

## INDIA

**The independence of the judiciary continued generally to be respected in India, but the judicial system remained overburdened and financially dependent on the executive. At the beginning of 2000, protests by lawyers over proposed changes to the rules of practice turned violent, and the Government appointed a commission to investigate the extreme response of the police and security forces. Debate continued regarding the imbalance in representation at the higher courts, particularly with respect to lower castes and indigenous populations. Violations of human rights continued throughout the country, especially in the regions of Jammu and Kashmir and Bihar, and particularly against religious minorities, members of lower castes and women.**

India gained its independence from British rule in 1947, and its Constitution came into force in January 1950. The Constitution encompasses the separation of powers and establishes India as a "Sovereign, Socialist, Secular Democratic Republic". The Constitution creates a federal union of 28 states and seven union territories.

The executive power of the Union is formally vested in the President, as head of state. However, in practice, executive power rests with the Council of Ministers, headed by the Prime Minister, who is the head of government. The President is obliged to follow the Council of Minister's advice. Although largely a ceremonial position, the President may exercise influence over the selection of the appropriate candidate for Prime Minister and can require the Government to submit to confidence motions, which may result in its dissolution.

The President is elected indirectly by a special electoral college for a five-year term, and is eligible for re-election. The current President is Kocheril Raman (K.R.) Narayanan. Members of the Council of Ministers are appointed by the President on the advice of the Prime Minister, who is the leader of the political party or coalition that holds the majority in parliament. The Council of Ministers is composed of members of both houses of parliament and is responsible to the *Lok Sabha*, or House of the People.

Parliament consists of the President and two separate houses, the Council of States (*Rajya Sabha*) and the House of the People (*Lok Sabha*). The Council of States is composed of twelve members appointed by the President and 233 representatives elected by the legislative assemblies of the states and union territories. The House of the People consists of 543 members directly elected in the states and union territories through a system of proportional representation. The President may also appoint an additional two members to represent the Anglo-Indian community, if the President is of the opinion that that community is under-represented. The Council of States cannot be dissolved and its members are elected in staggered biennial elections, for six-year terms. The members of the House of the People serve five-year terms, unless the House is dissolved sooner.

Each state has its own legislature, consisting of the Governor and either a unicameral or bicameral parliament. The head of government at the state level is called the Chief Minister, and serves the same functions at a state level as the Prime Minister does at the federal level. Article 356 of the Constitution allows the President to assume any of the functions of a state's government, and to declare that the powers of the legislature of a state be exercised by the Union parliament. Pursuant to Article 356, the President may invoke "President's rule" upon receipt of a report from the state

governor, or if otherwise satisfied "that the government of a state cannot be carried on in accordance with the Constitution."

The most recent federal elections were held in September 1999 after the Government lost a confidence vote in the House of the People in April of that year. The Bharatiya Janata Party (BJP) led the thirteen-party National Democratic Alliance coalition to victory. The Government was sworn in October 1999 with Shri Atal Bihari (A.B.) Vajpayee again serving as Prime Minister.

## HUMAN RIGHTS BACKGROUND

The Constitution mandates that certain fundamental rights be respected. Part III of the Constitution enumerates these rights in Articles 14 to 30. Article 32 guarantees the right to petition the Supreme Court for the enforcement of the fundamental rights contained in the Constitution. The Supreme Court has also developed the concept of public interest litigation, whereby an individual or public interest group may petition the Court on behalf of a socially and/or economically disadvantaged group that has suffered a legal wrong.

India is a party to the International Covenant on Civil and Political Rights, the International Covenant on Economic, Social and Cultural Rights, the Convention on the Elimination of All Forms of Discrimination Against Women, the Convention on the Rights of the Child and the Convention on the Elimination of All Forms of Racial Discrimination. India has signed, but not yet ratified, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

Despite several requests, the Government has repeatedly denied permission to both the UN Special Rapporteur on Torture and the UN Special Rapporteur on Extrajudicial Killings to visit India. The UN Special Rapporteur on the Independence of Judges and Lawyers, Dato' Param Cumaraswamy, requested permission to visit India in 2000, but the Government has not yet granted permission for this visit. Such country visits by UN Rapporteurs are only made when an invitation is extended by the government. Sadako Ogata, UN High Commissioner for Refugees, did make a visit in May, 2000.

