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India: Information on arrest warrants, particularly the relevant sections of the Code of Criminal Procedure and whether there have been amendments since August 2001; the manner in which these sections are translated in practice, including prevalence of arrests without warrant in Punjab; whether Punjab state police departments notify other state police departments of wanted individuals (2002 - 2005)
Research Directorate, Immigration and Refugee Board of Canada, Ottawa

Code of Criminal Procedure (CPC)

In correspondence to the Research Directorate, a New Delhi-based lawyer and the senior director of the Punjab state-based international human rights organization, Voices for Freedom Asia (VFF), wrote that offences in India are categorized as "cognizable" and "non-cognizable," where "cognizable" refers to a more serious offence (Lawyer 27 Oct. 2005; VFF 23 Oct. 2005). While police are required to obtain a court-issued arrest warrant for those individuals implicated in non-cognizable offences, they are not required to do so for those implicated in cognizable offenses (ibid.; Lawyer 27 Oct. 2005; India 1973, Art. 2(c) and 2 (I); ibid. March 2005). The 1973 Code of Criminal Procedure or Criminal Procedure Code (CPC), as found on the Website of the India Code Information System, an initiative of the Indian Ministry of Law and Justice (India n.d.a), contains the arrest warrant procedure for "non-terrorist activity" in India (Associate Professor of Law 20 Oct. 2005) and differentiates cognizable and non-cognizable offences as follows:

(c) "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.

(I) "non-cognizable offence" means an offence for which, and "non- cognizable case" means a case in which, a police officer has no authority to arrest without warrant (India 1973, Ch. 1, Art. 2).

ENSAAF, a California-based non-governmental organization "fight[ing] impunity for human rights violations... in India" (ENSAAF n.d.), wrote in its 2005 report on illegal detention in Punjab state that section 41 (a) of the CPC grants Indian police the power to arrest without a warrant or a magistrate's order if the arrest is based on "reasonable suspicion, information, or complaint" (ibid. Oct. 2005, 12). Article 41 of the 1973 CPC reads as follows:

41. When police may arrest without warrant.

(1) Any police officer may without an order from a Magistrate and without a warrant, arrest any person -

1. who has been concerned in any cognizable offence, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been so concerned; or
2. who has in his possession without lawful excuse, the burden of proving which excuse shall lie on such person,

any implement of house-breaking; or

3. who has been proclaimed as an offender either under this Code or by order of the State Government; or
4. in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or
5. who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody ; or
6. who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or
7. who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or
8. who, being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or
9. for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other cause for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issued the requisition (India 1973, Ch. 5 Art. 41).

A New Delhi-based lawyer stated in correspondence to the Research Directorate that those arrested without a warrant must be produced before a court of law within twenty-four hours of the arrest (Lawyer 27 Oct. 2005). Article 57 of the CPC reads:

57. Person arrested not to be detained more than twenty-four hours.

No police officer shall detain in custody a person arrested without warrant for a longer period than under all the circumstances of the case is reasonable, and such period shall not, in the absence of a special order of a Magistrate under section 167, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court (India 1973).

Amnesty International, ENSAAF and the New Delhi-based lawyer cited above state that article 58 of the CPC requires police to report all arrests without warrant to the court (AI Jan. 2003, 26; ENSAAF Oct. 2005, 12; Lawyer 27 Oct. 2005). Article 58 of the CPC reads as follows:

58. Police to report apprehensions.

Officers in charge of police stations shall report to the District Magistrate, or, if he so directs, to the Sub-divisional Magistrate, the cases of all persons arrested without warrant, within the limits of their respective stations, whether such persons have been admitted to bail or otherwise (India 1973).

For those arrested with a warrant, the senior director of Voices for Freedom Asia explained that such warrants are in force until the arrested person appears in front of a court of law (VFF 23 Oct. 2005), as detailed in article 70 of the CPC:

70. Form of warrant of arrest and duration.

(1) Every warrant of arrest issued by a Court under this Code shall be in writing, signed by the presiding officer of such Court and shall bear the seal of the Court.

(2) Every such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed (India 1973).

