Home Office

Country Information and Guidance

India: Background information, including actors of protection, and internal relocation

February 2015

Preface

This document provides supporting guidance to Home Office decision makers on handling claims made by nationals/residents of – as well as country of origin information (COI) about – India.

It must be read in conjunction with the subject-specific country information and guidance reports. Public versions of these documents are available at https://www.gov.uk/government/publications/india-country-information-and-guidance.

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.

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: cois@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: 22 January 2015

1.1 Summary of Issues

1.1.1 In general, are those at risk able to seek effective protection?

1.1.2 In general, are those at risk able to internally relocate within India?

1.2 Consideration of Issues

Are those at risk able to seek effective protection?

1.2.1 Although there are over 1.5 million police personnel in India, the number of officers per capita of the population is relatively low. Each of the 29 states and seven 'union territories' in India has its own, separate police force. Police effectiveness and conduct therefore varies to an extent from state to state. Certain reports have characterised officers at police-station level as being overworked, demoralised and working in poor conditions with inadequate training and equipment, subject to corruption and political influence.

1.2.2 Nevertheless, steps have been taken in various states to improve police effectiveness. Although there has been a substantial increase in the number of crimes recorded by the police in recent years, a high percentage of investigations – particularly for violent and other serious offences – result in suspects being formally charged and cases proceeding to court. There are legal remedies for serious police misconduct such as torture or abuse of office.

1.2.3 The Constitution and the Code of Criminal Procedure guarantee fair trial, and there is a right of appeal at most levels of the judicial system. However the judiciary is overburdened due mainly to understaffing and consequently a large backlog of pending cases has built up, resulting in people on remand spending long periods in detention awaiting trial. Bribery is also common in the judicial system.

1.2.4 In general, a person is likely to be able to access effective protection from the state. In spite of this effective police protection may not always be available in conflict areas where armed insurgent or terrorist groups are active (see conflict areas in the country information).

1.2.5 Decision makers must assess whether effective protection is available in relation to the particular circumstances and profile of the person. Any past persecution and past lack of effective protection may indicate that effective protection would not be available in the future.

See also:

- Country Information

and Asylum Instruction on:

- 'Assessing credibility and refugee status'

Are those at risk able to internally relocate within India?

1.2.6 Relocation to another area of India may be viable depending on the nature of the threat from non state agents or from rogue state agents depending on the individual circumstances of the person.

1.2.7 India is a vast country with a population of 1.2 billion. It comprises 36 states and 'union territories'. There are seven cities which have populations of over 5 million and over 600,000 towns and villages. There are no legal restrictions preventing relocation to most parts of the country, including to all the major cities. Although there are no special controls with regard to the movement of women and certain vulnerable groups, their ability to move freely may be restricted, depending on personal circumstances.

1.2.8 In the Country Guidance case of MD India CG [2014] UKUT 00065 (IAC) (12 February 2014), the Upper Tribunal, when considering whether a same sex orientated male who may be at risk of harm from his family could be expected to relocate, held that 'India is a country of 1.2 billion people and we have not been drawn to any evidence that there is a central registration system in place which would enable the police to check the whereabouts of inhabitants in their own state, let alone in any of the other states or unions within the country. We consider the possibility of the police, or any other person or body, being able to locate, at the behest of an individual's family, a person who has fled to another state or union in India, to be remote.' (paragraph 154).

1.2.9 Internal relocation to another area of India is generally viable but consideration must be given to the relevance and reasonableness of internal relocation on a case by case basis taking full account of the individual circumstances of the particular person. Decision makers need to consider the ability of the persecutor to pursue the person in the proposed site of relocation, and whether effective protection is available in that area. Decision makers will also need to consider the age, gender, health, level of education, ethnicity, religion, financial circumstances/ability to secure access to a livelihood and/or support network of the person, as well as the security, human rights and socio-economic conditions in the proposed area of relocation, including their ability to sustain themselves.

1.2.10 For women in India, relocation will not in general be unduly harsh, especially when single, without children to support, able to access accommodation and educated or skilled enough to be able to support herself.

See also:

- Country Information: 'Scheduled Castes' and 'Scheduled Tribes'

and Asylum Instructions on:

- Internal Relocation
- Gender Issues in the Asylum Claim

and Country Information and Guidance on:

- India: Sexual orientation and gender identity.

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1.3 Policy Summary

- **In general, a person is likely to be able to access effective state protection against persecution by non-state actors or rogue state actors.**
- **A person may, nevertheless in some cases be unable to obtain effective protection for reason of his or her individual circumstances, and effective protection may not always be available in conflict areas where armed insurgent or terrorist groups are active.**

- **Internal relocation to another area of India is generally viable but will depend on the nature and origin of the threat as well as the personal circumstances of the person.**

See also the Asylum Instructions on:

- Non-Suspensive Appeals: Certification Under Section 94 of the NIA Act 2002
- Humanitarian Protection
- Discretionary Leave

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Section 2: Information

Updated: 10 December 2014

2.1 History

2.1.1 For an overview of India's history since Independence in 1947, see the Encyclopaedia Britannica website[1] and the BBC News India Profile, which includes a timeline of events.

2.2 Economy

2.2.1 There had been rapid and sustained economic growth between 2007 and 2011; real GDP (gross domestic product) growth averaged 8 per cent per annum during this period, well above the world average. The rate of economic growth slowed to 5 per cent for the 2012-13 fiscal year, partly due to the global recession, and is estimated to have slowed down further in 2013-14.[2] Per-capita GDP for India was estimated to be US $4,000 in 2013, compared with $3,100 for Pakistan, $9,800 for China and $37,300 for the UK.[3]

2.2.2 The Economist Intelligence Unit noted that 'India is a two-tier economy, with a cutting-edge and globally competitive knowledge-driven services sector that employs the brightest of the middle classes on the one hand, and a sprawling, largely rain-fed agricultural sector that employs the majority of the vast and poorly educated labour force on the other.'[4] As of 2013, the agricultural sector employed nearly half of the country's workforce, but accounted for only 17 per cent of GDP. Services accounted for two-thirds of the country's total economic output.[5]

2.2.3 Only about 18 per cent of the Indian workforce is in formal, salaried employment; more than 70 per cent of all working people are self-employed as casual workers.[6] [7] The official rate of unemployment was estimated to be 8.8 per cent in 2013.[8] Unemployment was particularly acute in the under-25 age group and was disproportionately high amongst women.[9]

2.2.4 The Planning Commission of India estimated that the number of people below the poverty line (based on the Tendulkar methodology) fell from 407 million in 2004-05 to 269 million in 2011-12, despite population growth over the same period. In rural areas

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[1] Encyclopaedia Britannica: India, History, pages 164-176 http://www.britannica.com/EBchecked/topic/285248/India/47061/The-Republic-of-India, accessed 20 October 2014

[2] International Labor Organisation (ILO): India Labour Market Update, December 2013 http://www.ilo.org/wcmsp5/groups/public/---asia/---ro-bangkok/---sro-new_delhi/documents/genericdocument/wcms_232565.pdf, accessed 20 October 2014 ('Real' GDP takes inflation into account .)

[3] CIA World Factbook: Country comparison GDP per capita, updated to 2013 https://www.cia.gov/library/publications/the-world-factbook/rankorder/2004rank.html?countryname=India&countrycode=in&regionCode=sas&rank=169#in, accessed 20 October 2014

[4] Economist Intelligence Unit (by subscription): India Country Profile 2008.

[5] Statista: India: Distribution of the workforce across economic sectors from 2000 to 2012 http://www.statista.com/statistics/264653/proportions-of-economic-sectors-in-gross-domestic-product-gdp-in-selected-countries/ , accessed 21 October 2014

[6] BBC News: 'Nearly 10%' of Indians are without jobs, 11 November 2010 http://www.bbc.co.uk/news/world-south-asia-11732328 , accessed 20 October 2014

[7] World Bank: Country 'dashboard: 2010 estimate http://datatopics.worldbank.org/jobs/country/india , accessed 17 October 2014

[8] CIA World Factbook: India, updated 22 June 2014 https://www.cia.gov/library/publications/the-world-factbook/geos/in.html, accessed 20 October 2014

[9] World Bank: Country 'dashboard: 2010 estimate http://datatopics.worldbank.org/jobs/country/india, accessed 17 October 2014

the percentage of people living below the poverty line fell from 41.8 per cent in 2004-05 to 25.7 per cent in 2011-12, while in urban areas it declined from 25.7% to 13.7%.[10]

2.2.5 The Bertelsmann Foundation observed in their BTI Transformation Index 2014:

'[P]overty and inequality are still major structural difficulties ... Poverty is still widespread among the rural population as well as among the urban population active in the informal sector. Moreover, poverty has increasingly affected a range of states that were largely left untouched by the economic boom and have been plagued by bad governance in past decades, among them Uttar Pradesh, Orissa and Madhya Pradesh.'[11]

2.2.6 India was ranked 136 out of 187 countries in the Human Development Index (HDI) for 2013 (published by the United Nations Development Programme), which takes account of gross national income per capita, life expectancy and years in schooling.[12]

2.2.7 See a rough indication[13] of living costs and average salaries in Delhi (given in Rupees).[14] As of 31 October 2014, the rate of exchange was £1 sterling = 98.2 INR/Rs.[15]

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2.3 Geography and demography

2.3.1 The Republic of India covers an area of 3,287,263 sq km including the whole of Jammu and Kashmir, which is divided between India and Pakistan. The country borders on Bangladesh 4,142 km, Bhutan 659 km, Burma 1,468 km, China 2,659 km, Nepal 1,770 km and Pakistan 3,190 km.[16]

2.3.2 Data from the 2011 Census showed that the country's population had reached just over 1.2 billion (1,210,193,422), having increased by 181 million (17.6 per cent) since 2001. This represented a slight decline in India's historical population growth rate.[17] While India occupies 2.4 per cent of the world's surface[18] it supports 17.5 per cent of the world's population.[19]

2.3.3 The United Nations Population Fund (UNFPA) has observed:

'As well as being one of the largest, India is one of the most crowded countries on earth, with an average of more than 300 people per square kilometer of arable land. Roughly two-thirds of the population are concentrated in coastal states and along the wide Gangetic plain ... Population densities in these crowded areas exceed 500 per square kilometer. Nearly three-quarters of India's [population] live in some 600,000 villages,

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[10] Planning Commission, Government of India: Press Note on Poverty Estimates 2011-12, published 22 July 2013 (accessed via India Microfinance.com) http://indiamicrofinance.com/wp-content/uploads/2014/06/povert-in-india-2014-205.pdf, accessed 22 October 2014

[11] Bertelsmann Stiftung: BTI Transformation Index 2014 http://www.bti-project.org/reports/country-reports/aso/ind/index.nc , accessed 28 November 2014

[12] United Nations Development Programme (UNDP): Human Development Report 2013, undated http://hdr.undp.org/sites/default/files/reports/14/hdr2013_en_complete.pdf

[13] Note: This data is not verified and should be taken only as a rough indication.