The Committee on the Elimination of Discrimination against Women examined India's initial report during its January/February 2000 session. The Committee on the Rights of the Child also considered India's initial report in January, 2000. In 2000, thematic working groups and Special Rapporteurs of the Commission on Human Rights also made reference to the human rights situation and violations of human rights in India, including, *inter alia*, the Working Group on Arbitrary Detention, the Working Group on Disappearances, the Special Rapporteur on Religious Intolerance, the Special Rapporteur on the Sale of Children, Child Prostitution and Child Pornography, and the Special Rapporteur on Torture.

### *Human rights violations*

Serious human rights violations have persisted in India. These violations are particularly virulent in the states of Jammu and Kashmir, Punjab and the other northeastern states. Most human rights violations occur in areas marked by internal armed conflict or result from religious and racial discrimination and violence. Security forces, government-supported military forces and armed opposition groups all commit serious abuses, including torture, extra-judicial killings, rape and disappearances in the regions where conflict continues.

On 20 March 2000, 92 Sikh men were shot to death in Chattisinghpura, Anantnag district by a group of unidentified gunmen, some of whom reportedly were in Indian army uniform. It was the first time that the Sikh minority had been targeted in Jammu and Kashmir. Following the massacre, both Sikh and Muslim citizens in the region protested. Two armed Islamist groups were held responsible by the Indian and state governments, even though no official inquiry had been launched at the time. Those groups have denied involvement and some individuals and groups have implicated Government forces. Soon after the 20 March massacre, a group consisting of members of the Indian army's Special Operations Group (SOG) killed five men in Panchalthan-Pathribal village, Anantnag district. The official account stated that the five men were militants responsible for the 20 March massacre. However, this version of events was widely disputed. Many local people protested the killings and demanded the exhumation of the bodies, charging that they had been victims of a staged encounter. Several Muslims were allegedly "disappeared" following the Chattisinghpura massacre.

The protests continued, and grew in intensity as the government failed to act. On 3 April 2000 at least seven people were killed in Brakpora district when the police opened fire during one of the protests on unarmed protesters, reportedly after youths provoked them with stone throwing. Finally, on 6 April 2000 the bodies were exhumed and DNA tests were undertaken, the results of which have not been released. An inquiry into the spate of killings was demanded, and in response the government agreed to set up commissions of inquiry to investigate both the Chattisinghpura and Brakpora incidents. While the inquiries were made, the Government had yet to act on the conclusions and reports as of the time of this writing.

In addition to human rights abuses in particular regions, human rights violations continue to be committed against particular groups. Caste violence continues to occur, in particular against *Dalits* (formerly called "untouchables") and indigenous populations. In the state of Bihar there were several incidents of caste violence, including the murder of four *Dalits* in April and the massacre of 34 lower caste people in June. There were also incidents of arson that left whole families homeless. Caste violence is not confined to Bihar. A report emerged according to which an entire Dalit family was burned alive in Karnataka state in March, 2000. Many of these attacks are said to have been taken in reprisal for violence against upper castes. In July 2001 a prominent Dalit Member of Parliament, Phoolan Devi, was murdered. An investigation into the circumstances of her murder was being carried out.

Religious minorities in various states are also frequently targeted. Attacks against Christians in particular continue to rise in many states, as has been the trend since the BJP assumed power in 1998. Gujarat and Uttar Pradesh have been the venue of most of the anti-Christian violence, and over 35 such attacks were reported throughout the country for the year 2000. The violence has included direct attacks on persons, ransacking of Christian missionary schools and bombings of churches. Many of these attacks were reportedly committed by Hindu groups affiliated with the BJP. In addition, both Sikhs and Hindus have been the victims of violence in Jammu and Kashmir in the past few years. Muslims have also been the subject of attack, including police brutality. In Delhi in April, a group of police entered a Muslim post-secondary institution searching for two criminal suspects, and subsequently assaulted the students, destroying their property and the mosque.

