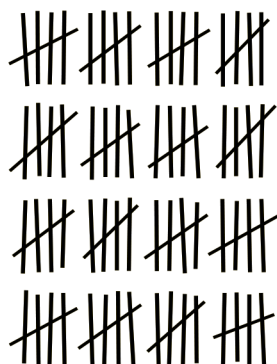


DEATH PENALTY INDIA REPORT

1



In the hope that their
voices will end our
collective silence.

Disclaimer

All findings, conclusions and observations in this Report are the sole responsibility of the National Law University, Delhi and they have not been verified, confirmed or endorsed by the National Legal Services Authority in any manner whatsoever.

॥ न्यायस्य प्रमाणं स्यात् ॥

**Published by**

National Law University, Delhi Press
Sector 14, Dwarka
New Delhi 110078
Published in February 2016

ISBN

978-93-84272-06-7

© National Law University, Delhi 2016

All rights reserved

Design

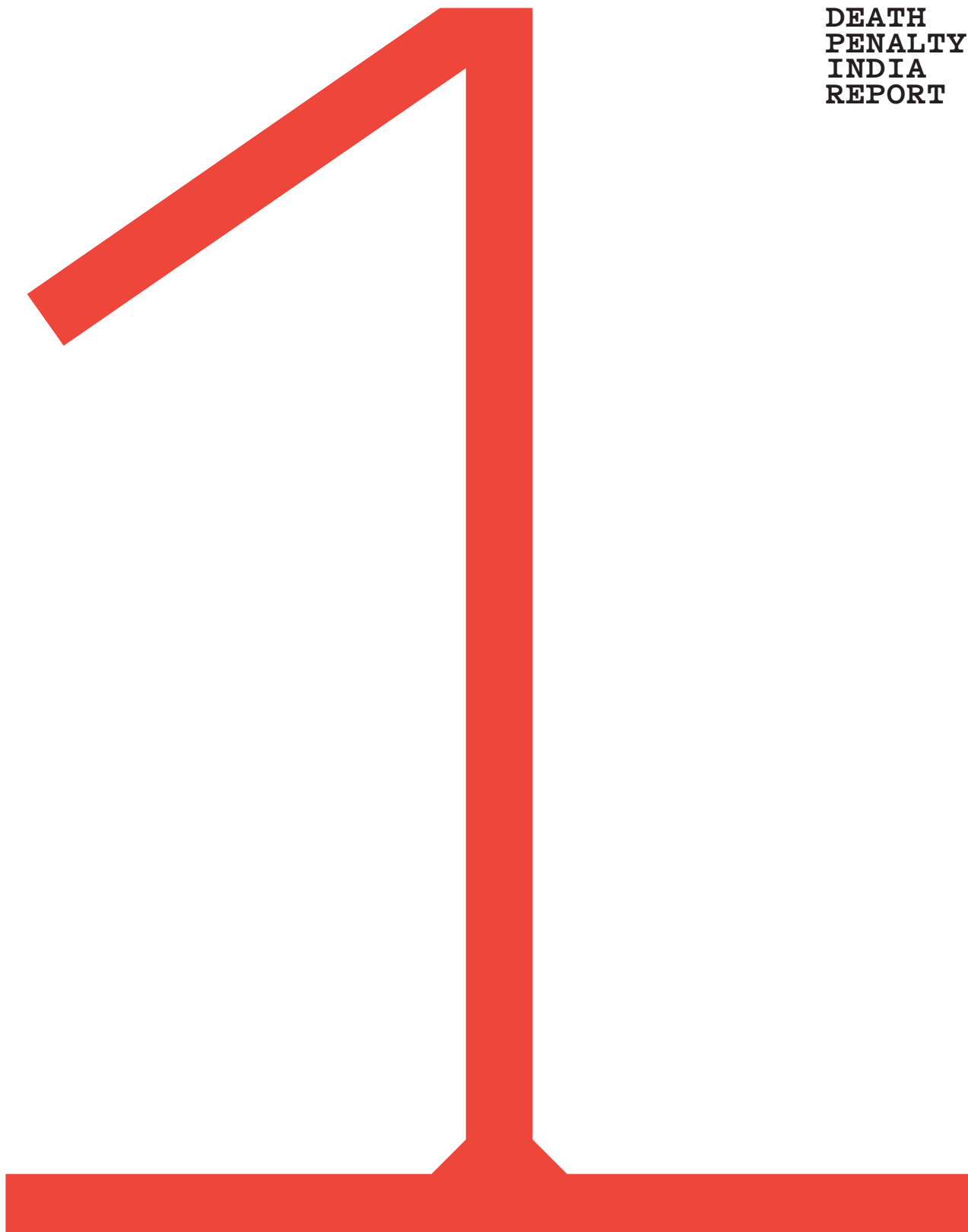
STRUCKBY.CO

Set in Founders Grotesk and Pitch by Klim Type Foundry.

Printers

Lustra Print Process Private Limited
Naraina Industrial Area Phase 1
Naraina, New Delhi 110028

DEATH
PENALTY
INDIA
REPORT



Contributors

DR. ANUP SURENDRANATH

DIRECTOR & LEAD AUTHOR

SHREYA RASTOGI

DEPUTY DIRECTOR

REVIEW, ANALYSIS & ASSISTANT AUTHOR

September 2014 onwards

NEHA SINGHAL

FORMER DEPUTY DIRECTOR

PROJECT DESIGN & FIELD WORK

June 2013-July 2014

REPORT RESEARCH & WRITING TEAM

C.V. ARADHANA

DEVINA MALAVIYA

LAKSHYA GUPTA

MAULSHREE PATHAK

RISHIKA SAHGAL

REVIEW & ANALYSIS TEAM

C.V. ARADHANA

CHINMAY KANOJIA

DEVINA MALAVIYA

GALE ANDREW

JAGATA SWAMINATHAN

LAKSHYA GUPTA

MAULSHREE PATHAK

PAWANI MATHUR

RISHIKA SAHGAL

SARVATRAJIT JAJMANN

VAIBHAV DUTT

STUDENT COORDINATORS

ISHITA SHARMA

(July 2013-November 2013)

DEVANSH ARYA

(December 2013-January 2014)

C.V. ARADHANA

(February 2014-August 2014)

SENIOR FIELD RESEARCHERS

AKSHAY VADDAGIRI

ARUN POOMULLI

C.V. ARADHANA

CHINMAY KANOJIA

DEVANSH ARYA

DEVASHISH GODBOLE

GALE ANDREW

ISHITA SHARMA

JAGATA SWAMINATHAN

LAKSHYA GUPTA

MALAVIKA PARTHASARATHY

MAULSHREE PATHAK

PAWANI MATHUR

PRAGYA JHA

PRIYANKA HAZARIKA

RIDHI DAROLIA

RISHIKA SAHGAL

SONAL SARDA

UMAKANT TRIPATHI

VAIBHAV DUTT

SANCHIT SALUJA

KAINAZ TANVEER

VARSHA RAO

ADMINISTRATION

PAWANI MATHUR

General Admin,

Accounts & Website

SARVATRAJIT JAJMANN

General Admin & Website

GALE ANDREW

General Admin & Website

DHRUV GARG

RTI

VARSHA RAO

Website

LAKSHYA GUPTA

RTI & Website

SONAL SARDA

Website

MAULSHREE PATHAK

Website

MALAVIKA PARTHASARATHY

Website

JAGATA SWAMINATHAN

Website

AISHANI GUPTA

General Admin

FIELD RESEARCHERS

AARUSHI MAHAJAN
ADITI PRAKASH
AISHANI GUPTA
AMRUTANSHU DASH
APOORVA
ARSHU JOHN
DEVINA MALAVIYA
DHRUV GARG
DIVISHA MEHTA
G ANANYA
HARDIK SINGH
KARAMDEO
KEERTHANA MEDRAMETLA
LUBHYATHI RANGARAJAN
NIDHI CHIKKERUR
NISHTHA SINHA
PRANAV KRISHNA
SAMITH NATARAJ
SANYA KUMAR
SUSHANT SINGH

VOLUNTEERS

AARTI BHAVANA
AAYUSH SINGHAL
ADITYA GARG
AKANKSHA GHOSH
ANVESHNA CHAINWALA
ANAMIKA MISHRA
AROON MENON
ASANG WANKHEDE
BALVINDER SANGWAN
BHARAT GUPTA
DEVDUTTA MUKHERJEE
DIVYANSHU BHATT
DVL VIDYA
GAURI TENDULKAR
GOWRI REGHUNATH
GUNJAN CHAWLA
HARISANKAR MAHAPATRA
KANISHK AGGRAWAL
KARISHMA PADIA
KARTHIK TAYUR
LAVANYA SINGH
MAHIMA JAIN
MEGHADARSHINI SOORANGI
MOHIT MEHTA

MUNMUN SINGH
PEARLITA NARAIN
PRASHANTH KP
PUNEET PAI
RAGHAV SACHDEVA
RAKESH J
RIA HIMMATRAMKA
RISHIKA SRIVASTAVA
SANJEEVI SESHADRI
SRIRAM
SHREY PATNAIK
SHRUTANJAYA BHARDWAJ
SHWETA KABRA
SIDDHANT SACHDEVA
SIDDHARTH MANOHAR
SOMIL GARG
SUBHRO MUKHERJEE
SUNITI SAMPAT
TANAYA RAJWADE
TANUJ DAYAL
VAISHALI SINGH
VIVEK SHAH
UPAMA BHATTACHARJEE

EXTERNAL CONTRIBUTORS

ANAND MOHAN
DEEPESH BANBERU
EKLAVYA VASUDEV
GITALI CHATTERJEE
MANASI RANADE
NIKITA SONAVANE

PHILARISA NONGPIUR
RAJAS NAIK
TRISHNA SENAPATY
VARUN REDDY
YASHASWITA APTE

EDITOR

LINA MATHIAS

DESIGN

STRUCKBY

Foreword

The Death Penalty Research Project is a major step forward in the research profile of National Law University, Delhi. As a very young law school established in 2008, we have been keen to develop a robust research agenda and this Project was a significant initiative in that direction. When Dr. Surendranath first proposed this Project there were concerns about the sensitivity of the issue and access to prisons in addition to the sheer scale and intensity. However, we took the position that given the dearth of research on the subject, it was imperative that the University undertook this Project. Over the last two years, I have personally witnessed the tremendous effort that has gone into this Project while negotiating multiple challenges. The University did the best it could to facilitate this Project and part of that commitment was providing full financial assistance to the Project from our research funds.

It is a matter of immense pride and satisfaction that so many of our students contributed to this Project. Even from the perspective of pedagogy, going to different parts of the country to be part of prisoner and family interviews

was a tremendous educational experience for them. Often required to find families of prisoners in extremely remote parts of the country, they were suddenly confronted with a reality quite removed from their own. It is quite evident that the reflection from these visits has deeply influenced their view on the complex relationship between law and justice.

The assistance from the National Legal Services Authority (NALSA) was critical to gaining access to prisons and this Project would not have been possible without such access. Our association with NALSA began during the tenure of Hon'ble Mr. Justice P. Sathasivam (as he was then) as Executive Chairperson and Mrs. Asha Menon (Former Member Secretary) in June 2013. This Project is a testament to the high-impact research that can be facilitated by effective collaborations between public authorities and universities.

The rigour, perseverance and patience with which this Project has been carried out is indicative of the potential within the law schools. Given the context within which we operate, law schools need to find ways to liberate

themselves from being just teaching universities. That is not to suggest that teaching is any less important or that we have overcome the monumental challenges in that sphere, but to only emphasise that universities must embrace the responsibility of exploring directions in which our society might evolve. Change and progress do not happen in a vacuum and an environment for it has to be created. It will necessarily involve discussions and disagreements and universities must be nurtured as incubators of such change.

PROF. (DR.) RANBIR SINGH

VICE-CHANCELLOR

NATIONAL LAW UNIVERSITY, DELHI

Preface

Everyone opening this Report probably has a position on the death penalty. But as individuals and as a society, how much do we really know about the administration of the death penalty in India? Discussions on the death penalty in India rarely have the space for issues beyond the heinousness of the crime and judicial arbitrariness. For an issue as grave as this, there have been far too few attempts in India to understand questions about who gets the death penalty, how they get it and what it is like to live under the sentence of death in Indian prisons. These are undoubtedly complex issues and this Report seeks to make a contribution towards grappling with that complexity.

Contributors to the Project have held a wide range of positions on the death penalty and unanimity of views on the issue was never sought. The Project is not meant to make a case for abolition but is meant to present voices that are rarely heard. There is a lot we can learn from these voices about the manner in which our criminal justice system functions and the myriad ways in which the criminal justice system impacts the lives of those who come in conflict with it.

The various kinds of information presented in these pages are not put forth as arguments that will determine the death penalty question in India but rather as issues that must become integral to discussions on the death penalty. The narratives we heard were extremely unsettling and we hope the information in these pages will make us all sufficiently uncomfortable about the manner in which we approach the death penalty in this country.

Interviewing prisoners sentenced to death and finding their families all across the country was certainly not an easy task. Over 80 undergraduate law students from National Law University, Delhi and a dozen other external volunteers have made invaluable contributions while working with us for varying durations over the last two-and-a-half years. But the contribution of those comprising the Review & Analysis Team and Report Research & Writing Team was extraordinary and inspiring both in terms of its quality and perseverance. Neha Singhal as Deputy Director of the Project for the first year guided us through the most difficult phases of fieldwork. Shreya Rastogi's immense contributions during the analysis and writing phases held the Project together during extremely difficult times when it looked like it might all fall apart.

Though the 'Contributors' page lists their names, the extent and quality of contributions from Aradhana, Chinmay, Devina, Gale, Jagata, Lakshya, Maulshree, Pawani, Rishika, Sarvatrajit, and Vaibhav cannot be overstated. The perseverance and rigour they demonstrated as law students bodes extremely well for their future careers and the contributions they will make towards a more just world.

The suffering and desperation that the students encountered frustrated them often, particularly because they had explicit instructions not to intervene in any manner. Once the novelty of the field experience wore off and particularly as we headed into the analysis and writing phases, those of us remaining on the Project had to dig really deep to see this through. There are of course many things that we would do differently if we were to do this

again. In retrospect, the unique challenges we faced in the work of this kind certainly prompted errors in terms of Project design, logistical planning and personnel management. We did our best to correct these errors promptly and at the end of the day I think we are all the wiser for it. Some individuals have made profound professional and personal sacrifices for this Project and I will always wonder, irrespective of what this Project achieves, if the price they paid was worth it.

The remarkable work done by Reena Mary George with prisoners sentenced to death in India has been an inspiration and a constant reminder that this could be done. Dr. Yug Mohit Chaudhry and Dr. Usha Ramanathan have been pillars of support and sources of constant encouragement throughout this Project. We received incredible support from the National Legal Services Authority and particularly from Mrs. Asha Menon (Former Member Secretary of NALSA) in facilitating access to prisons across the country. The cooperation we received from state legal services authorities and prison officials made interviews with prisoners a whole lot easier.

Sidharth Luthra, Dr. Usha Ramanathan, Siddharth Aggarwal, Rebecca John, Trideep Pais, Vijay Hiremath and Dr. Yug Mohit Chaudhry engaged our researchers in thought-provoking orientation sessions.

The foundation on which this entire Project rests is of course the unwavering support we received from National Law University, Delhi. The Vice-Chancellor, Professor Ranbir Singh, along with Professor Srikrishna Deva Rao (former Registrar) and Professor GS Bajpai (incumbent Registrar) ensured that no financial or logistical impedi-

ment ever came in the way of this Project. The enabling research environment provided at the University is very rare amongst India's law schools and I do hope that the output of this Project will give the University the confidence to further expand those opportunities.

In bringing all this together, I do hope that we have done justice to all that we heard and made an effective contribution towards forcing a conversation that has been long overdue.

DR. ANUP SURENDRANATH

January 2016

New Delhi

Contents

12
INTRODUCTION

26
CHAPTER 1
COVERAGE OF THE
PROJECT

90
CHAPTER 4
SOCIO-ECONOMIC
PROFILE

CONTENTS FOR

**DEATH PENALTY INDIA REPORT
VOLUME 2**

Chapter 6 Experience in Custody

Chapter 7 Trial and Appeals

Chapter 8 Living on Death Row

Chapter 9 Seeking Mercy

Chapter 10 Impact

Chapter 11 Death sentences in
India (2000-2015): An Overview

Conclusion

16
METHODOLOGY

20
LEGAL
CONTEXT

48
CHAPTER 2
DURATIONS ON
DEATH ROW

68
CHAPTER 3
NATURE OF
CRIMES

128
CHAPTER 5
LEGAL
ASSISTANCE

142
APPENDIX

Introduction

The Death Penalty Research Project was an attempt at documenting the socio-economic profile of prisoners sentenced to death in India and also at understanding their interaction with various facets of the criminal justice system. The motivation in undertaking this Project was to contribute towards developing a body of knowledge that would enable us to have a comprehensive and in-depth understanding of the manner in which the death penalty is administered in India. While there exists excellent work on the analysis of judgments of the Supreme Court on the death penalty, there is unfortunately very little research on various other aspects of this extreme punishment. We were of the view that much wider research and its dissemination could significantly enrich the overall discussion on the death penalty and this Report is envisaged as a small step in that direction. A lot more work is certainly required on issues addressed in this Report along with identifying other relevant areas for death penalty research.

The various findings and observations documented in this Report were analysed from the viewpoint of prisoners currently under the sentence of death. In a historical sense, the analysis and information provided here then holds true only for a snapshot of prisoners sentenced to death in independent India.

The state of record-keeping we encountered during our work inspired very little confidence, if at all, about the feasibility of a broader historical analysis. Periodical research of this kind in the future would certainly contribute to developing trends concerning the issues identified in this Report.

At the core of this Report is our position that the death penalty is qualitatively a unique punishment, quite distinct from any form of incarceration. As is evident, this position is not a comment on the desirability of the death penalty as a form of punishment and neither does it primarily draw its strength from the argument that the death penalty is irreversible. While being incredibly important, the irreversibility argument nonetheless comes uncomfortably close to positing the concern as exclusively being one of wrongful executions. The more foundational reason for the uniqueness of the death penalty has not received sufficient attention. The uncertainty between life and death that a prisoner endures during her incarceration under the sentence of death forms the very foundation for this argument. This aspect of the death penalty is unmatched in any other form of incarceration, which is exacerbated even further within the criminal justice system in India due to various structural reasons. An overburdened judiciary, poor quality representation to marginalised sections and a chronically under-resourced prison system ensure that there is very little information about the legal process that reaches prisoners sentenced to death. This failure of the criminal justice system only worsens the constant anticipation of death that prisoners grapple with.

We observed that constantly enduring the uncertainty between life and death has many different layers to it. In some instances, prisoners sentenced to death, not very long before our interviews, were perhaps the most tormented and distressed in coming to terms with their punishment. In certain other instances, it were the

prisoners closest to execution, in terms of their mercy petition pending or having been rejected, that were the most perturbed. The passage of time also seemed to affect the prisoners differently. While some prisoners sentenced to death recently were extremely hopeful of relief in the appellate stages, other prisoners who had spent very long periods under the sentence said that they would rather be executed than lead a life with the possibility of an execution looming large. While such reactions of prisoners are dealt with in much more detail in Volume 2 in the chapter on experiences in prison, it was evident that the sentence of death and the possibility of an execution defined their experience of incarceration.

To be clear, taking a position on the uniqueness of the death penalty is not to commit either way on the issue of its desirability as a punishment. To evaluate the desirability of the death penalty was neither the mandate of the Project nor of this Report. This Report is meant to be a detailed documentation of various aspects concerning the administration of the death penalty in India. The impact of the findings and observations in this Report on the desirability of the death penalty is a task that must be undertaken separately.

The argument on uniqueness provides us with an important point of departure in evaluating the performance of different components of the criminal justice system in administering the death penalty. Undoubtedly, the same institutional and procedural practices of the criminal justice system are used to sentence people to other punishments and there might be similar concerns with those processes as well. However, given that the

death penalty is the most extreme punishment available and also unique as a form of punishment, it is important to evaluate the processes adopted against relevant constitutional guarantees, substantive legal provisions and procedural safeguards. The standards expected must be as rigorous as possible because the consequences are the most extreme. A very substantial part of the Project was dedicated to documenting the fidelity (or the lack of it) to relevant legal frameworks in sentencing individuals to death. Chapters on the pre-trial experience, trials and appellate processes in death penalty cases along with practices in prisons within Volume 2 of the Report contain qualitative discussions on various aspects of the criminal justice system. Using narratives of prisoners and their families, we have attempted to present the common concerns we encountered during our research. The narratives force us to confront numerous crisis points and reflect on the very foundations of the criminal justice system we use to sentence individuals to death.

Questions concerning access to legal representation and its quality are just as integral to understanding the mechanics of the death penalty in India. Much of the discussion on this issue has centred around the proportion of legal aid lawyers being used in capital cases. While our research shows that the use of legal aid lawyers is certainly not as high as we might believe it to be, focussing only on the inadequacies of the legal aid system may lead to an inaccurate portrayal of the crises with legal representation of prisoners sentenced to death. The question to ask is not really about the proportion of legal aid or private lawyers and the emphasis must

be on a more general qualitative evaluation of the legal services accessed by prisoners sentenced to death. As the chapter on legal assistance in Volume 1 demonstrates, there are serious concerns with the standard of legal representation across the board, irrespective of whether it is legal aid or private legal services. It is evident that the ability to spend a hefty amount in engaging one's lawyer has significant impact on the nature of legal services the prisoners were able to access. In that sense, the fact that a majority of the prisoners had private lawyers in the trial court and High Court did not in any way ensure that they had access to quality legal representation.

