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Home Office

Country Policy and Information Note
India: Prison conditions

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Preface

This note provides country of origin information (COI) and policy guidance to Home Office decision makers on handling particular types of protection and human rights claims. This includes whether claims are likely to justify the granting of asylum, humanitarian protection or discretionary leave and whether – in the event of a claim being refused – it is likely to be certifiable as 'clearly unfounded' under s94 of the Nationality, Immigration and Asylum Act 2002.

Decision makers must consider claims on an individual basis, taking into account the case specific facts and all relevant evidence, including: the policy guidance contained with this note; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

Country Information

The COI within this note has been compiled from a wide range of external information sources (usually) published in English. Consideration has been given to the relevance, reliability, accuracy, objectivity, currency, transparency and traceability of the information and wherever possible attempts have been made to corroborate the information used across independent sources, to ensure accuracy. All sources cited have been referenced in footnotes. It has been researched and presented with reference to the Common EU [European Union] Guidelines for Processing Country of Origin Information (COI), dated April 2008, and the European Asylum Support Office's research guidelines, Country of Origin Information report methodology, dated July 2012.

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 make recommendations to him about the content of the Home Office's COI material. 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. IAGCI may be contacted at:

Independent Chief Inspector of Borders and Immigration,

5th Floor, Globe House, 89 Eccleston Square, London, SW1V 1PN.

Email: chiefinspector@icinspector.gsi.gov.uk

Information about the IAGCI's work and a list of the COI documents which have been reviewed by the IAGCI can be found on the Independent Chief Inspector's website at http://icinspector.independent.gov.uk/country-information-reviews/

Contents

Policy Guidance

Updated: 2 November 2016

1. Introduction

1.1 Basis of claim

1.1.1 Fear of being imprisoned on return to India and that prison conditions are so poor they amount to torture or inhuman treatment or punishment.

1.2 Points to note

1.1.2 This note is concerned solely with whether prison conditions are such that they breach Article 3 of the European Convention on Human Rights (ECHR) and warrant a grant of humanitarian protection. Prison conditions which are systematically inhuman and life-threatening are always contrary to Article 3 ECHR. However, even if those conditions are not severe enough to meet that threshold, Article 3 may be breached if, because of a person's individual specific circumstances, detention would amount to inhuman or degrading treatment.

1.1.3 If the prison sentence or the prison regime, irrespective of its severity, is discriminatory or being disproportionately applied for reasons of race, religion, nationality, membership of a particular social group or political opinion, the person may qualify as a refugee.

1.2.1 Where a claim is 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.

Back to Contents

2. Consideration of issues

2.1 Credibility

2.1.1 For information on assessing credibility, see the Asylum 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).

Back to Contents

2.2 Risk of imprisonment

2.2.1 Decision makers must first establish the likelihood that the person will be imprisoned on return including 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 Penal code).

Back to Contents

2.3 Exclusion

2.3.1 If the decision maker believes that the person is likely to face imprisonment on return to India, consideration must be given as to whether Article 1F – in particular Article 1F(b) – of the Refugee Convention is applicable.

2.3.2 For further guidance on the exclusion clauses, discretionary leave and restricted leave, see the Asylum Instructions on Exclusion: Article 1F of the Refugee Convention and Restricted Leave: Article 1F.

Back to Contents

2.4 Death penalty

2.4.1 Decision makers must establish the likelihood that the person will be convicted of a crime which would attract a real risk of the death penalty.

2.4.2 India retains the death penalty for ordinary crimes and 1,303 death sentences were handed out between 2004 and 2013. In 2015 over 75 people were sentenced to death, almost all for murder. At least 320 remained on death row at the end of 2015 in what has been described as inhumane conditions.

2.4.3 However, the last execution to take place in India was in July 2015 and only three others have been carried out since 2005. In August 2015, the India Law Commission submitted a report calling for abolition of the death penalty for all but terrorism-related offenses and "waging war" against the state (see Death penalty and Death row prisoners).

2.4.4 For further guidance regarding the death penalty, see the Asylum Instruction on Humanitarian Protection.

Back to Contents

2.5 Prison conditions

2.5.1 Under the Indian constitution, responsibility for the custody and correction of criminals rests with the 28 states and seven union territories. Each has its own prisons department and its own laws, rules and regulations. Prison conditions vary widely from state to state. The more prosperous states have better facilities and rehabilitation programmes; the poorer ones can afford only the most basic establishments. It is also reported that some prisoners are given better or worse treatment according to the nature of their crime and class status. Sanitary conditions are poor, and punishments for misbehaviour while incarcerated have been reported as being particularly onerous (see Numbers of prisons and prisoners and Physical conditions).

2.5.2 Although by the prevailing standards of society, prison conditions are often adequate, overall conditions are severe and overcrowding being a particular problem. There are also reports of lack of medical facilities, torture, other physical mistreatment and custodial deaths (see Physical conditions).

2.5.3 Over 67% of the prison population is comprised of remand prisoners who are held in pre-trial detention, often with convicted prisoners. Remand prisoners are often held for long periods of time which on occasions exceeds the duration of the sentence given to those convicted, particularly for those deemed unfit to stand trial. This is due to delays in the overburdened and under resourced judicial system and a lack of legal safeguards. Scheduled

castes and those with little wealth or influence are disproportionately affected and the quality of legal aid funded representation in capital cases is poor (see Numbers of prisons and prisoners and Pre-trial detention).

2.5.4 Although prison conditions in general are not so systematically inhuman and life-threatening as to meet the high threshold of Article 3 ECHR, the particular circumstances of some persons may place them at risk of suffering treatment contrary to Article 3 ECHR. Decision makers must therefore carefully consider each case on its facts.

2.5.5 For further guidance and factors to be taken into account see the Asylum Instruction on Humanitarian Protection and the Asylum Instruction on Assessing Credibility and Refugee Status.

Back to Contents

2.6 Certification

2.6.1 Where a claim is refused, it is unlikely to be certifiable as 'clearly unfounded' under section 94 of the Nationality, Immigration and Asylum Act 2002.

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

Back to Contents

3. Policy summary

3.1.1 Prison conditions vary widely from state to state but overall they do not in general reach the high threshold for breach of Article 3 ECHR. Depending on the particular circumstances of the person concerned, prison conditions may however reach the Article 3 threshold in individual cases.

3.1.2 Where, in an individual case, treatment does reach the Article 3 ECHR threshold, a grant of leave will normally be appropriate.

