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India: Prison conditions

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Preface

Purpose

This note provides country of origin information (COI) and analysis of COI for use by Home Office decision makers handling particular types of protection and human rights claims (as set out in the basis of claim section). It is not intended to be an exhaustive survey of a particular subject or theme.

It is split into two main sections: (1) analysis and assessment of COI and other evidence; and (2) COI. These are explained in more detail below.

Assessment

This section analyses the evidence relevant to this note – i.e. the COI section; refugee/human rights laws and policies; and applicable caselaw – by describing this and its inter-relationships, and provides an assessment on whether, **in general:**

- A person is reasonably likely to face a real risk of persecution or serious harm
- A person is able to obtain protection from the state (or quasi state bodies)
- A person is reasonably able to relocate within a country or territory
- Claims are likely to justify granting asylum, humanitarian protection or other form of leave, and
- If a claim is refused, it is likely or unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers **must**, however, still consider all claims on an individual basis, taking into account each case's specific facts.

Country of origin information

The country information in this note has been carefully selected in accordance with the general principles of COI research as set out in the Common EU [European Union] Guidelines for Processing Country of Origin Information (COI), dated April 2008, and the Austrian Centre for Country of Origin and Asylum Research and Documentation's (ACCORD), Researching Country Origin Information – Training Manual, 2013. Namely, taking into account the COI's relevance, reliability, accuracy, balance, currency, transparency and traceability.

The structure and content of the country information section follows a terms of reference which sets out the general and specific topics relevant to this note.

All information included in the note was published or made publicly available on or before the 'cut-off' date(s) in the country information section. Any event taking place or report/article published after these date(s) is not included.

All information is publicly accessible or can be made publicly available, and is from generally reliable sources. Sources and the information they provide are carefully considered before inclusion.

Factors relevant to the assessment of the reliability of sources and information include:

- the motivation, purpose, knowledge and experience of the source
- how the information was obtained, including specific methodologies used
- the currency and detail of information, and
- whether the COI is consistent with and/or corroborated by other sources.

Multiple sourcing is used to ensure that the information is accurate, balanced and corroborated, so that a comprehensive and up-to-date picture at the time of publication is provided of the issues relevant to this note.

Information is compared and contrasted, whenever possible, to provide a range of views and opinions. The inclusion of a source, however, is not an endorsement of it or any view(s) expressed.

Each piece of information is referenced in a brief footnote; full details of all sources cited and consulted in compiling the note are listed alphabetically in the bibliography.

Feedback

Our goal is to continuously improve our material. Therefore, if you would like to comment on this note, please email the Country Policy and Information Team.

Independent Advisory Group on Country Information

The Independent Advisory Group on Country Information (IAGCI) was set up in March 2009 by the Independent Chief Inspector of Borders and Immigration to support him in reviewing the efficiency, effectiveness and consistency of approach of COI produced by the Home Office.

The IAGCI welcomes feedback on the Home Office's COI material. It is not the function of the IAGCI to endorse any Home Office material, procedures or policy. The IAGCI may be contacted at:

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Information about the IAGCI's work and a list of the documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector's pages of the gov.uk website.

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Assessment

Updated: 29 August 2019

1. Introduction

1.1 Basis of claim

1.1.1 Fear of being imprisoned, following a criminal conviction, in conditions which are so severe as to amount to a real risk of serious harm.

1.2 Points to note

1.2.1 This note is concerned with whether prison conditions breach Article 3 of the European Convention on Human Rights (ECHR) and warrant a grant of humanitarian protection or discretionary leave.

1.2.2 In Mursic v Croatia (7334/13, 20 October 2016), the European Court of Human Rights (ECtHR) identified a strong but rebuttable presumption that a violation of Article 3 arises when the personal space available to a detainee falls below 3 sqm of floor surface in multi-occupancy accommodation in prisons (paras 123-126).

1.2.3 The ECtHR added that '...the assessment of the minimum level of severity for any ill-treatment to fall within the scope of Article 3 is, in the nature of things, relative. The assessment of this minimum [...] will depend on all the circumstances of the case, such as the duration of the treatment, its physical and mental effects and, in some cases, the sex, age and state of health of the victim.' (para 122).

1.2.4 For further guidance on Convention reasons see the instruction on Assessing Credibility and Refugee Status.

1.2.5 For general guidance on assessing prison conditions, see the instruction on Humanitarian protection.

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2. Consideration of issues

2.1 Credibility

2.1.1 For information on assessing credibility, see the instruction on Assessing Credibility and Refugee Status.

2.1.2 Decision makers must also check if there has been a previous application for a UK visa or another form of leave. Asylum applications matched to visas should be investigated prior to the asylum interview (see the Asylum Instruction on Visa Matches, Asylum Claims from UK Visa Applicants).

2.1.3 Decision makers should also consider the need to conduct language analysis testing (see the Asylum Instruction on Language Analysis).

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2.2 Exclusion

2.2.1 Decision makers must consider whether one (or more) of the exclusion clauses is applicable. Each case must be considered on its individual facts and merits.

2.2.2 If there are reasons for considering that the person has committed a serious criminal offence, then decision makers must consider whether one of the exclusion clauses – in particular Article 1F(b) – is applicable.

2.2.3 If the person is excluded from the Refugee Convention, they will also be excluded from a grant of humanitarian protection.

2.2.4 For further guidance on the exclusion clauses and restricted leave, see the Asylum Instruction on Exclusion: Article 1F of the Refugee Convention and the Instruction on Restricted Leave. For guidance on exclusion from humanitarian protection see the Asylum Instruction on Humanitarian protection. You may also need to refer to the Discretionary leave instruction.

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2.3 Refugee convention reason

2.3.1 Where a person is fleeing prosecution for a criminal offence, they will not be a refugee unless the prison sentence or prison regime, irrespective of its severity, is discriminatory or disproportionately applied for reasons of race, religion, nationality, membership of a particular social group or political opinion.

2.3.2 Those who face legitimate prosecution for a criminal offence, which would be seen as a criminal offence if committed in the UK, will not qualify as refugees solely because they face prosecution on return.

2.3.3 In the absence of a link to one of the five Convention reasons necessary for the grant of refugee status, the question is whether the person will face a real risk of serious harm sufficient to qualify for Humanitarian Protection.

2.3.4 For further guidance on Convention reasons see the instruction on Assessing Credibility and Refugee Status. Also see the instruction on Humanitarian protection.

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2.4 Risk

2.4.1 Decision makers must first establish the likelihood that the person will be imprisoned on return. This includes, if necessary: whether the alleged offence constitutes an offence under Indian law and, if so, is one which is likely to be punishable by a term of imprisonment (see Legislation).

2.4.2 If the person is likely to be imprisoned on return, decision makers must also consider whether the law is discriminatory or being disproportionately applied for reasons of race, religion, nationality, membership of a particular social group or political opinion.

2.4.3 For further guidance on assessing risk, see the instruction on Assessing Credibility and Refugee Status.

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2.5 Death penalty

2.5.1 Decision makers must establish whether there is a real risk the person will be convicted of a crime which would attract the death penalty.

