

Review of India: Country of Origin (COI) Report (Home Office UK Border Agency COI Service) dated May 2012

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1. Introduction

On the 6th November 2013 I was commissioned the reviews of *India: Country of Origin (COI) Report (Home Office UK Border Agency COI Service)* dated May 2012 and of the *Operational Guidance Note India* by Chief Inspector of Borders. These reviews are provided hereby as two separate documents. As per the terms of reference² the present review evaluates *India: Country of Origin Information* in the context set out in its introductory section and seeks to identify any areas where it can be improved. Specifically this review entails:

- (i) Assessing the extent to which information from source documents has been appropriately and accurately reflected in the COI Report,
- (ii) Identifying additional sources detailing the current human rights situation in the country,

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² Available at <http://icinspector.independent.gov.uk/the-independent-advisory-group-on-country-information-invites-tenders-to-evaluate-the-uk-home-offices-country-of-origin-information-coi-reports-and-operational-guidance-notes-ogns-on-indi/> (accessed 9 December 13).

- (iii) Noting and correcting any specific errors or omissions,
- (iv) Making recommendations for general improvements regarding, for example, the structure of the report, its coverage or its overall approach.

2. Overview

This reviewer finds that *India: Country of Origin Information 2012* (hereafter referred to as *India: COI 2012*) includes an extensive array of online sources on a significant list of relevant topics. Such an endeavor is particularly impressive if one considers the size and the cultural and socio-political variance of India.

It is clear that the authors of *India: COI 2012* have used and cited appropriate sources and dutifully updated the available information over the years. Generally speaking this reviewer finds that the information from source documents has been appropriately and accurately reflected in *India: COI 2012*.

Nevertheless, given the well-known socio-political instability of South Asia it is to be expected that much of the information contained in *India: COI 2012* needs update. While oversights and clarifications are occasionally pointed out, the bulk of my suggestions concern additional sources detailing the current human rights situation in the country.

I found only minor errors in *India: COI 2012*, but repetitions and overlapping occur – sometimes making the information to appear as scattered, conflicting, and difficult to consult. Most of the time this is due to the complexity of the issues treated, which necessarily touch at more than one of the listed topics. Hence I have suggested extra cross-references.

Another general remark of mine is that extracts from the original legal texts and academic sources would help, sometimes, to better understand the context of the information provided by *India: COI 2012*. In similar vein the use of information from the US State Department - which recur in 88 instances - may be alternated and/or complemented with sources that are more authoritative on the basis of the topic under consideration. Detailed suggestions have been formulated on this regard but, from a

general perspective, I submit that the use of a slightly greater diversification of sources (possibly including academic sources) is necessary to a balanced understanding of information and facts that are impacted by important cultural, historical, and political factors.

1. Page-by-page Suggestions

The current table of contents is quite exhaustive. Nevertheless “dacoity” as additional entry is submitted for consideration. Sec. 391, Indian Penal Code 1860 defines dacoity: “When five or more persons conjointly commit or attempt to commit a robbery, or where the whole number of persons conjointly committing or attempting to commit a robbery, and persons present and aiding such commission or attempt, amount to five or more, every person so committing, attempting or aiding, is said to commit "dacoity".” Sec. 395 of Indian Penal Code states that “Whoever commits dacoity shall be punished with [imprisonment for life], or with rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.” In some areas of India Dacoity groups have challenged the authority of the state and engaged in politics as well. Perhaps the most recent example has been the Dacoity of the Chambal Valley in Madhya Pradesh but new versions of dacoits and their exploitation by state policy have appeared recently. See for ex. http://articles.timesofindia.indiatimes.com/2013-01-06/india/36173427_1_dacoity-pappu-gujjar-crime-watchers; <http://timesofindia.indiatimes.com/home/stoi/Kill-a-dacoit-get-a-promotion/articleshow/3613626.cms> ; <http://www.hindustantimes.com/india-news/the-police-create-dacoits-in-chambal-paan-singh-tomar-s-son/article1-829811.aspx>; and http://articles.timesofindia.indiatimes.com/2013-04-07/goa/38345721_1_dacoity-burglaries-manohar-parrikar accessed 10 December 13.

p.10

1.01

India COI 2012 is unclear about the current boundaries between India and Pakistan with regard to Jammu and Kashmir of which a part is called Azad Kashmir by Pakistan and is divided from India by the Line of Control, *de facto* border designated by the Simla agreement in 1973. A map might be added also. Both countries regularly accuse one another of infiltration and indiscriminate firing causing the death of both

military and civilians. See for ex. <http://www.ndtv.com/article/india/indian-army-hints-at-pakistan-army-s-role-in-massive-loc-encounter-426770>,
<http://www.dawn.com/news/1051773/india-pakistan-exchange-gunfire-over-kashmir-border> accessed 14 December 13.

p.14

2.01

References to micro-credit failures and the wave of suicide that followed amongst the farmer should be added. See for ex. <http://www.bbc.co.uk/news/world-south-asia-11997571>,
<http://www.economist.com/node/17420202>,
<http://www.businessinsider.com/hundreds-of-suicides-in-india-linked-to-microfinance-organizations-2012-2> accessed on 10 December 13.

p.16-18

3 History

Important facts, some of which are cited in Annex A, could be included here.

The wars against Pakistan:

Indo–Pakistani war of 1947 (also called “First Kashmiri War”)

Indo–Pakistani war of 1965

Indo-Pakistani war of 1971 (also called “Bangladesh Liberation War”)

Indo-Pakistani war of 1999 (also called “Kargil War”)

Dalai Lama’s exile in Dharamsala.

<http://www.bbc.co.uk/news/world-asia-pacific-12735884>

http://news.bbc.co.uk/onthisday/hi/dates/stories/march/31/newsid_2788000/2788343.stm

accessed 14 December 13.

The war against China.

India-China war of 1962:

<http://www.tribuneindia.com/2012/specials/china.htm> accessed 14 December 13.