3.1.3 India retains the death penalty for ordinary crimes and death row detainees are held in inhumane conditions. However in practice the death penalty is used rarely.

3.1.4 Where a claim is refused, it is unlikely to be certifiable as 'clearly unfounded'.

Back to Contents

Country Information

Updated: 2 November 2016

4. Law

4.1 Penal code

4.1.1 A copy of the Indian Penal Code of 1860 can be found on the AdvocateKHOJ website at:

http://www.advocatekhoj.com/library/bareacts/indianpenalcode/index.php?Title=Indian%20Penal%20Code,%201860

Other relevant legislation, including The Criminal Law (Amendment) Act, 2013 [India], can be accessed on the UNHCR Refworld website at:

http://www.refworld.org/publisher,NATLEGBOD,,IND,,,0.html#SRTop31

Back to Contents

4.2 Death penalty

4.2.1 According to Amnesty International, India retains the death penalty for ordinary crimes and sentenced over 75 people to death in 2015, almost all for murder. At least four people were sentenced to death for aggravated circumstances of rape following amendments to the Criminal Code in 2013, some of which were imposed in Special courts. At least 320 people remained under sentence of death at the end of 2015.[1]

4.2.2 Cornell Center on the Death Penalty Worldwide state that:

'The last execution to take place in India was the July 30, 2015 hanging of Yakub Memon, convicted of financing the 1993 Mumbai bombings. Prior to these hangings, the last three executions to take place in India were the February 8, 2013 hanging of Muhammad Afzal, convicted of plotting the 2001 attack on India's Parliament, the hanging of 2008 Mumbai attack gunman Mohammad Ajmal Amir Qasab on November 21, 2012, and the hanging of Dhananjoy Chatterjee in 2004 for the murder and rape of a 14-year old girl. This, in turn, was the country's first execution since 1995.'[2]

4.2.3 The same source also lists those crimes punishable by death in India.[3]

4.2.4 Human Rights Watch's World Report 2016 further noted that:

'On July 30, 2015, India executed Yakub Memon for his involvement in a series of bombings in Mumbai in 1993 that caused over 350 deaths.

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[1] Amnesty International. Death sentences and executions report 2015. 6 April 2016. https://www.amnesty.org/en/documents/act50/3487/2016/en/ also available at http://www.refworld.org/docid/5704b6ed4.html [Date accessed 24 October 2016]

[2] Cornell Law School. Cornell Center on the Death Penalty Worldwide. Database. https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=India [Date accessed 24 October 2016]

[3] Cornell Law School. Cornell Center on the Death Penalty Worldwide. Death Penalty Database. undated https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=India [Date accessed 24 October 2016]

Memon's execution sparked a debate in India over the merits of retaining the death penalty. Memon was the third person to be hanged since the government lifted an unofficial moratorium on capital punishment in 2012.

'In August [2015], the Law Commission submitted a report calling for abolition of the death penalty for all but terrorism-related offenses and "waging war" against the state.'[4]

4.2.5 In a news release on 11 September 2015, the UN Special Rapporteurs on summary executions and on torture welcomed the recommendation made by the Indian Law Commission to abolish the death penalty for all crimes, except terrorism-related offences and waging war, and encouraged the Indian authorities to move towards the complete abolition of the death penalty for all offences.'[5]

Back to Contents

5. Numbers of prisons and prisoners

5.1 Background

5.1.1 The Commonwealth Human Rights Initiative (CHRI), an independent NGO, observed in a report published in 2009 that each of the 28 states and seven union territories has its own prisons department and its own laws, rules and regulations. The report further noted that 'Prisons in India continue to be governed by the Prisons Act, 1894, which has been adopted by most of the states. Those that have enacted their own laws have modelled these closely on this Act. This law does not contain any provisions on prisoners' rights, their rehabilitation, reformation, or for their reintroduction into society on completion of sentence.' It also stated that the National Human Rights Commission has issued guidelines to all state authorities on prisons and prisoners' rights. In addition, judgments of the Supreme Court with regard to prisoners' rights are binding on all state agencies in India. The CHRI report gives details of judicial directives relating to prisoners' living conditions, medical facilities, grievance redressal mechanisms, access to amenities, communication with family and friends and lawyers, external inspections, and on the rights of specific categories of prisoners, including those awaiting trial, women, and children who are in prison with their mothers.[6]

5.1.2 According to the Foreign Prisoner Support Service, the constitution assigns the custody and correction of criminals to the states and territories. Day-to-day administration of prisoners rests on principles incorporated in the

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[4] Human Rights Watch, World Report 2016 - India, 27 January 2016, https://www.hrw.org/world-report/2016/country-chapters/india [Date accessed 24 October 2016]

[5] UN Office of the High Commissioner for Human Rights: United Nations human rights experts welcome encouraging steps away from death penalty in China and India, 11 September 2015 http://www.ohchr.org/en/NewsEvents/Pages/DisplayNews.aspx?NewsID=16412&LangID=E [Date accessed 24 October 2016]

[6] Commonwealth Human Rights Initiative (CHRI), Rights behind Bars: Landmark Judicial Announcements and National Human Rights Commission Guidelines, p.8-10. published in 2009, http://www.humanrightsinitiative.org/publications/prisons/rights_behind_bars.pdf [Date accessed 24 October 2016]

Prisons Act of 1894, the Prisoners Act of 1900, and the Transfer of Prisoners Act of 1950. An inspector general of prisons administers prison affairs in each state and territory.' [7]

Back to Contents

5.2 Types of prisons and prisoner numbers

5.2.1 According to the National Crime Records Bureau's prison statistics[8] for 2014, which are also cited in the US State Department's 2015 country report[9] there are 8 categories of prison establishments with the following capacities:

Type	Number	Total Capacity
Central Jails	131	152,312
District Jails	364	135,439
Sub Jails	758	45,564
Women Jails	19	4,837
Open Jails	54	5,070
Borstal Schools	20	2,108
Special Jails	37	10,766
Other Jails	4	465
Total	1387	356,561

5.2.2 The US State Department, Country Reports on Human Rights for 2015: India, 13 April 2016, added that:

'The actual incarcerated population was 418,536. Persons awaiting trial accounted for more than two-thirds of the prison population. There were 17,681 female prisoners, approximately 4.2 percent of the total prison population, while juveniles constituted less than 1 percent. Authorities held men and women separately. The law requires the detention of juveniles in rehabilitative facilities, although at times authorities detained them in prisons, especially in rural areas. Authorities often detained pretrial detainees along with convicted prisoners.'[10]

