



United States Embassy
New Delhi, India
+91-11-2419-8000
ACSND@state.gov
<http://newdelhi.usembassy.gov>

Help for U.S. Citizen Victims of Crime in India

January 25, 2010

Being the victim of a crime in a foreign country can be a devastating and traumatic experience. While no one can undo the emotional trauma, physical injury, or financial loss you may have experienced, the U.S. Embassy in New Delhi as well as the Consulates in Mumbai, Chennai, Hyderabad, and Kolkata are ready to help. We are very concerned about violent crimes committed against U.S. citizens in India. We will assist you in managing the practical consequences of being a crime victim and provide you with information about accessing the local criminal justice system, as well as other resources for crime victims abroad and in the United States. Our offices can help you find appropriate medical care, contact family or friends on your behalf, and explain how funds can be transferred. We can also help you to better understand the criminal justice system in India, which is very different from the system in the United States.

The information included in this guide relating to the legal requirements in India is provided for general informational purposes only. The information may not be accurate or relevant to a particular case. Questions involving interpretation of Indian laws should be addressed to legal counsel licensed to practice law in India. The investigation and prosecution of the crime is solely the responsibility of local authorities, although the U.S. Federal Bureau of Investigation (FBI) may assist local authorities in certain cases of kidnapping, hostage-taking and terrorism.

REPORTING CRIMES: Victims of crime are encouraged to file police reports, called First Information Reports (FIR), at the police station nearest the scene of the crime. Crimes must be reported in the jurisdiction where they happened; this should be done within thirty days of the event, but it is best to do so immediately after the crime. A friend or family member can file the police report on the victim's behalf in situations where the victim is unable to do so. Victims of harassment or intimidation should also file complaints with the local police and then inform the Embassy or Consulate. If you lose your passport or if it is stolen, you will also need the FIR to obtain an exit visa to depart India. There are no special police officers designated to assist foreigners, but police should provide an interpreter if necessary.

If you have difficulties filing your police report with an official, please contact the Embassy or Consulate immediately. You may need a police report to file for crime victim compensation or insurance reimbursement. If you decide to file a report please send a copy to us, along with your address and phone number, in the event that we need to communicate with you. While we are not authorized to file complaints or act as your legal representative, prosecutor or investigator, our office can make calls to the police to express concern, help you track the progress of your case, monitor the investigation, and advise you of any developments.

If a victim leaves India without reporting a crime, the police will sometimes accept a report via email, but it is up to the discretion of the police station involved. Though a crime can be reported to the Indian

Embassy in the United States it is not recommended; the time required to process the complaint and send it through the system is lengthy and would hamper any investigation.

INVESTIGATIONS: The police have primary responsibility for investigating crimes; for more serious crimes the Central Bureau of Investigation (CBI) becomes involved. The U.S. FBI can assist at the request of the police and CBI, but the Government of India rarely asks for help. Forensic evidence will be collected and analyzed. Victims can get information about the progress of the investigation either personally or through their lawyer by contacting the police officer in charge of the investigation. Most police stations do not have email access so it is best to do this in person or by phone. The Embassy can assist in securing updates when more direct methods fail. Rarely will the system contact the victim with information; the victim generally has to take the initiative.

Serious crimes such as murder and kidnapping remain open indefinitely until they are solved. Less serious crimes have a limitation of seven years, after which evidence can be destroyed by police. Many crime investigations in India never result in the arrest of a suspect.

ARRESTS: Once an arrest is made, the accused will be presented to a magistrate (judge) who will review the FIR and determine whether he/she can be released on bail or must be retained in police custody during an investigation. The victim, who must retain a local address or contact information, will be notified about an arrest or other case developments. If the victim has no local address he or she can request that the local consular officer or lawyer (with his or her permission) receive the information that can be forwarded to the victim. In some cases, the assistance of the victim will be requested to identify the accused. The judicial system utilizes a process called the Test Identification Parade (TIP), which is similar to the police lineup system used in the U.S. It is conducted in the jail in the absence of the police. The only participants are the magistrate who is handling the case and the victim. There is no one-way glass used; the victim and magistrate directly view the possible suspects in the parade.

