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Home Office

Country Information and Guidance

India: Prison conditions

Preface

This document provides guidance to Home Office decision makers on handling claims made by nationals/residents of – as well as country of origin information (COI) about – India. 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 guidance contained with this document; the available COI; any applicable caselaw; and the Home Office casework guidance in relation to relevant policies.

Within this instruction, links to specific guidance are those on the Home Office’s internal system. Public versions of these documents are available at <https://www.gov.uk/immigration-operational-guidance/asylum-policy>.

Country Information

The COI within this document 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 the guidance and information we provide. Therefore, if you would like to comment on this document, please email: cpi@homeoffice.gsi.gov.uk.

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. 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/>

It is not the function of the IAGCI to endorse any Home Office material, procedures or policy.

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Section 1: Guidance

Updated: 2 September 2014

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.
- 1.1.2 This guidance is concerned solely with whether prison conditions are such that they breach Article 3 of 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.

See the country information on:

- ▶ [Prison conditions](#)

See also the Asylum Instruction(s) on:

- ▶ [Considering Protection \(Asylum\) Claims and Assessing Credibility](#)
- ▶ [Humanitarian Protection](#)

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1.2 Summary of Issues

- ▶ Is the person's account a credible one?
- ▶ Is the person reasonably likely to be imprisoned on return?
- ▶ Are prison conditions in India so severe that prisoners suffer treatment contrary to Article 3 ECHR?

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1.3 Consideration of Issues

Is the person's account a credible one?

- 1.3.1 Decision makers must consider whether the person's claim that they face a real risk of imprisonment on return is reasonably detailed, internally consistent and credible as well as being externally credible (i.e. consistent with generally known facts and the country information).

See also:

- ▶ [Indian Penal Code of 1860](#)

See also the Asylum Instruction(s) on:

- ▶ [Considering Protection \(Asylum\) Claims and Assessing Credibility](#)

Is the person reasonably likely to be imprisoned on return?

- 1.3.2 Decision makers must 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 also the Asylum Instruction(s) on:

- ▶ [Considering Protection \(Asylum\) Claims and Assessing Credibility](#)

Are prison conditions in India so severe that prisoners suffer treatment contrary to Article 3 ECHR?

- 1.3.3 Prison conditions are severe and taking into account the use of torture, extensive pre-trial detention, as well as the levels of overcrowding and inadequate food and medical care, have the potential to reach the Article 3 ECHR threshold in individual cases. Incidences of mistreatment, abuse, rape, violence and torture in detention have been reported in relation to minorities, members of lower castes, women, insurgents and alleged terrorists.

- 1.3.4 However, 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 person may place them at risk of suffering treatment contrary to Article 3 ECHR. Decision makers must therefore carefully consider the individual factors of each case. The relevant factors include:

- ▶ the reason for detention;
- ▶ the likely length of detention;
- ▶ the likely type of detention facility; and
- ▶ the person's age, gender and state of health.

See also country information on:

- ▶ [Prison conditions](#)

See also the Asylum Instruction(s) on:

- ▶ [Considering Protection \(Asylum\) Claims and Assessing Credibility](#)
- ▶ [Humanitarian Protection](#)

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1.4 Policy Summary

- 1.4.1 **Prison conditions in India do not generally reach the threshold for breach of Article 3 ECHR.**
- 1.4.2 **Prison conditions are severe and have the potential to reach the Article 3 ECHR threshold in individual cases, dependant on the particular circumstances of the person concerned. Incidences have been reported of minorities, members of lower castes, women, insurgents and alleged terrorists as suffering abuse, violence, rape and torture.**
- 1.4.3 **Where, in an individual case, treatment does reach the Article 3 ECHR threshold, a grant of Humanitarian Protection will normally be appropriate.**
- 1.4.4 **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.**

See also the Asylum Instruction(s) on:

- ▶ [Non-Suspensive Appeals: Certification Under Section 94 of the NIA Act 2002](#)
- ▶ [Humanitarian Protection](#)
- ▶ [Discretionary Leave](#)

