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GLOSSARY

Aadhar
Unique identification number

Hijra
A male to female transgender identity recognised in traditional South Asian cultures

Lok Sabha
People’s, or lower, house of parliament (analogous to the Australian House of Representatives)

Nari gruh
Women’s home or women’s shelter

Rajya Sabha
States’, or upper, house of parliament (similar to the Australian Senate)

Sati
The practice where a widowed woman commits suicide by throwing herself on her husband’s funeral pyre

Scheduled Caste
Constitutionally designated castes who have suffered historical disadvantage

Scheduled Tribe
Constitutionally designated tribes who have suffered historical disadvantage

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 56 of 21 June 2013 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 processes, 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 is based on DFAT’s on-the-ground knowledge and discussions with a range of sources in India. It takes into account relevant information from government and non-government sources, including but not limited to those produced by the International Committee of the Red Cross, International Organisation for Migration, the United Nations, US State Department, UK Home Office, the World Bank, international think tanks and non-government organisations, and reputable media organisations. 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 15 July 2015 and the DFAT Thematic Report on Punjab published on 7 December 2016.
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 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 north-eastern 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 increased since 2016 following an increase in attacks and civil unrest in the Indian state of Jammu and Kashmir.

DEMOGRAPHY

2.4 India has conducted a comprehensive census every ten years since 1951. India’s population was approximately 1.21 billion with an average annual population growth rate of 1.64 per cent between 2001 and 2011. Population densities were highest along India’s south-eastern and south-western coastlines and the Indus-Gangetic plain south of the Himalayas.

2.5 India is a diverse, multi-ethnic and multi-lingual society with 22 languages recognised 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. According to the 2001 census, a total of 122 languages and 234 ‘mother tongues’ with over 10,000 speakers were spoken in India. 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.

2.6 The 2011 census stated that 79.8 per cent of the population identified as Hindu, 14.2 per cent Muslim, 2.3 per cent Christian, 1.7 per cent Sikh, and less than one per cent each identified as Buddhist, Jain
or others. 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 south-west coast of India) and the disputed far northern border state of Jammu and Kashmir (particularly in the Kashmir valley); Christians are a majority in the three north-east states of Nagaland, Mizoram and Meghalaya; and Sikhs are a majority in Punjab.

2.7 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, castes have 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’ (mostly Dalits), ‘Scheduled Tribes’ (tribal and indigenous groups), and ‘Other Backward Classes’ (see Caste System).

Refugees in India

2.8 Approximately 210,000 refugees and asylum seekers of various origins reside in India, according to the 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, Myanmar, China (stateless Tibetans), Sri Lanka and Nepal (see Race/Nationality).

2.9 An estimated 110,000 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 self-proclaimed Tibetan government in exile. Refugee concerns are managed by the Central Tibetan Administration, an organisation in India that claims to be a government-in-exile.

2.10 Thousands of Sri Lankan Tamils fled to the state of Tamil Nadu during the Sri Lankan civil war. Of a total 300,000 who had travelled to India from Sri Lanka during the conflict, an estimated 100,000 Sri Lankan Tamil refugees remain. Around 65,000 of these live in 100 well-organised camps dispersed throughout Tamil Nadu. They receive monthly cash and in-kind assistance provided by the Indian government and Tamil Nadu government. A further 35,000 refugees, living as ‘non-camp refugees,’ are better integrated into the local economy. Since the end of the Sri Lanka conflict, UNHCR has assisted the repatriation of asylum seekers and their descendants from its office in Chennai. UNHCR facilitated the return of 1,500 Sri Lankans in 2017.

2.11 In 2016, thousands of Rohingya travelled overland from Myanmar to India via Bangladesh. The number of Rohingya in India is not clear. Estimates range from the 14,000 people registered with UNHCR to as many as 40,000 people, an estimate given by government officials.

2.12 A large number of Nepalis live and work in both the formal and informal sectors in India, including a substantial community in New Delhi. It is impossible to calculate overall numbers because of the large and regular movement of Nepalis into India. Nepali citizens in India are not required to register their presence with the government and can enter India without a travel document. Only foreigners (excluding Nepalis) visiting India on long-term visas are required to complete formalities with the Foreigners Regional Registration Office (see DFAT Thematic Report India-Nepal Treaty of Peace and Friendship: Rights of Nepalis in India).
ECONOMIC OVERVIEW

2.13 India’s economy is of global importance. It is one of the world’s fastest-growing large economies, with an annual GDP growth rate of 6.7 per cent in 2017. India’s GDP was USD 2,611 billion in 2017. India’s aspirational, consumer class has expanded in recent decades.

2.14 Growth prospects are underpinned by the government’s economic reform agenda aimed at creating jobs and improving the business environment, including at the state level. In recent years, a greater recognition of the urgency for reforms to lift productivity has led to important policy achievements, including implementation of a national GST in 2017. The government has launched a series of highly visible campaigns against corruption, including a decision to withdraw high-value banknotes from circulation (‘demonetization’).

2.15 India ranked 130 out of 189 in the United Nations Human Development Index 2018 statistical update. An estimated 22 per cent of the population lived below the national poverty line in 2011, according to the World Bank. That rate fell from over 43 per cent less than 20 years earlier. The World Bank classifies India as a lower middle income country.

Health

2.16 India’s health system faces a number of challenges including a diverse health profile, an acute shortage of infrastructure and lack of skilled health sector workers. A large disparity exists between the services and health outcomes of each state and between urban and rural areas. Low public health investment has led to heavy reliance on a weakly regulated private sector. With the majority of health care expenditure in the private sector, a large proportion of the population is vulnerable to poverty in the event of catastrophic illness. Total spending on health was 4.7 per cent of GDP in 2014, about half the total expenditure of Australia, according to the WHO. Government expenditure on health in the same period was just 1.13 per cent of GDP. Nevertheless, according to the World Health Organisation (WHO), India’s health indicators and government per capita spending on health have improved steadily in the past two decades. Life expectancy is 67 for males and 70 for females. According to the United Nations Children’s Fund (UNICEF), the under-five mortality rate is 43 deaths per 1,000 live births.

2.17 Since 2017, the Indian government has turned its attention to increasing health spending, improving the availability and efficiency of services and allowing individual states (which are responsible for health care delivery) more autonomy to implement health programs. In its new National Health Policy 2017, the government set a goal of increasing public health spending to 2.5 per cent by 2025. More recently, the government launched a revamped national insurance scheme, Ayushman Bharat, and a program to improve the primary health care system, as part of a commitment to move India towards universal health care. The scheme incorporates state-run schemes and an existing national scheme, and aims to provide coverage of up to USD 10,000 for over 100 million lower income families.

