supreme Court judgement, section 377 of the Penal Code criminalised homosexuality. In 2018, however, the court decriminalised adult consensual same-sex relationships and declared section 377 unconstitutional. Sources told DFAT attitudes towards gay men have not changed, despite the change in the law. Sources claim police still use many 'nuisance laws' to arrest, harass, manipulate and bribe gay men whose families are not aware of their sexual orientation. Sources told DFAT it is possible for middle class, educated gay men to relocate in India. However, this had to be weighed against the concept and custom of family ties, which were hard to break. Local sources claim while there are 'gay nights' in a few bars, there are no safe spaces for gay men.

Lesbians

3.161 Local sources told DFAT the situation for lesbians is difficult in that they lack safe spaces and, particularly in rural areas, often cannot talk about their sexual orientation. While issues of sexuality are discussed more openly in cities, sources claim the lesbian community still lacks access to services in urban areas. Sources were aware of a number of suicides of lesbians in 2019. Although information on lesbians in India is scarce, DFAT understands lesbians often experience sexual, physical and emotional violence, including lack of control over resources or forcible psychiatric treatment. Lesbians report feeling unsafe and sometimes being forced to marry men. Reports suggest lesbians seeking to end sexual or physical abuse in such relationships would either need to leave the situation (and sever family ties), or deny their sexuality.

Hijras/Transgender/third gender individuals

3.162 The term *Hijra* refers to a male to female transgender identity recognised in traditional South Asian cultures. According to local sources, *Hijras* are part of Indian tradition and hold a unique space in the community. While *Hijras* are sometimes called on to bless newborns, marriages and new houses in Indian society, their perceived ability to curse people can engender fear. Sources claim most families do not accept their male child behaving in ways considered feminine, and children who do so risk being subject to verbal or physical violence. Some families disown and evict their *Hijra* children, while some *Hijras* or transgender children run away and seek refuge in *Hijra* communes.

3.163 *Hijras* often live within their own communities and may not connect to the rest of the LGBTI community. Many *Hijras* are transgender or intersex, but not all transgender or intersex people are *Hijras*. Sources told DFAT *Hijras* live in a strong structure with a guru. While traditionally castrated, many now take growth hormones. Many *Hijras* have little formal education and can find it difficult to secure employment. They may face discrimination when seeking access to goods and services, including education, employment and health care. In the health care setting, *Hijras* report discriminative practices such as deliberate use of male pronouns, admission into male wards, harassment by hospital staff and patients, and, in some cases,

denial of medical services. *Hijras* report an absence of police protection makes them easy targets for extortion and sexual violence.

3.164 In 2018, a transgender candidate in state elections in southern India went missing, feared kidnapped. She reportedly returned home after 36 hours, during which she claimed to have been held at knifepoint.

3.165 In 1994, transgender persons were granted the right to vote. In 2014, the Supreme Court, declared *Hijras* as socially and economically backward, and provided a reservation for them within the OBCs, entitling them to reservations in education and employment. Following this judgement, government documents such as voter ID cards, passports and bank forms started providing a third gender option, usually designated as 'other' (O), 'third gender' (TG) or 'transgender' (T).

3.166 In 2019, the *Transgender Persons (Protection of Rights) Act, 2019* (TPPRA) gave transgender persons a right to self-perceived identity. However, it requires registration with the government for official recognition as such, after submitting proof of gender reassignment surgery. The Act creates obligations for welfare, education, social security and health measures; non-discriminatory treatment in the employment context; and establishment of a National Council for Transgender persons (which occurred in August 2020). It provides a penalty for offences under the Act of between 6 months and two years imprisonment and imposition of a fine. The TPPRA includes intersex persons, *Hijras*, *Jogtas*, and *Kinnars* within its definition of transgender persons. The legislation has been criticised by HRW, ICJ, the transgender community and LGBTI activists across India, who state self-declared identity should form the basis for access to all social security measures, benefits and entitlements. In January 2020, human rights activist Swati Bidhan filed a constitutional challenge against the TPPRA in the Supreme Court. Sources told DFAT that, despite the TPPRA, transgender persons still function as non-citizens, with no rights to marry, inherit or take care of sick partners.

3.167 Attitudes towards and experiences of LGBTI individuals can vary based on a range of factors (such as disparities between urban and rural India, language, caste, class and gender). DFAT assesses, in general, LGBTI individuals who express openly their sexual orientation and gender identity face a moderate risk of societal and official discrimination. This can include harassment, exclusionary practices, arbitrary arrest, detention and violence. The removal of section 377 of the IPC, while a victory for same-sex men in particular, does not prevent or reduce widely held anti-gay and anti-LGBTI sentiment. Equally, the TPPRA, while providing a range of measures, has been widely criticised on a number of grounds and does not prevent or reduce anti-transgender public sentiment and treatment.

Children

3.168 Almost half of India's population is aged under 18 years and classified as minors under the *Majority Act, 1875*. Under the *Prohibition of Child Marriage Act, 2005*, the legal age for marriage is 18 years for a female and 21 years for a male. Child-specific policies and laws, outside the constitution and the IPC, include the *National Policy for Children, 2013*, *Protection of Children from Sexual Offences Act, 2012* (POCSO) and the *Juvenile Justice (Care and Protection of Children) Act, 2015* (JJ). In March 2020, amendments to the 2012 POSCO Act were implemented. These aim to strengthen punishment provisions for acts of child abuse. Additions to the Act include provision of mandatory police verification of staff in schools and care homes, fines and imprisonment for child pornography, and a request for state/union territory governments to formulate child protection policies based on 'zero tolerance' to violence against children. POSCO's legal framework seeks to protect children from offences of sexual assault, sexual harassment and pornography, and safeguard children's interests in the judicial process. POSCO provides for the death penalty in cases of sexual assault and aggravated penetrative sexual assault on a child.

3.169 India has ratified the Convention on the Rights of the Child and its optional protocols on the involvement of children in armed conflict; and the sale of children, child prostitution and child pornography. Despite these legal provisions, India's child population is vulnerable to abuse, neglect and exploitation.

3.170 According to the 2015-16 National Family Health Survey (NFHS(4)), 80 per cent of children aged under five had their births registered; 62 per cent with birth certificates. Lowest overall rates of registration were in Uttar Pradesh (60 per cent) and Bihar (61 per cent). UNICEF reports this as a significant improvement since 2005-06, when the proportion of registered children in India was 41 per cent. States govern the procedures for registration of births. Lack of registration may result in children being unable to access public services, including government food rations, enrol in school, or obtain identification documents later in life (see [Birth, Marriage and Death Certificates](#)). Children, including babies, may need to be registered for *aadhaar* cards, a form of identity card, in order to access government food rations or other government services (see [Unique Identification Numbers \(UID\)/Aadhaar](#)).

3.171 According to official data, 31 per cent of females and 15 per cent of males have never attended school. School attendance rates are higher in urban than in rural areas, while girls in rural areas are more likely to experience discrimination in access to education, adequate nutrition and medical care.

3.172 A 2007 study cited by World Vision India found one in every two children was a victim of child abuse, with both boys and girls impacted. DFAT is not aware of current statistics, but understands rates of child abuse and exploitation in India remain high, with crimes against children likely under-reported. While academic research notes the highest incidences of sexual abuse occur among street children, working children and those in institutional care, instances of sexual abuse in families occur at all socioeconomic levels and across all religious traditions. Awareness of the issue of rape of minors is growing in India and the government introduced the death penalty for rape of girls under 12 years in 2018. A May 2020 World Vision report into the impacts of COVID-19 lockdown measures worldwide claims the measures placed vulnerable children at increased risk of emotional, physical and sexual violence. The report cites a 32 per cent increase in calls to emergency domestic violence hotlines in India due to COVID-19.

3.173 Despite laws to prevent child marriage, UNICEF reports that, in 2015, 27 per cent of girls in India married before their 18th birthday (compared to 37 per cent in 2010, and 47 per cent in 2005). Of the country's 223 million child brides, 102 million were married before turning 15. UNICEF reports the prevalence of child marriage varies across states and union territories, with over 40 per cent of young women in Bihar and West Bengal marrying before the age of 18, compared to less than five per cent in Lakshadweep. Over half of India's child brides live in five states: Uttar Pradesh, Bihar, West Bengal, Maharashtra and Madhya Pradesh. Local sources told DFAT child brides in India are at a greater risk of sexual and physical violence within their marital home than outside it. Risk factors for early marriage include poverty, low levels of education and living in rural areas. According to the US Department of State in 2019, laws against child marriage are applied inconsistently.

3.174 While Indian law prohibits child abuse, it does not recognise physical abuse by caregivers, neglect or psychological abuse as punishable offences. NGOs report teachers often use corporal punishment, despite its prohibition in some states. According to official data, between 65-99 per cent of schoolchildren experience physical and mental abuse by their teachers, with disadvantaged children being at greater risk in the school setting. NGOs claim social norms around discipline and child rearing, as well as misconceptions around the effectiveness of corporal punishment, are the most likely reasons why the legal ban of school corporal punishment is not enforced.