[14] Numbeo: Cost of living in Delhi, accessed 30 October 2014 http://www.numbeo.com/cost-of-living/city_result.jsp?country=India&city=Delhi , accessed 30 October 2014

[15] XE.com: Currency converter, accessed 31 October 2014 http://www.xe.com/currencyconverter/

[16] CIA World Factbook, updated 22 June 2014 https://www.cia.gov/library/publications/the-world-factbook/geos/in.html, accessed 20 October 2014

[17] Ministry of Home Affairs: Census of India 2011 website http://www.censusindia.gov.in/: Population Enumeration Data (Final Population): 5 year age group data http://www.censusindia.gov.in/2011census/population_enumeration.aspx , accessed 23 October 2014

[18] Boston Globe online: 'India's population reaches 1.21 billion', 1 April 2011 http://www.boston.com/news/world/asia/articles/2011/04/01/indias_population_reaches_121_billion/

[19] The Economic Times: Census of India 2011: Shocking gender bias among 17.5% humanity, 1 April 2011 http://articles.economictimes.indiatimes.com/2011-04-01/news/29370544_1_literacy-rate-female-foeticide-census-exercise

half of them with populations of less than 1,000. The other striking demographic feature of India is its diversity. India contains hundreds of distinct ethnic groups, speaking 14 major languages and hundreds of local dialects.'[20]

2.3.4 India is administratively divided into 29 states, plus 7 'union territories'. (See Maps in Annex A.) The major urban areas are Delhi U.T. (population 22.6 million in 2011); Mumbai, formerly Bombay (19.7 million); Kolkata, formerly Calcutta (14.4 million); Chennai, formerly Madras (8.8 million); Bangalore (8.6 million); Hyderabad (7.8 million); Ahmedabad (6.3 million) and Pune (5.0 million).[21]

2.3.5 Hindi is the most widely spoken language and primary tongue of 41% of the people; the other official languages are Bengali, Telugu, Marathi, Tamil, Urdu, Gujarati, Malayalam, Kannada, Oriya, Punjabi, Assamese, Kashmiri, Sindhi, and Sanskrit. Hindustani is a popular variant of Hindi/Urdu spoken widely throughout northern India but is not an official language. English is classified as a subsidiary official language, but is the language mainly used for national, political, legal and commercial communication.[22]

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2.4 Freedom of movement

2.4.1 The US State Department 2013 Human Rights Report, published in February 2014, recorded:

'The law provides for freedom of internal movement, foreign travel, emigration, and repatriation, and the government generally respected these rights.

'The central government continued to require special permits for nationals and foreigners to travel to parts of Arunachal Pradesh and Jammu and Kashmir. State governments required nationals to obtain special permits upon arrival for travel to these areas ... Security forces often searched and questioned vehicle occupants at checkpoints, mostly in troubled areas in the Kashmir Valley, before public events in New Delhi, or after major terrorist attacks.'[23]

2.4.2 Freedom House noted in their 2014 annual report that 'Freedom of movement is hampered in some parts of the country by insurgent violence or communal tensions.'[24]

2.4.3 A 2010 report for the Australian Refugee Review Tribunal commented:

'Reports on the situation of separated and divorced women in India more broadly underline that such women are vulnerable to labour exploitation, sexual harassment and/or abuse and discrimination. Recent reports indicate that divorce has become more socially acceptable and common in India over the last few years, particularly in urban areas, and many divorces are now initiated by women. However, the primary beneficiaries of these societal shifts appear to be middle-class urban women who are

[20] United Nations Population Fund (UNFPA): 'UNFPA at work in India', undated. http://web.lb.unfpa.org/intercenter/unfpa/india.htm , accessed 22 October 2014
[21] CIA World Factbook, updated 22 June 2014 https://www.cia.gov/library/publications/the-world-factbook/geos/in.html, accessed 20 October 2014
[22] CIA World Factbook, updated 22 June 2014 https://www.cia.gov/library/publications/the-world-factbook/geos/in.html, accessed 20 October 2014
[23] US Department of State: Country Reports on Human Rights Practices for 2013 – India, published 27 February 2014: section 2b, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dlid=220392, accessed 17 October 2014
[24] Freedom House: Freedom in the World 2014: India, F. Rule of Law: 9/16 (+1) and G. Personal Autonomy and Individual Rights: 10/16, 19 May 2014 http://www.freedomhouse.org/report/freedom-world/2014/india-0, accessed 20 November 2014

able to support themselves; the situation for women who are poor, financially dependent on their husbands and/or who live in rural areas remains difficult.'[25]

2.4.4 India's economy has rapidly expanded in the last few years, leading to an increase in the number of single women working in cities. According to various media sources, these women have greater freedoms and opportunities than in the past.[26] Government and private employers have started providing maternity benefits and flexible working arrangements for single mothers, as well as child day-care facilities.[27] But most women workers in India are employed in the 'informal' sector, where they generally experience job insecurity and poor working conditions, or are self-employed as market traders, etc.[28] A single women from a rural area, migrating to a metropolitan area, would find it more difficult to earn a livelihood if she has a low level of education or has no previous work experience or skills.[29]

2.4.5 The Immigration and Refugee Board (IRB) of Canada recorded in a report of May 2013 that, according to the 2001 Census, there were approximately 36 million women in India who were widowed, divorced or separated from their husbands. This report quoted various external sources as follows:

'The National Forum for Single Women's Rights indicates that these single women are rejected by society and treated with indifference by the federal government ... For example, widows are said to face "deep social stigma" (IPS 22 Oct. 2009), "social marginalisation" (IANS 6 Oct. 2009) and "cruel" treatment by in-laws (The Hindu 7 Oct. 2009). Media sources similarly note that divorced women face social "stigma" (ibid. 30 Dec. 2009) and "ridicule" (Mail Today 2 Feb. 2011).'

This report was not referring specifically to women who had relocated.[30]

2.4.6 Traditionally, most women in India go from living with their parents to getting married and living with their husband and his family. According to India's Ministry of Women and Child Development, finding suitable rented accommodation is one of the main problems for women who move on their own to the cities. While access to housing is 'significantly improving' for middle-class and higher-income single women (including divorced and widowed women), there continue to be social and cultural barriers. Women residing alone may be viewed (by prospective landlords and others) as having suspect reputations and may have to have family members vouch for them in order to gain access to housing.[31]

2.4.7 The Immigration and Refugee Board (IRB) of Canada further stated in their report of May 2013:

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[25] Australia: Refugee Review Tribunal (accessed via UNHCR Refworld): 'India: 1. Please provide information about separated or divorced women (who are Punjabi Sikhs) in Punjab. In particular, please provide information about…' 3 December 2010: IND37730, http://www.unhcr.org/refworld/docid/4f4603e92.html, accessed 23 October 2014

[26] Immigration and Refugee Board of Canada: India: Whether women who head their own households without male support can obtain housing and employment in Delhi, Mumbai and Chandigarh IND103726.E 9 May 2013 http://www.refworld.org/country,COI,IRBC,,IND,,51ab41204,0.html, accessed 23 October 2014

[27] I-Love-India.com: 'Single Moms' by Choice, undated http://www.iloveindia.com/parenting/single-parenting/choosing-to-be-single-mom.html, accessed 23 October 2014

[28] Immigration and Refugee Board of Canada: India: Whether women who head their own households without male support can obtain housing and employment in Delhi, Mumbai and Chandigarh IND103726.E 9 May 2013 http://www.refworld.org/country,COI,IRBC,,IND,,51ab41204,0.html, accessed 23 October 2014

[29] Delhi School of Economics: Chen M. And Dreze J. Recent Research on Widows in India, September1995, Economic and Political Weekly, Vol. 30, No. 39 (Sep. 30, 1995) http://econdse.org/wp-content/uploads/2012/09/JD-Recent-Research-on-Widows-in-India.pdf, accessed 23 October 2014

[30] Immigration and Refugee Board of Canada: India: Whether women who head their own households without male support can obtain housing and employment in Delhi, Mumbai and Chandigarh... IND103726.E 9 May 2013 http://www.refworld.org/country,COI,IRBC,,IND,,51ab41204,0.html, accessed 23 October 2014

[31] Immigration and Refugee Board of Canada: India: Whether women who head their own households without male support can obtain housing and employment in Delhi, Mumbai and Chandigarh IND103726.E 9 May 2013 http://www.refworld.org/country,COI,IRBC,,IND,,51ab41204,0.html, accessed 23 October 2014

‘According to India's Ministry of Women and Child Development, since 1972, the government has funded NGOs and other organizations...to build hostels for working women. The hostels are intended to provide safe and affordable housing to single working women; widowed, separated or divorced women; working women living outside their home towns or living without their out-of-town husbands; women undergoing employment training; and women studying in professional programs. There are reportedly 887 working women's hostels throughout India providing accommodation for approximately 65,000 women. Women can stay in the hostels for up to three years, with the possibility of an extension in exceptional circumstances. According to the Ministry, the hostels have day care centres for residents with children.’

‘According to the [Indian] Planning Commission, working women's hostels are primarily located in cities, but are not found in every district ... The Planning Commission characterized the basic facilities in the hostels as being of “inferior quality,” and noted that the sanitary conditions in most hostels are “very bad” ...The Commission added that the hostels do not provide the women residents with adequate access to health care.’[32]

2.4.8 The Canadian IRB report continued:

‘India's Ministry of Women and Child Development also funds Swadhar Shelter Homes, which aim to provide accommodation, food, clothing, counselling and services for “marginalized” women and girls who are in “difficult circumstances,” but who do not have support from their families ...The target group includes widows...victims of trafficking ... According to the Ministry, there are 318 Swadhar shelters across the country, as well as 238 help lines for women ... However, India's Planning Commission reports that the Swadhar shelters are underfunded and do not meet “[e]ven the basic needs” of the women...’

‘The government also offers other programs for women, such as the Support to Training and Employment Programme (STEP), which provides skills training to marginalized women...’[33]

2.4.9 The South Asian Women‘s Network lists several organisations that provide advice and support to women.

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2.5 The Constitution

2.5.1 The Constitution of India, as amended to 1 January 2013 (98th Amendment Act)[34], appears on the Ministry of Law and Justice website.