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Section 2: Information

2.1 Prison conditions

- 2.1.1 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.' 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.¹
- 2.1.2 The US Department of State (USSD) reported in its 2013 Human Rights Report for India that 'Prison conditions were frequently life threatening and did not meet international standards. [...] Prisons were severely overcrowded and food, medical care, sanitation, and environmental conditions often remained inadequate. Potable water was only occasionally available. Prisons and detention centers remained understaffed and lacked sufficient infrastructure. Prisoners were physically mistreated.'² The Times of India reported in July 2014 that 'Cases of custodial torture in the capital have been increasing over the years due to the insensitivity of jail officials and ineffective implementation of court directives'.³ Freedom House also noted in 2014 that 'routine abuse of ordinary prisoners, particularly minorities and members of the lower castes continued to be a problem.'⁴ The U.S. Department of State further stated that 'Sources continued to report a serious problem with custodial deaths, in which prisoners were killed or died in police custody. The failure of central and state authorities to pursue prosecutions against police or security force members also remained a problem'.⁵
- 2.1.3 The USSD 2013 Human Rights report noted reports that 'police raped women, including while in police custody. NGOs stated that the NHRC underestimated the number of rapes that police committed. Some rape victims were afraid to come forward and report the crime due to social stigma and possible acts of retribution, compounded by lack of oversight and accountability, especially if the perpetrator was a police officer or other official'.⁶ Similarly, Freedom House reported that 'Custodial rape of female detainees

¹ Commonwealth Human Rights Initiative (CHRI), Rights behind Bars: Landmark Judicial Announcements and National Human Rights Commission Guidelines, published in 2009, http://www.humanrightsinitiative.org/publications/prisons/rights_behind_bars.pdf, date accessed 14 August 2014

² U.S. Department of State, Country Report on Human Rights Practices for 2013: India, 27 February 2014, section 1c, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220392>, date accessed 14 August 2014

³ The Times of India, Custodial torture can't be tolerated: Court, 18 July 2014, <http://timesofindia.indiatimes.com/city/delhi/Custodial-torture-cant-be-tolerated-Court/articleshow/38567414.cms>, date accessed 14 August 2014

⁴ Freedom House, Freedom in the World 2014 - India, 19 May 2014, F. Rule of Law: 9/16 (+1), available at: <http://www.refworld.org/docid/5379d1d710.html>, date accessed 14 August 2014

⁵ U.S. Department of State, Country Report on Human Rights Practices for 2013: India, 27 February 2014, section 1a, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220392>, date accessed 14 August 2014

⁶ U.S. Department of State, Country Report on Human Rights Practices for 2013: India, 27 February 2014, section 1c, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220392>, date accessed 14 August 2014

continues to be a problem'.⁷ In April 2014, the UN Special Rapporteur on violence against women, its causes and consequences published a report in which she found that 'violence against women in custodial settings remains a concern [...] Concerns were raised about a lack of adequate protective measures to ensure the safety of inmates, including from gender-related killings. In 2012, 55 deaths of female inmates were registered, of which eight were suicides. There was also a reported lack of access to essential services, including medical care, for inmates due to limited resources'.⁸

- 2.1.4 The National Criminal Record's Bureau (NCRB) stated in its 'Prison Statistics India 2012' report that there were 1,394 prisons in the country with a capacity of 343,169 persons. The actual prison population was recorded as 385,135 as of 31 December 2012. There were 20 women's prisons and 16,951 female prisoners.⁹
- 2.1.5 The NCRB report provided detailed statistics on the number of prisons, their location and capacity in India's states and union territories, as on 30 November 2012.¹⁰
- 2.1.6 The USSD 2013 Human Rights report noted that 'Arbitrary and lengthy detention was a major problem because of the overburdened and underresourced court systems and the lack of sufficient safeguards'.¹¹ The Freedom House Freedom in the World 2014 – India report also stated that the court system was severely backlogged and understaffed, resulting in:

'... lengthy pretrial detention for a large number of suspects, many of whom remain in jail beyond the duration of any sentence they might receive if convicted. According to the International Centre for Prison Studies, 66 percent of the country's approximately 385,000 prisoners were on or awaiting trial at the end of 2012. The creation of various fast-track courts to clear the backlog has prompted charges that due process is being denied in some instances.'¹²

- 2.1.7 The Global Journals Research Paper 'A Study of Undertrial Prisoners in India', dated September 2013, stated:

'The presence of large number of undertrial prisoners and their continuing stay for longer period definitely indicates the slow pace of trials which will leads [sic] to the overcrowding of our prisons. In the National Human Rights Commissions view, unnecessary and unjustified arrests made by the police and the slow judicial processes causing congestion of undertrial prisoners are the main causes of overcrowding in jails.