3.175 There are groups that support children's rights in India. However, local sources told DFAT there remains a lack of services to support children who are the victims of violence and abuse.

3.176 While families and cultural traditions differ, DFAT assesses child sexual violence is prevalent across a range of socioeconomic and cultural traditions in India. Much of this discrimination and violence occurs within the family and extended family unit and is likely under-reported. DFAT understands the risk of sexual violence is generally higher for children in rural settings and poorer households.

3.177 DFAT assesses children in India face a moderate risk of societal discrimination, which is most evident in the education and care settings, with the outlawed practice of corporal punishment continuing with tacit approval.

Loan Sharks/Moneylenders

3.178 Loan sharks operate in India and various media reports in recent years have highlighted the issue. Moneylenders or *sahukar* operate outside of the formal credit system. Informal moneylending practices are particularly prevalent in the rural economy, with media reports claiming around half of India's estimated 600 million farmers take loans from informal sources. Access to banks, government loans or formal credit delivery services in rural areas can be poor, depending on the area.

3.179 Loans secured through informal moneylenders tend to carry much higher interest rates than in the formal sector, with victims often struggling to repay debts. Media reports have cited interest rates higher than 30 per cent, with some ranging from 75 to 350 per cent per month. Victims of loan sharks have been subjected to harassment, coercion and violence, including sexual violence. In some reported cases, defaulters have been killed or committed suicide. Media reports have linked an increase in farmer suicides to an inability to repay loans. Debts are then passed on to other family members.

3.180 There are multiple reports across India of victims of loan sharks. In June 2020, police reportedly freed a man in Ahmedabad who had allegedly been kidnapped by a moneylender over unpaid debts. In 2019, a couple and their two sons allegedly committed suicide in Dasarahalli after being unable to repay their debts. In 2018, a 40-year-old *Dalit* woman in Uttar Pradesh who was unable to pay the interest on an informal loan was reportedly set alight, suffering serious burns.

3.181 Legal protections exist for victims of moneylenders, at the state/union territory and federal level, including the *Usurious Loans Act of India* (1918), which applies to the informal financial sector. Provisions under section 415 of the IPC, which cover cheating and deception, may extend to predatory lending in some cases. Provisions to regulate the practice of moneylending can also be found in the *Reserve Bank of India Act* (1934) and the *Banking Regulations Act* (1949), all at the federal level. Penalties cover offences of imposition of exorbitant interest rates, harassment of borrowers and restoration of property, and range from imprisonment to imposition of fines. In practice, however, provisions in the law are rarely used or enforced and informal moneylending remains commonplace.

3.182 Laws against predatory lending otherwise vary from state to state. Stronger laws exist, for example, in Kerala, which fixes 18 per cent as the maximum rate of interest that can be charged by moneylenders, and in Tamil Nadu, which has in place an 'Act to prohibit the charging of exorbitant interest by any person'. Even in these states, the practice is reported to continue. Media have reported instances of police taking action when approached by victims being harassed by moneylenders. Such police action is likely isolated in the context of widespread informal lending and weak legal provisions against the practice. Despite being more prevalent in rural areas, loan sharks reportedly operate all over India.

3.183 In July 2019, New Zealand media reported on the case of a 27-year-old Indian man, whose family in India was threatened over unpaid loans and interest related to the man's studies in New Zealand. New Zealand authorities reportedly rejected his refugee claim, but upheld his appeal against deportation, granting him a 12-month work visa to earn money to repay debts.

3.184 DFAT assesses the experience for those who are unable to service debts to loan sharks, and their family members, varies widely. In some cases, victims can be subjected to violence (sometimes lethal) or be driven to death through suicide. In general, DFAT assesses those who lag behind in payments to loan sharks face a moderate risk of duress and harassment, which can include threats of violence towards themselves and family members, to elicit payments. Persons borrowing money through informal moneylenders may also face societal discrimination, due to familial shame, should they default.

4. COMPLEMENTARY PROTECTION CLAIMS

ARBITRARY DEPRIVATION OF LIFE

4.1 Article 21 of the Indian Constitution states that ‘no person shall be deprived of his life or personal liberty except according to procedure established by law.’

Extrajudicial Killings

4.2 ‘Encounter killings’ or ‘fake encounters’ are unofficial terms used in India to describe a situation whereby police or security forces kill a suspect in an encounter and then claim self-defence or another explanation. In its guidelines for police personnel, the National Human Rights Commission, India (NHRC) defines ‘encounters’ in the context of police operations more narrowly as ‘a situation where Police employ lethal force using firearms against armed criminals/offenders and under such situations, use of force by the police personnel is usually resorted to in self-defence’.

4.3 The NHRC releases monthly statistics on deaths in police encounters (as registered with the Commission). NHRC reported five cases in September 2020, with a total of 581 pending cases registered with the Commission. From 2013-14 to 2017-18, the NHRC reported annual totals of 137, 188, 179, 169 and 164 registered cases of police encounters. While complaints came from both rural and urban centres across the country, the highest number of complaints registered with NHRC were from Uttar Pradesh, followed by Delhi, Odisha, Bihar and Rajasthan. Sikkim and Lakshadweep registered the lowest number of complaints. In such cases, the NHRC has the power to recommend the payment of compensation or damages to the complainant or the victim’s family and/or initiate court proceedings or other suitable action, including disciplinary action. However, the compliance rate for compensation payment by government authorities is low, at around 20 per cent. Lack of media scrutiny and pressure from security forces in conflict-affected states suggest the incidence of ‘encounter killings’ may be higher than government figures report. The Lowy Institute reported that, over the two years from 2017-2019, police in Uttar Pradesh allegedly carried out 59 extrajudicial killings. Police encounters reportedly occurred most often in conflict zones, which local sources claimed circumvented the need for application of the death penalty.

4.4 In 2017, after taking office, the Uttar Pradesh Chief Minister reportedly announced the police would be given a ‘free hand’ to deal with criminals in the state, stating on national television ‘if you commit the crime, you will be knocked off’. In 2019, the Uttar Pradesh government, ahead of India’s Republic Day, listed its achievements. These reportedly included more than 3,000 encounters in which 69 criminals were killed, 838 sustained injuries and 7,043 were arrested between March 2017 and mid-July 2018. In a well-publicised incident in Uttar Pradesh on 10 July 2020, a well-known gangster, Vikas Dubey, was killed by police, allegedly while trying to escape custody after his gang had killed eight policemen on 8 July. Opposition leaders have reportedly claimed the killing was a ‘fake encounter’ for political motives.

4.5 The *Armed Forces Special Powers Acts, 1958* (AFSPA) (see [Enforced or Involuntary Disappearances](#)) remains in effect in Nagaland, Manipur, Assam and parts of Mizoram. Another version of the law operates in J&K, the *Armed Forces (Jammu and Kashmir) Special Powers Act* (1990). The Act allows the central

government to designate a state or union territory as a 'disturbed area' and authorises security forces in the state to use deadly force to 'maintain law and order' and arrest any person 'against whom reasonable suspicion exists' without informing the detainee of the grounds for arrest.

4.6 According to the Washington Post, in December 2019, a young veterinarian was raped and killed in Hyderabad and four suspects were arrested and allegedly confessed to the crime. Days later, they were fatally shot while in police custody. While some celebrated their deaths as a fitting punishment, others viewed their deaths as extrajudicial killings.

4.7 There have been similar allegations of police use of force during responses to civil protests. Indian media alleged in January 2020 that all deaths during anti-CAA protests in Uttar Pradesh were caused by the police. Officials put the death toll during the protests at 19, though opposition parties claim a higher figure. Similarly, reporting from the US-based independent media organisation Democracy Now! in December 2019 blamed police violence while confronting protesters for the deaths of at least six people across India, including four shot dead by police in Assam.

Enforced or Involuntary Disappearances

4.8 India signed the International Convention for the Protection of All Persons from Enforced Disappearance in 2007, but has not yet ratified it, despite recommendations at successive Universal Periodic Reviews in 2008, 2012 and 2017.

4.9 'Enforced disappearance' is not a specific criminal offence under the IPC. Families of 'disappeared' persons must file complaints under more general provisions of the Code of Criminal Procedure and IPC, including filing a 'missing persons', 'abduction', 'kidnapping' or 'wrongful confinement' complaint. Alternatively, some families have filed a writ of *habeas corpus* (commanding that a detained person be brought before a court) to find the whereabouts of 'disappeared' persons. However, when such cases are filed against members of the security forces and/or public servants, sanction provisions under Indian law (including under the AFSPA) can hinder investigations and prosecutions. These provisions require permission from the government before prosecutions can proceed. In practice, such permission is rarely, if ever, granted in cases of human rights violations. Additionally, military courts have jurisdiction over criminal cases concerning armed forces personnel, and, if the military court chooses to exercise its jurisdiction, the case cannot be tried in a civil court.

