



Home Office

Country Policy and Information Note

India: Actors of protection

Version 1.0

January 2019

Preface

Purpose

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

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

Assessment

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

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

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

Country of origin information

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

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

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

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

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

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

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

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

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

Feedback

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

Independent Advisory Group on Country Information

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

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

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

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Assessment

Updated: 23 January 2018

1. Introduction

1.1 Basis of claim

1.1.1 Whether, in general, a person at risk of persecution and/or serious harm from non-state actors and/or rogue state actors is able to obtain effective state protection.

1.2 Points to note

1.2.1 This CPIN does not specifically cover the state of Jammu and Kashmir.

1.2.2 Where a claim is refused, it must be considered for certification under section 94 of the Nationality, Immigration and Asylum Act 2002, as India is listed as a designated state (see [Certification of protection and human rights claims under section 94 of the Nationality, Immigration and Asylum Act 2002 \(clearly unfounded claims\)](#)).

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2. Consideration of issues

2.1 Credibility

2.1.1 For information on assessing credibility, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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

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

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2.2 Exclusion

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

2.2.2 For further guidance on the exclusion clauses and restricted leave, see the [Asylum Instruction on Exclusion: Article 1F of the Refugee Convention](#) and the [Asylum Instruction on Restricted Leave](#).

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2.3 Protection

2.3.1 Where the person's fear is of persecution and/or serious harm from non-state actors and/or rogue state actors, decision makers must assess whether the state can provide effective protection.

2.3.2 There is a functioning criminal justice system for the detection, prosecution and punishment of acts constituting persecution or serious harm, which is

generally accessible. Each of the 29 states and 7 union territories (UTs) have primary responsibility for crime prevention and investigation and maintaining law and order; each state and UT has its own separate police force. Police effectiveness and conduct varies from state to state, undermined by inadequate training and equipment, limited resources, political influence and corruption. Police investigation is seriously hampered by some police officers refusing to register victim's complaints, poor quality of investigations, insufficient training and legal knowledge, inadequate and outdated forensic and cyber infrastructure, and a lack of public trust. Their investigation may also be affected by bias in relation to class, caste, ethnicity and religion of the victim or offender or in relation to down-playing crimes in certain areas of the country (see [Security apparatus](#) and Capabilities of the security forces – [Effectiveness](#)).

- 2.3.3 Human rights abuses committed by the police, including rape and torture, are reported to be widespread and conducted with impunity. Persons from marginalised minority communities are particularly affected. Excessive force by security forces in areas of conflict are also reported, including extra-judicial killings, often in the form of 'fake encounters', rape, torture, arbitrary detention, kidnappings and destruction of homes (see Capabilities of the security forces – [Human rights abuses](#)).
- 2.3.4 There are legal remedies for severe police misconduct and corruption, although some victims may be reluctant to report police violations due to fear of retribution. The National Human Rights Commission had over 4,500 cases, against the police and judiciary, under consideration in late 2018. Central and state governments, and armed forces have investigated complaints and punished some violations committed by security forces but it has also been reported that the government rarely approves the prosecution of security forces members (see Capabilities of the security forces – [Avenues of redress](#))
- 2.3.5 Whilst there is a functioning independent judicial system, public trials, presumption of innocence and free legal counsel, the effectiveness of the judiciary is limited due to severe delays and backlogs and under-staffing, resulting in people on remand spending long periods in pre-trial detention. Corruption within the judiciary, particularly at the lower levels, is widespread. The current justice system either delays or denies justice in many instances especially against marginalised, poor and vulnerable groups (see [Rule of law and the judiciary](#)).
- 2.3.6 Despite some failings, in general, the state appears both willing and able to offer effective protection. Protection may not be available in conflict areas where armed insurgent or terrorist groups are active, or in cases of gender-based violence (see the [Country Policy and Information Note on India: Women fearing gender-based violence](#)). A person's reluctance to seek protection does not necessarily mean that effective protection is not available. It should be noted that protection does not lead to eliminating the risk of discrimination and violence. Decision makers must consider each case on its facts including any past persecution and past lack of effective protection which may indicate that effective protection would not be available

in the future. The onus is on the person to demonstrate why they would not be able to seek and obtain state protection.

2.3.7 For further information on effective protection for minority groups, including religious minorities, gay men and lesbians, and women, see the Country Policy Information Notes on [India: Religious minorities](#), [India: Sexual orientation and gender identity](#) and [India: Women fearing gender-based violence](#).

2.3.8 For further guidance on assessing the availability of state protection, see the [Asylum Instruction on Assessing Credibility and Refugee Status](#).

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Country information

Section 3 updated: 18 December 2018

3. Security apparatus

3.1 State police forces

- 3.1.1 Under the Constitution, the 29 states and 7 union territories (UTs) have primary responsibility for crime prevention and investigation and maintaining law and order^{1 2}. However, the Ministry of Home Affairs is responsible for the internal security of the country as a whole. It oversees the recruitment and management of the national Indian Police Service [for senior officers³] and central police organisations, coordinates the activities of various state police organisations, and provides financial assistance to state police forces⁴. Each state and union territory has its own police force⁵.
- 3.1.2 National statistics provided a breakdown of the number of police in each state and UT in 2014⁶. As of 2016, the total strength of the police force (civil and armed) throughout the country was 1,731,666, accounting for 137 police officers per 100,000 people⁷. The United Nations recommended standard is 222 police per 100,000 persons⁸. The majority of the police force (86%) was at a constabulary level, possibly weakening their incentive to perform well with lack of real prospect of promotion⁹.
- 3.1.3 A 2017 report by the India-based Institute for Policy Research Studies (PRS) stated 'The civil police is responsible for day-to-day law and order and crime control... Every state is divided into various field units for the purpose of effective policing: zones, ranges, districts, sub-divisions or circles, police stations and outposts.'¹⁰

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3.2 Central police forces

- 3.2.1 The Ministry of Home Affairs oversees the functioning of India's central armed police and paramilitary forces¹¹. The PRS report outlined India's border and special police forces, which, as of 2016, had approximately 905,000 personnel:
- Assam Rifles (AR): Guards India's borders with Myanmar;
 - Border Security Force (BSF): Guards India's borders with Pakistan and Bangladesh;

¹ USSD, 'Human Rights Report 2017 – India', (Section 1d), 20 April 2018, [url](#).

