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## India: Extrajudicial detention, including instances of torture by authorities; state response and recourse available to victims; documents issued to persons detained or interrogated by police (2016-April 2018)

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24 May 2018

**IND106099.E**

India: Extrajudicial detention, including instances of torture by authorities; state response and recourse available to victims; documents issued to persons detained or interrogated by police (2016-April 2018)

Research Directorate, Immigration and Refugee Board of Canada, Ottawa

### 1. Legislation

The Indian *Code of Criminal Procedure*, 1973 [1] provides the following:

#### Section 57 - Person Arrested Not to Be Detained More than Twenty-four Hours

No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court. (India 1973, sec. 57)

For information related to the "procedure when investigation cannot be completed in twenty-four hours," see section 167 of the Code of Criminal Procedure, which is attached to this Response.

## 1.1 National Security Act of India

The *National Security Act, 1980* of India provides the following:

### 3. Power to make orders detaining certain persons.

1. The Central Government or the State Government may, --(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, or the security of India, or (b) if satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India, it is necessary so to do, make an order directing that such person be detained.
2. The Central Government or the State Government may, if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of Public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do, make an order directing that such person be detained.

...

### 8. Grounds of order of detention to be disclosed to persons affected by the order.

1. When a person is detained in pursuance of a detention order, the authority making the order shall, as soon as may be, but ordinarily not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.
2. Nothing in sub-section (1) shall require the authority to disclose facts which it considers to be against the public interest to disclose.

...

10. Reference to Advisory Boards. Save as otherwise expressly provided in this Act, in every case where a detention order has been made under this Act, the appropriate Government shall, within three weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it under section 9, the grounds on which the order has been made and the representation, if any, made by the person affected by the order, and in case where the order has been made by an officer mentioned in sub-section (3) of section 3, also the report by such officer under sub-section (4) of that section.

### 11. Procedure of Advisory Boards.

1. The Advisory Board shall, after considering the materials placed before it and, after calling for such further information as it may deem necessary from the appropriate Government or from any person called for the purpose through the appropriate Government or from the person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the appropriate Government within seven weeks from the date of detention of the person concerned.

...

4. Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory Board; and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

## 12. Action upon the report of the Advisory Board.

1. In any case where the Advisory Board has reported that there is, in its opinion, sufficient cause for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.
2. In any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of a person, the appropriate Government shall revoke the detention order and cause the person concerned to be released forthwith.

13. Maximum period of detention. The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under section 12 shall be twelve months from the date of detention: Provided that nothing contained in this section shall affect the power of the appropriate Government to revoke or modify the detention order at any earlier time. (India 1980, sect. 3, 8, 10-13)

Writing for the Wire, an Indian news website, Ravi Nair, the Executive Director of the South Asia Human Rights Documentation Centre (SAHRDC) (*The Indian Express* n.d.), a "network of individuals" based in New Delhi that investigates, documents and disseminates information on human rights issues (SAHRDC n.d.), states that the National Security Act, which is applicable in the whole of India with the exception of the state of Jammu and Kashmir [2], allows for "preventive detention," which is "the extra-judicial confinement of an individual without charge ... purportedly to prevent a potential future crime," for up to one year (Nair 5 Mar. 2018). Nair further explains that, under the National Security Act, an individual can be detained for up to ten days "without being informed as to the reasons for the detention," and, if necessary for public interest, the government can withhold the reasons, "although not the grounds," for detention (Nair 5 Mar. 2018). According to Nair, while detained individuals are allowed to "make 'representations'" against extra-judicial detention, they are not allowed to question accusers, nor, sometimes, the evidence in support of detention; they are not allowed to a lawyer at any point in the process (Nair 5 Mar. 2018).

The information in the following paragraph was provided by Nair in the Wire article:

India regularly uses preventive detention to respond to ordinary criminal matters. ...