The death penalty still forms part of the scale of punishment in India. The number of offences which carry a maximum sentence of death has progressively increased, and in 2000 legislation to extend it to crimes of rape was pending. According to Amnesty International, the death penalty was ordered in at least 30 cases in 2000, and at least 60 persons remained on death row. There was

no information concerning executions that may have been carried out in 2000, as the Government does not keep the relevant statistics. In July 2000 a conference attended by eminent jurists and human rights campaigners urged the central and state governments of India to abolish the death penalty in both law and practice.

### *Domestic Human Rights Commission*

The National Human Rights Commission (NHRC) was established under the Protection of Human Rights Act, 1993 (PHRA). The NHRC is empowered to intervene in legal proceedings and to inquire into alleged violations of human rights. However, it is not entitled to investigate human rights violations directly, but only to advance recommendations. The NHRC may use the services of relevant government investigation agencies with the consent of the government for the purposes of conducting an investigation. The Act authorises the creation of State Human Rights Commissions with similar functions and powers as the National Commission. Similarly, the Act provides for the creation of Human Rights Courts, which have since been established in Tamil Nadu, Uttar Pradesh and Andhra Pradesh. These courts are not established as separate courts, but rather hear cases in special hearings of Sessions Courts.

There are numerous limitations to the mandate of the NHRC. For example, it has no power to prosecute violators nor to compensate victims. It may not inquire into incidents older than one year, and it has limited powers to summon witnesses and to require the production of public documents. In addition, the NHRC is not authorised to inquire into allegations of human rights violations by members of any of the federal armed forces but may only request a report from the government and make recommendations based on that report. Its inquiry powers are also restricted in relation to Jammu and Kashmir. It may only inquire into matters relating to entries in List I and III of the Seventh Schedule of the Constitution, thereby excluding from its jurisdiction violations related to the police, prisons and the public order of a state. These various limitations were criticised by the UN Human Rights Committee in 1997 (see *Attacks on Justice 1998*) and were noted by the UN Human Rights Commission's Working Group on Disappearances in its 2000 report.

These limitations have been frustrating for the NHRC, particularly those that impose a one-year limitation period on its investigations and those that limit its ability to investigate allegations of human rights violations committed by armed and paramilitary forces. In 2000 the NHRC submitted recommendations, pursuant to the assessment of an Advisory Committee to the Government, to amend its enabling statute. The Government had yet to respond to the recommendations at the time of this writing.

### *Restrictive Legislation*

Several legislative acts have served to contribute to continued impunity in India. The Armed Forces (Special Powers) Act of 1958 (AFSPA) and the Disturbed Areas Act continue to be in effect in several states. The AFSPA gives the army and army officers sweeping powers over the regions where it is applied. It confers on officers the right to use lethal force in response to a suspicion of, or the commission of, an offence against a law prohibiting freedom of assembly or the carrying of weapons or objects capable of being used as weapons. Such force can be used after the issuance of such prior warning as is considered necessary by the officer in order to maintain public order. The AFSPA also allows the army to arrest without a warrant, using such force as is necessary, anyone suspected of, or who has committed or is about to commit, any offence. Where prior consent has not been given by the government, section 6 of the AFSPA restricts the commencement of proceedings against members of the armed forces acting under AFSPA. Like section 6 of the

AFSPA, section 197 of the Criminal Procedure Code (CPC) prohibits the commencement of legal proceedings against members of the armed forces and public servants acting in their official capacity where the government has not given its prior consent to such legal proceedings.

The Terrorist and Disruptive Activities (Prevention) Act 1987 (TADA) lapsed in 1995. That Act had met with severe criticism by human rights organisations, UN mechanisms, the NHRC, lawyers and others due to the widespread human rights violations that it encouraged. Many human rights violations had occurred under the auspices of the TADA, including torture, and it has been reported that the Act is still being used in Jammu and Kashmir to detain people retroactively, an allegation which the Government has denied. In April 2000 the Law Commission of India submitted to the Government a draft Prevention of Terrorism Bill 2000, which was intended to replace the TADA and is drafted as a modified version of the 1995 Act. The NHRC and human rights NGOs expressed opposition to the Bill, arguing that it would result in human rights violations and violate international human rights norms. Several sections of the proposed legislation, which has yet to be introduced into Parliament, have been cited as conflicting with India's human right obligations.