The following additional information on arrest warrants in India is taken from the Indian Code of Criminal Procedure 1973, Chapter V - "Arrest of Persons," Chapter VII - "Processes to Compel the Production of Things," and the Second Schedule. Please note that the model of an arrest warrant appears at the bottom:

Chapter V

...

48. Pursuit of offenders into other jurisdictions.

A police officer may, for the purpose of arresting without warrant any person whom he is authorised to arrest, pursue such person into any place in India...

Chapter VI

...

B. - Warrant of arrest

71. Power to direct security to be taken.

(1) Any Court issuing a warrant for the arrest of any person may be in its discretion direct by endorsement on the warrant that, if such person executes a bond with sufficient sureties for his attendance before the Court at a specified time and thereafter until otherwise directed by the Court, the officer to whom the warrant is directed shall take such security and shall release such person from custody.

(2) The endorsement shall state-

1. the number of sureties;
2. the amount in which they and the person for whose arrest the warrant is issued, are to be respectively bound;
3. the time at which he is to attend before the Court.

(3) Whenever security is taken under this section, the officer to whom the warrant is directed shall forward the bond to the Court.

72. Warrants to whom directed.

(1) A warrant of arrest shall ordinarily be directed to one or more police officers; but the Court issuing such a warrant may, if its immediate execution is necessary and no police officer is immediately available, direct it to any other person or persons, and such person or persons shall execute the same.

(2) When a warrant is directed to more officers or persons than one, it may be executed by all, or by any one or more of them.

73. Warrant may be directed to any person.

(1) The Chief Judicial Magistrate or a Magistrate of the first class may direct a warrant to any person within his local jurisdiction for the arrest of any escaped convict, proclaimed offender or of any person who is accused of a non-bailable, offence and is evading arrest.

(2) Such person shall acknowledge in writing the receipt of the warrant, and shall execute it if the person for whose arrest it was issued, is in, or enters on, any land or other property under his charge.

(3) When the person against whom such warrant is issued is arrested, he shall be made over with the warrant to the nearest police officer, who shall cause him to be taken before a Magistrate having jurisdiction in the case, unless security is taken under section 71.

74. Warrant directed to police officer.

A warrant directed to any police officer may also be executed by any other police officer whose name is endorsed upon, the warrant by the officer to whom it is directed or endorsed.

75. Notification of substance of warrant.

The police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

76. Person arrested to be brought before Court without delay.

The police officer or other person executing a warrant of arrest shall (subject to the provisions of section 71 as to security) without unnecessary delay bring the person arrested before the Court before which he is required by law to

produce such person:

- Provided that such delay shall not, in any case, exceed twenty-four hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

77. Where warrant may be executed.

A warrant of arrest may be executed at any place in India.

78. Warrant forwarded for execution outside jurisdiction.

(1) When a warrant is to be executed outside the local jurisdiction of the Court issuing it, such Court may, instead of directing the warrant to a police officer within its jurisdiction, forward it by post or otherwise to any Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction it is to be executed; and the Executive Magistrate or District Superintendent or Commissioner shall endorse his name thereon, and if practicable, cause it to be executed in the manner hereinbefore provided.

(2) The Court issuing a warrant under sub-section (1) shall forward, along with the warrant, the substance of the information against the person to be arrested together with such documents, if any, as may be sufficient to enable the Court acting under section 81 to decide whether bail should or should not be granted to the person.

79. Warrant directed to police officer for execution outside jurisdiction.

(1) When a warrant directed to a police officer is to be executed beyond the local jurisdiction of the Court issuing the same, he shall ordinarily take it for endorsement either to an Executive Magistrate or to a police officer not below the rank of an officer in charge of a police station, within the local limits of whose jurisdiction the warrant is to be executed.

(2) Such Magistrate or police officer shall endorse his name thereon and such endorsement shall be sufficient authority to the police officer to whom the warrant is directed to execute the same, and the local police shall, if so required, assist such officer in executing such warrant.

(3) Whenever there is reason to believe that the delay occasioned by obtaining the endorsement of the Magistrate or police officer within whose local jurisdiction the warrant is to be executed will prevent such execution, the police officer to whom it is directed may execute the same without such endorsement in any place beyond the local jurisdiction of the Court which issued it.

