

India

The new coalition government led by the Congress party, which replaced the Hindu nationalist Bharatiya Janta Party (BJP) after elections in May 2004, has taken some important positive steps with regard to respect for human rights. These include repeal of the oft-abused Prevention of Terrorism Act (POTA) and a re-evaluation of federal government educational policies that have fostered communitarian resentments.

Attacks on civilians by militant groups and Indian security forces continued unabated before and after the change in government. Notwithstanding the repeal of POTA, the government continues to use other legislation to shield security forces from accountability. Indian military, paramilitary, and police forces have engaged in serious human rights abuses not just in conflict-zones such as Kashmir, but also when dealing with criminal suspects and detainees.

The Gujarat government's failure to bring to justice those responsible for massive communitarian riots in the state, in which thousands of Muslims were killed and left homeless, continues to be a source of tension throughout the entire country. However, the Supreme Court and the National Human Rights Commission have taken several positive steps to secure justice for the victims of the riots. The new government of Manmohan Singh also has to contend with the Indian government's systematic failure to protect the rights of Dalits, other marginalized castes and religious minorities. The Congress Party itself has failed to provide any justice to the victims of serious abuses against the Sikh community in Delhi and Punjab twenty years ago.

India faces a burgeoning HIV/AIDS problem, as people with HIV and their families face government and social discrimination.

Rights of Dalits and Indigenous Tribal Groups

Despite legislative measures to protect marginalized groups, discrimination based on caste, social, or religious grounds continues widely in practice. Local police often fail to implement the special laws set up to protect Dalits and members of tribal groups.

Dalits, or so-called untouchables, continue to face violence and discrimination in nearly every sphere of their lives. Abuses against Dalits range from harassment and use of excessive force by security forces in routine matters, to mutilations and killings by members of other castes for attempting to cross caste barriers. Dalit women are targeted with sexual violence. Not only do authorities regularly tolerate such discrimination and violence, in some instances they actively encourage it. In one widely noted incident in

July 2004, for example, police used excessive force against Dalits who tried to participate in a religious festival in Tamil Nadu.

Indigenous peoples, or Adivasis, have suffered from high rates of displacement. Scheduled Tribes that make up 8 percent of the total population constitute 55 percent of displaced people. This has had a serious effect on the overall development of these communities, particularly tribal children. The government continues to use the Land Acquisition Act of 1894 to displace the indigenous peoples from their lands without sufficient compensation, as is evident in the Narmada Valley Development Project. Tribal groups who have converted to Christianity have been targeted for attack by extremist Hindu organizations.

Impunity of Security Forces

Indian security forces, including the military, paramilitary forces, and the police, routinely abuse human rights with impunity. The Indian federal government rarely prosecutes army and paramilitary troops in a credible and transparent manner. The result has been an increase in serious violations by security forces throughout the country.

The government's repeal of the controversial Prevention of Terrorism Act (POTA) was a major step forward for civil liberties in India. POTA empowered security forces to hold individuals for up to 180 days without filing charges, broadening the scope of the death penalty, dispensing with the presumption of innocence by placing the burden of proof on suspects, and admitting confessions into evidence despite the frequent use of torture. The law was often used against marginalized communities such as Dalits, indigenous groups, Muslims, and the political opposition.

But POTA's repeal has not ended the legal impunity that security agencies enjoy. Laws such as the National Security Act, the Disturbed Areas Act, the Armed Forces Special Powers Act or the Armed Forces (Jammu and Kashmir) Special Powers Act have spawned abuses in various parts of the country, including many deaths in custody and widespread allegations of torture. These laws give security agencies unchecked powers of detention that often foster torture during interrogation.

For instance in Kashmir and Manipur states, the sites of long-standing insurgencies, Indian military and paramilitary forces have held suspects in army camps and barracks and have routinely tortured them, in violation of domestic and international laws.

In July 2004, Manipur state witnessed unprecedented civilian protests against the Armed Forces Special Powers Act after army troops sexually assaulted and killed a woman in custody. That Act provides security forces virtual immunity for crimes committed in the course of duty. The new government recently agreed to review the act.