The Jammu and Kashmir Public Safety Act 1978 (PSA) has also been frequently cited as prone to abuse, resulting in human rights violations. For example, the PSA permits the detention without charge of persons considered to be a security risk, involving detention periods of up to a year, subject to approval by three High Court judges after seven weeks of detention.

## JUDICIARY

India's legal system has developed under the influence of the common law traditions of the United Kingdom, and India remains essentially a common law jurisdiction. The judiciary plays a central role within the Indian constitutional structure. Article 32 of the Constitution guarantees the right to apply to the Supreme Court for the enforcement of those fundamental rights contained in the Constitution.

Under the terms of List III, Schedule 7 of the Constitution, the central and state governments enjoy concurrent responsibility for the administration of justice, jurisdiction and powers of all courts (except the Supreme Court, over which the central government retains jurisdiction), criminal law and procedure and civil procedure. However, the organisation of the Supreme Court and High Courts remains the exclusive jurisdiction of the central government, while the provisions regarding officers and servants of the High Courts fall within state power. In addition, the central government retains exclusive jurisdiction for offences against laws over which it alone has jurisdiction (List I of Schedule 7) and all matters involving the development or use of any armed forces of the Union or the use of civil power. Similarly, states have exclusive competence with respect to offences against laws over which states have exclusive jurisdiction (List II of Schedule 7), police and public order. The Attorney General is responsible for providing advice to the government on all legal matters and for the performance of all duties of a legal character that may be assigned by the President.

Despite the numerous constitutional provisions related to the judiciary, in Jammu and Kashmir the judicial system remains constantly under attack. Judges and witnesses are frequently threatened by militant forces. In addition, judges are not always independent and are often tolerant of the Government's actions. Court orders are not always respected by the security and armed forces. Very few cases involving terrorist crimes are even brought before the courts.

### *Court Structure*

Chapter IV of Part V of the Constitution deals with the union judiciary. Article 124 concerns the establishment and constitution of the Supreme Court, which is the final court. It is composed of 26 justices, one of whom serves as Chief Justice. Its decisions are binding on all lower courts. Article 130 stipulates that the seat of the Court is in Delhi. Article 131 gives the Supreme Court original jurisdiction to hear any dispute between the Government and the states, or between states "if and insofar as the dispute involves any question (whether of law or fact) on which the existence or extent of a legal right depends." The Supreme Court has appellate jurisdiction on any judgement, decree or final order of a High Court, if the High Court certifies that a party can appeal under Article 134A, in the following cases:

- civil, criminal or other proceedings, if the case involves a substantial question of law as to the interpretation of the Constitution (Article 132);
- civil proceedings that involve a substantial question of law of general importance (Article 133);
- criminal proceedings where the High Court has, on appeal, reversed an order of acquittal, or withdrawn a case from a subordinate court for trial before itself and subsequently convicted the person, and then sentenced the person to death, or if the High Court believes the case to be fit for appeal to the Supreme Court (Article 134).

Article 136 provides the Supreme Court with discretionary power to grant special leave to appeal from any judgement, decree, determination, sentence or order in any cause or matter passed by or made by a court or tribunal in the territory of India. The President may also request an advisory opinion from the Supreme Court pursuant to Article 143, on a question of law or fact that has arisen or is likely to arise. Cases involving the determination of a substantial question of law as to the interpretation of the Constitution, and requests for an opinion under Article 143 must be heard by a panel of at least five judges.

Chapter V of Part VI of the Constitution creates a High Court of Record for each state. Article 241 in Part VIII extends the provisions of Chapter V, Part VI to any High Courts created for union territories as well. Each existing High Court, subject to the Constitution, has the same jurisdiction as it had before the coming into force of the Constitution. All High Courts have such jurisdiction as may be conferred on them by the central or state governments on subject matters within the latter's legislative competencies. High Courts also have original jurisdiction to issue writs and orders for the enforcement of the fundamental rights contained in Part II of the Constitution. State High Courts have a supervisory power over all subordinate courts and tribunals in areas where they exercise jurisdiction. There are currently 18 High Courts.