4.10 According to AI and the ICJ, reports of enforced disappearances are largely from areas facing insurgency or armed conflict, or declared 'disturbed' under the AFSPA. As at December 2019, the following areas had been declared 'disturbed' under the AFSPA: J&K, Assam, Manipur (excluding Imphal Municipal Council Area), Nagaland, and Changlang, Longding and Tirap districts of Arunachal Pradesh, and areas falling within the jurisdiction of the eight police stations of districts in Arunachal Pradesh bordering the state of Assam. Once an area is declared 'disturbed' under the AFSPA, armed forces are given a range of 'special powers' which include the power to arrest without warrant, to enter and search any premises, and, in certain circumstances, to use lethal force even if not strictly necessary to protect life.

4.11 According to the ICJ, around 8,000 enforced disappearances were reported in Kashmir during the period 1989-2012, with a further 172 in 2015 in the Kashmir region. The ICJ reports it is difficult to assess the numbers and scope of enforced disappearances across India. However, complaints filed with the UN Working Group on Enforced or Involuntary Disappearances (WGEID), and official state responses to these complaints, confirm a pattern of enforced or involuntary disappearances in India. As at May 2020, India had 426 outstanding cases (including 10 females) of enforced disappearances before the WGEID. To date, the WGEID has not visited India, despite submitting a visit request in 2010 and multiple reminders in subsequent years.

Deaths in Custody

4.12 The 2019 NCRB report on prison statistics (across its 1,350 prisons and 478,600 inmates) reported 1,775 deaths in prison in 2019. The NHRC 2017-18 annual report recorded 2,896 cases of deaths in judicial custody and 250 cases of deaths in police custody (representing only those cases registered with the NHRC that year). The true extent of such incidents is difficult to gauge. Sources claim the prevalence of custodial violence could be linked to the absence of strong deterrent laws in the country.

4.13 Indian law requires a magistrate to conduct a judicial inquiry into deaths in custody. Police are required to register a First Information Report and an independent police station or agency should investigate the custodial death. The custodial death should also be reported to the NHRC, which requires an autopsy to be filmed and a report prepared. International human rights organisations claim the law is not consistently applied; in some cases, deaths are not reported to the NHRC or police may pressure families not to pursue the matter. Actual numbers of deaths in police custody may be higher than official figures.

DEATH PENALTY

4.14 India retains the death penalty under both national and state legislation although it is seldom used. Since 2000, eight people have been executed by hanging: five for rape and murder, and three for terror-related charges. Forty-one non-homicide offences and 13 homicide offences contained in national legislation (including in the IPC) carry the death penalty. These offences include murder simpliciter (i.e. murder with intent), sexual offences, terror offences, kidnapping with murder, dacoity ('banditry') with murder, offences under defence laws and drug offences. According to the National University Delhi, *Death Penalty India Report*, no prisoners were sentenced to death under any state legislation between 2013 and 2016. However, the lack of effective access to state laws makes it difficult to provide comprehensive information on the number of provisions under state legislation that allow for the death penalty.

4.15 While lower courts regularly impose the death penalty, particularly for sexual assault and murder, higher courts have tended to commute many sentences. According to the National Law University, 102 persons were sentenced to death by trial courts in 2019 (down from 162 in 2018). Rajasthan imposed the most death sentences with 13 in 2019, while no death sentences were imposed in Arunachal Pradesh, Goa, Meghalaya, Mizoram, Nagaland and Sikkim between 2016-2019.

4.16 Three hundred and seventy-eight prisoners were under the sentence of death as at 31 December 2019. In 2019, there was an increase in the proportion imposed for sexual offences. Andhra Pradesh introduced the death penalty for non-homicidal rape of adult women.

4.17 On average, trials in death penalty cases last three years and two months. However, there is a large variation across the different offences, ranging from one year and six months for death sentence trials involving sexual offences, to eight years and four months for terror offence trials. These figures do not include the time spent in appeals processes at Supreme and High Court levels (nor presidential clemency requests).

4.18 Since independence, the majority of executions have been carried out in Uttar Pradesh (354), Haryana (90) and Madhya Pradesh (73). The method of execution for civilian crimes is hanging. Military executions may be carried out by firing squad or hanging.

4.19 On 30 July 2015, Yakub Memon was executed by hanging for his role in a series of terrorist attacks in Mumbai in 1993. Four men were executed in Delhi on 20 March 2020, the first executions carried out in India since 2015. The men were part of group of six who were convicted in July 2013 of the gang rape and

murder of a 23-year-old woman on a bus in Delhi in December 2012. The victim, who came to be known as 'Nirbhaya' (fearless), died of her injuries a fortnight later in a Singapore hospital. The case became synonymous with issues related to violence against women in India. It had caused widespread protests over societal attitudes towards women and the state's failure to protect them from violence.

4.20 The four men were executed by hanging in Tihar Jail. This followed three stays of execution granted during January-February 2020, to hear last minute appeals for clemency. The hangings were welcomed in India. There were reportedly celebrations outside the prison where the executions took place with many chanting 'death to rapists'. Without referring directly to the case, Prime Minister Modi in a tweet on 20 March said 'Justice has prevailed. It is of the utmost importance to ensure dignity and safety of women'.

4.21 For both male and females on death row, most are from disadvantaged backgrounds, such as SCs/STs/ OBCs, religious minorities, and those with little or no education. Most females on death row were subject to early marriage.

4.22 While 2018 saw the highest number of death sentences imposed by trial courts in nearly two decades, the Supreme Court went against this trend. Of the 12 death penalty cases heard in the Supreme Court in 2018, 11 were commuted to life imprisonment. DFAT understands public support for the death penalty is increasing in India, particularly for sexual violence and terrorism crimes. Sources told DFAT such support is largely vengeance oriented rather than public belief in its deterrence factor.

4.23 The *Criminal Law Amendment Act*, 2018 introduced the death penalty as a possible punishment for rape of girls below 12 years. In August 2018, the Cabinet also approved a bill providing the death penalty or life imprisonment for crimes involving maritime piracy or piracy at sea. In January 2019, an amendment to the *Protection of Children from Sexual Offences Act*, 2012 provided for the death sentence for aggravated penetrative sexual assault of children below the age of 18 years.

4.24 Local sources told DFAT the government of Madhya Pradesh has devised and implemented a rewards system for Public Prosecutors incentivising the seeking of the death penalty. Some observers expressed concern to DFAT about the politicisation of the death penalty.

4.25 A private member's bill was introduced to Parliament in 2018 and aimed at abolishing the death penalty. It is currently pending. On 14 November 2018 and on 17 November 2020, India voted against the UN General Assembly's draft resolution to establish a moratorium on the death penalty.

TORTURE

4.26 India has signed but not ratified the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Article 21 of the constitution provides that 'no person shall be deprived of his life or personal liberty except according to the procedure established by law'. However, neither the constitution nor penal laws define custodial torture. The only provisions under which custodial torture can be punished are sections 330 and 331 of the IPC. However, their application is limited to 'grievous hurt' as defined in Section 320 of the IPC. Other sections deal peripherally with torture, including Section 49 of the Code of Criminal Procedure (CrPC), which states a person arrested shall not be subjected to more restraint than necessary to prevent his escape, and section 55A, which creates a duty on the police to take reasonable care of the health and safety of an accused under their custody. Sections 25 and 26 of the Evidence Act make a confession by an accused person while in police custody inadmissible as evidence. However, Section 27 of the Evidence Act allows for any information provided by the accused which leads to the discovery of facts to be proved against the accused, even if such information is part of a confession made in police custody. Local sources suggest this section promotes the continued reliance on the use of custodial torture to force confessions and staged recovery of facts that 'prove' the guilt of the accused.

4.27 In 2009, Section 54 of the CrPC was amended making it mandatory for an arrested person to be examined by a registered medical practitioner, who then prepares a record of the examination documenting any injuries or marks of violence upon the arrested person and the approximate time when they may have been inflicted. The Supreme Court has noted Section 54 of the CrPC reinforces the right of an accused to bring to the court's attention any instance of custodial torture or assault.

4.28 The courts, various legal experts, the Law Commission of India and the government have reiterated the need for legislation prohibiting torture. Parliament considered, but did not enact, a Prevention of Torture Bill in 2010. To date, four out of 28 states and 8 union territories (Himachal Pradesh, Jharkhand, Meghalaya and Sikkim) have agreed to the Bill on the Prevention of Torture drafted by the Law Commission and introduced into the *Lok Sabha* in December 2017. The Supreme Court has, for a number of years, expressed concern about increasing custodial torture and preserved the fundamental rights of Indian citizens in cases before it.

4.29 No reliable statistics report the incidence of torture in India. Human rights organisations, however, have reported a significant volume of individual testimony claiming torture by central and state police, paramilitary and military forces, including to force confessions, harass family members or silence activists. Local sources claim legal guidelines are not strictly followed and custodial torture is often relied upon by the police at the initial stages of investigation. Researchers have documented various torture methods employed by the police, including physical and mental violence. The NHRC stated in its 2017-18 Annual Report 'custodial violence and torture is so rampant in India that it has become almost routine'.

CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Arbitrary Arrest and Detention

4.30 Article 21 of the constitution guarantees 'no person shall be deprived of his life and personal liberty except according to procedure established by law'. Article 22 of the constitution guarantees the right of all arrested persons to be informed of the grounds of arrest as soon as possible. Section 50 of the CrPC provides a duty on the police officer arresting a person to inform them of the full particulars of the offence for which they are being arrested, or other grounds of arrest. Under Section 50A of the CrPC, every police officer or other person making an arrest must immediately inform the family, friends, or such other person that the arrested person may nominate, about the arrest. All detainees must be informed about their rights as soon as they are brought to the police station.

4.31 Article 22(2) of the constitution provides that every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours and no such person shall be detained in custody beyond this period without the authority of a magistrate. This right is also recognised in Section 57 of the CrPC.

4.32 Article 22 of the constitution guarantees the right of every arrested person to consult or be defended by a legal practitioner of their choice. In order for this right to be available to all, the Supreme Court has held that the State shall provide free legal services to such accused persons from the time they are first presented before the magistrate. However, the obligation of the State to provide legal aid does not extend to the period before that, such as during police interrogations.

4.33 In practice, local sources told DFAT legislative provisions are routinely not followed. Sources told DFAT, with nearly 70 per cent of those incarcerated being 'undertrial' (held in prison custody during or

while awaiting trial for a crime) and with low conviction rates, the ‘process becomes the punishment’. According to NCRB statistics, around 74 per cent of the 330,487 undertrial prisoners in 2019 were confined for up to a year; 13 per cent for up to two years; 7 per cent for up to three years; 4 per cent for five years; and nearly 2 per cent for more than five years.

4.34 There are no official statistics on the frequency or consistency of application of procedural safeguards. In practice, however, local sources noted violations of procedural safeguards were common. Academics have reported cases of extended police custody without charge, as well as lack of access to lawyers, poor quality legal representation, and lack of access to charge sheets, including due to language barriers or illiteracy.

Preventive Detention

4.35 ‘Preventive detention’ arises in a situation when a person is detained and restricted from doing something that might lead to a deterioration of law and order, whereas an ‘arrest’ is done when a person is charged with a crime and, under Indian law, must be brought before a magistrate within 24 hours.

4.36 There are two separate pieces of legislation that deal with preventive detention: the *Code of Criminal Procedure* (1973) (CrPC) and the *National Security Act* (1980) (NSA). Both the CrPC and the NSA apply to all of India (including, since August 2019, to J&K – see [Jammu and Kashmir](#)). The CrPC is the main legislation on procedure for administration of substantive criminal law in India. The NSA deals with preventive detention in the contexts of national security, public order and essential services.

4.37 Section 151 of the CrPC provides that preventive detention is an action taken on grounds of suspicion that some wrong actions may be done by the person concerned. A police officer can ‘arrest’ an individual without orders from a magistrate and without any warrant if they have any information that such an individual can commit any offence. Article 22 (4) of the constitution provides that no law providing for preventive detention shall detain a person for a period longer than three months unless a bench of High Court judges or an Advisory Board (made up of retired judges) decides to extend the date. Article 22 (5) of the constitution states a detained individual should be made aware of the grounds on which they have been detained and be provided an opportunity to make representations against the case. Parliament may prescribe the circumstances under which a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board.

4.38 The NSA allows the central or state governments to detain suspects to prevent them from acting in a manner prejudicial to the security of the state or to the maintenance of public order or from the maintenance of supplies and services essential to the community. A person detained under the NSA can be held for up to 10 days without being told the charges against them. Preventive detention orders can be maintained for up to 12 months without a person being charged. In this period, a person can appeal their detention to a High Court advisory board, but they are not allowed a lawyer during the trial.

4.39 While the NCRB collects data on non-NSA preventive detentions (known as *detenues*), it does not collect data on NSA preventive detentions, as the police do not register First Information Reports in these cases. Therefore, no figures are available for the exact number of detentions under the NSA. Information provided by local sources supports the extent and volume of NSA data included in open source reporting and sources agree its use can be seen as an extrajudicial power. At end 2019, most *detenues* were held in central jails, with highest numbers in Tamil Nadu, Gujarat and J&K.

4.40 The *Jammu and Kashmir Public Safety Act* (1978) (JKPSA) can be used in J&K to hold suspects ‘acting in any manner prejudicial to the security of the State’ in administrative detention for up to two years (a period double that of India’s NSA). In August 2019, a former J&K chief minister was detained under

the JKPSA (and charged six months later) for reportedly being a ‘threat to public order’. In a 2011 report, Amnesty International estimated there had been 8,000-20,000 detentions under the JKPSA over the previous two decades, although exact figures remain in dispute.

Corporal Punishment

4.41 According to UNICEF India, ‘corporal punishment is rampant in every single district of the country’, both at school and in the home. Teachers in schools, caretakers in care institutions (orphanages, juvenile homes, foster care homes, hostels) and parents are the main perpetrators of corporal punishment. India ratified the Convention on the Rights of the Child in 1992, and has since enacted complementary legislation and National Plans for both Children and Education. In 2007, the government established a National Commission for Protection of Child Rights to eliminate corporal punishment.

4.42 The constitution safeguards against violence against children under its right to live and right to education provisions. Under other Indian laws, penalties for hurting a child include a complete prohibition on corporal punishment under section 17 of the *Right to Education Act*, 2009 with disciplinary measures for those found guilty. The *Juvenile Justice Act*, 2015 provides imprisonment for up to 5 years, which may be increased to 10 years in more severe cases, with fines up to AUD 11, 000. The IPC provides penalties under sections 305, 323, 325, 352 and 506.

4.43 However, media reporting continues to document acts of corporal punishment, which at times has resulted in the death of a child. NGO research has shown most parents approve of corporal punishment within schools and use it themselves. In lower primary schools, the extent and frequency of corporal punishment is the same for boys and girls; however, in upper primary school, boys are subjected to corporal punishment at a higher rate. The national average is around 50 per cent of children receiving corporal punishment at school, both government and private. For marginalised children, the rate is higher (75 to 100 per cent). Social norms act as a justification for corporal punishment of marginalised children because of their perceived ‘bad upbringing’.

4.44 Local sources told DFAT prison inmates may be subject to corporal punishment, in the form of whipping, under the *Prisons Act*, 1894, depending on the state in which they are incarcerated. In 2013, in Madhya Pradesh, in an incident broadcast on local news, police publicly whipped three men and made them squat after they allegedly extorted money from traders in Mandsaur. In 2016, a similar incident of public corporal punishment by police took place in Hoshangabad, Madhya Pradesh.

5. OTHER CONSIDERATIONS

STATE PROTECTION

5.1 The Constitution of India devolves responsibility for police and public order to individual states and territories. States are responsible for preventing, detecting, registering and investigating crime and prosecuting criminals. The individual Indian State Police Services (see [Police](#)) comprise both state-based personnel and national personnel drawn from the central government. Separately, the central government, through the Ministry of Home Affairs (MHA), maintains a number of Central Armed Police Forces. These centralised forces manage internal security, including border control and protection of major infrastructure, under control of the Army (see [Military](#)). The MHA also oversees centralised police organisations, including the Central Bureau of Intelligence, Bureau of Research and Development, NCRB, National Investigation Agency, Training Academies and the National Disaster Response Force. These agencies may share information with their state counterparts. The central government provides financial assistance to the state governments under the *Scheme of Modernization of State Police Forces* for weaponry, communication, equipment, mobility, training and other infrastructure. In practice, funds under this scheme are not fully utilised across states.

Military

5.2 The Indian Armed Forces consist of four professional uniformed services: the Indian Army, Indian Navy, Indian Air Force and Indian Coast Guard. The Government of India is responsible for India's defence and its armed forces. The supreme command of the Indian Armed Forces is vested in the President and responsibility for national defence rests with Cabinet. The Ministry of Defence is responsible for the national defence policy framework. According to the World Bank, in 2017 India's armed forces personnel totalled 3.031 million (nearly treble its 1994 figure of 1.270 million). In 2019, India's military expenditure was 2.4 per cent of GDP.

5.3 Several centralised paramilitary forces support the Indian Armed Forces and are under the administrative control of the MHA. These include: the Assam Rifles (which conducts counter insurgency operations in the northeast and safeguards security of the Indo-China and Indo-Myanmar borders); the Border Security Force (which guards India's land borders and is responsible for preventing transnational crime); the Central Industrial Security Force (which provides security to critical infrastructure, natural resources and public assets, including airports, ports and the Delhi Metro); the Indo-Tibetan Border Police Force (which undertakes border-guarding duties from Karakoram Pass in Ladakh to Jachep La in Arunachal Pradesh, and operates border outposts in the Western, Middle and Eastern sectors of the Indo-China border including Ladakh, Himachal Pradesh and Uttarakhand, and Sikkim); the National Security Guard (which has responsibility for anti-terrorist activities); and Sashastra Seema Bal (SSB) (which is responsible for Indo-Bhutan and Indo-Nepal border control, and is the lead intelligence agency on those borders). SSB also works across international borders in Uttarakhand, Uttar Pradesh, West Bengal, Sikkim, Assam and Arunachal Pradesh. SSB performs internal security duties in J&K.