80. Procedure on arrest of person against whom warrant issued.

When a warrant of arrest is executed outside the district in which it was issued, the person arrested shall, unless the Court which issued the warrant is within thirty kilometres of the place of arrest or is nearer than the Executive Magistrate or District Superintendent of Police or Commissioner of Police within the local limits of whose jurisdiction the arrest was made, or unless security is taken under section 71, be taken before such Magistrate or District Superintendent or Commissioner.

81. Procedure by Magistrate before whom such person arrested is brought.

(1) The Executive Magistrate or District Superintendent of Police or Commissioner of Police shall, if the person arrested appears to be the person intended by the Court which issued the warrant, direct his removal in custody to such Court:

- Provided that, if the offence is bailable, and such person is ready and willing to give bail to the satisfaction of such Magistrate, District Superintendent or Commissioner, or a direction has been endorsed under section 71 on the warrant and such person is ready and willing to give the security required by such directions the Magistrate, District Superintendent or Commissioner shall take such bail or security, as the case may be, and forward the bond, to the court which issued the warrant:
- Provided further that if the offence is a non-bailable one, it shall be lawful for the Chief Judicial Magistrate (subject to the provisions of section 437), or the Sessions Judge, of the district in which the arrest is made on consideration of the information and the documents referred to in sub-section (2) of section 78, to release such person on bail.

(2) Nothing in this section shall be deemed to prevent a police officer from taking security under section 71.

87. Issue of warrant in lieu of, or in addition to, summons.

A Court may, in any case in which it is empowered by this Code to issue a summons for the appearance of any person, issue, after recording its reasons in writing, a warrant for his arrest-

1. if, either before the issue of such summons, or after the issue of the same but before the time fixed for his appearance, the Court sees reason to believe that he has absconded or will not obey the summons; or
2. if at such time he fails to appear and the summons is proved to have been duly served in time to admit of his appearing in accordance therewith and no reasonable excuse is offered for such failure.

90. Provisions of this Chapter generally applicable to summonses and warrants of arrest.

The provisions contained in this Chapter relating to a summons and warrant, and their issue, service and execution, shall, so far as may be, apply to every summons and every warrant of arrest issued under this Code.

...

Chapter VIII**113. Summons or warrant in case of person not so present.**

If such person is not present in Court, the Magistrate shall issue in a summons requiring him to appear, or, when such person is in custody, a warrant directing the officer in whose custody he is to bring him before the Court:

- Provided that whenever it appears to such Magistrate, upon the report of a police officer or upon other information (the substance of which report or information shall be recorded by the Magistrate), that there is reason to fear the commission of a breach of the peace, and that such breach of the peace cannot be prevented otherwise than by the immediate arrest of such person, the Magistrate may at any time issue a warrant for his arrest.

FORM No. 2**WARRANT OF ARREST**

(See section 70)

To (name and designation of the person or persons who is or are to execute the warrant).

WHEREAS (name of accused) of (address) stands charged with the offence of (state the offence), you are hereby directed to arrest the said _____, and to produce him before me. Herein fail not.

Dated, this _____ day of _____, 19____

(Seal of the Court) (Signature)

(See section 71)

This warrant may be endorsed as follows: -

If the said _____ shall give bail himself in the sum of rupees _____ with one surety in the sum of rupees _____ (or two sureties each in the sum of rupees _____) to attend before me on the day _____ of _____ and to continue so to attend until otherwise directed by me, he may be released.

Dated, this _____ day of _____, 19____.

(Seal of the Court) (Signature) (India 1973)

Amendments to Code of Criminal Procedure

The CPC was amended on 24 September 2001 and 23 June 2005 (India 24 Sept. 2001; *ibid.* 23 June 2005). However,

neither the 2001 nor the 2005 amendment contains information on arrest warrants (India 24 Sept. 2001; *ibid.* 23 June 2005). This information was corroborated by a New Delhi-based lawyer, who stated in correspondence to the Research Directorate that there has been no change in the arrest procedure in the CPC since 2001 (Lawyer 27 Oct. 2005).

Arrest Warrants in Punjab State

According to *Country Reports 2002*, *Country Reports 2003* and *Country Reports 2004*, authorities in Punjab state have "special powers to search and arrest without a warrant," though these reports neither explain nor provide examples of these powers (*Country Reports 2004* 28 Feb. 2005, Sec. 1f; *Country Reports 2003* 25 Feb. 2004, Sec. 1f; *Country Reports 2002* 31 Mar. 2003, Sec. 1f).