Atomic capability of India.

<http://nuclearweaponarchive.org/India/IndiaFirstBomb.htm> accessed 14 December 13.

The Sikh Golden Temple's siege of 1984 (also known as Operation Blue Star) which is mentioned later by the *India Coi 2012* but should appear here as well.

The role of Narendra Modi in the financial development of Gujarat.

<http://www.financialexpress.com/news/lessons-to-be-learnt-from-narendra-modis-gujarat/1187235> accessed 14 December 13.

The role of Narendra Modi in the Gujarat riots.

<http://www.bbc.co.uk/news/world-south-asia-13170914> accessed 14 December 13.

4 Recent Developments

Overview of significant events, June 2010 to March 2012

4.02

The “Multidimensional Poverty Index” appears to be a study and not an event.

4.03

This section might be cross-referenced with p. 158 (29.03-29.04) for which integration and update is suggested later in this review.

4.05 - 4.11

These are not events.

4.9

This is the only hint to the Samjota express burning that triggered the Gujarat riots of 2002. The trial regarding Narendra Modi should be mentioned. See

<http://indiatoday.intoday.in/story/enough-evidence-to-conduct-trial-against-modi-in-godhra-riots-case-zakias-lawyer/1/291985.html> accessed 14 December 13.

4.20

This section should be updated with Anne Hazare movement and hunger-strike as well as the recent information on the anti-corruption bill as indicated later in this review for p. 88. 19.08.

p.25

4.24

This information should be updated with the recent decision by the Supreme Court that sets out the Delhi High Court order declaring gay sex as illegal. See <http://www.indianexpress.com/news/gay-sex-illegal-rules-sc-as-it-sets-aside-delhi-hc-order-on-homosexuality/1206242/> accessed 11 December 13.

Here is the text of the Supreme Court judgment:

<http://www.scribd.com/doc/190889099/SC-verdict-on-Article-377> accessed 14

December 13. The Attorney General has expressed a view in the press against the Supreme Court's judgment:

<http://m.economictimes.com/opinion/comments-analysis/law-cant-remain-static/articleshow/27278372.cms> 14 December 13.

5 Constitution

6. Political System

This recent article outlines the specificities of the India federal system:

http://www.forumfed.org/libdocs/Federations/V7N1e_in_Roy.pdf accessed 14

December 13.

7. Human Rights

p. 30

7.1 Recent executions took place in the last two years:

Ajmal Kasab 21 November 2012 (Mumbai attacks)

Afzal Guru 9 February 2013 (Delhi bombing).

p. 31

7.8

The list of the treaties not signed by India should be added:

<http://www1.umn.edu/humanrts/research/ratification-india.html> and

http://nhrc.nic.in/documents/india_ratification_status.pdf accessed 14 December 13.

This section needs to be expanded. For an article outlining the position of India in relation to international treaties and the UN especially for its reluctance to sign any convention against caste based discrimination see:

http://www.observerindia.com/cms/export/orfonline/modules/issuebrief/attachments/human_rights_1209808630777.pdf accessed 14 December 13.

p. 32

8. Internal Security Situation

8.02 "...occasional use of extrajudicial methods ... India has successfully managed ...” This statement from Jane’s Sentinel suggests that widely criticized practices such as extrajudicial methods are acceptable. This analysis might be weighted with further information. See for ex. <http://www.hrw.org/print/news/2013/07/15/extrajudicial-killings-corrode-democracy-india> accessed 14 December 13. See also sec. 9.26 as below in this review.

p. 33-34

8.04-8.6 Among the recent Naxalite’s attacks:

The kidnapping and subsequent release of Italians in March 2012

<http://www.bbc.co.uk/news/world-asia-india-17421561>, and <http://online.wsj.com/news/articles/SB10001424052702304444604577339403556085614> accessed 14 December 13.

The kidnapping of a District administrator in April 2012,

<http://www.rediff.com/news/slide-show/slide-show-1-chhattisgarh-collector-kidnapped-2-body-guards-killed/20120421.htm> accessed 14 December 13.

The killing of a Congress Leader in May 2013

<http://daily.bhaskar.com/article/DEL-live-sonia-gandhi-condemns-naxal-attack-4274147-NOR.html> accessed 14 December 13.

In this section the *India COI 2012* relies only on Jane's Sentinel and SATP. It would be useful to add some background history outlining the socio-economic conditions that fuel the conflict. See for ex.: in March 2012

http://www.ipcs.org/pdf_file/issue/CR38-TheNaxalProblem.pdf accessed 14

December 13; in July 2012

<http://www.hrw.org/sites/default/files/reports/india0712ForUpload.pdf> accessed 14

December 13.

For a short history of Naxalite insurgency see:

<http://www.theguardian.com/world/2010/may/28/maoists-india-naxalite-landless>

accessed 14 December 13.

For a longer and more detailed overview see :

<http://www.worldpoliticsreview.com/articles/7948/indias-enduring-naxalite-insurgency> accessed 14 December 13.

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8.9

It might be added that in February 2010 the number of militants in Jammu and Kashmir was estimated to 500. See

<http://timesofindia.indiatimes.com/toierrorfound.cms?url=http://timesofindia.indiatimes.com/india/Only-500-militants-active-in-Kashmir-JK-police-chief/articleshow/6049472.cm> accessed 14 December 13.

India COI 2012 cites “the Pakistan-backed Islamist terrorist campaigns” from the SATP (assessment 2011). This information should be updated with SATP assessment 2013 <http://www.satp.org/satporgtp/countries/pakistan/> accessed 14 December 13.