Police

5.4 India's constitution devolves responsibilities for police and public order to the states. Each state and union territory maintains its own police force, and two-thirds of this cohort hold junior ranks. The national corps within the Indian Police Service (IPS) are selected by competitive exams, hold senior ranking positions and enjoy other benefits, including housing and transport. According to a 2018 survey across 22 states, the Centre for the Study of Developing Societies found less than 25 per cent of Indians trust the police highly (compared to 54 per cent for the army). The World Justice Project's 2020 Rule of Law Index ranked India 114 out of 128 countries with respect to order and security (see also [Corruption](#)). This measure considered issues such as crime, civil conflict and use of violence to redress personal grievances.

Centralised Indian Police Service

5.5 Article 312 of the constitution establishes a centralised IPS. The IPS is organised into state cadres to provide senior-level leadership to state police forces and to centralised forces. The MHA is responsible for IPS officers and policy decisions, including structure, training, allocation, confirmation, pay, allowances and disciplinary matters. State and central governments review IPS budget allocations every five years. As at March 2019, there were 4,982 IPS officers spread across 26 state cadres, with the states of Uttar Pradesh, West Bengal and Maharashtra having the most IPS officers, and Uttarakhand, Tripura and Sikkim having the least. The MHA is also responsible for a range central police functions (see [State Protection](#)).

State Police Services

5.6 According to *The Economist*, India's 1.9 million police officers 'do not enjoy a good reputation'. However, local sources report police effectiveness is hampered by lack of resourcing and infrastructure. Police budgets, on average, account for 3-5 per cent of state expenditure. The *Status of Policing in India Report 2019* (which used official data drawn from the NCRB and the Bureau of Police Research and Development to assess police capacity and adequacy) found inadequate infrastructure (physical, technological, human), resourcing and training compromised police operations. According to the report, approximately 240 police stations across India have no access to vehicles; 214 have no access to telephones; 70 have no access to wireless connections; and 24 have no access to either telephone or wireless connections. On average, police stations in India have six computers per station, but states like Assam and Bihar have an average of less than one computer per station.

5.7 Lack of 'boots on the ground' is another key capacity problem. Police in India reportedly work at 77 per cent of their sanctioned personnel capacity. This equates to around 1.2 ordinary police officers per 1,000 people, about half the level recommended by the UN. Long working days and unpaid overtime are common complaints.

5.8 Representation of SCs, STs, OBCs and women in the police forces is poor, with large vacancies in these reserved positions. SCs, STs, OBCs and women are less likely to be recruited/posted at officer-level ranks than are general police personnel. *The India Justice Report 2019* found women account for 7 per cent of police personnel.

5.9 To safeguard police operational autonomy from political interference, the Supreme Court directed states to introduce legal amendments to ensure police officers be guaranteed a minimum tenure of two years to function efficiently. However, in practice, over a quarter of police reportedly consider pressure from politicians is the biggest hindrance in crime investigation. Undermining safeguards, premature transfers of personnel are higher during election years, with the states of Uttar Pradesh and Haryana having the highest transfer rates. Premature transfers are also a common consequence of non-compliance with political pressure. *The Economist* reports lack of 'man-power' and 'meddling politicians', were in the top three problems facing police officers in India.

5.10 In India, for the police to investigate a case and commence the criminal justice process, they must prepare a First Information Report (FIR). According to 2018 NCRB data, where and how a person reports a complaint can influence their access to justice: 99 per cent of complaints routed through a court were registered as FIRs; 72 per cent of written complaints to the officer-in-charge of the police station were converted into FIRs; 53 per cent of written complaints were converted into FIRs; and only 5 per cent of oral complaints (where the duty officer takes down the details) were converted into FIRs. Only 3 per cent of complaints filed online (a new initiative in some states including Delhi and Uttar Pradesh) and 1 per cent of complaints taken by Emergency Telephone lines were converted to FIRs in the same period.

5.11 DFAT understands if a person of interest is being sought by another state, the states would work together in securing the arrest of that person. There is no state extradition requirement. DFAT understands state police do not have sophisticated online databases to track offenders; such work would be done manually. In general, there is a good degree of cooperation between state police services.

Judiciary

5.12 The Judiciary in India is separate from the Legislature (Parliament) and Executive (President). However, the doctrine of 'separation of powers' is not codified under the constitution, reflective of the British system. Instead, various articles of the constitution emphasise separation of function/powers, and the organs themselves impose checks and balances on one another. According to the *India Justice Report 2019*, there are 28 million cases pending in Indian subordinate courts, of which 24 per cent have been pending for more than five years, and 8 per cent for more than 10 years. In Bihar, Uttar Pradesh, West Bengal, Odisha, Gujarat, Meghalaya and the Andaman and Nicobar Islands, at least one in every four cases has been pending for more than five years. The report points to poor budgeting having led to capacity constraints in the judicial system. The *India Justice Report 2019* found average national spending on the judiciary was 0.08 per cent of GDP.

5.13 NGO Daksh's *Access to Justice 2017* study found the informal justice system (family, friends, village elders or caste or religious *Panchayats*) was preferred over the formal justice system (court and police) to settle disputes, with the latter perceived to be too slow, too expensive and too complex. There is a marked disparity between rural and urban populations in the availability of and access to justice services, including courts, police stations, legal aid clinics and lawyers. Corruption is also a factor: Transparency International's 2017 Global Corruption Barometer of the Asia Pacific region found 69 per cent of people in India who accessed public services had paid bribes (including 31-45 per cent of people paying bribes to courts). The same report found the poorest people were more likely than the richest to have paid bribes.

5.14 In January 2018, four senior justices in India published an open letter to the Chief Justice citing concerns with orders that had affected the 'overall functioning' of the justice system and 'independence' of higher courts. Such public airing of internal divisions in the judiciary is uncommon. Some observers claim the use of contempt of court proceedings against detractors of the judiciary has limited public debate on judicial corruption.

5.15 Many in India perceive judicial services to be slow and ineffective for people with day-to-day disputes. The World Justice Project Rule of Law (WJP ROL) Index 2020 measured adherence to the rule of law from the perspective of the ordinary person and their experiences in practical, everyday situations. Overall, the WJP ROL ranks India 69 out of 128 countries for adherence to the rule of law. In terms of criminal justice, India stands at 78th position, where effectiveness of the criminal investigation system, effectiveness of the correctional system, absence of discrimination, and timely and effective adjudication were the weakest factors. India stands at 98th on civil justice, with delay, effective enforcement, absence of discrimination, and accessibility and affordability being the weakest factors.

5.16 Article 39A of the constitution mandates that equal justice and free legal aid are rights of every Indian citizen. While 80 per cent of the population is eligible to access legal aid, the per capita spend was approximately AUD1.50 in 2018. Local sources told DFAT access to quality legal advice and competent state-appointed representation was poor. Daksh's Access to Justice study reported that, in over 35 per cent of cases, the court-appointed lawyer either did not explain to clients their rights and solutions, or clients did not understand them.

Detention and Prison

5.17 Prisons are governed by the federal *Prisons Act (1984)*. The MHA is responsible for Indian prisons, while administration rests with state governments and union territories. Conditions vary from prison to prison although, in general, facilities in central prisons are better than those of district prisons. India's prisons are operating beyond capacity. Poorly trained correctional staff operate on average between 30 to 40 per cent of their sanctioned strength. According to local sources, overcrowding leads to unsatisfactory living conditions, with dilapidated structures, lack of space, poor ventilation, and poor sanitation and hygiene.

5.18 Basic vegetarian food is provided, but prisoners may need to pay for additional items. DFAT understands prisoners generally get commissary access, access to free legal aid of variable quality, and general medical care. Specialist treatment is difficult and requires court permission, with surgery likely only in cases of genuine emergency. Pregnant prisoners lack adequate medical treatment and nutrition. Violence in prisons is present and there have been allegations of torture (see [Torture](#)). Discrimination towards lower castes and religious minorities also occurs. The National Legal Service Authority reports women prisoners often face abuse and violence.

5.19 According to NCRB statistics, 1,775 inmates died in prison in 2019. Of this figure, 1,544 reportedly died of natural causes and 165 prisoners of un-natural deaths, of which suicide (116) was the largest category, followed by accidents (20) and murder of inmates by fellow inmates (10). According to official statistics, the inmate to medical staff ratio was 243:1 in 2019. This shortfall may account for the high number of custodial deaths.

5.20 Local sources told DFAT inmates on death row suffered deteriorating mental health, as did the general prison population, due to prolonged periods of detention. Prisoners have limited access to mental health care. DFAT cannot verify whether prison conditions worsened inmates' mental health, as the NCRB does not provide information on prisoners' pre-existing mental health conditions.