In answer to whether the Punjab police notify police departments in other states of India of wanted individuals, a lawyer for the Committee for Information and Initiative on Punjab (CIIP) wrote in correspondence to the Research Directorate that "it hardly needs to be asked if there is (or would be) cooperation between the various police forces in India; the answer is patent. Such cooperation has existed from long before modern communication methods became available" (Lawyer 4 Jan. 2006). Article 48 of the CPC supports this claim as it states that "a police officer may, for the purpose of arresting without warrant any person whom he is authorized to arrest, pursue such person into any place in India" (India 1973). Furthermore, as of 6 January 2006, the Crime Criminal Information System (CCIS), a network of "secure and sharable databases at [p]olice [s]tation, [d]istrict, [s]tate and [n]ational level," (*ibid.* n.d.c) had been implemented in 35 states and 728 police districts in India, including Punjab state (*ibid.* n.d.d). These databases contain 147,633 First Information Reports (FIR) and 405,778 "forms" relating to Punjab state (*ibid.*). As well, the Central Finger Print Bureau (CFPB) conducts "a search of references relating to unidentified interstate suspected persons received from police stations and other investigating agencies in India" (*ibid.* n.d.b). Media articles on POLNET, a satellite-based police communication network (*Tribune* 19 Nov. 2005; *Hindustan Times* 10 May 2005) that enables data, voice and fax exchanges between police and other law enforcement agencies across the country (*ibid.*; *Times of India* 23 Nov. 2003) report that the network has been only partially implemented in Haryana state (*Hindustan Times* 10 May 2005; *Times of India* 23 Nov. 2003), Punjab state (*ibid.*) and Himachal Pradesh state (*Tribune* 19 Nov. 2005). Additional information on whether Punjab police notify police departments in other states of India of wanted individuals could not be found among the sources consulted by the Research Directorate.

Code of Criminal Procedure (CPC) in Practice

Although the Indian Constitution prohibits arbitrary arrest, such practice occurred in 2002, 2003 and 2004 (*Country Reports 2004* 28 Feb. 2005, Sec. 1a; *Country Reports 2003* 25 Feb. 2004, Intro; *Country Reports 2002* 31 Mar. 2003, Sec. 1a, 1d). Amnesty International and Human Rights Watch accounts of events in India in 2002 provide information on arrests, but do not specify whether they occurred using arrest warrants (AI 2003; HRW 2003). *Country Reports 2002* refers to the case of four persons arrested without an "arrest memo" and held by Border Security Force officers in Manipur state, though the report does not specify the contents or procedures to obtain such a memo (*Country Reports 2002* 31 Mar. 2003, Sec. 1b). No additional information on arrest memos in India could be found among the sources consulted for this Response.

While arrests in India are not mentioned in Human Rights Watch's annual report on events in India in 2003 (HRW 2004), Amnesty International documented the "preventive arrest" of political opponents in Jammu and Kashmir, Andhra Pradesh, Arunachal Pradesh, Karnataka and New Delhi Union Territory, as well as the arbitrary arrest of indigenous peoples and the activists working with them in 2003 (AI 2004). Amnesty International did not indicate whether arrest warrants were issued for these arrests (*ibid.*).

Both Amnesty International and the United States Department of State reported on arrests in India in 2004 (AI 2005; *Country Reports 2004* 28 Feb. 2005, Sec. 1b, 1c, 1e), but only *Country Reports 2004* specified that the supreme court issued arrest warrants for 10 of 21 persons accused in cases connected with anti-Muslim violence in Gujarat state (*Country Reports 2004* 28 Feb. 2005, Sec. 1e).

Although Amnesty International's report *Break the Cycle of Impunity and Torture in Punjab* did not indicate the prevalence of arrests without warrants in Punjab state, the report concluded that "[t]orture occurs even more frequently during unlawful and arbitrary arrests" (AI Jan. 2003, 19). In its annual report covering events in India in 2004, Amnesty International concluded that a "culture of impunity ... continued to prevail" among police and the judiciary in Punjab (AI 2005).