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[7] Foreign Prisoner Support Service. India prison information. Undated. http://www.phaseloop.com/foreignprisoners/pris-india.html [Date accessed 24 October 2016]
[8] National Crime Records Bureau. Prison statistics 2014. http://ncrb.gov.in/StatPublications/PSI/Prison2014/Snapshots-2014.pdf [Date accessed 24 October 2016]
[9] US Department of State: Country Report on Human Rights Practices 2015 - India, 13 April 2016. Section 1c . Prison and Detention Center Conditions http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dlid=252963 [Date accessed 24 October 2016]
[10] US Department of State: Country Report on Human Rights Practices 2015 - India, 13 April 2016. Section 1c . Prison and Detention Center Conditions http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dlid=252963 [Date accessed 24 October 2016]

5.2.3 The Institute for Criminal Policy Research's World Prison Brief [11] provides the following information about prisons and prisoner numbers:

Ministry responsible	Ministry of Home Affairs
Prison administration	Governments of States and Union Territories
Prison population total (including pre-trial detainees / remand prisoners)	418 536 at 31.12.2014 (National Crime Records Bureau)
Prison population rate (per 100,000 of national population)	33 based on an estimated national population of 1,275.0 million at end of 2014 (from United Nations figures)
Pre-trial detainees / remand prisoners (percentage of prison population)	67.6% (31.12.2014)
Female prisoners (percentage of prison population)	4.2% (31.12.2014)
Juveniles / minors / young prisoners incl. definition (percentage of prison population)	0.0% (31.12.2014 - under 18)
Foreign prisoners (percentage of prison population)	1.5% (31.12.2014)
Number of establishments / institutions	1 387 (31.12.2014 - comprising 131 central jails, 364 district jails, 758 sub jails, 19 women's jails, 54 open jails, 20 Borstal schools, 37 special jails, 4 other jails)
Official capacity of prison system	356 561 (31.12.2014)
Occupancy level (based on official capacity)	117.4% (31.12.2014)

[11] Institute for Criminal Policy Research (ICPR).World Prison Brief. http://www.prisonstudies.org/country/india [Date accessed 24 October 2016]

5.2.4 In an article published by Firstpost India in September 2016, it was reported that:

'India's jails held 418,536 prisoners at the end of 2014.

'Uttar Pradesh (88,221), Madhya Pradesh (36,433) and Bihar (31,295) had the highest number of prisoners, according to this March 2015 home ministry reply to the Lok Sabha.

'India's prisons are 117 percent over capacity or almost 62,000 inmates more than they have space for.

'Dadra and Nagar Haveli prisons are the most overcrowded, at 231 percent of capacity, followed by Chhattisgarh (159 percent), Arunachal Pradesh (127 percent) and Delhi (122 percent).

'Nagaland's prisons are filled to 69 percent of capacity, followed by Tripura (58 percent), Lakshadweep (56 percent) and Daman and Diu (44 percent).'[12]

5.2.5 In its 2015-16 Annual Report the Ministry of Home Affairs stated:

'On analyzing the National Crime Record Bureau (NCRB) data for the year 2014, the problem of overcrowding was observed in large number of States. The highest number of 88,221 inmates (84,649 male: 3,572 female) were reported from Uttar Pradesh followed by Madhya Pradesh 36,433 (35,283 male: 1,150 female), Bihar 31,295 (30,204 male: 1,091 female), Maharashtra 27,868 (26,438 male: 1,430 female) and Punjab 26,007 (24,703 male: 1,304 female) at the end of the year 2014.'[13]

Back to Contents

6. Physical conditions

6.1 General conditions

6.1.1 The Foreign Prisoner Support Service describes prison conditions in India as follows:

'By the prevailing standards of society, prison conditions are often adequate. Some prison administrators concede that the prevailing conditions of poverty in Indian society contribute to recidivism because a prison sentence guarantees minimal levels of food, clothing, and shelter. Despite this overall view, India's prisons are seriously overcrowded. [14]

6.1.2 In its May 2016 information pack for British prisoners in India, the British High Commission in India described the general prison conditions as follows

[12] Firstpost India. 1,700 died in overcrowded prisons in 2014; 89 percent of natural causes 15 September 2016. http://www.firstpost.com/india/1700-died-in-overcrowded-prisons-in-2014-89-percent-of-natural-causes-3005386.html [Date accessed 24 October 2016]
[13] Government of India. Ministry of Home Affairs. Annual Report 2015-16. Para 6.41 – 6.42. http://mha.nic.in/sites/upload_files/mha/files/AR(E)1516.pdf [Date accessed 24 October 2016]
[14] Foreign Prisoner Support Service. India prison information. Undated. http://www.phaseloop.com/foreignprisoners/pris-india.html [Date accessed 24 October 2016]

'In India prison conditions are very basic. You may not be provided with a bed to sleep on. The cells/barracks are not air conditioned/heated so you will face some harsh summer/winter weather conditions.

'Prisoners on arrival may be given a sheet or a blanket to spread on the floor. During winters or cold weather conditions extra blankets may be provided. All prisoners share common bathing / toilet facilities. There are usually no private toilets or bathing areas.

'You would either be sharing a cell with 2-4 other inmates or would be put in a barrack with 20-30 prisoners or more. It is unlikely that you will be able to have your own cell. However you may be held in a single cell if the authorities consider that your life may be in danger or if you are charged under the National Security Act.'[15]

6.1.3 The US State Department, Country Reports on Human Rights for 2015: India, 13 April 2016, stated that "prisons were often severely overcrowded, and food, medical care, sanitation, and environmental conditions often were inadequate. Potable water was only occasionally available. Prisons and detention centers remained underfunded, understaffed, and lacking sufficient infrastructure. Prisoners were physically mistreated."[16]

6.1.4 The same source also stated:

'On March 2 [2015], the High Court of Judicature in Hyderabad ordered the Telangana government to investigate the deaths of inmates at Cherlapally Central Prison that occurred in 2014, allegedly due to lack of medical care. The court passed the orders in response to a petition filed by M. Salauddin Ayub, a prisoner facing trial who asserted jail authorities failed to provide him timely medical care. He alleged 23 prisoners died in 2014 because of failure to provide timely medical care.' [17]

6.1.5 The Inter Press Service reported in August 2016 that:

'A media frenzy ensued in New Delhi last month when a popular television channel highlighted the horrific living conditions of women inmates in ward number six of Tihar Jail, South Asia's largest prison. The program – "Fear and Loathing in Tihar" — beamed into people's homes the prisoners' abysmal treatment by the administration: 600 of them packed like sardines into space meant for half that number, a lack of basic amenities, and a shocking state apathy towards detainees in the world's largest democracy.