² PRS, 'Police Reform in India', (page 2), June 2017, [url](#).

³ Indian Police Service, 'About us', n.d., [url](#).

⁴ DFAT, 'Country Information Report India', (paragraph 5.1), 17 October 2018, [url](#).

⁵ MHA, 'State and UTS Police', n.d., [url](#).

⁶ MOSPI, 'Strength Of Police Force', 6 September 2016, [url](#).

⁷ PRS, 'Police Reform in India', (page 1), June 2017, [url](#).

⁸ PRS, 'Police Reform in India', (page 1), June 2017, [url](#).

⁹ PRS, 'Police Reform in India', (page 1), June 2017, [url](#).

¹⁰ PRS, 'Police Reform in India', (page 3), June 2017, [url](#).

¹¹ USSD, 'Human Rights Report 2017 – India', (Section 1d), 20 April 2018, [url](#).

- Indo Tibetan Border Police Force (ITBP): Guards the border with China;
- Sashastra Seema Bal (SSB): Guards India's borders with Nepal and Bhutan;
- Central Industrial Security Force (CISF): Provides security to critical infrastructure installations, such as airports, atomic power plants, defence production units and oil fields;
- Central Reserve Police Force (CRPF): Deployed for law and order, counter-insurgency, anti-Naxal and communal violence operations;
- National Security Guards (NSG): Specialised in carrying out counter-terrorism, counter-hijacking and hostage-rescue operations. In addition, it provides VIP security and security for important events¹².

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3.3 Intelligence agencies

3.3.1 The central government maintains the country's intelligence agencies:

- Intelligence Bureau (IB): the central intelligence agency for all matters related to internal security, including espionage, insurgency and terrorism;
- Central Bureau of Investigation (CBI): an investigating agency set up under the Delhi Special Police Establishment Act, 1946. It is responsible for investigating serious crimes having all India or inter-state ramifications, such as those related to corruption, financial scams and serious fraud and organised crime (e.g., black marketing and profiteering in essential commodities). Typically, the CBI takes up an investigation: (i) on the order of the central government with the consent of state government, and (ii) on the order of the Supreme Court and High Courts;
- National Investigation Agency (NIA): an investigating agency set up under the National Investigation Agency Act, 2008. It is responsible for investigating offences against the sovereignty, security and integrity of the country punishable under eight specified laws, such as the Unlawful Activities (Prevention) Act, 1967 and the Anti-Hijacking Act, 1982. NIA takes up an investigation on the order of the central government, either on the request of a state government or on the central government's own authority¹³.

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3.4 Armed forces

3.4.1 The Indian Armed Forces is comprised of – the army, the navy, and the air force¹⁴. According to Global Fire Power's 2018 report, India's total military strength was just over 4.2 million, with over 1.3 million active personnel and over 2.8 million reserves¹⁵. IHS Jane's estimated the armed forces' total

¹² PRS, 'Police Reform in India', (pages 6 and 10), June 2017, [url](#).

¹³ PRS, 'Police Reform in India', (page 7), June 2017, [url](#).

¹⁴ Know India, 'Indian Armed Forces', n.d., [url](#).

¹⁵ Global Fire Power, 'India Military Strength', 2018, [url](#).

strength, as of July 2017, was over 1.4 million, divided into the army – 1,200,250; air force – 140,430; and navy – 67,800. Reserves in the army, which included the territorial army, was estimated at 2 million¹⁶.

3.4.2 India has no compulsory military conscription¹⁷.

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Section 4 updated: 18 December 2018

4. Arrest and detention

For information and guidance on prison conditions in India see the [Country Policy and Information Note on India: Prison conditions](#).

4.1 Legal rights

4.1.1 The USSD HR Report 2017 noted that ‘Police may detain an individual without charge for up to 30 days, although an arrested person must be brought before a judge within 24 hours of arrest. Lengthy arbitrary detention remained a significant problem due to overburdened and under resourced court systems and a lack of legal safeguards. Arraignment of detainees must occur within 24 hours unless authorities hold the suspect under a preventive detention law.’¹⁸

4.1.2 The same source noted the National Security Act allowed police to detain persons considered security risks anywhere in the country, except Jammu and Kashmir, without charge or trial for as long as a year. The law allowed family members and lawyers to visit national security detainees and required authorities to inform a detainee of the grounds for detention within 5 days, or 10 to 15 days in exceptional circumstances. Authorities allowed detainees access to a lawyer during interrogation, but police in Jammu and Kashmir allegedly routinely employed arbitrary detention and denied detainees access to legal representation and medical attention¹⁹.

4.1.3 For further information on the legislation relating to arrest and detention, and arrest procedures, see the Immigration and Refugee Board of Canada – [IRB Research Directorate response](#), dated May 2018²⁰.

4.1.4 The Australian Government’s Department of Foreign Affairs and Trade (DFAT) Country Information Report India noted that:

‘The Armed Forces Special Powers Act [AFSPA] (1958) remains in effect in Nagaland, Manipur, Assam, and parts of Mizoram. Another version of the law operates in Jammu and Kashmir, the Armed Forces (Jammu and Kashmir) Special Powers Act (1990). The Act allows the central government to designate a state or union territory as a “disturbed area” and authorises security forces in the state to use deadly force to “maintain law and order”

¹⁶ IHS Jane’s, ‘Armed Forces’, 17 September 2018, subscription only.

¹⁷ Child Soldiers, ‘OPAC status – India’, 2017, [url](#).

¹⁸ USSD, ‘Human Rights Report 2017 – India’, (Section 1d), 20 April 2018, [url](#).

¹⁹ USSD, ‘Human Rights Report 2017 – India’, (Section 1d), 20 April 2018, [url](#).

²⁰ IRB, ‘India: Extrajudicial detention’, 24 May 2018, [url](#).

and arrest any person “against whom reasonable suspicion exists” without informing the detainee of the grounds for arrest.²¹

- 4.1.5 Bertelsmann Stiftung’s BTI 2018 Country Report noted ‘The AFSPA 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.’²² (see also [Human rights abuses](#)).