2.5.2 The Fundamental Rights section of the Constitution (Part III, articles 12 to 35) sets out the rights of the Citizen, which include inter alia:

- Right to Equality: Equality before the law; prohibition of discrimination on grounds of religion, race, caste, sex or place of birth; equality of opportunity in state employment; abolition of ‘untouchability’;
- Right to Freedom: Protection of life and personal liberty; freedom of speech and expression, freedom of association and peaceful assembly, freedom of movement

[32] Immigration and Refugee Board of Canada: India: Whether women who head their own households without male support can obtain housing and employment in Delhi, Mumbai and Chandigarh... IND103726.E 9 May 2013 http://www.refworld.org/country,COI,IRBC,,IND,,51ab41204,0.html, accessed 23 October 2014
[33] Immigration and Refugee Board of Canada: India: Whether women who head their own households without male support can obtain housing and employment in Delhi, Mumbai and Chandigarh... IND103726.E 9 May 2013 http://www.refworld.org/country,COI,IRBC,,IND,,51ab41204,0.html, accessed 23 October
[34] The Gazette of India: The Constitution (Ninety-eighth Amendment) Act 2012 http://indiacode.nic.in/coiweb/amend/amend98.pdf, accessed 22 October 2014

and the right to reside in any part of India; protection against arbitrary arrest and detention; the right to free and compulsory education;

- Right against Exploitation: Prohibition of human trafficking, forced labour and employment of children in factories or hazardous conditions;
- Right to Freedom of Religion;
- Cultural and Educational Rights: Protection of the interests of minorities;
- Right to Constitutional Remedies: Remedies for the enforcement of Constitutional rights.[35]

2.5.3 Article 13(2) of the Constitution provides that 'The State shall not make any law which takes away or abridges the rights conferred by this Part [Part III - Fundamental Rights] and any law made in contravention of this clause shall, to the extent of the contravention, be void.'[36]

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2.6 Political system

2.6.1 The US State Department 2013 Human Rights Report recorded, 'The Constitution provides citizens the right to change their government peacefully, and citizens exercised this right through periodic, free, and fair elections based on universal suffrage.'[37]

2.6.2 The President, elected by an electoral college, is the chief of state; the Prime Minister is the head of the government. Under the constitution the 29 states and seven union territories have a high degree of autonomy and have primary responsibility for law and order, including the police, the high courts and the subordinate courts.[38]

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Union (national or central) legislature

2.6.3 Legislative power is vested in Parliament, which consists of two houses: the Lok Sabha (House of the People) being the lower house, and the Rajya Sabha (Council of States), the upper house. The Lok Sabha has up to 550 members who are directly elected for a five year term by universal adult suffrage in single-member constituencies. (A further 20 members, who represent the union territories, and two members from the Anglo-Indian community are nominated by the President.) The Rajya Sabha has 245 members, most of whom are indirectly elected by the state assemblies for six years (one-third retiring every two years), the remainder are nominated by the President for six years.[39]

2.6.4 A general election, in which 462 national and regional political parties fielded candidates and 553 million people voted, was held in phases from 7 April to 12 May 2014.[40] Party representation in the Lok Sabha (the lower house), following the general election, is

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[35] The Constitution of India: Amended to (Ninety-Eighth Amendment) Act, 2012, http://lawmin.nic.in/olwing/coi/coi-english/coi-indexenglish.htm , accessed 21 October 2014

[36] The Constitution of India: Amended to (Ninety-Eighth Amendment) Act, 2012, http://lawmin.nic.in/olwing/coi/coi-english/coi-indexenglish.htm, accessed 21 October 2014

[37] US Department of State: Country Reports on Human Rights Practices for 2013 – India, published 27 February 2014: section 3, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dlid=220392, accessed 17 October 2014

[38] US Department of State: Country Reports on Human Rights Practices for 2013 – India, published 27 February 2014: Executive summary, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dlid=220392, accessed 17 October 2014

[39] Jane's Information Group (subscription only) http://www.janes.com/ , Sentinel Security Assessment: India, Internal Affairs, updated 25 July 2014 Accessed 17 October 2014

[40] Election Commission of India: General Election 2014 http://eci.nic.in/eci_main1/GE2014/ge.html, accessed 20 October 2014

shown below. NDA leader Narendra Modi became Prime Minister on 20 May 2014.[41] (The Congress Party and its allies had been in power from 2004 to May 2014.)

	Seats
National Democratic Alliance (NDA), consisting of the Bharatiya Janata Party (BJP) and its allies. (A centre-right coalition that includes Hindu nationalist elements.)	336
United Progressive Alliance (UPA), including the Indian National Congress (Congress Party) and its allies. (Centre-left coalition.)	58
All India Anna Dravida Munnetra Kazagham (Regional party based in Tamil Nadu.)	37
All India Trinamool Congress (Regional party based in West Bengal.)	34
Others	80

Source: Election Commission of India[42]

State and local governance

2.6.5 Each of India's states (see Geography above), has a governor (appointed by the President of India for five years), a legislature (elected for five years by universal suffrage) and a council of ministers headed by a chief minister. The majority of state legislatures are unicameral. In addition, there are seven 'union territories' which are administered by lieutenant-governors or administrators appointed by the President. The union territories of Delhi and Puducherry also have elected chief ministers and state assemblies.[43]

2.6.6 Policies that are determined at state level include issues relating to law and order, education and agriculture.[44]

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2.7 Actors of protection

2.7.1 The armed forces, paramilitary forces and the police all operate under the control of democratically elected civilian authorities.[45]

Armed forces

2.7.2 The military consists of the army, navy (including naval air arm), air force and Coast Guard. The Indian army is one of the world's largest, with a strength of 1,100,000 active personnel and 1,000,000 reserves. The Territorial Army has 40,000 first-line and

[41] Jane's Information Group (subscription only) http://www.janes.com/ , Sentinel Security Assessment: India, Internal Affairs, updated 25 July 2014 accessed 17 October 2014)
[42] Election Commission of India: General Election 2014 http://eci.nic.in/eci_main1/GE2014/ge.html, accessed 17 October 2014
[43] Jane's Information Group (subscription only) http://www.janes.com/ , Sentinel Security Assessment: India, Internal Affairs, updated 25 July 2014 Accessed 17 October 2014
[44] Jane's Information Group (subscription only) http://www.janes.com/ , Sentinel Security Assessment: India, Internal Affairs, updated 25 July 2014 Accessed 17 October 2014)
[45] US Department of State: Country Reports on Human Rights Practices for 2013 – India, published 27 February 2014: Executive summary, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dlid=220392, accessed 17 October 2014

160,000 second-line troops.[46] There is currently no conscription or compulsory military service in India: service in the military is a career choice.[47]

2.7.3 The Bertelsmann Foundation has noted, 'The Indian military has never exceeded its competencies and has always remained under strict civilian control...' [48]

Paramilitary forces

2.7.4 India has 12 main paramilitary forces, which have a combined strength of some 1.3 million. Forces subordinate to the Ministry of Home Affairs include the Central Reserve Police Force (CRPF), the Assam Rifles (AR), the Border Security Force (BSF), the Central Industrial Security Force (CISF), the Indo-Tibetan Border Police (ITBP), and the Rashtriya Rifles (National Rifles). There are other paramilitary forces, such as the Coast Guard and the Defence Security Corps, which are subordinate to the Ministry of Defence.[49]

2.7.5 The Central Reserve Police Force (CRPF) consists of 218 battalions totalling some 200,000 personnel, making it one of the world's largest single paramilitary forces. Its main tasks include assisting states in maintaining internal security, election security and rescue and relief operations. The CRPF has been deployed in areas affected by the Maoist, or 'Naxalite', insurgency in central and eastern India. Jane's has observed that the effectiveness of the CRPF has been irregular, as a result of over-rapid expansion of the force, inadequate training, poor facilities and sub-standard equipment.[50]

Conflict areas

2.7.6 In 2013 the Army and paramilitary forces were engaged in ongoing conflicts in several parts of India: there is a Maoist ('Naxalite') insurgency across a number of central and eastern states, which has claimed over 6,000 lives since 2005; Kashmir continues to be afflicted by Pakistan-backed separatist terrorism; there are also several active insurgencies across the Northeastern states, including in parts of Assam, Manipur and Nagaland.[51]

2.7.7 See the South Asia Terrorism Portal website for a map showing the location of these conflict areas as of 2013.[52] The same website provides recent information on the situation in the various conflict zones[53] and on the insurgent, extremist or terrorist groups involved in each[54].

Security legislation

2.7.8 Amnesty International noted in a report of November 2013:

'The Armed Forces Special Powers Act, 1958, [AFSPA] and a virtually identical law, the Armed Forces (Jammu and Kashmir) Special Powers Act, 1990, have been in force

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[46] IHS: Jane's Sentinel Security Assessment (subscription): India: Armed forces, accessed 17 October 2014
[47] Indian Defence Review, 14 July 2014 http://www.indiandefencereview.com/news/does-india-need-compulsory-military-training/, accessed 22 October 2014
[48] Bertelsmann Stiftung: BTI Transformation Index 2014 http://www.bti-project.org/reports/country-reports/aso/ind/index.nc , accessed 20 October 2014
[49] IHS: Jane's Sentinel Security Assessment (subscription only) http://www.janes.com/ India: Security and foreign forces, updated 22 May 2014, accessed 17 October 2014
[50] IHS: Jane's Sentinel Security Assessment (subscription only) http://www.janes.com/ India: Security and foreign forces, updated 22 May 2014, accessed 17 October 2014
[51] Institute for Conflict Management: South Asia Terrorism Portal: India Assessment 2014 http://www.satp.org/satporgtp/countries/india/index.html, accessed 21 October 2014
[52] Institute for Conflict Management: South Asia Terrorism Portal: India Chronic Conflict Map 2014 http://satp.org/satporgtp/countries/india/database/conflictmapindia_2014.html accessed 28 November 2014
[53] Institute for Conflict Management: South Asia Terrorism Portal: India Assessment – 2014 http://www.satp.org/satporgtp/countries/india/index.html accessed 28 November 2014
[54] Institute for Conflict Management: South Asia Terrorism Portal: India - Terrorist, insurgent and extremist groups http://www.satp.org/satporgtp/countries/india/terroristoutfits/index.html accessed 28 November 2014

since 1958 in parts of Northeast India, and since 1990 in [Jammu and Kashmir]. The laws provide sweeping powers to soldiers, including the power to shoot to kill in certain situations and to arrest people without warrants. They also provide virtual immunity from prosecution by requiring prior permission from the Central Government before security personnel can be prosecuted. This permission is almost never given. The law has facilitated grave human rights violations, including extrajudicial executions, enforced disappearances, rape and torture and other ill treatment.'[55]

2.7.9 The Bertelsmann Foundation commented in their 2014 Country Report for India that 'The AFSPA [Armed Forces Special Powers Act] allows for the arrest without a warrant of anybody suspected of having committed an offence, and protects soldiers from prosecution, virtually allowing them to act with impunity.'[56]

Police

2.7.10 There is no national police force as such. Under the Constitution, each of the 29 states and seven union territories has primary responsibility for maintaining law and order and, thus, for supervising its own police force.[57] State police forces are structured and regulated by the Police Act of 1861, or by state statutes that are modelled after the 1861 Act. This Act also sets out the duties to be discharged by police officers.[58] As of 2013, India's state police forces employed a total of 1,585,117 personnel.[59]

2.7.11 State police forces have two main components: civil police and armed police. The primary function of the civil police is to control crime; the armed police mainly deal with 'law and order' situations. The civil police provide the staffing of police stations and criminal investigation departments (CIDs). Ordinary constables are generally unarmed, but might carry a baton or bamboo stick. The state armed police are usually organised along the lines of armed infantry battalions. They are used as reserves to deal with emergency law and order situations.[60]