5.21 According to NCRB prison statistics, the total inmate population at end 2019 was 478,600. Of this number, around 34 per cent were OBCs, 20 per cent SCs, and 11 per cent STs. Around 70 per cent of the total inmate population identified as Hindu, 20 per cent as Muslim, and the remaining 10 per cent as Sikh, Christian and others.

5.22 Prison occupancy levels of 118.5 per cent in 2019 exceeded the official prison capacity. Occupancy rates in Chhattisgarh, Delhi, Madhya Pradesh, Maharashtra, Meghalaya, Sikkim, Uttarakhand and Uttar Pradesh exceeded 150 per cent. According to media reporting in February 2020, the Supreme Court has linked overcrowding in India's jails to 'performance of courts', and recommends reforms to address the issue. Potential reforms include issuing fines or releasing offenders on probation instead of incarceration. Average prison budgets across states and union territories stand at 0.2 per cent of state expenditure.

5.23 Females made up 4.1 per cent of the prison population in 2019, increasing by around 60 per cent in the last 15 years. According to India's National Legal Services Authority, prison infrastructure is not able to keep up with the rising number of female inmates, who tend to face more obstacles than their male

counterparts. One-sixth of women prisoners are housed in women's prisons; the rest are confined to enclosures in male prisons. In 2019, there were 1,779 children incarcerated with their mothers. Children may remain with their mothers until age six when they are handed over to a surrogate or institution. DFAT is not aware of official prison statistics on other vulnerable groups, including LGBTI persons, or persons with disabilities.

Trafficking in Persons

5.24 India has ratified the UN Convention on Transnational Organised Crime (UNTOC), the Protocol to Prevent, Suppress and Punish Trafficking in Persons Especially Women and Children, and the SAARC Convention on Preventing and Combating Trafficking in Women and Children for Prostitution. India has a bilateral memorandum of understanding with Bangladesh on the issue. Trafficking in persons is prohibited under the constitution (Article 23) and a range of national and state legislation and administrative measures and interventions. Notwithstanding this legal framework, human trafficking into, out of and within India continues. In July 2018, the *Lok Sabha* passed the Trafficking in Persons (Prevention, Protection and Rehabilitation) Bill, which provided for the creation of a national anti-trafficking bureau and protection homes to provide both initial and long-term rehabilitation to victims. However, the Bill did not pass the upper house and subsequently lapsed. A revised anti-trafficking bill is currently under consideration.

5.25 In-country sources told DFAT India is a source, transit and destination country for trafficking in persons, with northeast India particularly vulnerable to cross-border trafficking. Inherent factors include India's socio-economic underdevelopment and geographic location. For victims and their families, poverty, gender discrimination and traditional practices are factors that can make them vulnerable to trafficking. Children and babies may be trafficked for the purpose of child sex abuse or recruitment into begging networks. Women may be trafficked for forced marriage, prostitution or domestic servitude, often on the promise of good jobs in large cities away from their homes. Men, women and children may be trafficked in relation to debt-bondage or other forms of bonded labour. In 2019, the UN Office on Drugs and Crime identified an increasing use of tech-based platforms by human traffickers in rural areas.

5.26 NCRB 2018 statistics recorded 2,465 cases of human trafficking, accounting for 5,788 trafficking victims. Of this figure, 2,834 were below 18 years and 2,984 were above 18 years. Women and girls made up 64 per cent of the total figure. Overall Maharashtra, Delhi Union Territory and Bihar reported the most victims trafficked. Bihar, Delhi Union Territory and Rajasthan reported the most victims trafficked under 18 years. According to NCRB data, 95 per cent of victims rescued under human trafficking were Indian, with small numbers of Sri Lankan, Nepalese and Bangladeshi victims also rescued by Indian authorities in India. NCRB data shows most victims were trafficked for sexual exploitation for prostitution and forced labour. Most of the data gathered was during cases of cross-border trafficking of women and girls. There is less information available about the extent of trafficking linked to other purposes.

5.27 According to local sources, women and girls from rural settings, tribal areas, lower castes and SCs, religious minorities and those with lower education are most affected. A joint Oak Foundation and Terres des hommes study found reintegration and rehabilitation remain difficult for survivors of trafficking as they face stigmatisation within their families and communities, as well as persistent socio-economic factors. Survivors also face the risk of re-victimisation, reprisal or retaliation. However, social acceptance differs across regions and society.

5.28 The government has implemented some protection measures for victims of people trafficking. A victims' compensation scheme exists for various crimes, including people trafficking, but is rarely used. The government has also cooperated with foreign governments in investigations and prosecutions. The US Department of State ranks India as a 'Tier 2' country for human trafficking (where Tier 1 is the best possible

ranking), denoting a country that does not meet the minimum standards according to US domestic law on protection of trafficking victims, but is making significant efforts to raise those standards.

INTERNAL RELOCATION

5.29 India has a long history of internal migration; however, in practice, it remains predominantly intra-state rather than interstate. The complementary rights to reside and move freely throughout India are found in Articles 19(1)(d) and (e) of the constitution. Article 19(1)(d) guarantees all citizens of India the right to move freely throughout the territory of India including from one state to another or from one place to another in the same state. This right can be curtailed under the 'reasonable restrictions' in Article 19(5); that is, in the interest of the general public or for the protection of the interest of any ST. Article 19(1)(e) gives every citizen the right to reside and settle in any part of the territory of India, subject to the reasonable restrictions in Article 19(5). The freedom of movement and residence may be curtailed and suspended during an emergency. Equally, any restriction which maintains public peace or safety can be considered in the interests of the general public.

5.30 According to the World Bank, while internal migration in India grows, interstate movement remains low. Drawing on the 2011 census (latest figures), internal migrants numbered 450 million, an increase of 45 per cent over the 309 million recorded in 2001. Internal migrants as a percentage of population increased from 30 per cent in 2001 to 37 per cent in 2011. However, the nature of movement remains relatively unchanged from the 2001 Census. The bulk of movements (62 per cent) were within the same district, with 26 per cent between districts within the same state. Only 12 per cent of movements were across state borders. Interstate migrants represented 4 per cent of India's population in 2011, a rate almost unchanged since 2001. Women made up the majority of intra-state migrants (63 per cent) with over half attributing marriage as the reason for migration. However, such migration tended to be a change in the usual place of residence across the village and town boundaries. Urban-to-urban migration remained the largest migration flow (46 per cent). Rural-to-urban migration flows remained stable and were roughly half of urban-to-urban flows (22 per cent). India's census data does not capture seasonal, temporary and circulatory migration (mostly for employment) which is around 13.6 million persons annually and seven times larger than permanent/semi-permanent migration.

Limits to Internal Relocation

5.31 According to the World Bank, factors that may limit interstate relocation include non-portability of entitlements, preferential norms in educational institutions, and domicile requirements for state government jobs. Other factors, some historical, that limit mobility/interstate migration include: the prevalence of the caste system; traditional values; the diversity of language and culture; exploitation and political exclusion; lack of education; limited access to financial services and resources; and predominance of agriculture and semi-feudal land relations in India.

5.32 Inability to access social protection is a further deterrent. In practice, difficulties in procuring registration documents including proof of residency and legal tenancy can restrict internal migrants' access to public services including health and education and social security programs. These difficulties include complicated regulations and administrative requirements, and act as a disincentive, especially for temporary and seasonal migrants. Such people often face barriers in obtaining subsidised food and housing until they can establish identity and local residence.

5.33 The absence of informal social networks that would normally assist with accommodation, employment and informal social protection may also limit relocation. Where local language and culture is different from region of origin, Indian nationals may also face harassment and political exclusion. Multiple

sources told DFAT relocation in India is not straightforward, and many cultural, socio-economic and gender-based obstacles, in addition to language differences, prevail.

Relocation of single women, women with children or victims of family violence

5.34 The *Aadhaar* Card provides access to government social welfare services, benefits and subsidies (see [Unique Identification Numbers \(UID\) / Aadhaar](#)) and its introduction may assist entitlement portability. However, requirements to provide details of a husband's or father's name can exclude single women, single women with children, and domestic violence survivors from government services and accommodation. While income tax provisions do not directly require women to use their husbands' or fathers' names, the *Aadhaar* card and passport both have this requirement.

5.35 Local sources told DFAT safe relocation for women and girls fleeing domestic or family violence within Indian states or elsewhere in India is practically impossible. There is limited availability of shelters/centres and, even where they are available, it is important to consider the situation a woman will face upon leaving such centres, where social support networks are unlikely. According to local sources, some women fleeing domestic violence stay in shelters for more than 10 years. There is little ability of state and NGO resources to reintegrate these women into the community. Sources in West Bengal told DFAT that, due to a shortage of women's shelters, women from other states seeking accommodation in shelters were repatriated to their home states.