While Volume 2 undertakes a qualitative discussion of the various processes that are used within the criminal justice system to administer the death penalty, Volume 1 of the Report provides a detailed analysis of the socio-economic profile of prisoners under the sentence of death. The purpose of documenting such a profile is not to suggest in any way that there exists a causal link between the various factors under consideration and the death penalty. However, it does show that the burden of the death penalty falls disproportionately on different marginalised groups considered along axes of class, gender, caste, religion and levels of educational attainment. It would be grossly inaccurate, on the basis of our findings, to argue that there is direct discrimination in operation within the criminal justice system. There is excellent work that interrogates such possibilities of direct discrimination but neither the design of our research nor our findings are capable of supporting such a claim. However, our findings would be particularly important in understanding the

impact of the structural concerns with the criminal justice system. These structural concerns seem to not just have disparate impact, they also seem to further disempower and marginalise certain sections. This is evident from the experiences that families have undergone in light of the arrest and conviction of the concerned prisoners. The details of this provided in Volume 2 indicate that one person in conflict with the criminal justice system often means that there is a ripple effect that ends up deepening the social and economic marginalisation of family members.

By providing insets throughout the Report, we have attempted to present many of the issues in their particular and personal contexts. We hope that the various nuances of the issues under consideration have been made sharper by providing such a context to it. It also brings home the fact that social, political and legal discussions on the death penalty must consider a lot more than just the nature of the crime and theories of punishment.

The Report also contains a chapter that provides an overview of the fate of people sentenced to death in the last 15 years. This chapter is not based on field interviews and has been done by analysing judgments from various courts in India. It has enabled us to show the trends in death sentences imposed by trial courts and then demonstrate their outcomes in terms of confirmations, acquittals and commutations in appellate courts. The evidence is rather clear that the trial courts impose death sentences that are rarely sustainable in law. However, that condemns individuals to spend long durations under the sentence of death grappling with the uncertainty between

life and death discussed earlier. It is imperative that discussions on the death penalty are not limited to executions that are carried out and must focus equally on the experience of living under the sentence of death. Making an individual undergo that experience for years together is an extreme form of punishment in and of itself. Questions of its desirability as a punishment aside, we need to face the grim picture that emerges in terms of structural concerns with the criminal justice system and its impact on marginalised and vulnerable groups. The concerns that emerge are not those that can be addressed by legislative reforms but strike at its very foundations. This crisis in the criminal justice system has been apparent for very long now and it assumes completely different proportions when the consequences of relying on it are so severe and grave.

Methodology

The Death Penalty Research Project was carried out by interviewing all prisoners under the sentence of death in India between July 2013 and January 2015. The families of these prisoners were also interviewed during the Project. The list of prisoners considered for the study in each of the states were frozen on the date of entry of researchers into that particular state.

ESTABLISHING THE NUMBER OF PRISONERS SENTENCED TO DEATH

Very early on we realised that even the total number of prisoners under the sentence of death in India was not available in any reliable manner. Our first task, therefore, was to determine the exact number of prisoners sentenced to death in India. With tremendous support from the National Legal Services Authority (NALSA), we established contact with the state legal services authorities, district legal services authorities, Inspector General/Director General of prisons, and the prisons that lodged prisoners sentenced to death. Through correspondence with these institutions, by filing requests for information under the Right to Information Act, 2005, and prison visits we were able to obtain lists of prisoners under the sentence of death in each prison and state in India. The list of pending death sentence confirmations before the High Courts, obtained through the Registrar Generals of the respective High Courts, helped us cross-check the final list of prisoners under the sentence of death.

ACCESS TO PRISONERS SENTENCED TO DEATH

Prisons are a state subject under the Constitution of India and therefore, with extensive support from NALSA, we

had approached the Home Department of each state separately for permission to enter prisons to interview prisoners sentenced to death. While some states were extremely cooperative and prompt in processing our request, it took numerous letters and repeated meetings with certain others. It took us nearly a year to get permission from the Government of Maharashtra. The Government of Tamil Nadu denied us permission to interview the prisoners, repeatedly stating that they were awaiting security clearance for our researchers from 'agencies' in Delhi. They did not reveal which agencies these were or the details of their communication with them. Overall, we had access to 373 prisoners sentenced to death out of a total of 385. Of the 373 prisoners, we were unable to interview 17 prisoners and families of 85 prisoners due to various reasons, as explained in the section on 'Scope of the Project' in Chapter 1 on 'Coverage of the Project'.

PRISONER AND FAMILY INTERVIEWS

Before the field interviews, we held consultations with experts familiar with the death penalty to prepare for interviews with prisoners and their families. At the end of this phase, we prepared separate questionnaires for prisoner and family interviews. Orientation sessions with prosecutors, police investigators, defence lawyers, trial and appellate judges, and scholars were organised for the researchers. These sessions also included group discussions based on academic papers, case law, films exploring various themes of the criminal justice system and long reportage pieces. The process we adopted for the interview phase of the Project involved conducting one interview session with each prisoner and a separate

session with each family at their place of residence. Undoubtedly the information we received from both prisoners and families were limited by the fact that we had only one session with each of them. A different approach with multiple sessions would have certainly yielded more information but such an approach was rendered impractical by the kind of access we were permitted by the state governments.

All interviews were carried out as conversations and researchers were specifically instructed to avoid conducting interviews as though they were administering a survey. Researchers were required to use the questionnaires only as reference points for conversations. Due to such an approach, we were unable to obtain responses to every question from all interviews and that is evident in the varying number of responses on different issues.

In the prisons, we were not allowed to carry any recording device and had to rely exclusively on handwritten notes. Even though we initially tried using voice recorders during family interviews with the permission of the families, we discontinued the practice very soon because we received feedback that the families were very guarded when they were being recorded. In prisons we ensured that the interviews were not conducted in the office of the jailor or the prison superintendent. However, some prisons insisted on guards being present at a distance where they could visually observe the prisoner during the interview. The presence of prison officials or guards during an interview surely had an impact on the prisoners' ability to speak freely, and thereby posed a difficulty for us. Similarly, though family interviews were mostly conducted in

their homes, there were instances where people of the locality would gather primarily out of curiosity. Families often did not want to discuss details regarding the prisoners in the presence of neighbours, and we often had to craft solutions, such as meeting a family at a different location, or at a different time, when they were agreeable to speak more freely.

Investigating the innocence or guilt of the prisoners was specifically excluded as an aim of the Project and therefore there is no discussion on it in this Report. Moreover, we have not conducted any documentary validation of the socio-economic information provided to us by the prisoners or their families during the interviews, and this Report only reflects the narratives obtained through interviews. We realised very early on that many prisoners and their families had no real access to documentary proof, and therefore, a validation exercise on that basis would be futile.

CONFIDENTIALITY AND PROTECTION OF IDENTITY OF PRISONERS/ FAMILIES

Prior to each interview, we provided an extensive description of the Project to the prisoners and families. We also provided each prisoner and family with an undertaking of confidentiality, both in written form (in English as well as in local languages) and also orally explaining the contents of our written undertaking. All prisoners and their families were assured that any information given would be used only for research purposes and the publication of such research. For prisoners and families who agreed to be interviewed, they were further informed that there was

no obligation to respond to every question that was put to them.

In order to maintain confidentiality and to prevent identification of prisoners/ families, the following measures have been adopted throughout the Report:

- All names of prisoners and their family members have been changed. The names given to the prisoners and their family members are fictitious and resemblance to any real person is coincidental and unintended.
- Relevant geographical information concerning location of prisons and names of villages, towns, cities, districts and states have been omitted.
- Identity of the concerned trial court and High Court has been withheld while writing about a prisoner's experience in the legal process.
- Information from judgments, including the dates of the incident/ arrest, dates of judgments from the trial court/ High Courts/ Supreme Court have been omitted where the identity of the prisoner may be revealed.
- Date of disposal of mercy petitions have not been revealed.
- Case citations have been omitted in places where we have analysed the judgments relating to prisoners in our study.

REVIEW AND ANALYSIS

After the interviews, the field notes were organised into various templates according to the themes reflected in the chapter titles of this Report. It took an incredible amount of effort from the Review & Analysis Team to convert the field notes into a common framework of analysis.

The process of reviewing field notes and converting it into information that could be analysed in Microsoft Excel took us nearly eight months. We used Microsoft Excel in combination with data visualisation softwares to produce the graphs and tables contained in this Report. We also coded the narratives we obtained through the interviews to develop various sub-themes and enable a qualitative analysis. The coding for the qualitative analysis was done exclusively in Microsoft Excel.

IN RETROSPECT

There are many things we could have done differently that would have made our fieldwork faster and more efficient. Finding families in different parts of the country was undoubtedly the toughest part of the Project. In retrospect, certain changes in the manner in which we collected information about their current locations would have saved us a lot of time and resources. We could also have planned interviews with the lawyers who represented prisoners in trial courts much better and it is rather unfortunate that we were unable to complete that part. However, the scale and nature of the Project was a tremendous challenge from which we have learnt extremely valuable lessons for conducting sensitive empirical research of this kind.

NON-INTERVENTION

The position that researchers took on the death penalty was not a bar to their participation in the Project. Though researchers were bound to confront situations of extreme poverty and desperation, they had clear instructions not to provide any assistance in terms of money, food, cloth-

ing etc. All researchers explicitly informed the prisoners and their families that the interviews were for research purposes only and not meant to assist them in any way. Nonetheless, prisoners and their families repeatedly requested researchers to draw the attention of the world outside to the injustices in their cases.

Legal Context

1 For more details on offences punishable by death in India, refer to Chapter 1 on 'Coverage of the Project'.

2 Section 235(2), Code of Criminal Procedure, 1973.

3 Section 354(3), Code of Criminal Procedure, 1973.

4 Section 366(1), Code of Criminal Procedure, 1973.

5 The Air Force Act, 1950; The Army Act, 1950; The Assam Rifles Act, 2006; The Border Security Force Act, 1968; The Coast Guard Act, 1978; The Indo-Tibetan Border Police Force Act, 1992; The Navy Act, 1957; The Sashastra Seema Bal Act, 2007; and The Terrorist and Disruptive Activities (Prevention) Act, 1987.

6 Article 134 of the Constitution of India lays down the circumstances in which an automatic appeal lies to the Supreme Court of India.

7 *Bachan Singh v. State of Punjab* (1980) 2 SCC 684. The majority comprising Chief Justice Y.V. Chandrachud and Justices R.S. Sarkaria, A.C. Gupta and N.S. Untwalia upheld the constitutional validity of the death penalty. In a dissenting opinion delivered in August 1982, Justice P.N. Bhagwati declared the death penalty to be unconstitutional. The constitutionality of the death penalty was previously adjudicated upon and upheld in October 1972 by a five-judge bench of the Supreme Court in *Jagmohan Singh v. State of Uttar Pradesh* (1973) 1 SCC 20.

8 For a detailed analysis of the inconsistencies in the use of the 'rarest of rare' doctrine, see Amnesty International India and PUCL Tamil Nadu, *Lethal Lottery: The Death Penalty in India-A study of Supreme Court judgments in death penalty cases 1950-2006*, 2008, available

Offences punishable with death in India are contained in both central and state legislations, but there is no exhaustive list of such provisions. 59 sections in 18 central legislations, containing both homicide and non-homicide offences, provide for the death sentence as a form of punishment. However, it is not possible to compile such information for all 29 states due to lack of effective access to relevant state legislations.¹ The Code of Criminal Procedure, 1973 (CrPC) explicitly provides for a separate sentencing hearing² and also requires special reasons to be recorded when a trial court imposes the death sentence.³ Death sentences imposed by trial courts are necessarily required to be confirmed by the High Court,⁴ except under certain central legislations that exclude the application of the CrPC.⁵ There is no right to appeal to the Supreme Court from the decision of the High Court except in a few circumstances.⁶

The constitutionality of the death penalty in India was last upheld in May 1980 by a five-judge bench of the Supreme Court of India.⁷ Ruling that the death penalty did not violate the right against the deprivation of life contained in Article 21 of the Constitution, the majority held that the death penalty should be imposed only in the 'rarest of rare' instances using the sentencing framework outlined in the judgment. However, the experience of working the 'rarest of rare' over the last three decades has been fraught with concerns of arbitrariness and judicial inconsistency. Not only have these concerns been extensively analysed and documented,⁸ the Supreme Court itself has explicitly acknowledged a long line of cases which have misinterpreted and incorrectly applied the 'rarest of rare' doctrine.⁹

The Supreme Court has also adjudicated challenges to various aspects of the administration of the death penalty. Mandatory death penalty has been held to be unconstitutional,¹⁰ while

at: <<https://www.amnesty.org/en/documents/ASA20/007/2008/en/>>.

⁹ See *Santosh Kumar Satishbhushan Bariyar v. State of Maharashtra* (2009) 6 SCC 498, paragraph 63; *Sangeet & Anr v. State of Haryana* (2013) 2 SCC 452, paragraphs 34-41; and *Shankar Kisanrao Khade v. State of Maharashtra* (2013) 5 SCC 546, paragraph 124.

¹⁰ *Mithu v. State of Punjab* (1983) 2 SCC 277, paragraph 23; See also, the decision of the Bombay High Court in *Indian Harm Reduction Network v. Union of India* Criminal Writ Petition No. 1784 of 2010 (High Court of Bombay) striking down the mandatory death penalty in Section 31A of the Narcotics Drugs and Psychotropic Substances Act, 1985; and the decision of the Supreme Court in *State of Punjab v. Dalbir Singh* (2012) 3 SCC 346, paragraph 91 striking down the mandatory death penalty in Section 27(3) of the Arms Act, 1959.

¹¹ *Deena v. Union of India* (1983) 4 SCC 645, paragraph 81.

¹² *Mohd. Arif v. Registrar, Supreme Court of India* (2014) 9 SCC 737, paragraphs 40-41; See also the dissent by Justice Chelameshwar (2014) 9 SCC 762.

¹³ *Shabnam v. Union of India & Ors* (2015) 6 SCC 702, paragraph 21. Also see, *Peoples' Union for Democratic Rights v. Union of India* PIL No. 57810 of 2014 (High Court of Judicature at Allahabad).

¹⁴ *Shamsher Singh v. State of Punjab & Anr* (1974) 2 SCC 831, paragraph 57.

¹⁵ *Shatrughan Chauhan & Anr v. Union of India* (2014) 3 SCC 1, paragraph 49.

hanging as the method of execution has been declared to be compatible with the provisions of the Constitution of India.¹¹

Though there is no right to appeal to the Supreme Court in death penalty cases (except in limited circumstances referred to above), a right to a mandatory open court hearing in death penalty cases under the court's review jurisdiction has been recognised.¹²

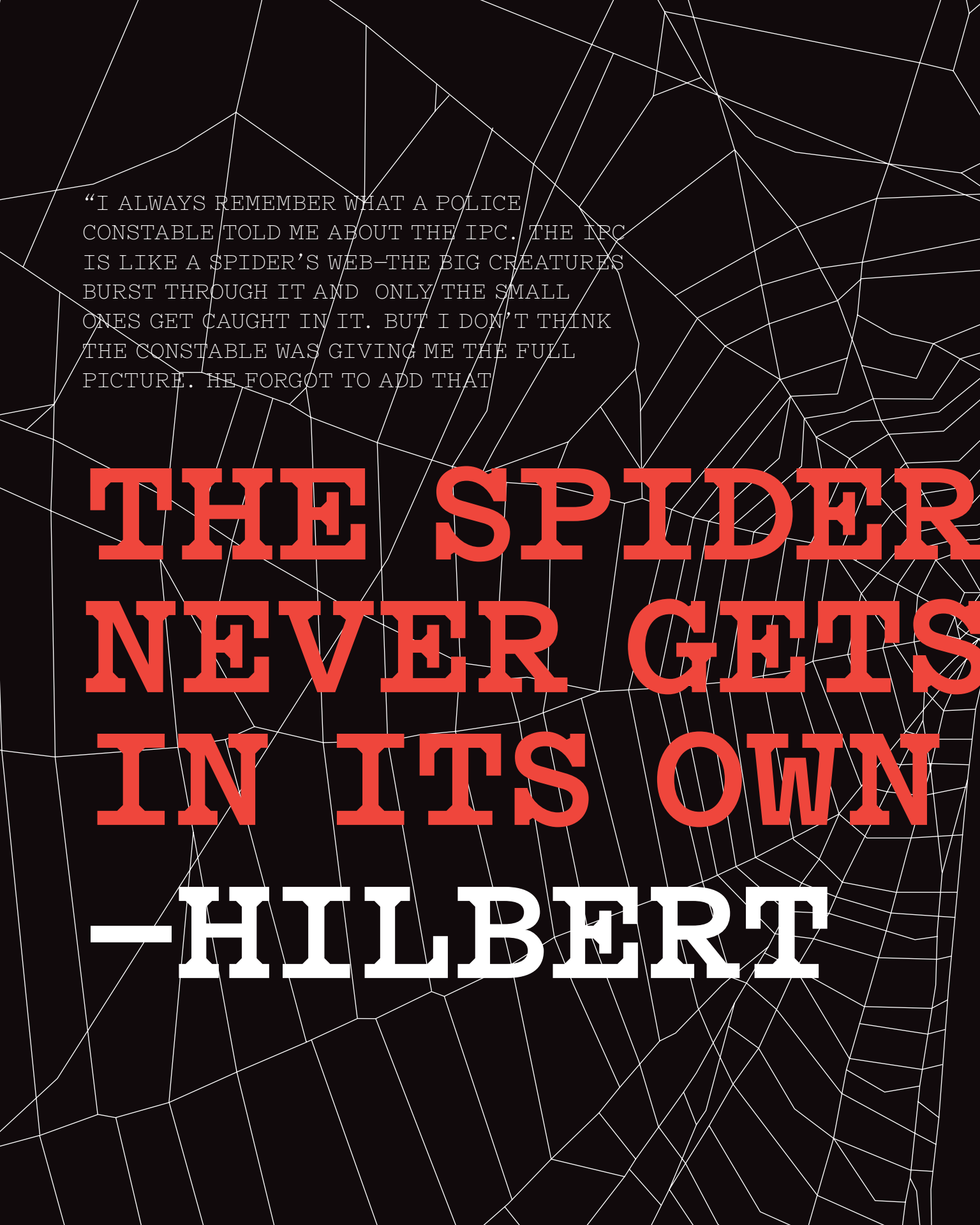
Before this decision, review petitions against the judgment of the Supreme Court in a death sentence appeal (as in all other cases) were decided in chambers. The Supreme Court, while affirming a decision of the Allahabad High Court, has also laid down detailed procedural safeguards to be followed while issuing a death warrant for setting the date, time and place of execution.¹³

Individuals sentenced to death can approach the Governor of a state or the President of India for clemency under Articles 161 and 72 of the Constitution of India. The Governor and the President are constitutionally bound by the advice of the executive in deciding mercy petitions, but the Constitution is silent on the time period within which the Governor/ President must take a decision.¹⁴ The Supreme Court has settled the position that the decision of the President to reject clemency is subject to judicial review on limited grounds. Further, undue and unexplained delay by the executive in disposing the mercy petition has been recognised as torture and a ground for commutation.¹⁵

The Law Commission of India has twice undertaken a comprehensive review of the death penalty.¹⁶ In its 262nd Report (August 2015), the Law Commission of India recommended abolition of the death penalty in a phased manner. As a first step, it recommended abolishing the death penalty for all offences except those related to terrorism.

¹⁶ Law Commission of India, 35th Report on 'Capital Punishment', 1967, available at: <<http://lawcommissionofindia.nic.in/1-50/Report35Vol1and3.pdf>>. The Law Commission concluded that despite the merit of the abolitionist arguments, India as a society was not yet ready to "experiment with abolition." The Law Commission also considered the issue of mode of execution in its 187th Report on 'Mode of Execution of Death Sentence and Incidental Matters', 2003.

There is no official record maintained by any ministry/ agency of the total number of prisoners India has executed since independence. Our efforts to collect this information from all prisons with gallows did not lead us to exhaustive records. The information we received from the prisons has been collated here: <http://www.deathpenaltyindia.com/executions/>.



"I ALWAYS REMEMBER WHAT A POLICE
CONSTABLE TOLD ME ABOUT THE IPC. THE IPC
IS LIKE A SPIDER'S WEB—THE BIG CREATURES
BURST THROUGH IT AND ONLY THE SMALL
ONES GET CAUGHT IN IT. BUT I DON'T THINK
THE CONSTABLE WAS GIVING ME THE FULL
PICTURE. HE FORGOT TO ADD THAT

THE SPIDER NEVER GETS IN ITS OWN —HILBERT



**ITSELF
CAUGHT
WEB”**

Chapter 1

Coverage of the Project

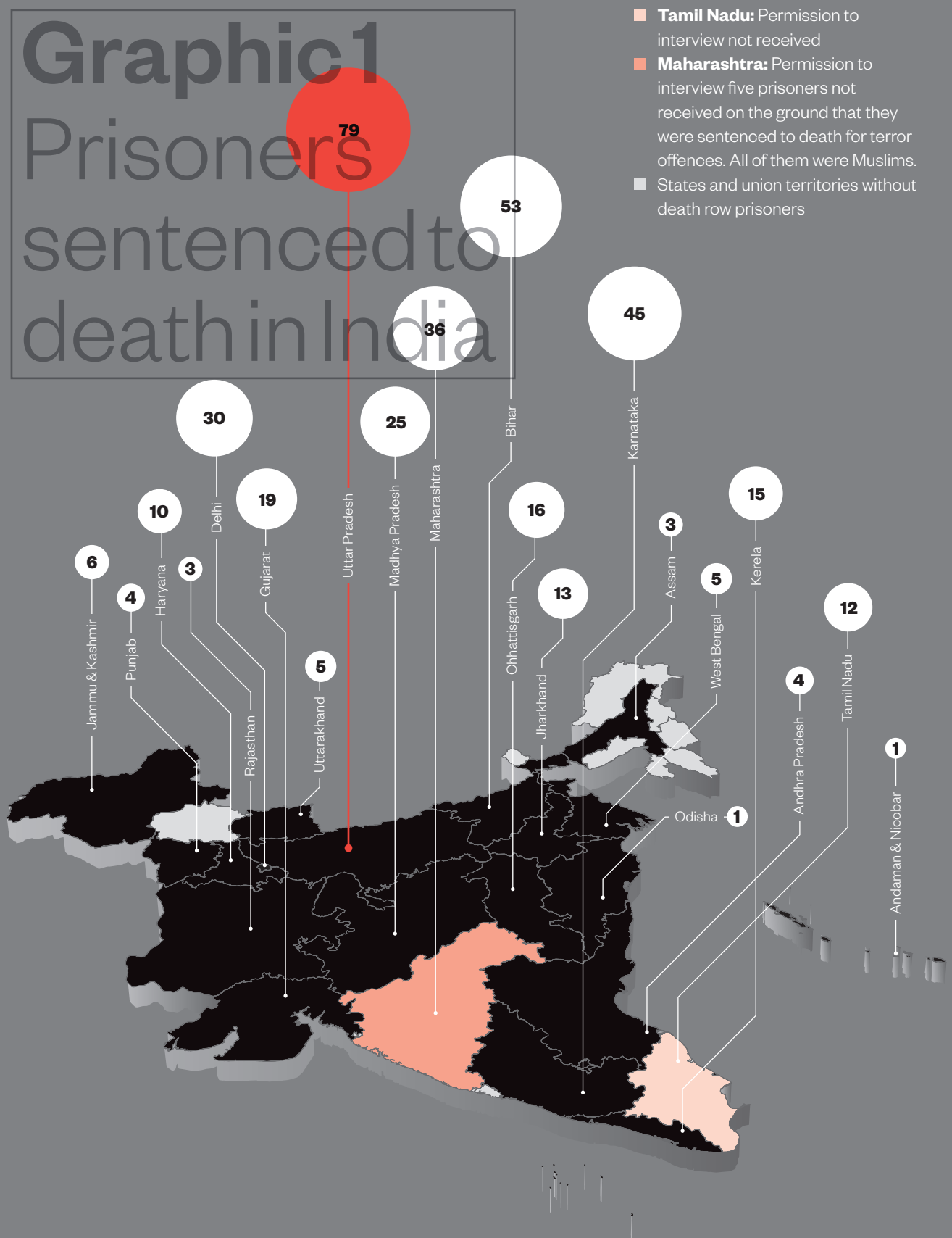
SCOPE OF THE PROJECT

The total number of prisoners sentenced to death in India during the course of the Death Penalty Research Project (Project) was 385. We interviewed prisoners in different states between July 2013 and January 2015, with the list of prisoners taken into consideration for each state being determined by the date on which we entered the state. Further, within states which have multiple prisons where prisoners sentenced to death are incarcerated, the number of prisoners interviewed was determined by the date on which we entered that particular prison. We adopted this methodology on realising that freezing the list of prisoners as on the date of the launch of the Project would not account for those who were sentenced to death between the launch and the actual date on which we entered the prisons.