2.7.12 At national level, agencies operating under the Ministry of Home Affairs include:

- The Central Bureau of Investigation which deals with economic crimes and certain serious non-economic crimes such as murder, terrorism and trafficking, on a selective basis.[61]
- The National Investigation Agency (NIA), which was established in 2008 following major terrorist attacks in Mumbai. The NIA has a strength of 650 officers and its principle function is to investigate terrorist activity and other criminal offences related to national security.[62]

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[55] Amnesty International, India: 'The Armed Forces Special Powers Act: Time for a renewed debate in India on human rights and national security', 8 November 2013, ASA 20/042/2013 http://www.refworld.org/docid/5281e3aa4.html , accessed 22 October 2014

[56] Bertelsmann Stiftung: BTI Transformation Index 2014, Undated, http://www.bti-project.org/reports/country-reports/aso/ind/index.nc , accessed 20 November 2014

[57] US Department of State: Country Reports on Human Rights Practices for 2013 – India, published 27 February 2014: section 1d, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dlid=220392, accessed 17 October 2014

[58] Human Rights Law Network (HRLN), New Delhi: Shinar, Adam: 'Accountability for the Indian Police: Creating an External Complaints Agency', August 2009 http://www.hrln.org/hrln/pdf/intern_work/Indian%20Police%20Reform%20Report%20-%20Adam%20Shinar%20_formatted%20by%20Ka.pdf , accessed 23 October 2014

[59] IHS: Jane's Sentinel Security Assessment (subscription only) http://www.janes.com/ , India: Security and foreign forces, updated 22 May 2014, accessed 17 October 2014

[60] World Police Encyclopedia (hard copy): ISBN 0-415-94250-0 Editor: Das, Dilip K. Published in 2006 by Routledge, Taylor and Francis Group. India section, Volume 1, pages 377 to 384

[61] Central Bureau of Investigation: 'About Us', undated http://www.cbi.gov.in/aboutus/aboutus.php, accessed 22 October 2014

[62] South Asia Terrorism Portal: India Assessment 2014, accessed 31 December 2014 http://www.satp.org/satporgtp/countries/india/index.html, accessed 21 October 2014

- The Indian Police Service (IPS) is a national institution, under the Ministry of Home Affairs, which provides advanced training to senior officers of the state police forces. (Most states have police training colleges or academies for ranks from sub-inspector upwards and all states have training schools for constables.)[63]
- The National Crime Records Bureau (NCRB) which collects and processes crime statistics at a national level and serves as a clearing house for information on crime and criminals, including those operating at national and international levels. The NCRB also maintains the Central Finger Print Bureau.[64]

Effectiveness of the police

2.7.13 Jane's Sentinel reported in 2013 that, 'in general, the number of constables in state police forces fell far short of the recommended strength'. India had one of the lowest police-to-population ratios among the world's major economies, with 129 police per 100,000 population. In 2011 there were only 84,479 female police officers in India, representing about 5 per cent of all officers.[65]

2.7.14 Since each of the states and union territories has its own police force, police competencies, training and conduct would vary to an extent from one state to another. The US State Department 2013 Human Rights Report confirmed, 'The effectiveness of law enforcement and security forces varied widely throughout the country.'[66]

2.7.15 In 2009 Human Rights Watch (HRW) published a report titled 'Broken System: Dysfunction, Abuse and Impunity in the Indian Police'. The report followed research in three states, Uttar Pradesh, Himachal Pradesh and Karnataka. It stated that, at the level of the police station:

'[J]unior and low-ranking police...particularly constables, live and work in abysmal conditions. They are often exhausted and demoralized, always on call, working long hours without shifts and necessary equipment, only to return to government-provided tents or filthy barracks for a few hours' sleep ... Even if officially encouraged, their use of professional crime investigation techniques is effectively discouraged by the dearth of time, training and equipment with which they operate … To get around these systemic problems many officers take "short-cuts"... by refusing to register crime complaints. At other times, they use illegal detention, torture and ill-treatment to punish criminals against whom they lack the time or inclination to build cases, or to elicit confessions, even ones they know are false ... Police are routinely diverted to protect "VIPs"...'[67]

See Human rights violations by the security forces, below.

2.7.16 A report by Lamani and Venumadhava, published in the International Journal of Criminology and Sociological Theory in December 2013, observed: 'Today police corruption is [a] common feature in all situations where they [the police] have discretion and where they are in a position to use that discretion. One such example is the enforcement of prohibition laws ... Though the quantum of corruption in police is not as high as that in several other departments, its extent is quite widespread and the consequences are more serious.' The sorts of corrupt acts that have been committed by police officers include, for example taking bribes in return for considerations such as

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[63] World Police Encyclopedia (hard copy) ISBN 0-415-94250-0 Editor: Das, Dilip K. Published in 2006 by Routledge, Taylor and Francis Group. India section, Volume 1, pages 377 to 384
[64] National Crime Records Bureau, accessed 28 October 2014 http://ncrb.gov.in/, accessed 20 October 2014
[65] IHS: Jane's Sentinel Security Assessment (subscription only) http://www.janes.com/ India: Security and foreign forces, updated 22 May 2014, accessed 17 October 2014
[66] US Department of State: Country Reports on Human Rights Practices for 2013 – India, published 27 February 2014: section 1d, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dlid=220392, accessed 17 October 2014
[67] Human Rights Watch: 'Broken System: Dysfunction, Abuse, and Impunity in the Indian Police', 4 August 2009 http://www.hrw.org/sites/default/files/reports/india0809web.pdf, accessed 21 October 2014

withholding evidence or otherwise undermining investigations; accepting payments from businesses engaged in illegal activity; opportunistic theft from arrestees and crime victims.[68]

2.7.17 Various states have taken effective measures to improve the effectiveness of their police forces. For example, it was recorded in October 2012 that, in the state of Rajasthan, the following measures had quickly brought about improvements in the effectiveness and the public image of the force: a freeze on personnel transfers, in-service training to improve investigation and 'soft' skills, and placing community observers in police stations.[69]

2.7.18 Data from the National Crime Records Bureau[70] shows:

(a) There has been a substantial increase in the number of incidents reported to the police (and recorded in a First Information Report - FIR) since 2008, particularly in respect of rape, crimes against women and crimes against children.

(b) There has been a substantial increase in the number of crimes recorded by the police in the past five years; nevertheless, a high percentage of investigations into violent and other serious offences result in suspects being formally charged ('chargesheeted') and cases proceeding to court. (Once a suspect is charged by the police, it is for court prosecutors to determine whether there is sufficient prima facie evidence for the case to go to trial.)

	Cases reported 2008[71]	**Cases reported 2013[72]**	**% Charge-sheeted (2013)**	**Conviction rate (2013) %**
Murder	32,766	33,201	87.1	36.5
Rape	21,467	33,707	95.4	27.1
All Violent crimes*	228,663	300,357	83.3	25.4
Crimes against women*	195,856	309,546	90.5	22.4
Crimes against children	22,500	58,224	83.4	30.9

*Note: Murder and rape are included in 'All violent crimes'. The figures for 'Crimes against women' exclude rape, murder and certain other violent crimes, but include domestic violence, sexual harassment, trafficking, etc

2.7.19 The UN Special Rapporteur on violence against women, its causes and consequences reported in April 2014, 'Many interlocutors said that victims were often discouraged from reporting to the police and that many women did not file a complaint owing to fear of reprisals or lack of guarantees of adequate shelter and access to livelihoods. Informal

[68] Ravikanth B. Lamani, G. S. Venumadhava:' Police Corruption in India': International Journal of Criminology and Sociological Theory, Vol. 6, No. 4, December 2013, 228-234 http://pi.library.yorku.ca/ojs/index.php/ijcst/article/download/37944/34411, accessed 21 October 2014

[69] Rao S.: 'Effective methods to improve police performance in cities and regions in developing countries', 19 October 2012. Government and Social Development Resource Centre http://www.academia.edu/2065876/Effective_methods_to_improve_police_performance_in_cities_and_regions_in_developing_countries , accessed 21 October 2014

[70] National Crime Records Bureau, accessed 28 October 2014 http://ncrb.gov.in/, accessed 21 October 2014

[71] National Crime Records Bureau: Publications: Crime in India 2008: Figures at a glance http://ncrb.gov.in/, accessed 21 October 2014

[72] National Crime Records Bureau: Crime in India 2013: Figures at a glance http://ncrb.gov.in/, accessed 21 October 2014

dispute settlement alternatives are often sought, allegedly by police, family members or community leaders.'[73]

2.7.20 Some of the larger states have institutes of forensic science which support and train the state police[74]; several universities and colleges in India offer courses in forensic science.[75]

Police communications and records

2.7.21 Human Rights Watch, in a report dated 2 February 2011, stated that 'India still lacks a nationwide crime database, leaving state police stations as "virtually unconnected islands"…'[76]

2.7.22 The Government confirmed in August 2011 that a national IT network, the Crime and Criminal Tracking Network Systems (CCTNS) Project, originally authorised in 2009, was under development by the National Crime Records Bureau. It will eventually link over 14,000 police stations and 6000 other offices. Its functions include the storage, transfer and sharing of data and information at all levels of the police, as well as keeping track of criminal investigations, prosecutions and the progress of cases through the Courts.[77] By 2013, 762 server- based computer systems had been installed at district and state crime records bureaux and 46,000 police officers had received training in using this IT.[78] CCTNS is being piloted in the states of Maharashtra, Uttar Pradesh, Assam and Kerala from 2014; if successful, the project will be extended across the country.[79]

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Human rights violations by the security forces

2.7.23 The REDRESS Trust, a UK-based NGO, noted in a 2013 report:

'The country's record in terms of the protection of human rights...is marked by contradiction, in part, because of the...ongoing armed conflicts in parts of the country. India has the requisite institutional and legal framework for the protection of human rights including a constitution guaranteeing fundamental rights, an independent judiciary and a vibrant civil society. At the same time, reports by domestic and international human rights organisations consistently show widespread human rights violations committed by the security forces, often with little or no accountability.'[80]

2.7.24 The US State Department 2013 Human Rights Report for India stated:

'Security forces at times committed human rights abuses.

'There were reports that the government and its agents committed arbitrary or unlawful killings, including extrajudicial killings of suspected criminals and insurgents, especially

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[73] UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to India, 1 April 2014, A/HRC/26/38/Add.1, available at: http://www.refworld.org/docid/53982c3e4.html , accessed 28 November 2014

[74] Institute of Forensic Science, Maharashtra http://ifscmumbai.com// , accessed 22 October 2014

[75] List of Forensic Science Colleges in India http://www.htcampus.com/subcategory/forensic-science-colleges-in-india/ , accessed 23 October 2014

[76] Human Rights Watch: The "Anti-Nationals": Arbitrary Detention and Torture of Terrorism Suspects in India, 2 February 2011 http://www.hrw.org/reports/2011/02/01/anti-nationals, accessed 22 October 2014

[77] Press Information Bureau, Government of India: '15000 Police Stations & 7000 Higher Offices to be Covered Under CCTNS', 2 August 2011 http://pib.nic.in/newsite/erelease.aspx?relid=73676, accessed 22 October 2014

[78] National Crime Records Bureau: Message from the Director General, undated http://ncrb.gov.in/ accessed 21 October 2014

[79] The Hitavada: 'Mah[arashtra] police digitises 95 lakh crime records for CCTNS', 4 May 2014 http://www.thehitavada.com/news-details/mah-police-digitises-95-lakh-crime-records-for-cctns, accessed 21 October 2014

[80] REDRESS, Torture in Asia: The Law and Practice , July 2013, http://www.refworld.org/docid/5232e4b24.html, accessed 21 October 2014

in areas of conflict such as Jammu and Kashmir, the Northeastern States, and the Naxalite belt.