The increasing criticism to the Indian state's accusations against the so-called Pakistan-backed terrorism and Pakistan's recent foreign policies should be included here. See for ex.: <http://www.theguardian.com/commentisfree/2010/oct/28/kashmir-arundhati-roy-india>,

<http://www.theguardian.com/commentisfree/2010/oct/28/kashmir-arundhati-roy-india>, <http://tribune.com.pk/story/613911/terrorism-is-a-concern-for-pakistan-as>

[much-as-it-is-for-india-foreign-secretary/](#), and <http://online.wsj.com/news/articles/SB10001424127887324085304579010992875828738>, accessed 14 December 13.

p.36

8.12-8.13

India COI 2012 cites the 2011 SATP Assessment and states that the security situation in the North East areas is improving. However the cited assessment omits to mention the violence between Garo and Rabha people in Assam and Meghalaya that displaced about 50,000 people between December 2010 and January 2011. See for ex.

[http://www.internal-displacement.org/8025708F004BE3B1/\(httpInfoFiles\)/33F71FE1DC7DA917C125795600303A63/\\$file/India-SCR-Nov2011.pdf](http://www.internal-displacement.org/8025708F004BE3B1/(httpInfoFiles)/33F71FE1DC7DA917C125795600303A63/$file/India-SCR-Nov2011.pdf) accessed 14 December 13. The situation seems to have deteriorated in 2012: see <http://www.bbc.co.uk/news/world-asia-india-19315546> accessed 14 December 13. Most recent news show unresolved conflicts and ongoing violence: see <http://indiatoday.intoday.in/story/assam-militant-attack-golpara-firing/1/321524.html> accessed 14 December 13.

p.36

8.14

This section on Extremist Hindu Nationalist Groups needs to be expanded. In particular the role of Hindu extremists in the Gujarat riots of 2002 should be mentioned. See p. 19 of the following Human Rights Watch's report:

<http://www.hrw.org/sites/default/files/reports/india0211W.pdf> accessed 14 December 13.

India COI 2012 quotes SATP stating that "... no incident of suspected Hindutva terror was recorded in 2008, 2009 or 2010, ...". Nevertheless some incidents linked to Hindu terrorism have been reported during that same period: See for ex.:

Malegaon blast of 2008:

<http://www.hindu.com/2009/01/21/stories/2009012160501200.htm> accessed 14 December 13.

Goa blast of 2009:

http://articles.timesofindia.indiatimes.com/2009-10-20/india/28075582_1_sanatan-sanstha-go-a-blast-margao-on-diwali-eve accessed 14 December 13.

Attack on Christian in Orissa, 2008 and 2012:

<http://news.bbc.co.uk/2/hi/7634958.stm> accessed 14 December 13.

See also <http://www.hindustantimes.com/india-news/mumbai/attacks-against-christians-on-the-rise-says-report/article1-795898.aspx> accessed 14 December 13.

For an overview of Hindu militants groups see p. 19 of the Human Rights Watch report *The Anti-Nationals: Arbitrary Detention and Torture of Terrorism Suspects*: <http://www.hrw.org/sites/default/files/reports/india0211W.pdf> accessed 14 December 13.

9. Security Forces

p. 37-39

9.01-9.05

For an overview of the police's structure in India see

http://www.humanrightsinitiative.org/index.php?option=com_content&view=article&id=88&Itemid=99 accessed 14 December 13. This section should also mention the role and competence of the District Tax Collector who has, among other, judicial authority as district magistrate and supervises the police and jails, especially for what concern preventive sections of the Criminal Procedure Code, and manages the situation of natural disasters and law and order crises. Unfortunately no authoritative sources were found by this reviewer. As an exception and with appropriate caution the following source might be cited: http://en.wikipedia.org/wiki/District_collector accessed 14 December 13. But as an example of the significant role of the collector see the following excerpt:

When the mining company applies for the lease, the application asks: does the applicant have surface rights? If not, has the consent of the owner/occupier been obtained? If the answer to these questions is no, then the application should be sent back immediately to obtain those consents. But instead, the mining company writes: “consent will be obtained,” and gets through this giant loophole that says “consent may be given after lease, but before entry.” So the government comes to the rescue of the mining company. The Tehsildar (a revenue official lower in rank to the District Collector) posts notice listing out all the plots in the lease, saying – come and collect your compensation as per the Land Acquisition Act. They don’t tell people that they have a choice not to consent. Normally people take it as a fait accompli. They come and take the compensation, and their consent is then assumed. In cases where villagers take the compensation, they try to buy land in other villages, and often the local people there see them as outsiders and don’t let them settle. But the people of Kosampalli are saying, “No amount of money can compensate us if you take away these last lands for mining, because we won’t be able to live here any more.” Our legal office managed to get a stay on the mining, and it’s fixed for final hearing.

<http://www.globalresearch.ca/the-bastar-land-grab-the-expropriation-of-farmers-in-india> accessed 14 December 13.

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9.13-9.14 Paramilitary forces and centralised police organisations subordinate to the Ministry of Home Affairs

This section should mention or cross-reference with sections 9.22-9.24 (“Human Rights violations by security forces”) the abuses by the Border Security Forces. See the document published by the US Department of State (April 2011):

<http://www.state.gov/j/drl/rls/hrrpt/2010/sca/154480.htm>

p. 40

9.15 Central Reserve Police Force (CRPF)

This section should mention or should cross-reference with sections 9.22-9.24 (“Human Rights violations by security forces”) the abuses by CRPF. See the violence committed by the CRPF in Kashmir

<http://www.hrw.org/sites/default/files/reports/INDIA935.PDF> accessed 14 December 13.

See also the involvement of CRFP in the killing of alleged Maoists on the 28 June 2012

<http://www.amnesty.org/es/library/asset/ASA20/024/2012/en/c75047a4-8232-4c4f->

[907f-7f29335c8216/asa200242012en.pdf](http://www.hrw.org/files/2007/12/907f-7f29335c8216/asa200242012en.pdf) accessed 14 December 13.

p. 41-42

9.19-9.21 Paramilitary and other forces.

This section as well as the following sections on Naxalites (Maoists) 11.02-11.08 would benefit from an overview of the relationship among state, non-state forces, and civilians:

<http://www.hrw.org/reports/2008/07/14/being-neutral-our-biggest-crime-0> accessed 14 December 13.