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4.2 First Information Reports (FIRs)

- 4.2.1 As noted in an IRB Research Directorate response in 2017, a First Information Report (FIR) is ‘a written document prepared by the police when they receive information about the alleged commission of a cognizable offence. It is a report of the information that first reaches the police about the occurrence of a crime or crimes, and this is why it is called the First Information Report.’²³ For further information on FIRs, including procedures and time frames followed by police to inform complainants that an investigation will not be conducted, see the [IRB Research Directorate response](#), dated 1 May 2017²⁴ and for data included in FIRs, the [IRB Research Directorate response](#), dated 25 June 2018²⁵.

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Section 5 updated: 18 December 2018

5. Capabilities of the security forces

5.1 Surveillance and tracking systems

- 5.1.1 Information on surveillance by state authorities; communication between police offices across the country, including use of the Crime and Criminal Tracking Network and Systems (CCTNS); categories of persons that may be included in police databases; tenant verification; and whether police authorities across India are able to locate an individual, was provided by the Immigration and Refugee Board of Canada [IRB Research Directorate response](#), dated June 2018²⁶.

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5.2 Effectiveness

- 5.2.1 As noted in the US Department of State’s annual human rights report for 2017 (USSD HR Report 2017), published 20 April 2018, ‘The effectiveness of law enforcement and security forces varied widely throughout the country. ... Police continued to be overworked, underpaid, and subjected to political pressure, in some cases contributing to corruption.’²⁷ The same report further noted that ‘NGOs reported that in many instances police refused to

²¹ DFAT, ‘Country Information Report India’, (paragraph 4.5), 17 October 2018, [url](#).

²² Bertelsmann Stiftung, ‘BTI 2018 Country Report – India’, (page 11), 23 March 2018, [url](#).

²³ IRB, ‘India: First Information Reports (FIRs)’, 1 May 2017, [url](#).

²⁴ IRB, ‘India: First Information Reports (FIRs)’, 1 May 2017, [url](#).

²⁵ IRB, ‘India: Surveillance by state authorities’, 25 June 2018, [url](#).

²⁶ IRB, ‘India: Surveillance by state authorities’, 25 June 2018, [url](#).

²⁷ USSD, ‘Human Rights Report 2017 – India’, (Section 1d), 20 April 2018, [url](#).

register victim's complaints, termed "first information reports" (FIR), on crimes reported against officers, effectively preventing victims from pursuing justice. Additionally, NGOs reported that victims were sometimes reluctant to report crimes committed by police due to fear of retribution.²⁸

5.2.2 The PRS report noted 'A high percentage of vacancies within the police forces exacerbates an existing problem of overburdened police personnel. [...] which negatively affects [...] efficiency and performance.'²⁹ The same report noted that whilst crime per lakh (100,000) population had increased over the last decade (2005-2015), convictions were low, and in 2015 'convictions were secured in 47% of the cases registered under the Indian Penal Code' with one reason put forward as the 'poor quality of investigations.'³⁰ Moreover, shortages in weaponry, deficiencies in stock of required vehicles and unutilised funds for modernising police infrastructure were noted³¹. In addition, the source noted that the political executive (i.e. ministers) have misused their power of ensuring accountability by using 'police forces for personal and political reasons.'³²

5.2.3 With regards to criminal investigations, the PRS report found that: '[...] the Law Commission and the Second Administrative Reforms Commission have noted that state police officers often neglect [criminal investigations] because they are understaffed and overburdened with various kinds of tasks. Further, they lack the training and the expertise required to conduct professional investigations. They also have insufficient legal knowledge (on aspects like admissibility of evidence) and the forensic and cyber infrastructure available to them is both inadequate and outdated. In light of this, police forces may use force and torture to secure evidence. Further, while crime investigations need to be fair and unbiased, in India they may be influenced by political or other extraneous considerations.'³³

5.2.4 The same report further noted with regards to the public's trust in the police force that 'the Second Administrative Reforms Commission has noted that police-public relations is in an unsatisfactory state because people view the police as corrupt, inefficient, politically partisan and unresponsive.'³⁴

5.2.5 Freedom House noted '... citizens often face substantial obstacles, including demands for bribes, and in getting the police to file a First Information Report, which is necessary to trigger an investigation of an alleged crime. Corruption within the police force remains a problem.'³⁵

See [First Information Reports \(FIRs\)](#).

5.2.6 As noted DFAT report 'The processes of recruitment, transfer, promotion and dismissal of police officers are opaque. Police resources, training and staffing are limited in some areas. There are media and civil society

²⁸ USSD, 'Human Rights Report 2017 – India', (Section 1d), 20 April 2018, [url](#).

²⁹ PRS, 'Police Reform in India', (page 10), June 2017, [url](#).

³⁰ PRS, 'Police Reform in India', (page 1), June 2017, [url](#).

³¹ PRS, 'Police Reform in India', (page 1), June 2017, [url](#).

³² PRS, 'Police Reform in India', (page 1), June 2017, [url](#).

³³ PRS, 'Police Reform in India', (page 11), June 2017, [url](#).

³⁴ PRS, 'Police Reform in India', (page 13), June 2017, [url](#).

³⁵ Freedom House, 'Freedom in the World 2018 – India', (F2), 1 March 2018, [url](#).

allegations that senior officials or political figures shape the conduct of investigations. Some victims of crime allege that people other than political figures or senior officials sometimes also attempt to interfere with police investigations.³⁶

5.2.7 The DFAT report added:

‘Registration, investigation and prosecution of cases may be affected by bias in relation to the class, caste, ethnicity and religion of a victim or offender. Ethnic and religious minorities complain that police lack sensitivity, suspicions about which sometimes lead to communal violence. Local sources report that police, along with other agencies including the courts, public servants, judiciary and prosecutors, have an inherent bias when dealing with Dalit victims of crime in particular.’³⁷