'A three-member panel appointed by the Supreme Court reported in April [2013] that the armed forces operating under the shield of the AFSPA were committing serious human rights violations.

'Most encounter killings, in which security forces and police killed alleged criminals or insurgents, occurred in conflict areas, but they reportedly occurred elsewhere in the country as well. Citing official statistics, news organizations reported 127 fake encounter cases across the country during [the period April 2012 to March 2013] , mostly in conflict areas.

'In August [2013] the Ministry of Home Affairs reported to parliament that 318 cases of custodial torture were reported from various states from April 1, 2012, to February 15, 2013. The ministry also stated that for the same period the states reported 126 cases of custodial deaths.

'The law does not permit authorities to admit into evidence confessions that have been coerced, but NGOs and citizens alleged that authorities used torture to coerce confessions ... Authorities allegedly also used torture as a means to extort money or as summary punishment.

'There were continued 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.'[81]

2.7.25 According to a Human Rights Watch report of August 2009 'Human rights groups say that the police frequently arrest and detain individuals on false charges at the behest of powerful local figures or due to other forms of corruption. In the cases documented by Human Rights Watch …the accounts of the accused suggest that police fabricated charges or informal accusations, making the arrest and detention of these individuals illegal under international and domestic law.'[82] Human Rights Watch reported in their annual report covering 2014 that '...reluctance to hold public officials to account for abuses or dereliction of duty continued to foster a culture of corruption and impunity.'[83]

Remedies for police misconduct

2.7.26 Whilst there is no specific criminal law provision defining and prohibiting torture in India, de facto acts of 'torture' are prohibited and punishable under various provisions of the Indian Penal Code 1860. These include Section 330 ('voluntarily causing hurt to extort confession') and section 331 ('voluntarily causing grievous hurt'). A Prevention of Torture Bill is under consideration by the Indian legislature.[84]

2.7.27 Investigations into allegations of serious police misconduct or abuse may be initiated through various means.

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[81] US Department of State: Country Reports on Human Rights Practices for 2013 – India, published 27 February 2014:Executive summary and section 1, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dlid=220392, accessed 17 October 2014

[82] Human Rights Watch: 'Broken System: Dysfunction, Abuse, and Impunity in the Indian Police', 4 August 2009 http://www.unhcr.org/refworld/publisher,HRW,COUNTRYREP,IND,4a793f692,0.html, accessed 20 October 2014

[83] Human Rights Watch, World Report 2014: India, 21 January 2014, http://www.hrw.org/world-report/2014/country-chapters/india, accessed 20 November 2014 ,

[84] REDRESS, Torture in Asia: The Law and Practice , July 2013, http://www.refworld.org/docid/5232e4b24.html, accessed 21 October 2014

- A complaint can be made to the officer in charge of a police station. Section 154(3) of the Code of Criminal Procedure provides that, if that officer fails to initiate a formal investigation by registering a First Information Report, or if a proper investigation is not carried out, the complainant can apply in writing to the Superintendent of Police, who must then take responsibility for investigating the case.[85] [86]
- If the state police force fails to properly investigate the case, or if the aggrieved individual does not wish to lodge a complaint at a police station, he/she is entitled to take their case to a Magistrate who, under sections 156 and 200 of the Code of Criminal Procedure, is empowered to order a criminal investigation.[87]
- A victim of police misconduct can also make a report to the National Human Rights Commission (NHRC) According to the Ministry of Home Affairs' 2012-13 Annual Report, the NHRC registered for consideration 80,764 cases of abuse by security officials nationwide between April and December 2012. The commission closed 66,346 cases, some of which had been carried forward from previous years. In 275 cases the commission recommended payment of interim relief amounting to 86.7 million rupees (US $1.42 million).[88] In addition to the NHRC, 23 states and union territories have Human Rights Commissions with remits in those particular states.[89] However, Freedom House reported in May 2014 that 'While [the NHRC] monitors abuses, initiates investigations, makes independent assessments, and conducts training sessions for the police and others, its recommendations are often not implemented and it has few enforcement powers.'[90]

2.7.28 In September 2006, the Supreme Court instructed both the central and state governments to comply with certain directives which were regarded as necessary for a police reform process. The Court stated that these directives had two main objectives: functional autonomy for the police and enhanced police accountability. One of the directives was that a Police Complaints Authority (PCA) was to be established in each state of India to inquire into public complaints against police officers in cases of serious misconduct.[91] However, as of December 2012, only 14 states had enacted legislation to establish Police Complaints Authorities and PCA's were actually operational in six states and four union territories.[92]

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[85] Code of Criminal Procedure Act, 1973 http://indiankanoon.org/doc/445276/ , accessed 21 October 2014
[86] Legal Services India: The Power of the Magistrate under Section 156(3) Cr.P.C., June 2012 http://www.legalservicesindia.com/article/article/the-power-of-the-magistrate-under-section-156-(3)-of-cr-p-c-1142-1.html, accessed 22 October 2014
[87] Legal Services India: The Power of the Magistrate under Section 156(3) Cr.P.C., June 2012 http://www.legalservicesindia.com/article/article/the-power-of-the-magistrate-under-section-156-(3)-of-cr-p-c-1142-1.html, accessed 22 October 2014
[88] US Department of State: Country Reports on Human Rights Practices for 2013 – India, published 27 February 2014: section 1d, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dlid=220392, accessed 17 October 2014
[89] UN Human Rights Council, Report of the Special Rapporteur on violence against women, its causes and consequences, Addendum : Mission to India: comments by the State on the report of the Special Rapporteur , 6 June 2014 http://www.refworld.org/docid/53b51cbf232.html, accessed 22 October 2014
[90] Freedom House: Freedom in the World 2014: India, F. Rule of Law: 9/16 (+1), 19 May 2014 http://www.freedomhouse.org/report/freedom-world/2014/india-0 , accessed 28 November 2014
[91] IHS: Jane's Sentinel Security Assessment (subscription only) http://www.janes.com/ , India: Security and foreign forces, updated 22 May 2014, accessed 17 October 2014
[92] Commonwealth Human Rights Initiative (CHRI): Prasad D. and Kotwal N: 'Police Complaints Authorities in India: A Rapid Study', December 2012 http://www.humanrightsinitiative.org/publications/police/PCA_Rapid_Study_December_2012_FINAL.pdf , accessed 22 October 2014

2.7.29 The Supreme Court, in a 1993 judgment, set an important standard of accountability by ruling that, for allegations of torture in police custody, the onus to disprove such allegations rests with the respective police.[93]

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2.8 Rule of law and the Judiciary

2.8.1 Article 39A of the Constitution states 'The State shall secure that the operation of the legal system promotes justice, on a basis of equal opportunity, and shall, in particular, provide free legal aid, by suitable legislation or schemes or in any other way, to ensure that opportunities for securing justice are not denied to any citizen by reason of economic or other disabilities.'[94]

Organisation

2.8.2 The Supreme Court heads the judicial system and has jurisdiction over constitutional matters, as well as appellate jurisdiction over any judgments of state high courts, state lower courts, and special tribunals, where that Court certifies that either a substantial question of law or the interpretation of the Constitution is involved. The Supreme Court consists of a Chief Justice and not more than 25 judges appointed by the President.[95]

2.8.3 All courts below the Supreme Court function at state level. A High Court stands at the head of each state's judicial administration. There are 18 high courts in the country, three having jurisdiction over more than one state. Among the union territories, only Delhi has a high court of its own. The other six union territories come under the jurisdiction of high courts of adjacent states. Each high court comprises a Chief Justice and such other judges as the President may, from time to time, appoint. The high courts are the courts of appeal from the lower courts, and their decisions are final except in cases where appeal lies to the Supreme Court.[96]

2.8.4 Lower criminal courts are the courts of Session which are competent to try all persons committed for trial and to determine any punishment authorised by the law. The law provides that trials for certain specified criminal offences, including sexual assault, may be heard in 'fast track courts'.[97]

Independence

2.8.5 Article 50 of the Constitution guarantees judicial independence: 'The State shall take steps to separate the judiciary from the executive in the public services of the State.'[98]

2.8.6 The U.S. Department of State reported that 'The law provides for an independent judiciary, and [in 2013] the government generally respected judicial independence.'[99]

2.8.7 The Supreme Court has ruled on several occasions to the detriment of the Government and the Court has instructed the state to uphold the rule of law on issues such as the

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[93] REDRESS, Torture in Asia: The Law and Practice , July 2013, http://www.refworld.org/docid/5232e4b24.html, accessed 21 October 2014
[94] Constitution: Part IV, Article 39A http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%202Pg.Rom8Fsss(7).pdf, accessed 20 October 2014
[95] Supreme Court of India: Constitution of the Supreme Court, undated http://supremecourtofindia.nic.in/constitution.htm, accessed 21 October 2014
[96] Supreme Court of India: Constitution of the Supreme Court, undated http://supremecourtofindia.nic.in/constitution.htm , accessed 21 October 2014
[97] BBC News: 'Do India's "fast track" courts work?', 9 January 2013 http://www.bbc.co.uk/news/world-asia-india-20944633, accessed 20 October 2014
[98] Constitution: Section IV Article 50 http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%202Pg.Rom8Fsss(7).pdf, accessed 21 October 2014
[99] US Department of State: Country Reports on Human Rights Practices for 2013 – India, published 27 February 2014: section 1e, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dlid=220392, accessed 17 October 2014

rights of prisoners to be treated humanely and free from torture, rights against custodial violence and prevention of mistreatment by law enforcement agencies.[100]

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Fair trial

2.8.8 Article 22 of the Constitution provides for the right of an arrested person to consult and to be defended by a lawyer of his choice. In addition, Article 39A of the Constitution requires the State to provide free legal aid to ensure that access to justice is not denied to citizens who are disadvantaged economically or otherwise. The right to consult a lawyer upon arrest has been held by the Supreme Court to be an undeniable right; this right also applies to persons who have not been officially apprehended or arrested. Furthermore, Article 303 of the Code of Criminal Procedure provides for the right of a person accused of an offence to be defended by a lawyer of his choice before a criminal court. In practice, however, there have been reports of arrestees being denied access to legal counsel, and not being allowed a confidential discussion when they do consult a lawyer.[101]

2.8.9 The Code of Criminal Procedure provides for public trials, except in proceedings that involve official secrets, trials in which someone might make statements prejudicial to the safety of the state, or under provisions of special security legislation. Defendants have the presumption of innocence (except in certain cases where insurgency or terrorism is suspected). The state provides free legal counsel to poor defendants, but access to competent counsel is reportedly often limited.[102]

