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OPERATIONAL GUIDANCE NOTE

INDIA

CONTENTS

1. Introduction

1.1 This document summarises the general, political and human rights situation in India and provides information on the nature and handling of claims frequently received from nationals/residents of that country. It must be read in conjunction with the COI Service India Country of Origin Information Report of October 2005 and any COI Service India Country of Origin Information Bulletins at:

http://www.homeoffice.gov.uk/rds/country_reports.html

1.2 This document is intended to provide clear guidance on whether the main types of claim are or are not likely to justify the granting of asylum, Humanitarian Protection or Discretionary Leave. Caseworkers should refer to the following Asylum Policy Instructions for further details of the policy on these areas:

API on Assessing the Claim
API on Humanitarian Protection
API on Discretionary Leave
API on the European Convention on Human Rights

1.3 Claims should be considered on an individual basis, but taking full account of the information set out below, in particular Part 3 on main categories of claims.

1.4 With effect from 15 February 2005, India is a country listed in section 94 of the Nationality Immigration and Asylum Act 2002. Asylum and human rights claims must be considered on their individual merits. However if, following consideration, the claim from someone who is entitled to reside in India, made on or after 15 February 2005, is refused, caseworkers should certify the claim as clearly unfounded unless satisfied that

it is not. A claim will be clearly unfounded if it is so clearly without substance that it is bound to fail. The information set out below contains relevant country information, the most common types of claim and guidance from the courts, including guidance on whether cases are likely to be clearly unfounded.

Source documents

1.5 A full list of source documents cited in footnotes is at the end of this note.

2. Country assessment

2.1 The Republic of India is a mix of different cultures, ethnic groups, languages and religions.[1] India has a democratic, parliamentary system of government with representatives elected in multi-party elections. The law provides citizens with the right to change their government peacefully, and citizens exercise this right in practice through periodic, free, and fair elections held on the basis of universal suffrage.[2] India has 28 states with constitutionally defined powers of government.[3]

2.2 The President is the Constitutional Head of State, elected for five years by an electoral college comprising elected members of both Houses of Parliament and the State legislatures.[4]

2.3 Prime Minister Atal Behari Vajpayee called an early election for April 2004 and voting was held over 4 days starting on 20 April 2004 and ending on 10 May 2004. The Congress-led front emerged victorious, securing 217 seats (35.19% of the vote) with its allies. The BJP and allies secured 185 seats (35.31%), and others 136 seats. The surprise result saw the former BJP-led coalition government resign.[5] Sonia Gandhi, the leader of the Congress Party, declined the prime ministership. Manmohan Singh, a former finance minister, was sworn in as Prime Minister on 22 May 2004, becoming India's first-ever non-Hindu Prime Minister. He leads a coalition government, called the United Progressive Alliance.[6]

2.4 India is a longstanding parliamentary democracy with an independent judiciary. According to the US Department of State report 2005, published in 2006, the Government generally respected the human rights of its citizens, however, numerous serious problems remained. The report noted particularly that police and security forces were sometimes responsible for extrajudicial killings, government officials often used special antiterrorism legislation to justify the excessive use of force while combating active insurgencies in Jammu and Kashmir and some northern states, security force officials who committed human rights abuses generally enjoyed legal impunity although there were numerous reports of investigations into individual abuse cases and punishment for some perpetrators. Other violations included torture and rape by police and other government agents; poor prison conditions; lengthy pre-trial detention without charge; prolonged detention while undergoing trial; occasional limits on press freedom and freedom of movement; harassment and arrest of human rights monitors; extensive societal violence and legal and societal discrimination against women; forced prostitution; child prostitution and female infanticide; trafficking in women and children; discrimination against persons with disabilities; serious discrimination and violence against indigenous people and scheduled castes and tribes; widespread intercaste and communal violence; religiously

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[1] Home Office COI Service India Country of Origin Information Report October 2005 (paragraphs 2.03 & 2.04)
[2] U.S. Department of State report on Human Rights Practices (USSD) - 2005 (Section 3)
[3] COI Service India Country Report (para 5.16)
[4] COI Service India Country Report (para 5.15)
[5] COI Service India Country Report (paras 4.28 & 4.29)
[6] COI Service India Country Report (para 4.31)

motivated violence against Muslims and Christians; and widespread exploitation of indentured, bonded, and child labour.[7]

2.5 The main domestic human rights organisation operating in the country is the Government-appointed National Human Rights Commission (NHRC) which acts independently of the Government, often voicing strong criticism of the Governments institutions and actions. However, the NHRC faces numerous institutional and legal weaknesses which have hampered its effectiveness. It does not have a statutory power to investigate allegations and can only request state governments to submit a report. The NHRC has investigated cases against the military, but it could only recommend compensation and its recommendations are not binding. States have their own human rights commissions and the NHRC only has jurisdiction to investigate if the state commission does not.[8] The NHRC has also influenced the legislative process, particularly by issuing recommendations on women's issues, persons with disabilities, and children's rights.[9] The NHRC was reported to have been active throughout 2004, highlighting human rights abuses throughout the country and recommending compensation for victims of human rights abuses. State Human Rights Commissions exist in Andhra Pradesh, Assam, Chhattisgarh, Himachal Pradesh, Jammu and Kashmir, Kerala, Madhya Pradesh, Manipur, Maharashtra, Orissa, Punjab, Rajasthan, Tamil Nadu, Uttar Pradesh, and West Bengal.[10]

2.6 Amnesty International noted in its report on 2004 that members of opposition groups were responsible for the targeted killings of civilians including relatives of state officials and those suspected of working for the Government. The use of explosives also led to the indiscriminate killing of civilians.[11] Torture, including rape and beatings of the civilian population by members of armed opposition groups also continued to be reported throughout 2003 and 2004. Armed opposition groups failed to abide by standards of international humanitarian law and many civilians were killed as a result of indiscriminate violence during attacks on security forces.[12] The Jammu and Kashmir Protection of Human Rights Act 1997 established a State Human Rights Commission and human rights courts. The Commission is empowered to enquire into any complaint of a violation of human rights presented to it by a victim or any person on his/her behalf. It can also intervene in any proceeding involving any allegation or violation of human rights pending before a court with the approval of the court.[13] More detailed information on the situation in Jammu and Kashmir can be found in the current COI Service India Country Report.