Arrests in India can be made under legislation other than the CPC, and this legislation also contains relevant information on arrest warrants in India. Information on selected such legislation is below.

Terrorist and Disruptive Activities Act (TADA)

Implemented in 1987 (India 1987), the *Terrorist and Disruptive Activities Act (TADA)* remained operative through May 1995 (*Country Reports 2004* 28 Feb. 2005, Sec. 1d). Enacted to prevent and manage "terrorist acts" and "disruptive activities," (India 1987) TADA gave all police officers and government officials the power to execute

punishments for "terrorist acts" and "disruptive activities" (India 1987, Art. 3, Art. 4, Art. 7). The 1995 lapse of the legislation notwithstanding, Indian authorities continued to arrest individuals under *TADA* in 2002 (AI 2003; *Country Reports 2002* 31 Mar. 2003, Sec. 1d), as well as in 2003 (*Country Reports 2003* 25 Feb. 2004, Sec. 1d; AI 2004) and 2004 (*Country Reports 2004* 28 Feb. 2005, Sec. 1d; AI 2005; ENSAAF Oct. 2005, 6). In 2003, 351 persons remained in detention awaiting prosecution under *TADA* (*Country Reports 2003* 25 Feb. 2004, Sec. 1d). In 2004, more than 1,000 persons remained in detention awaiting prosecution under *TADA* (*Country Reports 2004* 28 Feb. 2005, Sec. 1d).

Prevention of Terrorism Act (POTA)

Although repealed in December 2004 (*Country Reports 2004* 28 Feb. 2005, Sec. 1d; HRW 2005; AI 2005), the *Prevention of Terrorism Act (POTA)* (India 28 Mar. 2002) gave "broad powers of arrest" to police throughout India (AI Jan. 2003, 28). When repealing the act the Indian government admitted the act had been "'grossly misused'" (AI 2005). Operative as an ordinance since 2001 (*Country Reports 2003* 25 Feb. 2004, Sec. 1d), and passed by the Indian parliament in March 2002 (*ibid.*; AI 2003; India 28 Mar. 2002), *POTA* allowed for detention "without charge or trial" for up to six months for those persons "deemed to be a threat" to national security (AI Jan. 2003, 28; *ibid.* 2003; HRW 2003; *Country Reports 2003* 25 Feb. 2004, Sec. 1d), as well as the arrest and charge of those who refused to disclose information to the authorities about "terrorist activities" (*Country Reports 2004* 28 Feb. 2005, Sec. 1d). *POTA* does not state whether an arrest warrant is necessary for arrests made under *POTA* (India 28 Mar. 2002). It states only that "where a police officer arrests a person, he shall prepare a 'custody memo' of the person arrested," though 'custody memo' is not defined in the legislation (*ibid.*, Art. 52).

In 2003, human rights groups alleged that the Indian government invoked *POTA* "selectively and on dubious grounds" against members of the political opposition and minority communities (*Country Reports 2003* 25 Feb. 2004, Sec. 1d). According to an associate professor of Law, it is "not uncommon" for people to be charged for alleged terrorist activity retroactively under *POTA*, as well as other expired acts no longer in force in India (Associate Professor of Law 20 Oct. 2005).

Armed Forces Special Powers Act (AFSPA)

For the period 2002 through 2004, the *Armed Forces Special Powers Act (AFSPA)* remained in effect in several states, including Jammu and Kashmir, Nagaland, Manipur, Assam and parts of Tripura (*Country Reports 2004* 28 Feb. 2005, Sec. 1a; *Country Reports 2003* 25 Feb. 2004, Sec. 1a; *Country Reports 2002* 31 Mar. 2003, Sec. 1a). This act allows Indian authorities in specified states to conduct searches and arrests without warrants (SAHRDC n.d.; *Country Reports 2004* 28 Feb. 2005, Sec. 1a; *Country Reports 2003* 25 Feb. 2004, Sec. 1a; *Country Reports 2002* 31 Mar. 2003, Sec. 1a; ENSAAF 24 Jan. 2005, 8; AI 2005). Activists demanding repeal of this law say this act "has been used by armed forces to violate human rights in the north eastern state of Manipur" (AP 20 Sept. 2004).

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.

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