While 385 prisoners were sentenced to death during the course of the Project, 373 prisoners across 20 states and one union territory (Andaman & Nicobar Islands), form part of the study. The 12 prisoners who do not form part of this study are those who were sentenced to death in Tamil Nadu. Despite our numerous attempts over 18 months starting in May 2013, the Prisons Department of

Graphic 1

Prisoners sentenced to death in India



Female prisoners sentenced to death		
State	Number of prisoners	
Delhi		3
Maharashtra		3
Uttar Pradesh		2
Chhattisgarh		1
Haryana		1
Karnataka		1
Madhya Pradesh		1

Ratio of prisoners sentenced to death in each state in comparison with the population		
State	Number of prisoners	Ratio per 10,00,000 population
Delhi	30	1.79
Karnataka	45	0.74
Chhattisgarh	16	0.63
Bihar	53	0.51
Uttarakhand	5	0.49
Jammu & Kashmir	6	0.48
Kerala	15	0.45
Uttar Pradesh	79	0.39
Haryana	10	0.39
Jharkhand	13	0.39
Madhya Pradesh	25	0.34
Maharashtra	36	0.32
Gujarat	19	0.31
Tamil Nadu	12	0.18
Punjab	4	0.14
Assam	3	0.1
West Bengal	5	0.05
Andhra Pradesh	4	0.05
Rajasthan	3	0.04
Odisha	1	0.02

the Government of Tamil Nadu refused permission saying it had not received security clearance from 'agencies' in Delhi. We were never told who these 'agencies' were **(Graphic 1)**.

Of the 373 prisoners who form part of the study, 17 were not interviewed due to various reasons. While, some of them were being moved to different cities for medical treatment, others were lodged in mental health facilities and yet others were being taken to other states to stand trial. The Government of Maharashtra, however, did not permit us to interview five prisoners on the

ground that they were sentenced to death for “terrorist activities and bomb blast cases.” All five were Muslims and were sentenced to death in the 1993 Bombay bomb blasts case, the 2003 Mumbai twin car bomb blast case and the 2010 Pune German Bakery case. Despite this, all 17 prisoners form a part of our study because we have been able to gather information about them and their cases through interviews with their family members and lawyers, along with other documentary sources. Additionally, families of 85 prisoners sentenced to death could not be interviewed for a variety of reasons, such as refusal to be interviewed (some of them due to severance of ties with prisoners), inability of researchers to trace the families, and geographical inaccessibility of certain areas.




During the period of the Project, no prisoners were sentenced to death in Arunachal Pradesh, Goa, Himachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Tripura, Chandigarh, Dadra & Nagar Haveli, Daman & Diu, Lakshadweep, and Puducherry. Telangana was not considered separately since the state was not in existence at the launch of the Project or when interviews with the families were conducted.

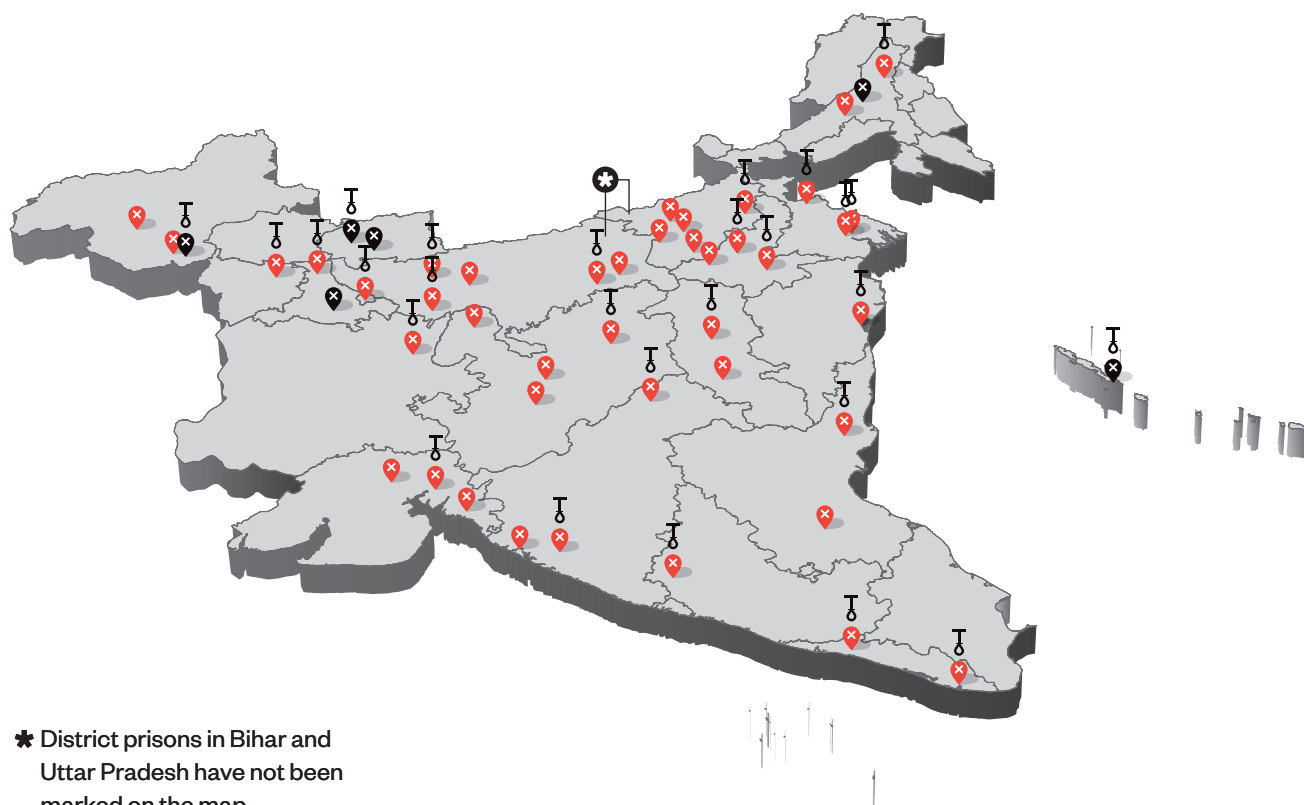
Of the 373 prisoners, 361 were men and 12 were women. Delhi and Maharashtra each had three female prisoners sentenced to death while Uttar Pradesh had two. Chhattisgarh, Madhya Pradesh, Karnataka and Haryana each had one female prisoner sentenced to death (**Table 1**).

Amongst the states, while Uttar Pradesh had the highest number of prisoners sentenced to death (79) in absolute numbers, Delhi had the highest ratio in terms of the prisoners sentenced to death in comparison with the population (1.79 persons per 10 lakh

Graphic 2

Prisons incarcerating persons sentenced to death

-  DISTRICT PRISONS
-  CENTRAL PRISONS
-  GALLOWS



Prisons incarcerating persons sentenced to death				
State	Type of prison	Prison	Number of prisoners	Gallows
Andaman & Nicobar Islands	District	District Jail, Prothrapur	1	Yes
Andhra Pradesh	Central	Central Prison, Kadapa	1	No
		Central Prison, Rajahmundry	3	Yes
Assam	Central	Central Jail, Guwahati	1	No
		Central Jail, Jorhat	1	Yes
	District	Special Jail, Nagaon	1	No
Bihar	Central	Central Jail, Buxar	2	No
		Central Jail, Gaya	3	No
		Model Central Prison, Beur, Patna	14	No
		Shaheed Jubba Sahani Central Jail, Bhagalpur	21	Yes
		Shaheed Khudi Ram Bose Central Jail, Muzaffarpur	7	No
	District	District Jail, Arrah	5	No
Chhattisgarh	Central	District Jail, Khagaria	1	No
		Central Jail, Durg	7	No
	Central	Central Jail, Raipur	9	Yes
		Central Jail, Tihar	30	Yes
Delhi	Central	Ahmedabad Central Prison	6	No
		Lajpor (Surat) Central Prison	1	No
		Vadodara Central Prison	12	Yes
Gujarat	Central	Central Jail, Ambala	6	Yes
	District	District Jail, Bhiwani	4	No
Jammu & Kashmir	Central	Central Jail, Kotbhalwal, Jammu	3	No
		Central Jail, Srinagar	1	No
	District	District Jail, Jammu	2	Yes
Jharkhand	Central	Birsa Munda Central Jail, Hotwar, Ranchi	5	Yes
		Central Jail, Medininagar, Palamau	1	No
		Loknayak Jaiprakash Narayan Central Jail, Hazaribag	7	Yes
Karnataka	Central	Central Prison, Belgaum	45	Yes
Kerala	Central	Central Prison, Kannur	6	Yes
		Central Prison, Thiruvananthapuram	9	Yes
Madhya Pradesh	Central	Central Jail, Bhopal	3	No
		Central Jail, Gwalior	2	No
		Central Jail, Indore	14	No
		Netaji Subhash Chandra Bose Central Jail, Jabalpur	6	Yes

Prisons incarcerating persons sentenced to death in India (Continued)				
Maharashtra	Central	Mumbai Central Prison	1	No
		Nagpur Central Prison	13	Yes
		Yerwada Central Prison	22	Yes
Odisha	Central	Circle Jail, Berhampore	1	Yes
Punjab	Central	Central Jail, Patiala	4	Yes
Rajasthan	Central	Jaipur Central Jail	3	Yes
Uttar Pradesh	Central	Central Jail, Agra	12	Yes
		Central Jail, Bareilly	3	Yes
		Central Jail, Fatehgarh	2	No
		Central Jail, Naini	11	Yes
		Central Jail, Varanasi	7	No
	District	District Jail, Azamgarh	1	No
		District Jail, Badaun	2	No
		District Jail, Barabanki	1	No
		District Jail, Basti	1	No
		District Jail, Etah	4	No
		District Jail, Faizabad	7	Yes
		District Jail, Ghaziabad	5	No
		District Jail, Hardoi	3	No
		District Jail, Jhansi	1	Yes
		District Jail, Kanpur	1	Yes
		District Jail, Mainpuri	1	No
		District Jail, Mathura	8	No
		District Jail, Mau	1	No
		District Jail, Moradabad	1	No
		District Jail, Muzaffarnagar	5	No
		District Jail, Rampur	1	No
		District Jail, Sidharth Nagar	1	No
Uttarakhand	District	District Jail, Dehradun	1	Yes
		District Jail, Roshnabad, Haridwar	4	No
West Bengal	Central	Alipore Central Correctional Home, Kolkata	2	Yes
		Berhampore Central Correctional Home, Murshidabad	2	Yes
		Presidency Correctional Home, Kolkata	1	Yes

¹ The state-wise population has been considered according to the 2011 Census of India available at: <<http://censusindia.gov.in/2011census/censusinfodashboard/index.html>>.

² For more details, refer to Chapter 11 on 'Death sentences in India (2000-2015): An Overview'.

population), with 30 prisoners sentenced to death (**Table 2**).¹ An analysis of death sentences imposed by courts in India over the past 15 years shows that the most number of death sentences have been imposed in Delhi during this period, in comparison with its population.²

Central legislations other than IPC with offences punishable by death
The Air Force Act, 1950
The Arms Act, 1959
The Army Act, 1950
The Assam Rifles Act, 2006
The Border Security Force Act, 1968
The Coast Guard Act, 1978
The Commission of Sati (Prevention) Act, 1987
The Delhi Metro Railway (Operation and Maintenance) Act, 2002
The Geneva Conventions Act, 1960
The Indo-Tibetan Border Police Force Act, 1992
The Narcotic Drugs and Psychotropic Substances Act, 1985
The Navy Act, 1957
The Petroleum and Minerals Pipelines (Acquisition of right of user in Land) Act, 1962
The Sashastra Seema Bal Act, 2007
The Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989
The Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002
The Unlawful Activities Prevention Act, 1967

PRISONS

The prisoners forming part of the study were incarcerated in 67 prisons, of which 42 were central prisons and 25 were district prisons (**Graphic 2**). Of these 67 prisons, 30 had gallows (**Table 3**).

States adopted different practices in terms of the prisons in which prisoners sentenced to death were lodged. While most states lodged prisoners sentenced to death only in central prisons, Uttar Pradesh lodged these prisoners in 17 district prisons in addition to five central prisons. Central Prison, Belgaum in Karnataka, the only prison in Karnataka where prisoners sentenced to death were lodged, incarcerated the highest number of such prisoners in India.

Prison administrations across the country consider prisoners sentenced to death to be 'high-risk' prisoners and therefore once the sentence of death was pronounced, prisoners were often moved to central prisons in order to keep them in a high security environment. While the central prisons seem to be much better in terms of infrastructure and facilities, the move from the district prison to the central prison as a prisoner sentenced to death invariably meant that it became more difficult for families to meet the prisoners.

The *mulaqats* (visits) then meant longer distances, more expenses and increased logistical difficulties for the families of the prisoners. The extremely restricted *mulaqat* hours, typically no longer than three hours, meant that families who had to travel into the towns

BELGAUM PRISON, KARNATAKA

Karnataka was the only state that kept all prisoners sentenced to death in one prison. As soon as the prisoners were sentenced to death, they were moved to the Central Prison, Belgaum. Their families who were residing at various places across the state were thus compelled to travel to Belgaum district in North-West Karnataka to meet them. The long distances meant heavy expenditure of up to Rupees 1,600. Given their economic vulnerability, this was an unaffordable amount.

The family of Gopesh, a prisoner lodged in Central Prison, Belgaum, described how they packed *chapattis* (Indian bread) and curd rice for the trip so as to save money. While some families would catch a bus or train to return the same evening, others would spend one night in a *durgah* (shrine), since paid accommodation elsewhere was simply beyond their means. The shift to Belgaum also resulted in the family visits becoming infrequent. Some families would be able to visit only once or twice a year, while the

most frequent visits were those made once in two months. Jumail's wife was unable to take her children with her from Hyderabad to visit their father since the long journey was not easy for the young children who invariably fell sick along the way. Similarly, Barun Kumar, had asked his family not to visit him because of the hardships involved in making the difficult journey. Mayur, sentenced to death for rape and murder of a minor, had asked his family to save money for his children rather than spending it on the travel to meet him.

where the central prisons were located, had to make arrangements for stay if they arrived after the stipulated meeting hours. Often people stayed on railway platforms or in bus terminals, only to meet the prisoner for no more than 20 minutes, the next day.

DEATH PENALTY OFFENCES IN INDIA

In India, 59 sections in 18 central legislations allow for the death penalty as a possible punishment. Out of these 59 sections, 12 sections are under the Indian Penal Code (IPC).³

Apart from the IPC, **Table 4** shows the other 17 central legislations that contain offences which are punishable by death.⁴ Lack of effective access to state legislations makes it impossible to provide any comprehensive information on the number of provisions under state laws that allow for the death penalty. However, no prisoners were sentenced to death under any state legislation during the course of the Project.

HOMICIDE AND NON-HOMICIDE OFFENCES

Central legislations in India allow for the possibility of a death sentence in both homicide offences i.e. offences involving loss of life and non-homicide offences. The issue of whether the death penalty should exist for non-homicide offences has been extensively debated in the United States, with the US Supreme Court ruling that it would be unconstitutional to extend the death penalty to non-homicide offences like rape,⁵ including rape of a minor.⁶

In India, while there are 41 non-homicide offences in central legislations that carry the death penalty, only 13 homicide offences are punishable by death.⁷ In August 2015, the Supreme Court upheld

³ For the text of the 59 provisions in central legislations that provide for the death sentence, refer to Table 1 of the Appendix.

⁴ The list of central legislations with offences punishable by death has been prepared as per content published by Ministry of Law and Justice, Legislative Department available at <<http://www.indiacode.nic.in/>>.

⁵ *Coker v. Georgia* 433 U.S. 584 (1977).

⁶ *Kennedy v. Louisiana* 554 U.S. 407 (2008).

“HOW CAN WE ASK FOR DEATH! EVEN IF THEY ARE LANGUISHING IN JAIL, WE TAKE COMFORT FROM THE FACT THAT AT LEAST THEY ARE THERE, PHYSICALLY PRESENT. IF THEY DIE, WE WILL BE TOTALLY SHATTERED.”

—MORE BROTHERS’ WIVES

⁷ Offences under Sections 364A, 376A and 376E of the Indian Penal Code, 1860 have been considered as both homicide and non-homicide offences as they provide for the death sentence in situations, where loss of life may or may not be involved. In addition, civil offences committed by those to whom defence legislations are applicable, are deemed to be offences under defence legislations. However, such persons are punishable to the extent provided under the civil legislations, with death being the maximum possible punishment. As a result, if the substantive civil offence is a homicide offence, then the deemed offence under a defence legislation would also be a homicide offence. On the other hand, if the substantive civil offence is a non-homicide offence punishable with death, then the deemed offence under the defence legislation would also be a non-homicide offence. There are eight such provisions in the defence legislations as provided in Table 1 of the Appendix.

⁸ *Vikram Singh @ Vicky & Anr v. Union of India & Ors* (2015) 9 SCC 502.

the constitutionality of Section 364A of the IPC which allows for the sentence of death when kidnapping is for ransom.⁸

PRISONERS SENTENCED TO DEATH FOR NON-HOMICIDE OFFENCES

In our study, 12 out of the 373 prisoners were sentenced to death for non-homicide offences, i.e. for offences that did not result in the loss of human life. These prisoners were convicted in three cases. Eight prisoners from Karnataka were sentenced to death in the Bangalore Church Blasts case (June 2000) even though the blasts did not cause any loss of life. Section 121 of the IPC, under which they were sentenced, criminalises “waging, or attempting to wage war, or abetting waging of war, against the Government of India.”

Three prisoners from Maharashtra were sentenced to death in the Shakti Mills gang-rape case under Section 376E of the IPC, which was introduced as part of the Criminal Law (Amendment) Act, 2013. These amendments were part of the Central Government’s response to the protests that broke out after the gang-rape in Delhi on 16 December 2012. The provision introduced the death penalty for the non-homicide offence of a repeat conviction for rape. The constitutionality of the provision is currently under challenge in the High Court of Bombay.

One prisoner from Gujarat was sentenced to death under Section 31A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS). This provision allows for the death penalty in instances of repeat conviction for certain offenses involving commercial quantity of any narcotic drugs or psychotropic substances.

THE MANDATORY DEATH PENALTY

The mandatory death penalty continues to remain on the statute books in India though it has been held to be unconstitutional.

In *Mithu v. State of Punjab*, the Supreme Court struck down Section 303 of the IPC, which prescribed mandatory death sentence for the offence of murder committed by a person undergoing imprisonment for life, on the ground that it violated Articles 14 and 21 of the Constitution.⁹ It was held that the basis for this Section was the assumption that convicts serving life imprisonment were a “dangerous breed of humanity as a class”, but that there was no scientific basis to support that claim. The Court also held that the deprivation of the judicial discretion

on sentencing was bound to lead to injustice, and was arbitrary, unfair and unjust. In *Indian Harm Reduction Network v. Union of India*, the High Court of Bombay held that the provision for mandatory death sentence under Section 31A of the NDPS was in violation of Article 21 of the Constitution, and held that the words “shall be sentenced to death” be read as “may be sentenced to death.”¹⁰ In *State of Punjab v. Dalbir Singh*, the Supreme Court struck down Section 27(3) of the Arms Act, 1959 which made the offence of using prohibited arms, if it results in the death of a person, as punishable with death.¹¹ It was found that Section 27(3) was in breach of Articles 14 and 21 of the Constitution, as it took away judicial

discretion in matters relating to imposition of the death penalty. Despite mandatory death sentence being declared unconstitutional in the cases mentioned above, it is a matter of grave concern that it continues to be a part of certain central legislations. Section 195A of the IPC, Section 3(1)(g) (i) of the Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 and Section 3(2)(i) of The Scheduled Castes and the Scheduled Tribes (Prevention of Atrocities) Act, 1989 still provide for the mandatory death sentence.