Chapter VI of Part VI of the Constitution relates to the creation and jurisdiction over subordinate courts. The power to establish subordinate courts falls under the jurisdiction of both the central and state governments. Article 235 places the administrative control of all district and other subordinate courts in the High Court of that state. Special tribunals and courts are under the judicial control of the High Courts and the Supreme Court.

Section 6 of the Criminal Procedure Code 1973 requires that the following criminal courts, in descending order of superiority, be created in each state: Courts of Sessions, Judicial Magistrates of the First Class, Judicial Magistrates of the Second Class and Executive Magistrates. Similarly, the Civil Procedure Code 1908 requires the establishment of a District Court. The Sessions and District Courts are the principal courts of original jurisdiction in civil and criminal matters

subordinate to the High Court. The precise jurisdiction of these courts and their names may vary from state to state.

## Judges

Extensive constitutional provisions are intended to safeguard the independence of judges, including articles regarding selection, conditions of tenure and removal of judges at both the Supreme Court and the High Courts. The overburdened court system and the lack of enforcement of court decisions in regions where there is armed conflict pose the greatest threats to judicial independence.

### *Selection*

Article 124(2) of the Constitution provides that "(e)very judge of the Supreme Court shall be appointed by the President ... after consultation with such of the judges of the Supreme Court and of the High Courts in the State as the President may deem necessary...". In the case of appointments other than that of the Chief Justice, the Chief Justice is always to be consulted. In accordance with Article 217, every judge of a High Court shall be appointed by the President after consultation with the Chief Justice of India and the Governor of the state, and in the case of appointments other than the Chief Justice of a High Court, the Chief Justice of that court.

The Supreme Court of India, in *Supreme Court Advocates-on-Record Association v. Union of India* 1993(4) S.C. 441 (the Second Judges Case), made a significant ruling on the selection process for judges. The Court held that the Chief Justice has a pre-eminent position in the appointment process. The Chief Justice is responsible for the initiation of the process, and no appointment can be made without the consent of the Chief Justice. In *Special Reference No. 1 of 1998*, JT 1998(5) the Court set out in detail the procedures for appointment and transfer of judges. The Court further determined that "consultation with the Chief Justice" amounted to consultation by the Chief Justice with the four most senior judges of the Supreme Court in regard to appointments. The individual opinion of the Chief Justice, therefore, was not sufficient to be considered as a consultation.

Chapter VI of Part VI of the Constitution governs the appointment of judges to subordinate courts. Article 233 provides that the appointment of district judges shall be made by the Governor of the state in which the court sits, in consultation with the High Court of that state. Pursuant to Article 234, appointments of persons other than district judges to the judicial service of a state shall be made by the Governor in accordance with rules made by him/her after consultation with the State Public Service Commission and the High Court of that state. The provisions of this Chapter can be extended to any class of magistrate upon public notification by the Governor.

The parliamentary Committee on the Welfare of Scheduled Castes and Scheduled Tribes has underscored the shortage of members in the judiciary from the Scheduled Castes and Scheduled Tribes. In its second report, released in October, 2000, the Committee noted that there are only 15 Scheduled Caste judges, and five Scheduled Tribe judges among the 481 High Court judges sitting throughout the country. In addition, the first Supreme Court appointment from the two groups occurred in July 2000 when Mr. Justice K.G. Balakrishnan was appointed. The report recommended that the Government take positive steps towards ameliorating this situation, and even suggested amendments to Articles 124 and 217 to promote increased representation from these groups.

### *Conditions of Tenure*

Articles 124 and 217 provide that Supreme Court and High Court judges shall hold office until attaining the ages of 65 and 62 years respectively. Articles 125 and 218, in conjunction with Part D of the Second Schedule, provide that judges of the Supreme and High Courts shall be paid a salary and be entitled to such privileges, allowances and rights as may be determined by law. The latter benefits may not be altered to their disadvantage after their appointment to office. Controversy has arisen recently in respect of the fact that judges' remuneration and the budget of the judiciary is controlled by the executive. The Chief Justice of India, Dr. A.S. Anand stated that greater financial and administrative autonomy for the judiciary was required and would help improve the administration of justice in the country. In July 2000 the central government advised the state and union territory governments to undertake changes to improve the financial autonomy of the judiciary. This initiative followed the comments made by the Chief Justice, as well as those of a three-judge committee set up by the Chief Justice to consider the issue, and recommendations made at the Chief Justices conference in December, 1999.