2.5.2 India retains the death penalty for ordinary crimes (crimes defined in criminal codes or by the common law) although is not a mandatory sentence for any crime. In 2018 and 2019 legislation was amended to allow the death penalty as a punishment for rape and aggravated sexual assault of children under 18 years old; legislation was changed in August 2018 to provide for the death penalty for piracy. A death sentence should, according to a Supreme Court judgement of 2012, only be applied in the 'rarest of rare' cases (see Offences punishable by the death penalty),

2.5.3 In practice, this is not the case as death sentences continue to be imposed by trial courts: 2018 saw one of the highest rates since 2000 with 162 death sentences handed down. In the same year, 92 death sentences were either commuted to life imprisonment or the accused was acquitted by the Supreme or High Courts. There were reports of a reward system being operated in Madhya Pradesh for prosecutors incentivising the use of the death penalty. As of 31 December 2018, 426 prisoners were on death row. Despite this, no executions have taken place since 2015 (see Implementation of the death penalty).

2.5.4 Each case must be considered on its facts, with the onus on the person to demonstrate that there is risk that they will be convicted and face the death penalty on return.

2.5.5 For further guidance regarding the death penalty, see the instruction on Humanitarian protection.

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2.6 Prison conditions

2.6.1 State and Union Territory governments have primary responsibility for the administration and management of prisons and prisoners. The Prisons Act of 1894, alongside each state's own prison acts or rules and the Model Prison Manual 2016, govern the treatment and rights of prisoners and lay down the procedures for prison management (see Prisons: Administration).

2.6.2 Prisons conditions vary from state to state and prison to prison. Many are overcrowded and understaffed (see Prison conditions). As of 31 December 2016, overall prison occupancy stood at 113.7%. The occupancy rate varies by state and prison although nearly half of all central (main) jails are reported to be overcrowded. Although prison capacity has increased since 2014, so has the number of prisoners (see Capacity and occupancy). A Supreme Court order of July 2013 - which followed a writ petition highlighting prison overcrowding, unnatural deaths (including suicides), inadequacy of staff and inadequate staff training - aims to address the conditions in 1,382 prisons. Numerous court judgements have been delivered in relation to this petition, including a direction to all State Legal Services Authorities (SLSAs) to conduct studies on prison conditions. In 2018, in a case heard by the Supreme Court, overcrowding was reported to be well above 150% in many prisons and in one case as high as 609% (see General conditions, Capacity and occupancy and Medical care and treatment).

2.6.3 Monitoring of prisons was insufficient – less than 1% were adequately scrutinised. On the relatively few prisons that were monitored, there were reports of dilapidated prison buildings; inadequate food; lack of access to

fresh water and medical care; poor sanitation and environmental conditions, including dysfunctional drainage and sewerage systems and a lack of heat and ventilation. Beds are not always provided (see Oversight and monitoring, General conditions and Access to provisions).

2.6.4 In some State prisons, there are cases of denial of medical care; reports of insufficient and basic medicines being stocked in prison; a severe shortage of medical staff including female doctors; and delays in referrals for emergency medical treatment (see Medical care and treatment).

2.6.5 India has failed to adopt a national law against torture or to ratify the UN Optional Protocol to the UN Convention against Torture (see Domestic and international law against torture). There are reports and allegations of prisoner torture and ill-treatment by prison staff in some prisons, including rape and sexual assault and solitary confinement. Minority groups and members of lower castes may be more vulnerable to abuse. There are reports of prisoners with disabilities suffering inadequate and inaccessible facilities without the necessary modifications (see Torture and ill-treatment, Women and children and Minority groups).

2.6.6 Prison conditions may vary according to the class of prisoner. Reports indicate better provisions and living conditions may be made available to wealthy prisoners, for example, fugitive millionaires awaiting extradition. Prisoners on remand (awaiting trial) are often housed with convicted prisoners contributing to overcrowding. Remand prisoners make up two-thirds of the prison population and are sometimes held for over 5 years awaiting trial (see Prisoner categories and Capacity and occupancy).

2.6.7 The majority of women, who make up less than 5% of the prison population, are held in general prisons, albeit segregated from men. Only 17% of women prisoners are held in all female prisons and there is a lack of female prison staff. Nutrition is insufficient for pregnant and lactating women and children. Juveniles are often held in rehabilitative facilities although there are reports of minors being housed in adult prisons in rural areas. Children up to the age of 6 may be accommodated with their mothers (see Prisoner categories, Capacity and occupancy and Women and children).

2.6.8 Regarding space afforded to prisoners, although the Model Prison Manual 2016 prescribes the minimum floor space – 3.71 square metres (sqm) per prisoner for sleeping barracks and a total of 8.92 sqm for cells and barracks designed for no more than 20 prisoners – one source notes that barracks usually hold 20-30 inmates, sometimes more and that cells are usually shared between 2-4 inmates. If the manual's cell and barrack size guidelines are adhered to, there may be between 4.46 sqm or, in situations of severe overcrowding, 2.23 sqm of space per person (see Cell size and space).

2.6.9 However, the ECtHR in Mursic also said that, in cases where it is alleged that the inmate had between 3 and 4sq m of personal space, space would remain a weighty factor in the assessment of the adequacy of the conditions of detention. In such instances, a violation of Article 3 would be found if the space factor was coupled with other aspects of inappropriate physical conditions of detention related to, in particular, access to outdoor exercise, natural light or air, availability of ventilation, adequacy of room temperature,

the possibility of using the toilet in private and compliance with basic sanitary and hygienic requirements (paragraph 139).

2.6.10 During daylight hours, times are allotted for prisoners to move around the yard, wards, bathing and recreational areas (see Cell size and space).

2.6.11 Inspection boards, whose aim is to visit prisons to assess conditions and make reports and recommendations, do not operate in all states or do not function effectively. International organisations do not have permission to visit prisons. The National Human Rights Commission made unannounced prison visits although its special rapporteur reports are not publicly available (see Oversight and monitoring).

2.6.12 In general, prison conditions are not systematically inhuman and life-threatening. However, due to the lack of prison monitoring and the absence of information on what the physical conditions are like in most prisons, decision makers must carefully consider each case on its facts, taking into account the person's background and specific circumstances (including the sex, age and state of health of the victim), likely length and location of detention and how prison conditions will impact them. The onus is on the person to demonstrate that if detained they would experience conditions that breach Article 3 of the ECHR.

2.6.13 For general guidance on assessing prison conditions, see the instruction on Humanitarian protection. Also refer to the Discretionary leave instruction if the person is excluded from humanitarian protection. You may also wish to refer to the instruction on Assessing Credibility and Refugee Status.

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2.7 Certification

2.7.1 Where a claim falls to be refused, it must be considered for certification under section 94 of the Nationality, Immigration and Asylum Act 2002 as India is listed as a designated state. A claim based on prison conditions is unlikely to be certifiable as 'clearly unfounded'.

2.7.2 For further guidance on certification, see Certification of Protection and Human Rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 (clearly unfounded claims).

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Country information

Section 3 updated: 29 August 2019

3. Judiciary

3.1.1 For information on independence, fair trail and corruption, see the Country Policy and Information Note on India: Actors of protection.

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Section 4 updated: 29 August 2019

4. Legislation

4.1 Indian Penal Code (IPC)

4.1.1 For offences prescribed under the IPC, see the Indian Penal Code 1860, with amendments[1].

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4.2 Domestic and international law against torture

4.2.1 In its December 2018 report, the Asian Centre for Human Rights (ACHR), sets out the various reasons India has not ratified the UN Convention Against Torture (UNCAT)[2].