For a recent report on the same topic see:

<http://www.hrw.org/sites/default/files/reports/india0712ForUpload.pdf> accessed 14 December 13.

p. 42-43

9.22-9.24 Human rights violations by security forces
see updates as above (9.13-9.14, 9.15, 9.20-9.21)

p. 44

9.26 Extra judicial killings

This section quotes the USSD 2010 Reports stating that “there was no current data regarding custodial death”. This statement should be compared with data collected by the NHRC: see http://articles.timesofindia.indiatimes.com/2013-11-24/india/44411666_1_custodial-deaths-custodial-torture-national-human-rights-commission accessed 14 December 13.

A report by the Asian center for Human rights in date of November 2011 already provided data on extrajudicial killings at the date of publication of *COI India 2012*:

<http://www.achrweb.org/reports/india/torture2011.pdf> accessed 14 December 13.

Furthermore incentives for extrajudicial killings were exposed in 2008. See for ex.:

<http://timesofindia.indiatimes.com/home/stoi/Kill-a-dacoit-get-a-promotion/articleshow/3613626.cms> accessed 14 December 13.

p. 45-47

9.28-9.33 Arbitrary arrest and detention

Related to the Ahmedabad bombing of 2008 COI India 2012 mentions arbitrary detention as influenced by religious affiliation (9.31 p. 46). Recent confirmations of this trend are reported in the following article published in March 2013.

<http://www.thehindu.com/todays-paper/tp-national/tp-andhrapradesh/call-to-end-targeting-of-innocent-muslim-youth/article4507097.ece> accessed 14 December 13.

9.34-9.41 Torture

This section should mention that India signed but did not ratify the UN convention against torture:

http://nhrc.nic.in/documents/india_ratification_status.pdf and
http://treaties.un.org/Pages/ViewDetails.aspx?mtdsg_no=IV-9&chapter=4&lang=en
accessed 14 December 13.

Several sources agree on the inadequacy of the existing legislation against torture in

India: <http://www.thehindu.com/todays-paper/tp-national/tp-newdelhi/law-minister-unaware-of-the-status-of-antitorture-bill/article3574994.ece>,

<http://www.thehindu.com/todays-paper/tp-national/tp-tamilnadu/india-should-ratify-un-prevention-of-torture-bill/article4855594.ecen>, and

<http://www.humanrights.asia/news/ahrc-news/AHRC-STM-198-2010b> accessed 14 December 13.

p. 47

9.37

COI India 2012 reports here data from the National Human Rights Commission 2011 (as cited by the Asian Centre for Human Rights (ACHR)). The accuracy of these data for what concerns custodial death is challenged by a report of the Asian Centre for Human Rights that provides with a worse scenario:

<http://www.achrweb.org/reports/india/torture2011.pdf> accessed 14 December 13.

p.51

9.44 Excessive use of force and other abuses in internal conflict areas.

The *COI India 2012* reports a military contingent of 500.000. The number of troops deployed in Jammu and Kashmir appears to remain officially undisclosed. Some sources states of a military contingent up to 700.000, others between 300.000 and 500.000, while the number of militants appears to be 500 (see <http://www.hindustantimes.com/India-news/NewDelhi//Article1-557917.aspx> accessed 14 December 13).

9.45-9.47 Avenues of complaint

This section could expand on the access to and feasibility of complaints against police or others state forces. See for ex.:

http://www.humanrightsinitiative.org/publications/police/PoliceComplaintsAuthorities_ReformResisted.pdf accessed 14 December 13.

At sec. 9.46 *COI India 2012* cites the United Nations Special Rapporteur on the Situation of Human Rights Defenders who noted in her report dated 6 February 2012 that out of 1388 abuses investigated between 1994 and 2010 only 80 cases revealed to be genuine. The US Department of State in date 8 April 2011 stressed the widespread impunity among all level officials:

“Officers at all levels acted with impunity, and officials rarely held them accountable for illegal actions. Military courts investigated cases of abuse by security officials. When a court found an officer guilty of a crime, the punishment often was a transfer. According to the MHA's 2008-09 report, citizens filed 1,185 reports of human rights

violations countrywide against army and central paramilitary personnel. Authorities investigated 1,162 cases, found 1,129 false, and judged 33 genuine. The military imposed penalties on 69 individuals and awarded compensation in six cases.” (see <http://www.state.gov/j/drl/rls/hrrpt/2010/sca/154480.htm> accessed 14 December 13)

p. 42-53

9.48-9.51 National and state human right commissions

This section should mention the difficult access to national and state human rights institutions especially for what concerns corporate crimes. See <http://www.indianet.nl/pdf/AccessToJustice.pdf> accessed 14 December 13.

p. 61, 12.02

- Information on the configuration and competence of the judiciary should be extracted from the Constitution of India (chapter IV).

- Additional information: The role of Supreme Court and upper judiciary as theoretically exceeding its constitutional mandate is explained with the notion of judicial activism of which the socio-legal scholarship on South Asia is well aware (see the address by Hon’ble Mr. K.G. Balakrishnan, Chief Justice of India (Trinity College Dublin, Ireland – October 14, 2009) http://supremecourtfindia.nic.in/speeches/speeches_2009/judicial_activism_tcd_dubl_in_14-10-09.pdf accessed 9 December 13)

See also:

https://media.law.wisc.edu/m/4mdd4/gargoyle_17_1_3.pdf accessed 14 December 13

Sathe, S.P. (2002) *Judicial Activism in India: Transgressing Borders and Enforcing Limits*, New Dehli: Oxford University Press.

Serajuddin, Alamgir Muhammad (2011) *Muslim Family Law, Secular Courts and Muslim Women of South Asia*, Karachi: Oxford University Press.