2.8.10 The law allows defendants access to relevant prosecution evidence in most civil and criminal cases, and the right to question witnesses. Courts must announce sentences publicly and there are effective channels for appeal at most levels of the judicial system.[103]

2.8.11 The Indian Evidence Act provides that the admissibility of a confession is contingent upon it being given freely and voluntarily, and excludes confessions made to police officers as a general rule. (This does not always apply in cases involving security legislation.)[104]

2.8.12 Under The Legal Services Authorities Act, 1987, every citizen whose annual income does not exceed Rs 9,000 is eligible for free legal aid in cases before subordinate courts and high courts. In cases before the Supreme Court, the limit is Rs 12,000. This limit can be increased by the state governments.[105]

2.8.13 Several NGOs in India advise individuals in the legal process and arrange access to defence counsel, as does the National Legal Services Authority (NALSA). Poor people, and people in certain other vulnerable groups, qualify for free legal services through NALSA.[106]

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[100] Canada: Immigration and Refugee Board of Canada, India: Independence of and corruption within the judicial system, including the scale of corruption at different levels (2009-April 2013), 26 April 2013 http://www.refworld.org/docid/51ab45674.html , accessed 21 October 2014

[101] REDRESS, Torture in Asia: The Law and Practice , July 2013, http://www.refworld.org/docid/5232e4b24.html, accessed 21 October 2014

[102] US Department of State: 2013 Human Rights Report (India), section 1e, published 27 February 2014 http://www.state.gov/j/drl/rls/hrrpt/2013/sca/220392.htm, accessed 17 October 2014

[103] US Department of State: 2013 Human Rights Report (India), section 1e, published 27 February 2014 http://www.state.gov/j/drl/rls/hrrpt/2013/sca/220392.htm, accessed 17 October 2014

[104] REDRESS, Torture in Asia: The Law and Practice , July 2013 http://www.refworld.org/docid/5232e4b24.html, accessed 21 October 2014, accessed 21 October 2014

[105] Legal Service India:: Legal Aid in India, undated, accessed 29 October 2014 http://www.legalserviceindia.com/article/l340-Legal-Aid-In-India.html

[106] National Legal Services Authority: 'Services provided', undated http://nalsa.gov.in/legalservices.html

Judicial corruption

2.8.14 The US State Department has described corruption in the judiciary as "widespread".[107]

2.8.15 According to the Freedom House 'Freedom in the World 2014' report for India, 'The lower levels of the judiciary in particular have been rife with corruption...' This report noted that '...in recent years some judges have initiated contempt-of-court cases against activists and journalists who expose judicial corruption or question verdicts. Contempt-of-court laws were reformed in 2006 to make truth a defense with respect to allegations against judges, provided the information is in the public and national interest.'[108]

2.8.16 The Immigration and Refugee Board of Canada, in a report of April 2013, quoted various external sources as follows:

'Sources indicate that bribery is common in the judicial system... According to the TI [Transparency International] poll, 45 percent of people who had contact with the judiciary between July 2009 and July 2010 had paid a bribe to the judiciary... According to TI, the most common reason for paying bribes in India in general is to "speed things up"... A former chief justice of India, in an interview with the New Delhi-based news magazine Outlook, stated that, in the lower courts "everything comes for a price," noting that there were "fixed" rates for a quick divorce, bail, and other procedures...'[109]

Inefficiency in the judicial process

2.8.17 The Bertelsmann Foundation commented in their 2014 Country Report for India:

'The main problem of the Indian judiciary...is its limited functional operability, which is mainly due to understaffing. According to a New York Times article, in 2008 India had a ratio of 14 judges per million people, with only Guatemala, Nicaragua and Kenya displaying a lower ratio worldwide. This leads to massive delays in the hearing of cases and to extremely long periods of detention when awaiting trial.' [110]

2.8.18 The US State Department (USSD) noted that in 2013, 'The judicial system remained seriously overburdened and lacked modern case management systems, often delaying or denying justice.' In 2013 there were 275 judicial vacancies in the state high courts and more than 3,700 vacancies in the subordinate judiciary.[111] The USSD Human Rights Report for 2012 had recorded, 'On May 14 [2012], the Ministry of Law and Justice announced that approximately 27.225 billion rupees (US $500 million) would be provided to states to set up special courts dedicated to backlog reduction.[112] According to a BBC News article of 9 January 2013, there were 30 million cases pending in the high and district courts in India.[113]

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[107] US Department of State: Country Reports on Human Rights Practices for 2013 – India, published 27 February 2014: section 1e, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dlid=220392, accessed 17 October 2014

[108] Freedom House: Freedom in the World 2013, published 19 May 2014 http://www.freedomhouse.org/report/freedom-world/2014/india-0 , accessed 20 October 2014

[109] Canada: Immigration and Refugee Board of Canada, India: Independence of and corruption within the judicial system, including the scale of corruption at different levels (2009-April 2013), 26 April 2013: http://www.refworld.org/docid/51ab45674.html , accessed 20 October 2014

[110] Bertelsmann Stiftung: BTI Transformation Index 2014 http://www.bti-project.org/reports/country-reports/aso/ind/index.nc, accessed 20 October 2014

[111] US Department of State: Country Reports on Human Rights Practices for 2013 – India, published 27 February 2014: section 1e, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dlid=220392, accessed 17 October 2014

[112] US Department of State: Country Reports on Human Rights Practices for 2013 – India, published 27 February 2014: section 1e, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dlid=220392, accessed 17 October 2014

[113] BBC News: 'Do India's "fast track" courts work?', 9 January 2013 http://www.bbc.co.uk/news/world-asia-india-20944633, accessed 24 October 2014

‘Lok Adalats’ (People’s courts’)

2.8.19 Lok Adalats provide a means of dispute resolution, through arbitration, for parties who cannot afford to, or do not wish to, pursue a case through the civil courts. India has a long tradition of such conciliation being practiced in society at grass roots level, particularly in village ‘panchayat’. A Lok Adalat is presided over by a sitting or retired judicial officer as the chairman, with two other members, usually a lawyer and a social worker. Both commercial and non-commercial cases may be heard. One important condition is that both parties in dispute should agree for settlement through Lok Adalat and abide by its decision. Justice is dispensed summarily ‘without too much emphasis on legal technicalities’.[114]

2.8.20 The Legal Services Authorities Act, 1987 (Section 21) provides that ‘1. Every award of Lok Adalat shall be deemed as decree of Civil Court; 2. Every award made by the Lok Adalat shall be final and binding on all the parties to the dispute; 3. No appeal shall lie from the award of the Lok Adalat.’[115]

2.8.21 Criticisms of the Lok Adalat process have included the fact that the protective provisions of the Code of Civil Procedure and the Indian Evidence Act do not apply; and that there is no avenue of appeal to a higher court (though disputes are ordinarily settled on consent of the parties).[116]

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2.9 ‘Scheduled Castes’ and ‘Scheduled Tribes’

Background: Constitutional and statutory provisions

2.9.1 The Indian Constitution guarantees equality of opportunity for all citizens, but also allows that special provision be afforded to certain castes (mainly Dalits[117]) and tribal groups, in such areas as access to education, allotment of jobs, preferential allocation of development funds, political representation and protection against ill-treatment or exploitation.[118] The specific ‘Scheduled Castes’ and ‘Scheduled Tribes’ to which these provisions would apply were listed, by state, in Constitution Orders No. 19[119] and 22[120] of 1950. Article 17 of the Constitution states that ‘untouchability’ is abolished and that its practice in any form is ‘forbidden and punishable in accordance with the law’ The Constitution also prohibits caste-based discrimination in employment..[121]

2.9.2 A number of laws have been enacted to put into operation the provisions in the Constitution. For example, the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act of 1989 criminalised acts of violence and intimidation against members of

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[114] Legal Service India.com: Karthyaeni.V and Vidhi Bhatt: ‘Lok Adalats And Permanent Lok Adalats: A Scope For Judicial Review?’ (undated) http://www.legalserviceindia.com/articles/lok_a.htm, accessed 24 October 2014
[115] Legal Service India: An Introduction to the Legal Services Authorities Act, 1987, undated http://www.legalserviceindia.com/articles/legaut.htm
[116] Legal Service India.com: Karthyaeni.V and Vidhi Bhatt: ‘Lok Adalats And Permanent Lok Adalats: A Scope For Judicial Review?’ (undated) http://www.legalserviceindia.com/articles/lok_a.htm, accessed 24 October 2014
[117] The term ‘Dalit,” derived from the Sanskrit for ‘oppressed’ or ‘crushed’, refers to people traditionally regarded as being at the bottom of the Hindu caste system. Dalits are also referred to as ‘untouchables’ (see paragraph 2.9.5)
[118] The Constitution of India (Ninety-eighth Amendment) Act 2012. Article 15 http://lawmin.nic.in/olwing/coi/coi-english/coi-indexenglish.htm , accessed 22 October 2014
[119] Government of India: Constitution (Scheduled Castes) Order 19 of 1950 http://lawmin.nic.in/ld/subord/rule3a.htm , accessed 10 December 2014
[120] Government of India: Constitution (Scheduled Tribes) Order 22 of 1950 http://lawmin.nic.in/legislative/election/volume%201/rules%20&%20order%20under%20Constitution/THE%20CONSTITUTION%20(SCHEDULED%20TRIBES)%20ORDER,%201950.pdf, accessed 10 December 2014
[121] The Constitution of India (Ninety-eighth Amendment) Act 2012. Article 15 http://lawmin.nic.in/olwing/coi/coi-english/coi-indexenglish.htm , accessed 22 October 2014

scheduled castes and tribes; the Act carries more severe sentences for several offences already criminalised under the Indian Penal Code, such as murder, rape, right of entry to a public place, injury, sexual exploitation, bonded labour, and intimidation, insult or humiliation.[122] The Protection of Civil Rights Act 1955 specifically provides for the punishment of anyone who, on the ground of 'untouchability', prevents any person from entering a place of public worship which is open to other persons professing the same religion.[123]

2.9.3 According to Human Rights Watch (August 2014), '...under existing law, Muslim and Christian Dalits are not included as Scheduled Castes and thus are not eligible for the same protections as Hindu Dalits under the Scheduled Castes and Scheduled Tribes Prevention of Atrocities Act, 1989.'[124]

The Caste System and Dalits

2.9.4 Human Rights Watch observed in their August 2014 report, 'Cleaning Human Waste: "Manual Scavenging," Caste, and Discrimination in India':

'Historically, civil, social, and economic life in India has been regulated by the caste system – a system of social stratification that designates ranked groups defined by descent and confined to particular occupations. Caste-based social organization is governed by custom and is enforced socially and economically, irrespective of the religion practiced by an individual, caste in India is hereditary in nature. A community's caste designation has long had a significant impact on the ability of members of that community to control land and other productive resources, establishing broad congruence between caste and class.