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4.3 Double jeopardy

4.3.1 The Constitution of India states under Article 20:

'20. [...] (2) No person shall be prosecuted and punished for the same offence more than once.'[3]

4.3.2 Section 300 of the Code of Criminal Procedure Act (CrPC) provides as follows:

'300. Person once convicted or acquitted not to be tried for same offence:

(1) A person who has once been tried by a Court of competent jurisdiction for an offence and convicted or acquitted of such offence shall, while such conviction or acquittal remains in force, not be liable to be tried again for the same offence, nor on the same facts for any Other Offence for which a different charge from the one made against him might have been made under sub-section (1) of Section 221, or for which he might have been convicted under sub-section (2) thereof.

(2) A person acquitted or convicted of any offence, may be afterwards tried, with the consent of the State Government, for any distinct offence for which a separate charge might have been made against him at the former trial under sub-section (1) of Section 220.

(3) A person convicted of any offence constituted by any act causing consequences which, together with such act, constituted a different offence

[1] Indian Penal Code 1860, url.
[2] ACHR, 'Torture, India's self made hurdle to extradition', (page 13), December 2018, url.
[3] Constitution of India, as amended to 2015, url.

from that of which he was convicted, may be afterwards tried for such last-mentioned offence, if the consequences had not happened, at the time when he was convicted.

(4) A person acquitted or convicted of any offence constituted by any acts may, notwithstanding such acquittal or conviction, be subsequently charged with, and tried for, any other offence constituted by the same acts which he may have committed if the Court by which he was first tried was not competent to try the offence with which he is subsequently charged.

(5) A Person discharged under Section 258 shall not be tried again for the same offence except with the consent of the Court by which he was discharged or of any other Court to which the first mentioned Court is subordinate.

(6) Nothing in this Section shall affect the provisions of Section 26 of the General Clauses Act, 1897 (10 of 1897) or of Section 188 of this Code.

Explanation: The dismissal of a complaint, or the discharge of the accused, is not an acquittal for the purpose of this Section." (Code of Criminal Procedure, 1973)'[4]

4.3.3 The effect of the 'Explanation' in Section 300 (above) is that a person who has been acquitted of a crime can be retried for the same offence[5].

4.3.4 Section 188 of the Code of Criminal Procedure confirms that an Indian citizen can be detained and tried in India for an offence committed in another country; it reads:

'188. Offence committed outside India -

When an offence is committed outside India –

(a) by a citizen of India, whether on the high seas or elsewhere; or

(b) by a person, not being such citizen, on any ship or aircraft registered in India, he may be dealt with in respect of such offence as if it had been committed at any place within India at which he may be found:

Provided that, notwithstanding anything in any of the preceding sections of this Chapter, no such offence shall be inquired into or tried in India except with the previous sanction of the Central Government.'[6]

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Section 5 updated: 29 August 2019

5. Death penalty

5.1 Offences punishable by the death penalty

5.1.1 India retains the death penalty for ordinary crimes, as noted by Amnesty International in its 2018 report on death sentences and executions[7]. In 2018, legislation was expanded to allow the death penalty for non-homicidal offences. The Criminal Law Amendment Act of 2018 provides for the death

[4] Code of Criminal Procedure Act, 1973, url.
[5] Verma, S., 'Guarantee Against Double Jeopardy', 8 April 2015, url.
[6] Code of Criminal Procedure Act, 1973, url.
[7] Amnesty International, 'Death sentences and executions 2018', (page 49), 10 April 2019, url.

sentence as a possible punishment for rape and gang-rape of girls below the age of 12 years. In January 2019, amendments to the Protection of Children from Sexual Offences Act, 2012, imposes the death sentence as a possible punishment for penetrative aggravated sexual assault with children below the age of 18 years. A bill was approved by the Cabinet in August 2018, providing the death penalty or life imprisonment for crimes involving maritime piracy or piracy at sea[8].

5.1.2 The Cornell Law School's death penalty database for India listed the crimes punishable by death as well as types of offenders excluded from the death penalty[9]. The same source noted that the death penalty is not mandatory for any crime, or was not applied as such by the courts, and should only be used, according to a Supreme Court judgement of 2012, in 'the rarest of the rare' cases[10].

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5.2 Implementation of the death penalty

5.2.1 Research conducted by Project 39A at the National Law University, Delhi, indicated that, in 2018, 162 death sentences were imposed by India's trial courts, the highest in a calendar year since 2000, when Project 39A began recording. This was an increase of 50% compared to the 108 sentences passed in 2017. In 2016, 150 death sentences were imposed[11]. As of 31 December 2018, 426 prisoners were on death row[12].

5.2.2 The Project 39A report stated 'In a move that has raised serious concerns about interference with principles of prosecutorial independence, the Madhya Pradesh government has devised and implemented a rewards system for Public Prosecutors incentivising the seeking of the death penalty. The scheme awards 100-200 points for maximum punishment at lower courts, 500 for a life sentence and 1000 points for obtaining a death sentence. In an apparent bid to secure faster convictions, the reward system also creates awarding titles like 'Best Prosecutor of the Month" and "Pride of Prosecution" to prosecutors earning more than 2000 points while issuing strict warnings to those earning below 500 points.'[13]

5.2.3 Reporting on the reward system, The Indian Express cited one case in Madhya Pradesh in which a man was sentenced to death for raping a minor after a 5-day trial[14]. India's digital news platform, The Print, reported in 2018 that, as well as the state of Madhya Pradesh, the state government of Maharashtra had also introduced a reward system to public prosecutors to secure the rate of convictions in general[15].

[8] Project 39A, 'Annual Statistics Report 2018', (page 2), January 2019, url.
[9] Cornell Law School, 'Death penalty database', 4 March 2014, url.
[10] Cornell Law School, 'Death penalty database', 4 March 2014, url.
[11] Project 39A, 'Annual Statistics Report 2018', (pages 1 and 32), January 2019, url.
[12] Project 39A, 'Annual Statistics Report 2018', (page 29), January 2019, url.
[13] Project 39A, 'Annual Statistics Report 2018', (page 7), January 2019, url.
[14] Indian Express, 'Madhya Pradesh govt offers 1,000 points for death sentence', 19 August 2018, url.
[15] The Print, 'How to kill a criminal justice system…', 30 November 2018, url.

5.2.4 Project 39A noted that in 2018, of 12 death sentences reviewed by the Supreme Court, 11 were commuted to life imprisonment[16]. In the same year, the High Court commuted 58 death sentences and acquitted 23[17]. No executions have been reported since 2015, as of 6 August 2019[18].

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Section 6 updated: 29 August 2019

6. Prisons

6.1 Administration

6.1.1 The administration and management of prisons in India is the responsibility of the individual Governments of States and Union Territories. The Ministry of Home Affairs provides guidance and advice on issues concerning prisons and inmates[19]. Prisons are governed by the Prisons Act of 1894 although each state has also formulated their own prison acts or rules[20]. The Model Prison Manual 2016 provides guidance to prison administrations and aims to bring uniformity in the laws, rules and regulations on governing prisons and prisoner rights across India[21].

