



Australian Government
Refugee Review Tribunal

Country Advice

India

India – IND39818 – Authorities’ treatment of accused terrorists – Collaboration with Pakistani terrorists – State protection

13 February 2012

1. Please advise on the treatment by authorities of those accused of terrorist activities in India, in particular those who are accused of collaborating with Pakistani terrorists.

Those accused of terrorist activities in India may face treatment by Indian authorities considered to be harsh by western standards. This treatment can include torture, arbitrary detention, threats to suspects and their families, and extra-judicial killings. No information was located regarding the specific treatment of those accused of collaborating with Pakistani terrorists.

According to the most recent US Department of State (USDOS) *Country Reports on Human Rights Practices for 2010 – India*, Indian law “provides for an independent judiciary, and the government generally respected judicial independence in practice, although citizens reported that judicial corruption was widespread”. USDOS also reported that “there were reports that government security forces tortured, raped, and mistreated insurgents and alleged terrorists in custody and injured demonstrators”.¹

In 2011, Freedom House noted that “Indian security personnel based in Kashmir, numbering about 500,000, carry out arbitrary arrests and detentions, torture, ‘disappearances’, and custodial killings of suspected militants and alleged civilian sympathizers...[P]rogovernment militias...act with impunity and have reportedly carried out a range of human rights abuses against pro-Pakistan militants and civilians”.²

According to the most recent USDOS *Country Reports on Terrorism*, “India continued to see a reduction in the number of deaths attributable to terrorist violence, as it ramped up its counterterrorism capacity building efforts and increased cooperation with the international community, especially the United States”. USDOS noted that in May 2010, “an Indian court convicted and sentenced to death the lone surviving attacker of the 2008 Mumbai terrorist attacks”. Further, during 2010 “Indian authorities arrested numerous suspected militants, uncovered several arms caches, continued to develop a new internal security force, implemented improved border security measures mainly along the Pakistani border, and tightened laws to counter terrorist financing”.³

USDOS also reported that in January 2010, “a Delhi court sentenced two Lashkar-e-Tayyiba (LeT) militants to seven years of imprisonment for possession of the explosive RDX in connection with a conspiracy to carry out a suicide attack at the Indian Military Academy in

¹ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – India*, 8 April, Section 1.e, 1.g

² Freedom House 2011, *Freedom in the World 2011 – Kashmir (India)*, UNHCR Refworld website, 25 August <http://www.unhcr.org/refworld/docid/4e565c5f33.html> – Accessed 31 January 2012

³ US Department of State 2011, *Country Reports on Terrorism for 2010*, 18 August, p.113

2005". The Indian government also considered countering extremist ideology to be integral to its counter-terrorism strategy, continuing its "Surrender-cum-Rehabilitation policy, which encouraged misguided youths and militants to surrender, while offering to provide them with rehabilitation and assistance in transitioning back into the population".⁴

Indian courts have demonstrated that they can act independently, regardless of the profile, or otherwise, of particular cases. In 2010, *The Times of India* reported that the trial of three individuals accused of involvement in the 2008 Mumbai attacks resulted in a conviction for the sole surviving gunman, and acquittals for two Indian nationals charged with conspiracy and involvement in the attack. According to the article, "[t]he acquittals, particularly, were significant: If they exposed the inability of the Mumbai cops to produce a watertight case even in a trial of this magnitude, they also spoke of the independent-mindedness of the Indian judiciary, which weighed the evidence and pronounced what is being seen as a carefully-considered judgment".⁵

According to the Asian Human Rights Commission, the *Armed Forces (Special Powers) Act, 1958* (AFSPA) remains the "subject of severe criticism by human rights activists and jurists in India and across the world". In excess of 4,000 people are estimated to have been killed under the Act. The AFSPA provides statutory impunity, and empowers soldiers to "shoot to kill with no fear of prosecution", potentially "arbitrarily on mere suspicion". The AFSPA provides "extraordinary powers to the Indian armed forces in the so called 'disturbed areas'; alleged human rights violations include "arbitrary killings, torture, cruel, inhuman and degrading treatment and enforced disappearances".⁶ The AFSPA grants the following powers:

Use of lethal force:

If a military officer is of the opinion that it is necessary to do so for the maintenance of public order, he or she can, after giving warning, fire upon or otherwise use force, including lethal force, against any person who is acting in contravention of any law or order. This applies in particular if five or more persons assemble together or if the targeted person carries weapons or any other objects that can be used as weapons.

