



## Immigration and Refugee Board of Canada

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31 March 2005

**IND43421.E**

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India: Information on the court system in Punjab; whether court hearings/proceedings are held in camera; which members of the public can find out about cases being heard by the court on any given day; whether police officers have access to this information (2003-March 2005)

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In 23 March 2005 correspondence, an official at the High Commission of Canada in India indicated that, generally, court proceedings and hearings in India, criminal or civil, are not held in camera, that the date and place of hearings are generally not confidential and that police officers are likely to have access to this information. The official further provided the following information:

The Code of Criminal Procedure deals with procedural matters relating to criminal proceedings before Indian courts. Section 327 of the Code of Criminal Procedure provides:

(1) The place in which any criminal court is held for the purpose of inquiring into or trying any offence shall be deemed to be an open Court to which the public generally may have access, so far as the same can conveniently contain them:

Provided that the presiding Judge or Magistrate may, if he thinks fit, order at any stage of any inquiry into, or trial of, any particular case, that the public generally, or any particular person shall not have access to, or be or remain in, the room or building used by the Court.

(2) Notwithstanding anything contained in sub-section (1), the inquiry into and trial of rape or an offence under section 376, section 376-A, Section 376-B, or section 376-C or section 376-D of the Indian Penal Code (45 of 1860) shall be conducted in camera:

Provided that the presiding Judge may, if he thinks fit, or on an application made by either of the parties, allow any particular person to have access to, or be or remain in, the room or building used by the Court.

(3) Where any proceedings are held under sub-section (2), it shall not be lawful for any person to print or publish any matter in relation to any such proceedings, except with the previous permission of the Court.

In section 327(2) of the Code of Criminal Procedure, reference has been made to -

section 376 of the Indian Penal Code, which deals with punishment for rape;

section 376-A, which deals with intercourse by a man with his wife during separation;

section 376-B, which deals with intercourse by [a] public servant with [a] woman in his custody;

section 376-C, which deals with intercourse by [the] superintendent of [a] jail, [or] remand home;

section 376-D, which deals with intercourse by any member of the management or staff of a hospital with any woman in that hospital;

I am providing below extracts from Sohni's Code of Criminal Procedure, 19th edition, 1994, which contain a discussion of section 327 of the Criminal Procedure Code:

A court-room is a public place, and unless the proceedings are held in camera or the Court for some other valid reason issues a prohibition beforehand, any person can enter it without any permit and remain there so long as he does not misbehave. Hallowed by the administration of justice for long years gone by and by the promise of administration of justice for years to come, public court-houses may well be said to be temples of justice where all who seek justice may enter and where none, being called on to help in justice being administered, should refuse to come. That justice should be properly administered in the interest of all and not merely of the parties in a particular case. It is for this reason that the highest in the land together with the lowest have entered the portals of courts of law without hesitation and with prayerful humility. While liberty is given to a Judge to exclude certain persons in certain circumstances, for valid reasons appealing to the trying Magistrate or the Judge, the general principle, that a trial should be held in public place, and that all the members of the public should have access to it, as far as may be, has not been disputed by anyone in this country. Wherever the Court may be held, the Magistrate is bound by the provisions of this section. [p. 3662]

There may be circumstances in which, for reasons of security for the accused or for the witnesses or for the Magistrate himself, or for other valid reason the Magistrate may think it proper to hold Court inside a jail building or some other building and restrict the free access of the public. Where there is nothing in the record of the case to show that there was any such reason which made the Magistrate decide in favour of holding the trial, in a jail, the trial inside the jail is improper, as it has prejudiced the accused in his defence. [p. 3663]

Under the proviso to this section, however, the Magistrate has a discretion to exclude the public generally or any particular person from the room where the trial is held. But he must record his reasons for doing so. Lack of space in the court-house may justify a Judge or Magistrate in admitting only a limited number of members of the public in the interests of public health and hygiene. So, too, when indecent and obscene matters have to be canvassed during a trial, Judges and Magistrates in India may well have a discretion to exclude women, children and others likely to be injuriously affected by hearing that stuff. The Court has power to control publication of its proceedings, where in the absence of secrecy, justice cannot be administered at all, as in a case where the charges relate to high matters of State and the conduct in question being that of a Premier of an important province. Where a Magistrate conducts a trial in camera in the exercise of his own discretion, as he was entitled to do so by the proviso to this section and no objection to this course is raised, the proceeding of the Magistrate cannot be upset on this ground unless the applicant can show that he was in fact prejudiced by the case being tried not in open Court. It is not advisable that a police officer interested in the case proceeding before the Magistrate should receive exceptional treatment as a seat on the dais, as it is calculated to bring suspicion in the minds of the accused as to the independence of the Magistrate. [p. 3665]

Presence of police officers in Court-room. The Proviso makes no exception in the case of a police officer. If the accused person objects to the presence of a police officer or other person, the Magistrate has to decide whether the accused's fear of prejudice to his case is reasonable, considering the susceptibilities of the class to which he belongs, and not merely whether the presence is convenient or helpful to the court or the prosecution (High Commission of Canada 23 Mar. 2005).