5.36 Local sources advised relocation would generally be possible for a single woman without children, who was able to access accommodation and support networks, or who was educated, skilled or wealthy enough to support herself.

Relocation based on sexual orientation

5.37 Local sources told DFAT middle-class, educated, same-sex oriented males would be able to relocate internally to major cities in India more easily than could same-sex oriented males who are poorer or less well educated. DFAT does not have specific information on the ability of same-sex oriented women to relocate within India, but notes factors such as education level, socioeconomic status, financial independence and location (rural or urban) will impact on an individual's ability to relocate safely (see [Sexual Orientation and Gender Identity](#)).

5.38 DFAT assesses individuals seeking protection from discrimination or violence may be able to access internal relocation options, although these may be more limited for some individuals depending on their personal circumstances. In particular, DFAT assesses women, including single women with children or those fleeing family violence, have limited access to internal relocation options.

TREATMENT OF RETURNEES

5.39 DFAT is not aware of any evidence of mistreatment of returnees, including failed asylum seekers, by Indian authorities. India does not have a centralised registration system in place to enable the police to check the whereabouts of inhabitants in their own state, let alone in any of the other states or union territories. The Department of Home Affairs is required to notify Indian authorities prior to the arrival of escorted removals from Australia but does not track returnees after their arrival in India. Home Affairs does not routinely notify Indian authorities of unescorted returns and removals. UK Home Office reporting notes tracking and surveillance systems appear limited.

Exit and Entry Procedures

5.40 The Bureau of Immigration undertakes immigration functions in India. Indian nationals travelling abroad require a valid Indian passport and travel authority for the destination country. An Indian national, on re-entry to India, requires a valid Indian passport or travel document issued by the Government of India.

5.41 Certain categories of Indian nationals have their passports endorsed with the 'Emigration Check Required' (ECR) stamp. In general, an ECR passport is issued to individuals who have not passed 10th grade/class (matriculation or higher education pass certificate). Those with ECR passports seeking to travel for employment overseas as unskilled workers (to certain countries in the Middle East, Asia and Africa) need to obtain emigration clearance from the Ministry of External Affairs prior to departure.

5.42 The purpose of the ECR process is to ensure safety of Indian low/unskilled workers in countries with no worker protection rights and who are at risk of exploitation. An ECR stamp in an Indian passport may provide a clue about the holder's education, travel and employment history as well as age and marital status.

5.43 Since January 2019, non-ECR passport holders who are travelling for employment to one of 18 designated countries (Afghanistan, Bahrain, Indonesia, Iraq, Jordan, Kingdom of Saudi Arabia, Kuwait, Lebanon, Libya, Malaysia, Oman, Qatar, South Sudan, Sudan, Syria, Thailand, United Arab Emirates and Yemen) have been required to register with the Ministry of External Affairs prior to departure. The requirement is mandatory and failure to comply may result in the passenger being offloaded from flight.

5.44 India has a border alert mechanism, known as a Look-Out Circular (LOC), that allows certain agencies to flag citizens and non-citizens for border intervention on entry to or exit from the country. Authorities can request LOCs in cases where a person is a suspect, accused or under investigation for cognisable offences under the *Indian Penal Code* or other penal laws. LOCs can be used to locate and prevent a person from exiting the country (via airports, ports or land border crossings), and allow for arrest in some cases (such as when a person is absconding). In other cases, immigration authorities may not prevent LOC subjects from travelling, but originating agencies will be informed about the person's departure or arrival. Generally, LOCs are valid for one year from the date of issue. In some cases validity can be longer (such as LOCs issued at the request of courts or Interpol, those with a specified duration or those linked to impounding of passports).

5.45 Travel document applications for Indian nationals in Australia are issued by the Indian High Commission in Canberra or the representative consulates in Sydney, Melbourne and Perth, depending on the state of residence. The Indian High Commission has previously advised of the requirement that a travel document application should be signed by the applicant and accompanied by a letter stating the applicant consented to the issuance of the document and is willing to return to India.

DOCUMENTATION

Birth, Marriage and Death Certificates

5.46 The *Registration of Births and Deaths Act*, 1969, which applies to the whole of India, confers powers on state governments and union territories to set rules for compulsory registration of births and deaths. In 2012, this Act was extended to include registration of marriages. Despite legislation, in practice, registration and issuing of birth extracts (certificates) occurs inconsistently across India, with considerable variations between and within states. Registration in rural areas is lower than in urban areas. However,

even if children are registered, many lack proof of registration if they have not obtained an extract or certificate of their birth.

5.47 According to UNICEF India, each year about 42 per cent of births (around 10 million) go unregistered. The states with the lowest birth registration rates are Uttar Pradesh, Bihar, Rajasthan, Andhra Pradesh and Madhya Pradesh (with rates ranging between 20 and 57 per cent). These states are also among the most populous in the country and account for approximately 25 per cent of annual births. In 2016, UNICEF reported a birth registration rate of 79.7 per cent for children aged under five years. UNICEF's 2019 data shows 14 per cent of children aged under five in India have never had their birth recorded or registered (suggesting a rise in registration rate to 86 per cent). UNICEF's 2019 data also reported 51 to 75 per cent of children aged under five in India have a birth certificate.

5.48 Registration and issuing extracts/certificates are devolved to the states and territories, with only a proportion of records computerised. Manual records are still relied upon, particularly in rural areas. As at 2018, eight state/local government bodies across India could offer limited online documentation verification services for birth, death and marriage certificates. It is common for names, birth dates and other personal details to be recorded inconsistently across the range of official documents a citizen can require in India, including passports. This can occur for a range of (non-fraudulent) reasons, including clerical errors, a lack of accurate record keeping and flexible naming conventions. Birth, marriage and death can also be registered late (sometimes years after the event) based only on an unverified sworn affidavit. Such registrations are highly unreliable.

Citizenship

5.49 Citizenship by descent has different rules based on birth date. Citizenship by descent requires registration within one year of birth unless approved by the central government; meeting of parental citizenship thresholds; and, since 2004, a declaration the minor does not hold a passport of another country. A foreigner (not illegal migrant) who is ordinarily resident in India for 12 years, with a 12-month residency requirement immediately preceding application, can acquire citizenship by naturalisation. They must meet specified qualifications, unless waived by the central government on the grounds of distinguished service to science, philosophy, art or literature.

Unique Identification Numbers (UID) / Aadhaar

5.50 The *Aadhaar* is a 12-digit unique identification number (UID) issued to Indian nationals to establish their identity based on demographic and biometric information. It provides a platform for social welfare services, benefits and subsidies. The Unique Identification Authority of India (UIDAI) is responsible for the issue of *Aadhaar* numbers. More than 1.2 billion *Aadhaar* have been issued to Indian residents since 2010. Article 110 of the constitution provides the foundation for passing the *Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016* (*Aadhaar Act 2016*), which applied to all states except J&K. In 2018, enactment of *The Jammu and Kashmir Aadhaar (Targeted Delivery of Financial and other subsidies, Benefits and Services) Act, 2018* extended the use of *Aadhaar* to J&K.

5.51 Application for an *Aadhaar* card is free and the scheme is voluntary. However, in practice, *Aadhaar* are entrenched in everyday Indian life. In 2018, the Supreme Court ruled *Aadhaar* could not be mandatory for accessing bank accounts, school admission or mobile phone subscriptions. However, denial of services that do not require an *Aadhaar* number remains commonplace when *Aadhaar* information is not given. Examples of lawful data requests include linking the *Aadhaar* number to a person's Permanent Account Number (PAN) card for income tax filing and its use for welfare programs. The majority of registrations are

for Indian nationals but all persons residing in India for more than 182 days are entitled to obtain an *Aadhaar* number. Since September 2019, non-resident Indians can apply for *Aadhaar* on arrival in India, no longer requiring the 182-day waiting period to elapse.

5.52 As a platform for payment and administering social welfare services, benefits and subsidies the *Aadhaar* is used for central government payments by direct benefit transfers to *Aadhaar*-linked bank accounts. As at July 2019, a variety of documents must be linked to a person's *Aadhaar* including bank account details, PAN cards, voter ID cards, LPG connection cards, public subsidy and unemployment benefit schemes and mobile numbers, and Employees' Provident Fund Organisation of India fund accounts.

5.53 *Aadhaars* were developed to be robust enough to eliminate duplicate and fake identities, and to be verified and authenticated in a cost-effective way; however, the system is open to abuse. UIDAI reported in May 2018 it had blacklisted over 50,000 *Aadhaar* enrolment centre operators for various fraud and corruption violations.

5.54 Obtaining an *Aadhaar* card does not require significant documentation, with multiple options available, making it accessible to undocumented poorer citizens. The use of biometric data including face authentication, iris and fingerprint, is intended to reduce or eliminate duplication of UIDs to the same person. While it may be possible to obtain an *Aadhaar* card under a false name, it is less likely a person using the same biometric data could obtain a second *Aadhaar* card under a different name. The *Aadhaar* card itself is not a secure document, being printed on paper, and while it should not be treated as an identity card, in practice it is.