Arrest:

A military officer can arrest, without warrant, any person who committed a cognisable offence or against whom a reasonable suspicion exists that he or she has committed such an offence or is about to commit it. When effecting arrest, the military officer can use such force as may be necessary. Any person who is arrested pursuant to the AFSPA shall be handed over by the military officer to the officer-in-charge of the nearest police station as soon as possible.

Enter and Search:

⁴ US Department of State 2011, *Country Reports on Terrorism for 2010*, 18 August, pp.114-115

⁵ '26/11: Kasab held guilty, 2 Indians walk free' 2010, *The Times of India*, 4 May
http://articles.timesofindia.indiatimes.com/2010-05-04/india/28311128_1_k-p-pawar-ajmal-amir-kasab-terror-trial – Accessed 1 February 2012

⁶ Asian Human Rights Commission 2011, *The State of Human Rights in India in 2011: Human rights a utopia without justice*, Asian Human Rights Commission website, pp.8-9
<http://www.humanrights.asia/resources/hrreport/2011/AHRC-SPR-005-2011.pdf/view> – Accessed 9 December 2011

A military officer can enter and search, without warrant, any premises in order to carry out an arrest, or to recover any person believed to be wrongfully restrained or confined or any property reasonably suspected to be stolen or any arms or explosives. When entering and searching, the military officer can use such force as may be necessary.

Immunity:

...No prosecution, suit or other legal proceeding shall be instituted, except with the previous sanction of the Central Government, against any person in respect of anything done or purported to be done in exercise of the powers conferred by this Act.⁷

In 2008 the Indian parliament passed “the Unlawful Activities Prevention Act (UAPA), which gives authorities the ability to detain persons without charge in cases where insurgency or terrorism was suspected”. The UAPA reportedly allows for suspects to be held for 30 days by police, and an additional 150 days in judicial custody. The UAPA also “denies bail for foreigners and makes it easier for courts to deny bail in the case of detained Indian citizens”. In addition, the Act “presumes the accused to be guilty if the prosecution can produce certain incriminating evidence against the accused, such as the possession of arms or explosives or the presence of fingerprints at the crime scene, regardless of whether criminal intent exists”.⁸

USDOS also noted that in 2004, the Indian government “repealed the Prevention of Terrorism Act (POTA), which created special courts, allows the identities of witnesses to be withheld, and allowed admission into evidence of custodial confessions”. The National Security Act (NSA) “allows police to detain persons considered security risks anywhere in the country, except Jammu and Kashmir, without charge or trial for as long as one year”, while the Public Safety Act (PSA), which only applies to Jammu and Kashmir, “permits state authorities to detain persons without charge or judicial review for as long as two years”.⁹

In 2011, Human Rights Watch (HRW) reported that “India’s security forces have long sought to elicit information, evidence, and confessions for bombings and other militant attacks using torture and other ill-treatment of suspects”. According to HRW, “[t]hose subjected to torture and ill-treatment are not just members of militant groups, but include many people whom the security forces falsely claim are involved in militant attacks or are the relatives of suspected militants”.¹⁰ The Asian Centre for Human Rights’ *Torture in India 2011* report noted that “[t]orture remains endemic, institutionalised and central to the administration of justice and counter-terrorism measures. India has demonstrated no political will to end torture”. Torture is reportedly used to “extract confession, demand bribes, settle personal scores etc. Terror suspects are at increased risk of torture given the immense pressure on the police to solve the crimes”.¹¹

According to a United Nations-supported 2008 poll by WorldPublicOpinion.org, 59 per cent of Indians surveyed supported the use of torture against terror suspects. The majority of respondents believed that “it was permissible for State authorities to use torture and other

⁷ Asian Human Rights Commission 2011, *The State of Human Rights in India in 2011: Human rights a utopia without justice*, Asian Human Rights Commission website, p.11

<http://www.humanrights.asia/resources/hrreport/2011/AHRC-SPR-005-2011.pdf/view> – Accessed 9 December 2011

⁸ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – India*, 8 April, Section 1.d

⁹ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – India*, 8 April, Section 1.d

¹⁰ Human Rights Watch 2011, *The “Anti-Nationals”: Arbitrary Detention and Torture of Terrorism Suspects in India*, Human Rights Watch website, February, p.23 <http://www.hrw.org/reports/2011/02/01/anti-nationals> – Accessed 1 August 2011

¹¹ Asian Centre for Human Rights 2011, *Torture in India 2011*, Asian Centre for Human Rights website, 21 November, pg.1,9 <http://www.achrweb.org/reports/india/torture2011.pdf> – Accessed 22 November 2011

means of physical intimidation against those suspected of terrorist activities on grounds that the information they may have would save innocent lives”.¹²