A [SAHRDC] internal review of *habeas corpus* petitions ... found that there is a regular pattern of using preventive detention, for instance, to address the current activities of recidivists and organised crime; to bypass trial when witnesses were unwilling to testify; and to prevent release on bail. Essentially, the police appear to regularly use preventive detention in more difficult criminal law cases when inefficiency or ineptitude might make law enforcement difficult.

...

[T]he government argued that current and past criminal activities show a "propensity to commit crimes" that can only be prevented through extra-judicial detention....

[T]he courts never questioned and the government never explained why criminal prosecution alone was an insufficient response to the current crime. If the accused is considered to be a serious

threat to public order to justify preventive detention, then there seems little reason why the government cannot successfully oppose bail. (Nair 5 Mar. 2018)

According to the cases reviewed by the SAHRDC, the Indian government uses the "vague language" of the National Security Act and detains individuals when public order is threatened, "to respond to straightforward matters of law and order" (Nair 5 Mar. 2018).

The government appears to believe that nearly any crime disrupts public order, including mugging, counterfeiting, sexual assault, murder and other crimes not directed at the public. It supports detention if the threatened act could cause a commotion or obstruct traffic, or if anyone other than the immediate victim suffered from fear, even if it arises from reading media reports of a criminal incident. (Nair 5 Mar. 2018)

Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

## 2. Treatment of detainees

According to a document detailing crime statistics for 2016 in India, published by the National Crime Records Bureau of the Indian Ministry of Home Affairs, there was, in 2016, 92 deaths in police custody reported in India, including persons in remand and those who were not [3] (India 10 Oct. 2017, 532). The same source states that, of the 92 deaths reported, 8 are related to injuries sustained due to physical assault by police while in custody (India 10 Oct. 2017, 531). Concerning the 92 deaths in police custody, the same source indicates that 24 police officers have been "charge-sheeted," and none have been convicted (India 10 Oct. 2017, 529-530).

An article in Scroll.in, an Indian news website, indicates that the Indian Code of Criminal Procedure provides that a magistrate must be informed whenever an inmate dies in prison, adding that, on the basis of data from 2016 submitted to the Bombay High Court, a magistrate was informed "in only about half the cases" (Scroll.in 1 Aug. 2017). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

A 2016 Human Rights Watch report on custodial killings in India written by Jayshree Bajoria, a research consultant for Human Rights Watch, indicates that most of the 17 custodial death cases documented [4] occurred within 24 hours following arrest, and they illustrate "police failures to abide by arrest rules, inform family members of arrests, and produce suspects before magistrates; failures by magistrates to fulfil their duties; and failure by police to ensure that detainees receive medical check-ups, as required by Indian law, to identify possible abuse" (Human Rights Watch 19 Dec. 2016, 24). The same source indicates that "Indian police still often torture suspects to punish them, gather information, or coerce confessions" (Human Rights Watch 19 Dec. 2016, 1). A copy of the 2016 Human Rights Watch report is included in the National Documentation Package for India.

In an August 2017 article published in the *Asian Age*, an Indian newspaper with editions in Delhi, Mumbai, Kolkata and London, Jayshree Bajoria states that, although India has strict laws and procedures to protect against police torture and ensure accountability, according to the Supreme Court of India, it is "very difficult" to produce evidence against the police in cases of custodial crimes (*The Asian Age* 20 Aug. 2017).