2.7 Although India has signed and ratified the UN Convention on the Elimination of All Forms of Discrimination against Women and has a number of constitutional safeguards guaranteeing equal rights for women, there is evidence of huge gaps between constitutional guarantees and the daily realities of women's lives.[14] In 2004, domestic violence was reported to be a common and serious problem across all religious, class, and caste boundaries. Societal violence against women was also a serious problem in 2004. Although providing or taking a dowry is illegal, dowries continue to be offered and accepted and dowry disputes are a serious problem. It was reported in 2004 that women do not report the majority of rapes. Women victims of rape are also reported to be at a severe disadvantage within the criminal justice system and the rape of women in custody was reported in 2004.[15] However, in August 2005, 'The Protection of Women from Domestic Violence Bill, 2005', which seeks to protect women from all forms of

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[7] USSD 2005 (Introduction)
[8] USSD 2005 (Section 4)
[9] COI Service India Country Report (para 6.05)
[10] USSD 2005 (Section 4) & National Human Rights Commission, New Delhi, India
[11] Amnesty International (AI) Report 2005. India: Covering events from January to December 2004
[12] COI Service India Country Report (para 6.323)
[13] COI Service India Country Report (para 6.368)
[14] COI Service India Country Report (paras 6.373, 6.374, 6.378 & 6.379)
[15] COI Service India Country Report (paras 6.425 - 6.427 & 6.436) & USSD 2005 (Section 1 & 5)

domestic violence and check harassment and exploitation by family members or relatives, was passed by the Indian Parliament. In the same month, it was reported that the authorities in Delhi have initiated strategies to control crime against women, including the recruitment of 1,000 more women personnel in the Delhi police.[16]

3. Main categories of claims

3.1 This Section sets out the main types of asylum claim, human rights claim and Humanitarian Protection claim (whether explicit or implied) made by those entitled to reside in India. It also contains any common claims that may raise issues covered by the API on Discretionary Leave. Where appropriate it provides guidance on whether or not an individual making a claim is likely to face a real risk of persecution, unlawful killing or torture or inhuman or degrading treatment/ punishment. It also provides guidance on whether or not sufficiency of protection is available in cases where the threat comes from a non-state actor; and whether or not internal relocation is an option. The law and policies on persecution, Humanitarian Protection, sufficiency of protection and internal relocation are set out in the relevant API's, but how these affect particular categories of claim are set out in the instructions below.

3.2 Each claim should be assessed to determine whether there are reasonable grounds for believing that the claimant would, if returned, face persecution for a Convention reason - i.e. due to their race, religion, nationality, membership of a particular social group or political opinion. The approach set out in *Karanakaran* should be followed when deciding how much weight to be given to the material provided in support of the claim (see the API on Assessing the Claim).

3.3 If the claimant does not qualify for asylum, consideration should be given as to whether a grant of Humanitarian Protection is appropriate. If the claimant qualifies for neither asylum nor Humanitarian Protection, consideration should be given as to whether he/she qualifies for Discretionary Leave, either on the basis of the particular categories detailed in Section 4 or on their individual circumstances.

3.4 This guidance is **not** designed to cover issues of credibility. Caseworkers will need to consider credibility issues based on all the information available to them. (For guidance on credibility see paragraph 11 of the API on Assessing the Claim)

3.5 Also, this guidance does not generally provide information on whether or not a person should be excluded from the Refugee Convention or from Humanitarian Protection or Discretionary Leave**.** (See API on Humanitarian Protection and API on Exclusion under Article 1F or 33(2) and API on DL)

All APIs can be accessed via the IND website at:

http://www.ind.homeoffice.gov.uk/ind/en/home/laws___policy/policy_instructions/apis.html

3.6. Sikhs in fear of State Persecution

3.6.1 The majority of asylum claims made by Indian nationals in the United Kingdom are from young male Sikhs from Punjab.

- Some claim a fear of persecution by the Indian authorities because of their membership of groups such as Shiromani Akali Dal (SAD) or All India Sikh Students Federation (AISSF).

[16] COI Service India Country Report (paras 6.386, 6.410 - 6.412, 6.429 & 6.430)

- Some claim a fear of persecution by the Indian authorities because the individual has, or is perceived to have, harboured or assisted, terrorists, or otherwise been associated with terrorists (in particular Khalistan separatist groups).

- Some claim they have been victims of harassment, and fear further harassment, by the Indian authorities because they are Sikh.

3.6.2 ***Treatment.*** The 2001 Census of India noted that out of a population of 1028 million, 19 million or 1.9% follow the Sikh religion.[17] Sikhs are a majority in the state of Punjab.[18] During the 1980's tensions between Sikhs and the central Government in New Delhi heightened. Over the years that followed, Punjab was faced with escalating confrontations and increased terrorist incidents.[19] Serious human rights abuses were committed during a period of counter insurgency lasting from 1984 to 1994.[20] However, the Sikh militant movement is no longer active in Punjab. The hard core militants have either been arrested or killed by security forces. This change in the situation for Sikhs who no longer constitute a persecuted group is confirmed in reports as long ago as 1997 and 1998.[21]

3.6.3 A 2000 Danish Immigration Service Fact Finding Mission reported that there were now no security problems in Punjab and co-operation between the State Government and central Government was good. Cases concerning human rights abuse were different from before in that now the abuse was individual and had specific reasons. Sikhs were not subjected to torture just because they were Sikhs or because of the general political situation. It was also reported that the situation was not perfect, but that Sikhs in general were not being persecuted. The problems were of a different nature than before and were often due to problems in local society, e.g. disputes over land, etc. During the same mission to the Punjab in March and April 2000, the Danish Immigration Service was informed by the non-governmental Committee for Co-ordination on Disappearances in Punjab (CCDP) that, in their view, the Punjab was now peaceful and that there were no problems with militant groups and no political problems either.[22] Amnesty International in a report issued in January 2003 (reporting specifically on the situation in Punjab) confirmed that the targets of torture have changed since the period of Sikh militancy when the most frequent victims of police abuse were members of the Sikh community, in particular youths and supporters of Sikh political parties and armed opposition groups. Now, the majority of victims are detainees held in connection with criminal investigations and include members of all religious communities and social groups.[23]

3.6.4 Amendments in 1984 to the National Security Act 1980 and the subsequent Terrorist Affected Areas Act and Terrorist and Disruptive Activities (Prevention) Act (in force from 1985 to 1995) provided the police in Punjab with sweeping powers of arrest and detention. These laws left the heaviest legacies of the militancy period on policing methods in the state and the rest of the country.[24] It is reported that the Punjab police may be serious about pursuing Sikhs anywhere in India whom they view as hard-core militants, however, in practice only a handful of militants are likely to be targeted for such long-arm law enforcement.[25]

3.6.5 The Punjab State Human Rights Commission was set up in July 1997. It has intervened in a number of cases of police excesses, torture and custodial death, and the Punjab