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6.2 Locations and types

6.2.1 In June 2019, the Commonwealth Human Rights Initiative (CHRI), an independent non-governmental organisation (NGO), listed the 7 types of prisons in India:

- **Central jails**: These lodge both convicts and undertrials;
- **District jails**: These lodge primarily undertrials; upon conviction prisoners are sent to central jails;
- **Sub-jails**: These lodge only undertrials;
- **Women's jails**: These exclusively lodge women prisoners;
- **Semi Open or Open jails**: These lodge only convicts, and allow prisoners to be engaged in work to earn their own livelihood;
- **Borstal schools**: These lodge prisoners between 18 and 21 years of age;
- **Special jails**: States may define certain prisons as special jails; however, no set criteria is prescribed to define what constitutes them[22].

6.2.2 In March 2019, the National Crime Record Bureau (NCRB) published its most recent prison statistics for India, referring to the period 1 January to 31 December 2016. Data was collated from all prison departments in the 36

[16] Project 39A, 'Annual Statistics Report 2018', (page 3), January 2019, url.
[17] Project 39A, 'Annual Statistics Report 2018', (page 8), January 2019, url.
[18] Cornell Law School, 'Death penalty database', (Executions in 2019), updated 6 August 2019, url.
[19] Ministry of Home Affairs, 'Prison Reforms', updated 9 August 2019, url.
[20] CHRI, '101 Questions on Prisons You Didn't Know Whom to Ask', (page 2), 4 June 2019, url.
[21] Model Prison Manual 2016, url.
[22] CHRI, '101 Questions on Prisons You Didn't Know Whom to Ask', (page 4), 4 June 2019, url.

states and Union Territories[23]. According to the NCRB report, as of 31 December 2016, there were 1,412 prisons in India[24]. The NCRB data included the number of prisons, according to type, in each state[25].

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Section 7 updated: 29 August 2019

7. Prison conditions

7.1 General conditions

7.1.1 The Oxford Human Rights Hub, whose aim is to advance the understanding and protection of human rights and equality, published a blog by third-year law student, Lakshana Ramakrishnan, dated February 2019, regarding an ongoing court petition relating to prison conditions in India:

'In June 2013, Justice R C Lahoti, a retired Chief Justice of the Indian Supreme Court, wrote to the then Chief Justice on overcrowding, unnatural deaths, inadequacy of staff and the inadequate training of staff in the Indian prison system. The letter was admitted as a writ petition through an order passed in July that year. The writ sought to remedy the inhuman conditions prevailing in 1382 prisons in India. From 2016 to December 2018, several judgements titled Re: Inhuman Conditions in 1382 Prisons have been delivered in relation to this petition. The directives issued in these judgements have accorded them landmark status.'[26]

7.1.2 The Supreme Court directed all State Legal Services Authorities (SLSAs) to conduct studies on prison conditions[27].

7.1.3 Following the inspection of all 58 prisons in Bihar state in 2015 by human rights activist Smita Chakraburtty, the subsequent report, published by the Bihar State Legal Services Authority (BSLSA), cited numerous problems in Bihar's prisons including: dilapidated buildings, water leakage, lack of light and ventilation, dysfunctional drainage and sewerage systems, scarcity of fresh drinking water, limited space for receiving visitors or accessing legal counsel, understaffing, overcrowding, poor medical and healthcare provisions and incidents of torture and rape[28].

7.1.4 The US Department of State noted in its human rights report for 2018 (USSD HR Report 2018) that conditions in India's prisons were 'frequently life threatening', adding 'Prisons were often severely overcrowded; and food, medical care, sanitation, and environmental conditions frequently were inadequate. Potable water was not universally available. Prisons and detention centers remained underfunded, understaffed, and lacked sufficient infrastructure. Prisoners were physically mistreated.'[29]

[23] NCRB, 'Prison Statistics India 2016', March 2019, url.
[24] NCRB, 'Prison Statistics India 2016', (page xi), March 2019, url.
[25] NCRB, 'Prison Statistics India 2016', (page 21), March 2019, url.
[26] Ramakrishnan, L., 'Re: Re: Inhuman conditions in 1382 Prisons', 27 February 2019, url.
[27] The Hindu, 'SC seeks details on over-crowded prisons', 27 February 2018, url.
[28] BSLSA, 'Prisons of Bihar Status Report 2015', 2015, url.
[29] USSD, 'Country Report on Human Rights Practices 2018', (page 6), 13 March 2019, url.

7.1.5 The CHRI noted in its analysis of Prison Statistics India 2016 that there was a 35% shortage in human resources; of the 81,568 sanctioned posts for prison officials and staff, only 53,370 were filled. There were only 621 correctional staff, which included probation officers, psychologists or psychiatrists and social workers – all primarily responsible for the rehabilitation and reformation of prisoners – across the country's 1,412 prisons[30].

7.1.6 Citing a report by IANS, India's largest independent news agency, Outlook India noted in November 2018 that, following a visit to prisons in Haryana by 2 Supreme Court (SC) judges, the SC bench branded prisons as being in a 'pathetic condition', with taps not working and toilets blocked[31].

7.1.7 Between December 2017 and May 2018, the CHRI conducted a study of all 19 prisons in Haryana state, on behalf of the Haryana State Legal Services Authority, and published a report on their findings in August 2019. Summing up the study, the CHRI found '… sound infrastructure, regular maintenance and basic cleanliness almost everywhere. They also found no complaints of sub-standard conditions or unhygienic food during our interactions with the prisoners.' Not all prisons were overcrowded but most were understaffed[32].

7.1.8 According to the British High Commission (BHC), New Delhi, in its guide for British prisoners in Indian prisons (BHC guide), dated September 2018, the prison system and regime varied between States and conditions were very basic. A bed may not be provided; the cells/barracks did not have air conditioning or heating; and bathing and toilet facilities were usually shared[33].

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7.2 Prisoner categories

7.2.1 The CHRI noted that prisoners were classified on the basis of the status of their trial:

- **Convict prisoners**: Persons who have been adjudged guilty by the court of a criminal offence and have been sentenced to imprisonment;
- **Undertrial prisoners**: Persons who are in prison pending completion of their trial;
- **Detenues**: Persons who have been detained in prison under preventive detention laws;
- **Internees/Awaiting release**: Persons who have completed their sentence but have not been released due to procedural delays; these are primarily in case of foreign national prisoners (FNPs);

[30] CHRI, 'Jail Mail: Nelson Mandela Day', (section VI), 18 July 2019, url.
[31] Outlook, 'SC slams Centre, states for 'pathetic condition' in jails', 22 November 2018, url.
[32] CHRI, 'Inside Haryana Prisons', (page 4), 10 August 2019, url.
[33] BHC, 'India Prisoner Pack', (page 14), last updated 17 September 2018, url.

- **Civil prisoners**: Prisoners who do not belong to any of the above categories and have been detained for default of payment of a fine or a civil financial liability[34].