PRISONERS SENTENCED TO DEATH FOR HOMICIDE OFFENCES

The homicide offences for which 361 prisoners were sentenced to death can be grouped under six broad categories (**Graphic 3**):

■ **Murder *simpliciter*:** This category includes cases where the prisoners were convicted, under Section 300 of the IPC (murder), or Section 300 of the IPC (murder) along with the Arms Act, 1959, the Explosive Substances Act, 1908 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

■ **Rape with murder:** This category includes those cases where the main offence along with the murder charge was rape.

■ **Kidnapping with murder:** This category includes those cases where the main offence along with the murder charge was kidnapping.

■ **Terror offences:** This category includes cases where the prisoners were convicted under the Terrorist and Disruptive Activities (Prevention) Act, 1987, Prevention of Terrorism Act, 2002, Unlawful Activities (Prevention) Act, 1967, and the offence of ‘waging war’ under Section 121 of the IPC.

■ **Dacoity with murder:** This category includes cases where prisoners were convicted for dacoity with murder under Section 396 of the IPC.

■ **Offences under defence legislations:** Among the prisoners in our study, one was given the death penalty for an offence under the Border Security Force Act, 1968, while another was sentenced to death under the Army Act, 1950.

9 (1983) 2 SCC 277, paragraph 5.

10 In Criminal Writ Petition No. 1784 of 2010, paragraph 89. The Act was subsequently amended in March 2014 through an amendment, which prescribes a minimum sentence under Section 31A (not less than the punishment under Section 31) and has removed the mandatory death penalty.

11 (2012) 3 SCC 346, paragraph 91.

DEATH SENTENCE UNDER NDPS

Kalam was sentenced to death under Section 31A of the NDPS. He was first arrested at the age of 21, for an offence involving commercial quantities of *charas* (hashish). He was convicted and sentenced to 10 years rigorous imprisonment on the basis of his confession statement, and that of his co-accused, even though these statements were retracted on the ground that they had been

extracted through torture. He stated that he was severely beaten and lit cigarettes were stubbed on his body, leaving permanent scars. While the High Court upheld the conviction, an appeal against this decision has been pending before the Supreme Court since 2009. During the pendency of this case, when Kalam was out on parole, he was arrested for the delivery of commercial quantities of *charas*. Based on his earlier conviction,

he was sentenced to death for the subsequent offence under Section 31A of NDPS. The appeal against the sentence of death has been pending before the High Court, awaiting the decision of the Supreme Court regarding the earlier offence. Consequently, Kalam has been incarcerated for 127 months (10 years, 7 months), and has been under the sentence of death for over five years.

After murders under Section 302 of the IPC, murders involving rape as well, formed the second highest category of offences. Within the category of homicide cases, there was a wide variance in terms of the facts on the basis of which death sentence was imposed. While a closer analysis of such cases is required, it nonetheless raises the question whether allowing the death penalty for all murders that fall under Section 302 is overbroad.

STAGES IN DEATH SENTENCE CASES

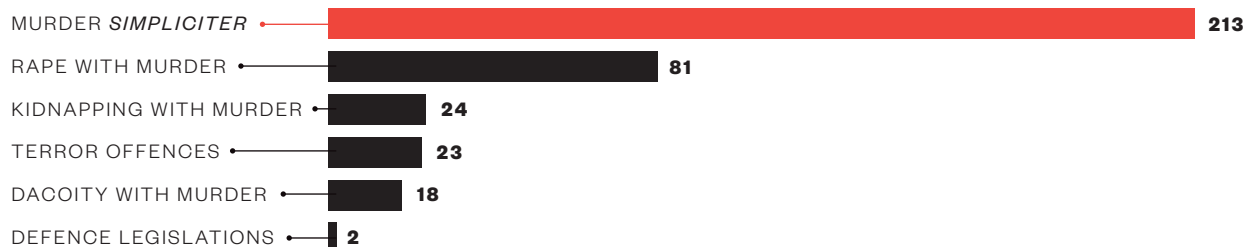
Ordinarily, all trials pertaining to capital offence cases are conducted in a Court of Session (**Graphic 4**). According to Section 366 (1) of the Code of Criminal Procedure, 1973 (CrPC), a death sentence imposed by the Court of Session cannot be carried out until the High Court of that state confirms the sentence. Therefore, irrespective of whether the prisoner files an appeal or not, a death sentence imposed by Court of Session is referred to the concerned High Court for confirmation. However, several central legislations which exclude the application of the CrPC do not require confirmation of death sentence by the High Court for the capital offences contained thereunder.¹²

Except in a few circumstances, there is no automatic right available to a prisoner sentenced to death to have her case heard by the Supreme Court. In criminal matters, an appeal lies to the Supreme Court under Article 132 of the Constitution if a certificate of appeal has been granted by the High Court stating that the case involves a substantial question of law regarding the interpretation of the Constitution. The Supreme Court may also be approached under Article 136 of the Constitution which gives the Court the discretion to decide whether it wants to hear a case filed under

¹² The Air Force Act, 1950; The Army Act, 1950; The Assam Rifles Act, 2006; The Border Security Force Act, 1968; The Coast Guard Act, 1978; The Indo-Tibetan Border Police Force Act, 1992; The Navy Act, 1957; The Sashastra Seema Bal Act, 2007, and The Terrorist and Disruptive Activities (Prevention) Act, 1987.

Graphic3

Categories of homicide offences for which prisoners were sentenced to death



its 'special leave' jurisdiction. While the Supreme Court has rarely refused to hear the appeals of prisoners sentenced to death, there have been few instances of such refusal, making it a matter of grave concern. In the last decade, the Supreme Court has refused to hear special leave petitions in nine death sentence cases involving 11 prisoners, dismissing them at the admission stage (**Table 5**).

Apart from Articles 132 and 136, an appeal to the Supreme Court in death sentence cases shall necessarily lie under Article 134 of the Constitution, in the following three instances:

- When the High Court reverses an order of acquittal by the trial court and imposes a death sentence
- When the High Court withdraws a trial from a lower court, conducts the trial before itself and sentences the accused to death
- When the High Court certifies that the case is fit for appeal to the Supreme Court

Once an appeal has been decided by the Supreme Court, a petition seeking review of the judgment or order passed by it may be filed under Article 137 within 30 days from the date of such judgment or order. In September 2014, a five-judge bench of the Supreme Court in *Mohd. Arif @ Ashfaq v. The Registrar, Supreme Court of India & Ors*,¹³ held that review petitions filed in those matters where the death sentence has been imposed, shall be heard in open court before a three-judge bench. If a review petition is dismissed, the Supreme Court may allow a curative petition to reconsider its judgment or order, if it is established that there was a violation of principles of natural justice or an apprehension of bias on the part of a judge.¹⁴ The curative petition would be disposed of without oral arguments, unless ordered otherwise by the Supreme Court.

¹³ (2014) 9 SCC 737, paragraphs 39 and 46.

¹⁴ *Rupa Ashok Hurrah v. Ashok Hurrah & Ors* (2002) 4 SCC 388, paragraph 51.

After the death sentence has been confirmed either by the High Court or the Supreme Court, a person can file a request for pardon either with the Governor of the state (Article 161 of the Constitution) or the President of India (Article 72 of the Constitution).¹⁵ The nature of power exercised by a Governor or the President is different from judicial decision-making and does not result in abrogating the previous judicial record. The exercise of this power is not limited to the consideration of evidence that was placed before the courts, but may also involve the examination of various factors that may be pertinent to the question of sentencing, such as the prisoner's age, socio-economic circumstances, gender and mental health. However, there is no requirement on the part of the executive to provide reasons for the rejection or acceptance of requests for pardon.

While the merits of the executive's decision cannot be scrutinised by the judiciary, the area and scope of the pardoning power may be reviewed by the High Courts or the Supreme Court.¹⁶ In January 2014, the Supreme Court in *Shatrughan Chauhan & Anr v. Union of India & Ors*,¹⁷ held that non-consideration of supervening circumstances by a Governor or the President while rejecting a mercy petition would be in violation of the right to life guaranteed under Article 21 of the Constitution and would be a sufficient ground for commutation of the death sentence to imprisonment for life. The supervening circumstances discussed by the Court were unexplained delay in disposal of mercy petition, insanity/ mental illness/ schizophrenia, solitary confinement, reliance on judgments declared *per incuriam*¹⁸ and procedural lapses in the disposal of the request for pardon.

¹⁵ Persons sentenced to death in union territories can file a request for pardon only to the President of India.

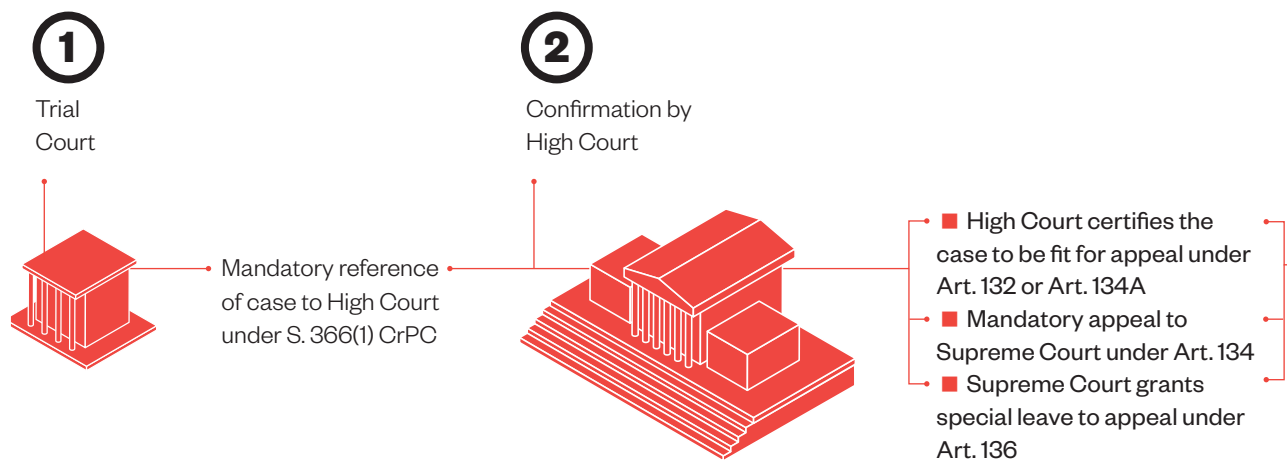
¹⁶ *Kehar Singh & Anr v. Union of India & Anr* (1989) 1 SCC 204, paragraph 14.

¹⁷ (2014) 3 SCC 1.

¹⁸ A judgment is said to be *per incuriam* if it is held to be in ignorance of a statutory provision, previous decision by a superior court or a court of coordinate jurisdiction.

Graphic 4

Stages in death sentence cases



CATEGORIES OF PRISONERS IN THE STUDY

For the purposes of this study, we have categorised prisoners sentenced to death as follows (**Graphic 5**):

- Prisoners sentenced to death by the trial court with the confirmation of the sentence pending before the High Court
- Prisoners whose death sentence was confirmed by the High Court but the appeal was pending before the Supreme Court
- Prisoners whose mercy petition was under consideration by the Governor of a state or the President (includes those prisoners whose death sentence has been confirmed by the Supreme Court but who have not filed a mercy petition for various reasons)
- Prisoners whose mercy petition had been rejected

In our study we have included prisoners whose death sentence was yet to be confirmed by the High Court primarily due to the status accorded to them in prisons across India. Prisoners sentenced to death by the trial court, even pending confirmation by the High Court, are treated as death row prisoners in terms of various prison regulations. Such treatment finds its most intense impact in terms of them being lodged in separate barracks and being denied the opportunity to work. Though there were some regional variations, most prisons kept all prisoners sentenced to death in the same barracks, separate from other prisoners, and hardly any of them permitted prisoners sentenced to death to work due to their 'high-risk' status.

③

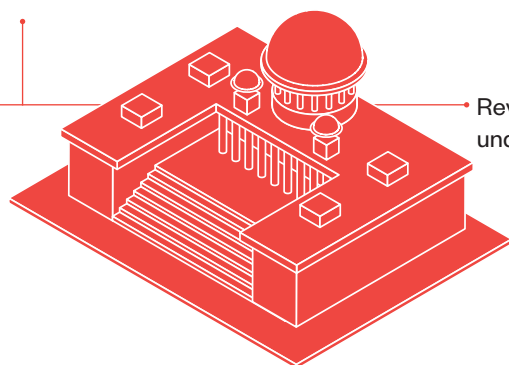
Appeal against death sentence
in Supreme Court

④

Review petition in
Supreme Court

⑤

Curative petition in
Supreme Court



Review petition
under Art. 137



In our study, the largest proportion of prisoners had their cases pending in the High Courts (270) and the numbers reduced significantly as we moved into the later stages of the legal process. Of the 270 prisoners whose cases were pending confirmation before the High Courts, the majority were from Uttar Pradesh (68), Bihar (42) and Karnataka (33). These states together accounted for 53% of all prisoners whose cases were pending before the High Court.

There were 52 prisoners whose cases were pending before the Supreme Court. Madhya Pradesh (12) and Maharashtra (10) had the highest number of such prisoners, followed by Bihar (six) and Uttar Pradesh (five).

There were 30 prisoners whose mercy petitions were either pending before the Governor of the respective state or the President, or whose sentence of death had been confirmed by the Supreme Court and a mercy petition had not been filed. Maharashtra (14) and Bihar (five) had the highest number of such prisoners.

Amongst the 373 prisoners interviewed, there were 21 whose mercy petitions had been rejected by the President. Karnataka (nine) and Uttar Pradesh (four) had the highest number of mercy-rejected prisoners.

Graphic 5

Categories of prisoners sentenced to death

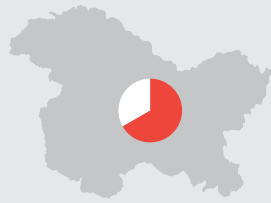
■ HIGH COURT PENDING
■ SUPREME COURT PENDING

■ MERCY PENDING
■ MERCY REJECT



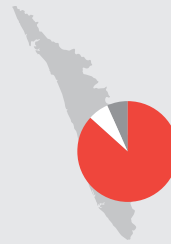
Uttarakhand

■ 4 ■ 0
■ 0 ■ 1



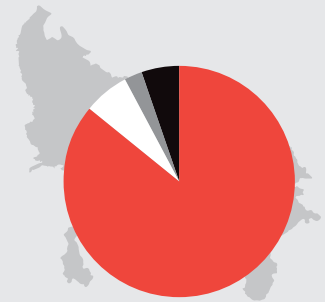
Jammu & Kashmir

■ 4 ■ 0
■ 2 ■ 0



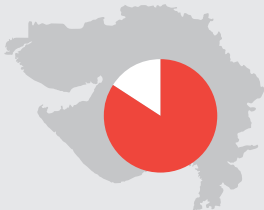
Kerala

■ 13 ■ 1
■ 1 ■ 0



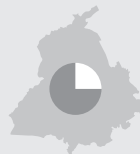
Uttar Pradesh

■ 68 ■ 2
■ 5 ■ 4



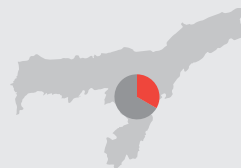
Gujarat

■ 16 ■ 0
■ 3 ■ 0



Punjab

■ 0 ■ 3
■ 1 ■ 0



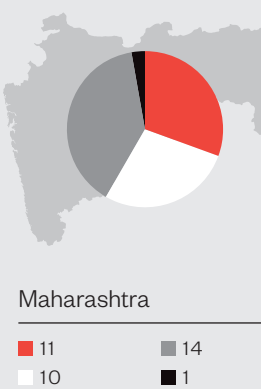
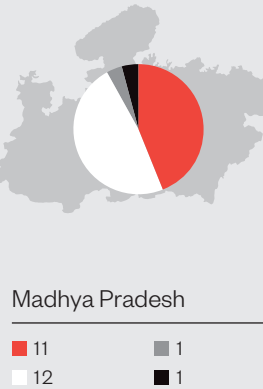
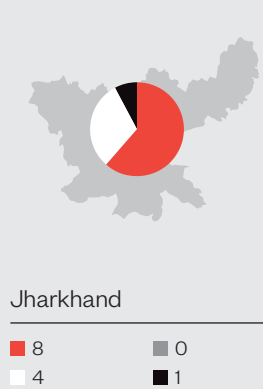
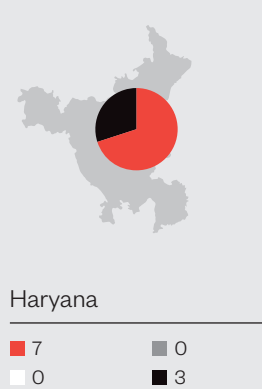
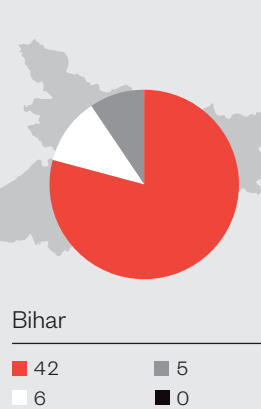
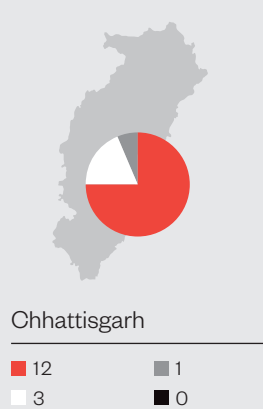
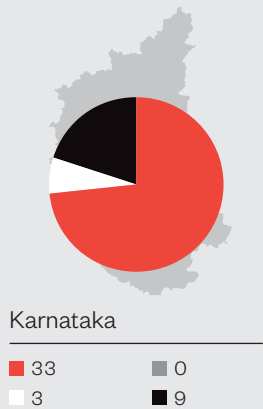
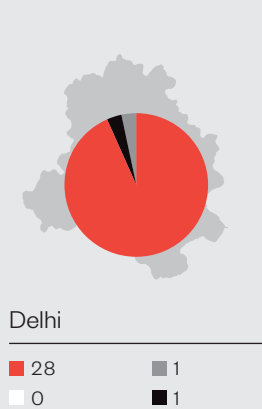
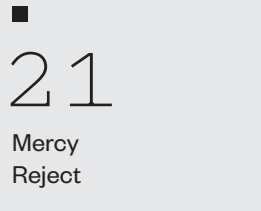
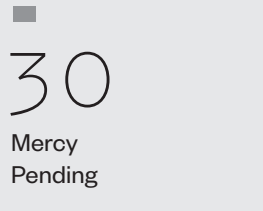
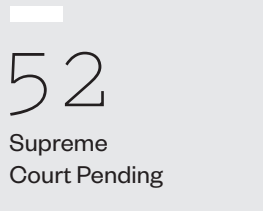
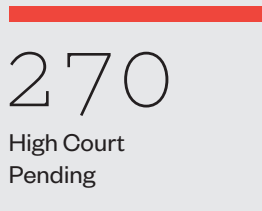
Assam

■ 1 ■ 2
■ 0 ■ 0



West Bengal

■ 3 ■ 0
■ 2 ■ 0



EXPERIENCE OF A MERCY-REJECT PRISONER

Hanut was sentenced to death for the murder of the members of his wife's family. His sentence was commuted by the High Court to imprisonment for life, but the Supreme Court subsequently enhanced his punishment to the death sentence. Thereafter, Hanut filed a mercy petition before the Governor, which was rejected in the same year. However, his mercy petition to the President was rejected after a period of six and

a half years. While recounting his experience on death row, Hanut said that he was constantly haunted by the gallows in prison. Each time a visitor came to the prison, the officials would demonstrate an execution in the gallows. He shared that the eerie sound of the trapdoor being opened would fill the prisoners with fear. To Hanut, this was an omen of his future, a flash into what could happen to him. On these days, he would often require sleeping pills to fall asleep. Each letter that Hanut

received filled him with fearful anticipation of whether it was a response to his mercy petition. Subsequent to his interview, the Supreme Court commuted his death sentence to life imprisonment on the ground of "undue and unexplained delay" in the disposal of his mercy petition. The Court held that such a delay in the execution of the death sentence amounted to torture, which was a violation of the right to life guaranteed under Article 21 of the Constitution.

Special leave petitions dismissed *in limine* by the Supreme Court since 2004

Name of prisoner	Dismissed in	Judges
Lal Chand	February 2004	BN Agrawal, AR Lakshmanan, JJ.
Jafar Ali	April 2004	Doraiswamy Raju, Arijit Pasayat, JJ.
Tote Dewan	August 2005	BP Singh, SH Kapadia, JJ.
Sanjay	July 2006	BP Singh, Altamas Kabir, JJ.
Bandu	July 2006	BP Singh, Altamas Kabir, JJ.
Dnyaneshwar Borkar	July 2006	BP Singh, Altamas Kabir, JJ.
Magan Lal	January 2012	HL Dattu, OK Prasad, JJ.
Jitendra @ Jeetu, Babu @ Ketan and Sanni @ Devendra	January 2015	HL Dattu, C.J., AK Sikri, RK Agrawal, JJ.
Babasaheb Maruti Kamble	January 2015	HL Dattu, C.J., AK Sikri, RK Agrawal, JJ.

**“DEATH PEN
IS LIKE A G
IT HAUNTS A
IT KILLS TH
WITHIN.”**

—MAAHIR

FALTY
HOST.
A PERSON.
THEM FROM



Chapter 2

Durations on Death Row

DURATION OF INCARCERATION

This section provides details of the total time spent in prison by prisoners sentenced to death and includes their duration in prison as under trials. In effect, the figures in this section represent the duration that prisoners sentenced to death had spent in confinement since their arrest, as on the date of the interview for the Project.¹ The information in this section has been organised according to the different categories of prisoners sentenced to death.

MERCY-REJECTED PRISONERS

Amongst the 21 prisoners whose mercy petitions were rejected by the President of India (**Table 1**), the median of the number of years in incarceration was 201 months (16 years, nine months).