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[17] Census of India 2001: Date on Religion - Brief Analysis of 2001 Census Religion Data
[18] U.S. Department of State: International Religious Freedom Report (USIRFR) 2005 (Section I)
[19] COI Service India Country Report (para 6.130)
[20] USSD 2005 (Section 1)
[21] COI Service India Country Report (paras 6.144, 6.145, 6.157 & 6.185) & USSD 2005 (Section 1)
[22] COI Service India Country Report (paras 6.187 & 6.188)
[23] Amnesty International (AI): India: Break the cycle of impunity and torture in Punjab dated 20 January 2003 (Section III)
[24] COI Service India Country Report (para 6.154)
[25] COI Service India Country Report (para 6.161)

Government has been forced to pay compensation.[26] The Commission is reported to receive 200 to 300 complaints per day but is limited by statute to examining cases which fall within a one-year statute of limitations.[27]

3.6.6 The Shiromani Akali Dal (SAD) is now a recognised and legal political party in India which has taken part in elections and supported the last government's BJP party.[28] The All India Sikh Students Federation was banned in 1984, but this ban was lifted in 1985. It has since split into various factions and is believed to be active in various universities in Punjab. It currently operates under the name of Sikh Students Federation (SSF).[29] There are no reports that members of either of these organisations are specifically targeted or discriminated against as a result of their membership.

3.6.7 ***Sufficiency of Protection.*** As this category of claimant's fear is of ill treatment/persecution by the state authorities they cannot apply to the authorities for protection.

3.6.8 ***Internal Relocation.*** For claimants in this category fearing ill treatment/persecution by the state authorities, relocation to a different area of the country to escape this threat is not feasible.

3.6.9 The law provides for freedom of movement and the Government generally respects this in practice, however, in certain border areas the Government requires special permits. Punjabi Sikhs are able to relocate to another part of India and there are Sikh communities all over India.[30]

3.6.10 There are no checks on a newcomer to any part of India arriving from another part of India, including if the person is a Punjabi Sikh. Local police forces have neither the resources nor the language abilities to perform background checks on people arriving from other parts of India. There is no system of registration of citizens, and often people have no identity cards, which in any event can be easily forged.[31]

3.6.11 Taking these factors into account as a general rule, Sikhs from the Punjab are able to move freely within India and internal relocation to escape the attentions of local police in their home area would not be unduly harsh. Therefore, where the fear is of local police and the individual is not of interest to the central authorities, internal relocation is feasible. As noted in the caselaw below for single women who do not relocate as part of a family unit relocation may be difficult and unduly harsh.

3.6.12 ***Caselaw.***

> **S (India) [2003] UKIAT 00098. T**he Tribunal found that a Sikh ex-army Sergeant, who was frequently arrested by local police and mistreated (and released after payment of a bribe on each occasion), would be able to relocate to an area where he would face neither persecution nor a breach of his Article 3 rights. The IAT held that his problems with the police were localised and he was not of interest to the central authorities if he did not volunteer his past associations and that whilst he might face difficulties in another area accessing employment and accommodation because of language differences and lack of family ties this was not sufficient to make relocation unduly harsh.
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> **Surinder Pal [2001] (01TH01238).** The Tribunal commented that although some concerns remained, the general human rights situation in Punjab had much improved as the conflict there had died down. It was held that the Adjudicator had rightly concluded

[26] COI Service India Country Report (para 6.173)
[27] COI Service India Country Report (para 6.174)
[28] COI Service India Country Report (annex B and C)
[29] COI Service India Country Report (annex B)
[30] COI Service India Country Report (paras 6.194 & 6.195) & USSD 2005 (Section 2)
[31] COI Service India Country Report (para 6.196)

that a Sikh supporter of the Khalistan movement (AISSF) was not at risk if returned to Punjab.

Joginder Kaur [2002] UKIAT 07599. The Tribunal found that the sister of a high profile Khalistani radical, Mukhtiar Singh, would be at real risk of Article 3 ECHR mistreatment through family connections.

3.6.13 ***Conclusion.*** A distinction should be drawn between low and high level activists:

3.6.14 ***Low-level activists.*** It is most unlikely that anyone claiming involvement in low-level activities would be able to demonstrate a well-founded fear of persecution within the terms of the 1951 Convention or would qualify for Humanitarian Protection, on the basis of their activities alone. Claims from low level activists are likely to be clearly unfounded.

3.6.15 ***High-level activists.*** High profile activists, or family members of high profile activists, may be able to establish a well-founded fear of persecution, or torture or degrading or inhuman treatment, amounting to a breach of Article 3 ECHR, and in exceptional circumstances a grant of asylum or Humanitarian Protection may be appropriate. If refused, claims from high profile activists known to the authorities are unlikely to be clearly unfounded.

3.7 Sikhs in fear of non-State agents

3.7.1 Claimants fear persecution by non-State agents because they have refused to join a terrorist group, or may claim to fear the Akali Dal because of their involvement with the Congress party.

3.7.2 ***Treatment.*** Reports in 1997 and 1998 noted that the Sikh militant movement is no longer active in Punjab having been virtually eliminated. The hard core militants have either been physically wiped out or are no longer in India, with militant organisations being shut down or reduced in size. Key leaders had been arrested, gone underground, or had abandoned the movement with remaining supporters struggling to maintain funds and morale.[32] A 2002 report noted that the state of Punjab had remained largely free from terrorist violence for the ninth successive year after the terrorist-secessionist movement for Khalistan was comprehensively defeated in 1993. However, there remained a handful of terrorist groups mainly sponsored by Pakistan and by some non-resident Indian Sikh groups based in the West who continued to propagate the ideology of Khalistan (a separate Sikh state).[33] In the year 2002, till 30 May 2002 five people were killed and 39 others injured in terrorism-related violence in the state. During this period a total of four terrorists were arrested and another surrendered.[34] In a 2003 report, Amnesty International (AI) noted that the majority of the armed opposition groups are inactive in Punjab today and AI has received no reports of acts of torture perpetrated by their members after the end of the militancy period.[35]

3.7.3 In June 2005, it was reported that police in Punjab had 'neutralised' Sikh separatist militants who had recently become active in the state. The state's police chief said an operation to counter the militants was launched following two cinema bomb attacks in Delhi and confirmed that there had been an attempt to revive Sikh militancy in Punjab. However, the state's police chief also said the revival was 'checked' by timely police action which led to the arrests of about 24 people. He ruled out the possibility of a full-scale resumption of Sikh militancy in Punjab, although there had been a 'concerted effort' to reactivate Sikh separatist groups such as the Babbar Khalsa.[36] Although some

[32] COI Service India Country Report (paras 6.144 & 6.145)
[33] COI Service India Country Report (para 6.189)
[34] COI Service India Country Report (para 6.147)
[35] COI Service India Country Report (para 6.185)
[36] COI Service India Country Report (paras 6.148 - 6.151)

claimants claim to fear persecution by terrorists or other non-state agents, there is no evidence that, following the end of the counter-insurgency period, such persecution takes place in Punjab.