Mental Health

2.18 Access to mental health care is difficult and patients are subject to stigma and discrimination. Recently, the government has begun to take positive steps to address this issue. Parliament passed the Mental Health Care Act (2017), and it came into effect on 7 July 2017. This Act rescinds the previous Mental Healthcare Act (1987), which had been widely criticized for not recognizing patient rights. The new Act defines mental illness as ‘a substantial disorder of thinking, mood, perception, orientation, or memory that grossly impairs judgment or ability to meet the ordinary demands of life, mental conditions associated with
the abuse of alcohol and drugs.’ The Act also repealed section 309 of the Penal Code (1860), which criminalised attempted suicide by a mentally ill person.

2.19 Access to mental health care is not uniform across the country, with availability significantly more limited in rural areas compared to urban cities and large towns. This reflects the situation for access to general health care. In practice, mental health programs suffer from severe constraints in technical, human and material resources, and remain a low priority on the public health agenda.

2.20 According to the National Mental Health Survey, conducted by the National Institute of Mental Health and Neuro Sciences in 2015-16, many drugs identified as critical in mental health care were not continuously available at most of the facilities surveyed in 12 districts.

**Education**

2.21 Children aged 6 to 14 are entitled to free and compulsory education under the Constitution. According to an ASER 2017 report, the student enrolment rate at primary level is 96.9 per cent. Literacy rates are improving and according to India’s most recent (2011) census, were approximately 74 per cent, compared with 65 per cent in the 2001 census.

2.22 Education performance is uneven between the Indian states as educational outcomes correlate with economic performance: according to UNICEF in 2017, the southern state Kerala, one of India’s wealthiest states, reported a literacy rate of 93.91 per cent, while the poorer state of Bihar reported a rate of 63.82 per cent. The standard of teaching and the quality of teachers varies between states, and the World Bank reports significant rates of teacher absenteeism.

2.23 Gender, caste and socio-economic outcomes are also uneven: the literacy rate of boys and men is higher than girls and women, at 82.14 per cent and 65.46 per cent respectively. Girls from scheduled castes and tribes have especially poor school attendance. The states of Uttar Pradesh, Bihar, Manipur, West Bengal, and Madhya Pradesh reported female student attendance rates of between 50 and 60 per cent.

**Employment**

2.24 According to the International Labour Organisation, approximately 66 per cent of the population is of legal working age (15 to 64 years). The labour force participation rate was 53.8 per cent as at 2017. The participation rate for men is more than 50 percentage points higher than for women, whose participation rate is approximately 27 per cent and falling. The total unemployment rate is 3.4 per cent, and the youth unemployment rate is 9.5 per cent for men and women. Much of India’s labour market is not organised and these figures may not accurately reflect the rates of unemployment.

2.25 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.

**POLITICAL SYSTEM**

2.26 The Republic of India is a federal constitutional democracy, made up of 29 states and seven union territories, controlled by the central government. The Constitution divides powers between the central government (also known as ‘the Centre’ or ‘union government’), and the states, with some areas of shared
responsibility. The President of India has formal executive power over the central government but acts on the advice of ministers.

2.27 The national parliament is bicameral, comprising the Lok Sabha (people’s or lower house) and Rajya Sabha (states’ or upper house). The Lok Sabha consists of 543 elected members and two presidential appointees to represent the Anglo-Indian community. Lok Sabha members are elected by universal adult suffrage every five years using the ‘first past the post’ voting system. The current Rajya Sabha consists of 233 elected members, and twelve presidential nominees. One-third of Rajya Sabha members are elected every two years by the legislative assemblies of the Indian states.

2.28 According to the Election Commission of India, India has more than 2,000 registered political 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 that broad coalitions are often required to form governments at the federal level.

2.29 For much of the post-independence era, Indian politics has been dominated by the Indian National Congress Party (Congress). However, the Bharatiya Janata Party (BJP) won 282 seats out of 543 elected seats in the 2014 general election, the first time that a single party obtained a parliamentary majority since 1984. The BJP formed government along with its National Democratic Alliance (NDA) partners, who won a further 54 seats. Prime Minister Narendra Modi and his cabinet were sworn in on 26 May 2014. The next general election is due by May 2019.

HUMAN RIGHTS FRAMEWORK

2.30 India is a state party to the following international human rights instruments: the International Covenant on Civil and Political Rights; the Convention on the Elimination of All Forms of Discrimination Against Women; the International Covenant on the Elimination of All Forms of Racial Discrimination; the International Covenant on Economic, Social and Cultural Rights; the Convention on the Rights of the Child and the Convention on the Rights of Persons with Disabilities. India has signed, but not ratified, the Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment and the Convention for the Protection of All Persons from Enforced Disappearance.

2.31 Section 15 of the Constitution protects citizens from state discrimination on the basis of religion, race, castes, 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, the US State Department reports that discrimination on the basis of sex and gender, religious affiliation, castes, refugee status, and tribe continues to occur (see relevant sections).

2.32 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 LGBTI).

National Human Rights Institutions

2.33 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 some NHRC committees. The NHRC is accredited by the United Nations-affiliated Global Alliance of National Human Rights Institutions as ‘fully compliant’ with the Paris Principles for national human rights bodies.

2.34 The NHRC receives around 100,000 complaints per year. In early 2018, it had over 24,000 matters under consideration. Critics claim the NHRC does not investigate every complaint, and that it suffers from a lack of investigative capacity. The NHRC relies on information provided by India’s states, which withhold it in some cases.

2.35 The NHRC does not have the power to investigate acts committed by the military and paramilitary forces. However the NHRC does investigate and report on extra-judicial killings (see Extra-Judicial Killings).

SECURITY SITUATION

2.36 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 common. Drivers of civil unrest are complex and varied and may include: tensions between different religious, social and ethnic communities (see Religion and Caste System); insurgencies or protests motivated by ideological or political objectives; tensions along the Line of Control (LoC) in Jammu and Kashmir (J&K); and tensions within communities over issues such as land ownership and marriage-related disputes.

2.37 Crime rates across India vary. A total of 4,831,515 cognisable crimes were reported in 2016, according to government statistics. This represented a rise of 2.6 per cent over the previous year. Crime rates are significantly higher in large cities. Most Indians live their lives with a relatively low risk of criminal violence, although violence against women occurs (see Women).

2.38 Misinformation spread on social media occasionally leads to violence. Rumours spread using social media platforms including Twitter and WhatsApp 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.

Jammu and Kashmir

2.39 According to the South Asia Terrorist Portal (SATP), at least 17 active and 18 inactive terrorist or extremist groups exist in Jammu and Kashmir (J&K). Some militant outfits are based in Pakistan or receive support from Pakistan-based groups and engage in organised crime. The most active groups as in 2018 include Lashkar-e-Taiba (LeT), Hizb-ul-Mujahideen (HM), Jaish-e-Mohammed (JeM), Hiz-ul-Mujahideen (HuM), Harkat-ul-Jehad-i-Islami (HJI), and Lashkar-e-Omar (LeO). Reports indicate that some groups may have ties with Al Qaeda in the Indian subcontinent or the Pakistani and Afghan Taliban movements. 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.