5.2.8 Information provided by the Immigration and Refugee Board of Canada’s Research Directorate in May 2017 on FIRs noted that ‘In 2014, the Times of India reported that “[d]espite warnings from the very top, burking at police stations continue to trouble citizens” explaining that “[b]urking is a practice wherein policemen refuse to file complaints, register non-cognizable offences in place of cognizable crimes or suppress complaints to show that the crime rate under their jurisdiction is under control and also “minimize their work” [...]. CHRI [Commonwealth human Rights Initiative] notes that there is “an urgent need for police departments to address the long-standing obstructions and violations by police in registering FIRs” [...] The Indian Express similarly reports that “as soon as [a] crime graph of a particular region, as reflected in data, rises, the minister responsible reprimands the concerned officer. The officer, in turn, tries his best to keep the numbers to the lowest. One of the ways this is allegedly done is by refusing FIRs” [...] The Indian Express cites a presentation at the conference of Director Generals of Police in Gujarat, India in December 2015 by Indian Police Service officer Rajeew Krishna, who “claims that only 9-21 per cent of all crimes in India get registered by police,” due to 30 percent of all crimes not being reported and over 50 percent of reported crimes being “turned away by police” [...].’³⁸

5.2.9 Amnesty International noted in its annual report covering 2017 that in land confiscation cases involving indigenous people ‘police accepted the complaints but refused to register criminal cases.’³⁹

See also [First Information Reports \(FIRs\)](#) and [Rule of law and the judiciary](#).

5.2.10 For further information on minority groups see the [Country Policy Information Note on India: Religious minorities](#).

5.2.11 Regarding India’s armed forces, IHS Jane’s noted ‘There are serious shortfalls in all the services, by far the most serious being in the army, in which most units are manned to only half their authorised strength.’⁴⁰ The

³⁶ DFAT, ‘Country Information Report India’, (paragraph 5.4), 17 October 2018, [url](#).

³⁷ DFAT, ‘Country Information Report India’, (paragraph 5.5), 17 October 2018, [url](#).

³⁸ IRB, ‘India: First Information Reports (FIRs)’, 1 May 2017, [url](#).

³⁹ Amnesty International, ‘Annual Report 2018’, (Indigenous Peoples’ rights), 22 February 2018, [url](#).

⁴⁰ IHS Jane’s, ‘India – Armed Forces’, 17 September 2018, subscription only.

same source stated that India's Army '... is capable of countering insurgencies in the northwest and northeast of the country, while concurrently continuing to prepare for full-scale conflict on the western and northern frontiers.'⁴¹

- 5.2.12 The USSD HR Report 2017 noted 'The country's armed forces, the security forces of individual states, and paramilitary forces engaged in armed conflict with insurgent groups in several northeastern states, and with Maoist insurgents in the north, central, and eastern parts of the country – although the intensity of these conflicts continued to decrease significantly. Army and central security forces remained stationed at conflict areas in the northeast.'⁴²

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5.3 Human rights abuses

- 5.3.1 The PRS report noted '... in India, various kinds of complaints are made against the police including complaints of unwarranted arrests, unlawful searches, torture and custodial rapes.'⁴³
- 5.3.2 According to the BTI 2018 Country Report 'All over India, custodial killings and police abuse, including torture and rape during custody, are commonplace. In general, underprivileged groups are particularly affected by the limited enforcement of protection laws and by the extremely slow processes of the judicial system. De facto, disadvantaged social groups do not enjoy equal access to justice.'⁴⁴ In 2017, police and security force personnel were accused of the rape of at least 5 indigenous (Adivasi) women and girls, and 2 paramilitary personnel were arrested for the rape and murder of a woman in Mizoram⁴⁵.
- 5.3.3 According to Freedom House, reports of torture, rape, and abuse by law enforcement and security officials persisted in 2017. Abuses against prisoners, particularly members of the lower castes and minorities, by prison staff were common. Official data showed 968 deaths occurring in judicial or police custody between 1 January 2017 and the beginning of August 2017⁴⁶. Amnesty International reported that of the 968 deaths, 74 occurred in police custody, though Amnesty International did not record the nature of the deaths⁴⁷. In 2016, 92 deaths in police custody were recorded by the National Crime Records Bureau (NCRB), 8 of which were reportedly a result of injuries sustained due to physical assault by police⁴⁸. The National Human Rights Commission (NHRC) provides [monthly statistics](#), including the number of reported deaths in police custody⁴⁹.

⁴¹ IHS Jane's, 'India – Army', 17 September 2018, subscription only.

⁴² USSD, 'Human Rights Report 2017 – India', (Section 1g), 20 April 2018, [url](#).

⁴³ PRS, 'Police Reform in India', (page 8), June 2017, [url](#).

⁴⁴ Bertelsmann Stiftung, 'BTI 2018 Country Report – India', (pages 11-12), 23 March 2018, [url](#).

⁴⁵ Amnesty International, 'Annual Report 2018', (Police and security forces), 22 February 2018, [url](#).

⁴⁶ Freedom House, 'Freedom in the World 2018 – India', (F3), 1 March 2018, [url](#).

⁴⁷ Amnesty International, 'Annual Report 2018', (Torture), 22 February 2018, [url](#).

⁴⁸ NCRB, 'Crime in India 2016', (page 532), 30 November 2017, [url](#).

⁴⁹ NHRC, 'Monthly statistics', [url](#).

- 5.3.4 A 2016 Human Rights Watch (HRW) report stated that torture was reported to be frequently used by police to punish suspects, gather information or coerce confessions, which on occasion led to death⁵⁰. HRW noted further that ‘it was not aware of a single case in which a police officer was convicted for a custodial death between 2010 and 2015.’⁵¹ It concluded that ‘the authorities routinely fail to conduct rigorous investigations and prosecute police officials implicated in torture and ill-treatment of arrested persons.’⁵²
- 5.3.5 In 2016, the NCRB recorded there were 209 criminal cases registered against police personnel for human rights violations, of which 50 officials were ‘charge-sheeted’. There were no convictions⁵³.
- 5.3.6 HRW stated in its World Report 2018, covering 2017 events, that ‘Lack of accountability for past abuses committed by security forces persisted even as there were new allegations of torture and extrajudicial killings, including in the states of Uttar Pradesh, Haryana, Chhattisgarh, and Jammu and Kashmir.’⁵⁴
- 5.3.7 Freedom House noted ‘Security forces battling regional insurgencies continue to be implicated in extrajudicial killings, rape, torture, arbitrary detention, kidnappings, and destruction of homes.’⁵⁵
- 5.3.8 The USSD HR Report 2017 noted, regarding internal armed conflicts, with insurgent groups in several northeastern states, and with Maoist insurgents in the north, central, and eastern areas of the country:
- ‘The use of force by all parties to the conflicts resulted in deaths and injuries to both conflict participants and civilians. There were reports government security forces committed extrajudicial killings, including staging encounter killings to conceal the deaths of captured militants. Human rights groups claimed police refused to release bodies in cases of alleged “encounters.” Authorities did not require the armed forces to report custodial deaths to the NHRC [National Human Rights Commission].’⁵⁶
- 5.3.9 The DFAT report noted:
- “Encounter killings” or “fake encounters” are terms used to describe a situation whereby police or security forces kill a suspect in an encounter and then claim self-defence or another explanation. Such killings have occurred in both rural and urban areas. According to government figures, 108 such deaths occurred in 2017. State governments may investigate and have compensated victims’ families. The true extent of such behaviour is difficult to gauge.’⁵⁷
- 5.3.10 According to data provided by the National Human Rights Commission (NHRC) of India, 1,782 cases of fake encounters were registered in India