3.7.4 ***Sufficiency of Protection.*** Police are a civil authority controlled by the Union Ministry of Home Affairs and subordinate to the Executive, represented in the Union Government by the Prime Minister and in the States by the Chief Minister, and their respective Councils of Ministers. The 25 state governments have primary responsibility for maintaining law and order. Each State has its own force headed by a Director-General of Police (DGP) and a number of Additional Directors-General or Inspectors-General of Police (IGP) who look after various portfolios.[37] A wide variety of domestic and international human rights groups generally operate without government restriction in India.[38] Those experiencing persecution from militant groups can reasonably seek protection from the Indian authorities and there is no evidence to suggest that such protection is not provided.

3.7.5 ***Internal Relocation.*** The law provides for freedom of movement and the Government generally respects this in practice, however, in certain border areas the Government requires special permits. Punjabi Sikhs are able to relocate to another part of India and there are Sikh communities all over India.[39]

3.7.6 There are no checks on a newcomer to any part of India arriving from another part of India, including if the person is a Punjabi Sikh. Local police forces have neither the resources nor the language abilities to perform background checks on people arriving from other parts of India. There is no system of registration of citizens, and often people have no identity cards, which in any event can be easily forged.[40]

3.7.7 Taking these factors into account as a general rule, Sikhs from the Punjab are able to move freely within India and internal relocation to escape the attentions of individuals in their home area would not be unduly harsh. As noted in the caselaw below for single women who do not relocate as part of a family unit relocation may be difficult and unduly harsh.

3.7.8 ***Caselaw.***

> **Balvir Kaur [2002] UKIAT03387.** The Tribunal found that it would be unduly harsh to expect a woman from a rural background to relocate to another part of India because in reality she would be destitute, without accommodation, without housing and with no one to turn to.

3.7.9 ***Conclusion.*** Following the end of the counter-insurgency period there is no evidence of persecution of Sikhs by non state agents and therefore claimants would be unlikely to demonstrate a well-founded fear of persecution, or torture or degrading or inhuman treatment, amounting to a breach of Article 3 ECHR. In addition, there generally exists the option for those who encounter difficulties to seek national protection or to relocate internally (although, for single women who do not relocate as part of a family unit, relocation may be difficult and unduly harsh). Therefore, it is unlikely that any such claim would result in a grant of asylum or Humanitarian Protection and such claims are likely to be clearly unfounded.

3.8 Christians, Muslims and Hindus

3.8.1 Claimants fear persecution from non-state agents as a consequence of their Christian, Muslim or Hindu religious faith.

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[37] COI Service India Country Report (para 5.63)
[38] USSD 2005 (Section 4)
[39] COI Service India Country Report (paras 6.194 & 6.195) & USSD 2005 (Section 2)
[40] COI Service India Country Report (para 6.196)

3.8.2 ***Treatment-General.*** According to the 2001 Government census, Christians constitute 2.3% of the population of India and Muslims 13.4% (of which just over 90% are Sunni and the remainder Shi'a). Hindus, the major religion in India, constitute 80.5% of the population.[41] Muslims and Christians are therefore respectively the first and second largest minority religious groups in India.[42]

3.8.3 The law provides for secular government and the protection of religious freedom. However, during 2005, whilst the central Government generally respected these provisions in practice; it sometimes did not act effectively to counter societal attacks against religious minorities and attempts by state and local governments to limit religious freedom. This failure resulted in part from the legal constraints inherent in the country's federal structure and in part from shortcomings in the law enforcement and justice systems. Ineffective investigation and prosecution of attacks on religious minorities in 2005 were seen by some extremists as a signal that such violence may be committed with impunity.[43]

3.8.4 It has been reported that the status of religious freedom improved during 2004 and 2005, however, tensions between Muslims and Hindus, and between Hindus and Christians, continued during these years. Attacks on religious minorities decreased overall, but occurred in several states, which brought into question the Government's ability to prevent sectarian and religious violence or prosecute those responsible for it. On the positive side, no new anti-conversion laws were enacted during 2004 or 2005 and the anti-conversion law in Tamil Nadu was repealed. Hindutya, the politicised inculcation of Hindu religious and cultural norms to the exclusion of others remained a subject of national debate and influenced some governmental policies.[44]

3.8.5 ***Treatment-Muslims.*** The Indian authorities do not restrict the religious activities of Muslims, who have freedom of religious practice and freedom to organise their services according to their codes, religious teachings and customs. A 1997 report of the Special Rapporteur noted that Muslims in India have their own educational establishments including madrasa religious schools responsible for disseminating the teachings of Islam. They also have a large number of places of worship in India. Muslims are reported to be under-represented in the civil service, the military and institutions of higher education.[45] However the current President of India Dr APJ Abdul Kalam is a Muslim.[46]

3.8.6 A campaign of sectarian violence was triggered in February 2002 following an attack on a train carrying Hindu activists. As a result of a fire on the train 59 Hindus were killed and the event provoked deadly religious riots in which at least 1,000 people died, most of them Muslim.[47] The Supreme Court made a scathing attack on the authorities in Gujarat over its handling of a particular incident during these riots (the Best Bakery Case) in which 12 Muslims were killed. Following this criticism Gujarat's State Government agreed to seek a re-trial of the 21 Hindus who had been acquitted of involvement in the attack. In April 2004, in what was described as an indictment of Modi's Gujarat Government, the Supreme Court overturned the acquittal of the 21 accused in the bakery store case and ordered a new trial of those indicted. India's highest court ordered a transfer of the trial to neighbouring Maharashtra state and directed both state governments to provide protection to witnesses and victims, appoint a new public prosecutor and institute new police investigations into the case.[48] The re-trial of those involved commenced before the Special Court in Mumbai in

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[41] USIRFR 2005 (Section I)
[42] COI Service India Country Report (para 6.103)
[43] USSD 2005 (Section 2)
[44] COI Service India Country Report (paras 6.58 & 6.59) & USSD 2005 (Section 2)
[45] COI Service India Country Report (paras 6.63 & 6.64)
[46] COI Service India Country Report (paras 4.26, Annex A & Annex E)
[47] COI Service India Country Report (paras 6.82 – 6.85)
[48] COI Service India Country Report (para 6.88)

July 2005 continuing into 2006.[49] Human Rights Watch noted in its 2006 Annual Report that the Gujarat government again failed to bring to justice those responsible for the riots in which thousands of Muslims were killed and left homeless, but noted that the Supreme Court and the National Human Rights Commission have taken several positive steps to secure justice for the victims of the riots.[50]