2.40 Violence and civil unrest has escalated since 2016 following an increase in cross-border firing, militant attacks and political protests. The Pakistan government publicly accused Indian forces of violating the 2003 ceasefire agreement more than a thousand times during 2017, killing 28 civilians and injuring 117. Conversely, the Indian government accused Pakistan of violating the ceasefire more than 800 times, resulting in the deaths of 25 civilians and 18 Indian troops.
North-east Separatism

2.41 Militancy in India’s north-east region has a long history. However, violence has declined significantly according to the SATP. There are reportedly over 50 different outfits in the seven north-eastern 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 sixteen autonomous administrative divisions to ease tensions in Assam, Meghalaya, Mizoram, and Tripura. The Naga Framework Agreement, signed between the Indian government and some Naga militant groups in 2015, established a ceasefire to facilitate peace negotiations, which continue. Some militant movements persist in areas of Assam, Meghalaya, Manipur and Nagaland.

2.42 Ethnic militancy in the north-east also targets Bengali Muslim immigrants. Sources report that indigenous groups are concerned that their identity, land, and livelihoods are threatened by the influx of migrants. Some arrived during the Bangladesh war of independence in 1971 and others more recently. In July 2018, a new national register of citizens was released, which aimed to identify ‘illegal’ residents of Assam, allegedly migrants from Bangladesh. Four million people were excluded from the list causing widespread anxiety amongst non-Assamese residents of Assam.

Naxal Movement (Maoists)

2.43 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 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. In 2017, Chhattisgarh, Jharkhand, Odisha and Bihar had the highest numbers of Naxal-related fatalities, and the movement also operated in Telagana, Ahdra Pradesh, Maharashtra, Kerala, Uttar Pradesh, Madhya Pradesh and West Bengal. Sources agree that Naxal does not represent a political force that effectively challenges the Indian state and note a declining influence over the last decade.

2.44 Forced recruitment and village-level intimidation campaigns do occur, but the success rate is reportedly low. Insurgent groups ask each family in a village for 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. Local sources say an established system exists whereby a cadre can ask to leave and have the request granted. However, reports of Naxalite recruitment of children in Chhattisgarh and Jharkhand continue to emerge. The Indian government has a reintegration program for Naxal fighters who lay down their arms and surrenders are common.
3. REFUGEE CONVENTION CLAIMS

RACE/NATIONALITY

3.1 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.

3.2 Ethnicity and language are defining features in India and have been the most important factors for the creation of new states. For example, the States Reorganisation Act (1956) created several new states, including Telugu-speaking Andhra Pradesh and Malayalam-speaking Kerala. The former state of Punjab was divided in 1966 into the Punjabi-speaking state of Punjab and the Hindi-speaking state of Haryana, with the two new states sharing a centrally-administered capital, Chandigarh. In 2014, the state of Telangana was formed out of the state of Andhra Pradesh.

3.3 DFAT assesses that India has effective constitutional protections against official discrimination on the basis of ethnicity and language. For information on scheduled castes and scheduled tribes see Caste System.

RELIGION

3.4 Section 15 of the Constitution prohibits discrimination against any citizen on the grounds of religion. Section 25 guarantees the right to freely profess, practise and propagate religion, and section 26 guarantees every religious denomination or any sect the freedom to manage its own religious affairs. Federal 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.

3.5 According to the 2011 census, 79.8 per cent of Indians are Hindu, 14.2 per cent are Muslim, 2.3 per cent are Christian and 1.7 per cent are Sikh. Two per cent of Indians adhere to another religion including Buddhists, Jains, Zoroastrians, Jews, Baha’i and tribal religions.

3.6 Anti-conversion laws exist in Arunachal Pradesh, Chhattisgarh, Gujarat, Himachal Pradesh, Jharkhand, Madhya Pradesh, Odisha, Rajasthan and Uttarakhand. Six of these states enforce the laws; there is no implementing legislation for the anti-conversion law in Arunachal Pradesh, Rajasthan and Jharkhand. The laws prohibit conversion based on force, allurement, inducement or fraud, but sources report that there are instances where the laws have applied to Muslims and Christians engaged in proselytization.

Muslims

3.7 Muslims comprise 14.2 per cent of the population and India has the third highest Muslim population in the world. Most Muslims in India live in communities where they constitute a minority, generally alongside a Hindu majority. Large minority Muslim communities live in the states of Uttar Pradesh,
Bihar, Maharashtra, West Bengal, Telangana, Karnataka and Kerala, according to government sources. Muslims comprise 68.3 per cent of the population in the small Union Territory of Lakshadweep and in Jammu and Kashmir. Approximately 85 per cent of Muslims are Sunni and the majority of the rest are Shi’ia.

3.8 Since independence, instances of communal tension involving Muslims have occasionally led to riots. Recent large-scale riots occurred in West Bengal in July 2017. Particularly violent unrest occurred in Muzaffarnagar in Uttar Pradesh in August and September 2013, in which 60 people were killed and 90 people were injured. The violence displaced over 50,000 people. Serious riots previously occurred in the western state of Gujarat during 2002 following a fire on a train, which local Muslims were accused of starting, and which caused the deaths of Hindu pilgrims. This incident led to a week of violence in various locations across Gujarat. A government report in 2005 stated that 790 Muslims and 254 Hindus were killed in the riots, with 223 more people reported missing and more than 2,500 injured.

3.9 Violent attacks by vigilante cow protection groups, mostly against Muslims and Dalits, occasionally occur. Incidents have involved killings, mob violence, assaults and intimidation. The states affected included Madhya Pradesh, Haryana, Jharkhand, Gujarat and Uttar Pradesh. Vigilante cow protection groups fatally attacked at least 11 Muslim men and injured many others in 2017. Human rights groups criticised Prime Minister Modi and members of the ruling Bharatiya Janata Party (BJP) for failing to condemn such attacks, which critics argued amounted to implicit support. Police have arrested some alleged perpetrators, but no convictions have been reported.

3.10 DFAT assesses that Muslims face a low risk of societal discrimination and violence. Incidents of communal violence in the mid-2000s have not been repeated on a large scale in recent years. Muslims suspected of cow butchery in the states listed above may be targeted, however incidents while widely reported have not affected the day-to-day lives of most Muslims. DFAT assesses that Muslims in other parts of India face a low level of official and societal discrimination.

Christians

3.11 Christians constitute approximately 2.3 per cent of the population. The largest Christian denominations today are Roman Catholics, Syro-Malabar Catholics, Malankara Orthodox Syrians and various Protestant denominations. Christianity is the majority religion in the north-eastern states of Mizoram, Nagaland and Meghalaya, and has a strong presence in the southern states of Goa, Kerala and Tamil Nadu.