⁵⁰ HRW, ‘Bound by Brotherhood’, (Summary), 19 December 2016, [url](#).

⁵¹ HRW, ‘Bound by Brotherhood’, (Summary), 19 December 2016, [url](#).

⁵² HRW, ‘Bound by Brotherhood’, (Summary), 19 December 2016, [url](#).

⁵³ NCRB, ‘Crime in India 2016’ (page 536), 30 November 2017, [url](#).

⁵⁴ HRW, ‘World Report 2018’, 18 January 2018, [url](#).

⁵⁵ Freedom House, ‘Freedom in the World 2018 – India’, (F3), 1 March 2018, [url](#).

⁵⁶ USSD, ‘Human Rights Report 2017 – India’, (Section 1g), 20 April 2018, [url](#).

⁵⁷ DFAT, ‘Country Information Report India’, (paragraph 4.2), 17 October 2018, [url](#).

between 2000 and 2017. The state of Uttar Pradesh accounted for 794 cases (44.55%), followed by Andhra Pradesh, Bihar, Assam, Jharkhand and Manipur, each state accounting for less than 6% of cases registered⁵⁸. The NHRC provides [monthly statistics](#), including the number of reported fake encounters⁵⁹.

5.3.11 According to the DFAT report ‘Lack of media scrutiny and pressure from security forces in conflict-affected states suggest the incidence of “encounter killings” may be higher than government figures report. Encounter killings are most frequent in areas with active conflicts, such as Naxalite-affected states, Jammu and Kashmir, and north-east India, but can occur elsewhere. The Uttar Pradesh Chief Minister told the state parliament in February 2018 that “encounter killings would not stop” and criticised “people ... showing sympathy for criminals”.’⁶⁰

5.3.12 Amnesty International reported in its 2018 annual report on India, relating to 2017 events, that:

‘In April, a senior officer of the paramilitary Central Reserve Police Force alleged in writing to his commanding authorities that multiple security agencies had killed two suspected armed group members in an extrajudicial execution in Assam. The officer was transferred. In July, the Supreme Court directed the Central Bureau of Investigation to investigate more than 80 alleged extrajudicial executions by police and security force personnel in Manipur between 1979 and 2012. The court ruled that cases should not go uninvestigated merely because of the passage of time. In June, the Madhya Pradesh police shot dead five farmers who were among protesters in Mandsaur demanding better prices for crops. In August, at least 38 people were killed, some of them by the use of excessive force, when they were fired on by police during protests in Haryana following the conviction for rape of a self-styled “godman”, or guru.’⁶¹

5.3.13 According to Bertelsmann Stiftung’s BTI 2018 Country Report, the Armed Forces Special Powers Act ‘... been the object of much controversy in India against the background of repeated abuses by the security forces.’⁶² (see also Arrest and detention – [Legal rights](#)).

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5.4 Avenues of redress

5.4.1 Freedom House noted ‘While the criminal procedure code requires that the government approve the prosecution of security forces members, approval is rarely granted, leading to impunity.’⁶³ NGOs reported that victims were sometimes reluctant to report crimes committed by police due to fear of retribution⁶⁴.

⁵⁸ First Post, ‘NHRC registered 1,782 fake encounter cases’, 2 February 2018, [url](#).

⁵⁹ NHRC, ‘Monthly statistics’, [url](#).

⁶⁰ DFAT, ‘Country Information Report India’, (paragraphs 4.2-4.3), 17 October 2018, [url](#).

⁶¹ Amnesty International, ‘Annual Report 2018’, (Police and security forces), 22 February 2018, [url](#).

⁶² Bertelsmann Stiftung, ‘BTI 2018 Country Report – India’, (page 11), 23 March 2018, [url](#).

⁶³ Freedom House, ‘Freedom in the World 2018 – India’, (F3), 1 March 2018, [url](#).

⁶⁴ USSD, ‘Human Rights Report 2017 – India’, (Section 1d), 20 April 2018, [url](#).

- 5.4.2 The PRS report noted ‘India has some independent authorities that have the power to examine specific kinds of misconduct. For example, the National or State Human Rights Commission may be approached in case of human rights violations, or the state Lokayukta [anti-corruption ombudsman] may be approached with a complaint of corruption.’⁶⁵ However, the same source noted that ‘the Second Administrative Reforms Commission has noted the absence of independent oversight authorities that specialise in addressing all kinds of police misconduct, and are easily accessible.’⁶⁶
- 5.4.3 According to Freedom House, there was little indication of the Lokayuktas Act (2014) [which creates independent government bodies tasked with receiving complaints of corruption against public servants or politicians, investigating claims, and pursuing convictions through the courts] being implemented⁶⁷.
- 5.4.4 The DFAT report noted ‘The NHRC [National Human Rights Commission] receives around 100,000 complaints per year. In early 2018, it had over 24,000 matters under consideration. Critics claim the NHRC does not investigate every complaint, and that it suffers from a lack of investigative capacity. The NHRC relies on information provided by India’s states, which withhold it in some cases.’⁶⁸ As of 15 November 2018, over 4,500 cases pending concerned matters of police and judicial custodial deaths and deaths in police encounters⁶⁹.
- 5.4.5 Under the Model Police Act and Supreme Court (SC) guidelines of 2006, all states and UTs were required to set up state and district level police complaints authorities. According to the PRS report, not all states or territories had set up complaints authorities at either state or district level, and/or the authorities were not functioning in accordance with the Act or SC guidelines⁷⁰.
- 5.4.6 The USSD HR Report 2017 noted that the central and state governments investigated some human rights violations committed by government forces resulting in a few prosecutions⁷¹.
- 5.4.7 According to the DFAT report ‘Indian law requires all deaths in custody to be investigated by a magistrate not associated with the accused police station or agency. International human rights organisations claim that the law is not consistently applied: deaths may not be reported to the NHRC and police may pressure families not to pursue the matter. Actual numbers of deaths in police custody may be higher than official figures.’⁷²
- 5.4.8 The USSD HR Report for 2017 noted, ‘The NHRC recommended the Criminal Investigations Department of the state police investigate all deaths taking place during police pursuits, arrests, or escape attempts. Many states