PRETRIAL PERIOD: When the police investigation is complete the police will file a "Charge Sheet." The Charge Sheet will list all of the counts with which the arrestee is being charged. The charges will be formally entered (similar to an indictment in the United States) before a magistrate. The magistrate decides if the case goes to trial; he or she may also decide to drop certain charges and allow the trial process to go forward on others. In addition, the police may later seek to amend a Charge Sheet if additional criminal violations come to light. Plea bargaining is generally not an option in India. All levels of the Indian court system have jurisdiction to take criminal cases.

Under the prevailing laws, all victims of crime are represented by a public prosecutor. The victim can appoint a private attorney who is generally allowed to assist the public prosecutor and make written submissions. There are victim advocates (*pro bono lawyers*) for those who are not able to afford a private attorney. A victim advocate can be secured by submitting a request in writing to the presiding judge, who will make the decision on whether or not to grant the request. Lawyers for those who qualify are selected from a group of attorneys who volunteer to provide their services.

TRIAL: There is no limitation on the duration of criminal trials in India. If a foreigner is involved, however, a petition can be filed for an expedited trial by their attorney. The victim can be required to remain in country or to return to India to testify at the trial. A written statement is not acceptable, but depositions via digital video conferencing (DVC) are sometimes permitted. The lower courts (magistrate and sessions courts) in India are very different from those in the United States; several cases can be ongoing at the same time in front of a single judge; there is no trial by jury. The courtroom is crowded and noisy with lawyers simultaneously arguing for their respective clients. All information is recorded. In some cases, the judge will make a ruling immediately; in others, the judge will retire to chambers to review the transcripts and then return with a decision. A consular officer sometimes attends court hearings if his or her presence is deemed necessary to demonstrate the concern of the Embassy. The consul only attends as an observer and does not participate in the

hearing. Representatives of the media are not permitted inside the courtroom. The official court language of India is English so translators for American citizens are not necessary, at least in the Delhi area. In other states, this may not be the case for lower or sessions courts. If hearings are conducted in the local language, a translator will be necessary; translators are generally available for hire near the courts. The victim may have to pay the fee for the translator. All court records are written in English. Appropriate dress is recommended in the courtroom but is not mandatory. When the judge enters the courtroom, generally all in attendance will rise.

SENTENCING: If the accused is found guilty, the sentencing takes place during the final phase of the trial. It begins immediately following the reading of the verdict. If the victim wishes to communicate input on the sentencing, he or she can do so through an attorney during the pretrial hearings. The victim will most likely not be notified when the perpetrator is transferred or released, but is free to request the information independently or through an attorney.

APPEALS: The accused has the right to appeal, a process that can take years. Once accused, the prisoner generally remains incarcerated during the appeals process. Victims are not expected to testify during appeals.

ATTORNEYS: You may want to consider hiring a local attorney to secure appropriate legal guidance. Local legal procedures differ from those in the United States. Although the public prosecutor is responsible for prosecuting your case, an attorney you hire can promote your interests with the police and the court. While our office cannot recommend specific attorneys, we can provide you with a list of attorneys who have expressed interest in representing U.S. Citizens. This list is available on the Internet at http://newdelhi.usembassy.gov/judicial_assistance.html.

VICTIM COMPENSATION IN INDIA: There is no national crime victim assistance office in India. The Indian government sometimes provides monetary compensation to certain crime victims, especially if the crime or event is newsworthy, but it is not common. The courts of India have limited powers to grant compensation to victims of crime, though under certain circumstances the courts can order the perpetrator to pay compensation. When a sentence of a fine is imposed as the sole punishment or as additional punishment, the whole or part of it may be directed to be paid to the victim as per the discretion of the court. A victim who has suffered losses due to the acts of the perpetrator is free to initiate a separate suit against the perpetrator to recover damages for the wrong that has been committed against him or her. In such cases, it is important to note that at the time of awarding compensation in a subsequent civil suit relating to the same matter, the court will take into account any sum paid or recovered as compensation previously.