3.12 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 prominent officials denigrating Christians, and threats or acts of violence. In July 2017, attackers publicly murdered a Christian pastor in Punjab, allegedly for attempting to convert others.

3.13 Authorities have disbanded or de-registered Christian charities and NGOs as part of a continuing trend limiting NGO activity. One of India’s largest Christian charities, the United States-based Compassion International, shut down after 48 years of operating in India when the government banned foreign donations to the organisation. The government claimed the charity, which operates child sponsorship programmes out of local Indian churches, was using its charity status to convert children to Christianity.

3.14 On 2 August 2017, the Supreme Court asked the Odisha government to reinvestigate 315 cases pertaining to anti-Christian violence in 2008 in Kandhamal District. The 315 cases, from a total of 827 registered cases, had been closed on grounds of insufficient evidence against the accused. Charges were filed in the other 512 cases. Completed trials in 362 cases, resulted in 78 convictions. The Supreme Court also directed the state government to pay compensation for injury and property loss or damage.
3.15 DFAT assesses that most Christians live day-to-day without societal discrimination or violence. Christians engaged in proselytising, or perceived to be proselytising, particularly to Hindus, face a moderate risk of official and societal discrimination, and a moderate risk of societal violence.

Sikhs

3.16 Sikhism is a monotheistic religion founded in the Punjab region (now part of both India and Pakistan) in the 15th century. Sikhs consider themselves disciples of the Ten Gurus, beginning with Guru Nanak (1469-1539) and ending with Gobind Singh (1666-1708). According to the 2011 census, the Sikh population of India was approximately 19 million, 1.7 per cent of the total population at that time. Most Sikhs (75 per cent) live in Punjab, where they comprise around 55 per cent of the population.

3.17 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 an 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.

3.18 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 that followed, 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.

3.19 Sources agree that, since the late 1980s and early 1990s, Sikhs have lived peacefully in India and the majority of Sikhs do not experience societal discrimination or violence. Sikhs who advocate for an independent ‘Khalistan’ may be subject to attention by authorities. DFAT assesses that Sikhs in India generally face a low level of official and societal violence and discrimination.

POLITICAL OPINION (ACTUAL OR IMPUTED)

3.20 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.

3.21 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’.
Opposition Parties and Critics of the Government

3.22 The Constitution protects the right 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.

3.23 There are few publicly available statistics on election incidents. Reports of violence around polling stations do occur during electoral periods.

3.24 During 2017, police filed sedition charges against TTV Dinakaran, the leader of the All India Anna Dravida Munnetra Kazhagam party, and some of his supporters for distributing pamphlets that criticised Prime Minister Modi and the Tamil Nadu Chief Minister.

3.25 DFAT assesses that leaders and members of opposition political parties do not face official or societal discrimination. 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, elections in India are peacefully conducted.

GROUPS OF INTEREST

Human Rights Organisations

3.26 India has a vibrant NGO sector. Some NGOs have been denied permission to accept foreign funding under the Foreign Contribution Regulation Act (2010 – FCRA) in recent years. Some NGOs have had their foreign funding licences cancelled or not renewed or claim that tax investigations or other bureaucratic actions are designed to prevent them from operating. Civil society groups claim this method is used more and more to silence organisations, including Lawyers Collective, an organisation which represents activists in cases against the government.

3.27 DFAT assesses that people working for NGOs do not face discrimination or violence on a day to day basis. Those who operate NGOs critical of the government face a moderate risk of official discrimination.

Media

3.28 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.

3.29 India has a vibrant media sector. Hundreds of television channels and thousands of newspapers operate in a wide range of regional dialects and languages. The opening of the media sector from the 1990s has served as an important check on corruption. However, the quality of media and journalism varies. Credible criticisms include a lack of distinction between journalistic and editorial content, partisanship, and tendencies towards sensationalism and ‘paid news’. India ranked 138 of 180 countries on the Reporters without Borders (RSF) Press Freedom Index for 2018. RSF cited self-censorship in response to threats by Hindu nationalists and a lack of independent reporting on the Kashmiri conflict as reasons for the low score.
3.30 Media content is subject to censorship for obscenity, to discourage the publication of sensitive information, 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’. In November 2016, authorities ordered Hindi-language news channel NDTV India to suspend broadcasting for 24 hours after the Ministry of Information and Broadcasting took issue with the channel’s coverage of a January 2016 attack by militants on an Indian air force base in Pathankot, Punjab.

3.31 Journalists and media staff have been the victims of targeted violence. RSF reported that four journalists had been killed in the first half of 2018, and several murders of journalists were recorded in 2017. Journalists in the Kashmir region are particularly affected by violence. Female journalists have faced online harassment.

3.32 DFAT assesses that journalists who openly criticise government policies face a moderate risk of official discrimination or harassment. Otherwise journalists face a low level of official and societal violence and discrimination, in the context of a vast and active media industry.

Women

3.33 Traditional social practices and the low status of women in many parts of India 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 the bride’s family paying a dowry leads to female infanticide, sex-selective abortions and dowry deaths (women murdered or driven to suicide in the attempt to extort a higher dowry). Over 90 per cent of domestic violence incidents are not reported to any formal agency such as police, social workers or lawyers.

3.34 The gang rape and homicide of a young medical student in December 2012 in New Delhi triggered demonstrations across India. Since then, the issue of violence against women has attracted increased attention among the population. Reports of rape, in Delhi in particular, have sharply increased since 2013, although the conviction rate has declined. In 2015, the Ministry of Home Affairs registered over 34,600 cases of rape and over 4,400 cases of attempted rape. The number of cases that go unreported is likely to be much higher. Some women complain that police refuse to file reports of sexual violence. Marital rape continues to be legal.

3.35 According to Human Rights Watch, many women fail to report violence for fear of retribution. Witness protection programmes are not available to victims outside of the state of Delhi. Women who are victims of assaults by men who are well-connected in politics or who have significant wealth, or in cases where the woman is from a lower socio-economic class or caste, may have particular difficulties in having file or investigate reports of sexual assault (see Police).

3.36 In traditional rural areas, senior community members or village committees have reportedly arranged gang rapes of women as punishment for their families’ perceived misconduct in a number of incidents, according to human rights NGOs. According to the Asia Foundation, almost 400,000 women and girls have been abducted in the past decade. Rates are reportedly much higher in northern states with highly unbalanced child sex ratios, and involve women and girls of low castes, especially Dalits. The offenders (sometimes from higher dominant castes) abduct the women and girls for rape, sexual trafficking and forced marriage. Victims and their families generally remain silent due to shame and fear of reprisal. Sources reported a low incidence of police action in these cases, attributed to police bias towards higher castes and a tendency to dismiss the victims due to their lower caste.