'Most Indian jails fail to meet the minimum United Nations standards for such facilities, including inadequate amounts of food, poor nutrition, and

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[15] British High Commission, New Delhi. Information pack for British prisoners in India. 3 May 2016. p.15. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/520991/India___Prisoner_Pack.pdf [Date accessed 24 October 2016]

[16] US Department of State: Country Report on Human Rights Practices 2015 - India, 13 April 2016. Section 1c. Prison and Detention Center Conditions. http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dlid=252963 [Date accessed 24 October 2016]

[17] US Department of State: Country Report on Human Rights Practices 2015 - India, 13 April 2016. Section 1c . Prison and Detention Center Conditions. http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dlid=252963 [Date accessed 24 October 2016]

unsanitary conditions. Torture and other forms of ill-treatment are also common. The cells are also often dilapidated, with poor ventilation and absence of natural light.

'According to a 2015 report of the Comptroller and Auditor General (CAG) of India on Tihar Jail, the prison complex is reeling under a prisoner population more than double its sanctioned strength and understaffed by 50 per cent of its required workforce. The key findings of the report suggest that the 10 jails in Tihar were grossly overcrowded with 14,209 prisoners against a capacity of 6,250.

'Moreover, against government rules, 51 prisoners awaiting trial were found to have already served more than half the maximum term of punishment for the offences they were booked under, the report says.

'Medical facilities, adds the damning report, are non-existent. There's paucity of doctors, paramedical, ministerial, factory and Class IV staff by 18 to 63 per cent in the prison which despite an in-house 150-bed hospital and additional dispensaries in each of the 10 jails. The CAG found that "the hospital was not equipped to face any emergency situation.

'The subhuman conditions take a toll on human health — both mental and physical, a former inmate told IPS. "Women prisoners prefer to take care of each other when they are indisposed as there are only male doctors doing rounds most of the time," she said. "I remember once a young woman had a miscarriage and bled for a few hours before she was taken to the hospital."'[18]

Back to Contents

6.2 Variation by state

6.2.1 In its May 2016 information pack for British prisoners in India, the British High Commission in India described the general prison conditions as follows:

'The prison system and regime vary from State to State. All prisons have a comprehensive written prison manual. This manual covers governance and treatment of prisoners including rations for each prisoner and disciplinary actions that may be taken if prisoners step out of line.

'Each state has one or more central prisons where you can be held in judicial custody. A Prison Superintendent governs each prison and he has administrative and disciplinary powers within his prison. If in doubt, check with the Superintendent.' [19]

6.2.2 The Foreign Prisoner Support Service also state that prison conditions vary from state to state. The more prosperous states have better facilities and attempt rehabilitation programs; the poorer ones can afford only the most

[18] Inter Press Service, Indian Jails Slammed as Purgatory for the Poor, 9 August 2016 http://www.ipsnews.net/2016/08/indian-jails-slammed-as-purgatory-for-the-poor/?utm_source=rss&utm_medium=rss&utm_campaign=indian-jails-slammed-as-purgatory-for-the-poor [Date accessed 28 October 2016]

[19] British High Commission, New Delhi. Information pack for British prisoners in India. 3 May 2016. https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/520991/India___Prisoner_Pack.pdf [Date accessed 24 October 2016]

bare and primitive accommodations. Women prisoners are mostly incarcerated in segregated areas of men's prisons. [20]

6.2.3 Mint, one of India's business news publications, published an article in February 2016 highlighting the differences in prison expenditure between states:

'Data from the Prison Statistics India shows that the state spends Rs.51per inmate daily on food, clothing and medicine. Twisted as the comparison may sound, that Rs.51 spend is well over the government's own poverty line of Rs.47 per day in urban areas and Rs.32 per day in rural areas.

'This is not to argue that people below the poverty line will find the material conditions in prisons attractive. The Rs.51 per inmate per day is not a generous amount, given that prisoners only receive the bare-minimum necessities required for survival. The appalling conditions in India's overcrowded and crime-ridden jails have also been amply documented.

'Not all states take equal care of inmates. On the surface, it may appear that Delhi, which spends around Rs.85,000 annually per inmate, is the most generous. However, the biggest expenditure on inmates in Delhi is slotted under a section titled "Others", which typically includes expenses such as overheads and security costs.

'When only food, clothing and medicine expenditure are considered, the north-eastern states turn out to be the biggest spenders. Nagaland and Arunachal Pradesh spend above Rs.70,000 per inmate annually. Maharashtra and Lakshadweep spend the least: the former spent close to Rs.12,000 per inmate annually, while the latter spent a pitiful Rs.714 a year. Gujarat spends a similarly low amount of Rs.13,000 annually.

'States also have a lot of discretion when it comes to spending on welfare and vocational/educational activities. Chhattisgarh, Andhra Pradesh, Odisha and Telangana are the most generous, while Punjab, Rajasthan and Arunachal Pradesh do not spend any money on this at all.'[21]

Back to Contents

6.3 Variation by nature of crime

6.3.1 According to the Foreign Prisoner Support Service conditions for holding prisoners also vary according to classification. India retains a system set up during the colonial period that mandates different treatment for different categories of prisoners. Under this system, foreigners, individuals held for political reasons, and prisoners of high caste and class are segregated from lower-class prisoners and given better treatment. This treatment includes

[20] Foreign Prisoner Support Service. India prison information. Undated. http://www.phaseloop.com/foreignprisoners/pris-india.html [Date accessed 24 October 2016]
[21] Live Mint. Prison economics and the gap between different states. 4 November 2015. http://www.livemint.com/Opinion/Vr7bOdjTPNMwRU3NvzSCsM/Prison-economics-and-the-gap-between-different-states.html [Date accessed 24 October 2016]

larger or less-crowded cells, access to books and newspapers, and more and better food.' [22]

6.3.2 The same source also states that prisoners are given better or worse treatment according to the nature of their crime and class status, sanitary conditions are poor, and punishments for misbehaviour while incarcerated have been known to be particularly onerous. [23]

Back to Contents

6.4 Prison deaths

6.4.1 The US State Department report stated that "On March 2 [2015], the High Court of Judicature in Hyderabad ordered the Telangana government to investigate the deaths of inmates at Cherlapally Central Prison that occurred in 2014, allegedly due to lack of medical care. The court passed the orders in response to a petition filed by M. Salauddin Ayub, a prisoner facing trial who asserted jail authorities failed to provide him timely medical care. He alleged 23 prisoners died in 2014 because of failure to provide timely medical care."[24]

6.4.2 In its 2015-16 Annual Report the Ministry of Home Affairs noted that 'During the period from 01.04.2015 to 31.12.2015, the Investigation Division of NHRC has dealt with a total of 4,418 cases of Custodial Deaths, including 2,720 cases of deaths in judicial custody, 180 cases of deaths in Police custody and 1,518 fact finding cases.'[25]

6.4.3 In an article published by Firstpost India in September 2016, it was reported that:

'As many as 1,702 prisoners died in jails nationwide in 2014, according to this reply by the ministry of home affairs to the Lok Sabha (Parliament's lower house) in August 2016.