3.8.7 ***Treatment-Christians.*** It is reported that the Indian authorities do not interfere with the internal religious activities of Christians, that their activities are conducted freely and that they are well integrated into Indian society. Minorities including Christians can establish their own schools offering religious instruction as well as a general education, in addition religious instruction can be provided at seminaries.[51]

3.8.8 However, individual acts of violence and harassment have been reported over the years, sometimes leading to the injury or death of individuals. During 2005, there were reports of harassment, acts of violence and even detention in the Rajasthani town of Kota and the Balmikinagar jungles bordering Nepal.[52] In some cases, Christians involved in missionary work have been the target particularly where their actions have involved or have been perceived to involve religious conversions. Perpetrators of some of these acts of violence have been traced and prosecuted.[53] The United Nations noted in their Human Development Report, 2004, “In South Asia organised violent attacks on Christian Churches and missions have increased. India, despite its long secular tradition, has experienced considerable communal violence, with rising intensity." A Freedom House report dated June 2004 also noted an increase in the number of attacks on Christians over the last 10 years.[54]

3.8.9 ***Treatment-Hindus.*** As noted above, Hindus are the major religion in India accounting for some 80% of the population. Skirmishes between Hindus and Muslims do occasionally occur, for example there were minor Hindu-Muslim skirmishes in Gujarat in Vadodara (September 2003 and February 2004), Viramgam (November 2003), Ahmedabad (November 2003 and January 2004), and Godhra (September 2003 and February 2004) as a result of which seven people, three Hindus and four Muslims, were killed.[55] Hindu nationalists have long agitated to build a temple on a disputed site in Ayodha and in February 2002 it was reported that a mob of Muslims attacked a train carrying Hindu volunteers returning from Ayodhya to the state of Gujarat, and 57 were burnt alive. According to the official Government figures released in May 2005, 790 Muslims and 254 Hindus were killed in the incident and the resulting anti-Muslim riots throughout the state. Over 100,000 were also reported to have been left homeless by the riots. This led to accusations that the state government had not done enough to contain the riots, or arrest and prosecute the rioters.[56] More recent reports have suggested that the fire may not have been as a result of an attack by Muslims but may have been accidental.[57]

3.8.10 ***Sufficiency of Protection.*** The Penal Code prohibits and punishes any violation of tolerance and non-discrimination based on religion or belief.[58] However in May 2004, the United States Commission on International Religious Freedom reported that the

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[49] Outlook India.com ‘Court records statements of accused in Best Bakery case’ dated 8 August 2005 & Outlook India.com ‘Best Bakery case: SC asks Guj Govt to serve notice’ dated 21 November 2005
[50] Human Rights Watch. World Report 2006: India
[51] COI Service India Country Report (para 6.103 & 6.105)
[52] USIRFR 2005 (Section II)
[53] COI Service India Country Report (paras 6.112 - 6.125)
[54] COI Service India Country Report (para 6.120)
[55] USIRFR 2004 (Section II)
[56] COI Service India Country Report (paras 4.25 & 6.82 - 6.84) & USIRFR 2005 (Section II)
[57] COI Service India Country Report (para 6.85)
[58] COI Service India Country Report (para 6.43)

Government's response to violence against religious minorities in Gujarat and elsewhere continues to be inadequate.[59]

3.8.11 The appointed members of the National Commission for Minorities (NCM) and the National Human Rights Commission (NHRC) are tasked respectively with protecting the rights of minorities and protecting human rights. These governmental bodies investigate allegations of discrimination and bias and can make recommendations for redress to the relevant local or central government authorities. These recommendations are generally followed, although they do not have the force of law.[60]

3.8.12 In September 2003, Dara Singh received the death sentence having been identified as the ringleader of a group found responsible for the 1999 death of missionary Graham Staines and his two sons. Twelve others received life imprisonment for their involvement in the killings. The death sentence is used rarely in India and is reserved for the most serious crimes. Defendants have the right to appeal all the way to the Supreme Court and can then ask for a presidential pardon. In May 2005, Dara Singh's sentence was commuted from the death penalty to life in jail and in August 2005, it was reported that he has appealed against his conviction to the Supreme Court.[61] Additionally following a bombing incident in 2000 which injured 30 Christians, the former BJP Prime Minister Atal Behari Vajpayee spoke out strongly about these incidents. He called on State Governments to "firmly and impartially investigate all incidents of violence against Christians in India", and commenting on the spate of attacks he called them an "aberration and an exception to the general texture of peaceful and cordial relations between the various communities".[62]

3.8.13 As noted above, the Gujarat Government has been criticised for its failure to bring to justice those responsible for the riots in 2002. However, the Supreme Court and the National Human Rights Commission have taken steps to secure justice for the victims of the riot. In August 2004, it was reported that the Supreme Court ordered the Gujarati police to review and re-open 2,000 closed cases relating to the events in 2002. Compensation has also been paid by the Gujarat Government to the families of those killed and injured, and a total of Rs2.4 billion has reportedly been paid out in relief and rehabilitation.[63]

3.8.14 Those experiencing religious intolerance can reasonably seek protection from the Indian authorities and there is no evidence to suggest that such protection is not provided. As evidenced by the NHRC findings in respect of the extreme violence in February 2002 in Gujarat, there is monitoring, investigation and redress for those who are victim to religious violence even in the most extreme circumstances. As detailed, perpetrators of religious violence against Christians, Muslims and Hindus have been prosecuted for their actions.

3.8.15 In the cases of high profile religious leaders whose actions have made them a particular target, the Indian State may not be able to provide a sufficiency of protection.

3.8.16 Caselaw

> **Fruitwala [2001] 01TH02589.** The applicant was a member of a small Muslim Party who had been persecuted on account of political and religious reasons and because he was a witness to a killing during the Bombay riots in 1992. The IAT held that although there is in general a sufficiency of protection on Horvath principles in India for its citizens, in the unusual and very specific circumstances of this case the applicant had been unable to secure state protection and his asylum appeal was allowed.

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[59] COI Service India Country Report (para 6.46)
[60] USIRFR 2005 (Section II)
[61] COI Service India Country Report (paras 6.113 - 6.118)
[62] BBC News. 'India condemns attacks on Christians' dated 24 June 2000
[63] COI Service India Country Report (paras 6.84 & 6.94 - 6.96) & Human Rights Watch. World Report 2006: India

3.8.17 ***Internal Relocation.*** The law provides for freedom of movement and the Government generally respects this in practice, however, in certain border areas the Government requires special permits.[64] Therefore, as a general rule, an internal relocation option exists from one Indian State to another. However, internal relocation for females who need to relocate may not be an option. For single women who do not relocate as part of a family unit, relocation may be difficult and unduly harsh.