⁶⁵ PRS, ‘Police Reform in India’, (page 9), June 2017, [url](#).

⁶⁶ PRS, ‘Police Reform in India’, (page 9), June 2017, [url](#).

⁶⁷ Freedom House, ‘Freedom in the World 2018 – India’, (C2), 1 March 2018, [url](#).

⁶⁸ DFAT, ‘Country Information Report India’, (paragraph 2.34), 17 October 2018, [url](#).

⁶⁹ NHRC, ‘Monthly Salient Statistics’, as of 15 November 2018, [url](#).

⁷⁰ PRS, ‘Police Reform in India’, (page 9), June 2017, [url](#).

⁷¹ USSD, ‘Human Rights Report 2017 – India’, (Section 1g), 20 April 2018, [url](#).

⁷² DFAT, ‘Country Information Report India’, (paragraph 4.8), 17 October 2018, [url](#).

did not follow this nonbinding recommendation and continued to conduct internal reviews at the discretion of senior officers.⁷³

- 5.4.9 The same source also noted, ‘There were cases of [police] officers at all levels acting with impunity, but there were also cases of security officials held accountable for illegal actions. Military courts investigated cases of abuse by the armed forces and paramilitary forces. Authorities tried cases against law enforcement officers in public courts but sometimes did not adhere to due process. Authorities sometimes transferred officers after convicting them of a crime.’⁷⁴

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Section 6 updated: 18 December 2018

6. Rule of law and the judiciary

6.1 Organisation

- 6.1.1 Most states and UTs have separate High Court and subsidiary courts. For information on, and the organisation of, Indian courts, see the [Court Website](#)⁷⁵.

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6.2 Fair trial

- 6.2.1 The USSD HR Report 2017 stated that judicial corruption was widespread and added ‘The judicial system remained seriously overburdened and lacked modern case management systems, often delaying or denying justice.’⁷⁶ The same source added:

‘The law provides for public trials, except in proceedings that involve official secrets or state security. Defendants enjoy the presumption of innocence, except as described under UAPA [the Unlawful Activities Prevention Act] conditions, and may choose their counsel. The state provides free legal counsel to defendants who cannot afford it, but circumstances often limited access to competent counsel, and an overburdened justice system resulted in lengthy delays in court cases, with disposition sometimes taking more than a decade.

‘While defendants have the right to confront accusers and present their own witnesses and evidence, defendants sometimes did not exercise this right due to lack of proper legal representation. Defendants have the right not to testify or confess guilt. Courts must announce sentences publicly, and there are effective channels for appeal at most levels of the judicial system.’⁷⁷

- 6.2.2 According to the BTI 2016 Country Report, poorer Indians had limited access to the courts, while wealthier or influential people were able to delay judgments by appeal. As a result, more privileged individuals were more rarely convicted, and justice was frequently denied to large sections of the

⁷³ USSD, ‘Human Rights Report 2017 – India’, (Section 1g), 20 April 2018, [url](#).

⁷⁴ USSD, ‘Human Rights Report 2017 – India’, (Section 1d), 20 April 2018, [url](#).

⁷⁵ Court Websites, ‘Indian Courts’, n.d., [url](#).

⁷⁶ USSD, ‘Human Rights Report 2017 – India’, (Section 1e), 20 April 2018, [url](#).

⁷⁷ USSD, ‘Human Rights Report 2017 – India’, (Section 1e), 20 April 2018, [url](#).

population⁷⁸. Freedom House reported the criminal justice system failed to provide equal protection to marginalised groups, while in rural areas informal community councils issued edicts concerning social customs. This sometimes resulted in violence against persons perceived to have transgressed social norms, especially women and members of the lower castes⁷⁹.

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6.3 Independence

6.3.1 Article 50 of the Constitution of India reads ‘The State shall take steps to separate the judiciary from the executive in the public services of the State.’⁸⁰ The BTI 2018 Country Report noted ‘The Indian judiciary is institutionally differentiated and largely independent from the legislative and executive branches.’⁸¹ Freedom House reported in its Freedom in the World 2018 report that ‘The judiciary is independent of the executive branch. However, the lower levels of the judiciary in particular have been rife with corruption, and most citizens have great difficulty securing justice through the courts.’⁸²

6.3.2 In May 2017, the Canadian Immigration and Refugee Board’s Research Directorate published a response to an information request on corruption within the Indian judicial system and found corruption at different levels affecting the effectiveness of the courts⁸³. The source reported that:

‘In an opinion article published in the Indian Express, Upendra Baxi, a professor of law at the University of Warwick and the former vice-chancellor of the Universities of South Gujarat and Delhi [...], notes that “[s]everal chief justices of India (CJI), incumbent justices, and superannuated justices have lamented the fact that the widespread systematic governance corruptibility has resulted in discrete acts of judicial corruption” [...] A 2015 BBC article on the link between the slow resolution of cases and corruption states that “[s]nail justice ends up benefitting the rich as witnesses can be intimidated and bought and political pressure and money power can be used to influence and subdue prosecutors and sometimes judges” [...]. An article in the Guardian notes that “[i]n the absence of speedy justice, vigilantism thrives. ... Corruption too, is endemic. People would rather bribe a police officer or a judge than go through the lengthy hassle of a trial” [...]’⁸⁴

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6.4 Effectiveness

6.4.1 Bertelsmann Stiftung’s BTI 2018 Country Report noted:

‘The main problem of the Indian judiciary is its limited functional operability, which is mainly due to understaffing... [which] leads to massive delays in the

⁷⁸ Bertelsmann Stiftung, ‘BTI 2016 Country Report – India’, (page 9), 29 February 2016, [url](#).