THE PRESS: Crimes, particularly those which are newsworthy or committed against foreigners, receive a great deal of attention in the Indian press. While members of the media are not allowed in the courtroom during criminal proceedings, many of the privacy protections that are in place for victims in the U.S. throughout the investigation and trial are not common practice in India. For example, it is common for police or other involved authorities to release details regarding the victim, the incident, or medical care that the victim has received. While consular officers will always strive to keep information private at the request of the victim, there is no guarantee that the authorities involved in a case will act similarly.

EMBASSY AND CONSULATE LOCATION: Americans living or traveling in India are encouraged to register with the nearest U.S. Embassy or Consulate through the [State Department's travel registration website](#) so that they can obtain updated information on travel and security within India. Americans without Internet access may register directly with the nearest U.S. Embassy or Consulate. By registering, American citizens make it easier for the Embassy or Consulate to contact them in case of emergency.

The U.S. Embassy in New Delhi is located at Shanti Path, Chanakya Puri 110021; telephone +91-11-2419-8000; fax +91-11-2419-8407. The Embassy's web site is <http://newdelhi.usembassy.gov>. (The "+" sign indicates your international access code, which in the United States is 011-, but which is 00- in most other countries.)

The U.S. Consulate General in Mumbai (Bombay) is located at Lincoln House, 78 Bhulabhai Desai Road, 400026, telephone +91-22-2363-3611; fax +91-22-2368-5483. The web site is <http://mumbai.usconsulate.gov>.

The U.S. Consulate General in Kolkata (Calcutta) is at 5/1 Ho Chi Minh Sarani, 700071; telephone +91-33-3984-2400; fax +91-33-2282-2335. The web site is <http://kolkata.usconsulate.gov>.

The U.S. Consulate General in Chennai (Madras) is at 220 Anna Salai, Gemini Circle, 600006; telephone +91-44-2857-4000; fax +91-44-2857-4443. The web site is <http://chennai.usconsulate.gov>.

The U.S. Consulate General in Hyderabad is at Paigah Palace, 1-8-323 Chiran Fort Lane, Begumpet, Secunderabad, Andhra Pradesh, 500003; telephone +91-40-4033-8300; fax +91-40-4033-8301. The web site is <http://hyderabad.usconsulate.gov>.

SPECIAL INFORMATION FOR CASES OF SEXUAL ASSAULT AND RAPE

Physical evidence is very important in sexual assault cases, and can deteriorate as time passes. As such, victims should not change clothes, avoid bathing if possible, and have a physical exam at the first opportunity. You should take these steps even if you are unsure about whether to report the crime to police. If you decide to pursue a prosecution at a later time, these steps preserve evidence that will assist the prosecutor. A consular officer or after-hours duty officer from the U.S. Embassy may be able to accompany victims of sexual assault for the medical exam.

In India, sexual assault and rape are defined as a man having sexual intercourse with a woman under circumstances falling under any of the following descriptions:

- o Against her will;
- o Without her consent;
- o With her consent, when her consent has been obtained by putting her or any person in whom she is interested in fear of death or harm;
- o With her consent, when the man knows that he is not her husband, and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married;
- o With her consent, when, at the time of giving such consent, by reason of unsoundness of mind or intoxication or the administration by him personally or through someone else, illicit substances or drugs, she is unable to understand the nature and consequences of that to which she gives consent;
- o With or without her consent when she is under sixteen years of age.

The legal definition of rape is consistent throughout India.

At this time there are no comprehensive laws against male rape in India. However, “unnatural offences” are defined as any carnal intercourse “against the order of nature with any man, woman or animal,” and can be punished by imprisonment for up to ten years (in special cases this could be extended to life imprisonment) and may also be liable for a fine.