7.2.2 According to the CHRI, '… prison manuals usually provide different rules for each category of prisoners. In general, rules for undertrials, detenues and civil prisoners are more lenient than those for convicts.'[35] The same source noted segregation varies across states and prisons:

'Prisoners can be segregated based on their age, physical and mental health, nature of offence, status of trial, court where they are being tried, criminal record and the length of sentence, etc. As a general practice, convicted and undertrial prisoners are confined separately, as are male and female prisoners. Habitual offenders are also separated from first-time offenders. Prisoners are usually accommodated in barracks with accommodation varying from 20-50 or more, depending on infrastructural capacities which vary from prison to prison and state to state.'[36]

7.2.3 Of the 293,058 under-trial prisoners, as of 31 December 2016, 36,346 had been detained for a period of 1 to 2 years, and 3,927 had been incarcerated for over 5 years[37]. According to the USSD HR Report 2018, pre-trial detainees were often detained alongside convicted prisoners, and added 'Pretrial detention was arbitrary and lengthy, sometimes exceeding the duration of the sentence given to those convicted.'[38]

7.2.4 According to a Times of India report of August 2018, prison authorities in Mumbai planned to rebuild part of Arthur road jail to meet international standards to house fugitive millionaires who often resist deportation by citing poor conditions in Indian jails[39]. In June 2019, according to The Hindu Business Line (part of The Hindu newspaper group), Home Affairs officials gave assurances of a barrack at Arthur road jail that met European standards, which had been prepared for the extradition of diamond merchant, Nirav Modi[40].

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7.3 Capacity and occupancy

7.3.1 According to the NCRB report, as of 31 December 2016, official capacity of India's 1,412 prisons stood at 380,876. As of the same date, prison occupancy stood at 433,003, over 13% above capacity. Although the capacity of prisons increased from 356,561 in 2014 to 380,876 in 2016, the number of prisoners also increased by 3.5%, from 418,536 to 433,003, during the same period[41]. Under-trial prisoners accounted for 67% of the total number of prisoners. There were 18,498 female prisoners (4.3% of the

[34] CHRI, '101 Questions on Prisons You Didn't Know Whom to Ask', (page 4), 4 June 2019, url.
[35] CHRI, '101 Questions on Prisons You Didn't Know Whom to Ask', (page 4), 4 June 2019, url.
[36] CHRI, '101 Questions on Prisons You Didn't Know Whom to Ask', (page 6), 4 June 2019, url.
[37] NCRB, 'Prison Statistics India 2016', (page 156), March 2019, url.
[38] USSD, 'Country Report on Human Rights Practices 2018', (pages 6 and 8), 13 March 2019, url.
[39] Times of India, 'Mumbai jail to get EU-style cells for fugitive millionaires', 30 August 2018, url.
[40] The Hindu Business Line, 'Arthur Road Jail kept ready for Nirav Modi: Official', 19 June 2019, url.
[41] NCRB, 'Prison Statistics India 2016', (pages xi-xii), March 2019, url.

total prison population), 1,649 of whom were incarcerated with their children[42].

7.3.2 The NCRB report provided data on the population of prisons across India's states and UTs, including the available capacity and occupancy rate[43]. Whilst the overall occupancy rate for all prisons across India stood at 113.7%, as of 31 December 2016[44], the recorded occupancy rate varied across prisons in different states and UTs, although nearly half of all central jails were over-occupied[45]. The same source also provided data on the population of prisons by type and according to gender[46].

7.3.3 In March 2018, the Supreme Court (SC) expressed concern at the state of overcrowding in over 1,300 prisons, remarking 'It is unfortunate that the prisons are overcrowded. Prisoners also have human rights and they cannot be kept in jails like animals'. Latest Laws website reported that the SC Bench stated that 'It was informed by Amicus Curiae ["friend of the court"] that there were a large number of jails where "overcrowding is well above 150% and in one case it is as high as 609%".' The SC criticised States and UTs for not addressing the issue of overcrowding[47].

7.3.4 The USSD HR Report 2018 noted 'In Uttar Pradesh occupancy at most prisons was two, and sometimes three, times the permitted capacity, according to an adviser appointed by the Supreme Court.'[48]

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7.4 Cell size and space

7.4.1 The Model Prison Manual 2016 prescribes the minimum floor space per prisoner for sleeping barracks (designed for no more than 20 prisoners) and cells (for prisoner segregation due to security or disease containment). Sleeping barracks should be 3.71 square metres of space per prisoner. Cells should be 8.92 square metres[49]. There should be at least one flush toilet per 10 prisoners (the ratio should increase to one toilet per 6 prisoners during the day) and one bathing cubicle for every 10 prisoners[50].

7.4.2 The CHRI noted 'Generally, prisons are locked up from sunset to sunrise and under normal condition, prisoners are not allowed to move around during these hours. During the day, there are specific times allotted for movement around the yard, wards, bathing and recreational activities. Prisoners are also counted several times a day, in accordance with the policy for each prison.'[51]

[42] NCRB, 'Prison Statistics India 2016', (pages xii-xiii and 44), March 2019, url.
[43] NCRB, 'Prison Statistics India 2016', (page 23), March 2019, url.
[44] NCRB, 'Prison Statistics India 2016', (page xi), March 2019, url.
[45] NCRB, 'Prison Statistics India 2016', (page 23), March 2019, url.
[46] NCRB, 'Prison Statistics India 2016', (pages 22-28), March 2019, url.
[47] Latest Laws.com, 'SC slams State Govts on 600% overcrowding of Jails', 30 March 2018, url.
[48] USSD, 'Country Report on Human Rights Practices 2018', (page 6), 13 March 2019, url.
[49] Model Prison Manual 2016, (page 26), url.
[50] Model Prison Manual 2016, (pages 27-28), url.
[51] CHRI, '101 Questions on Prisons You Didn't Know Whom to Ask', (page 7), 4 June 2019, url.

7.4.3 The BHC guide noted that cells were usually shared between 2-4 inmates and barracks held 20-30 prisoners, sometimes more. Single cells may be provided if a person's life was considered in danger, or if charged under the National Security Act[52].

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Section 8 updated: 29 August 2019

8. Treatment of prisoners

8.1 Torture and ill-treatment

8.1.1 India has not ratified the UN Convention against Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (UN CAT)[53]. Similarly, there is no national law against torture[54]. (see Legal rights – Domestic and international law against torture).

8.1.2 In its 2017/2018 report, covering 2017 events, Amnesty International noted that between January and August 2017, 894 deaths occurred in judicial custody, although it did not specify the nature of the deaths. The report noted:

'In February [2017], Uma Bharti, a central government minister, said she had ordered rape suspects to be tortured when she was Chief Minister of Madhya Pradesh. In August [2017], Manjula Shetye, a woman prisoner at the Byculla jail in Mumbai, died after being allegedly beaten and sexually assaulted by officials for complaining about food in the prison. A team of parliamentarians that visited Byculla jail reported that prisoners were routinely beaten. In November, a committee set up by the Delhi High Court said that 18 prisoners in Tihar jail in New Delhi had been beaten after they had objected to their pillow covers being taken.'[55]

8.1.3 The USSD HR Report 2018 noted, regarding the Manjula Shetye case, that, 'On June 20 [2018], prosecutors filed murder, conspiracy, criminal intimidation, and destruction of evidence charges against the jail warden and five other prison officials for the 2017 death of Manjula Shetye, a female convict in Mumbai. The officials were arrested in 2017 for allegedly assaulting Shetye following her complaint about inadequate food. A government doctor who signed the death certificate was suspended.'[56]

8.1.4 The USSD HR Report 2018 'In March [2018] media reported the NHRC completed its investigative report that confirmed torture allegations by 21 inmates on trial in a jail in Bhopal. The report allegedly recommended appropriate legal action be taken against the jail authorities and the doctor involved in the torture and its cover up.'[57]

8.1.5 A study by the National Commission for Women (NCW), under the Ministry of Women and Child Development (WCD), conducted between November

[52] BHC, 'India Prisoner Pack', (page 14), last updated 17 September 2018, url.
[53] OHCHR, 'UN Treaty Body Database', n.d., url.
[54] CHRI, 'Strengthening Legal Protection Against Torture In India', 28 October 2018, url.
[55] Amnesty International, 'Annual Report 2017/18 – India', 22 February 2018, url.
[56] USSD, 'Country Report on Human Rights Practices 2018', (page 7), 13 March 2019, url.
[57] USSD, 'Country Report on Human Rights Practices 2018', (page 7), 13 March 2019, url.