Pearl, David and Werner Menski (1998) *Muslim Family Law*, Sweet & Maxwell.

p. 63 Lok Adalats (‘People’s Courts’)

12.07

The Lok Adalat mentioned in *Karthyani.V* and *Vidhi Bhatt* provides only with a partial view of the arbitration courts in India. *Panchayat* is a traditional jurisdiction widespread in South Asia in a variety of forms of which the Lok Adalat is but one. Art. 243 of the Constitution sets the composition and the competence of the so-called statutory *panchayats* as organs of self-governance adopted in all states of India after Independence on inspiration from the traditional forms of governance and dispute settlement. Following the laws of the states of the federation, *panchayats* may also have minor judicial competence. A considerable number of courts of arbitration and/or adjudication in India have *de facto* or by law judicial competence that may extend to criminal law also (see among other the reference to *khap panchayat* in *India COI 2012*). Panchayat and other jurisdictions either state/ NGO sponsored such including lok adalat and *maheela adalat* (women's court) or caste based such as *jati panchayat* or community based such as *khap panchayat* deserve attention for their adverse implications on human rights but also for the recognition of their decisions by state law in India – sometimes with a positive impact of panchayat (see Holden, Livia (2008) *Hindu Divorce*, Aldershot: Ashgate, chapter 4) - and among diasporic communities (see Holden, Livia (2011) 'Expert Report Writing: Professional Commitments and Legal Outcomes', in *Cultural Expertise and Litigation: Patterns, Conflicts, Narratives*, Holden, Livia ed., London: Routledge). Unfortunately to date there is no comprehensive compendium on panchayat and alternative jurisdiction in India. While such a study is awaiting publication the following concise historical overview might be of help (Holden 2008: 82, note 5):

From 1920 until 1947 the British implemented the village councils, *panchayat*, with competence in minor penal and civil matters. The Constitution of India [1947] (art. 50) provided the village councils with separate bodies for judiciary, *nyaya panchayat*, and executive competence, *gram panchayat*. The widespread failure of the judiciary councils led to their suppression at the same time as the limited inclusion of their competence in the hands of the statutory council with executive competence. However, both the British and the post-Independence attempts at restoring traditional justice in India were far from the local legal values by which they should have been inspired. [...] Yet, in many villages of South Asia justice is *de facto* almost independently administered by two councils: the statutory panchayat, based in principle on permanent elected members, and the traditional panchayat, whose authority is not state-related but linked to the caste or other contextual source of power, and whose composition relies on both the features of the case and the people involved.

See also:

Basu, Srimati (2012) *Judges of Normality: Mediating Marriage in the Family Courts of Kolkata, India Signs* Vol. 37, No. 2, *Unfinished Revolutions A special issue edited*

by Phillip Rothwell, pp. 469-492.

Solanki, Gopika (2011) *Adjudication in religious family laws: cultural accommodation, legal pluralism, and gender equality in India*, Cambridge: Cambridge University Press.

Vatuk, Sylvia (2013) 'The "Women's Court" in India: an Alternative Dispute Resolution Body for Women in Distress', in Holden, Livia ed. *Legal Pluralism and Governance in South Asia and in the Diasporas*, special issue for the *Journal of Legal Pluralism*.

For the reception and recognition of Indian customary practices in the UK and in the US see NP v KRP [2013] EWHC 694 (Fam) and Holden, Livia (2008) "Crossing the borders: from the Hindu panchayat to the immigration office", in *Hindu Divorce*, pp. 189-211.

p. 64

12.12

The ongoing debate about age, seniority, and social diversity as criteria that should inform the selection of judge at the apex court but are not provided by the Constitution should be added (see <http://www.frontline.in/cover-story/age-seniority-diversity/article4613881.ece> accessed 9 December 13).

p. 65

12.15

Additional source: in relation to the appointment of judges, corruption, and the scarce independence of the judiciary see <http://www.rediff.com/news/interview/there-is-corruption-in-judiciary-i-cannot-change-that-overnight-kapil-sibal/20130603.htm> accessed 9 December 13)

p. 65

12.16

Additional sources:

First paperless courts in 2010 in India <http://www.dnaindia.com/india/report-india-s-first-paperless-court-takes-off-1345207> accessed 11 December 13

Increase of sexual violence also linked to excessive backlog of criminal courts
<http://www.washingtonpost.com/blogs/worldviews/wp/2012/12/29/india-rape-victim-dies-sexual-violence-proble/> accessed 11 December 13.

p. 66

12.20

This section would benefit from a link or cross-reference with the sections of Naxalites and Jammu & Kashmir and unlawful detention as well.

Additional sources:

Fair trials on people involved with Naxalites

<http://www.hrw.org/news/2008/04/28/india-fair-trial-doubtful-honored-rights-advocate> accessed 9 December 13.

Unlawful detention and fair trial in Jammu & Kashmir

http://act.amnesty.org.in/india_arbitrary_and_unlawful_detentions_in_jammu_and_kashmir_must_end_1 accessed 9 December 13.

p. 68

12.25

http://articles.timesofindia.indiatimes.com/2013-11-10/india/43885115_1_aid-cji-india-p-sathasivam accessed 9 December 13.

p. 69

12.31

Cognizable and non cognizable offences. This section might be linked with bribery which is non cognizable and for which the police cannot arrest without warrant
<http://www.dailypioneer.com/city/kickbacks-a-cognizable-offence-observes-ec.html>
accessed 11 December 13.

p. 70

13.03

This section on the Armed Forces Special Powers Act should also be linked with the

human rights violations by security forces in Northeast India. See <http://www.humanrights.asia/resources/journals-magazines/article2/1003/the-armed-forces-special-powers-act-1958-in-manipur-and-other-states-of-the-northeast-of-india-sanctioning-repression-in-violation-of-india2019s-human-rights-obligations> accessed 11 December 13.