When a victim files a complaint of rape with the local police, the investigating officer, with the permission of the Deputy Commissioner of Police, will authorize a forensic sexual assault exam. If for some reason the police refuse to take the complaint of the victim, the complaint can be filed with the local magistrate who is also authorized to request a forensic exam. A forensic exam is recommended for all rape cases, but the physical examination can only be done with the consent of the victim or of a person competent to give consent on her behalf. It should ideally be completed within twenty-four hours of the time the offense is reported. Any doctor with minimum M.B.B.S. (Medical Bachelor and Bachelor of Surgery) qualifications who is employed in a hospital run by the Government or a local authority can perform the physical exam. (Note: it is critical that the exam be done in a government, not private, hospital.) A government chemical or biological examiner will then perform the forensic analysis at a Central Forensic Science Laboratory or a state Forensic Laboratory. A forensic sexual assault exam involves a pelvic exam, vaginal/penile/anal swabs, head and pubic hair samples, fingernail scrapings, blood samples, saliva samples, etc. The victim can bring a support person with her to the exam. The state pays for the exam. Though it is best to have a medical examination performed in order to provide corroborative evidence during the trial, a rape/sexual assault charge can be filed without an exam.

You should get medical attention to determine if you have been injured in any way and to discuss treatment and prevention options for pregnancy and sexually transmitted diseases. Emergency contraception (the morning-after pill) is available in India as is HIV prophylaxis. The Embassy or Consulate can provide you with a list of local doctors.

At the complaint stage, the investigating officer will interview the victim. In court the victim will be interviewed by the magistrate.

Although acquaintance rape is taken seriously, spousal rape is not unless the spouse is under 15 years of age.

India has a toll-free Women's Helpline Service that can be reached by dialing 100. The specific toll-free Women's Helpline Service number in Delhi is 1091; in Mumbai it is 103; in Kolkata, 1090; in Chennai, 1091 or 2345-2365; and in Hyderabad one can dial 1-800-425-2908 or 1098 for crimes in general. Crime Against Women Cells, located in each of the 9 New Delhi Districts with a Central Cell in Nanak Pura, deal with women -related crimes like rape, dowry deaths and harassment, molestation, etc. and are equipped to provide counseling to victims. In addition to the toll free emergency number (1091), victims can also use the following: 2341-1091 and 2331-7004. A Women's Police Mobile Team provides 24 hour service to women helpline cases. Operators can speak English.

SPECIAL INFORMATION FOR CASES OF DOMESTIC VIOLENCE

Domestic violence is considered a crime in India. It is addressed in "The Protection of Women from Domestic Violence Act, 2005." It empowers women to file a case against a person with whom she is having a "domestic relationship" in a "shared household." The law covers "acts of omission or commission that harm or injure or that have the potential to harm or injure." The law considers physical, sexual, emotional, verbal, and psychological abuse or threats.

How can victims get a protection/restraining order?

A victim, or any other person on behalf of the victim, may present an application for a protection/restraining order to the Magistrate. An applicant can request orders relating to the protection of themselves and their children, their residence, monetary relief, custody, and/or compensation. If the Magistrate is satisfied that the affidavit in the application discloses prima facie that the accused is committing or has committed an act of domestic violence, or that there is likelihood that the accused may commit an act of domestic violence, he or she may grant an ex parte interim order in favor of the victim and against the accused.

The next step in the process is a hearing date in which both parties participate. This hearing, set by the Magistrate, is supposed to be within three days of the date on which the court first received the application. The Magistrate attempts to resolve every application within a period of sixty days from the date of its first hearing. However, at this time in India, the majority of cases are taking longer than sixty days to be resolved.

A violation of a protection order or an interim protection order by the accused is a crime. It can be punishable with imprisonment for a term which may extend to one year, or with a fine of up to twenty thousand rupees (approximately \$500 USD), or both. Such an offence can be judicially heard and determined; the accused is usually not eligible for bail; and the offender can be held guilty and punished by the court solely on the testimony of the victim.