Navinder Singh had spent the longest time in incarceration in this category (300 months or 25 years). He was sentenced to death by the sessions court for the murder of 13 people, which was upheld by the High Court. Nine years later, the Supreme Court dismissed

Case information regarding mercy-rejected prisoners sentenced to death				
Name of prisoner	Duration of trial	Duration of High Court proceedings	Duration of Supreme Court proceedings	Total time of incarceration
Navinder Singh	5 years, 11 months	3 years, 7 months	9 years, 7 months	25 years
Champak	8 years, 5 months	TADA case	2 years, 4 months	20 years, 5 months
Chittaranjan	8 years, 5 months	TADA case	2 years, 4 months	20 years, 5 months
Murthi	8 years, 5 months	TADA case	2 years, 4 months	20 years, 5 months
Lucius	8 years, 5 months	TADA case	2 years, 4 months	20 years, 5 months
Dalvinder	3 years, 11 months	1 year, 4 months	6 months	20 years, 4 months
Aliasgar	12 years, 11 months	TADA case	5 years, 8 months	19 years, 10 months
Girish Kumar	7 years, 11 months	8 months	1 year	19 years, 6 months
Ainesh Singh	6 years, 7 months	TADA case	7 months	19 years
Sudish	8 years, 7 months	6 months	1 years, 6 months	19 years
Nataraj	1 year, 1 month	2 years, 2 months	1 year, 1 month	16 years, 9 months
Giriraj	1 year, 1 month	2 years, 2 months	1 year, 1 month	16 years, 8 months
Gopesh	8 years, 8 months	1 year	3 years, 3 months	15 years, 7 months
Amarpreet	2 years, 9 months	11 months	1 year, 10 months	12 years, 2 months
Hanut	2 years, 8 months	11 months	1 year, 10 months	12 years, 1 month
Panduram	3 years, 9 months	4 months	1 year, 2 months	11 years, 11 months
Harikishan	3 years, 9 months	4 months	1 year, 3 months	11 years, 11 months
Pranay Singh	1 year, 11 months	1 year, 1 month	5 years, 2 months	11 years, 3 months
Talib	1 year	6 months	3 months	11 years
Chetak	4 years, 1 month	1 month	2 years, 7 months	10 years, 8 months
Gorakh	8 months	7 months	4 months	3 years, 4 months

The appeal from cases decided by designated courts under Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) directly lies before the Supreme Court.

his appeal and confirmed his death sentence. Thereafter, he sent mercy petitions to the President and the Governor. While the latter rejected the mercy petition within seven months, the President's rejection came after a delay of seven years and six months. However, Navinder never received any official communication intimating him of the President's rejection of his mercy plea. His death sentence was finally commuted to life imprisonment by the Supreme Court on the ground that the executive had caused inordinate delay in deciding his mercy petition.

The lowest period of incarceration amongst this category of prisoners was that of Gorakh. Gorakh had spent 40 months (three years, four months) in prison from the time of his arrest till the rejection of his mercy petition.

MERCY-PENDING PRISONERS

The median for the incarceration periods for prisoners whose mercy petitions were pending was 144 months (12 years). While

¹ The statistics on durations have been represented in terms of mean (or average) and median. As the mean duration may be affected by extremely high or low durations, the median has also been provided to show the central tendency of a particular data set.

Case information regarding mercy-pending prisoners sentenced to death				
Name of prisoner	Duration of trial	Duration of High Court proceedings	Duration of Supreme Court proceedings	Total time of incarceration
Yudhishtir	9 years, 4 months	TADA case	10 months	21 years, 5 months
Gopichand Ravidas	9 years, 4 months	TADA case	10 months	21 years, 5 months
Govardhan Ravidas	9 years, 4 months	TADA case	10 months	21 years, 5 months
Mahant	9 years, 4 months	TADA case	10 months	21 years, 5 months
Chitrabhanu	3 years, 5 months	1 year, 5 months	1 year, 2 months	19 years, 9 months
Nimish	3 years, 3 months	1 year, 5 months	1 year, 2 months	19 years, 7 months
Joginder Singh	11 years, 6 months	3 years, 3 months	Appeal not filed	18 years
Maahi	4 years, 7 months	3 years, 5 months	1 year, 9 months	17 years, 7 months
Adita	4 years, 7 months	3 years, 5 months	1 year, 9 months	17 years, 7 months
Kalicharan	5 years, 9 months	1 year, 7 months	1 year, 1 month	17 years, 4 months
Devnath	1 year, 6 months	2 months	6 years, 9 months	14 years, 6 months
Sajal	3 years, 10 months	1 year, 5 months	2 months	13 years, 4 months
Asad	4 years, 10 months	1 year, 11 months	3 years, 11 months	13 years, 1 month

there were 30 prisoners in this category across India (**Table 2**), Maharashtra had 14 such prisoners and Bihar had five.

Gopichand Ravidas, Govardhan Ravidas, Yudhishtir and Mahant had spent the longest time in prison by virtue of being imprisoned for 257 months (21 years, five months). These prisoners were sentenced to death in a caste massacre with the victims belonging to an upper caste community. Since this was a case under Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA), the prisoners could not approach the High Court and the appeal lay directly to the Supreme Court. Through a split verdict amongst three judges, the Supreme Court confirmed the death sentence.

The shortest period of incarceration under this category was 81 months (six years, nine months) for Maahir, who was sentenced to death for the murder of a woman and her four children.

PRISONERS WITH APPEALS PENDING IN THE SUPREME COURT

The median incarceration for prisoners sentenced to death whose appeals were pending in the Supreme Court was 79 months (six years, seven months). There were 52 prisoners in this category (**Graphic 1**) and the longest period of incarceration was 258 months (21 years, six months).

Jaswant Ravidas, Loknath and Girilal, the prisoners from this category incarcerated for the longest duration, were sentenced to death for their involvement in a caste massacre with the victims belonging to an upper caste community. At the time of their interview, they had spent over 20 years in prison and the

Case information regarding mercy-pending prisoners sentenced to death (Continued)				
Hilbert	4 years	1 year, 7 months	2 years, 7 months	12 years, 10 months
Arnav	1 year, 5 months	1 year	4 years, 3 months	12 years, 5 months
Bhupender	1 year, 3 months	1 year, 4 months	4 months	11 years, 6 months
Baburao Moré	3 years	9 months	2 years, 1 month	11 years
Nagesh Moré	3 years	9 months	2 years, 1 month	11 years
Bhairav Moré	3 years	9 months	2 years, 1 month	11 years
Vachan Moré	3 years	9 months	2 years, 1 month	11 years
Mudit Moré	1 year, 8 months	9 months	2 years, 1 month	9 years, 8 months
Lakshmikant	3 years, 3 months	2 years, 1 month	1 year, 11 months	9 years, 6 months
Purohit	7 months	10 months	1 year	9 years, 6 months
Abrez	3 years, 3 months	1 year, 3 months	2 years, 8 months	9 years, 5 months
Abhijeet Singh	1 year, 10 months	1 year, 5 months	1 year, 8 months	8 years, 11 months
Pahal	1 year, 10 months	1 year, 5 months	1 year, 8 months	8 years, 11 months
Rivan	8 months	2 months	3 years, 3 months	8 years, 4 months
Rubiram	2 years, 2 months	7 months	1 year, 5 months	7 years, 3 months
Tapan	1 year, 5 months	6 months	2 years, 11 months	7 years, 2 months
Maahir	1 year, 4 months	3 months	2 years, 3 months	6 years, 9 months

The appeal from cases decided by designated courts under Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) directly lies before the Supreme Court.

Supreme Court was yet to decide their appeal. When the Court finally disposed of their case, Loknath was acquitted and the death sentences for Jaswant and Girilal were commuted.

It is interesting to note that the Supreme Court in another judgment, by a majority of 2:1 upheld the death sentence against four other accused (Gopichand Ravidas, Govardhan Ravidas, Yudhishtir and Mahant) for their involvement in the same incident. However, the dissenting judge acquitted Yudhishtir as his guilt had not been proven beyond reasonable doubt. He also commuted the death sentence against the other three prisoners on the ground that there were several shortcomings in the investigation process, and it was not a fit case for imposing the death penalty.

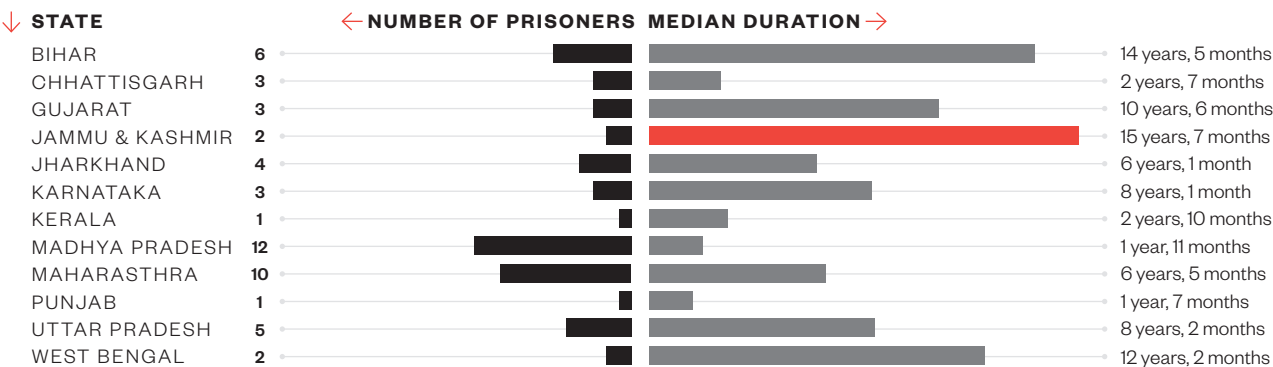
On a consideration of the dissenting opinion in Gopichand Ravidas' case, the death sentences against Jaswant Ravidas and Girilal were commuted on the ground that the capital punishment could not be inflicted if there was the "slightest hesitation" on the part of the Court.

PRISONERS WHOSE CASES WERE SENT BACK BY THE APPELLATE COURTS

During the Project, we encountered two cases involving five prisoners which have travelled through the judicial hierarchy and been sent back for reconsideration on the question of sentence.

Graphic1

Median duration of incarceration for prisoners with appeals pending in the Supreme Court



However, at the time of interview, these prisoners continued to be treated as prisoners sentenced to death in their respective prisons. In the first case, Atul has been imprisoned for nearly 266 months (22 years, two months) while his case is still being considered by the Armed Forces Tribunal, after being sent back on the question of sentence. Atul was prosecuted and sentenced to death by court martial for murdering two of his colleagues in June 1992. While disposing of a writ petition in this matter, the High Court set aside the death sentence and asked the court martial to pass new orders on the sentence. While deciding the appeal filed by the state against the order of the High Court, six years later, the Supreme Court directed the High Court to reconsider its judgment on the sentence. Another eight years passed before the High Court sent the case to the subsequently formed Armed Forces Tribunal for further reconsideration of the sentence. Amidst this legal wrangling, Atul has spent 22 years in prison, almost all of it as a prisoner sentenced to death, despite no appellate court having confirmed his death sentence.

In the second case, Arhat, Aatmej, Taranlal and Tusharanshu have been incarcerated as prisoners sentenced to death without any order from an appellate court confirming their death sentence. Taranlal and Aatmej have spent almost 227 months (18 years, 11 months) in prison, while Tusharanshu and Arhat have been imprisoned for 83 months (six years, 11 months). Although, the trial court sentenced them to death in December 1999 for an incident involving the murder of four persons, the High Court acquitted them of all charges. The case then languished in the Supreme Court for eight years, before it was sent back to the High Court for reconsideration of the evidence. There has been no movement in the case ever since.

DURATION UNDER THE SENTENCE OF DEATH

Though India has executed four prisoners in the last 15 years, the debate around the death penalty in India must focus on the experience of being on death row. A far more qualitative narrative is required, the focal point being the number of years spent under the sentence of death and the conditions under which such prisoners are incarcerated. In a broken criminal justice system beset with delays, prisoners very often end up spending many years under the sentence of death unnecessarily.

The extremely low number of death sentences confirmed by the Supreme Court from 2000 to 2015 (73 prisoners, 4.9% of the total number of prisoners sentenced to death by trial courts³) makes it imperative that the death penalty problem in India must be framed in terms of the high number of years that prisoners unjustifiably spend under the sentence of death along with the trauma and suffering that accompanies it. That is precisely what sets prisoners sentenced to death apart from other inmates in Indian prisons. Any examination of the death penalty must confront this tremendous mental suffering that is inflicted on prisoners, who spend their days in that uncertain space between life and death.

This section provides details of the total time spent by prisoners under the sentence of death after it was pronounced by the trial court. The information in this section has been organised according to the different categories of prisoners sentenced to death.

MERCY-REJECTED PRISONERS

Amongst the 21 prisoners whose mercy petitions were rejected by the President (**Table 3**), the median of the number of years under

³ For more details, refer to Chapter 11 on 'Death sentences in India (2000-2015): An Overview'.

Time on death row for mercy-rejected prisoners sentenced to death	
Name of prisoner	Total time on death row
Navinder Singh	21 years, 1 month
Dalvinder	16 years, 5 months
Nataraj	15 years, 8 months
Giriraj	15 years, 7 months
Ainesh Singh	12 years, 5 months
Champak	12 years
Chittaranjan	12 years
Murthi	12 years
Lucius	12 years
Girish Kumar	11 years, 7 months
Sudish	10 years, 5 months
Talib	10 years
Hanut	9 years, 5 months
Amarpreet	9 years, 5 months
Pranay Singh	9 years, 4 months
Panduram	8 years, 2 months
Harikishan	8 years, 2 months
Gopesh	6 years, 11 months
Aliasgar	6 years, 11 months
Chetak	6 years, 7 months
Gorakh	2 years, 8 months

the sentence of death was 125 months (10 years, five months).

Navinder Singh had spent the longest time under the sentence of death i.e. 253 months (21 years, one month) at the time of his interview. The shortest period under the sentence of death in this category was 32 months (two years, eight months) for Gorakh. He was sentenced to death for the murder of his five daughters, which was confirmed by the High Court within seven months. Thereafter, his leave to appeal to the Supreme Court was dismissed at the admission stage, without full appreciation of the facts and evidence in the case. Subsequently, he filed his mercy petition before the President, which was rejected 11 months later. Considering Gorakh's mental illness, the Supreme Court commuted his death sentence to life imprisonment a few months after we interviewed him.

MERCY-PENDING PRISONERS

Of a total of 30 prisoners whose mercy petitions were pending (**Table 4**), the median for the duration under the sentence of death was 103 months (eight years, seven months).

Nimish and Chitrabhanu had spent the longest time under the

sentence of death i.e. 196 months (16 years, four months) at the time of their interview. Both prisoners filed separate mercy petitions before the President which have been pending for more than ten years.

Rubiram was under the sentence of death for the shortest duration in this category i.e. 61 months (five years, one month). At the time of his interview, Rubiram had spent 87 months (seven years, three months) in prison. Subsequently, his mercy petition was rejected by the President. However, the High Court commuted his death sentence to life imprisonment on the grounds of inordinate delay by the executive in deciding the mercy petition and solitary confinement in prison.

PRISONERS WITH APPEALS PENDING IN THE SUPREME COURT

Of the 52 prisoners whose death sentences were pending appeals in the Supreme Court (**Graphic 2**), the median for the duration they had spent under the sentence of death was 44 months (three years, eight months).

In this category, Avadesh had spent 125 months (10 years, five months) in prison after the sessions court sentenced him to death in February 2003. Subsequently, the High Court confirmed his death sentence, after which the Supreme Court took eight years and seven months to finally decide his case and commute his sentence to life imprisonment. By this time he had spent a total of 149 months (12 years, five months) in prison.

Mankaran from Madhya Pradesh was under the sentence of death for the shortest duration in this category. The trial court sentenced

Time on death row for mercy-pending prisoners sentenced to death	
Name of prisoner	Total time on death row
Nimish	16 years, 4 months
Chitrabhanu	16 years, 4 months
Devnath	13 years
Maahi	13 years
Adita	13 years
Yudhishtir	12 years, 1 month
Gopichand Ravidas	12 years, 1 month
Govardhan Ravidas	12 years, 1 month
Mahant	12 years, 1 month
Kalicharan	11 years, 7 months
Arnav	11 years
Bhupender	10 years, 3 months
Sajal	9 years, 6 months
Purohit	9 years, 1 month
Hilbert	8 years, 10 months
Asad	8 years, 3 months
Baburao Moré	8 years
Nagesh Moré	8 years
Bhairav Moré	8 years
Vachan Moré	8 years
Mudit Moré	8 years
Rivan	7 years, 8 months
Abhijeet Singh	7 years, 1 month
Pahal	7 years, 1 month
Joginder Singh	6 years, 6 months
Lakshmikant	6 years, 3 months
Abrez	6 years, 2 months
Tapan	5 years, 9 months
Maahir	5 years, 5 months
Rubiram	5 years, 1 month

him to death in three months and, the High Court also confirmed his death sentence within three months. The case is currently pending before the Supreme Court of India.⁴

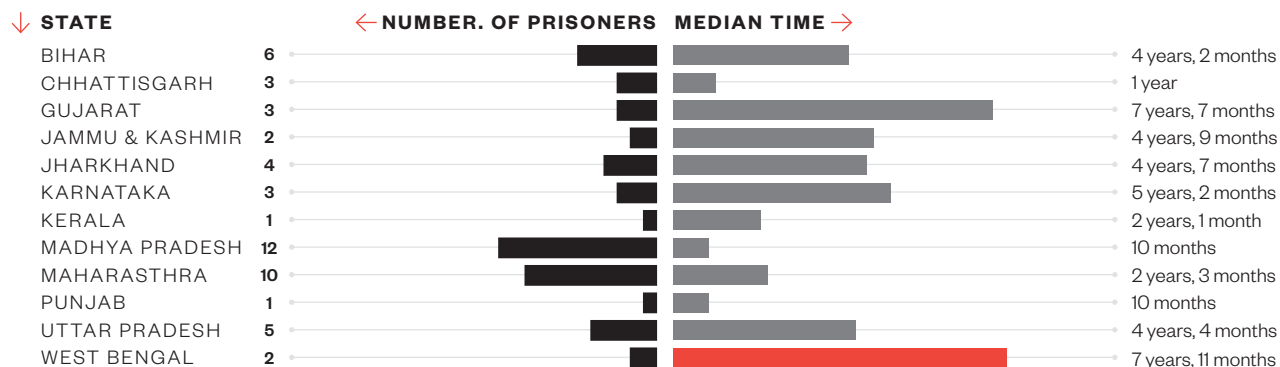
DURATION OF TRIAL

The pendency of legal proceedings in courts for more than five years has been considered by the National Court Management Systems (NCMS) Committee constituted by the Supreme Court, to be a grave violation of speedy justice guaranteed under Article

⁴ For more details, refer to the section on 'Extremely short trials' in this chapter.

Graphic2

Median time on death row for prisoners with appeals pending in the Supreme Court



21 of the Constitution.⁵ Under the supervision of the Chief Justice of India, the NCMS Committee has urged all courts across the country to take urgent measures and prioritise the disposal of matters that have been pending for more than five years.

Though there are serious concerns about durations of trials in general, the issue at hand is to present information on the duration of trials and its relevance for the administration of the death penalty. Obviously at this stage of the legal process, there cannot be an argument based on the suffering inflicted by the death penalty. However, the anticipation of the death penalty as one of the possible punishments raises its own concerns.

The question that arises then is what special significance do long trial durations hold in the context of the death penalty? As will be seen in Chapter 5 on 'Legal Assistance', prisoners sentenced to death tend to rely on private lawyers at the trial stage rather than legal aid lawyers. While the reasons for this are fully explained in that chapter, part of it is that the seriousness of the charge against the accused causes the families to hire a private lawyer rather than resort to the unpredictable quality of legal aid assistance. Given the economic status of the prisoners in question, the fees of the lawyers are a serious drain on their resources and longer trials exacerbate the financial stress.

AVERAGE AND MEDIAN OF DURATION OF TRIALS

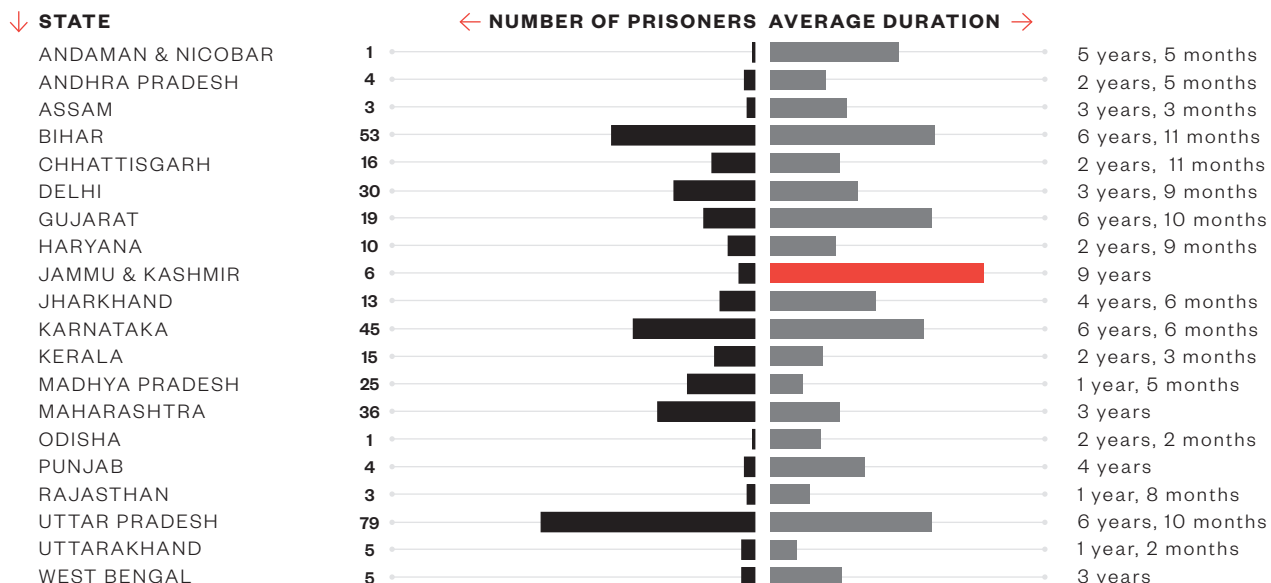
The national average duration of trial for 373 prisoners sentenced to death is 60 months (five years), while the median duration of trial is 38 months (three years, two months).⁶ While the national figures are important, it becomes equally vital to look into the

⁵ 'National Court Management Systems-Policy & Action Plan', National Court Management Systems Committee, available at: <<http://supremecourtsofindia.nic.in/ncms27092012.pdf>>.