2017 and May 2018, published June 2018, noted 'Incidence of violence including sexual violence by inmates and authorities has been reported from across the country. However, official reports remain underestimated due to fear in prisoners of retaliation as they are forced to stay in the same place as their perpetrators.'[58]

8.1.6 In its "Annual Report on Torture 2018", the ACHR reported:

'On 1 March 2018, the Coimbatore Bar Association in a letter to acting Principal District Judge M. Christopher alleged that the inmates were subjected to torture at the Central Prison at Coimbatore in Tamil Nadu. The inmates were allegedly assaulted with wooden logs and pipes and made to do 500 sit-ups without break and kneel down for a long time.

'The Principal District Judge appointed advocate M Ganesh Kumar to inquire into the condition in Coimbatore Central Prison in April 2018. In his report submitted to the court in May 2018, Kumar stated that many prisoners were tortured by prison warders and the court should intervene to prevent such violations. The report stated that one of the prisoners identified as A Babu alias Syed Ibrahim was severely beaten by prison warders and many other prisoners were also attacked by warders. A prisoner identified as Sanjay Raja, aged 26 years, who was produced at the District Court in Coimbatore on 16 May 2018 alleged that he was being physically attacked and harassed inside the prison by the jail wardens. He stated before the media, "Jail Superintendent Senthil Kumar has put placed me in solitary confinement, makes me stand nude and he attacks me physically. I have suffered severe injuries due to these attacks" […]

'On 29 August 2018, Vishal Singh, an inmate, narrated inhuman treatment at the hands of jail officials for failure to pay "protection money" at the Patiala Central Jail in Punjab. These allegations were made before the Patiala Special Judge Kamaljit Lamba in an application demanded his shifting to any other prison. According to Vishal, Jail Superintendent Rajan Kapoor and Deputy Superintendent Teja Singh subjected him to brutal torture and showed injury marks to the judge. Vishal alleged that those who refused to pay "protection money" were tortured by the staffers. His mother Amandeep Kaur, appearing before the judge, stated that jail staffers were demanding Rs 20,000 from her son to spare him. […] The allegations of Vishal were confirmed after two videos purportedly shot by an inmate of Patiala Central Jail went viral on social media. In one of the two videos, which the inmate claimed was shot on 8 August 2018, a jail staffer was seen beating an inmate with a leather belt for failing to pay "protection" money to the jail officials. […] In the other video, which was purportedly recorded on 5 July 2018, it was claimed that jail staffer Munshi, alias Ghoda used to beat up inmates.'[59]

8.1.7 In April 2019 OHCHR experts expressed their concern about the prison conditions of Dr G.N. Saibaba, defender of the rights of religious minorities, including the Dalits. UN experts stated concern that Dr. Saibaba, who is disabled and was sentenced to life imprisonment in 2017, 'continues to be

[58] Ministry of WCD, 'Women in Prisons', (page 21), June 2018, url.
[59] ACHR, 'India: Annual report on torture 2018', (pages 106-9), April 2019, url.

held in solitary confinement at a Maharashtra prison. "[…] He continues to be detained in inadequate conditions of detention in so-called "anda cells", with no windows, extreme temperatures and inaccessible facilities. […] "The denial of such conditions can be considered a form of discrimination, and may amount to torture or ill-treatment," they added. "Moreover, prolonged solitary confinement may amount to cruel, inhuman or degrading treatment or punishment and, in some circumstances, even to torture" they said.'[60]

See also Minority groups.

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8.2 Women and children

8.2.1 The study by the NCW found that only 17% of women prisoners were incarcerated in all female prisons, with the majority held in general prisons in female enclosures. In its key findings, the NCW found a lack of female staff (e.g. guards, officers, medical), inadequate accommodation exacerbated by overcrowding, poor sanitation and hygiene with a lack of toilets and washrooms and an insufficient provision of water. Nutrition was a concern, particularly for pregnant and lactating women, and children. There were few educational facilities[61].

8.2.2 Children up to the age of 6 were allowed to be confined with their mothers if no alternative care was available[62].

8.2.3 The National Human Rights Commission (NHRC) of India held an open house discussion on prison reform and prisoner welfare on 29 June 2018, where it was recorded that '… many women inmates in jails bring their children along with them and the minor children grow up in the jail environment. Care must be taken to ensure that proper educational opportunities are provided to them, and that they are not met with hostility or violence due to their caste or ethnic identity.'[63]

8.2.4 According to the NCW study, some women reported being humiliated or violated whilst being searched during the prison admission process[64].

8.2.5 The USSD HR Report 2018 noted that 'The law requires detention of juveniles in rehabilitative facilities, although at times authorities detained them in adult prisons, especially in rural areas.'[65]

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8.3 Minority groups

8.3.1 The Freedom House 'Freedom in the World 2019' report on India noted, 'Abuses against prisoners, particularly minorities and members of the lower castes, by prison staff are common.'[66]

[60] OHCHR, 'UN experts call for release of human rights defender Saibaba', 30 April 2019, url.
[61] Ministry of WCD, 'Women in Prisons', (pages iii-v and 23), June 2018, url.
[62] Ministry of WCD, 'Women in Prisons', (page 23), June 2018, url.
[63] NHRC, 'Minutes of the Open House Discussion', (para 26), 29 June 2018, url.
[64] Ministry of WCD, 'Women in Prisons', (page 21), June 2018, url.
[65] USSD, 'Country Report on Human Rights Practices 2018', (page 6), 13 March 2019, url.
[66] Freedom House, 'Freedom in the World 2019 – India', (section F3), 4 February 2019, url.