'While 1,507 (89 percent) died of natural causes, 195 (11 percent) died of unnatural causes, such as "suicide, execution, murder by inmates, deaths due to assault by outside elements, death due to firing, deaths due to negligence/excess by jail personnel and others", said another home ministry's statement released to the Lok Sabha in March 2016.

'Deaths in prisons increased 28 percent between 2011 and 2014, up from 1,332 to 1,702. While 21 percent more prisoners died of natural causes over four years to 2014, deaths from unnatural causes more than doubled from 88 cases in 2011 to 195 in 2014.

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[22] Foreign Prisoner Support Service. India prison information. Undated. http://www.phaseloop.com/foreignprisoners/pris-india.html [Date accessed 24 October 2016]
[23] Foreign Prisoner Support Service. India prison information. Undated. http://www.phaseloop.com/foreignprisoners/pris-india.html [Date accessed 24 October 2016]
[24] US Department of State: Country Report on Human Rights Practices 2015 - India, 13 April 2016. Section 1c http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dlid=252963 [Date accessed 24 October 2016]
[25] Government of India. Ministry of Home Affairs. Annual Report 2015-16. Para 6.6. http://mha.nic.in/sites/upload_files/mha/files/AR(E)1516.pdf [Date accessed 24 October 2016]

'The administration and management of prisons is primarily the responsibility of the state governments.

'Prisons in Uttar Pradesh reported more natural deaths (300) than any other state, followed by Punjab (218) and Madhya Pradesh (122).

'Over four years to 2014, Uttar Pradesh reported a 6 percent increase, Punjab a 114 percent increase and Madhya Pradesh a 47 percent increase in natural deaths.

'Odisha prisons reported a 1,367 percent increase in unnatural deaths over four years, rising from three in 2011 to 44 in 2014. After Odisha, the largest number of unnatural prison deaths were reported from Uttar Pradesh (23), West Bengal (21) and Karnataka (15) that year.

'Tamil Nadu, which lead the unnatural-death ranking in 2011, saw a 67 percent decline in 2014, from 15 to five.'[26]

6.4.4 The full text of the statements referred to in the above article – which also include a breakdown of the figures by state/union territory - can be found on the India Parliament website at:

http://164.100.47.190/loksabhaquestions/annex/9/AS232.pdf

http://164.100.47.190/loksabhaquestions/annex/7/AU803.pdf

Back to Contents

7. Pre-trial detention

7.1.1 According to the National Crime Records Bureau's 2014 prison statistics, 282,879 or 67.6% of total inmates were 'undertrial' [on remand] and the highest percentage (27.3%) (63,225 out of 231,962) of undertrials under IPC crimes were charged with murder. A total of 3,540 undertrials (1.3% of total undertrials) were detained in jails for more than 5 years at the end of the year 2014. Uttar Pradesh had the highest number of such undertrials (1022) followed by Rajasthan (523).[27]

7.1.2 In its annual report for 2015/6 Amnesty International reported that 'Prolonged pre-trial detention and overcrowding in jails remained widespread. As of January, over 282,000 prisoners – 68% of the total prison population – were pre-trial detainees. Dalits, Adivasis and Muslims continued to be disproportionately represented.'[28]

7.1.3 The US State Department, Country Reports on Human Rights for 2015: India, 13 April 2016, stated that:

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[26] Firstpost India. 1,700 died in overcrowded prisons in 2014; 89 percent of natural causes. 15 September 2016. http://www.firstpost.com/india/1700-died-in-overcrowded-prisons-in-2014-89-percent-of-natural-causes-3005386.html [Date accessed 24 October 2016]

[27] National Crime Records Bureau. Prison statistics 2014. http://ncrb.gov.in/StatPublications/PSI/Prison2014/Snapshots-2014.pdf [Date accessed 24 October 2016]

[28] Amnesty International, Amnesty International Report 2015/16 - The State of the World's Human Rights - India, 24 February 2016 https://www.amnesty.org/en/countries/asia-and-the-pacific/india/report-india/ [Date accessed 28 October 2016]

'Pretrial detention was arbitrary and lengthy, sometimes exceeding the duration of the sentence given to those convicted.

'The Human Rights Law Network (HRLN) in Kochi, Kerala, reported that certain prisoners with mental disabilities in the Kerala central prison considered "not fit for trial" had awaited trial for 10 to 26 years.

'The Public Safety Act, which applies only in Jammu and Kashmir, permits state authorities to detain persons without charge or judicial review for up to two years without visitation from family members. Authorities allow detainees access to a lawyer during interrogation, but police in Jammu and Kashmir allegedly routinely employed arbitrary detention and denied detainees access to lawyers and medical attention.

'Lengthy arbitrary detention remained a significant problem due to overburdened and under resourced court systems and a lack of legal safeguards. The government continued efforts to reduce lengthy detentions and alleviate prison overcrowding by using "fast track" courts, which specified trial deadlines, provided directions for case management, and encouraged the use of bail. Some NGOs criticized these courts for failing to uphold due process and requiring that detainees unable to afford bail remain in detention.

'According to NCRB [National Crime Records Bureau] authorities had convicted of crimes only three out of an estimated 600 inmates in a prison in Dantewada, Chhattisgarh. The remainder of prisoners awaited trial in a jail built for a capacity of 150. Authorities detained most of the accused for ties to a violent Maoist insurgency. The Peoples Union for Democratic Rights claimed authorities filed criminal charges against a number of local Adivasi residents without informing them. When defendants did not appear in court, they were deemed "absconders," which made them vulnerable to police harassment and arrest warrants. According to the NCRB 2014 report, Chhattisgarh prisons were at 261 percent of capacity and Delhi prisons at 216.8-percent capacity.