3.8.18 ***Caselaw.***

> **Winston Farrer [2002] UKIAT 04874.** The Tribunal agreed with the Adjudicator that this Christian appellant was personally at risk of persecution in Gujarat on account of his religious beliefs. However, it was held that it would not be unduly harsh for the appellant to relocate to another area of India where sentiment against Christians was not so strong and therefore internal relocation was a viable option.

3.8.19 ***Conclusion.*** The Indian constitution guarantees the rights of religious minorities and there are avenues open for individuals to seek protection from the authorities where they experience ill-treatment. Furthermore, there exists the option for those who encounter such difficulties to relocate internally. Therefore, it is unlikely that claimants in this category would qualify for asylum or Humanitarian Protection and such claims are likely to be clearly unfounded. An exception to this may be high-profile religious leaders in very specific and individual circumstances for whom there may not be a sufficiency of protection as detailed above, however, such cases are likely to be extremely rare. Such cases may result in a grant of asylum or Humanitarian Protection but if refused are unlikely to be clearly unfounded.

3.9 Land disputes

3.9.1 Typically a claimant states that he is in dispute with either an uncle or another family member over a piece of land. The protagonist violently abuses the claimant, and is influential so either the claimant does not report the problems to the police or has not had an investigation by the police. The violence escalates and the claimant flees the country.

3.9.2 ***Treatment.*** In a country where nearly two thirds of the population relies on agriculture for their livelihoods,[65] the ownership and acquisition of land is clearly an important issue. Land records are vital documents for farmers and the Government, used to prove ownership and for administrative functions as well.[66] The computerisation of land records in India was advocated in 1985 and a centrally sponsored scheme was started in 1988. The scheme continued to develop and by 1999 was being implemented in 544 districts of the country, leaving only those where there were no land records.[67] It is reported that computerised land ownership records in India are now providing millions of farmers with a measure of security and peace of mind they did not previously have.[68] However, another report notes that current land ownership records provide only "presumptive title" rather than "guaranteed title" suggesting that the absence of guaranteed title has far-reaching implications in the country.[69] Land disputes in India can occasionally end in violence as noted in a 2001 report in The Tribune newspaper, when four people were hurt in a firing incident over a land dispute. The report notes that the

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[64] COI Service India Country Report (para 6.194) & USSD 2005 (Section 2)
[65] COI Service India Country Report (para 3.01)
[66] The World Bank: News and Broadcast. 'India: Land Records Online' updated May 2004
[67] GIS Development. 'Computerisation of Land Records in India' (page 2)
[68] The World Bank: News and Broadcast. 'India: Land Records Online' updated May 2004
[69] India Together. 'A credible low-income housing policy' dated 24 February 2005

police were deployed in the tense situation in the village, three people were arrested and the gun used seized.[70]

3.9.3 ***Sufficiency of Protection.*** The law provides for an independent judiciary, and during 2005 the Government generally respected this provision in practice, however, serious problems remained. It has been reported that in 2004 the judiciary was under funded and overburdened generally, but during 2005 court was regularly in session and the judicial system began to normalize in Jammu and Kashmir. Nevertheless, the judicial system was hindered because of judicial tolerance of the Government's anti-insurgent actions and because of the frequent refusal by security forces to obey court orders. In 2004 and 2005, human rights groups claimed that because of the extensive case backlog and rampant corruption the judicial system no longer met its constitutional mandate.[71] A wide variety of domestic and international human rights groups operate freely without government restriction, investigating abuses and publishing their findings on human rights cases. The National Human Rights Commission (NHRC) was set up under the Protection of Human Rights Act 1993, which defines Human Rights as rights relating to life, liberty, equality and dignity of individuals guaranteed by the Constitution or embedded in the International Covenants and enforceable by courts in India.[72] While the NHRC is conducting enquiries, it has the powers of a civil court, including summoning attendance of witnesses, compelling the provision of information and referring cases of contempt to a magistrate.[73] The 1993 Protection of Human Rights Act recommended that each state establish a state human rights commission, but not all states have done so.[74] There are institutions in place in India to protect those in land disputes and there are some organisations both governmental and non-governmental to whom individuals can turn for help and assistance.

3.9.4 ***Internal Relocation.*** The law provides for freedom of movement and the Government generally respects this in practice, however, in certain border areas the Government requires special permits.[75] Therefore, as a general rule, a claimant who fears retribution as a result of a land dispute could move from one State to another. However, internal relocation for females who need to relocate may not be an option. For single women who do not relocate as part of a family unit, relocation may be difficult and unduly harsh.

3.9.5 ***Conclusion*** Sufficient protection is available in all parts of India and claimants can seek assistance from the national or local human rights commissions if required. Those who are unable or, owing to fear, unwilling to avail themselves of the protection of the authorities, can relocate to another part of India (although, for single women who do not relocate as part of a family unit, relocation may be difficult and unduly harsh). Therefore, grants of asylum or Humanitarian Protection will not be appropriate and such claims will be clearly unfounded.

3.10 Members of Akali Dal

3.10.1 Members of the Akali Dal political party may claim that they fear ill-treatment amounting to persecution from members of the opposing Congress Party.

3.10.2 ***Treatment.*** Akali Dal also called Shiromani Akali Dal (SAD) is a Sikh party originally formed in 1920 to demand an independent Sikh state. The party has a number of factions but as of 2003 the Shiromani Akali Dal under Prakash Singh Badal became the largest faction and the one recognised by the Election Commission as SAD. In recent times, SAD

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[70] The Tribune: Online Edition. 'Land dispute: 4 hurt in firing' dated 19 April 2001
[71] COI Service India Country Report (paras 5.23 & 5.32) & USSD 2005 (Section 1)
[72] USSD 2005 (Section 4) & Home Office CIPU Report of the fact finding mission to India (paras 7.49 & 7.50)
[73] COI Service India Country Report (para 6.13)
[74] USSD 2005 (Section 4)
[75] COI Service India Country Report (para 6.194) & USSD 2005 (Section 2)

has been in alliance with the Bharatiya Janata Party (BJP) and together with the BJP won 10 out of the 13 seats in Punjab in the 2004 elections. SAD is a legal party which has participated in state and national elections in India.[76] The Congress Party or National Congress as it has been known since the early to mid 1990s was originally known as the All India Congress Committee.[77] It was the party of Indian independence and has ruled for some 50 years since independence. It lost the 1998 elections to an alliance under the BJP, but came to power again in 2004 as the leading member of the United Progressive Alliance.[78]

3.10.3 ***Sufficiency of Protection.*** Police are a civil authority controlled by the Union Ministry of Home Affairs and subordinate to the Executive, represented in the Union Government by the Prime Minister and in the States by the Chief Minister, and their respective Councils of Ministers. The 25 state governments have primary responsibility for maintaining law and order. Each State has its own force headed by a Director-General of Police (DGP) and a number of Additional Directors-General or Inspectors-General of Police (IGP) who look after various portfolios.[79] During 2005, a wide variety of domestic and international human rights groups generally operated without government restriction in India.[80] Those experiencing persecution or ill-treatment from members of opposing political parties or alliances can reasonably seek protection from the Indian authorities and there is no evidence to suggest that such protection is not provided.