The US Department of State's *Country Reports on Human Rights Practices for 2017* indicates that, on 25 March 2017, the High Court of the state of Madras ordered the government of Tamil Nadu to pay one million Indian rupees (approximately C\$18,850) to the family of an individual

who died in 2010 while in police custody, and it states that a probe into the case confirmed that the individual was "subjected to 'ill treatment' during his illegal detention" and died as a result (US 20 Apr. 2018, 3). According to the same source, on 7 April 2017, an individual suspected of sexual harassment of a minor died after being detained and interrogated in the Begumpet police station in Hyderabad (US 20 Apr. 2018, 3). On 21 April 2017, a man interrogated in the Hayathnagar (east of Hyderabad) police station for "'suspicious movement' on the road" died on his way to the hospital (US 20 Apr. 2018, 3). On 18 March 2017, another individual died in a Hyderabad police station "after being detained for questioning following an altercation" (US 20 Apr. 2018, 3). The *US Country Reports 2017* notes that, in all of the aforementioned cases, the police denied that detainees were tortured, and said that they all died due to prior health problems (US 20 Apr. 2018, 3). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

The information in the rest of this section was provided by Al Jazeera in a January 2018 article:

On 9 January 2018, police forces in the state of Assam (northeast India) have tortured an individual suspected of possessing "illegal arms." The victim's wife stated that four policemen "pinned [the victim] down in the courtyard and kicked him indiscriminately" and that "[p]olice covered [the victim's] face with a cloth and poured cold water on his face. [The victim] vomited and fainted after a while." The police brought the victim to the hospital where a doctor pronounced him "brought dead." According to a student activist belonging to the All Assam Minority Students' Union (AAMSU), which works for victims of police atrocities, "waterboarding is a widely practised torture technique used by the Assam police as part of their notorious 'third degree,' or torture practices, in police custody to extract information from detainees." The director general of police in Assam is quoted as stating the following:

"He has died in police custody, already a case has been registered, the person (police officer) has been arrested and sent to judicial custody, and the investigation is on. ...

The investigation will find out what the cause of death was. If his guilt is established, he will be punished as per law."

The director of police in Assam "admitted there was a need for 'training and sensitisation' of the police force and strict 'enforcement' of law" (Al Jazeera 23 Jan. 2018). Corroborating information could not be found among the sources consulted by the Research Directorate within the time constraints of this Response.

### 3. State Response

The UN Office of the High Commissioner for Human Rights (OHCHR) indicates that India signed the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, but that it has not ratified it (UN n.d.). Sources state that a bill to prevent torture was introduced in India in 2010, but lapsed in 2014 due to inaction (*The Asian Age* 20 Aug. 2017) or due to the dissolution of the Lok Sabha (lower house) (Scroll.in 1 Aug. 2017).

In a September 2016 submission for the 27th session of the UN Universal Periodic Review (UPR) held in April and May 2017, Amnesty International notes that "[t]orture and other ill-treatment in police and judicial custody remain common, and [that] domestic legislation has not been passed to recognize these as crimes" (Amnesty International Sept. 2016, 1-2). In a UN report of the Working Group on the UPR, India states that it is committed to ratifying the *Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment*, and that "there were sufficient provisions in the domestic legal framework that prohibited torture, and the Supreme Court had laid down specific rules and guidelines that the police must follow when making arrests" (UN 17

July 2017, para. 22, 67). The Human Rights Watch report indicates that rules to prevent custodial mistreatment were delivered in the 1997 Supreme Court judgement *D.K. Basu v. West Bengal*, and have been incorporated in the amended Code of Criminal Procedure (Human Rights Watch 19 Dec. 2016, 3). The same source states that the rules call for "the police to identify themselves clearly when making an arrest; prepare a memo of arrest with the date and time of arrest that is signed by an independent witness and countersigned by the arrested person; and ensure that next of kin are informed of the arrest and the place of detention" (Human Rights Watch 19 Dec. 2016, 3).

### 3.1 Procedure of Arrest

The Indian Code of Criminal Procedure provides the following:

#### Section 41B - Procedure of Arrest and Duties of Officer Making Arrest

Every police officer while making an arrest shall--

- a. bear an accurate, visible and clear identification of his name which will facilitate easy identification;
- b. prepare a memorandum of arrest which shall be--
  - i. attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;
  - ii. countersigned by the person arrested; and
- c. inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest.

...