8.3.2 Commenting on the NRCB's prison statistics report for 2016, The Hindu – an English-language daily newspaper – noted that, unlike previous reports, no statistics were provided on the demographics of prisoners:

'The most significant shortcoming of the report lies in the NCRB's failure to include demographic details of religion and the Scheduled Caste and Scheduled Tribe status of prisoners, which are crucial to understanding India's prison population. This information was consistently published for the last 20 years and instrumental in revealing the problematic overrepresentation of Muslims, Dalits and Adivasis among under-trials in prisons.'[67]

8.3.3 The Hindu added that, in 2015, 'Muslims, Dalits and Adivasis accounted for 55% of the under-trial population even though they made up only 50% of the convict population and 38% of the total Indian population.'[68]

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9. Access to provisions

9.1 Medical care and treatment

9.1.1 The CHRI stated that 'Every central and district jail is supposed to employ the services of a qualified psychiatrist who is to be assisted by a psychologist and a social worker trained in psychiatry. Central and district jails are required to have facilities for preliminary treatment of mental disorders.'[69]

9.1.2 In its analysis of Prison Statistics India 2016, the CHRI noted that 2016 saw the highest number of unnatural deaths recorded in prisons since 1998. The report added that suicides accounted for 44% of unnatural deaths which, according to CHRI, pointed to a lack of inadequate medical care including for mental health. Natural deaths that occurred included preventable diseases indicating a lack of treatment or negligence during treatment[70]. The CHRI noted that there was only one psychologist / psychiatrist for every 21,650 inmates[71].

9.1.3 Commenting on the prison statistics report for 2016, The Hindu noted 'The rate of suicide among prisoners […] increased by 28%, from 77 suicides in 2015 to 102 in 2016. For context, the National Human Rights Commission in 2014 had stated that on average, a person is one-and-a-half times more likely to commit suicide in prison than outside, which is an indicator perhaps of the magnitude of mental health concerns within prisons.'[72]

9.1.4 Following the inspection of 58 prisons in Bihar state in 2015 by Smita Chakraburtty, the subsequent report published by the Bihar State Legal Services Authority (BSLSA), stated:

[67] The Hindu, 'The state of Indian prisons', 25 June 2019, url.
[68] The Hindu, 'The state of Indian prisons', 25 June 2019, url.
[69] CHRI, '101 Questions on Prisons You Didn't Know Whom to Ask', (page 7), 4 June 2019, url.
[70] CHRI, 'Jail Mail: Nelson Mandela Day', (section III), 18 July 2019, url.
[71] CHRI, 'Jail Mail: Nelson Mandela Day', (section VI), 18 July 2019, url.
[72] The Hindu, 'The state of Indian prisons', 25 June 2019, url.

'The prisons do not have proper facility of storing medicine, medical store in the prison are ill equipped, medical equipments [sic] such as X-Ray machines are dysfunctional, refrigerator for storing medicines are not operational. Medical clinics are usually run by compounders who keep only basic medicines such as paracetamol and some B-Complex vitamins, required medical kits such as pregnancy kits, HIV kits to conduct medical test as mentioned in the Prisoner Health Screening Form is also not available in the prisons. There is a severe shortage of medical staff in prison. Also, lady doctors are only available in around 6 out of 58 prisons of the state.'[73]

9.1.5 The report further stated that, due to the non-availability of resident doctors, there was no one to refer cases to the district hospital. It noted:

'The procedure of sending inmate for medical check-up or treatment, even in emergency cases, to District Hospital was extremely lengthy, leading to inordinate delay which often resulted in loss of life. Even major health conditions failed to receive the required medical attention. One such case was encountered in the Beur Central Prison, where the undertrial prisoner Upender Kumar was lying unconscious, was bleeding and had bedsores, yet the Patna Medical College Hospital did not admit him. There was no facility to treat him in Beur Hospital Ward. More shockingly, there was no arrangement to separate prisoners suffering from the human immunodeficiency virus (HIV) from those suffering from tuberculosis and they were kept in the same ward. If this was the condition of the Beur Jail, which is one of the best equipped prisons located in Patna, one can only shudder to imagine the kind of medical facilities provided in the other 57 prisons which did not have half the facilities provided in Beur Central Jail. [Smita Chakraburtty] found 102 mentally ill, 26 terminally ill, 23 handicapped, 176 in need of other medical help such as spectacles/hearing aids etc and 4 pregnant prisoners in the jails across the state.'[74]

9.1.6 In 2017, Amnesty International issued an Urgent Action in relation to a disabled teacher, G.N Saibaba, who was sentenced to life imprisonment in March 2017:

'Detained at the Nagpur Central Jail in Maharashtra State, G N Saibaba suffers from post-polio paralysis in both his legs and requires the use of a wheelchair. He has further been diagnosed with acute pancreatitis, a spinal disorder that compromises the use of his left shoulder and hand. He also suffers from a cardiac condition and hypertension. […] Following his arrest, G N Saibaba's condition has considerably worsened. His wife said that he had told her he is in acute pain and has fallen unconscious in his cell three times since his conviction. He also told his advocate that the jail authorities regularly delay him access to lifesaving medication. Jail authorities have failed to provide necessary health updates to his family and lawyers and to take him to a hospital equipped to provide him the care he requires. In addition, there are continued concerns around prison conditions including issues regarding sanitation and G N Saibaba's access to basic needs such

[73] BSLSA, 'Prisons of Bihar Status Report 2015', (page 59), 2015, url.
[74] BSLSA, 'Prisons of Bihar Status Report 2015', (page 59), 2015, url.

as a mattress and appropriate clothing. […] Denial of medical treatment to prisoners is cruel, inhuman and degrading treatment that can amount to torture.'[75]

9.1.7 In April 2019 OHCHR stated 'UN experts have called on Indian authorities to immediately release human rights defender Dr. G.N. Saibaba, a person with disabilities whose health is seriously deteriorating and who reportedly continues to be held in solitary confinement at a Maharashtra prison. "Dr. Saibaba's health problems require immediate and sustained medical attention and are reaching a point of being life-threatening," the experts said. […] At the time of his arrest in 2014, Dr. Saibaba suffered an injury to his left hand, and has not been provided with appropriate medical treatment and rehabilitation. The latest reports indicate that he is in extreme pain and is no longer responding to drugs and sedatives.'[76]

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9.2 Food and water

9.2.1 The Model Prison Manual 2016 prescribes the dietary requirements and recommended calorie intake for prisoners, depending on the individual's circumstances[77].

9.2.2 The CHRI noted, regarding dietary provision:

'All prisoners are provided food three to five times a day; this includes tea, light snacks and three meals. A diet chart is usually displayed inside the prison premises, or can be obtained from the officer-in-charge of the prison or the jail manual. Prison rations consist of basic and balanced food such as dal and rice or roti, and may include vegetables and sometimes meat or eggs. This differs across regions and states in India. Some prisoners are also provided special diets if required according to the directions of the medical officer. Different meals may be allocated to prisoners according to their health, work or religious beliefs. Sick or infirm prisoners or those in the hospital ward also receive a special diet, as do pregnant or lactating women, and children.'[78]

9.2.3 The NHRC noted in its meeting minutes on prison reform and prisoner welfare, June 2019, 'While the problem of poor diet is a common issue with all inmates, the impact of poor diet is significantly greater on these vulnerable groups whose socio-economic condition is so poor that they cannot afford to purchase anything from the jail stores to supplement the prescribed diet. They are completely dependent on the jail diet for meeting their nutritional needs.'[79]

9.2.4 The CHRI noted regarding potable water:

'Every prisoner has a right to clean and safe drinking water. Prisons have different provisions to ensure this: some provide filtered water or have

[75] Amnesty International,'Urgent Action', 23 November 2017, url.
[76] OHCHR, 'UN experts call for release of human rights defender Saibaba', 30 April 2019, url.
[77] Model Prison Manual 2016, (pages 63-67), url.
[78] CHRI, '101 Questions on Prisons You Didn't Know Whom to Ask', (page 8), 4 June 2019, url.
[79] NHRC, 'Minutes of the Open House Discussion', (para 23), 29 June 2018, url.

established Reverse Osmosis (RO) plants, whereas some provide unfiltered water, which might not be fit for consumption. Complaints regarding quality of water can be made to the officer in-charge of prisons, officers from legal services authorities or members of the Board of Visitors.'[80]

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10. Oversight and monitoring

10.1 Government oversight

10.1.1 The CHRI noted that by law, every prison must have a Board of Visitors comprised of officials, elected representatives and people of good standing from the local community known as Non-Official Visitors. The board should visit prisons to assess conditions and meet periodically to make reports and recommendations. The 2016 CHRI report noted that less than 1% of jails were sufficiently monitored[81].