Other laws such as the Public Safety Act and section 197 of the Criminal Code of Procedure also raise human rights concerns. Section 197 extends immunity to public servants by requiring government authorization to initiate the prosecution of public servants for crimes that result from the discharge of their official functions. In effect, it allows the government to shield security forces from any legal accountability.

In Kashmir, military, paramilitary, and police forces continue their practice of torturing detainees and custodial killings. There has also been a nationwide rise in allegations of extrajudicial executions by security forces, who typically justify their actions by claiming to have killed suspects in an exchange of gunfire.

Kashmir Conflict

Since November 2003, a cease-fire along the Line of Control in Kashmir has provided tremendous relief to residents on both sides of the de facto border. During the intermittent shelling, however, neither Pakistan nor India took adequate precautions to protect civilians. The violence inside Indian-controlled Kashmir continued.

Bomb and grenade attacks by militants in crowded market places constituted the intentional targeting of civilians. Attacks, apparently by separatist militants, on moderate Kashmiri leaders have hindered the peace process. Indian police and security services often use excessive force, and have been responsible for arbitrary detention, torture, and extrajudicial execution. Since 1989, when the insurgency began, thousands of people have disappeared at the hands of both militant and government forces.

Legacy of Communal Violence

Large-scale episodes of communal violence remain unpunished. This injustice continues to foster communal resentments throughout India. There has still been no accountability for the deaths of more than two thousand Muslims in the western state of Gujarat during communal violence that erupted following an attack on a train carrying Hindu pilgrims in 2002. In *Discouraging Dissent*, a report released in August 2004, Human Rights Watch documented the continued discrimination, intimidation of witnesses, faulty investigation, and apparent interference from members of the BJP state government in efforts to prosecute those responsible for the anti-Muslim violence.

The Indian Supreme Court has already ordered two Gujarat cases to be retried in another state. The criminal justice system in Gujarat, the Supreme Court concluded, had been “abused, misused and mutilated by subterfuge.” Human rights activists and lawyers have petitioned for fresh investigations and trials in a number of cases where it was felt that the local courts, prosecutors and police were hostile to Muslim complainants. Despite these positive developments, rights activists in Gujarat continue to be harassed on the basis of what police claim are their “anti-national activities.” Witnesses, however, remain vulnerable to threats.

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2004 marked the twentieth anniversary of Operation Blue Star, a focal point in the conflict between Sikh nationalists and state security apparatus in the Punjab in the 1980s; and the anti-Sikh riots in New Delhi, which resulted in more than three thousand Sikh deaths. In July, the National Human Rights Commission called for claims in cases of summary execution in Punjab. The assignment of individual criminal responsibility for those and other crimes committed during the period, however, remains elusive. Also in July, the Nanavati Commission of inquiry served former prime minister P.V. Narasimha Rao, who was home minister in the Congress Party government in 1984, a notice for his failure to act to prevent the attacks on Sikhs. Two others who have similarly been served notices have recently been appointed ministers in the new Congress government.

Rights of Children

India has the largest number of working children in the world, millions of whom work in the worst forms of child labor, including bonded labor. The Indian government knows about these children and is required by its own laws to protect them. Instead, for reasons of apathy, caste bias, and corruption, many government officials deny that they exist at all.

Both literacy and school enrollment rates overall have improved in the last decade, but according to UNESCO, approximately half of students completed grade five. Proportionately fewer girls than boys attend school, and those that do, drop out at higher rates. Dalits also have higher illiteracy and drop-out rates and face significant discrimination in education.

Rights of Those Living with HIV/AIDS

The government estimates that 5.1 million people in India are living with HIV/AIDS, though many experts suggest the number is much higher. People with AIDS, as well as those traditionally at highest risk—sex workers, injection drug users, and men who have sex with men—face widespread stigmatization and discrimination. People with AIDS are denied employment and access to education and healthcare. Those at high risk face police harassment and other state-sponsored abuse that undermines HIV prevention and AIDS care services for them. Married women are also at risk because they are frequently unable to demand condom use of their husbands, who may have extramarital sexual partners.