⁶ Due to limited access to case records, the duration of trial has been calculated from the date of the arrest of the prisoner and if unavailable, the date of the incident, as recorded in the judgements.

Graphic3

Average duration of trial



state-wise figures to get an estimate of the time that trial courts in each state are taking to impose the death penalty (**Graphics 3&4**).

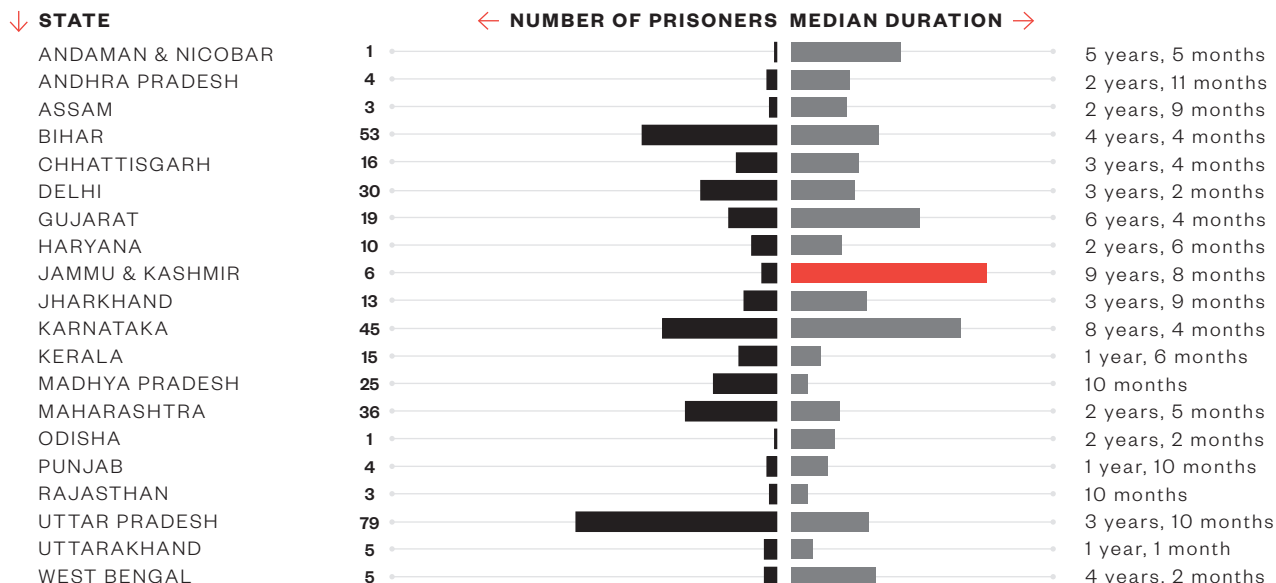
In terms of a combined comparison of the average and the median, Gujarat and Karnataka were observed to have taken the longest time to complete trials. A look at states with at least 10 prisoners sentenced to death shows that Bihar had the highest average duration of trial (83 months or six years, 11 months) while Karnataka had the highest median trial duration (100 months or eight years, four months). Gujarat had a high median (76 months or six years, four months) as well as average duration (82 months or six years, 10 months) of trial court proceedings. Uttar Pradesh, with the largest number of prisoners sentenced to death (79), had an average trial duration of nearly 82 months (six years, 10 months) and a median trial duration of 46 months (three years, 10 months).

Only three out of the 20 states having prisoners sentenced to death⁷ (Madhya Pradesh, Rajasthan and Uttarakhand) had an average duration of trial of less than two years. Meanwhile, five states (Madhya Pradesh, Kerala, Uttarakhand, Punjab and Rajasthan) had a median duration of trial of less than two years. In Maharashtra, which had 36 prisoners sentenced to death, the average duration of trial was 36 months (three years) and the median duration of trial was 29 months (two years, five months).

⁷ For more details on prisoners sentenced to death across states in India, refer to Chapter 1 on 'Coverage of the Project'.

Graphic4

Median duration of trial



Five out of the six prisoners sentenced to death in Jammu & Kashmir had trials that lasted for more than eight years (**Graphic 5**). Of these five prisoners, Abed and Chirag Kumar currently have their cases pending in the Supreme Court after the High Court took approximately four years to confirm their death sentence. This was after their trials took 150 months (12 years, 6 months) and 110 months (nine years, two months) respectively.

The trials of a majority of prisoners in Gujarat and Karnataka ran for a period of five years or more. 15 out of 19 prisoners in Gujarat (79%), and 26 out of 45 prisoners in Karnataka (58%), had trials lasting beyond five years. Bihar (47%) and Uttar Pradesh (44%) also had a high proportion of prisoners whose cases were in the trial court for more than five years.

LONG TRIALS

Of the 373 prisoners in our study, the trials of 127 prisoners lasted for more than five years with the trials of 54 such prisoners continuing for more than 10 years. The longest trial we documented was in the case involving Vishram, Nalin and Milind, where the trial proceedings lasted for 372 months (31 years). These prisoners were between 25 to 40 years when they were charged in a fake encounter killing case. They hardly spent any time in prison during this period and continued to progress in their careers in the police, until they were sentenced to death in 2013.

“WHEN YOU EXECUTE A MAN WHO HAS BEEN ON DEATH ROW SEVEN, EIGHT, 10 OR 12 YEARS, YOU ARE NOT EXECUTING THE SAME MAN THAT CAME IN.”

—DONALD CABANA,

FORMER WARDEN OF

MISSISSIPPI STATE PENITENTIARY

This can be contrasted with the case of Apurvabhai, who was sentenced to death for the murder of five members of a family living outside India, in whose house he was employed as domestic help. Although he was arrested in January 1992, Apurvabhai stated that the proceedings in his trial did not commence until 1997. His trial before a special court, concluded in August 2011, after a period of 235 months (19 years, 7 months), during which he was released once on parole for 12 hours, to attend his daughter’s wedding. His case was pending in the High Court when we interviewed him in February 2014. He has spent nearly 22 years in prison.

EXTREMELY SHORT TRIALS

In terms of framing the problem around the duration of trials, our research has shown that concerns exist at both ends of the spectrum. While unduly long trials are certainly a problem, extremely short trials were also documented, albeit to a much lesser extent. While the trials of 127 prisoners took more than five years, the trials of 10 prisoners were completed within six months. Of these 10 prisoners, eight were sentenced to death for rape with murder (**Table 5**), with all of them having a minor as the victim. Seven of these cases were decided by courts after the December 2012 Delhi gang rape.

Madhya Pradesh had seven out of these 10 prisoners and they were sentenced to death in trials lasting between one month and six months. Maharashtra had two prisoners, while Bihar had one. The shortest trial we documented lasted for nine days in a sessions court in Bihar.

DURATION OF HIGH COURT CONFIRMATION

Among the prisoners that form a part of our study, there were 90 across India whose death sentences were confirmed by a High Court.⁸ These include prisoners whose cases were pending before the Supreme Court, and also those whose cases were confirmed by the Supreme Court, and their mercy petitions were either pending before the President or Governor, or their mercy petitions had been rejected. The duration between the pronouncement of sentence by the trial court and the confirmation by the High Court has been used to compute the duration of High Court confirmation proceedings. While the national average of the duration for confirmation by the High Court was 16 months (one year, four months), the median for the same was 11 months (**Table 6**).

Maharashtra (24 out of 36 prisoners, 67%) and Madhya Pradesh (14 out of 25 prisoners, 56%) had the highest number of prisoners whose death sentences had been confirmed by a High Court. The average time taken for confirmation of the death sentence in Maharashtra was 15 months (one year, three months) while the median was nine months.

It is interesting to note that Madhya Pradesh had the lowest average and median durations for confirmation of death sentence. The Madhya Pradesh High Court took only four months on an average to confirm death sentences, while the median duration of confirmation proceedings was also four months. The 14 confirmations in Madhya Pradesh took place between June 2006 and October 2013. Eight of these confirmations came in 2013, all of them involving rape with murder.

⁸ 13 prisoners convicted under TADA have not been included in this category as an appeal from the decision of the designated court under TADA lies directly to the Supreme Court.

Graphic 5

States with trials lasting more than 5 years

■ PRISONERS WITH TRIALS LASTING MORE THAN 5 YEARS
■ TOTAL NUMBER OF PRISONERS SENTENCED TO DEATH



Uttar Pradesh

■ 35 ■ 79



Karnataka

■ 26 ■ 45



Bihar

■ 25 ■ 53



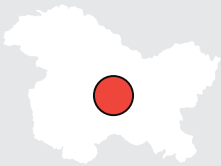
Gujarat

■ 15 ■ 19



Delhi

■ 6 ■ 30



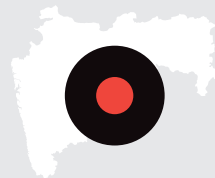
Jammu & Kashmir

■ 5 ■ 6



Jharkhand

■ 5 ■ 13



Maharashtra

■ 5 ■ 36



Andaman & Nicobar

■ 1 ■ 1



Assam

■ 1 ■ 3



Kerala

■ 1 ■ 15



Madhya Pradesh

■ 1 ■ 25



Punjab

■ 1 ■ 4

Prisoners sentenced to death for rape with murder having extremely short trials	
Name of prisoner	Duration of trial
Umang	9 days
Datta	1 month
Lokesh	1 month, 4 days
Prahar	1 month, 10 days
Mayank	1 month, 11 days
Mankaran	3 months, 3 days
Sachiv	4 months, 13 days
Kapil	5 months, 14 days

The figures for the duration of High Court confirmation proceedings in Madhya Pradesh become more startling when we compare these with the next lowest average duration of High Court confirmation proceedings. The Jharkhand High Court on average confirms death sentences in 10 months, which is more than double the average time taken by the Madhya Pradesh High Court. The national median for High Court confirmations is almost three times (11 months) and the national average is four times (16 months) that of the Madhya Pradesh High Court.

DURATION OF SUPREME COURT CONFIRMATION

Amongst the 373 prisoners who were part of our study, the death sentences of 50 prisoners had been confirmed by the Supreme Court.⁹ The median duration of proceedings at the Supreme Court was nearly 22 months (one year, 10 months), while the average was 25 months (two years, one month). The median of the duration of confirmation proceedings at the Supreme Court was twice the duration of confirmation proceedings at the High Courts (11 months).

Maharashtra had the highest number of death sentences confirmed by the Supreme Court (15). For the cases from Maharashtra, the average duration for confirmation by the Supreme Court was 31 months (two years, seven months) while the median was 25 months (two years, one month).

Amongst the 50 prisoners, the Supreme Court took more than five years to confirm the death sentence of four prisoners, while it took more than three years to confirm the death sentence of another four prisoners (**Table 7**).

⁹ Apart from these 50 prisoners, Joginder Singh did not file an appeal before the Supreme Court against the confirmation of his death sentence by the High Court. Currently, a mercy petition on his behalf is pending before the President.

Average and median of duration of High Court confirmation			
State	Number of prisoners confirmed	Median duration of High Court confirmation(in months)	Average duration of High Court confirmation(in months)
Jharkhand	5	11	10
Karnataka	8	10	14
Madhya Pradesh	14	4	4
Maharashtra	24	9	15
Uttar Pradesh	11	26	22

These figures are for states with five or more prisoners whose cases have been confirmed by the High Court.

Cases with highest duration for confirmation of death sentence by the Supreme Court	
Name of prisoner	Duration of Supreme Court confirmation
Navinder Singh	9 years, 7 months
Devnath	6 years, 9 months
Aliasgar	5 years, 8 months
Pranay Singh	5 years, 2 months
Arnav	4 years, 3 months
Asad	3 years, 11 months
Gopesh	3 years, 3 months
Rivan	3 years, 3 months

The longest duration taken by the Supreme Court to confirm a death sentence was 115 months (nine years, seven months) in Navinder's case.

The shortest time taken by the Supreme Court to confirm a death sentence was in the case of Sajal, whose special leave petition was dismissed *in limine* within two months.

**“WHO,
BY AND
LARGE,
ARE THE
MEN WHOM
THE
GALLOWS
SWALLOW?”**





THE WHITE-COLLAR CRIMINALS AND THE CORPORATE CRIMINALS WHOSE WILFUL ECONOMIC AND ENVIRONMENTAL CRIMES INFLICT MASS DEATHS OR WHO HIRE ASSASSINS AND MURDER BY REMOTE CONTROL? RARELY. WITH A FEW EXCEPTIONS, THEY HARDLY FEAR THE HALTER. THE FEUDING VILLAGER, HEADY WITH COUNTRY LIQUOR, THE STRIKING WORKERS DESPERATE WITH DEFEAT, THE POLITICAL DISSENTER AND SACRIFICING LIBERATOR INTENT ON CHANGING THE SOCIAL ORDER FROM SATANIC MISRULE, THE WAIFS AND STRAYS WHOM SOCIETY HAS HARDENED BY NEGLECT INTO STREET TOUGHS, OR THE POOR HOUSEHOLDER—HUSBAND OR WIFE—DRIVEN BY DIRE NECESSITY OR BURST OF TANTRUMS—IT IS THIS PERSON WHO IS THE MORNING MEAL OF THE MACABRE EXECUTIONER.”

**—RAJENDRA PRASAD v. STATE OF UTTAR PRADESH,
SUPREME COURT OF INDIA (1979)**

Chapter 3

Nature of Crimes

CATEGORIES OF OFFENCES

This chapter presents the data on the crimes for which the sentence of death was imposed. Apart from presenting the broad categories of crimes, it also looks at information on the victims and the crime-wise duration of proceedings.

As mentioned in Table 4 in Chapter 1, there are 17 central legislations in India other than the Indian Penal Code, 1860 (IPC) that provide for the sentence of death. Seven of those legislations were invoked to sentence the prisoners in this Project (**Table 1**). Not surprisingly, the IPC was invoked most often to sentence individuals to death. No prisoners were sentenced to death under any state legislation.

The prisoners in our study were convicted and sentenced to death for the following offences, categorised on the basis of the nature of crime involved:

- **Murder *simpliciter*:** Includes cases where the prisoners were convicted under Section 300 of the IPC (murder), or Section 300 of the IPC (murder) along with the Arms Act, 1959; the Explosive Substances Act, 1908 and the Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.

Legislations under which prisoners have been sentenced to death	
Legislations	Number of prisoners
The Indian Penal Code, 1860	363
The Explosive Substances Act, 1908	13
The Terrorist and Disruptive Activities (Prevention) Act, 1987	13
The Arms Act, 1959	5
The Border Security Force Act, 1968	1
The Narcotic Drugs and Psychotropic Substances Act, 1985	1
The Unlawful Activities (Prevention) Act, 1967	1

Prisoners sentenced to death under two or more legislations have been counted under each of those legislations.

■ **Sexual offences:** Includes cases where the main offence along with the murder charge was rape, and also includes cases involving a repeat conviction for rape punishable with death under Section 376E of the IPC.

■ **Terror offences:** Includes cases where the prisoners were convicted under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA), the Prevention of Terrorism Act, 2002, the Unlawful Activities (Prevention) Act, 1967 or for the offence of 'waging war' under Section 121 of the IPC.

■ **Kidnapping with murder:** Includes those cases where the main offence along with the murder charge was kidnapping.

■ **Dacoity with murder:** Includes cases where prisoners were convicted for dacoity with murder under Section 396 of the IPC.

■ **Offences under defence legislations:** Among the prisoners in our study, one was given the death penalty for an offence under the Border Security Force Act, 1968, while another was sentenced to death under the Army Act, 1950.

■ **Drug offences:** Includes cases where prisoners have been sentenced to death under Section 31A of the Narcotic Drugs and Psychotropic Substances Act, 1985 (NDPS) for a repeat conviction under the Act.

It must be noted that the nature of crime does not necessarily indicate the legislation or provision under which the death sentence was imposed, but is rather a reflection of the crime for which prisoners have been convicted and sentenced to death. For instance, prisoners categorised under 'terror offences' include those sentenced to death under Section 302 of the IPC (murder), but the main offences they were convicted under included the ones under terror legislations, in addition to murder under the IPC.

National representation of nature of crime of prisoners sentenced to death	
Nature of crime	Number of prisoners
Murder <i>simpliciter</i>	213
Sexual offences	84
Terror offences	31
Kidnapping with murder	24
Dacoity with murder	18
Offences under defence legislations	2
Drug offences	1

Similarly, prisoners categorised under 'sexual offences' include those sentenced to death for murder under Section 302 of the IPC but also convicted for rape, and those sentenced to death under Section 376E of the IPC.¹

The highest number of prisoners were sentenced to death for murder *simpliciter* (213), comprising 57.1% of the total prisoners considered in this study (**Table 2**). Of these, 25.8% (55 prisoners) were sentenced to death for the murder of a single person. Murders involving sexual offences formed the next largest category, wherein 84 prisoners (22.5%) were sentenced to death.

It must be reiterated that the nature of crime analysis in this chapter is frozen in time and provides data regarding the 373 prisoners under the sentence of death during the period of our study. A nature of crime analysis for death sentence cases in the past fifteen years has been provided in Chapter 11 on 'Death sentenced in India (2000–2015): An Overview'.

¹ The punishment for rape is prescribed under Sections 376, 376A, 376B, 376C, 376D and 376E of the Indian Penal Code, 1860. The death sentence has been prescribed as a possible punishment under Section 376A (punishment for causing death, or resulting in persistent vegetative state of victim in the course of commission of rape), and Section 376E (punishment for repeat offenders). Otherwise, the death sentence cannot be imposed for commission of rape. In cases where the main offence along with the murder charge is rape, the death sentence is imposed under Section 302 (punishment for murder).

STATE-WISE ANALYSIS OF CRIMES

MURDER *SIMPLICITER*

A state-wise analysis of the nature of crime presents an interesting picture (**Graphic 1**). While overall, Uttar Pradesh and Bihar have the highest number of prisoners sentenced to death, these two states also have the highest number of prisoners sentenced to death for the crime of murder *simpliciter* (collectively 46% of the 213 prisoners were sentenced to death for murder *simpliciter*). The highest numbers of prisoners sentenced to death for sexual offences and terror offences were from other states.

SEXUAL OFFENCES

Amongst the 84 prisoners sentenced to death for sexual offences, the highest proportions were from Maharashtra and Madhya Pradesh. Of the 84 prisoners, 17.9% (15 prisoners) were from Maharashtra, and 16.7% (14 prisoners) were from Madhya Pradesh.

TERROR OFFENCES

Karnataka, which had 12.1% (45 prisoners) of all prisoners sentenced to death in India, had the highest number of prisoners sentenced to death for terror offences (12 prisoners, 38.7% of the 31 prisoners sentenced to death for terror offences). Bihar was the next highest state in terms of number of prisoners sentenced to death for terror offences, with seven prisoners (22.6%) convicted under TADA.

OTHER OFFENCES

Karnataka had the highest number of prisoners sentenced to death for dacoity with murder (11 prisoners, 61.1% of the 18 prisoners sentenced to death for dacoity with murder). Uttar Pradesh had the highest number of prisoners sentenced to death for kidnapping with murder (five prisoners, 20.8% of the 24 prisoners sentenced to death for kidnapping with murder). Uttar Pradesh and West Bengal were the only two states with a prisoner each sentenced to death under defence legislations. The sole prisoner sentenced to death under NDPS was from Gujarat.