3.37 The Protection of Women from Domestic Violence Act (2005) requires the states to provide shelters, counselling services and legal aid to survivors. Local sources claim that women’s shelters in India are
run very strictly and do not always provide a safe environment. Shelters were first established to ‘protect’ vulnerable women from prostitution and trafficking rackets; therefore, women who attend shelters (nari gruh, meaning women’s homes) are seen as ‘immoral’ or ‘deviants’ who deserve to be punished. The quality of counselling services is poor and not always available. Sources report a shortage of data on the facilities available across states, and on the experiences of women in state and NGO-run shelters.

3.38 Women from higher socio-economic backgrounds, particularly urban women, are more likely to use the courts as a means of redress and protection from violence related to dowries, though social stigma can be a deterrent. Women in smaller, rural communities are deterred from such action due to the cost and social stigma. Women with higher standards of education have a better awareness of available services and are better placed to access these services. If working, these women are also more likely to be employed in the formal sector with higher legal protections.

3.39 Although, in general, urban women from higher class and caste backgrounds tend to have better access to legal protections, these women may be pressured by their families to hide family violence against them for fear of maligning their family’s honour and reputation.

3.40 Other factors which may affect the situation for women experience 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.

3.41 DFAT assesses that women face a low risk of official discrimination. DFAT assesses that women, particularly in rural areas and from lower castes, face a moderate risk of societal discrimination and violence.

Marriage (inter-faith, inter-caste)

3.42 India is officially a secular and multi-ethnic country, and inter-faith and inter-caste marriages are legal. India has no centralised system for marriage registration. Some states require marriages to be registered by law. Couples may seek to marry under one of India’s personal religious laws, which have been codified according to the requirements of different religions. The Special Marriage Act (1954) is an alternative to each of the various religious personal laws. The Act 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.

3.43 Arranged marriages continue to account for the overwhelming majority of marriages across India. Parents or other family members often assume sole responsibility for deciding who their children marry, particularly in northern India. Many parents consider arranging a marriage for their children a right and a duty, and may not accept their son or daughter choosing their own spouse. Women face social pressure to marry by their mid-20s and men by their mid-30s. Around one in 1,000 marriages in India ends in divorce, compared with around one in three in Australia, although rates are increasing.

3.44 Hindu nationalists have increasingly 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. Activists and politicians, have used traditional and social media to propagate this idea, to threaten and warn Muslims away from marriage to Hindu women and to incite Hindu men to violence against Muslim men. DFAT has found no evidence of Muslim men coercing Hindu women into marriage for the purposes of proselytisation.

3.45 According to local sources, violence associated with inter-religious or inter-caste marriage is more prevalent in Haryana, Uttar Pradesh and Rajasthan, especially if a Muslim man is involved or the man is from a lower caste than the woman. That said, sources observed that acceptance of marriages outside of castes or religion, or even of marriage partners not chosen by the family, depended heavily on individual family
beliefs. Some families, particularly in urban areas, are more accepting, whereas others are extremely conservative and do not allow their children to choose spouses.

3.46 DFAT assesses that treatment of people in inter-religious or inter-caste marriages varies according to the families involved. In some cases the families of intending marriage partners may perpetrate violence against them.

**Caste System**

3.47 Hindu tradition divided society into a hierarchy of hereditary groups, associated with particular occupations. Four principal groups exist within the system’s hierarchy: Brahmin priests and teachers, Kshatriya warriors and rulers, Vaishya farmers, traders and merchants and Shudra labourers. There are thousands of subgroups within the four main strata. Caste is predominately a Hindu concept, but has become a cultural phenomenon that exists within other religions and across India’s many social, linguistic and religious communities.

3.48 A group known as ‘Dalits’ (sometimes referred to as ‘Untouchables’) fell outside the four principal groups. 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 in occupations that include scavenging, street cleaning and handling of human or animal waste, corpses or carcasses.

3.49 Violence and discrimination against Dalits continues. Dalits have more limited educational and employment opportunities and face discrimination in health care and access to other essential services. The US State Department reported in 2017 that Dalit women were more likely than other women to suffer, or be threatened with, sexual assault.

3.50 According to the Socio Economic and Caste Census of 2011, Dalits comprised 18.45 per cent of the total population. An estimated 36.75 per cent of households in Punjab are Dalit, with lower numbers in the north-eastern states.

3.51 In recognition of entrenched disadvantage, the Constitution contains several provisions relating to ‘Scheduled Castes’ (mainly Dalits), ‘Scheduled Tribes’ (tribal and indigenous groups) and ‘Other Backward Classes’. Section 17 abolishes the practice of untouchability. Section 15 allows for positive discrimination for the ‘advancement’ of ‘socially and educationally backward classes’. Part XVI governs the reservation of positions for Scheduled Castes, Scheduled Tribes and others. This includes reserved seats in the Lok Sabha, seats in each state’s legislative assembly, government appointments and access to higher education. The government maintains a National Commission for Scheduled Castes.

3.52 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 party and is the second Dalit to hold that position. His main opponent for the position was Meira Kumar, a Dalit from the opposition Indian National Congress Party.

3.53 DFAT assesses that Dalits and other people considered to be of a low caste continue to face a moderate level of official and societal discrimination, including social segregation, exclusion from temples and educational institutions, difficulties in finding employment, and sexual assault in the case of women and girls.
LGBTI

3.54 People who are lesbian, gay, bisexual, transgender or intersex (LGBTI) are often subject to physical and emotional abuse by their families and wider society. In 2018, the New York Times interviewed gay and transgender people across India about their experiences. They reported sexual assault, shunning by parents, social isolation, employment discrimination and vulnerability to police abuse.

3.55 Until a September 2018 Supreme Court judgement, Section 377 of the Penal Code criminalised homosexuality. LGBTI people claimed that, while the law was not regularly enforced, it was used as a way to extract bribes or as a means of extortion. Homosexuality is now legal in India but LGBTI groups say this has not changed societal views on LGBTI people.

3.56 Hijra live within their own communities and may not connect to the rest of the LGBTI community. Many hijra are transgender or intersex, but not all transgender or intersex people are hijra. Hijra tend to be associated with dancing and entertainment, but also sex work. They may face discrimination when seeking access to goods and services, including education, employment and health care but are generally revered by Indian society. A bill to prevent discrimination against transgender and intersex people is currently being considered by the Indian parliament.

3.57 In July 2016, the government abstained on a UN resolution that created a UN expert post to address discrimination against LGBTI persons and voted in favour of amendments to weaken the mandate, saying the Supreme Court was still to decide on the issue of LGBTI rights.

3.58 Local sources say some parents accept their child being gay, as long as they still get married to opposite sex partners. Class also plays an important role: wealthier LGBTI people can live openly in cities and are accepted. For the ordinary person, particularly in rural areas but also in urban areas in many cases, it is difficult to live openly and many face discrimination in accessing housing and employment.