10.1.2 According to prison data obtained by CHRI, there were, on average, 2 inspections – including from medical, executive, judicial and other inspectors or visitors – per prison per month during 2016. The CHRI noted, however, that there was no record of reports submitted by inspectors. It was also not clear whether all 1,412 prisons were visited every month. Further, the requisite Board of Visitors were found to not be operating in some states or not working according to their mandate[82].

10.1.3 The NHRC noted in June 2018 that:

'Jail Visitor Boards are not functioning properly and their purpose is not served. It was also suggested that to control the crimes by prison staff there is a need to have strong supervision over the staffs and if any such cases come into notice, strict action should be taken against the staff. Grievance box at many jails are located at a very conspicuous place that's why the prisoners avoid complaining as they get noticed if they put any grievance.'[83]

10.1.4 In September 2018 the Supreme Court formed a Committee on Prison Reforms to address the problems facing India's prisons including overcrowding, lack of legal advice to inmates and issues relating to remission and parole. The Committee was expected to collate information and make recommendations within a year[84].

10.1.5 The CHRI noted in its report on Haryana prisons, published August 2019, that, whilst internal and external oversight mechanisms were functional in the state, 'The Board of Visitors do not visit prisons regularly and are not holding meetings for each prison; information on non-official visitors and their functioning is not available.'[85]

[80] CHRI, '101 Questions on Prisons You Didn't Know Whom to Ask', (page 9), 4 June 2019, url.
[81] CHRI, 'Looking into the Haze', (pages 1, 18 and 27), 2016, url.
[82] CHRI, 'Jail Mail: Nelson Mandela Day', (section VIII), 18 July 2019, url.
[83] NHRC, 'Minutes of the Open House Discussion', (paras 33-35), 29 June 2018, url.
[84] The Hindu, 'Supreme Court constitutes committee to look into jail reforms', 25 September 2018, url.
[85] CHRI, 'Inside Haryana Prisons', (page 9), 10 August 2019, url.

10.1.6 In its December 2018 report, the ACHR, stated 'On 1 November 2018, the National Human Rights Commission has summoned the state chief secretary and the inspector general of police (prisons) of Uttar Pradesh for not responding properly to notices issued by it in respect of deaths of over 2,000 prisoners in the state's overcrowded jails in the past five years.'[86]

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10.2 Independent monitoring

10.2.1 In its 2018 annual report, the International Committee of the Red Cross (ICRC) noted that it did not have access to detainees in India for most of the year although was able to visit 2 detention facilities in December 2018[87]. In 2017, the ICRC noted that it did not make prison visits as it was unable to secure permission from the Indian authorities[88].

10.2.2 The USSD HR Report 2018 noted, regarding independent monitoring, 'The NHRC received and investigated prisoner complaints of human rights violations throughout the year, but civil society representatives believed few prisoners filed complaints due to fear of retribution from prison guards or officials.'[89] The report added 'In many states the NHRC made unannounced visits to state prisons, but NHRC jurisdiction does not extend to military detention centers. An NHRC special rapporteur visited state prisons to verify that authorities provided medical care to all inmates. The rapporteur visited prisons on a regular basis throughout the year but did not release a report to the public or the press.'[90]

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Section 11 updated: 29 August 2019

11. External support

11.1 Visiting rights and assistance

11.1.1 The CHRI noted 'The system of being visited in prison is called mulaqat (interview). [...] The frequency of visits could range from twice a week to once a week depending on whether the prisoner is an undertrial, detenue, civil prisoner or a convict.' The rules for mulaqat varies from prison to prison [91].

11.1.2 According to the CHRI report on Haryana State prisons, the 'Visitation system is well organised; prisoners are permitted to make calls every day.' However, the report also noted that '… some prisoners were unable to meet their families because Aadhar [personal identification] cards have been made mandatory identification proof for visitors, and people without these are not allowed to visit prisons.'[92]

[86] ACHR, 'Torture, India's self made hurdle to extradition', (page 106), December 2018, url.
[87] ICRC, 'Annual Report 2018', (page 376), 19 June 2019, url.
[88] ICRC, 'Annual Report 2017', (page 367), June 2018, url.
[89] USSD, 'Country Report on Human Rights Practices 2018', (page 7), 13 March 2019, url.
[90] USSD, 'Country Report on Human Rights Practices 2018', (pages 7-8), 13 March 2019, url.
[91] CHRI, '101 Questions on Prisons You Didn't Know Whom to Ask', (page 12), 4 June 2019, url.
[92] CHRI, 'Inside Haryana Prisons', (page 7), 10 August 2019, url.

11.1.3 The USSD HR Report 2018 noted 'Authorities permitted visitors limited access to prisoners, although some family members claimed authorities denied access to relatives, particularly in conflict areas, including the state of Jammu and Kashmir.'[93] The same source noted 'The central government reported state government screening committees informed families about the status of detainees. There were reports, however, that prison guards sometimes required bribes from families to confirm the detention of their relatives.'[94]

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[93] USSD, 'Country Report on Human Rights Practices 2018', (page 6), 13 March 2019, url.
[94] USSD, 'Country Report on Human Rights Practices 2018', (page 4), 13 March 2019, url.

Terms of Reference

A 'Terms of Reference' (ToR) is a broad outline of what the CPIN seeks to cover. They form the basis for the country information section. The Home Office's Country Policy and Information Team uses some standardised ToRs, depending on the subject, and these are then adapted depending on the country concerned.

For this particular CPIN, the following topics were identified prior to drafting as relevant and on which research was undertaken:

- Legislation
    - Indian Penal Code (IPC)
    - Double jeopardy
- Death penalty
    - Punishable offences
    - Implementation
- Prisons
    - Administration
    - Locations
    - Types / categories of prisoner
    - Occupancy and cell size
- Access to medical care, food, water
- Prison conditions
    - General conditions
    - Treatment of detainees
    - Women and children
    - Minorities
- Government oversight and independent monitoring
- External support – visits and assistance

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British High Commission, New Delhi, ‘India Prisoner Pack’, 17 September 2018, https://www.gov.uk/government/publications/india-prisoner-pack. Last accessed: 27 August 2019

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Commonwealth Human Rights Initiative (CHRI),

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Version control

Clearance

Below is information on when this note was cleared:

- version **3.0**
- valid from **12 November 2019**

Changes from last version of this note

Updated country information and inclusion of Mursic v Croatia (7334/13, 20 October 2016), ECtHR caselaw.

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