'According to the People's Union for Civil Liberties, in the states of Bihar, prebifurcation Andhra Pradesh, and Meghalaya, more than 80 percent of those in custody awaited trial. [29]

7.1.4 The Inter Press Service reported in August 2016 that:

'Delhi-based human rights lawyer Maninder Singh says that many detainees are forced to be in jail longer than the maximum sentence for the offense with which they were charged, with some people spending as long as two decades in detention before being convicted or released by the courts.

Women awaiting trial in particular, adds Singh, are made to suffer as they are too poor to afford justice. "Some even have kids who have to stay with them in those pathetic conditions till they are six years old. Many under trials

[29] US Department of State: Country Report on Human Rights Practices 2015 - India, 13 April 2016. Section 1c . Prison and Detention Center Conditions http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dlid=252963 [Date accessed 24 October 2016]

languish for months without even charges being framed against them. There's simply no legal recourse available to them.'[30]

7.1.5 A Hindustan Times article of 9 May 2016 reported:

'The country's top judges have decided to fast-track cases of lakhs [hundreds of thousands] of undertrials [remand prisoners], many of whom have been in jail for periods longer than they would serve on being found guilty.

'Prisoners awaiting verdict for more than 10 years will top the priority list. It is estimated that more than 280,000 people are languishing in 1,387 jails across the country, constituting almost two-thirds of India's total prison population.

'While courts battle a huge backlog, Indian prisons are overcrowded, with cases takes years to be decided. Sometimes the first hearing takes months. Many of the accused are too poor to afford a lawyer to represent them.

'Going through the data, the chief justices' conference 2016, which concluded on April 23 here, resolved to take the disposal of cases pending for more than 10 years "on a mission-mode basis".

'The chief justices also decided to take up cases pending for more than three years and evolve a mechanism for regular identification of undertrial prisoners completing more than half of their maximum possible sentences.

'At least 18,000 cases are pending for more than three years of which 80% cases are concentrated in seven states.

'Out of these, 226 cases are awaiting verdict for more than 10 years.'[31]

Back to Contents

8. Death row prisoners

8.1.1 In January 2014 Amnesty International reported on a landmark decision by India's Supreme Court setting out guidelines to safeguard the rights of prisoners on death row. The Supreme Court commuted the death sentences of [13 people] on the grounds of delay in the disposal of their mercy petitions by the President ranging between five and 12 years, and commuted the death sentences of [2 others] on the ground that they suffer from mental illness. [32]

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[30] Inter Press Service, Indian Jails Slammed as Purgatory for the Poor, 9 August 2016 http://www.ipsnews.net/2016/08/indian-jails-slammed-as-purgatory-for-the-poor/?utm_source=rss&utm_medium=rss&utm_campaign=indian-jails-slammed-as-purgatory-for-the-poor [Date accessed 28 October 2016]

[31] Hindustan Times. Judiciary in clean-up mode, targets years-old cases of undertrials. 9 May 2016. http://www.hindustantimes.com/india/judiciary-in-clean-up-mode-targets-years-old-cases-of-undertrials/story-J6gLnUREhXGzRtC4c8QWhN.html [Date accessed 24 October 2016]

[32] Amnesty International. India: Landmark Supreme Court decision upholds rights of death row prisoners. 21 January 2014. http://www.amnestyusa.org/news/news-item/india-landmark-supreme-court-decision-upholds-rights-of-death-row-prisoners [Date accessed 24 October 2016]

8.1.2 According to Amnesty International, in its judgment, the Supreme Court ruled that "undue, inordinate and unreasonable delay in execution of death sentence [amounts to] torture" and was a ground for commutation of sentence. The Supreme Court also laid down guidelines on the treatment of people under sentence of death. According to the guidelines, prisoners on death row should receive legal aid, be informed about the rejection of their mercy petitions and in writing, have their mental and physical conditions regularly checked and be allowed to meet their family members before execution, which should not happen before two weeks from the communication of the rejection of the mercy petition. Research by Amnesty International and the People's Union for Civil Liberties into India Supreme Court judgements on the death penalty has also revealed that the imposition of death sentences in India is highly arbitrary, and disproportionately affects those with little wealth or influence.' [33]

8.1.3 A Guardian article in May 2016 stated:

'Prisoners on death row in India are living in inhumane conditions, facing unfair trials and horrific acts of police torture, according to a new study released by the Death Penalty Research Project at the National Law University in Delhi.

'The study is based on interviews with 373 of the 385 inmates believed to be on death row in India and offers a harrowing insight into the unbearable uncertainty the prisoners face and the horrific conditions they have to live in as they wait for judges to decide their fate.

'Researchers said there was little reliable information about how the state handled death row inmates, and found it difficult to discover the simplest of details, including the exact number of people facing the death penalty.

'Capital punishment has rarely been enforced in recent years and huge numbers of death sentences are later commuted to life in prison, though many prisoners spend years waiting for their fate to be decided. According to a report from the National Crime Bureau, 1,303 death sentences were handed out between 2004 and 2013, of which three led to executions. One man, Yakub Memon, convicted over his involvement in the 1993 Mumbai bombings, was executed in 2015.'[34]

8.1.4 The same article continued:

'The study is a window into the lengthy, bureaucratic judicial process in India. It shows that for those currently on death row, there was an average of five years between arrest and sentencing.

'Death sentences are handed down without consistency, forcing inmates into an endless system of appeals, during which they often have little information

[33] Amnesty International. India: Landmark Supreme Court decision upholds rights of death row prisoners. 21 January 2014. http://www.amnestyusa.org/news/news-item/india-landmark-supreme-court-decision-upholds-rights-of-death-row-prisoners [Date accessed 24 October 2016]

[34] The Guardian. India's death row prisoners face horrific conditions, study finds. 6 May 2016. https://www.theguardian.com/world/2016/may/06/india-death-row-prisoners-horrific-conditions-study [Date accessed 24 October 2016]

about the progress of the cases against them. Many are unable to meet their lawyers and are not informed about the status of proceedings.

'Torture, solitary confinement and "violent investigation techniques" are also endemic and a host of social and economic factors can determine how a person is treated in jail and the sentence they get. Three out of four death row inmates were classed as "economically vulnerable" and 42% belonged to the "scheduled castes", considered to be lower down in the caste system.

'Both judges and defence lawyers were blamed for the inadequacies of the sentencing process. Researchers recorded various instances where defence lawyers were not present during sentencing, conviction and sentencing were delivered on the same day or judges failed to apply the "rarest of the rare" rule for death sentences.