Mention to the so-called *Sedition Law* under section 124A of the Indian Penal Code, which carries a maximum penalty of life imprisonment (mitigated by a Supreme Court ruling that sedition requires evidence of incitement to violence) might be added (see the comments of this reviewer to sec. 17 of *India COI 2012*).

p.72
13.08

Descriptive quotations like this one would be more effective if extracted from the original sources, in this case The Gazette of India accessible at http://mha.nic.in/hindi/sites/upload_files/mhahindi/files/pdf/National_Security_Act1980.pdf accessed on 9 December 13.

p. 72
13.09

More attention should be given to the abuse of preventive detention mentioned here and this should be linked with preventive detention treated elsewhere in this report (see 9.29 and 13.01).

p. 72
13.10

The South Asian Terrorism Portal would be more significant as a source if used for information exclusively related to terrorism.

p. 73
13.15

Here more specific sources are suggested which were available at the time of the preparation of *India: CoI 2012*: Authoritative human rights sources and reputed national press have reported the repeated request for repeal of the Jammu and

Kashmir Armed Forces Special Powers Act as well as the abuses perpetrated under this Act: <http://www.hrw.org/news/2011/10/19/india-repeal-armed-forces-special-powers-act> and <http://www.thehindu.com/opinion/lead/an-abomination-called-afspa/article4404804.ece> accessed 9 December 13.

p. 74
13.17

Here more specific sources are suggested which were available at the time of the preparation of *India: CoI 2012*: Under the cover of the Public Safety Act India appears to run against international human rights' obligations:

<http://www.amnesty.org/en/library/info/ASA20/001/2011> accessed 9 December 13.

p. 74
13.18

This paragraph cites the cases in which anti-terrorism laws have promptly charged the culprits of terrorist acts. Occurrences of delay such as the one of the Gujarat riots should also be cited: <http://www.hrw.org/news/2012/02/24/india-decade-gujarat-justice-incomplete> and <http://www.hindustantimes.com/india-news/ahmedabad/gujarat-riot-case-why-the-7-year-delay/article1-406337.aspx> accessed 11 December 13.

p.78
16.02

This reviewer can attest to the non-justified interference from the Ministry of Interior in relation to the organization of international conferences in India.

p. 79

17 Freedom of speech and media

The Reporters without Borders referring to the year 2013 indicates that the situation is deteriorating in certain areas of India. See <http://en.rsf.org/report-india,63.html> accessed 14 December 13. It should be noted that the Sedition Law (briefly mentioned by sec. 17.06) appears to be used by the Indian government to crack down journalists and activists. See <http://infochangeindia.org/agenda/freedom-of-expression/sedition-and-the-death-of-free-speech.html>,

<http://www.hrw.org/news/2011/01/05/india-repeal-sedition-law>,
<http://www.cpj.org/blog/2012/09/with-new-focus-on-sedition-law-india-poised-at-jun.php>, <http://www.hrw.org/news/2012/10/12/india-drop-sedition-charges-against-cartoonist> ,
<http://cpj.org/2012/12/indian-government-should-repeal-sedition-law.php>, and
<http://www.theguardian.com/commentisfree/2012/sep/11/india-sedition-laws-aseem-trivedi> accessed 14 December 13.

Mention to the *Sedition Law* could be also added to the section that deals with Security Legislation 13.03 at p.70.

p. 87

18.13

This information reporting of attacks to activists by the police should be linked with the corruption and connivance of the police with gangs, political parties based on religious affiliation, and organized crime (see among others sec. 9, 20.4, 20.14, 20.27, 20.45, 20.46, 20. 48).

p. 88

19.08

It should be noted that in spite of the disclosure of significant scandals related to financial malpractice and bribery (see also Commonwealth Games 2010) the anti-corruption bill was further amended undermining its force and the upper house was adjourned. See <http://www.bbc.co.uk/news/world-asia-india-21289118> accessed 9 December 13. This should be linked with bribery as non-cognizable offence (12.31).

p. 90

20.04

The reference to the “concern amongst women’s rights activists regarding several discriminatory aspects, especially on the basis of gender, within personal laws governing each religious community” should be put in perspective in order to understand that:

- personal laws and customary laws in South Asia may overlap but are essentially two different sources of law
- customary matrimonial remedies such as divorce at the woman's initiative recognized by sec. 29 (2) of Hindu Marriage Act 1955, provide women with an extra remedy in specific circumstances and unless they are manipulated by patriarchal interpretations.

See for ex. Holden 2008, 218:

In summary, this book has not only demonstrated that, in the part of Madhya Pradesh where my fieldwork was undertaken, in specific circumstances Hindu women can successfully negotiate the end of an unsuitable matrimonial tie and remarry to secure better lives for themselves and their children; but that for an understanding of the peculiar techniques, which are part of the women's legal awareness, it is necessary to see beyond positive law, to where the non-state-law can inform or even substitute for state-law a perspective of legal pluralism that is something more than plurality of laws. Hindu women, of various communities and backgrounds, successfully claim agencies to end unsuitable matrimonial ties and remarry on the basis of custom. They do so by mobilizing tradition on their own terms, a right that no law court or policy maker should in any measure be able to challenge.

Additional sources:

For the warning on the potential danger of personal laws as prejudicial to women's rights in India see Archana Parashar (2013) "Religious personal laws as non-state laws: implications for gender justice", *The Journal of Legal Pluralism and Unofficial Law*, 45:1, 5-23.

For a socio-legal study that highlights the interpretations of South Asian personal laws that favour women's rights see Agnes, F. (1999), *Law and Gender Inequality* (Delhi: Oxford University Press).