CRIME-WISE ANALYSIS OF STATES

In this sub-section, we have attempted to analyse the crimes for which the death sentence has been imposed within different states. In the states with 10 or more prisoners sentenced to death,

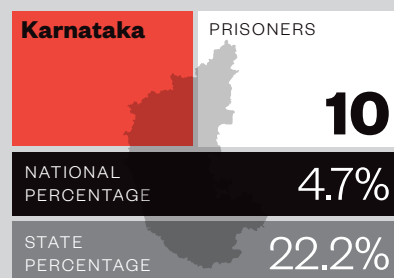
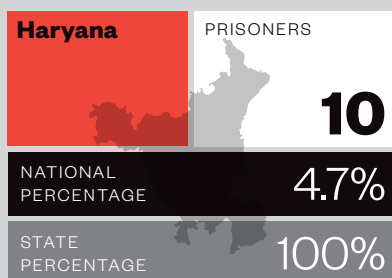
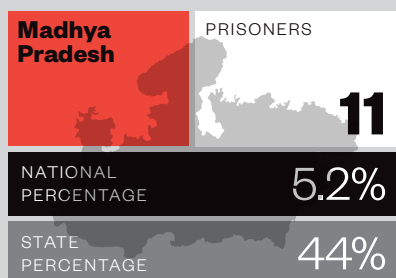
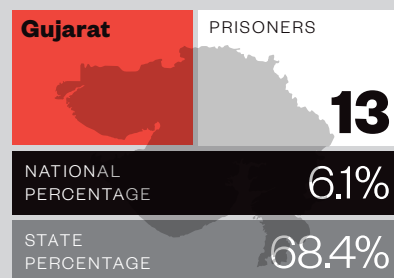
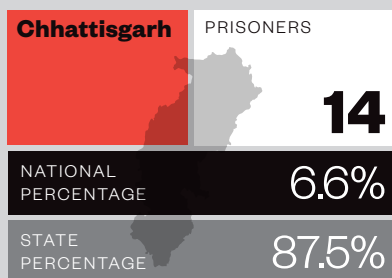
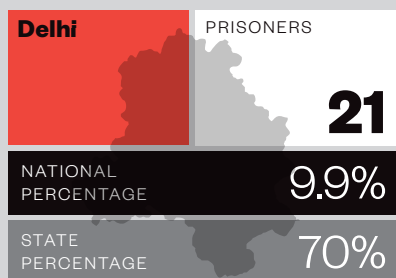
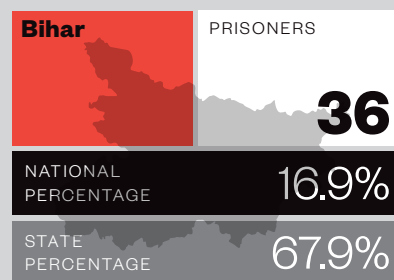
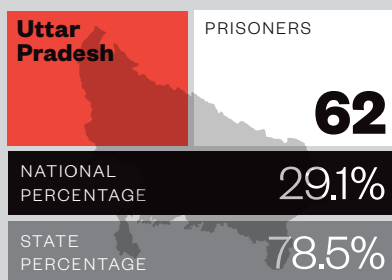
Graphic 1

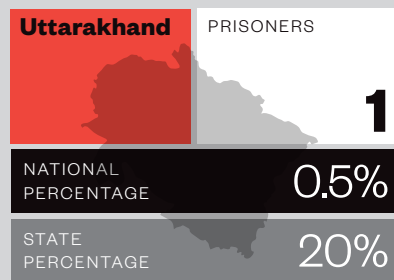
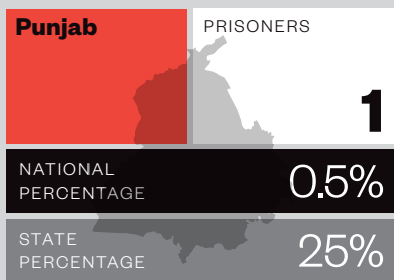
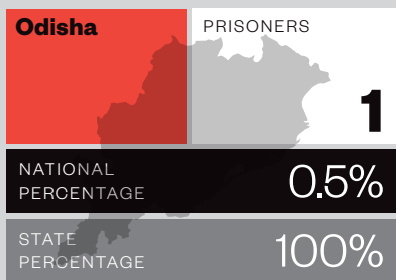
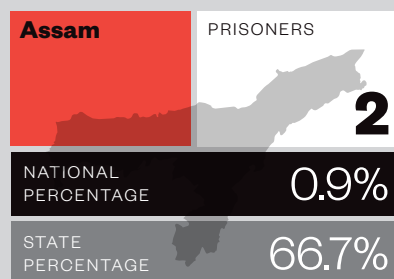
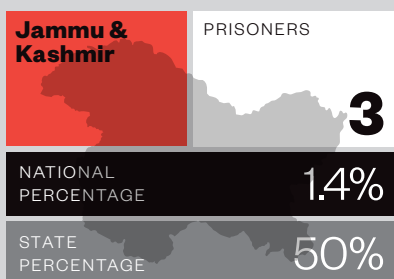
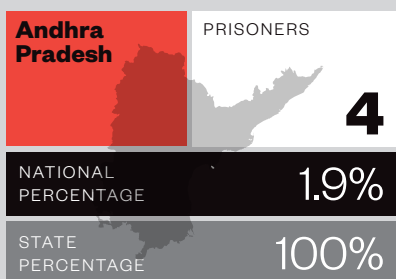
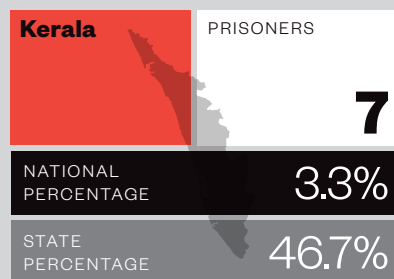
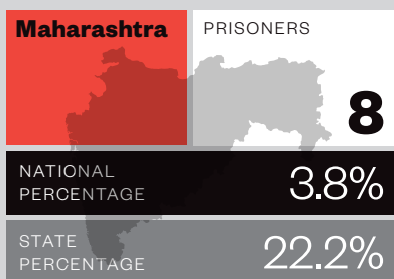
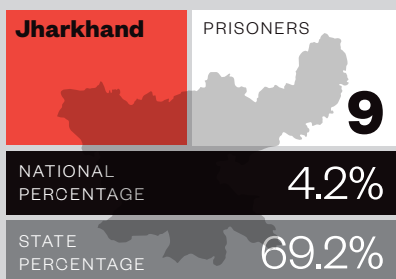
Nature of crime of prisoners sentenced to death

Percentage of prisoners sentenced to death in the state for the particular nature of crime out of all prisoners sentenced to death in India for that crime

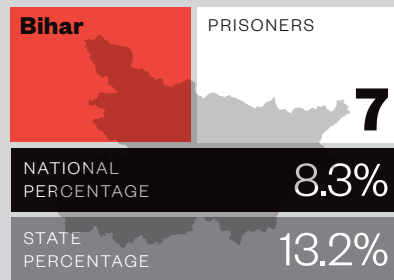
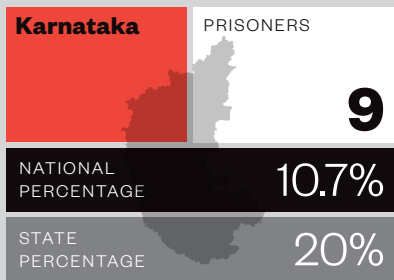
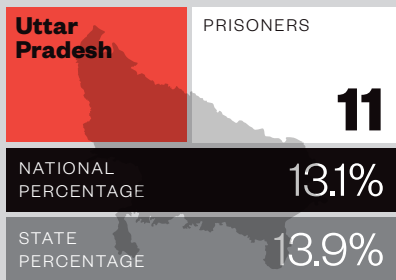
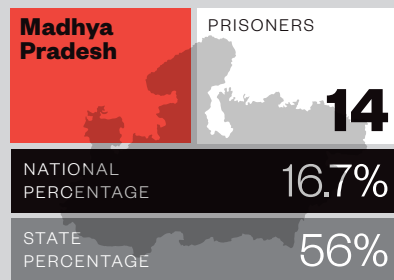
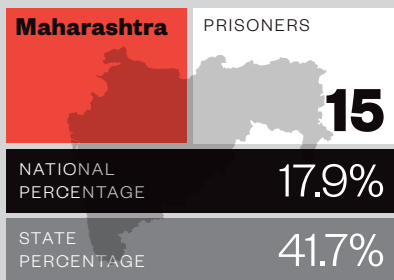
Percentage of prisoners sentenced to death in the state for the particular nature of crime out of all prisoners sentenced to death in that state

1 MURDER SIMPLICITER



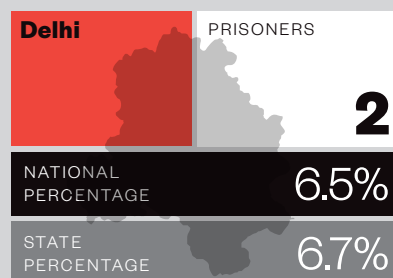
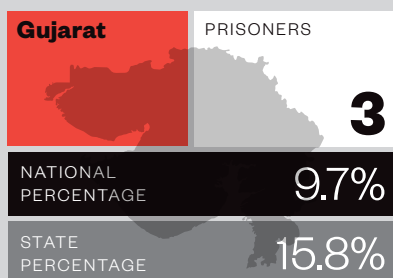
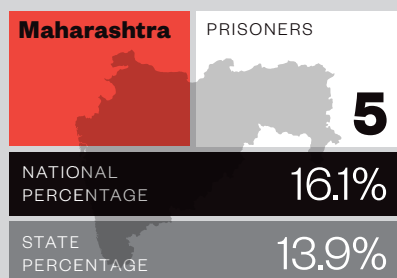
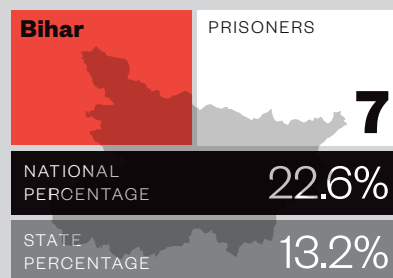
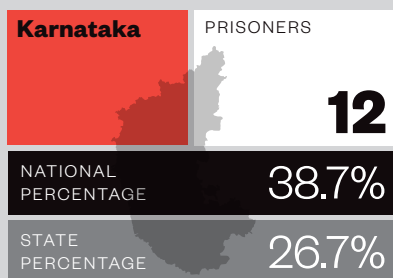
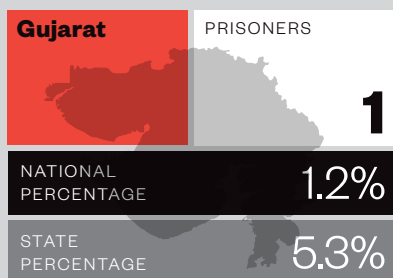
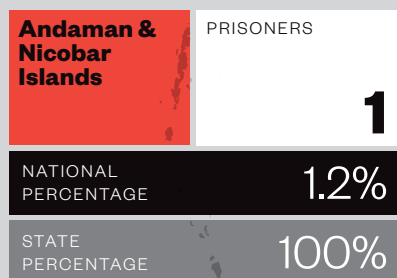
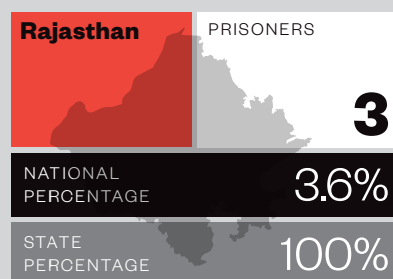
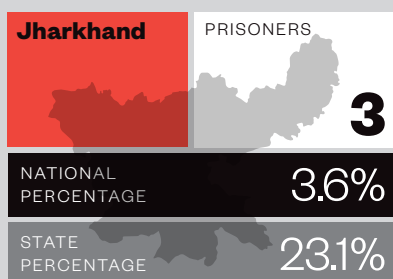
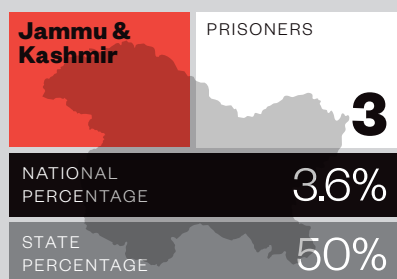
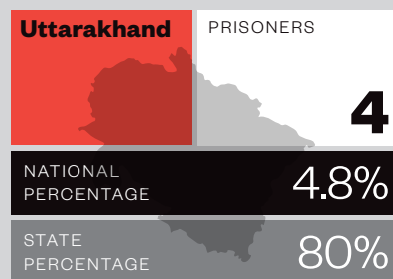
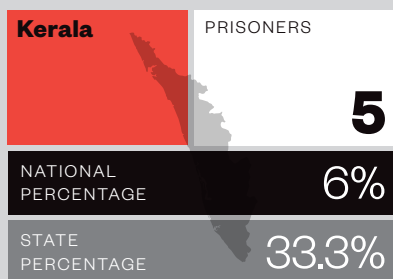
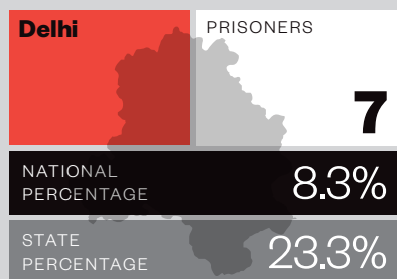


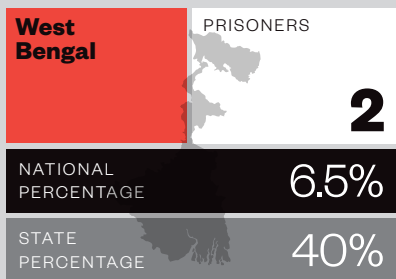
2 SEXUAL OFFENCES



Percentage of prisoners sentenced to death in the state for the particular nature of crime out of all prisoners sentenced to death in India for that crime

Percentage of prisoners sentenced to death in the state for the particular nature of crime out of all prisoners sentenced to death in that state

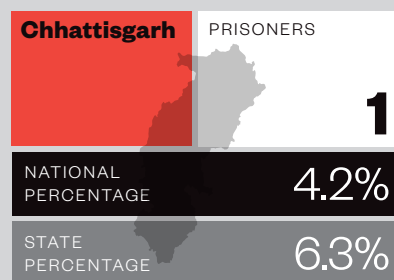
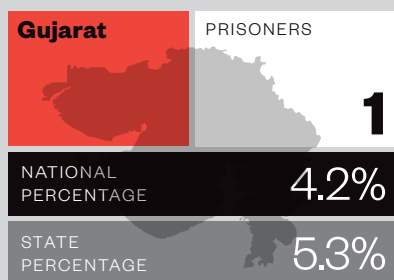
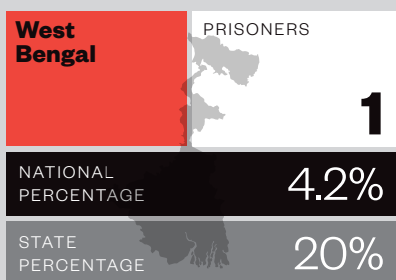
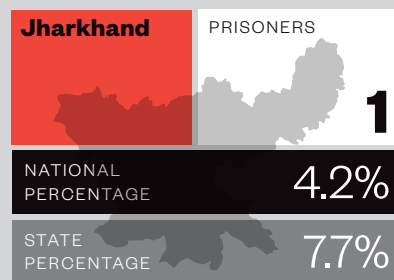
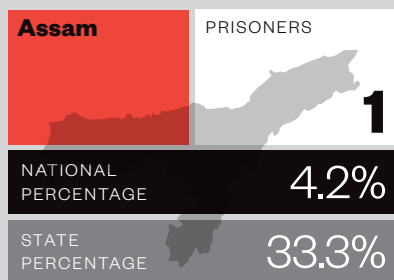
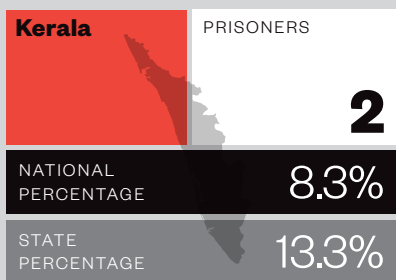
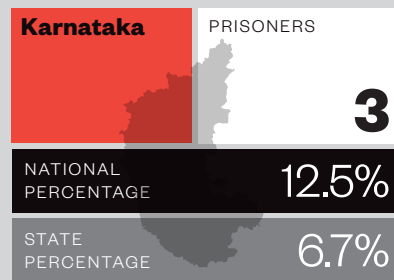
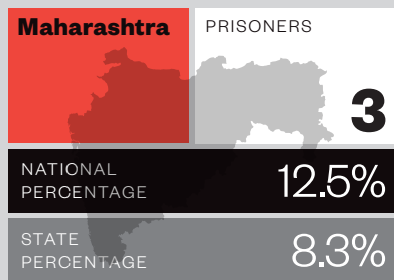
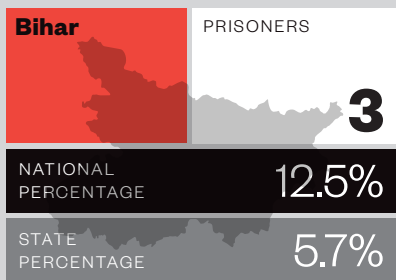
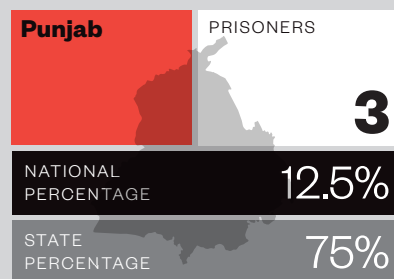
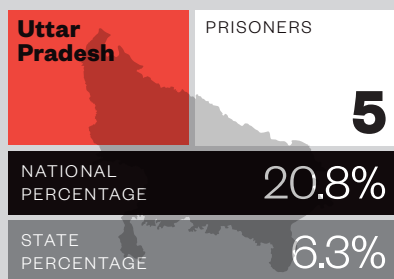




The shocking nature of the crime or the number of murders committed is also not the criterion. It was said that the focus has now completely shifted from the crime to the criminal. Special reasons necessary for imposing death penalty must relate not to the crime as such but to the criminal.

-Bachan Singh v. State of Punjab,
Supreme Court of India (1980)

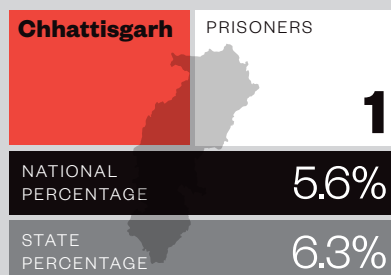
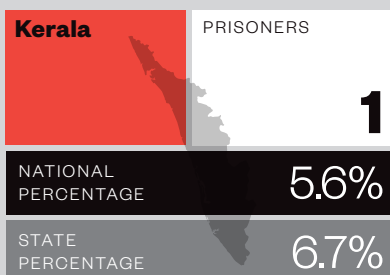
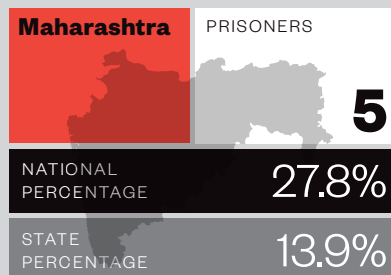
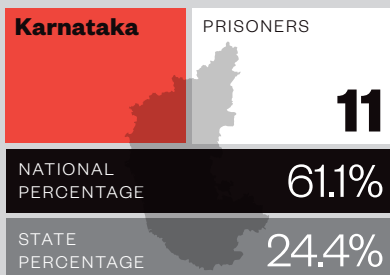
4 KIDNAPPING WITH MURDER



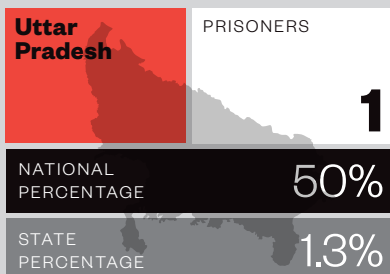
Percentage of prisoners sentenced to death in the state for the particular nature of crime out of all prisoners sentenced to death in India for that crime

Percentage of prisoners sentenced to death in the state for the particular nature of crime out of all prisoners sentenced to death in that state

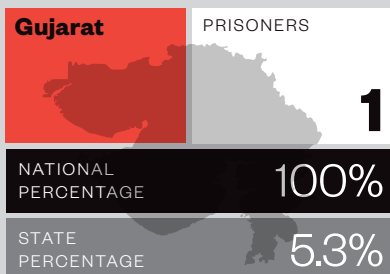
5 DACOITY WITH MURDER



6 OFFENCES UNDER DEFENCE LEGISLATIONS



7 DRUG OFFENCES



ALIASGAR

Aliasgar was arrested in August 1994 in relation to the Bombay bomb blasts that took place in March 1993. The Special Court, TADA sentenced him to death in July 2007, after a trial that lasted for 155 months (12 years, 11 months).

As per the provisions of TADA, no appeal can lie to a High Court from the decision of a TADA court, and an appeal can be preferred as a matter of right before the Supreme Court. In Aliasgar's case, the Supreme Court confirmed the death sentence in March 2013 at the end

of proceedings that lasted 68 months (five years, eight months). After spending 251 months (20 years, 11 months) in prison and 96 months (eight years) on death row, Aliasgar was executed on 30 July 2015.

a majority of prisoners in Bihar, Chhattisgarh, Delhi, Gujarat, Haryana, Jharkhand, Kerala and Uttar Pradesh were sentenced to death for murder *simpliciter*. This is similar to the national figure for prisoners sentenced to death for murder *simpliciter* (213 prisoners or 57.1% of the total number of prisoners sentenced to death). Haryana (100% of the 10 prisoners sentenced to death), Chhattisgarh (87.5%, 14 prisoners of all 16 prisoners sentenced to death) and Uttar Pradesh (78.5%, 62 prisoners of all 79 prisoners sentenced to death) had significantly higher proportion of prisoners sentenced to death for murder *simpliciter*, as compared to the national proportion for the same.

Madhya Pradesh had 14 prisoners sentenced to death for rape with murder, while Maharashtra had 15 prisoners who were given the death penalty for sexual offences, constituting 56% and 41.7%, respectively, of all prisoners sentenced to death in these states. The proportion of prisoners sentenced to death for sexual offences in these states is much higher than the national percentage of prisoners on death row for sexual offences (84 prisoners, 22.5% of the 373 prisoners sentenced to death). Karnataka had the highest number of prisoners sentenced to death for terror offences and dacoity with murder. Out of the 45 prisoners sentenced to death in Karnataka, 12 (26.7%) were convicted under terror offences, a proportion more than thrice the national percentage of prisoners sentenced to death for terror offences (31 prisoners, 8.3%). Similarly, Karnataka had 11 prisoners (24.4%) on whom death penalty was imposed for dacoity with murder, which is more than twice the number of prisoners sentenced to death for dacoity with murder in any other state, and more than five times the national proportion of prisoners sentenced to death for dacoity with murder (18 prisoners, 4.8%).

I WAS BERATED BY THE POLICE OFFICER
FOR ‘HAVING THE MIND OF A TERRORIST’

—MAHMUD

NATURE OF CRIME AND DURATION OF LEGAL PROCEEDINGS

To deepen the understanding of the consequences that arise from the nature of the crime in question, this sub-section presents disaggregated data on the duration of legal proceedings in relation to the nature of crime. For this purpose, we have created three categories:

■ **All cases where the death sentence has been imposed by the trial court:** These include cases that are pending before the High Courts or the Supreme Court, are mercy pending, or where the mercy petition has been rejected.

■ **All death penalty cases that have been confirmed by the High Court:** These include cases that are pending before the Supreme Court, are mercy pending, or where the mercy petition has been rejected.

■ **All death penalty cases that have been confirmed by the Supreme Court:** These include mercy pending cases and those where the mercy petition has been rejected.

DURATION OF TRIALS

An analysis of the duration of trials of different crimes reveals an interesting story (**Table 3**). While the national median duration of trial is 38 months (three years, two months), there is a large variation observed in the median duration of trial across different nature of crimes. Amongst the crimes for which a statistically significant number of prisoners have been sentenced to death, the national median duration of trial is highest for terror offences with the trial lasting for a median duration of 100 months (eight years, four months) for such cases. The median duration of trial for the crime of dacoity with murder (98 months or eight years, two

DURATION OF TRIAL DISAGGREGATED BY NATURE OF CRIME

Nature of crime	Number of prisoners	Median duration of trial
Defence legislations	2	1 year
Sexual offences	84	1 year, 6 months
Kidnapping with murder	24	3 years, 1 month
Murder <i>simpliciter</i>	213	3 years, 4 months
Drug offences	1	5 years, 1 month
Dacoity with murder	18	8 years, 2 months
Terror offences	31	8 years, 4 months
National figures	373	3 years, 2 months

months) comes close to being the highest. For murder *simpliciter*, the category of crime under which most of the prisoners in our study have been sentenced to death (213 out of 373 prisoners), the national median of duration of trial was 40 months (three years, four months).