'At the final stage of proceedings, inmates can write to the president of India or the Ministry of Home Affairs, who have the power to grant a pardon. As there is no time limit for responses, prisoners waiting for their mercy pleas to be heard had spent an average of 21 years and five months in jail.

'The use of torture is ubiquitous, the report said. Inmates spoke about being hung by wires, being forced to drink urine, being placed on a slab of ice and having a leg broken, forced anal penetration, and extreme stretching. Some gave specific details – being tied in a sack of chillies and beaten with the butts of police guns. Others left it vague, simply saying "unexplainable things" had been done to them.' [35]

8.1.5 Drawing on the same Death Penalty Research Project report, Firstpost India reported that almost 75% of the prisoners were economically vulnerable and a major chunk of them were either primary or sole earners in their family. The report continued:

'Seventy six per cent of convicts awaiting gallows belong to backward classes and religious minorities, as per the report which also indicates that all the 12 female death row convicts in the country belong to the above mentioned categories.

'Two hundred and sixteen of 270 prisoners, (i.e, 80 per cent) in this study spoke about custodial torture faced by them which includes the most inhuman, degrading and extreme forms of physical and mental torture inside the dark walls.

'Burning skin with cigarettes, inserting needles into fingernails, forced nudity, forced anal penetration with rods and glass bottles, forced to drink urine, made to urinate on heater, hung by wires, extreme beating etc are few forms of torture that have been revealed in the study.

'The study also found that 23 per cent of prisoners sentenced to death had never attended school and 61.6 per cent had not completed their secondary education.

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[35] The Guardian. India's death row prisoners face horrific conditions, study finds. 6 May 2016. https://www.theguardian.com/world/2016/may/06/india-death-row-prisoners-horrific-conditions-study [Date accessed 24 October 2016]

'During the panel discussion, Justice Lokur also referred to shortcomings of the legal aid system in the country, saying that people have lost faith in legal aid lawyers.

The study supports this view as it states that 70.6 per cent of the death row prisoners represented by private lawyers were economically vulnerable and it shows that "their deep-seated fear of legal aid lawyers drove the families to hire private lawyers".

The panel discussion also pointed out the fact that around three-fourth of the prisoners have not got a chance to interact with their lawyers outside court. This becomes worse when the matter comes to high court where most them have never interacted with or even met their high court lawyers.'[36]

8.1.6 Cornell Center on the Death Penalty Worldwide state that:

'Legal aid in capital cases is typically rendered by out-of-work or inexperienced attorneys, and funding is unavailable for expert testimony in the few cases where a court will agree to hear it.

'The state provides free legal representation to indigent defendants. However, in practice, the quality of legal representation was often poor. The typical defense strategy involves challenging errors in the prosecution's case, not delivering an independent defense, and attorneys do not receive training in how to handle capital cases. Attorneys may handle 5 cases in court per day. Often, incompetent attorneys who do not face meaningful ethical sanctions for ineffective representation handle capital defenses. In many capital cases, there have been reports of lawyers failing to present evidence of mental illness or disability, evidence that the accused was under the age of 18 at the time of the crime, or other relevant evidence that may act as mitigating factors such as personal, social, psychological information that may affect the court's decisions in sentencing. This type of information provides the context for a case and the absence of such evidence during the trial can lead to unnecessarily harsh sentences. Appellate attorneys may have difficulty determining where inadequacies in trial defense have led to inappropriate convictions and sentences, and in some cases, such evidence was only discovered by the Supreme Court on appeal.'[37]

8.1.7 A copy of the Death Penalty Research Project report can be accessed at:

http://www.deathpenaltyindia.com/wp-content/uploads/2016/05/Death-Penalty-India-Report-Volume-1.pdf

Back to Contents

[36] Firstpost India. Three-Fourth death row convicts in India are socio-economically backward 8 May 2016 http://www.firstpost.com/india/three-fourth-death-row-convicts-in-india-are-socio-economically-backward-report-2770638.html [Date accessed 24 October 2016]

[37] Cornell Law School. Cornell Center on the Death Penalty Worldwide. Death Penalty Database. undated https://www.deathpenaltyworldwide.org/country-search-post.cfm?country=India [Date accessed 24 October 2016]

9. Prisoners' complaints and independent monitoring

9.1.1 According to the Commonwealth Human Rights Initiative (CHRI):

'The closed nature of penal system makes it easier for any kind of abuse to go unnoticed and unattended. Therefore, it becomes extremely important to hold the functionaries of prison accountable for their actions. To this end, multiple oversight mechanisms have been instituted in India either by a legislation or regulation to ensure that the prison conditions are monitored regularly and the rights of prisoners are upheld notwithstanding the isolation of the place they are detained in.

'Prison Visiting System and Undertrial Review Committees are two such mechanisms that call for regular inspections in prison by government stakeholders, civil society members and judicial officers. The mandate of Prison Visiting system has a wider ambit and requires the visitors to ensure that all rules and regulations are being carried out to their satisfaction. The Undertrial Review Mechanism centers on reviewing the cases of undertrials who have been in detention for longer than legally required. Both the mechanisms purport to bring the state of prisons and prisoners to the notice of government and higher judiciary. The aim is to curb the deficiencies before they accumulate or grow into unmanageable proportions.

'Today, these monitoring mechanisms have become perfunctory and prisons are not being monitored in accordance with law. This has led to unhygienic conditions, high incidence of abuse and prolonged and unnecessary detention of undertrials.

'We work towards retaining and reinforcing the institution of prison visitors and promoting the creation and regular functioning of review committees.'[38]

9.1.2 The same organisation reported in June 2016 that 'Regular monitoring of jails is paramount to ensure that there is some independent scrutiny of the conditions of the imprisoned whose access to means of assistance is stringently controlled. Focusing on Board of Visitors, CHRI research in India found that not even 1% of jails are monitored according to the law.'[39]

9.1.3 The US State Department, Country Reports on Human Rights for 2015: India, 13 April 2016, stated that:

'Authorities permitted visitors some access to prisoners, although some family members stated authorities denied them access to relatives held in detention, particularly in conflict areas, including Jammu and Kashmir. There was no ombudsman for detention facilities, but authorities allowed prisoners to submit complaints to judicial authorities...'