### *Removal*

Articles 124(4) and 217(1)(b) provide that Supreme and High Court judges respectively, cannot be removed from office except by an order of the President confirmed in the same session after an address by each house of parliament, supported by a majority of the total membership of that house, and by a majority of not less than two thirds of those voting and present. A judge may only be removed on the grounds of proved misbehaviour or incapacity.

Under the Judges (Inquiry) Act 1968, 100 members of the House of the People (*Lok Sabha*) or 50 members of the Council of States (*Rajya Sabha*) may request their respective Speaker or Chairman of the House to consider material relating to accusations of misbehaviour or incapacity. A committee consisting of a Supreme Court judge, a Chief Justice of a High Court, and an eminent jurist is formed to apprise the judge of the charges against him or her and to allow for the preparation of a defense. If the committee concludes that misbehaviour or incapacity has been proved, it will report this finding to Parliament for action. Members of the judiciary of the subordinate courts may only be removed by the High Court, in its administrative capacity.

### *Measures to Improve the Justice System*

It has been reported that there are well over 20 million cases pending throughout the country, including at the district courts, High Courts (over 3.3 million) and the Supreme Court (almost 20,000 in 1998). In addition, there are only some 11 judges for every million citizens, which is apparently the lowest ratio in the world. At any one time, 25 percent of the 608 judicial posts at the High Courts stand vacant. Thirty thousand cases per million people are pending.

Due to this notorious backlog of cases in the country, the Government announced on 3 March 2001 three initiatives for improving the administration of justice in India. The Department of Justice reported that it had approved a recommendation of the XIth Finance Commission for the creation of 1,734 additional 'fast track' (sessions) courts to deal with long pending sessions as well as other cases. Funds have been allotted for a five year period, up to 2005. The scheme started functioning on 1 April 2001 and began by considering cases that had been pending for two years or more and cases of under trials in jails. So far, approximately 500 'fast track' courts have been set up since the scheme commenced in April. It is expected that in the first year of the program all cases under trial will have been concluded. The Government anticipates that approximately two million cases will be dealt with by these additional courts by 2005, which will result not only in addressing the human



rights situation, but will also amount to considerable savings for the government as those awaiting trial in jail are released and their cases dealt with.

The second initiative is the computerisation of the city courts in Delhi, Mumbai, Chennai and Calcutta. This development will allow parties to file their complaints by computer as well as to inquire into pending cases at central facilitation centres. It is also anticipated that creating a computer network will streamline the system for allocation of cases to particular judges, and will speed up the administration of justice generally. The final initiative being undertaken by the Department of Justice in 2001-2002 is the networking of the Department with the Supreme Court, the High Courts and the Law Departments of the State Governments. It is expected that this process will assist those bodies involved in judicial reforms, as well as improve access to information.

## LAWYERS

In late 1999 and early 2000, lawyers held mass protests and strikes against proposed changes to the Code of Civil Procedure by the Code of Civil Procedure (Amendment) Bill 1999, as well as changes to the Advocates Act 1961. The Government had argued that the changes were intended to alleviate excessive delays in the administration of justice, improve the quality of legal services and incorporate changes required by the General Agreement on Trade and Services. Many lawyers were concerned about two changes in particular: the proposal that advocates be subjected to an assessment every five years in order for their licence to be renewed, and suggested changes to allow foreign firms and individuals to practice in India.

Members of the legal professions staged two large protests in Delhi, on 21 December 1999 and 24 February 2000. During these protests lawyers were arrested and some were injured when the police responded using tear gas and a lathi charge (see *Attacks on Justice* 10th edition). Three junior police officers were suspended by the Delhi Government on 15 March 2000, and two Assistant Commissioners of Police were transferred as a result of the police response to the 24 February protest.