'The poor are particularly worse off when confronted with criminal justice system. Many undertrials are detained because they have no money to get a bail [sic] or hire a lawyer to assist them. If he is unable to furnish surety, he cannot get bail and spends years in a

⁷ Freedom House, Freedom in the World 2014 - India, 19 May 2014, F. Rule of Law: 9/16 (+1), available at: <http://www.refworld.org/docid/5379d1d710.html>, date accessed 14 August 2014

⁸ UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to India, 1 April 2014, paragraph 24, available at: <http://www.refworld.org/docid/53982c3e4.html>, date accessed 14 August 2014

⁹ National Criminal Records Bureau, Prison Statistics India 2012, September 2013, page i, <http://ncrb.gov.in/PSI-2012/Full/PSI-2012.pdf>, date accessed 14 August 2014

¹⁰ National Criminal Records Bureau, Prison Statistics India 2012, September 2013, page 175 <http://ncrb.gov.in/PSI-2012/Full/PSI-2012.pdf>, date accessed 14 August 2014

¹¹ U.S. Department of State, Country Report on Human Rights Practices for 2013: India, 27 February 2014, section 1a, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220392>, date accessed 14 August 2014

¹² Freedom House, Freedom in the World 2014 - India, 19 May 2014, F. Rule of Law: 9/16 (+1), available at: <http://www.refworld.org/docid/5379d1d710.html>, date accessed 14 August 2014

prison. Quite often, the surety amount asked by the court is large that the poor cannot furnish it as a result he goes to the prison.’¹³

- 2.1.8 The NCRB’s ‘Prison Statistics India 2012’ report cited 1,471 deaths in custody in 2012, 126 of which were recorded as ‘unnatural’ deaths, the majority being suicide.¹⁴ In comparison, 1,244 natural, and 88 unnatural deaths in prison were recorded in 2011.¹⁵
- 2.1.9 The USSD 2013 Human Rights report stated that ‘There were reports of political prisoners and detainees in the country. NGOs reported that the Jammu and Kashmir government held political prisoners and temporarily detained more than 600 persons characterized as terrorists, insurgents, and separatists under the Public Safety Act between 2005 and 2012.’ At the end of 2011, West Bengal had 438 political prisoners in the state’s correctional facilities, according to the Association for Protection of Democratic Rights. In August, the West Bengal Assembly passed an amendment to the state’s Correctional Services Act to bar those with links to terrorist organizations from receiving political prisoner status. The State Correctional Administration minister stated that the bill was amended because ‘the government could not distinguish between political and nonpolitical prisoners.’¹⁶
- 2.1.10 The USSD 2013 Human Rights report also stated that ‘Human rights groups maintained that military, paramilitary, and insurgent forces abducted numerous persons in Jammu and Kashmir, Manipur, Jharkhand, and the Naxalite belt. Human rights activists feared that some of the unacknowledged prisoners were tortured and/or killed during detention [...] There were reports that government security forces tortured, raped, and mistreated insurgents and alleged terrorists in custody and injured demonstrators’.¹⁷ It further noted that ‘Police responses to incidents of terrorism included the use of torture, mistreatment of suspects, and arbitrary detention in an effort to obtain forced or false confessions. Police held suspects without registering their arrests and denied some suspects sufficient food and water.’¹⁸ Similarly, Freedom House noted that ‘Security forces operating in the context of regional insurgencies continue to be implicated in extrajudicial killings, rape, torture, arbitrary detention, kidnappings, and destruction of homes’.¹⁹
- 2.1.11 Amnesty International reported that India carried out one execution and issued more than 72 death sentences in 2013.²⁰ It further found that ‘at least 400 people were

¹³ The Global Journals Research Paper Volume 2: Issue 9, Sept 2013 ‘A Study of Undertrial Prisoners in India’ by Dr. Bindu M.Nambiar <http://theglobaljournals.com/paripex/articles.php?val=MTU5NA==&b1=153&k=39>, date accessed 14 August 2014

¹⁴ National Criminal Records Bureau, Prison Statistics India 2012, September 2013, page 133 <http://ncrb.gov.in/PSI-2012/Full/PSI-2012.pdf>, date accessed 14 August 2014

¹⁵ National Criminal Records Bureau, Prison Statistics India 2012, September 2013, page 133 <http://ncrb.gov.in/PSI-2012/Full/PSI-2012.pdf>, date accessed 14 August 2014

¹⁶ U.S. Department of State, Country Report on Human Rights Practices for 2013: India, 27 February 2014, section 1d, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220392>, date accessed 14 August 2014