Although the Indian Penal Code does not use the word stalking, "intrusion upon the privacy of a woman" can be punished with imprisonment of a term of up to one year, or a fine, or both.

Are there domestic violence shelters in the host country?

No secure, safe shelters are currently available in India.

Emergency Information

Emergency assistance is available to victims of domestic violence, although more services are available in urban areas.

Crime Against Women Cells, located in each of the 9 New Delhi Districts with a Central Cell in Nanak Pura (2467-3366), deal with women-related crimes like rape, dowry deaths and harassment, molestation, etc. and are equipped to provide counseling to victims. In addition to the **toll free emergency number (1091)**, victims can also use the following: 2341-1091 and 2331-7004. English is spoken in cities; in rural areas the police will generally only speak the local languages.

SPECIAL INFORMATION FOR CASES OF CHILD ABUSE: The local police and the local government administration are responsible for the protection of children. They have full authority to investigate any report of child abuse. Any well-wisher or interested person can report suspicions of child abuse; parents, guardians and legal custodians of a child are mandated to report suspected child abuse. In each case the report would be filed with the local police or administration and must be done in person.

Formatted: Font: Bold

If an U.S. citizen child were removed from the home because of abuse, they would be placed in a shelter for protection or remain in the custody of the police until alternative arrangements could be made. Local NGOs and Child Welfare Agencies have expertise in helping child victims. Both government and private hospitals are appropriate for the medical examination of a U.S. citizen -child who may have been physically or sexually abused, but if a court case is filed the exams must take place in the government hospital.

If the abuser is charged and if the child is in a position to explain what happened, the child's testimony will be taken privately via video camera. The child will be deposed in a special chamber apart from the courtroom, or the courtroom will be vacated of everyone except the judge and the child, who will have been prepared by the government lawyer who was appointed to the case.

SPECIAL INFORMATION FOR CASES OF KIDNAPPING

Kidnappings of foreigners for ransom are rare in India. In these cases the police and the Central Bureau of Investigation and the U.S. FBI will coordinate the investigation.

The 1984 Comprehensive Crime Control Act authorizes the FBI to conduct investigations overseas when a US citizen is taken hostage. Although the FBI does not have traditional law enforcement powers overseas such as arrest, search, and subpoena authority, the FBI does work closely with the host country authorities on hostage taking cases. Examples of FBI resources that can be deployed are evidence collection teams, hostage negotiators, and victim specialists. In the US, FBI agents and victim specialists work closely with the victim family to ensure coordination and the timely passage of information.

SPECIAL INFORMATION FOR CASES OF HOMICIDE

In India, an autopsy is required in all cases of homicide; accidents; unnatural death; death in suspicious circumstances; death resulting from encounters with police; death in police custody, remand homes or jails; dowry death and suicide. All crimes or offences against any person are considered to be crimes against the State and the State initiates proceedings against the perpetrator. The family members of the deceased have a right to participate in the post trial stage of the proceedings, such as the filing of an appeal. There are no specific provisions in the law that deal with the estate in a homicide case. However, under special circumstances or when the court feels it is necessary to pass appropriate orders to deal with the estate, it may do so.

Most homicide investigations in India involving US citizens are investigated and prosecuted by host country authorities. The FBI may provide assistance when the crime involves a US citizen. It should be noted, however, that the FBI does not have traditional law enforcement powers overseas such as arrest, search, and subpoena authority. This limitation does not preclude the FBI from rendering assistance as needed. The 1986 Omnibus Diplomatic Security and Anti-Terrorism Act broadened the FBI's extraterritorial jurisdiction to include authority to investigate violent crimes committed during acts of terrorism such as murder and conspiracy to commit murder. Homicides that are directly related to a terrorist incident are investigated by the FBI and presented for prosecution in the US. The FBI regularly deploys a variety of subject matter experts around the world to assist host country investigators. Examples of FBI assistance include the deployment evidence collection teams, hostage negotiators, extraterritorial investigators, bomb technicians, etc.