3.59 LGBTI women face problems related both to their sex and their sexuality and gender identity (see Women). Lesbians report feeling unsafe and sometimes being forced to marry men.

3.60 DFAT assesses that people who openly identify as lesbian, gay, bisexual, transgender or intersex face a moderate risk of official and societal discrimination and may face societal violence. The removal of section 377 of the Penal Code, while a victory for gay men in particular, does not necessarily prevent or reduce widely-held anti-gay and anti-LGBTI sentiment.

Children

3.61 Indian law prohibits child abuse, but it does not recognise physical abuse by caregivers, neglect, or psychological abuse as punishable offenses. Teachers often use corporal punishment even though it is banned.

3.62 UNICEF estimates authorities register 58 per cent of births each year. This means that about 10 million births go unregistered each year. States govern the procedures for registration of births. Lack of registration may result in children being unable to access public services or enrol in school. They may experience difficulty in obtaining identification documents later in life. Children, including babies, may need to be registered for aadhaar cards, a form of an identity card, in order to access government food rations or access other government services.

3.63 A 2017 survey conducted by World Vision India found that one in every two children was a victim of child abuse. The survey included 45,844 children between the ages of 12 and 18 across 26 states. DFAT understands that approximately half of child sexual abuse cases involve incest and a high proportion of cases
are not reported to authorities. 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.

3.64 The legal age for marriage is 18 for women and 21 for men. A marriage of parties under that age is voidable and child marriage prevention offices exist in every state to enforce this. Nonetheless, child marriage is common: according to UNICEF, between 2010 and 2017, 27 per cent of children were married by age 18 and 7 per cent were married by age 15. According to the US State Department in 2017, laws against child marriage were applied inconsistently.

People who owe money to loan sharks

3.65 Loan sharks operate in India and various media reports in recent years have highlighted the issue. Victims may be subjected to violence, which may range from harassment to serious violence, including sexual violence. Moneylending practices are particularly prevalent in the rural economy, especially during times of poor harvest. Access to banks and government loans in rural areas may be poor, depending on the area. Poor people and people who lack education are particularly susceptible to the practice.

3.66 Legal protections exist for victims of loan sharks including the federal Usurious Loans Act of India (1918), which applies to the unorganised financial sector. Provisions under section 415 of the Penal Code, which covers cheating and deception, may extend to predatory lending in some cases. Provisions to regulate the practice of money lending can also be found in the Reserve Bank of India Act (1934), the Companies (2013) and the Banking Regulation Act (1949), all at the federal level.

3.67 Laws against predatory lending otherwise vary from state to state. Stronger laws exist, for example, in Kerala, which bans interest rates more than 2 percentage points higher than fixed interest rates from commercial banks, and Tamil Nadu, which bans interest rates above 12 per cent. Even in these states, the practice is reported to continue.

3.68 Promoters often operate chit funds, a popular group savings scheme. These schemes may be run as Ponzi schemes and eventually defraud a large number of small depositors of their life savings. Among such schemes that recently collapsed, the Saradha Group in east India (primarily in West Bengal) had collected around USD 4 billion from over 1.7 million depositors before it collapsed in 2013. In neighbouring Odisha, over 300 small chit fund companies are under investigation.
4. COMPLEMENTARY PROTECTION CLAIMS

ARBITRARY DEPRIVATION OF LIFE

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

Extra-Judicial Killings

4.2 ‘Encounter killings’ or ‘fake encounters’ are terms used to describe a situation whereby police or security forces kill a suspect in an encounter and then claim self-defence or another explanation. Such killings have occurred in both rural and urban areas. According to government figures, 108 such deaths occurred in 2017. State governments may investigate and have compensated victims’ families. The true extent of such behaviour is difficult to gauge. 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.

4.3 Encounter killings are most frequent in areas with active conflicts, such as Naxalite-affected states, Jammu and Kashmir, and north-east India, but can occur elsewhere. The Uttar Pradesh Chief Minister told the state parliament in February 2018 that ‘encounter killings would not stop’ and criticised ‘people … showing sympathy for criminals’.

4.4 According to the 2017 US State Department report, on 6 June 2017, police killed six individuals during a protest in Madhya Pradesh. The Madhya Pradesh government reportedly appointed a commissioner to investigate police action and paid INR 10 million (AUD 200,000) to each victim’s family. The investigation was still continuing in June 2018. Opposition politicians in the state of Tamil Nadu accused police of killing a large number of protesters against a mine development in May 2018.

4.5 The Armed Forces Special Powers Act (1958) remains in effect in Nagaland, Manipur, Assam, and parts of Mizoram. Another version of the law operates in Jammu and Kashmir, 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.

Enforced or Involuntary Disappearances

4.6 The US State Department reported in 2018 allegations of hundreds of unresolved disappearances resulting from police failing to file arrest reports for detained persons. Police and government officials deny these allegations. The US State Department further reports allegations that prison guards have demanded bribes from families to confirm the detention of their relatives.
Deaths in Custody

4.7 The NCRB reported 92 deaths in custody nationwide in 2016 with Maharashtra reporting the highest number of cases at 16. Madhya Pradesh and Gujarat reported 11 cases and Uttar Pradesh nine cases. The NHRC, in response to a ‘right to information’ request, stated that 74 persons died in police custody from 1 January to 2 August 2017. Official data responding to another ‘right to information’ request recorded 968 deaths in judicial or police custody between 1 January and early August 2017. Human Rights Watch claimed 591 people died in police custody between 2010 and 2015.

4.8 Indian law requires all deaths in custody to be investigated by a magistrate not associated with the accused police station or agency. International human rights organisations claim that the law is not consistently applied: deaths may not be reported to the NHRC and police may pressure families not to pursue the matter. Actual numbers of deaths in police custody may be higher than official figures.

DEATH PENALTY

4.9 India retains the death penalty for several crimes including aggravated murder, certain other offences resulting in death, terrorism offences, treason, espionage and certain military offences not resulting in death. Changes to the Penal Code in 2013 extended the death penalty to include certain instances of rape. The government introduced the death penalty for rape of girls under 12 years in 2018. Amnesty International identified over 371 people on death row at the end of 2017, with 136 new death sentences handed down in 2016 and 109 in 2017.

4.10 NCRB data shows an average of 132 death sentences handed down each year between 2001 and 2011, although the Supreme Court confirms only a few each year. Since 2007, only three people have been executed. The last person to be executed was Yakub Memon, in July 2015 for his role in a series of terrorist attacks in Mumbai in 1993. The method of execution for civilian crimes is hanging. Military executions may be carried out by firing squad.