¹⁷ U.S. Department of State, Country Report on Human Rights Practices for 2013: India, 27 February 2014, section 1g, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220392>, date accessed 14 August 2014

¹⁸ U.S. Department of State, Country Report on Human Rights Practices for 2013: India, 27 February 2014, section 1d, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220392>, date accessed 14 August 2014

¹⁹ Freedom House, Freedom in the World 2014 - India, 19 May 2014, F. Rule of Law: 9/16 (+1), available at: <http://www.refworld.org/docid/5379d1d710.html>, date accessed 14 August 2014

²⁰ Amnesty International, Death sentences and executions in 2013, March 2014, page 8, <http://www.amnesty.org/en/library/asset/ACT50/001/2014/en/652ac5b3-3979-43e2-b1a1-6c4919e7a518/act500012014en.pdf>, date accessed 14 August 2014

believed to be on death row at the end of the year.’²¹ In a more recent briefing Amnesty International stated that ‘The administration of the death penalty in India is arbitrary, inconsistent and abusive, and disproportionately affects people with little wealth or influence’.²²

2.1.12 The USSD 2013 Human Rights report stated that:

‘Visitors were permitted some access to prisoners, although some family members stated that they were denied access to relatives held in detention, particularly in areas of conflict, including Jammu and Kashmir. Prisoners have the right to engage in religious activity, and in most cases that right was respected. The government allowed some NGOs to assist prisoners, within specific guidelines. Prison officials kept extensive records. There was no ombudsman for detention facilities, but prisoners could submit complaints to judicial authorities. Alternative sentencing methods were rarely used...

‘The Ministry of Home Affairs acknowledged in its 2012-13 annual report that the NHRC visited jails and other institutions where persons were detained, in order to observe and report on the living conditions of the inmates. The NHRC received and investigated prisoner complaints of human rights violations throughout the year, but some activists indicated that many complaints were not filed due to fear of retribution from prison guards or officials. Most NHRC findings and recommendations were published on the NHRC website, but NGOs alleged that investigations and recommendations dealing with controversial topics, such as the conditions of detainees, were not disclosed.

‘Prisoners could register complaints with state and national human rights commissions, but these commissions could only recommend that authorities redress grievances. Government officials 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.’²³

2.1.13 In 2011, the National Human Rights Commission and National Commission for Women made visits to state prisons and found poor living and health conditions.²⁴ The International Committee of the Red Cross (ICRC) reported making visits to detainees in Jammu and Kashmir, although its findings remained confidential as agreed with the government.²⁵

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²¹ Amnesty International, Death sentences and executions in 2013, March 2014, page 22, <http://www.amnesty.org/en/library/asset/ACT50/001/2014/en/652ac5b3-3979-43e2-b1a1-6c4919e7a518/act500012014en.pdf>, date accessed 14 August 2014

²² Amnesty International India, Amnesty International India Submission to the Law Commission of India on the Abolition of the Death Penalty, 4. Categorization of murder and mandatory death sentences: not ending inconsistency and arbitrariness, 30 July 2014, <http://www.amnesty.org/en/library/asset/ACT50/003/2014/en/193c5698-58aa-492f-82f1-1cb3de55c9e8/act500032014en.pdf>, date accessed 14 August 2014

²³ U.S. Department of State, Country Report on Human Rights Practices for 2013: India, 27 February 2014, section 1c, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220392>, date accessed 14 August 2014

²⁴ National Human Rights Commission, Minutes and Recommendations of the National Seminar on ‘Prison Reform’, New Delhi, 15 April 2011, <http://nhrc.nic.in/Documents/Minutes%20%20Reco%20Prison%20Reform.pdf>, date accessed 14 August 2014

²⁵ U.S. Department of State, Country Report on Human Rights Practices for 2013: India, 27 February 2014, section 1c, <http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dliid=220392>, date accessed 14 August 2014

Annex A: Map

- 5 Map of India extracted from the University of Texas at Austin, Perry-Castañeda Library Map Collection.²⁶



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²⁶ University of Texas at Austin, Perry-Castañeda Library Map Collection <http://www.lib.utexas.edu/maps/>, India, 2001, [http://www.lib.utexas.edu/maps/middle east and asia/india pol01.jpg](http://www.lib.utexas.edu/maps/middle%20east%20and%20asia/india_pol01.jpg), date accessed 21 June 2014

Change Record

Version	Date	Change References
1.0	02/09/2014	First version of updated template.

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