At least hundreds of thousands of children are living with HIV/AIDS. Many more are otherwise seriously affected by India's burgeoning epidemic—when they are forced to withdraw from school to care for sick parents, are forced to work to replace their parents' income, or are orphaned (losing one or both parents to AIDS). Children affected by HIV/AIDS are being discriminated against in education and health services, denied care by orphanages, and pushed onto the streets and into the worst forms of child labor. Gender discrimination makes girls more vulnerable to HIV transmission and makes it more difficult for them to get care. Many children, especially the most vulnerable as well as the professionals who care for them, are not getting the information about HIV they need to protect themselves or to combat discrimination.

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Inadequate Protection against Gender-Based Discrimination and Violence

Women and girls confront discrimination and violence in practically every aspect of life. A strong preference for sons over daughters has led to sharply skewed gender ratios in several states. Sex-selective abortions, female feticide, and inadequate provision of food and health care to girls has led to ratios of less than eight hundred women for every one thousand men in some places. Despite several legal provisions for gender equality, women still struggle to realize equal rights to property, marriage, divorce, and protection under the law. Gender-based violence, including domestic violence, sexual harassment, sexual assault, and trafficking into forced labor and forced prostitution remain serious and pervasive problems in India. Domestic violence includes dowry-related abuses and “bride-burning.”

Activists continue to campaign for reform of rape laws to protect women and children from all forms of sexual violence. The pervasive understanding of ‘rape’ is that it occurs only when a stranger uses force on a woman. A marital exemption protects men from being prosecuted for raping their wives. Marital rape is not recognized or penalized unless the wife is under the age of fifteen or if she lives separately from her husband.

There is inadequate legal protection for abuse against girls, boys, and men, or for sexual violence between spouses. In the absence of a more suitable law, section 377 of the Indian Penal Code, which penalizes consensual sexual activity deemed “unnatural,” is also used to prosecute the sexual abuse of children and women.

This provision has also been used to penalize men having sex with men, and has been used as justification for harassment of HIV/AIDS educators. The Delhi High Court dismissed a legal challenge to section 377, dealing a disappointing set back for activists working to improve the rights of gay and lesbian people in India.

Key International Actors

India receives 60 percent of its aid from multilateral donors such as the World Bank. India decided in 2003 to stop receiving bilateral assistance from all but six countries, including the United States, the United Kingdom, and Russia. The decision is widely perceived as an effort to bolster India’s image as a world power. Increasingly, India has been providing significant amounts of financial and military aid to its smaller neighbors, but has not used its increasing influence to make public calls for better compliance with human rights standards.

The thawing of relations between India and Pakistan began in earnest in November 2003 with a ceasefire across the line-of-control. That was followed by a meeting between then-Prime Minister Vajpayee and President Pervez Musharraf of Pakistan in January 2004. The Congress government continued its predecessor’s policy of dialogue with Pakistan to resolve outstanding issues of conflict. The two

countries' leaders met in New York in September, where Singh and Musharraf reiterated a commitment to the bilateral dialogue to restore normalcy and a peaceful negotiated settlement in Kashmir.

The easing of tensions between India and Pakistan has allowed the United States to focus its dialogue with India on strengthening bilateral relations between New Delhi and Washington. U.S. Secretary of State Colin Powell visited India in March 2004. Human rights issues were not discussed. The increasingly warm relations between the two countries, despite the U.S. conferring the status of "major non-NATO ally" upon Pakistan, will likely continue under Congress Party leadership. Deputy Secretary of State Richard Armitage visited New Delhi in July, reaffirming to Indian leaders that the United States sees India as an important partner. India has also been strengthening its military-to-military ties, conducting joint exercises with United States and other NATO forces.

India is the largest provider of military assistance to Nepal, which is in the midst of a brutal civil war. India has not used its position of influence to push the Nepalese government to improve its human right records, and has resisted calls for a multilateral peace conference, presumably to avoid similar calls for resolving the Kashmir dispute.

India has been increasingly close to the brutal military government of Burma. A delegation of Burma's political opposition was not allowed to enter India to attend a conference on human rights. In September 2004, the Indian government welcomed a delegation from the Burmese military government, but did not raise any concerns about Burma's dismal human rights record. Thousands of Burmese continue to seek refuge in India, where they are not granted proper protections under international law.