TORTURE

4.11 India has signed but not ratified the UN Convention Against Torture and Other Cruel, Inhuman and Degrading Treatment or Punishment (CAT). Parliament considered but did not enact a Prevention of Torture Bill in 2010. Despite the absence of specific legislation preventing torture, sections of the Penal Code stipulate penalties of up to seven years’ imprisonment and a fine for ‘voluntarily causing hurt to extort confession’. India’s Law Commission released a report in October 2017 recommending the government ratify the CAT and enact a law criminalising torture. Section 24 of the Indian Evidence Act (1872) makes confessions obtained by inducements, threats or promises inadmissible in criminal cases.

4.12 No reliable statistics report the incidence of torture in India. Non-government organisations have, however, documented a significant volume of individual testimony claiming torture by central and state police, paramilitary and military forces. Rights organisations claim that prison staff commonly abuse detainees, particularly minorities and members of the lower castes.
CRUEL, INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

Arbitrary Arrest and Detention

4.13 Section 21 of the Constitution guarantees that ‘no person shall be deprived of his life and personal liberty except according to procedure established by law’. Section 22 sets out a number of standards, including the right of a detainee to be informed of the grounds for arrest, and the right to be defended by a legal practitioner of their choice. Police must present detainees before a magistrate within 24 hours. However, other laws, including state laws, may allow longer periods of detention, including ‘preventative detention’.

4.14 The National Security Act (1980) 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. ‘Preventive detention’ orders can be maintained for up to 12 months. The Jammu and Kashmir Public Safety Act (1978) has been used in Jammu and Kashmir to hold suspects ‘acting in any manner prejudicial to the security of the State’ for up to two years in administrative detention.
5. **OTHER CONSIDERATIONS**

**STATE PROTECTION**

5.1 Under the Constitution, the states and union territories have primary responsibility for maintaining law and order. The Constitution also empowers the central government to intervene in some situations and perform some functions in police matters. The Ministry of Home Affairs is responsible for the internal security of the country as a whole. It oversees the recruitment and management of the national Indian Police Service and Central Police Organisations, coordinates the activities of various state police organisations, and provides financial assistance to state police forces.

**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. In addition, the Indian Armed Forces are supported by two paramilitary organisations, the Assam Rifles and the Special Frontier Force, and various inter-service institutions, such as the Strategic Forces Command. The Ministry of Defence oversees the Indian Armed Forces, and their supreme commander is the President of India. The Indian Armed Forces are well regarded by the Indian population.

**Police**

5.3 Each state and union territory maintains a separate police force. NCRB data records a total of 1.7 million officers of all ranks across India in 2013. The central government recruits and manages the Indian Police Service, which posts officers to senior positions within state police forces. The central government oversees national armed police organisations: the Assam Rifles, the Border Security Force, the Central Industrial Security Force, the Central Reserve Police Force, the Indo-Tibetan Border Police and the National Security Guards. It is also responsible for the Bureau of Police Research and Development, the Central Bureau of Investigation (corruption investigation agency that reports directly to the prime minister), the Directorate of Coordination of Police Wireless, the Intelligence Bureau, the National Crime Records Bureau, the National Institute of Criminology and Forensic Science, and the National Police Academy.

5.4 The processes of recruitment, transfer, promotion and dismissal of police officers are opaque. Police resources, training and staffing are limited in some areas. There are media and civil society allegations that senior officials or political figures shape the conduct of investigations. Some victims of crime allege that people other than political figures or senior officials sometimes also attempt to interfere with police investigations.

5.5 Registration, investigation and prosecution of cases may be affected by bias in relation to the class, caste, ethnicity and religion of a victim or offender. Ethnic and religious minorities complain that police lack sensitivity, suspicions about which sometimes lead to communal violence. Local sources report that police,
along with other agencies including the courts, public servants, judiciary and prosecutors, have an inherent bias when dealing with Dalit victims of crime in particular.

Judiciary

5.6 The Indian judiciary is independent of the executive branch. Some international rights organisations claim that corruption is prevalent, particularly at lower levels of the judiciary. Large backlogs of cases means that most citizens have great difficulty securing justice through the courts. In 2017, the government created a search and evaluation committee to support the appointment of judges.

5.7 The high courts in 2017 had over four million cases pending, with 25 million cases awaiting trial in subordinate courts. The Supreme Court has over 60,000 cases pending. Backlogs lead to lengthy pre-trial detention periods for a large number of suspects, in some cases significantly longer than any prison term their alleged offence would attract. Over two thirds of detainees in the criminal justice system are awaiting trial, and prisons are overcrowded.

5.8 Section 39A of the Constitution mandates that equal justice and free legal aid are rights of every Indian citizen. In practice, defendants are assigned state-appointed lawyers. The quality and consistency of representation by state lawyers varies. The standard of defence from a state-appointed lawyer would not compare to a highly-paid private lawyer.

5.9 In April 2017, the Ministry of Law and Justice launched an alternative to improve legal assistance for disadvantaged citizens. This included expanding pro-bono legal services to improve access to higher quality legal advice. The ministry partnered with the Ministry of Electronics and Information Technology to launch a pilot of ‘tele-law’ services, which provide legal services through common service centres in remote rural areas.

Detention and Prison

5.10 Under the Constitution, the states and territories administer prisons, which are governed by the federal Prisons Act (1894). The US State Department reports that prison conditions in India do not meet international standards due to a lack of resources, overcrowding and poor sanitary conditions, which, in some cases, are life threatening. Minorities, including Muslims and members of Scheduled Castes and Scheduled Tribes, tend to be over-represented among convicted prisoners.

5.11 The NHRC has powers to visit any institution ‘under the control of the government, where persons are detained or lodged for purposes of treatment, reformation or protection, for the study of the living conditions of the inmates and make recommendations’.

Trafficking in Persons

5.12 Trafficking in persons occurs into, out of, and within India. People trafficking for migration purposes is particularly associated with the states of Punjab and Haryana. 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.
5.13 The government has implemented some protection measures for victims of people trafficking. A victims’ compensation scheme exists for various crimes, including people trafficking. The government has also cooperated with foreign governments in investigations and prosecutions. The US State Department reports that numbers of prosecutions have increased over several years. According to government statistics, police identified 22,955 victims in 2016, compared with 8,281 victims in 2015. Of these, 11,212 were engaged in forced labour and 7,570 in sex trafficking. The US State Department 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 minimum standards according to US domestic law on protection of trafficking victims, but is making significant efforts to raise those standards. A new bill to prevent trafficking is currently being considered by the Indian parliament.

INTERNAL RELOCATION

5.14 Sections 19(1)(d) and (e) of the Constitution guarantee citizens the right to move freely throughout the territory of India and the right to reside and settle in any part of the territory of India, subject to reasonable restrictions in the interests of the sovereignty and integrity of India and the security of the state. The interpretation of ‘reasonable restrictions’ is left to the government and courts. It enables laws and regulations that can restrict movement (for example, where there is unrest or in some border areas) and residence (non-residents cannot buy land in Jammu and Kashmir or in Uttarakhand).