On 28 March 2000 the Government announced the appointment of an inquiry commission into the use of force by police during the 24 February 2000 demonstration. The Commission was to have been headed by retired Justice of the Rajasthan High Court N.C. Kochlar, but after he reportedly expressed doubt as to his ability to conduct the inquiry, he was replaced by former Supreme Court Justice G.T. Nanavati at the end of April, 2000.

On 17 April 2000 the Delhi High Court held that lawyers did not have the right to strike, following a public interest litigation petition which had challenged the strike that had taken place on 24 February 2000. The Division Bench of the High Court held that a strike by lawyers infringed the fundamental rights of the litigants to have their cases heard within a satisfactory amount of time. However, Chief Justice Devender Gupta and Mr. Justice Cyriac Joseph, who heard the case, also criticised the Government for its "half-hearted" decision to suspend and transfer the three policemen. In the videotapes of the protest, the policemen could be seen beating the lawyers, despite the absence of any provocation by the lawyers. With respect to the lawyers' strike, the Court held that there was no reason for its continuation, as the Commission of Inquiry had since been established. In addition, the Court held that lawyers should not need to resort to a strike, as this action disrupted court proceedings and other forms of protest that did not affect litigants were more appropriate. It also held that the inquiry commission was to begin its work by 25 April 2000.

and stated that it would not rule on the justifiability of the use of force, as that was the mandate of the Commission of Inquiry.

As a result of the Delhi High Court's decision, the Nanavati Commission held its first sitting on 25 April 2000. The Commission called on all those individuals and organisations who had direct or indirect knowledge of the events of 24 February 2000 to make submissions. While the Commission was to have submitted its report within three months of its first sitting, the Government has already extended the term of the Commission several times. The original extension was for two months, which meant that the term was to have expired on 23 September 2000. However, the Commission was given an extension of two additional months due to holidays of the High Court and in order to take the Bar Council of India's submissions after the latter decided to participate in the Commission, having earlier refused to cooperate. The Commission's deadline have since been repeatedly extended.

On 28 August 2001, over 1,000 lawyers from Western Uttar Pradesh also conducted a protest in support of their demand for the establishment of a bench of Allahabad High Court in the region. The lawyers set up a road blockade on a national highway and burnt effigies of Law Minister Arun Jaitley and UP Chief Minister Rajnath Singh. The lawyers said they would continue their protests until 31 August and boycott all courts in the region. The protests were said to be peaceful, however the police reportedly resorted to heavy-handed tactics in response.

## CASES

### (i) Attacks on lawyers

**Raghubir Sharan Verma {lawyer} and Madhu Verma:** Mr. Verma was a prominent criminal lawyer in the city of Patna in the north Bihar district of Siwan. He and his wife were shot to death by a group of armed assailants while sitting in their garden in April, 2000. Their 20-year-old daughter, Shilpi, was also a victim of the attack, but survived her bullet wounds and was given security protection by the Government only after Patna High Court lawyers so demanded. The Vermas' son, Sumit, had been killed two years earlier, allegedly by the same group of people. Mr. Verma had alleged in proceedings in the Siwan District Court that one of the close associates of a Mr. Shahabuddin, Rashtriya Janata Dal (RJD) Member of Parliament for Siwan and a powerful figure in the area, was responsible for his son's murder, and had thereby incurred the wrath of a powerful group in the area.

It is alleged that Mr. Shahabuddin runs the district through his crime syndicate, although Mr. Shahabuddin himself contends that he has brought peace to Siwan. He has been accused in connection with a number of criminal cases but has never been convicted. In March 2001, a shootout between police and Mr. Shahabuddin's supporters resulted in the death of 10 persons, including two police officers. The State Government in Patna subsequently ordered a judicial inquiry into the shootout. Mr. Shahabuddin had yet to be charged with the murder of Mr. and Mrs. Verma. However, he and ten others were charged by Delhi Police on 28 August 2001 with conspiring to murder *tehelka.com* chief Tarun Tejpal and his colleague Aniruddha Bahal. Mr. Shahabuddin has been linked with the leader of the RJD, Mr. Laloo Prasad Yadav, who himself has also been the subject of criminal investigations and corruption scandals in Bihar, although no case has been successful against him (see *Attacks on Justice* 9th edition). Following Mr. and Mrs. Verma's murder, the Patna High Court lawyers met and agreed that they would not take up the cases of politically powerful individuals accused of these and similar murders of lawyers. Due to

the fear that has gripped the region recently, only about 50 persons attended the funeral of the Vermas, and less than 10 attended the condolence meeting at the court.