'Dalits are relegated to the bottom of the caste hierarchy. They have been traditionally limited to livelihoods viewed as deplorable or deemed too menial by higher caste groups – including as manual scavengers, leather workers, and cobblers, among others. Their caste designation also renders them socially "polluted" or "untouchable" and is used to justify discriminatory practices. As a result, in parts of India, Dalit communities are still denied access to community water sources, denied service by barbers, served tea in separate cups, barred from entering shops, excluded from temples, and prevented from taking part in community religious and ceremonial functions.

'The Indian government has passed laws and adopted policies aimed at ending caste discrimination, but has done too little to address widespread failure to implement these measures and the role of local government officials in perpetuating discriminatory practices.

'The persistence of untouchability has been condemned by many Indian leaders, including [former] Prime Minister Manmohan Singh, who likened caste discrimination to apartheid ... Political and rights movements have broken some caste barriers, but caste continues to be used to justify discriminatory, cruel, and inhuman treatment inflicted upon millions of Indians – especially in areas of rural India where caste-designation still dictates rigid roles and entitlements.'[125]

2.9.5 A report published by Human Rights Watch in March 1999 had noted:

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[122] Human Rights Watch: Broken People: Caste violence against India's "Untouchables", March 1999: Section iii. 'The context of caste violence' http://www.hrw.org/legacy/reports/1999/india/ , accessed 09 December 2014

[123] UN Human Rights Council: Report of the Special Rapporteur on freedom of religion or belief, Asma Jahangir, on her mission to India in March 2008. [A/HRC/10/8/Add.3], published 26 January 2009 http://www.unhcr.org/refworld/country,,,MISSION,IND,4562d8cf2,498ae8032,0.html, accessed 10 December 2014

[124] Human Rights Watch, Cleaning human waste: "Manual Scavenging", Caste and Discrimination in India, 25 August 2014, http://www.hrw.org/reports/2014/08/25/cleaning-human-waste-0, accessed 9 December 2014

[125] Human Rights Watch, Cleaning human waste: "Manual Scavenging", Caste and Discrimination in India, 25 August 2014, http://www.hrw.org/reports/2014/08/25/cleaning-human-waste-0, accessed 9 December 2014

‘A person is considered a member of the caste into which he or she is born and remains within that caste until death, although the particular ranking of that caste may vary among regions and over time … Traditional scholarship has described this more than 2,000-year-old system within the context of the four principal “varnas”, or large caste categories. In order of precedence these are the Brahmins (priests and teachers), the Ksyatriyas (rulers and soldiers), the Vaisyas (merchants and traders), and the Shudras (laborers and artisans). A fifth category falls outside the varna system and consists of those known as “untouchables” or Dalits; they are often assigned tasks too ritually polluting to merit inclusion within the traditional varna system.

‘Within the four principal castes, there are thousands of sub-castes, also called “jatis”, endogamous groups that are further divided along occupational, sectarian, regional and linguistic lines. Collectively all of these are sometimes referred to as “caste Hindus” or those falling within the caste system. The Dalits are described as “varna-sankara”: they are ‘outside the system’ – so inferior to other castes that they are deemed polluting and therefore ‘untouchable’. Even as outcasts, they themselves are divided into further sub-castes. Although “untouchability” was abolished under Article 17 of the Indian constitution, the practice continues to determine the socio-economic and religious standing of those at the bottom of the caste hierarchy.’[126]

2.9.6 The India country profile published in 2004 by the Library of Congress Federal Research Division recorded, ‘Similar hereditary and occupational social hierarchies exist within Sikh and Muslim communities but are generally far less pervasive and institutionalized.[127]

2.9.7 The US Department of State noted in its 2013 Report on Human Rights Practices:

‘Many SC [Scheduled Castes] members continued to face impediments to the means of social advancement, such as education, jobs, access to justice, freedom of movement, and access to institutions and services. According to the 2011 census, SC members constituted 16.6 percent (approximately 200.9 million persons) of the population. The Ministry of Home Affairs’ 2012-13 annual report noted 33,719 cases of registered crimes against SC members in 2011, compared with 32,712 cases in 2010. The report also noted that 4,247 Dalits were hurt in various incidents, and 9,086 persons were convicted of crimes against Dalits in 2012, according to NCRB records.

‘Although the law protects Dalits, they faced violence and significant discrimination in access to services, such as health care, education, temple attendance, and marriage. Many Dalits were malnourished. Most bonded laborers were Dalits. Dalits who asserted their rights often were attacked, especially in rural areas. As agricultural laborers for higher-caste landowners, Dalits often worked without remuneration. Reports from the UN’s Committee on the Elimination of Racial Discrimination described systematic abuse of Dalits, including extrajudicial killings and sexual violence against Dalit women. Crimes committed by upper-caste Hindus against Dalits often went unpunished, either because authorities failed to prosecute perpetrators or because victims did not report crimes due to fear of retaliation.

‘NGOs reported that Dalit students were denied admission to certain schools because of their caste ... During the year there were reports that school officials barred Dalit children from morning prayers, asked Dalit children to sit at the back of the class, or forced Dalit children to clean school toilets while denying them access to the same facilities. There were also reports that teachers refused to correct the homework of Dalit

[126] Human Rights Watch: Broken People: Caste violence against India’s “Untouchables”, March 1999: Section iii. ‘The context of caste violence’ http://www.hrw.org/legacy/reports/1999/india/ , accessed 09 December 2014
[127] Library of Congress – Federal Research Division
Country Profile: India 2004 http://lcweb2.loc.gov/frd/cs/profiles/India.pdf, accessed 10 December 2014

children, refused to provide midday meals to Dalit children, and asked Dalit children to sit separately from children of upper-caste families.

'Manual scavenging, the removal of animal or human waste by Dalits, continued in spite of its prohibition under the law.

'The federal and state governments continued to implement various programs for [Scheduled Castes] members to provide better-quality housing, reserved seats in schools, government jobs, and access to subsidized foods, but critics claimed that many of these programs suffered from poor implementation and/or corruption.'[128]

2.9.8 Freedom House noted in their 2014 annual report that '...members of the lower castes and minorities continue to face routine discrimination and violence. Dalits are often denied access to land and other public amenities, abused by landlords and police, and forced to work in miserable conditions.'[129] The Immigration and Refugee Board of Canada has quoted a People's Collective for Economic, Social and Cultural Rights (PCESCR) report of 2008 as stating that 'India's 66 million Dalit or "untouchable" women face particular discrimination in accessing employment ... Dalit women, who work primarily as agricultural labourers and cultivators, but also in households and in the unorganized sector of urban areas, are "denied just and equal wages, a fair share in economic distribution, and maternity benefits".'[130] Human Rights Watch recorded in August 2014, 'Across much of India, consistent with centuries-old feudal and caste-based custom, women from communities that traditionally worked as "manual scavengers," still collect human waste on a daily basis, load it into cane baskets or metal troughs, and carry it away on their heads for disposal at the outskirts of the settlement.'[131]

2.9.9 Minority Rights Group International stated in July 2014:

'The UN Special Rapporteur on violence against women, Rashida Manjoo, upon the conclusion of her visit to India in April 2013, noted that... women from minority groups across the country, including Dalits, Adivasis, and other Scheduled Castes and Tribes, "experience some of the worst forms of discrimination and oppression", despite legislation that exists to protect their rights. A National Tribunal organized by civil society in September heard numerous cases of violence against Dalit women and concluded that there had been a failure of state institutions to protect them. Much of this violence was rooted in their everyday poverty and disempowerment in caste-based societies, often with the collusion of police, judiciary and medical personnel.'[132]

2.9.10 According to the US Department of State, 'National crime statistics indicated that, compared with other caste affiliations, rape was most highly reported among Dalit women.'[133]

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[128] US Department of State: Country Reports on Human Rights Practices for 2013 – India, published 27 February 2014: section 6, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dlid=220392, accessed 17 October 2014

[129] Freedom House: Freedom in the World 2014: India, F. Rule of Law: 9/16 (+1) and G. Personal Autonomy and Individual Rights: 10/16, 19 May 2014 http://www.freedomhouse.org/report/freedom-world/2014/india-0, accessed 9 December 2014

[130] Canada: Immigration and Refugee Board of Canada, India: Whether women who head their own households ..., 16 May 2013 IND104430.E, available at: http://www.refworld.org/docid/51ab41204.html accessed 8 December 2014

[131] Human Rights Watch, Cleaning human waste: "Manual Scavenging", Caste and Discrimination in India, 25 August 2014, http://www.hrw.org/reports/2014/08/25/cleaning-human-waste-0, accessed 9 December 2014

[132] Minority Rights Group International, State of the World's Minorities and Indigenous Peoples 2014 - India, 3 July 2014: http://www.refworld.org/docid/53ba8decb.html, accessed 28 November 2014

[133] US Department of State: Country Reports on Human Rights Practices for 2013 – India, published 27 February 2014: section 6, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dlid=220392, accessed 17 October 2014

2.9.11 Amnesty International commented in June 2014, 'Activist groups say that systemic bias against Dalits and Adivasis make it less likely that crimes against women will be reported, investigated and prosecuted effectively … Police are also known to collude with perpetrators from dominant castes in covering up crimes by not registering or investigating offences against Dalits.'[134]

Tribal peoples ('Adivasi')

2.9.12 The India country profile of the Library of Congress Federal Research Division, published in 2004, noted that there are several hundred tribal communities in India, 'often called Scheduled Tribes for legal purposes, although the term "adivasi" is commonly used.'[135]

2.9.13 Information published in October 2009 by the Asian Centre for the Progress of Peoples (ACPP) stated:

'Adivasis are not a homogenous group, but over 200 tribes speaking over 100 languages, which vary greatly in ethnicity, culture and language; however, there are similarities in their way of life...

'According to IFAD [International Fund for Agricultural Development], Indigenous Peoples suffer higher rates of poverty, landlessness, malnutrition, human rights violation, unemployment and internal displacement than other sects of the society, and they have lower level of literacy and less access to health services … 40.1 per cent of the Adivasis are displaced; 55.2 per cent of the Adivasis are under the below poverty line; … 53.1 per cent of Adivasi households do not have drinking water source; 56 per cent of the Adivasi children are undernourished; 53 per cent of Adivasis are illiterate; 76 per cent of the Adivasis do not have permanent houses.'

ACPP has noted that 'the vast majority' of Adivasi communities are classified as Scheduled Tribes for purposes of the special provisions in the Constitution.[136]

2.9.14 The US Department of State observed in its 2013 Report on Human Rights Practices:

'The constitution provides for the social, economic, and political rights of disadvantaged groups of indigenous people. The law provides special status for indigenous people, but authorities often denied them their rights. According to the Ministry of Tribal Affairs' 2011-12 annual report, there were more than 700 STs [Scheduled Tribes] in the country, and the 2011 census revealed the population of ST members as 84.3 million... There were 75 Particularly Vulnerable Tribal Groups, characterized by primitive technology, stagnant or declining population, extremely low literacy, and subsistence-level economy.