⁷⁹ Freedom House, ‘Freedom in the World 2018 – India’, (F4), 1 March 2018, [url](#).

⁸⁰ Constitution of India, [url](#).

⁸¹ Bertelsmann Stiftung, ‘BTI 2018 Country Report – India’, (page 10), 23 March 2018, [url](#).

⁸² Freedom House, ‘Freedom in the World 2018 – India’, (F1), 1 March 2018, [url](#).

⁸³ IRB, ‘India: Independence of and corruption within the judicial system’, 5 May 2017, [url](#)

⁸⁴ IRB, ‘India: Independence of and corruption within the judicial system’, 5 May 2017, [url](#)

hearing of cases (the backlog currently amounts to over four million cases in the high courts and 25 million cases in subordinate courts; in the Supreme Court, over 60,000 cases are pending) and to extremely long periods of detention when awaiting trial. Over two thirds of India's prisoners are awaiting trial, and prisons are hopelessly overcrowded...'⁸⁵

- 6.4.2 Freedom House reported that the lower levels of the judiciary were rife with corruption and most citizens had great difficulty securing justice through the courts⁸⁶. The same source further noted that 'The system is severely backlogged and understaffed, leading to lengthy pretrial detention for a large number of suspects, many of whom remain in jail longer than the duration of any sentence they might receive if convicted.'⁸⁷
- 6.4.3 The IRB's Research Directorate May 2017 response to an information request on corruption within the Indian judicial system found staffing shortages, case backlogs, and corruption at different levels affecting the effectiveness of the courts.⁸⁸
- 6.4.4 The IRB's Research Directorate added:
'The Indian Express quotes retired CJI V.N. Khare as claiming that "corruption in lower courts is no secret" [...]. GAN Business Anti-Corruption Portal, a portal by GAN Integrity, which provides anti-corruption compliance resources and country risk profiles for businesses and is funded in part by the European Union European Commission's Prevention of and Fight against Crime Programme ..., reports that in India, "[t]here is a high risk of corruption when dealing with India's judiciary, especially at the lower court levels. Bribes and irregular payments are often exchanged in return for favorable court decisions".'⁸⁹
- 6.4.5 Due to severe backlogs and understaffing, many pre-trial detainees remained incarcerated longer than the duration of any sentence they might receive, reported Freedom House⁹⁰. The report of the Special Rapporteur on adequate housing noted in January 2017 that '... a substantial backlog of pending cases within the judicial system has rendered access to justice for the poor a continuing challenge.'⁹¹
- 6.4.6 The PRS report noted 'In India, crime rate has increased by 28% over the last decade, and the nature of crimes is also becoming more complex (e.g., with emergence of various kinds of cybercrimes and economic fraud). Conviction rates (convictions secured per 100 cases) however have been fairly low. In 2015, the conviction rate for crimes recorded under the Indian Penal Code, 1860 was 47%. The Law Commission has observed that one of the reasons behind this is the poor quality of investigations.'⁹²

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⁸⁵ Bertelsmann Stiftung, 'BTI 2018 Country Report – India', (page 11), 23 March 2018, [url](#).

⁸⁶ Freedom House, 'Freedom in the World 2018 – India', (F1), 1 March 2018, [url](#).

⁸⁷ Freedom House, 'Freedom in the World 2018 – India', (F1), 1 March 2018, [url](#).

⁸⁸ IRB, 'India: Independence of and corruption within the judicial system', 5 May 2017, [url](#).

⁸⁹ IRB, 'India: Independence of and corruption within the judicial system', 5 May 2017, [url](#).

⁹⁰ Freedom House, 'Freedom in the World 2018 – India', (F1), 1 March 2018, [url](#).

⁹¹ HRC, 'Special Rapporteur on adequate housing', (paragraph 74), 10 January 2017, [url](#).

⁹² PRS, 'Police Reform in India', (page 11), June 2017, [url](#).

6.5 Juvenile justice

- 6.5.1 A statement by the Ministry of Women and Child Development (MWCD), dated February 2018, noted:

‘There are 701 Juvenile Justice Boards (JJBs) in the country which are supported under the Integrated Child Protection Scheme (ICPS) of the Ministry of Women and Child Development. The primary responsibility of setting up the JJBs vests with the State Governments/UT Administrations concerned. Section 4 (1) of the Juvenile Justice (Care and Protection of Children) Act, 2015, provides that the State Government shall constitute for every district one or more JJBs for exercising the powers and discharging its functions relating to children in conflict with law and this is an on going process.’⁹³

- 6.5.2 In May 2017, Human Rights Watch (HRW) noted in its submission to the Universal Periodic Review (UPR) of India that ‘The government [...] passed amendments to the Juvenile Justice Act to permit prosecution of 16 and 17-year-olds as adults when charged with serious crimes such as rape and murder, despite concern that this violates India’s commitments to child rights protections.’⁹⁴

- 6.5.3 Legal Bites, a one-stop knowledge portal and a community of information for all Law students, professionals and Law institutes, provided an overview of the [Juvenile Justice Act 2015](#), and its potential challenges⁹⁵.

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6.6 Alternative dispute resolution

- 6.6.1 Lok Adalats, meaning people’s courts, provide a means of dispute resolution, through arbitration, for parties who cannot afford to, or do not wish to, pursue a case, usually civil or family matters, through the civil courts. India has a long tradition of such conciliation being practiced in society at grass roots level, particularly in village ‘panchayat’^{96 97}. 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.’⁹⁸
- 6.6.2 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.’⁹⁹

⁹³ MWCD, ‘701 Juvenile Justice Boards (JJBs) Established in the country’, 9 February 2018, [url](#).

⁹⁴ HRW, ‘Submission from HRW for the UPR of India’, 1 May 2017, [url](#).

⁹⁵ Legal Bites, ‘Juvenile Justice Act’, 26 January 2018, [url](#).

⁹⁶ Legal Service India, ‘Lok Adalats And Permanent Lok Adalats’, n.d., [url](#).