50A. Obligation of person making arrest to inform about the arrest to inform about the arrest [*sic*], etc., to a nominated person

1. Every police officer or other person making any arrest under this Code shall forthwith give the information regarding such arrest and place where the arrested person is being held to any of his friends, relatives or such other persons as may be disclosed or nominated by the arrested person for the purpose of giving such information.
2. The police officer shall inform the arrested person of his rights under subsection (1) as soon as he is brought to the police station.
3. An entry of the fact as to who has been informed of the arrest of such person shall be made in a book to be kept in the police station in such form as may be prescribed in this behalf by the State Government.
4. It shall be the duty of the Magistrate before whom such arrested person is produced, to satisfy himself that the requirements of sub-section (2) and sub-section (3) have been complied with in respect of such arrested person.

...

#### Section 54 - Examination of Arrested Person by Medical Officer

1. When any person is arrested, he shall be examined by a medical officer in the service of Central or State Government, and in case the medical officer is not available, by a registered medical practitioner soon after the arrest is made:  
 Provided that where the arrested person is a female, the examination of the body shall be made only by or under the supervision of a female medical officer, and in case the female medical officer is not available, by a female registered medical practitioner.

2. The medical officer or a registered medical practitioner so examining the arrested person shall prepare the record of such examination, mentioning therein any injuries or marks of violence upon the person arrested, and the approximate time when such injuries or marks may have been inflicted.
3. Where an examination is made under sub-section (1), a copy of the report of such examination shall be furnished by the medical officer or registered medical practitioner, as the case may be, to the arrested person or the person nominated by such arrested person. [5]

...

#### Section 55A - Health and safety of arrested person

It shall be the duty of the person having the custody of an accused to take reasonable care of the health and safety of the accused. (India 1973, sec. 41B, 50A, 54, 55A)

The "requirements to be followed in all cases of arrest or detention," as provided in the 1997 Supreme Court judgment, include the following:

8. The arrestee should be subjected to medical examination by the trained doctor every 48 hours during his detention [i]n custody by a doctor on the panel of approved doctors appointed by Director, Health Services of the concerned State or Union Territory. Director, Health Services should prepare such a penal [sic] for all Tehsils and Districts as well. (India 1 Aug. 1997)

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of sources consulted in researching this Information Request.

#### Notes

[1] Subsection 1(2) of the Code of Criminal Procedure provides that the Act "extends to the whole of India except the State of Jammu and Kashmir" (India 1973, subsection 1(2)).

[2] Nair mentions that Jammu and Kashmir has enacted a law similar to India's National Security Act, which is titled Jammu & Kashmir Public Safety Act (1978) (Nair 5 Mar. 2018).

[3] The Indian National Crime Records Bureau indicates that there were, on 31 December 2015, 419,623 inmates in Indian prisons (India 26 Sept. 2016, i).

[4] The 17 custodial deaths occurred between 2009 and 2015 (Human Rights Watch 19 Dec. 2016, 2).

[5] The state of Uttar Pradesh amendments to section 54 of the 1973 Indian Code of Criminal Procedure Act provides that the medical report should be provided free of charge (India 1973).

#### References

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## Additional Sources Consulted

**Oral sources:** Amnesty International; Commonwealth Human Rights Initiative – Office in New Delhi; criminal law lawyer in Delhi and Noida; criminal law lawyer in Mumbai; criminal law lawyer in Nagpur; criminal law lawyer in Natpa; India – National Human Rights Commission.

**Internet sites, including:** Center for Constitutional Rights Research and Advocacy; Commonwealth Human Rights Initiative; ecoi.net; India – Ministry of Home Affairs, National Human Rights Commission; International Rehabilitation Council for Torture Victims; South Asia Human Rights Documentation Centre; UN – Refworld.

## Attachment

India. 1973 (amended 2013). "[Section 167](#)." *Code of Criminal Procedure, 1973*. [Accessed 15 May 2018]

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