5.15 India’s internal migration flows are substantial. Migration data from the 2011 census has been collected, but not yet released. The 2001 census recorded an estimated 307 million internal migrants in India, defining as a migrant anyone who lived in a place different to their place of birth or place of last residence. This figure represents approximately 30 per cent of India’s total population. The numbers may include people who had moved over very short distances within the same district, and may have missed a significant number of seasonal migrants, many of whom work in the informal sector without papers.

Limits to internal relocation

5.16 Several factors may limit options for internal relocation. These include language barriers, a lack of documentation, lack of familial or community networks, lack of financial resources and employment opportunities, and discrimination based on ethnicity, religion, caste or gender.

5.17 India is a multi-lingual and multi-ethnic nation. Language barriers prevent internal migrants from obtaining access to health or educational opportunities. Bilingual or multilingual internal migrants have better opportunities for internal relocation.

5.18 A lack of identity documents and proof of local residence can restrict internal migrants’ access to public services and social security programs or even banking facilities. As a result, they often face barriers in obtaining subsidised food, housing and banking services until they can establish identity and local residence. Ethnic, religious or caste identity may lead to anti-migrant sentiment and limit options for internal relocation. Requirements to provide details of a husband’s or father’s name can exclude single women, women with children and domestic violence survivors from government services and accommodation.

5.19 DFAT assesses that individuals seeking protection from discrimination or violence have a wide range of viable internal relocation options, although these may be more limited for some individuals depending on their personal circumstances.
TREATMENT OF RETURNEES

5.20 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 police to check the whereabouts of inhabitants in their own state, let alone in other states or union territories. The Department of Home Affairs is required to notify Indian authorities prior to the arrivals of removals from Australia but does not track returnees after their arrival in India. A February 2015 report by the UK Home Office considered it unlikely the police, or any person or body would be able to locate a person who had fled to another state or territory.

Exit and Entry Procedures

5.21 Returnees to India use either an existing passport, a newly issued passport, or an emergency certificate, issued through an Indian diplomatic mission. Documents are signed on the basis of a confirmed identity. In most cases, this is a straightforward process, but significant delays have been reported where the identity of the client could not be confirmed to the satisfaction of the passport officer in the Indian mission. The Indian Ministry of External Affairs has confirmed that identities are referred to the police authorities in the location of claimed origin of the returnee. This process is not always reliable, and significant delays have occurred in isolated cases.

DOCUMENTATION

Birth Certificates

5.22 Birth certificates are issued inconsistently across India, with considerable variations between and within states. DFAT understands that, in some cases, refugees in India born in Tibet have been issued with Indian birth certificates on arrival in India. Successive governments have tightened citizenship laws. People born in India between January 1950 and July 1987 were automatically granted citizenship, whereas those born between July 1987 and December 2004 were granted citizenship if one of their parents was also an Indian citizen at the time of their birth. Those born after December 2004 were granted citizenship if both their parents were citizens, or if one parent was a citizen and the other was not an illegal migrant at the time of birth.

Unique Identification Numbers (UID) / Aadhaar

5.23 In 2009, the central government established a Unique Identification Authority to issue 12 digit ‘Aadhaar’ or individual identification numbers, designed to establish a unique identity on the basis of demographic and biometric information. The MEA has stated that future passports will require Aadhaar registration. Aadhaar is regulated by the Aadhaar (Targeted Delivery of Financial and Other Subsidies, Benefits and Services) Act, 2016, and applies in all states except in the state of Jammu and Kashmir (due to constitutional provisions).

5.24 In 2016, the private Unique Identification Authority consortium became a statutory body under the Ministry of Electronics and Information Technology and re-named the Unique Identification Authority of India (UIDAI). The Aadhaar scheme is voluntary; the Supreme Court ruled in September 2018 that it could not be mandatory for accessing school enrolment or for mobile phone subscriptions. As at July 2017, UIDAI
has collected biometric data for over 1.2 billion people. The majority of registrations are for Indian nationals, however all persons residing in India for more than 182 days are entitled to obtain an Aadhaar number. The Aadhaar card or number is not conclusive evidence of a person’s identity as it can be issued without the person providing base documents to support their identity, and the biometrics collected are not verified with any other records before issuing the card. A recent court judgement found that possessing an Aadhaar was not mandatory for access to bank accounts, mobile phone connections or school admissions.

5.25 The UIDAI reported in September 2017 that it had blacklisted over 49,000 Aadhaar enrolment centre operators for charging individuals for services.

Permanent Account Numbers

5.26 The Income Tax Department issues permanent account numbers (PANs) to taxpayers and business owners. The PAN is a unique ten-digit alphanumeric number, issued in the form of a laminated card. Although PANs are not universal, they are required to conduct certain kinds of transactions, including the purchase and sale of immovable property, motor vehicles and shares exceeding INR 50,000 (around AUD 1,000). They are also required to open new bank accounts, establish fixed deposits of more than INR 50,000 and obtain telephone connections.

Passports

5.27 The central government recognises the passport as its primary identity document. The MEA is responsible for issuing passports in India and at diplomatic and consular missions abroad. Current requirements for an adult passport are: proof of date of birth, such as a birth certificate; proof of identity with photograph; proof of residence; and proof of nationality (verified by the MEA). All new passports issued in India are machine-readable. The MEA phased out handwritten passports in 2015, in accordance with an International Civil Aviation Organization deadline. Indian citizens without a valid passport may be eligible for an emergency certificate, which enables one-way travel to India. Indian diplomatic and consular missions abroad can issue emergency certificates.

PREVALENCE OF FRAUD

5.28 Forgery, making false documents and using false documents are offences under sections 463-489 of the Penal Code. Several sources claim the manufacture and use of fraudulent documents is prevalent in India, including for immigration purposes. Documents vulnerable to forgery include civil registry documents, curricula vitae, letters of employment, financial documents, educational qualifications, newspaper articles, political party registration, and websites created specifically to validate other documents. Although all documents are vulnerable to fraud, some are more difficult to forge. Passports are relatively more difficult to forge than other types of identity documents, but genuine passports may be obtained relatively easily using fraudulent information. In May 2013, the MEA revoked the passports of 127 Sri Lankan nationals residing in Tamil Nadu on the grounds they were issued on the basis of false supporting documents.

5.29 Document fraud is a common criminal activity. Organised networks of agents are known to provide complete packages of fake documents. These agents, and others, charge significant fees for the provision of fraudulent documents. The procurement of fake documents is often facilitated with financial loans from loan sharks. The threats associated with the non-payment of a loan fee has been a factor in people applying to remain in Australia after their visa has expired.