⁹⁷ Law Rato, ‘Lok Adalats in India’, 5 November 2018, [url](#).

⁹⁸ Legal Service India, ‘Lok Adalats And Permanent Lok Adalats’, n.d., [url](#).

⁹⁹ Legal Service India, ‘An Introduction to the Legal Services Authorities Act’, n.d., [url](#).

- 6.6.3 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)¹⁰⁰.
- 6.6.4 In 2012, India Today stated ‘Khap panchayat is the union of a few villages, mainly in north India though it exists in similar forms in the rest of the country.’¹⁰¹ The Times of India noted in March 2018, “Khap” panchayats are caste or community groups, present largely in rural areas of north India which at times act as quasi-judicial bodies and pronounce harsh punishments based on age-old customs. Several cases of women and men falling victim to “khap” diktats have been reported over the years, particularly in states like Haryana, Utter Pradesh and Rajasthan.¹⁰² In March 2018 the Supreme Court of India ruled it unlawful for khap panchayats to restrict a marriage between 2 consenting adults and, until a law was in place, provided guidelines ‘... to check unlawful interference in the lives of inter-faith and inter-caste couples by khap panchayats.’^{103 104}

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6.7 Legal aid

- 6.7.1 Article 39A of the Constitution provides for equal justice and free legal aid¹⁰⁵. In addition to constitutional rights, a March 2018 article in Live Law by lawyer, Richa Kachhwaha, noted:

‘The Legal Services Authorities Act 1987 was enacted which allowed any person to seek legal aid under the Act to defend or file a case and if belonging to any of the specified category, viz., member of Scheduled Caste or Scheduled Tribe; or poor (with an annual income of not more than Rs.50000/- for cases in the Supreme Court and Rs.25000/- in other courts); or a victim of human trafficking or a beggar; or a woman or child; or if the individual suffers from any disability; or a victim of mass disaster, ethnic violence, caste atrocity, flood, drought, earthquake, industrial disaster; or an industrial workman; or in custody, including protective custody; or facing a charge which might result in imprisonment. [...] In addition, legal aid may also be granted in cases of public importance and special cases considered deserving of legal aid/services.’¹⁰⁶

- 6.7.2 However, according to Kachhwaha, ‘In practice, [...] the number of individual lawyers and social/legal organizations engaged in delivering [legal aid] services efficiently is low and still heavily reliant on the PIL [Public Interest Litigation] mechanism.’¹⁰⁷
- 6.7.3 The DFAT report noted ‘... defendants are assigned state-appointed lawyers. The quality and consistency of representation by state lawyers

¹⁰⁰ Legal Service India, ‘Lok Adalats And Permanent Lok Adalats’, n.d., [url](#).

¹⁰¹ India Today, ‘What is a khap panchayat?’, 11 October 2012, [url](#).

¹⁰² The Times of India, ‘Khap panchayats to stall marriage’, 27 March 2018, [url](#).

¹⁰³ Hindustan Times, ‘Khap panchayat’ interference’, 28 March 2018, [url](#).

¹⁰⁴ NDTV, ‘Khap Panchayat Verdict’, 27 March 2018, [url](#).

¹⁰⁵ Constitution of India, [url](#).

¹⁰⁶ Live Law, ‘Access To Legal Aid In India : An Unfulfilled Promise?’, 15 March 2018, [url](#).

¹⁰⁷ Live Law, ‘Access To Legal Aid In India : An Unfulfilled Promise?’, 15 March 2018, [url](#).

varies. The standard of defence from a state-appointed lawyer would not compare to a highly-paid private lawyer.¹⁰⁸

- 6.7.4 The report of the Special Rapporteur on adequate housing noted ‘... the legal aid system for those living in poverty is only marginally effective, limiting access to courts to the availability of public interest representation by civil society.’¹⁰⁹
- 6.7.5 The DFAT report noted ‘In April 2017, the Ministry of Law and Justice launched an alternative to improve legal assistance for disadvantaged citizens. This included expanding pro-bono legal services to improve access to higher quality legal advice. The ministry partnered with the Ministry of Electronics and Information Technology to launch a pilot of “tele-law” services, which provide legal services through common service centres in remote rural areas.’¹¹⁰
- 6.7.6 Further information on legal aid in criminal cases for persons in custody in India can be found in the September 2018 report ‘[Hope behind Bars](#)’, by the Commonwealth Human Rights Initiative (CHRI)¹¹¹.

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¹⁰⁸ DFAT, ‘Country Information Report India’, (paragraph 5.8), 17 October 2018, [url](#).

¹⁰⁹ HRC, ‘Special Rapporteur on adequate housing’, (paragraph 74), 10 January 2017, [url](#).

¹¹⁰ DFAT, ‘Country Information Report India’, (paragraph 5.9), 17 October 2018, [url](#).

¹¹¹ CHRI, ‘Hope behind bars’, 18 September 2018, [url](#).

Terms of Reference

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

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

- Security apparatus, including police, armed forces and intelligence services
- Security forces capabilities
 - Surveillance
 - Effectiveness
 - Human rights abuses
 - Avenues of redress
- Arrest and detention
 - Legal rights
 - First Information Reports
- Rule of law and the judiciary
 - Organisation
 - Fair trial
 - Independence
 - Effectiveness
 - Juvenile justice
 - Alternative dispute resolution
 - Legal Aid

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Immigration and Refugee Board of Canada,

'India: Extrajudicial detention, including instances of torture by authorities; state response and recourse available to victims; documents issued to persons detained or interrogated by police (2016-April 2018), IND106099.E', 24 May 2018, available at: <https://irb-cisr.gc.ca/en/country-information/rir/Pages/index.aspx?doc=457485&pls=1>. Last accessed: 8 October 2018

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'India: Independence of and corruption within the judicial system, including the scale of corruption at different levels (2015-May 2017), IND105781.E', 5 May 2017, <https://irb-cisr.gc.ca/en/country-information/rir/Pages/index.aspx?doc=457023>. Last accessed: 23 October 2018

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Version control

Clearance

Below is information on when this note was cleared:

- version **1.0**
- valid from **23 January 2019**

Changes from last version of this note

First version in stand-alone CPIN format.

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