'The NHRC [National Human Rights Commission] received and investigated prisoner complaints of human rights violations throughout the year, but some

[38] Commonwealth Human Rights Initiative. Monitoring Prisons. http://www.humanrightsinitiative.org/content/monitoring-prisons [Date accessed 24 October 2016]

[39] Commonwealth Human Rights Initiative, Looking into the haze - a study on prison monitoring in India, 20 June 2016 http://www.humanrightsinitiative.org/publication/looking-into-the-haze-a-study-on-prison-monitoring-in-india [Date accessed 28 October 2016]

activists indicated that prisoners did not file many complaints due to fear of retribution from prison guards or officials.

'Authorities permitted prisoners to register complaints with state and national human rights commissions, but the authority of the commissions extended only to recommending that authorities redress grievances. Government officials reportedly often failed to comply with a 2012 Supreme Court order to the central government and local authorities to conduct regular checks on police stations to monitor custodial violence.

'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.

'During the year the International Committee of the Red Cross visited detainees in prisons in Jammu and Kashmir, and in cities where authorities transferred detainees from Jammu and Kashmir.

'The National Commission for Women visited prisons to assess detention conditions for women. Authorities afforded Sanlaap, an NGO working on repatriation of human trafficking victims in West Bengal, frequent access to undocumented migrants detained under the Foreigners' Act.'[40]

Back to Contents

10. Prison reform

10.1.1 In its 2015-16 Annual Report the Ministry of Home Affairs noted that the Human Rights Commission NHRC has constituted a committee of experts in March.2015 to suggest amendments to the Prison Act, 1894, in order to make it in conformity with human rights norms, Supreme Court judgments and International Conventions/Covenants binding on India.[41]

10.1.2 A BBC news report in January 2016 reported that:

'Indian prisoners on death row will now be allowed to meet their families one last time before being executed.

'It is part of a set of prison reforms announced by the government to modernise the country's notorious prisons.

'Legal aid centres will be set up in all jails and better health care will also be provided, the new rules say.

'There are more than 400,000 inmates in prisons across India, with more than half of them awaiting trial.

'Under the new guidelines, jail authorities will let death row convicts see their families before execution.

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[40] US Department of State: Country Report on Human Rights Practices 2015 - India, 13 April 2016. Section 1c . Prison and Detention Center Conditions. http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2015&dlid=252963 [Date accessed 24 October 2016]

[41] Government of India. Ministry of Home Affairs. Annual Report 2015-16. Para 6.36. http://mha.nic.in/sites/upload_files/mha/files/AR(E)1516.pdf [Date accessed 24 October 2016]

‘Last year, the family of a man convicted for plotting bomb attacks in Mumbai in 1993 was denied a meeting with him ahead of his hanging.

‘Another part of the reforms involves the establishment of new legal aid centres, which will aim to provide guidance to poorer inmates, especially those awaiting trial.

‘The new guidelines also make it mandatory for jail officers to ensure the safety of female prisoners and care for their children.

‘Prison staff will be trained to deal with cases of gender and sexual violence.

‘"This has been drawn from the UN rules for the treatment of female prisoners and non-custodial measures for women offenders adopted by the UN General Assembly," a government statement said.’[42]

10.1.3 Mint, one of India's business news publications, published an article in February 2016 reporting:

‘The Supreme Court on Friday [5 February 2016] kicked off prison reforms with an order directing authorities to ensure quarterly reviews of undertrials [remand prisoners], computerization of prisons and providing facilities to ensure prisoners are treated with dignity.

‘The order also spoke about reducing overcrowding in prisons. “It is clear that in spite of several orders passed by this court from time to time in various petitions, for one reason or another, the issue of overcrowding in jails continues to persist,” the court noted.

‘The National Crime Records Bureau’s numbers till 31 December 2014, quoted in the order, show that central jails housed 184,386 prisoners as opposed to their capacity of 152,312 and district jails held 179,695 against a capacity of 135,439.

‘Observing that prisoners needed to be treated with dignity, a bench comprising justices Madan B. Lokur and R.K. Agrawal directed that undertrials who had completed half the sentence of the crime they were charged with, should be released.

‘“Treat prisoners with dignity. The Supreme Court has been saying this since (the case of) Sunil Batra (1980). But nothing has changed. Prison reforms are certainly required. But nobody is paying attention to the ultimate purpose of this. What after a prisoner is released? We have to reform society to accept them. The government does nothing to integrate them back into society,” said Ved Kumari, professor of law at Delhi University.

‘This is not the first such direction from the apex court on the issue. In 2014, a Supreme Court bench ordered strict implementation of the provision of the Criminal Procedure Code which prescribes release of undertrials who have served half their sentence.

[42] BBC News. India prison reforms let death row prisoners meet family. 22 January 2016. http://www.bbc.co.uk/news/world-asia-india-35379159#sa-ns_mchannel=rss&ns_source=PublicRSS20-sa [Date accessed 24 October 2016]

‘For the release of undertrials, the court asked Undertrial Review Committees in all districts to meet every quarter. These committees were required to be set up under a 24 April 2015 order of the apex court.

‘The court went on to state that no undertrial should languish in jail for want of bail money. According to the order, 3,470 prisoners had not been released because they failed to furnish bail bonds.

‘In a step to extend reforms to juvenile homes, the court advised that a document similar to the Model Prison Manual be prepared for juvenile observation homes and safety homes. It asked the secretary, women and child development ministry, to respond by 14 March in this connection.

‘The Model Prison Manual is a document prepared by the home ministry dealing with various incidental issues including custodial management, medical care, education of prisoners, vocational training and skill development programmes, legal aid, welfare of prisoners, after-care and rehabilitation, and prison computerization.

‘The court, in its directions, also touched upon the need to provide quality legal aid to prisoners by empanelling “competent lawyers”. It noted earlier findings that most prisoners were from the “weaker sections of the society”. The court said that it should be ensured that “legal aid for the poor does not become poor legal aid”.

‘It also said that police personnel in charge of prisons should ensure effective utilisation of funds allocated to them for improving living conditions of prisoners.

‘Pushing for computerization, the court directed that a management information system be set in place in all central and district jails so that there is better handling of prisons and prisoners.

‘It called for an annual review of the implementation of the Model Prison Manual and said that it should not be reduced to just another document.’[43]

Back to Contents

[43] Live Mint. Supreme Court kicks off prison reforms. 6 February 2016. http://www.livemint.com /Politics/2GQAbPa6Wm2IeK4z1I6CUN/Supreme-Court-kicks-off-prison-reforms.html [Date accessed 24 October 2016]

Version Control and Contacts

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Clearance

Below is information on when this note was cleared:

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Back to Contents