Permanent Account Numbers

5.55 The Income Tax Department (ITD) issues permanent account numbers (PAN) to taxpayers and business owners. The PAN is a unique lifetime ten-digit alphanumeric number issued in the form of a laminated card to Indian nationals. The legal framework for PANs is set out in Section 139A of the *Income Tax Act*, which stipulates who is required to have a PAN, transactions for which PANs are required and the application process for a PAN. PAN enables the ITD to link all transactions made by the holder of the PAN with the department for detecting and combating tax evasion and widening the tax base. These transactions include tax payments, credits, income/wealth/gift returns, Fringe Benefits Tax and specified financial transactions. Specified financial transactions include: sale and purchase of immovable property valued at 500,000 rupees or more (approx. AUD10,500); sale and purchase of a motor vehicle; term deposits and bank deposits above 50,000 rupees (approx. AUD1,000); opening a bank account; applying for a telephone/mobile connection; payment to hotels and restaurants above 25,000 rupees (approx. AUD500); and purchase of jewellery or bullion above 500,000 rupees (approx. AUD10,500). The PAN also serves as an identification document (for example, when applying for an Indian passport).

5.56 The PAN card is vulnerable to exploitation as individuals can apply for more than one number. Around 445 million PANs had been issued in India as at June 2019, while over 55 million tax returns for individuals had been lodged in a similar period. Local sources cited numerous reports of counterfeit plastic cards being produced and seized, as the cards, themselves lacked security features and were easily replicated. In an effort to reduce duplications, PAN cards not linked to [Aadhaar](#) cards will be inoperative after 31 March 2021.

Passports

5.57 Article 21 of the constitution provides a fundamental right to travel. The *Passports Act, 1967* and *Passport Rules, 1980* provide responsibility to the Ministry of External Affairs for issuing passports through its Central Passport Organisation in India and through Indian diplomatic missions abroad. The Act does not allow dual citizenship. Under Section 12 of the Act, a person must surrender their passport if they have acquired the citizenship of a foreign country. In July 2019, a Bill was introduced into parliament to allow dual citizenship, which would amend Article 9 of the constitution, which provides automatic termination of Indian citizenship upon acquiring the citizenship of another country.

5.58 India issues machine-readable passports in accordance with International Civil Aviation Organization guidelines. Current basic supporting documents required with a passport application include: proof of date of birth, identity proof with photograph, proof of residence and proof of nationality. Indian passport design incorporates many security features, but security is undermined by production inconsistencies and vulnerable source documents (that is, use of non-genuine source documents to obtain a genuine passport). As such, the Indian passport is not conclusive evidence of an individual's identity as it is possible to use fraudulent base documents to obtain a genuine passport. For example, the passport instruction form lists a number of alternative documents to birth certificates to prove date of birth, such as: transfer/school leaving/matriculation certificate; *Aadhaar* card; a policy bond issued by a public life insurance company; public servant service record; drivers licence; PAN Card issued by the Income Tax Department; or a declaration of the head of an orphanage confirming the date of birth of the applicant.

5.59 If an Indian passport holder loses their passport while travelling, they may return to India on an 'Emergency Certificate'. Indian diplomatic and consular missions abroad can issue emergency certificates.

Identity Certificates issued by India to stateless persons

5.60 An Identity Certificate (IC) is normally issued to Tibetan Refugees residing in India, from the Regional Passport Office, Delhi (RPO Delhi) on recommendation by the Bureau of His Holiness the Dalai Lama, New Delhi. In addition to Tibetan refugees, stateless people residing in India may also apply for ICs at the Passport Office within whose jurisdiction they reside. IC issuance is subject to clearance by the Ministry of External Affairs.

5.61 In December 2017, the Government of India streamlined processes for issuing ICs by removing the requirement for a 'No objection to return to India' (NORI) stamp in an IC in order to re-enter India. To receive a NORI stamp, an applicant must seek clearance from the Ministry of External Affairs as well as Foreigners Regional Registration Office and Ministry of Home Affairs/police. A 'no objection certificate' (NOC) is now issued to the applicant at the same time as the IC, based on the verification checks conducted by the issuing authority.

PREVALENCE OF FRAUD

5.62 Forgery, making false documents and using false documents are offences under sections 463-489 of the IPC. Forgery is punishable with imprisonment of up to two years, with a fine, or both.

5.63 In 2012, the Government of India introduced a QR code-based municipal service validation code facility to provide electronic verification of birth, marriage and death certificates lodged by clients at registrar offices. This facility is not yet available India-wide. DFAT understands issuing authorities do not routinely conduct verification of documents submitted by clients before issuing birth, death or marriage certificates with the QR facility.

5.64 Local sources told DFAT identity documents in India are unreliable because ‘breeder documents’ (which include birth, marriage and death certificates used to support applications for identity, residence and travel documents) and other basic government identity documents can be obtained fraudulently. Easily-faked bank statements or utility bills can also be used to demonstrate residency. Verifying documents is time consuming and largely unreliable given the ease of fraudulently obtaining genuine documents of all types.

5.65 Document fraud is a common criminal activity. Organised networks of agents are known to provide complete packages of fake documents. The Times of India reported in February 2019 the arrest of five persons in Hyderabad for fabricating documents and official stamps, and helping people obtain visas for Canada, the United States, France and Italy through fraudulent means. During the arrest, the police seized 88 Indian passports, three fake passports, two forged passports, 130 fake rubber stamps, a rubber stamp-making machine, printers and scanners. The accused had reportedly processed 400-450 visa applications, many of which had resulted in visas. While the applicants came from across India, most were from Punjab, Andhra Pradesh and Uttar Pradesh. The accused allegedly took applicants’ original passports, charging approx. AUD 750-850 as a first instalment, and a further AUD7,500-8,500 if the visa was successful. The process allegedly involved tampering with original Indian passports, and forging documents such as bank statements and seals, income tax returns, identity proofs, letter heads and logos, as well as rubber stamps of government officials, immigration stamps used at Indian airports, and immigration service stamps of the US, Australia, the UK and the UAE. Sources told DFAT organised networks such as those arrested in Hyderabad in 2019 provided complete packages of fake documents and charged significant fees for the provision of fraudulent documents.

6. APPENDIX

STATE-BY-STATE BREAKDOWN OF SCHEDULED LANGUAGES SPOKEN

6.1 The census provides data on 121 languages divided into two data sets:

- 22 languages included in the constitution as ‘scheduled languages’; and
- 99 non-scheduled languages, which also includes other identifiable languages and mother tongues spoken across India.

6.2 The table below provides latest census data on the three most widely spoken scheduled languages in each state/union territory in order of descending usage. Hindi is the most widely spoken language in 12 out of 35 states/union territories. Non-scheduled languages recorded higher levels of usage than any of the 22 scheduled languages in Arunachal Pradesh, Nagaland, Mizoram and Meghalaya.

State/Union Territory	Language 1	Language 2	Language 3
Jammu & Kashmir[^]	Kashmiri	Hindi	Dogri
Himachal Pradesh	Hindi	Punjabi	Nepali
Punjab	Punjabi	Hindi	=Urdu & Bengali
Chandigarh[^]	Hindi	Punjabi	Urdu
Uttarakhand	Hindi	Urdu	Punjabi
Haryana	Hindi	Punjabi	Urdu
NCT of Delhi[^]	Hindi	Punjabi	Urdu
Rajasthan	Hindi	Punjabi	Urdu
Uttar Pradesh	Hindi	Urdu	Punjabi
Bihar	Hindi	Maithili	Urdu
Sikkim	Nepali	Hindi	Bengali
Arunachal Pradesh	Bengali	Hindi	Nepali
Nagaland	Bengali	Hindi	Nepali
Manipur	Manipuri	Nepali	Hindi

Mizoram	Bengali	Hindi	Nepali
Tripura	Bengali	Hindi	Odia
Meghalaya	Bengali	Hindi	Nepali
Assam	Assamese	Bengali	Hindi
West Bengal	Bengali	Hindi	Santali
Jharkhand	Hindi	Bengali	Santali
Odisha	Odia	Hindi	Santali
Chhattisgarh	Hindi	Odia	Bengali
Madhya Pradesh	Hindi	Marathi	Urdu
Gujarat	Gujarati	Hindi	Sindhi
Daman & Diu[^]	Gujarati	Hindi	Marathi
Dadra & Nagar Haveli[^]	Hindi	Gujarati	Marathi
Maharashtra	Marathi	Hindi	Urdu
Andhra Pradesh	Telugu	Urdu	Hindi
Karnataka	Kannada	Urdu	Telugu
Goa	Konkani	Marathi	Hindi
Lakshadweep[^]	Malayalam	Tamil	Hindi
Kerala	Malayalam	Tamil	Kannada
Tamil Nadu	Tamil	Telugu	Kannada
Puducherry[^]	Tamil	Telugu	Malayalam
Andaman & Nicobar Islands[^]	Bengali	Hindi	Tamil

[^] Union Territory