In its 2011 report *The “Anti-Nationals”: Arbitrary Detention and Torture of Terrorism Suspects in India*, HRW provided a wide range of examples of ill-treatment or torture of people accused of terrorism, many of which occurred following major terrorist attacks across the country. HRW reportedly found “credible evidence that state police units investigating the attacks engaged in widespread and serious abuses of suspects’ rights, such as arbitrary arrest and detention, torture, and other ill-treatment, including threats against suspects and their relatives”. HRW claims that some detainees were “blindfolded and held in stress positions during all their waking hours, beaten, subjected to electric shock, or denied food and water. Many said police forced detainees to make false confessions, at times making them repeat a fabricated version of events until they had memorized it”.¹³

According to the Asian Centre for Human Rights’ *Torture in India 2010* report, in September 2009 “over a dozen terror suspects, accused of carrying out bomb attacks in Jaipur on 13 May 2008, were allegedly tortured after they demanded permission to join prayers with other prisoners in the jail compound on the occasion of Id-ul-Fitr”. Two of the suspects, reportedly held under the UAPA, alleged that “jail officials dragged them out of their cells on 21 September 2009 evening with the help of ‘hard-core prisoners’ and tortured them. All the terror suspects were reportedly held in cramped, dingy cells without ventilation and in isolation”.¹⁴

In January 2009, *Aljazeera* reported that two suspected gunmen were killed by Indian police near New Delhi, the day before the national Republic Day celebrations. According to a senior police officer, “an anti-terrorist team chased a car carrying two-men towards the capital on Sunday before intercepting it in the suburb of Noida, 20km from the city”. The officer said that the two gunmen – whose passports indicated that they were Pakistani – died *en route* to hospital. Two AK-47 assault rifles, hand grenades and detonators were reportedly recovered from the gunmen’s car.¹⁵

With regard to general state protection, in 2008 the UK Home Office Operational Guidance Note for India noted that the governments of 28 states and seven union territories have primary responsibility for maintaining law and order, with the central government providing guidance and support. Some members of the security forces have reportedly committed human rights abuses, and corruption in the police force exists at all levels. Police have acted with relative impunity, and are rarely held accountable for illegal actions. Despite this, there are indications that a key priority for Indian police is the targeting of terrorist elements within Indian society. The UK Home Office suggests that “there is no information to suggest that police would systematically fail to investigate effectively any complaints made by individuals threatened by terrorist groups”. Further, the same report indicates that those experiencing or

¹² ‘59% of Indians polled support torture against terror suspects’ 2008, InfoChange India website, source: *Hindustan Times*, 26 June <http://infochangeindia.org/human-rights/news/59-of-indians-polled-support-torture-against-terror-suspects.html> – Accessed 6 February 2012

¹³ Human Rights Watch 2011, *The “Anti-Nationals”: Arbitrary Detention and Torture of Terrorism Suspects in India*, Human Rights Watch website, February, p.28 <http://www.hrw.org/reports/2011/02/01/anti-nationals> – Accessed 1 August 2011

¹⁴ Asian Centre for Human Rights 2010, *Torture in India 2010*, Asian Centre for Human Rights website, April, p.46 http://www.achrweb.org/reports/india/torture2010.pdf?bcsi_scan_A4C9E8056B19D97F=0&bcsi_scan_filename=torture2010.pdf – Accessed 14 April 2010

¹⁵ ‘Indian police kill terror suspects’ 2009, The Free Library website, source: *Aljazeera*, 25 January <http://www.thefreelibrary.com/Indian+police+kill+terror+suspects.-a0192574714> – Accessed 6 February 2012

fearing harm from militant groups “can reasonably seek protection from the Indian authorities and there is no evidence to suggest that such protection is not provided.”¹⁶

Government officials and security services frequently engaged in corrupt practices with impunity, with an estimated 54 per cent of the population admitting to having bribed authorities. Alongside issues such as school admission, access to water supply and access to government assistance, bribes were reportedly also paid to obtain police protection.¹⁷

2. Please advise on the treatment of those accused of terrorist activities by authorities in Haryana in particular.

No information was located indicating that those accused of terrorist activities are subject to different treatment by authorities in Haryana to those accused throughout India in general.

¹⁶ UK Home Office 2008, *Operational Guidance Note – India*, April, p.8

¹⁷ US Department of State 2011, *Country Reports on Human Rights Practices for 2010 – India*, April, Section 4

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