Although India's constitution guarantees fundamental rights, in the 1980s, faced with the rise of Sikh nationalism in Punjab, the Indian government introduced a series of measures aimed at curbing the insurgency (SHRG n.d.; *Harvard Human Rights Journal* Spring 2002). Among these measures was the Terrorist and Disruptive Activities (Prevention) Act of 1987 (TADA) (SHRG n.d.; *Harvard Human Rights Journal* Spring 2002). The TADA established "designated courts" to try those suspected of terrorist acts and disruptive activities (SHRG n.d.). The TADA also established in camera trials (*Harvard Human Rights Journal* Spring 2002; ENSAAF 11 Apr. 2004, 9; SHRG n.d.) and authorized the detention of persons in a "disturbed area" based on mere suspicion (ENSAAF 11 Apr. 2004, 9). In Punjab, it allowed detention without formal charges for a period of two years (SHRG n.d.).

Due to international pressure, the Indian government allowed the TADA to lapse in 1995 (*ibid.*; *Country Reports* 2004 28 Feb. 2005; HRW 22 Sept. 2004; see also ENSAAF 11 Apr. 2004, 9). However, the law was given retroactive effect and, according to various sources, people are still being charged and held under its provisions (SHRC n.d.; HRW 22 Sept. 2004; *Country Reports* 2004 28 Feb. 2005; Rediff.com 18 Sept. 2004).

In the wake of the 11 September 2001 attacks on the United States, a new anti-terrorism act was passed, the Prevention of Terrorism Act (POTA) (HRW 22 Sept. 2004; *Human Rights Features* Jan.-Mar. 2002; World Socialist Web Site 27

Nov. 2004). The POTA allowed detention of suspects for up to 180 days without charges (*Human Rights Features* Jan. - Mar. 2002; Rediff.com 18 Sept. 2004; *Asia Times Online* 23 Sept. 2004; *Country Reports 2004* 28 Feb. 2005). It also provided for "special courts to try offenses [and] placed the burden of proof at the bail stage on the accused" (ibid.). The Act was repealed in the Fall of 2004 (*Asia Times Online* 23 Sept. 2004; HRW 22 Sept. 2004; Rediff.com 18 Sept. 2004; World Socialist Web Site 27 Nov. 2004). Some sources believe, however, that the repeal of the POTA was only cosmetic, as it was combined with amendments to the 1967 Unlawful Activities Prevention Act (UAPA) containing sections similar to those included in the POTA (ibid.; *Country Reports 2004* 28 Feb. 2005). Specific information on whether the POTA allowed for trials to be held in camera could not be found among the sources consulted by the Research Directorate.

This Response was prepared after researching publicly accessible information currently available to the Research Directorate within time constraints. This Response is not, and does not purport to be, conclusive as to the merit of any particular claim for refugee protection. Please find below the list of additional sources consulted in researching this Information Request.

#### References

*Asia Times Online* . 23 September 2004. Sudha Ramachandran. "Filling India's Anti-Terrorism Void." <[http://www.atimes.com/atimes/South\\_Asia/FI23Df03.html](http://www.atimes.com/atimes/South_Asia/FI23Df03.html)> [Accessed 23 Mar. 2005]

*Country Reports on Human Rights Practices for 2004* . 28 February 2005. "India." United States Department of State. Washington, DC. <<http://www.state.gov/g/drl/rls/hrrpt/2004/41740.htm>> [Accessed 23 Mar. 2005]

ENSAAF. 11 April 2004. "Human Rights in Punjab: 1984 to 2004." Presentation prepared for the 1984 Youth Forum held at the University of Toronto at Mississauga, 11 April 2004. <<http://www.ensaaf.org/centennial.pdf>> [Accessed 16 Mar. 2005]

*Harvard Human Rights Journal* . Spring 2002. Vol. 15. Jaskaran Kaur. "A Judicial Blackout: Judicial Impunity for Disappearances in Punjab, India." <<http://www.law.harvard.edu/students/orgs/hrj/iss15/kaur.shtml>> [Accessed 23 Mar. 2005]

High Commission of Canada, New Delhi. 23 March 2005. Correspondence from an official.

*Human Rights Features* [New Delhi]. January-March 2002. "POTO: Govt Decides to Play Judge and Jury." <[http://www.hrdc.net/sahrdc/hrquarterly/Jan\\_march\\_2002/poto.htm](http://www.hrdc.net/sahrdc/hrquarterly/Jan_march_2002/poto.htm)> [Accessed 23 Mar. 2005]

Human Rights Watch (HRW). 22 September 2004. "India: POTA Repeal a Step Forward for Human Rights." <[http://hrw.org/english/docs/2004/09/22/india9370\\_txt.htm](http://hrw.org/english/docs/2004/09/22/india9370_txt.htm)> [Accessed 17 Mar. 2005]

Rediff.com. 18 September 2004. George Iype. "It Is Goodbye to POTA." <<http://www.rediff.com/news/2004/sep/18spec1.htm>> [Accessed 23 Mar. 2005]

Sikh Human Rights Group (SHRG). n.d. "TADA." <<http://www.shrg.org/information/tada/tada.htm#>> [Accessed 16 Mar. 2005]

World Socialist Web Site. 27 November 2004. Kranti Kumara. "Repeal of India's Draconian Anti-Terrorism Law." <<http://www.wsws.org/articles/2004/nov2004/ind-n27.shtml>> [Accessed 23 Mar. 2005]

#### Additional Sources Consulted

**Oral sources:** Eight oral sources consulted did not provide information within the time constraints of this Response.

**Internet sites, including:** Amnesty International, Committee for Information and Initiative on Punjab, Freedom House, The Sikh Coalition, World Sikh Organization.

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