

## India Country Summary Card

<b>RIGHT TO COUNSEL</b>	
<b>Right to Counsel</b>	<ul style="list-style-type: none"> <li>No person who is arrested shall be denied the right to consult and to be defended by a legal practitioner of his choice. <b>(art.22 (1) of the Constitution of India)</b></li> <li>Decisions of the court made without the accused having been provided a lawyer are not valid <b>(Khatri (II) v. State of Bihar (1981) 1 SCC 627)</b></li> </ul>
<b>INTERROGATION AND INVESTIGATION</b>	
<b>Right of indigent to have attorney</b>	<ul style="list-style-type: none"> <li>The State shall provide a lawyer to an accused if the circumstances and the needs of justice so require <b>(Hussainara Khatoun &amp; Ors. v. Home Secretary, Bihar, Patna (1980) 1 SCC 98)</b></li> </ul>
<b>Search and Seizure</b>	<ul style="list-style-type: none"> <li>The officer or other person making an arrest may take from the person arrested any offensive weapons and shall deliver them to the Court or officer to whom the person making the arrest must produce the arrestee <b>(s. 52 Criminal Procedure Code 1973)</b></li> </ul>
<b>Search of person</b>	<ul style="list-style-type: none"> <li>The officer making the arrest may search that person, and put in safe custody all articles, other than necessary wearing apparel, found upon him and where any article is seized from the arrested person, a receipt showing the articles taken in possession by the police officer shall be given to such person. <b>(s.51 (1) CPC)</b></li> </ul>
<b>Search of home</b>	<ul style="list-style-type: none"> <li>If a police officer having authority to arrest, has reason to believe that the person to be arrested has entered into, or is within any place, the person residing or being in charge it, shall allow the officer free ingress thereto, and afford all reasonable facilities for a search therein. <b>(s.47 CPC)</b></li> </ul>
<b>ARREST AND DETENTION</b>	
<b>Arrest</b>	<ul style="list-style-type: none"> <li>A person arrested must be informed of the grounds of his arrest <b>(s.50 CPC)</b></li> <li>The police may arrest a person without a warrant except in non-cognizable offences if it is based on a probable cause. This exists if at the time of the arrest the officer is relying on reasonable facts sufficient to lead him to believe that the person committed or is committing a crime. <b>(See s.41 (a-i) CPC)</b></li> <li>No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice. <b>(art.22(1) Constitution)</b></li> </ul>
<b>Detention</b>	<ul style="list-style-type: none"> <li>Every person who is arrested and detained in custody shall be brought before the nearest magistrate within a period of twenty-four hours of such arrest and shall not be detained in custody beyond the said period without the authority of a magistrate. <b>(art.22(2) Constitution), (s. 57 CPC)</b></li> <li>A person can be held in police custody for up to 15 days if ordered by the nearest judicial magistrate <b>(s167 CPC)</b></li> </ul>
<b>Right to bail</b>	<ul style="list-style-type: none"> <li>A person arrested must be informed of his right to bail <b>(s.50 CPC)</b></li> <li>Any person arrested other than a person accused of a non-bailable offence may be granted bail either by</li> </ul>

	<p>the police having the accused in custody or by the court before whom the trial is put up for hearing. Such persons may be released on executing of bond with or without sureties <b>(s.436 CPC)</b></p> <ul style="list-style-type: none"> <li>• In non-bailable cases, a person may be released on bail if he is under the age of sixteen, or is a woman, or sick or infirm or there are special reasons. As soon as reasonable grounds for guilt cease to appear, the accused is entitled to be released on bail or on his own recognizance <b>(s.437 CPC)</b></li> <li>• The accused may be granted bail in all non-death penalty cases where the client has served one-half of the maximum sentence for the crime committed, whether it be listed as a bailable or non-bailable offence <b>(s.436(A) CPC: inserted by the CPC (Amendment Act)2007)</b></li> </ul>
<b>Speedy Trial</b>	<ul style="list-style-type: none"> <li>• An investigation in trial should be held 'as expeditiously as possible' <b>(s.309 CPC)</b>. In all summons trials once the accused has been arrested, the investigation for the trial must be completed within six months or stopped on an order of the Magistrate, unless the latter accepts that there is a cause to extend the investigation <b>(s.167 CPC)</b> Interpreted as a right to speedy trial in <b>Hussainara Khatoon &amp; Ors.</b></li> </ul>
<b>Conditions of Detention</b>	<ul style="list-style-type: none"> <li>• No person shall be deprived of his life or personal liberty except according to procedure established by law <b>(art.21 Constitution)</b></li> <li>• No explicit prohibition of torture under domestic law, but India is a signatory to the UN Convention against Torture, thus people detained should not be subjected to torture or inhuman or degrading treatment <b>(for definition see art.2 CAT)</b></li> </ul>
<b>TRIAL</b>	
<b>Right to a fair trial</b>	<ul style="list-style-type: none"> <li>• The State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India. <b>(art.14 Constitution)</b></li> <li>• For a trial to be fair, it must be an open court trial <b>(s.327 CPC)</b></li> <li>• An accused shall be informed that he is entitled to have his case tried by another court. However, he has no right to select or determine by which other court the case is to be tried <b>(s.191 CPC)</b></li> </ul>
<b>Presumption of Innocence</b>	<ul style="list-style-type: none"> <li>• No explicit law on presumption of innocence in domestic law, BUT- Signatory to the UDHR which states that 'Everyone charged with a penal offence has the right to be presumed innocent until proved guilty according to law in a public trial at which he has had all the guarantees necessary for his defence <b>(art. 11(1) UDHR)</b></li> </ul>
<b>Admissibility of Confessions</b>	<ul style="list-style-type: none"> <li>• No confession made to the police is valid as evidence. All confessions must be made to a Magistrate not below the rank of Judicial Magistrate. The Magistrate taking the confession must give the accused due time out of the custody of the police and try to ensure that the accused was not coerced or intimidated in any way before receiving the confession. <b>(s.164 CPC), see also (s.25 of the Indian Evidence Act)</b></li> </ul>
<b>Age of Culpability</b>	<ul style="list-style-type: none"> <li>• An act is never considered as an offence if committed by a person under seven years of age <b>(s.82, ch. IV Indian Penal Code)</b></li> <li>• An act is never an offence if is committed by a child above seven years of age and under twelve, who has not attained sufficient maturity of understanding to judge of the nature and consequences of his conduct on that occasion <b>(s.83, ch. IV Penal Code)</b></li> </ul>