For a recent overview of the debate overcoming the assumption that personal laws are per se against gender rights see the following extract (<http://www.frontline.in/cover-story/personal-laws-a-reality-check/article5037670.ece> accessed 14 December 13):

Legislative reforms in Hindu and Christian laws and the increasing juridification of the Muslim law have created a greater degree of uniformity among different personal laws. Secondly, there is more debate and dissent within communities and a concerted attempt to reform family law from within. Thirdly, new evidence suggests that gender inequality within the family bears a greater correlation to socio-economic conditions than the form of religious law. But perhaps, most importantly, the new areas of emphasis on family law reform address questions such as domestic violence which cut across community identities and concerns.

p.90

20.05

Detailed reference to Hindutva, extremist Hindu parties such as Abhinav Bharat and Rashtriya Swayamsevak Sangh and violence linked to them should be added (see <http://www.hrw.org/sites/default/files/reports/india0211W.pdf> accessed 11 December 13). See also forms of daily harassment by Hindu radical vigilantes at <http://www.thehindu.com/news/national/other-states/hindutva-vigilantes-target->

hindumuslim-couples/article5231849.ece accessed 11 December 13. A cross-reference might be added with sec. 8.14.

p. 91

20.08

This section on religiously motivated violence and communalism should be linked to the other sections of this report that treat the mentioned facts.

p.92

20.10

The reasoning of the USRF 2010 Report suggesting that factors behind communal violence are not always based on religious affiliation should be complemented with the recurrent attacks and abuse to religious minorities and people belonging to groups that are considered to be polluted according to Hindu orthodoxy (see for ex. The connivance of a politician with the police in a case of land grabbing of an Untouchable's land <http://timesofindia.indiatimes.com/home/specials/assembly-elections-2013/rajasthan-assembly-elections/Police-officers-shielding-politician-in-land-grabbing/articleshow/26992104.cms> accessed on 11 December 13).

p.92

20.11

The current government appears to support the adoption of the Communal Violence Bill see <http://www.thehindu.com/news/national/govt-gives-a-push-to-communal-violence-bill/article5257702.ece> accessed 11 December 13.

p.92-93

This section on Jammu and Kashmir should be integrated with the human right abuses linked with heavy military presence (see the comments of this reviewer at sec. 9.44. regarding the estimate of 500.000 military contingent for 500 insurgents) and special laws. Much of this information was already available in 2012 (see <http://www.kashmirprocess.org/reports/graves/BuriedEvidenceKashmir.pdf> and <http://www.hrw.org/sites/default/files/reports/INDIA937.PDF> accessed 11 December 13).

p. 94 and ff.

The section on Gujarat riots needs update. The information on the Rashtriya Swayamsevak Sangh (right wing paramilitary nationalist Hindu group) involvement, which was already available at the time of publication of *India COI 2012*, appears missing (see among other sources <http://www.hrw.org/sites/default/files/reports/india0211W.pdf> accessed 11 December 13).

p.99-100

20.36

The statement “Although no Muslim caste system exists ...” should be reformulated as “In spite of the egalitarian principles of Islam groups and subgroups of Indian Muslims essentially function as such”. See also <http://www.britannica.com/EBchecked/topic/295708/Islamic-caste> accessed 11 December 13.

p.102

20.47

“The USRF 2009 Report observed, —Although most victims were Christians, the underlying causes that led to the violence have complex ethnic, economic, religious, and political roots related to land ownership and government-reserved employment and educational benefits.” Linkages to other parts of this report especially for the argument undermining religious affiliation as a source of discrimination. See the comment of this reviewer for sec. 20.10.

p. 105

20.59

Sources other than the South Asia Terrorism Portal should be included. See for ex. entry Babbar Khalsa in the *Encyclopedia of Terrorism* (Peter Chalk), 2013, ABC-CLIO, LLC.

p. 106

20.61

This section should be updated with the information on the waves of rapes and other

discrimination against women see <http://www.hrw.org/world-report/2013/country-chapters/india?page=2> accessed 11 December 13.

p.110

21.06-21-08

This section on tribal peoples (Adivasi) is particularly poor and needs significant integration regarding displacement and abuse of human rights, environmental rights, and land rights in particular.

See among the many sources available:

<http://www.aitpn.org/UN/upr-india.pdf> ,

<http://www.survivalinternational.org/news/7935>,

<http://www.greenpeace.org/india/en/Press/Halt-violation-of-human-rights-in-forests/> ,

<http://www.ohchr.org/EN/NewsEvents/Pages/AlmaGraceBarla.aspx> , and

<http://www.ipsnews.net/2013/02/india-undercuts-tribal-rights/>, accessed 11 December 13.

The Jarawa tribes on the Andaman Islands deserve to be mentioned perhaps under a subheading: international access has been strictly controlled by the Indian government but situations of human rights abuse and exploitation have been regularly and increasingly reported:

<http://www.survivalinternational.org/tribes/jarawa/>,

<http://www.thehindu.com/news/international/south-asia/rights-group-launches-tourism-boycott-of-andaman-islands-over-human-safaris/article4670676.ece> accessed 11 December 13.

p.115-117

2.13-22.20

In spite of the large quantity of information available on transgender communities in India the non-state system of dispute resolution and customary (land) rights that apply have been studied exhaustively. See however the documentary film *Between the Lines* by Thomas Wartman (2005) that shows how hijras' community leaders play an encompassing role of protection and management of funds that sometimes but not always is also abused.

p.121

24.09

This statement should be integrated with the acknowledgement that personal laws and customary practices do include provisions that are contextually and culturally conducive for the protection of women's rights at a national and international level for what concerns in particular the diasporic communities (see Holden, Livia (2008) *Hindu Divorce: A Legal Anthropology*, Aldershot: Ashgate; Holden, Livia (2012) 'Divorce at the Woman's Initiative in South Asia and in the Diasporas' in *Interpreting Divorce Laws in Islam*, Rubya Mehdi, Werner Menski, Jørgen Choler Nielsen (eds.), DJØF: Copenhagen; and Holden, Livia (2011) 'Expert Report Writing: Professional Commitments and Legal Outcomes', in *Cultural Expertise and Litigation: Patterns, Conflicts, Narratives*, Holden, Livia ed., London: Routledge.) This section might cross-referenced with sec. 20.04.

p. 127

24.30-24.31

This section needs update regarding the new anti-rape legislation. See for ex. <http://www.bbc.co.uk/news/world-asia-india-21950197> (accessed 11 December 13) which has been already considered as insufficient (see <http://www.trust.org/item/20130502035819-30c1v> accessed 11 December 13).

p.136 and ff.