'In most of the Northeastern States, where indigenous groups constituted the majority of the states' population, the laws provide for tribal rights, although some local authorities attempted to violate these provisions. The laws prohibit any nontribal person, including citizens from other states, from crossing a government-established inner boundary without a valid permit ... Tribal authorities must approve the sale of land to nontribal persons.

'Information provided by the NCRB stated 5,922 criminal cases were reported against members of STs in 2012, an increase from the 5,756 cases reported in 2011. Tribal

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[134] Amnesty International, India; Submission to the UN Committee on the Elimination of Discrimination Against Women, 58th Session; June 2014, 2014 http://tbinternet.ohchr.org/Treaties/CEDAW/Shared%20Documents/Ind/INT_CEDAW_NGO_Ind_17515_E.pdf, accessed 9 December 2014

[135] Library of Congress – Federal Research Division Country Profile: India 2004 http://lcweb2.loc.gov/frd/cs/profiles/India.pdf , accessed 9 December 2014

[136] Asian Centre for the Progress of Peoples: 'Backgrounder on the Situation of Adivasis in India, October 2009 http://www.acpp.org/uappeals/bground/Adivasis%20in%20SIndia.htm , accessed 10 December 2014

women employed as domestic workers often were neither properly paid nor protected from sexual exploitation. Encroachment on tribal lands continued in almost every state, despite limited efforts by the states to combat the practice, since businesses and private parties continued to exert political influence and pressure on local governments. Those displaced by the encroachments typically were not compensated...

'Local activists claimed that the rights of tribal and rural groups under the Forest Act continued to be manipulated. Weak enforcement of the act often circumvented the free and informed consent of tribal and rural groups prior to development.'[137]

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2.10 Corruption

2.10.1 In its 2013 Corruption Perceptions Index (CPI), Transparency International ranked India 94th in the world out of 175 countries, with a CPI of 36.[138] (The Corruption Perceptions Index ranks countries and territories based on how corrupt their public sector is perceived to be, based on expert and business surveys. A country's CPI score indicates the perceived level of public sector corruption on a scale of 0 - 100, where 0 means that a country is perceived as highly corrupt and 100 means it is perceived as very 'clean'. A country's rank indicates its position relative to the other 174 countries included in the index, with the country ranked 1st being the least corrupt.)

2.10.2 The US State Department 2013 Human Rights Report noted

'Corruption was present at all levels of government. The CBI registered 583 cases of corruption between the months of January and November [2013]. The Central Vigilance Commission (CVC) received 7,224 cases in 2012. Of those, 5,528 were received in 2012 and an additional 1,696 remained from 2011. The Commission recommended action on 5,720 cases. The CVC operated a toll-free hotline to lodge complaints and a web portal to share information. NGOs noted that bribes typically were paid to expedite services, such as police protection, school admission, water supply, or government assistance. Civil society organizations drew public attention to corruption throughout the year, including through public demonstrations and websites that featured individual [accounts] of corruption.'[139]

2.10.3 The Bertelsmann Foundation commented in their 2014 Country Report for India that 'rampant corruption" existed which "undermine[d] good governance at all levels'.

'The rule of law in India is massively undermined by political corruption. Officeholders who engage in corruption often slip through political, legal or procedural loopholes and are not effectively persecuted. However, a massive anti-corruption movement which started in 2011 has generated an entirely new awareness among the population, for the first time openly challenging the widespread culture of corruption and leading to increasingly adverse publicity for politicians involved in corruption cases.'[140]

2.10.4 In December 2013, Parliament passed the Lokpal and Lokayuktas Bill, establishing an ombudsman organization (the Lokpal) to investigate allegations of government

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[137] US Department of State: Country Reports on Human Rights Practices for 2013 – India, published 27 February 2014: section 6, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dlid=220392, accessed 17 October 2014

[138] Transparency International: 2013 Corruption Perception Index, published December 2013 http://www.transparency.org/cpi2013/results, accessed 23 October 2014

[139] US Department of State: Country Reports on Human Rights Practices for 2013 – India, published 27 February 2014: section 4, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dlid=220392, accessed 17 October 2014

[140] Bertelsmann Stiftung: BTI Transformation Index 2014, Undated, http://www.bti-project.org/reports/country-reports/aso/ind/index.nc , accessed 20 November 2014

corruption.[141] The Bill was first tabled in Parliament in December 2011 following massive public protests against official corruption. The Lokpal has the power to investigate alleged offences by any public servant, including government employees, judges, MPs, Ministers, and the Prime Minister. Victimizing a whistleblower or witness has become an offence. Following an investigation, the Lokpal can initiate prosecution in a Special Court formed under the Prevention of Corruption Act, 1988.[142] The Lokpal and Lokayuktas Act, 2013 entered into force on 1 January 2014.

Actors of protection: Effectiveness and Human rights violations and impunity, Rule of law and the judiciary and Forged and fraudulently obtained documents

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2.11 Citizenship and nationality

2.11.1 The Constitution provides that 'every person who has his domicile in the territory of India and—

(a) who was born in the territory of India; or

(b) either of whose parents was born in the territory of India; or

(c) who has been ordinarily resident in the territory of India for not less than five years ...

shall be a citizen of India.'[143]

2.11.2 Dual nationality is not permitted under Indian law.[144]

2.11.3 An individual who was once an Indian citizen and is now a foreign national can apply for an 'Overseas Citizenship of India' (OCI) Card. An OCI Card is a life-long multiple entry visa which enables the holder to have unlimited travel and stay in India. (This is not the same as dual nationality and does not entitle the holder to an Indian passport.) Further details can be found in the Citizenship Act and on the Indian High Commission (London) website.

2.11.4 Children's names can no longer be entered in their parent's passports; they have to be issued a separate passport. Passports issued to minors aged under 15 are normally valid for five years, or until the holder turns 15, whichever is less. Children aged 15 and older are issued a passport that is normally valid for ten years.[145]

2.11.5 The principal Act and regulations pertaining to citizenship and residency are:

- Citizenship Act 1955, as amended.[146]
- Ministry of Home Affairs: Citizenship Rules, 2009.[147]
- Bureau of Immigration, Ministry of Home Affairs: Registration and visa extension.[148]

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[141] US Department of State: Country Reports on Human Rights Practices for 2013 – India, published 27 February 2014: section 4, http://www.state.gov/j/drl/rls/hrrpt/humanrightsreport/index.htm?year=2013&dlid=220392, accessed 17 October 2014

[142] Lokpal and Lokayuktas Bill, 2013 http://www.prsindia.org/uploads/media/Lok%20Pal%20Bill%202011/Lokpal_Bill_as_passed_by_both_Houses.pdf , accessed 30 October 2014

[143] The Constitution: Part II Article 5: http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%202Pg.Rom8Fsss(5).pdf, accessed 29 October 2014

[144] The Constitution: Part II Article 9: http://lawmin.nic.in/olwing/coi/coi-english/Const.Pock%202Pg.Rom8Fsss(5).pdf, accessed 29 October 2014

[145] Consulate General of India (Birmingham): Passport information, undated , accessed 28 October 2014 http://cgibirmingham.org/page/display/19/67, accessed 30 October 2014

[146] Ministry of Home Affairs: Citizenship Act 1955, as amended to 2005 http://mha.nic.in/sites/upload_files/mha/files/pdf/ic_act55.pdf, accessed 28 October 2014

[147] Ministry of Home Affairs: Citizenship Rules, 2009 http://mha1.nic.in/pdfs/Citi_Rule-2009.pdf , accessed 28 October 2014

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2.12 Documentation

Unique Identification Project ('Aadhaar')

2.12.1 The Unique Identification Authority of India was established in 2009 to 'to issue a 12-digit unique identity number (UID) to all Indian residents…that can be verified and authenticated…online…and is robust enough to eliminate duplicate and fake identities.' The project was given the brand name 'Aadhaar'. The new identity system is linked to each individual's photograph, demographic information and biometric data (fingerprints and iris image). Acquiring a UID is voluntary and free of charge; there is no legal requirement to register.[149] It was reported in July 2014 that UID/Aadhaar numbers (and cards) had so far been issued to 640 million people. Application for a UID number was still voluntary but, according to the Times of India, the Government was planning to seek permission from the Supreme Court to make a UID mandatory for claiming welfare benefits.[150]

See an example of a specimen UID card

2.12.2 An Aadhaar card is proof of identity, not of citizenship, as numbers are issued to any individuals residing in India, including foreign nationals.[151]

Forged and fraudulently obtained documents

2.12.3 Quoting a researcher on Indian criminal justice issues, the Immigration and Refugee Board (IRB) of Canada stated in a report of 5 May 2014:

'[M]ost identity documents in India can be faked and/or obtained by fraudulent means and can be "custom ordered in most parts of the country".

'[F]raudulent medical records, school records and police records are prevalent in India.

'Political party cards are totally fraudulent. Most parties do not have any documentation of their members and generally do not issue membership cards. Some local units may provide one to their local members but there is little authenticity of these.'[152]

2.12.4 Transparency International (India) also indicated to the Canadian IRB that fraudulent identity documents are commonly available in India. The IRB added: 'Media sources report of several scams in which passports were able to be procured with the submission of fake identity documents.' Although Unique Identity (UID) numbers and 'Aadhaar' identity cards rely on relatively advanced technology and biometrics, there have also been some reports in the press of these being fraudulently obtained.[153]

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[148] Bureau of Immigration, Ministry of Home Affairs http://www.immigrationindia.nic.in/index.htm, accessed 28 October 2014
[149] Unique Identification Authority of India website: http://uidai.gov.in/, accessed 28 October 2014
[150] The Times of India: 'Modi govt to give legal backing to Aadhaar', 14 July 2014 http://timesofindia.indiatimes.com/india/Modi-govt-to-give-legal-backing-to-Aadhaar/articleshow/38336812.cms, accessed 29 October 2014
[151] Unique Identification Authority of India website: http://uidai.gov.in/, accessed 28 October 2014
[152] Canada: Immigration and Refugee Board of Canada, India: Availability and prevalence of fraudulent identity documents, including membership cards of political parties (2011-April 2014), 5 May 2014, IND104839.E , http://www.refworld.org/docid/538c369f4.html, accessed 29 October 2014
[153] Canada: Immigration and Refugee Board of Canada, India: Availability and prevalence of fraudulent identity documents, including membership cards of political parties (2011-April 2014), 5 May 2014, IND104839.E , http://www.refworld.org/docid/538c369f4.html, accessed 29 October 2014

Annex A: Map of India

Political map showing the 29 states and 7 union territories, as of 2 June 2014. (Source: Indian Embassy, Kathmandu.[154])

There are interactive and thematic maps – including detailed maps of individual states – on the website Maps of India.com.[155]

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[154] Embassy of India, Kathmandu. Political map as of 2 June 2014 http://www.indianembassy.org.np/uploaded/map/India-Poltical-Map.pdf , accessed 19 November 2014

[155] Maps of India.com, http://www.mapsofindia.com/maps/india/india-political-map.htm, accessed 30 October 2014

Change Record

Version	Date	Change References
1.0	4 February 2015	First version of country information and guidance.
2.0	10 February 2015	Amended to correct a paragraph numbering error in section 2.7

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