3.10.4 ***Internal Relocation.*** The law provides for freedom of movement and the Government generally respects this in practice, however, in certain border areas the Government requires special permits.[81] Therefore, as a general rule, an internal relocation option exists from one Indian State to another. However, internal relocation for females who need to relocate may not be an option. For single women who do not relocate as part of a family unit, relocation may be difficult and unduly harsh.

3.10.5 ***Conclusion.*** The Akali Dal and the Congress Party are both legal political parties within India who campaign and participate in State and National elections. There is no evidence to suggest that members of one party fearing ill-treatment or persecution by individual members of the other party could not seek protection from the authorities or relocate internally to escape a local threat (although, for single women who do not relocate as part of a family unit, relocation may be difficult and unduly harsh). As a result, claims in this category will not generally warrant a grant of asylum and will be clearly unfounded.

3.11 Women who fear domestic violence

3.11.1 Claimants may fear they face domestic violence at the hands of their husbands or other family members.

3.11.2 ***Treatment.*** Although India has signed and ratified the UN Convention on the Elimination of All Forms of Discrimination against Women and has a number of constitutional safeguards guaranteeing equal rights for women, there is evidence of huge gaps between constitutional guarantees and the daily realities of women's lives.[82] In 2004 and 2005, domestic violence including dowry-related abuses and 'bride-burning' was reported to be a common and serious problem across all religious, class, and caste

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[76] COI Service India Country Report (Annex B)
[77] COI Service India Country Report (Annex B) & Europa World Year Book 2004 India Directory (pages 2086 - 2087)
[78] COI Service India Country Report (para 4.31 & Annex B)
[79] COI Service India Country Report (para 5.63)
[80] USSD 2005 (Section 4)
[81] COI Service India Country Report (para 6.194) & USSD 2005 (Section 2)
[82] COI Service India Country Report (paras 6.373, 6.374, 6.378 & 6.379)

boundaries.[83] It has been reported that every 6 hours in India a young married woman is burned alive, beaten to death or driven to commit suicide and that at least 45% of Indian women are slapped, kicked or beaten by their husbands, many of them on a continual basis.[84]

3.11.3 **Sufficiency of Protection.** Women reportedly continued to face discrimination at the hands of the police, the criminal justice system and non-state actors during 2003 and 2004, whilst the independent judiciary was under funded and overburdened.[85] However, the Indian Government has advised State governments to undertake a number of measures for the prevention of crime against women. This includes the registration of First Instance Reports (FIRs) in all cases of crime against women, the prominent exhibition of help-line numbers of the crime against women cells at public places, the setting up of women police cells in the police stations and exclusive women police stations where necessary, the creation of short-stay homes for female victims of crime and adequate training of police personnel in special laws who deal with crime against women.[86]

3.11.4 In August 2005, 'The Protection of Women from Domestic Violence Bill, 2005', which seeks to protect women from all forms of domestic violence and check harassment and exploitation by family members or relatives, was passed by the Indian Parliament. The bill seeks to deter all forms of domestic violence against women by providing for punishment of up to a one year jail term and defines the expression 'domestic violence' to include actual abuse or threat of abuse: physical, sexual, verbal, emotional or economic violence. The bill also seeks to ban harassment from dowry demands and gives sweeping powers to magistrates to issue protection orders.[87]

3.11.5 Those experiencing domestic violence at the hands of their husbands or other family members can therefore reasonably seek protection from the Indian authorities. However, the provision of this assistance may be inadequate to ensure that every individual woman who needs assistance and protection is able to access it. Additionally, some women's ability to access this help and assistance may be limited by such factors as their location, lack of literacy and lack of awareness of their rights in what remains a patriarchal society.

3.11.6 ***Internal Relocation.*** The law provides for freedom of movement and the Government generally respects this in practice, however, in certain border areas the Government requires special permits.[88] However, the situation as regards internal relocation for single women, divorcees with or without children, and widows may differ from the situation for men as it may be difficult for women on their own to find secure accommodation. Although rents are high and landlords are often unwilling to rent to single women there are hostels particularly in urban areas where a large number of call centres provide employment.[89] The situation for women with children is likely to be more difficult as children may not be accepted in hostels.[90] Illiterate women from rural areas are likely to find it particularly difficult to obtain accommodation as a lone woman.[91]

3.11.7 For some women in India relocation will not be unduly harsh but this is only likely to be the case where the individual is single, without children to support and is educated enough to be able to support herself. Some single women may also be able to relocate to live with

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[83] COI Service India Country Report (paras 6.402 - 6.404) & USSD 2005 (Section 5)
[84] COI Service India Country Report (para 6.412)
[85] COI Service India Country Report (paras 5.23 & 6.375) & Amnesty International Report 2005: India
[86] COI Service India Country Report (para 6.433) & USSD 2005 (Section 5)
[87] COI Service India Country Report (paras 6.386 & 6.410 - 6.412)
[88] COI Service India Country Report (para 6.194) & USSD 2005 (Section 2)
[89] Home Office CIPU Report of the fact finding mission to India (paras 9.1 - 9.16)
[90] Home Office CIPU Report of the fact finding mission to India (paras 7.17, 7.25, 7.27 & 9.5)
[91] Home Office CIPU Report of the fact finding mission to India (paras 9.1 - 9.16)

extended family or friends in other parts of the country. However, where these circumstances do not apply internal relocation is likely to be unduly harsh.

3.11.8 Caselaw

Balvir Kaur [2002] UKIAT03387. The Tribunal found that it would be unduly harsh to expect a woman from a rural background to relocate to another part of India because in reality she would be destitute, without accommodation, without housing and with no one to turn to.

3.11.9 ***Conclusion.*** The position and treatment of women within the family in India is such that a significant percentage of women may be the victims of some kind of domestic violence. Women can seek protection from the authorities and legislation has been introduced to persecute perpetrators. However, some Indian women, such as those from rural areas or those who are illiterate, may be unable to access this assistance. The most recent information available on the situation of women in India does not support the view that women in India are a particular social group, in particular there is no evidence that the Indian Government supports or condones the ill-treatment of women therefore a grant of asylum will not be appropriate. Where an Indian woman is able to show that she faces a real risk of domestic violence amounting to torture or inhuman or degrading treatment, is unable, or unwilling through fear, to access protection and where internal relocation is unduly harsh, a grant of Humanitarian Protection will be appropriate. Cases in this category should only be certified as clearly unfounded where it is unarguable that there is a sufficiency of protection in the individual case or where it is unarguable that internal relocation is not unduly harsh in the individual case.