Section n.25 on children does not mention the abuse of children's rights due to corporate-led development. See <http://www.indianet.nl/pdf/AccessToJustice.pdf> accessed 11 December 13.

p.154

27.08

The illicit organ trade should also be mentioned: <http://www.who.int/bulletin/volumes/85/12/06-039370/en/> accessed 11 December 13.

p.156

Section 28 on food security should be updated. See <http://foodsecurityindex.eiu.com> accessed 11 December 13.

p. 158

29.03-29.04

This section on Unique Identification should be integrated with the information related to the misuse of the so called aadhaar cards. See <http://indiatoday.intoday.in/story/supreme-court-aruna-roy-aadhaar-scheme-uid-welfare-scheme/1/313583.html> accessed 11 December 13.

p.158-159

This section on Internally Displaced People should be integrated and updated with the very rich and detailed information available. See for ex. <http://www.refworld.org/docid/4f97fb601e.html>, [http://www.internal-displacement.org/8025708F004CE90B/\(httpCountries\)/5762D122F45E14B0802570A7004BBA1F?OpenDocument](http://www.internal-displacement.org/8025708F004CE90B/(httpCountries)/5762D122F45E14B0802570A7004BBA1F?OpenDocument), [http://www.internal-displacement.org/8025708F004CE90B/\(httpCountries\)/5762D122F45E14B0802570A7004BBA1F?OpenDocument](http://www.internal-displacement.org/8025708F004CE90B/(httpCountries)/5762D122F45E14B0802570A7004BBA1F?OpenDocument) and <http://www.unhcr.org/cgi-bin/txis/vtx/page?page=49e4876d6&submit=GO> accessed on 10 December 13.

p. 162

31.07

This section needs to be updated. See update needed <http://www.unhcr.org/pages/49e4876d6.html> accessed 11 December 13.

p. 166

36

This section on land acquisition needs significant integration and update:

- on agricultural reforms and their failure (see Deshpande, R S, 2012, Agrarian Crisis and Farmer Suicides (Land Reforms in India Series), Sage Publication, <http://www.thehindu.com/opinion/columns/sainath/farmers-suicide-rates-soar-above-the-rest/article4725101.ece> ,
- the highly debated issue of farmers' suicide (for conflicting analysis see <http://news.nationalpost.com/2013/01/26/the-myth-of-indias-gm-genocide-genetically-modified-cotton-blamed-for-wave-of-farmer-suicides/> and

- <http://thediplomat.com/2013/07/why-do-so-many-indian-farmers-commit-suicide/> , accessed 14 December 13),
- land rights and indigenous people especially for what concerns the state's connivance with corporations and multinationals that disregard the existing legislation (see <http://www.globalresearch.ca/the-bastar-land-grab-the-expropriation-of-farmers-in-india> , <http://www.communitylandrights.org/madhu-sarin-indigenous-community-rights-in-india-a-critical-moment-in-history/> , <http://www.culturalsurvival.org/publications/cultural-survival-quarterly/india/aboriginal-groups-india>, and <http://www.humanrights.asia/news/urgent-appeals/AHRC-UAU-032-2013> accessed 11 December 13.
 - land grabbing (see <http://agrariancrisis.in/2013/10/26/indias-role-in-the-new-global-farmland-grab/> accessed 11 December 13).
 - Take-over by the state of common and forest land as well as project/development driven acquisition of private and common land by the state causing direct loss of livelihood without compensation or rehabilitation even beyond the affected area (see Gopalakrishnan, Shankar (2012) *Undemocratic and arbitrary: Control, Regulation, and Expropriation of India's forests and common land*, Society for Promotion of Wastelands Development Rights and Resources Initiative, available at [https://www.academia.edu/2342740/Undemocratic and Arbitrary Control Regulation and Expropriation of Indias Forest and Common Lands](https://www.academia.edu/2342740/Undemocratic_and_Arbitrary_Control_Regulation_and_Expropriation_of_Indias_Forest_and_Common_Lands) accessed 14 December 13)

This section should also be integrated with the severe backlog of civil cases that makes redress ineffective (see <ftp://ftp.fao.org/docrep/fao./011/ak280e/ak280e00.pdf> accessed 14 December 13) and the poor access to redress against illegal or unfair acquisition of land by corporations (see <http://www.indianet.nl/pdf/AccessToJustice.pdf> accessed 14 December 13).

Furthermore this section should link with the section on Maoist as background information and include data on the extremely harsh relocation for farmers, especially if they belong to tribal groups (see <http://www.globalresearch.ca/the-bastar-land-grab-the-expropriation-of-farmers-in-india> accessed 14 December 13):

So in Bastar the state has this predicament. They want the minerals, they even want the forests a little bit for carbon credits, but they don't want the people. In 2005, Salwa Judum starts. It's typical strategic hamleting, moving people out of the villages and into camps. A similar approach was taken to insurgencies in the Northeast, in Mizoram and Tripura, for example. Here, they emptied 644 villages, by the government's admission, 350,000 people. About 50,000 were brought to the camps, and today these camps still have about 10,000 people. Some fled to neighbouring states particularly Andhra Pradesh. Where are the rest? They seem to have gone even deeper into the forest, probably 200,000 people. They try to cultivate and live in the forest, but they are being treated as outlaws. This displacement has been a very violent process. There are affidavits, evidence in the "Salwa Judum" cases filed in the Supreme Court (Nandini Sundar's case and Kartam Joga's case). In one block alone, the Konta block, there were 500 deaths, 99 rapes, 2000 houses burned. This was a violent, state-backed vigilante movement, and was also essentially pushed back militarily by the Maoists.