**Bhupendra Kumar {lawyer}:** Mr. Kumar was a special public prosecutor and was conducting the case of the alleged rape of the wife of a senior Indian Administrative Service (IAS) official. The RJD president, Mr. Laloo Prasad Yadav, was one of the accused, as was Mr. Tulsi Singh, a former Minister in the Government. Following the murder of Mr. Verma (see above), Mr. Kumar resigned from his position, and subsequently quit the bar after 38 years as a lawyer. While Mr. Kumar stated in a letter to the Bar Council that the reason for his resignation was the murder of Mr. Verma and his wife, there were suggestions that Mr. Kumar himself had also received threats. A news report noted that an independent Member of the Legislative Assembly, Mr. Surajbhan, apparently had issued a statement implying a grave threat to Mr. Kumar's life.

**Sangita Sharma {lawyer}:** Ms Sharma was a Andhra Pradesh High Court advocate who committed suicide on 15 June 2000. A inquiry by the National Commission for Women into the incident reported that she was driven to suicide as a result of sexual harassment by her senior male colleagues. The inquiry revealed that Ms Sharma had received a number of anonymous phone calls prior to her death, some of which had contained threats to abduct her son and parents. Two of the men alleged to have been involved in the harassment have subsequently been charged over the matter, a Mr. Vijay Kumar and a Mr. Narahimha Naidu.

## (ii) Cases relating to judicial independence and accountability

### *Dismissals and transfers of judges*

**JW Singh {judge}:** Mr. Singh was a sessions judge who was dismissed after being accused of having connections with the underworld. His case is currently before a special court convened under the Maharashtra Control of Organised Crime Act.

**Subhash Raghuvir Jaiswal {judge}:** Mr. Jaiswal was a judge of the Bombay City Civil and Sessions Court, who was dismissed from office after the Bombay Law and Judiciary Department issued an order made on the recommendation of the Bombay High Court administration. The official reason cited in the order was that the dismissal resulted from his inability to 'successfully complete his probation'. However, newspaper reports have indicated that he was involved in serious misconduct, including setting fire to a property he owned in order to evict tenants. He is facing a High Court inquiry in relation to this latter incident.

**Mr. N.K. Jain {judge}:** Mr. Jain, formerly Chief Justice of the Madras High Court, received a notice of transfer to Karnataka High Court in August 2001. Despite this transfer order, the Judge continued to carry out his judicial duties in the Madras High Court and, as a result, a number of lawyers approached the Madras Court with petitions to restrain the Chief Justice from further discharging his duties. The petitioners argued that the action of the Chief Justice would erode public faith and confidence in the judiciary. The Advocate-General, Mr. V. T. Goplan, was asked to submit an opinion about the matter to the court, but in his resulting submission stated he had been advised by the Union Government to inform the court that it could not give any executive direction to the judiciary in matters of transfers and appointments and that the issue should be resolved by the court itself.

**Mr. M S Menon {lawyer}:** Mr. Menon was found guilty of committing contempt of court by the Bombay High Court on 12 March 2001, following remarks made by him against Metropolitan

Magistrate B. A. Shellar. Mr. Menon reportedly made a statement that the presiding magistrate intentionally chose to overlook evidence in a criminal case because he had filed a complaint with the Special Investigation Department and the Chief Metropolitan Magistrate. Mr. Menon apologised to the court and was ordered to pay a fine of 2,000 rupees.

**Mr. S K Sundaram {lawyer}:** Mr. Sundaram was sentenced to six months' imprisonment for 'gross criminal contempt of court'. The lawyer had sent a telegram to the Chief Justice of India demanding that he step down on the grounds that he had already attained the age of superannuation. In the telegram, Mr. Sundaram accused the Chief Justice of committing offences such as cheating, criminal breach of trust and falsification of records.