3.12 Prison Conditions

3.12.1 Claimants may claim that they cannot return to India due to the fact that there is a serious risk that they will be imprisoned on return and that prison conditions in India are so poor as to amount to torture or inhuman treatment or punishment.

3.12.2 Prisons in India are governed under the auspices of the Prisons Act 1894 and the Prisoners Act 1900. State governments and Union Territories are responsible for prison administration. As at mid 2003, it was reported that there were 1,119 prisons including juvenile camps, with a total prison population of 313,635. The official capacity was 229,713 resulting in an occupancy level of 136.5%.[92] It has been reported that in 2005 prison conditions were harsh and life threatening. Prisons were reportedly severely overcrowded and the provision of food and medical care was frequently inadequate.[93] As a result of the severely overloaded court system thousands of people await trial for periods longer than they would receive if they had been convicted. Some prisoners are held for months or even years before obtaining a trial date. In 2005, human rights organizations reported that 60 to 75 percent of all detainees were in jail awaiting trial, drastically contributing to overcrowding. They also asserted that approximately 65 percent of those detained were found innocent.[94]

3.12.3 Women are housed separately from men, and by law juveniles must be detained in rehabilitative facilities, however, they are at times detained in prison, especially in rural areas. Pre-trial detainees are not separated from the general prison population.[95]

3.12.4 One NHRC report notes that a large proportion of deaths in judicial custody were from natural causes, in some cases aggravated by poor prison conditions. The NHRC Special Rapporteur and the Chief Co-ordinator of Custodial Justice have been charged with helping to implement a directive to state prison authorities to perform medical check-ups

[92] COI Service India Country Report (para 5.72)
[93] USSD 2005 (Section 1)
[94] USSD 2005 (Section 1)
[95] COI Service India Country Report (para 5.80) & USSD 2005 (Section 1)

on all inmates. However, by the end of 2004 medical checks were available to only a few inmates. According to a Home Ministry report, nationwide deaths in custody rose from 1,340 in 2002 to 1,462 in 2003.[96]

3.12.5 NGOs are allowed to work in prisons within specific government guidelines but as a result of agreements with the Government their findings remain largely confidential. A Home Ministry report noted that the International Committee of the Red Cross (ICRC) visited 55 detention centres and over 7,000 detainees in 2004 including all acknowledged detention centres in Jammu and Kashmir and all other facilities where Kashmiris were held. However, ICRC were not authorised to visit interrogation or transit centres and did not have access to detention centres in the north-eastern states.[97]

3.12.6 ***Conclusion.*** Whilst prison conditions in India are poor, with overcrowding and the inadequate provision of health care being particular problems, conditions are unlikely to reach the Article 3 threshold. Therefore, even where claimants can demonstrate a real risk of imprisonment on return to India a grant of Humanitarian Protection will not generally be appropriate. Similarly, where the risk of imprisonment is related to one of the five Refugee Convention grounds, a grant of asylum will generally not be appropriate. However, the individual factors of each case should be considered to determine whether detention will cause a particular individual in his particular circumstances to suffer treatment contrary to Article 3, relevant factors being the likely length of detention the likely type of detention facility and the individual's age and state of health. Where in an individual case treatment does not reach the Article 3 threshold a grant of Humanitarian Protection will be appropriate unless the risk of imprisonment is related to one of the five Refugee Convention grounds in which case a grant of asylum will be appropriate.

4. Discretionary Leave

4.1 Where an application for asylum and Humanitarian Protection falls to be refused there may be compelling reasons for granting Discretionary Leave (DL) to the individual concerned. (See API on Discretionary Leave)

4.2 With particular reference to India the types of claim which may raise the issue of whether or not it will be appropriate to grant DL are likely to fall within the following categories. Each case must be considered on its individual merits and membership of one of these groups should *not* imply an automatic grant of DL. There may be other specific circumstances not covered by the categories below which warrant a grant of DL - see the API on Discretionary Leave.

4.3 Minors claiming in their own right

4.3.1 Minors claiming in their own right who have not been granted asylum or HP can only be returned where they have family to return to or there are adequate reception, care and support arrangements. At the moment we do not have sufficient information to be satisfied that there are adequate reception, care and support arrangements in place.

4.3.2 Minors claiming in their own right without a family to return to, or where there are no adequate reception, care and support arrangements, should if they do not qualify for leave on any more favourable grounds be granted Discretionary Leave for a period of three years or until their 18th birthday, whichever is the shorter period.

4.4 Medical treatment

[96] COI Service India Country Report (paras 5.75 & 5.76)
[97] COI Service India Country Report (para 5.82)

4.4.1 Claimants may claim they cannot return to India due to a lack of specific medical treatment. See the IDI on Medical Treatment which sets out in detail the requirements for Article 3 and/or 8 to be engaged.

4.4.2 Medical care in India is free to all citizens, but most care is provided in the private sector. Private health care costs are less than in the UK, [98]and there is a good availability of medications, many cheaper than in the UK.[99] In the larger cities, particularly the State capitals, there are hospitals offering care in a wide range of medical specialities.[100] Several reports note that better care is available in cities than in rural areas where treatment may be limited or unavailable. However, most districts are served by referral hospitals.[101]

4.4.3 The Article 3 threshold will not be reached in the great majority of medical cases and a grant of Discretionary Leave will usually not be appropriate, however where a caseworker considers that the circumstances of the individual claimant and the situation in the country reach the threshold detailed in the IDI on Medical Treatment making removal contrary to Article 3 or 8 a grant of discretionary leave to remain will be appropriate. Such cases should always be referred to a Senior Caseworker for consideration prior to a grant of Discretionary Leave. The Article 3 threshold will not be reached in the great majority of medical cases and a grant of Discretionary Leave will usually not be appropriate.

5. Returns

5.1 Factors that affect the practicality of return such as the difficulty or otherwise of obtaining a travel document should not be taken into account when considering the merits of an asylum or human rights claim.

5.2 Indian nationals may return voluntarily to any region of India at any time by way of the Voluntary Assisted Return and Reintegration Programme run by the International Organisation for Migration (IOM) and co-funded by the European Refugee Fund. IOM will provide advice and help with obtaining travel documents and booking flights, as well as organising reintegration assistance in India. The programme was established in 2001 and is open to those awaiting an asylum decision or the outcome of an appeal, as well as failed asylum seekers. Indian nationals wishing to avail themselves of this opportunity for assisted return to India should be put in contact with the IOM offices in London on 020 7233 0001 or www.iomlondon.org.

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