Amongst the crimes for which a statistically significant number of prisoners have been sentenced to death, the lowest median is seen in death sentence trials involving sexual offences. At 18 months (one year, six months), the median for death sentence cases involving sexual offences is significantly lower than the median for all other crimes, and is less than half (46.1%) of the median national duration of trial.

HIGH COURT CONFIRMATIONS

The median duration for confirmation of the death sentence by the High Courts is lowest for sexual offences (six months) and highest for terror offences (46 months or three years, 10 months). The duration of proceedings for terror offences is over four times the overall median duration of proceedings for High Court confirmations (11 months). The High Courts seem to be confirming death sentences *per se* (irrespective of the crime in question) within a short span of time compared to the trial courts and the Supreme Court (**Table 4**). This is interesting because the High Courts in death penalty cases do not act merely as appellate courts but are also expected to appreciate evidence.

The fact that they confirm death sentences within such a short span is perhaps indicative that this intended role of the High Courts is not being fully utilised by the lawyers of prisoners sentenced to death. Or it might well be that the High Courts have

DURATION OF HIGH COURT CONFIRMATION DISAGGREGATED BY NATURE OF CRIME

Nature of crime	Number of prisoners	Median duration of High Court confirmation
Sexual offences	27	6 months
Dacoity with murder	6	9 months
Murder <i>simpliciter</i>	37	11 months
Kidnapping with murder	11	1 year, 5 months
Terror offences	9	3 years, 10 months
National figures	90	11 months

The cases of 103 prisoners were pending before the Supreme Court, were mercy pending, or the mercy petition had been rejected. Of these, 13 prisoners were convicted for offences under TADA. Under the Act, appeals from the decision of the trial court lie directly before the Supreme Court, and cannot lie before the High Court. There is therefore no data for the High Court for such prisoners.

an efficient model of functioning when it comes to death penalty cases, in which case there might be lessons to be learnt.

SUPREME COURT CONFIRMATIONS

Interestingly, our observation is that the trends that hold true for trial court and High Court durations with respect to different crimes are not replicated at the Supreme Court stage (**Table 5**). At the Supreme Court, the lowest median duration for confirmation of death sentence is for murder *simpliciter* (14 months), and the highest median duration for confirmation of death sentence is for sexual offences (32 months or two years, eight months). The median duration of confirmation for terror offences (28 months or two years, four months) is 1.3 times the national median of duration for confirmation of death sentences by the Supreme Court (22 months or 1 year, 10 months). Terror offences had the highest median duration for confirmation at the Supreme Court after sexual offences.

SEXUAL OFFENCES AND DURATION OF LEGAL PROCEEDINGS

The median duration of trials and High Court proceedings in cases involving sexual offences is the lowest as compared to other crimes (**Graphic 2**). The median duration of trials for such cases is 18 months (one year, six months) while the national median duration of trial court proceedings is 38 months (three years, two months). The median duration for High Courts to confirm death sentences in cases involving sexual offences is six months while the national median duration of High Court proceedings was 11 months. Interestingly, we do not see this trend holding true for proceedings in the Supreme Court, as the cases of prisoners in the

DURATION OF SUPREME COURT CONFIRMATION DISAGGREGATED BY NATURE OF CRIME

Nature of crime	Number of prisoners	Median duration of Supreme Court confirmation
Murder <i>simpliciter</i>	19	1 year, 2 months
Kidnapping with murder	5	1 year, 8 months
Dacoity with murder	6	2 years, 1 month
Terror offences	11	2 years, 4 months
Sexual offences	9	2 years, 8 months
National figures	50	1 year, 10 months

Of the 51 prisoners whose mercy petitions were pending or had been rejected, one prisoner did not appeal to the Supreme Court.

sexual offences category have the longest median duration of proceedings in the Supreme Court (32 months or two years, eight months).

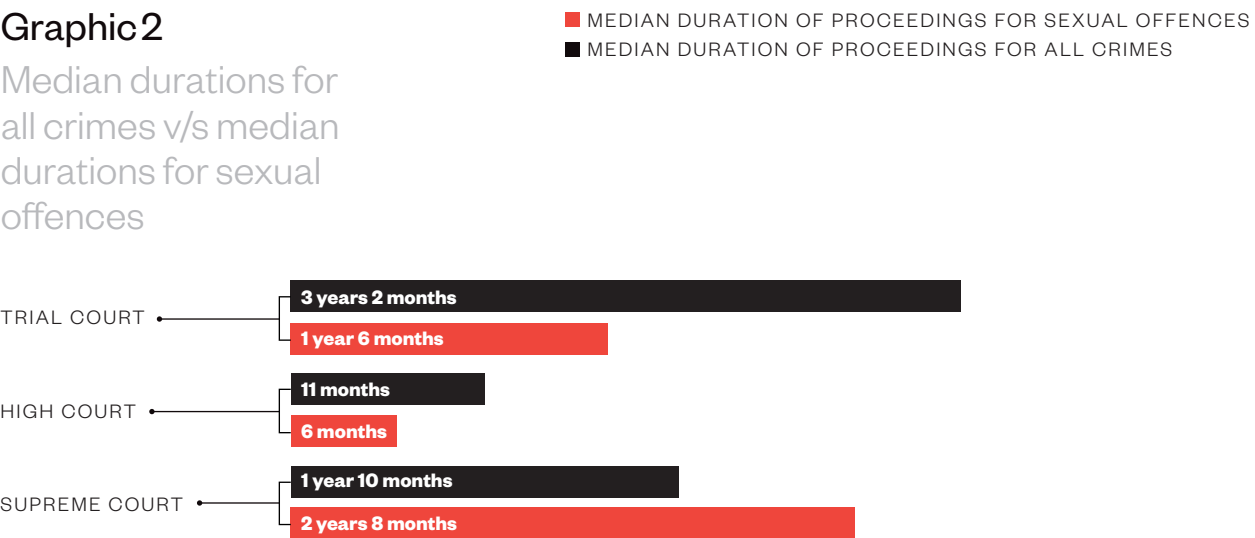
A state-wise analysis of duration of trial in cases involving sexual offences reveals that across states these cases are decided within short durations. While in Maharashtra the median duration of trials of prisoners sentenced to death for sexual offences was 17 months (one year, five months) for 15 prisoners, it was 9 months for 14 prisoners in Madhya Pradesh and 16 months (one year, four months) for 11 prisoners in Uttar Pradesh. While the national median duration for such cases in comparison to other categories of crimes is already significantly lower at 18 months (one year, six months), Madhya Pradesh had the lowest median (9 months) within this category.

Our comparison of the median durations of trial for sexual offences with the median duration of trial for all offences within each state yielded some interesting observations (**Table 6**). Other than in Jharkhand, the median duration of trials for sexual offences was significantly lower than the median duration of trial for all offences across states.

In Delhi, it was 10 months, while the overall median duration of trial was nearly four times that figure (38 months or three years, two months). Similarly, in Uttar Pradesh, the median for such cases (16 months or one year, four months) was nearly three times lower than the median duration of trial for all offences (46 months or three years, 10 months). In Kerala, it was 10 months, while the overall median duration of trial was 18 months (one year, six months). It was observed that while Karnataka's median duration

Graphic2

Median durations for all crimes v/s median durations for sexual offences



to complete trials involving sexual offences was 33 months (two years, nine months), the median duration of trial for all offences was 100 months (eight years, four months).

The significantly shorter duration of trials and High Court confirmation proceedings which lead to the imposition of the death sentence in sexual offence cases deserve serious consideration. In a legal system beset with structural delays, where it is evident that the criminal justice system does not deliver timely trials in other categories of offences, we must examine why the courts deliver faster decisions in death penalty cases involving sexual violence. While there certainly must be speedy trials, lopsided durations indicate a far deeper malaise. It must force us to enquire about the processes followed in these cases and ask some difficult questions. Protections that ensure a fair and just procedure exist so that the State does not resort to mob justice with the veneer of the rule of law. It is important that our pursuit of effective and speedy justice to the victims must not dilute or ignore the foundational principles of criminal justice.

While short durations of proceedings in cases involving sexual offences may not necessarily imply dilution of safeguards built into the criminal justice system, some instances in our study seem to suggest otherwise. In this context, an examination of the two cases in our study with the shortest durations of trial is illuminating. Umang was convicted and sentenced to death in a trial that lasted nine days. “I was beaten in the police lock-up for five days and was taken to court for another five”, shared Umang, who had never been to school. He was not aware of the charges against him and could not understand court proceedings as they were conducted in English. His legal aid lawyer met him only once and never

State-wise representation of median duration of trial for sexual offences vis-a-vis median duration of trials for all offences			
State	Number of prisoners sentenced to death for sexual offences	Median duration of trial for sexual offences	Median duration of trial for all offences
Maharashtra	15	1 year, 5 months	2 years, 5 months
Madhya Pradesh	14	9 months	10 months
Uttar Pradesh	11	1 year, 4 months	3 years, 10 months
Karnataka	9	2 years, 9 months	8 years, 4 months
Bihar	7	2 years, 8 months	4 years, 4 months
Delhi	7	10 months	3 years, 2 months
Kerala	5	10 months	1 year, 6 months
Uttarakhand	4	1 year, 1 month	1 year, 1 month
Jammu & Kashmir	3	8 years, 7 months	9 years, 8 months
Jharkhand	3	5 years, 5 months	3 years, 9 months
Rajasthan	3	10 months	10 months
Andaman & Nicobar Islands	1	5 years, 5 months	5 years, 5 months
Gujarat	1	9 months	6 years, 4 months
West Bengal	1	1 year, 8 months	4 years, 2 months

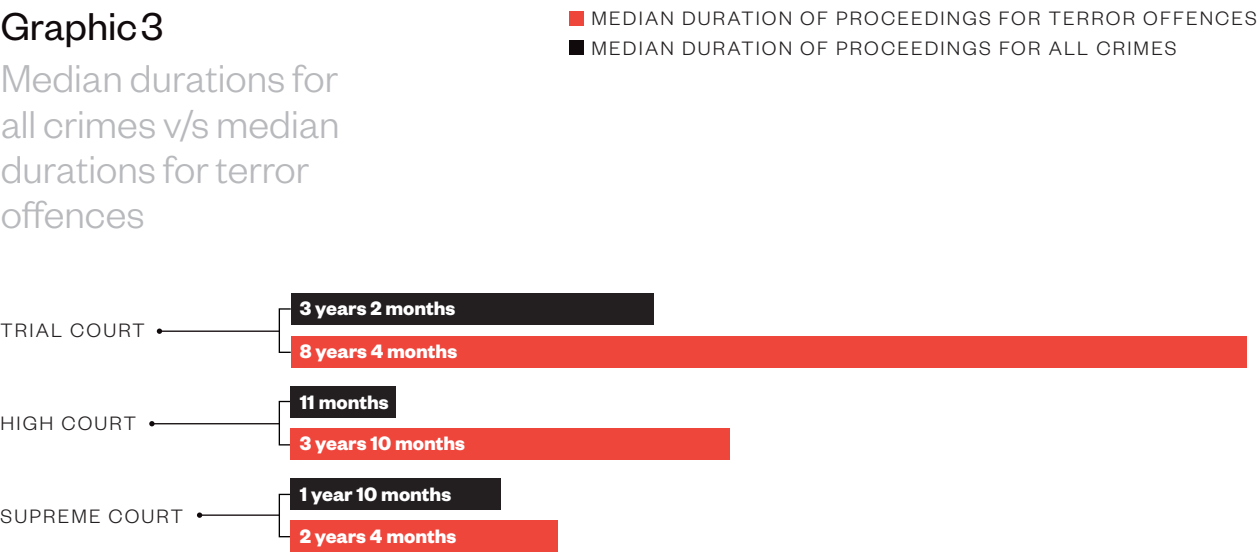
explained the case against him. In another case, Datta's trial was completed within a month and he was sentenced to death. Datta recounted that several times during the day-to-day proceedings, he was kept in the court lock up while the testimonies of witnesses were recorded in his absence. When he was taken to the courtroom, he was made to stand at the back and was unable to hear the proceedings. Belonging to an impoverished family, Datta was allotted a legal aid lawyer; however the lawyer did not explain the proceedings to him, nor spoke to him in order to construct his defence.

TERROR OFFENCES AND DURATION OF LEGAL PROCEEDINGS

While the median durations of legal proceedings are the shortest for sexual offences, the longest durations are in terror cases, and this is particularly true at the trial court and High Court stages (**Graphic 3**). The median duration of trials in terror cases is 100 months (eight years, four months) while it is 46 months (three years, 10 months) at the High Court stage, both of which are highest amongst all crimes at those stages. The median duration of trials for terror offences is more than twice the median duration for all crimes (38 months or three years, two months) while the median duration of High Court proceedings for terror offences is more than four times the median duration of High Court proceedings for all offences (11 months).

Graphic3

Median durations for all crimes v/s median durations for terror offences



Further, the median duration of proceedings in the Supreme Court for terror offences is 28 months (two years, four months) which is again higher than the median duration for all offences at the Supreme Court (22 months or one year, 10 months).

The true import of long durations of legal proceedings for terror offences can be seen when it is mapped on to the period of incarceration in these cases. Prisoners sentenced to death for terror offences are incarcerated for the longest duration as compared to prisoners sentenced to death for all other crimes.²

PROFILE OF VICTIMS

59 prisoners were sentenced to death in cases where the victim was a family member, while 304 had non-family members as victims in their cases.³ Nine prisoners were sentenced to death in cases where there was no victim (**Table 7**). The crime-wise breakup of the two categories of victims is provided in **Graphic 4**.

In terms of the age profile of victims, 174 prisoners were sentenced to death for crimes in which adults were victims, while the victims in the cases concerning 86 prisoners were minors (**Table 8**). Both minors and adults were victims in cases where 104 prisoners were sentenced to death.⁴ A look at the crime-wise composition for these categories of victims, shows that the highest number of adults were victims of murder *simpliciter* while the highest number of minors were victims in cases involving sexual offences.

IMPACT OF THE NATURE OF CRIME ON DEATH PENALTY CASES

The purpose of a criminal justice system is to adjudicate on the guilt of an accused in a manner that is consistent with due process

² For details on period of incarceration for different crimes, refer to Table 2 of the Appendix.
³ Apart from these prisoners, one prisoner was sentenced to death for the murder of victims that included family members and a non-family member.
⁴ For details regarding number of victims for which prisoners were sentenced to death, refer to Table 3 in the Appendix.

PUBLIC OPINION MAY HAVE SOME RELEVANCE TO THE ENQUIRY, BUT IN ITSELF, IT IS NO SUBSTITUTE FOR THE DUTY VESTED IN THE COURTS TO INTERPRET THE CONSTITUTION AND TO UPHOLD ITS PROVISIONS WITHOUT FEAR OR FAVOUR. IF PUBLIC OPINION WERE TO BE DECISIVE THERE WOULD BE NO NEED FOR CONSTITUTIONAL ADJUDICATION.

-S v. MAKWANYANE

CONSTITUTIONAL COURT OF REPUBLIC OF SOUTH AFRICA (1995)

of law. The Constitution and the Code of Criminal Procedure, 1973 guarantee various rights and procedural safeguards to ensure that the accused is provided fair access to justice. However, in certain cases, the meaningful exercise of these rights is hampered by the nature of the crime. The accounts of various prisoners indicate that it was the nature of crime that influenced the attitude of different stakeholders in the criminal justice system such as the police, lawyers and prison authorities and inmates.

Volume 2 of this Report analyses the experience of the prisoners sentenced to death at the different stages of their journey through the criminal justice machinery. However, it is essential here to highlight the impact that the nature of crime has on the interaction of the prisoner with the various participants of the criminal justice system. Only the prisoner can provide a first-hand account of the impact that the nature of crime had on her experience with the criminal justice system and whether it influenced the outcome of the case in any manner.

The investigation of a case by the police is the primary step which sets the wheels of the criminal justice machinery in motion. It is at this stage that there have been instances of the nature of the crime playing a role in the treatment of the accused and the investigation by the police. In some cases, the accused were labelled as terrorists by the police even before the adjudication of their guilt by the judiciary. A few disturbing accounts of prisoners who were at the receiving end of such a prejudiced treatment even before their cases went to court have been described below.

Juzer, who was charged with the offence of waging war, described in vivid detail as to how he was taken by the police to an isolated

Representation of categories of victims — family/non-family	
Category of victim	Number of prisoners
Non-family	305
Family	60
No victim	9

A case involving one prisoner where victims included family members and a non-family member, has been counted in both categories, 'Non-family' and 'Family'. Three prisoners perpetrated the repeat offence of rape on a non-family member that did not lead to loss of life. These three prisoners have been counted under the category 'Non-family'. Barring these three prisoners and the nine others whose offences had no victim, the cases of all other prisoners involved loss of life.

National representation of category of victim — adult/minor	
Category of victim	Number of prisoners
Adult	174
Adult and child	104
Child	86
No victim	9

spot in the city, so that they could shoot him like his friend who had been killed in an encounter. Juzer said that he felt utterly helpless and vulnerable, and agreed to sign all the documents given to him by the police. He admitted that he had reached the point where he simply gave up and submitted to everything that was demanded of him.

Mahmud, who was convicted for an offence under an anti-terrorism legislation, realised how biased the system was when he was berated by the investigating officers for "having the mind of a terrorist." Threatening to kill him, the police fired shots at him and as a result he was left with no choice but to follow their instructions.⁵

In another case, Kapil told us that no lawyer was allowed to defend him, owing to pressure from the local lawyers' union. This was because he was implicated in a case involving the rape and murder of a minor girl. Hanut, accused of the murder of his wife's family, said that a lawyer representing him withdrew from the case after receiving death threats. These accounts are indicative of the obstacles in the effective realisation of the fundamental right to be defended by a legal practitioner of choice, guaranteed under Article 22 of the Constitution.

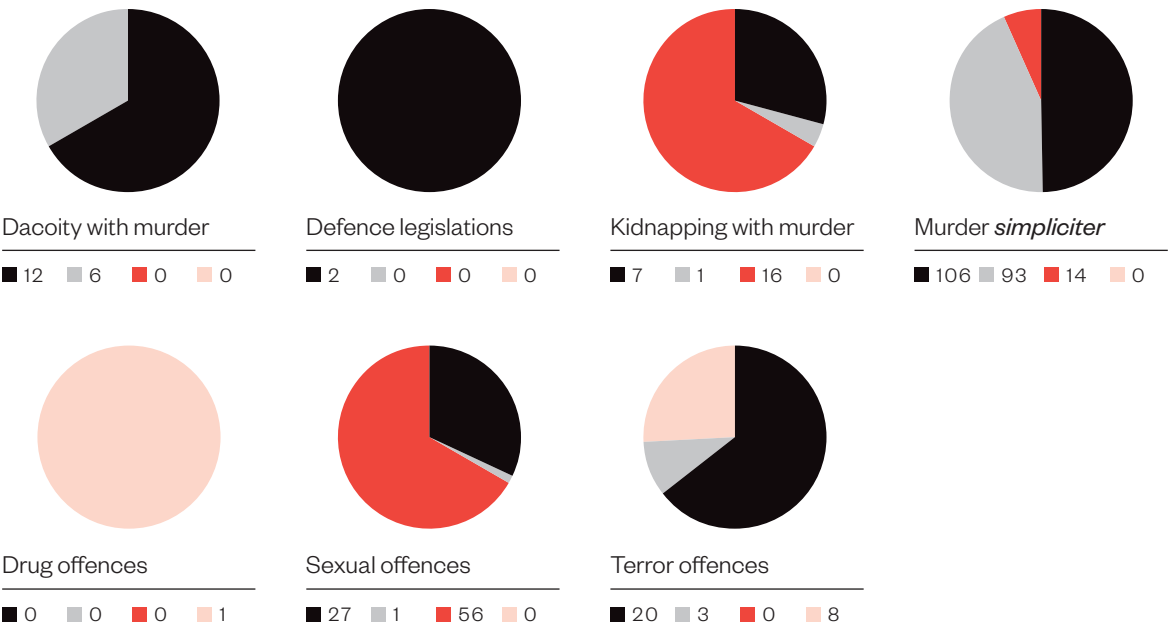
In some cases, the attitude of the jail authorities and other inmates towards prisoners sentenced to death has been found to have been influenced by the nature of their crime, especially in cases

⁵ Mahmud was subsequently acquitted of all charges by the Supreme Court.

Graphic4

Crime-wise composition of category of victim—adult/minor

■ ADULT
 ■ ADULT AND CHILD
 ■ CHILD
 ■ NO VICTIM

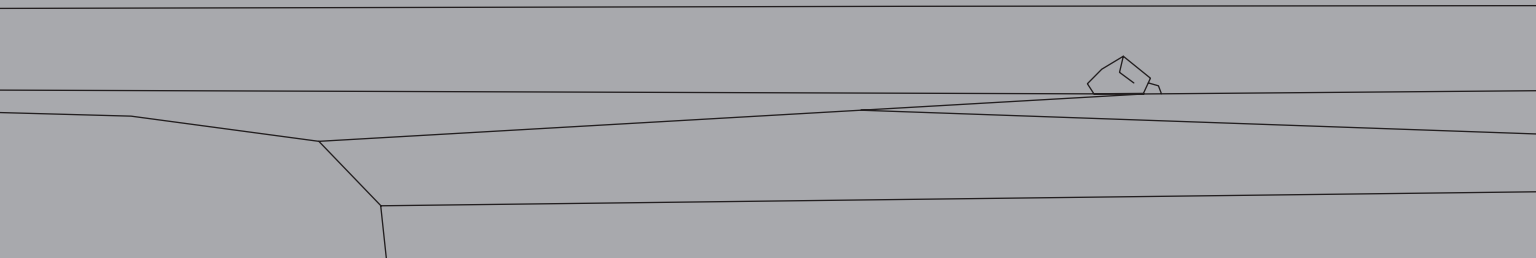


6 For more details on treatment of prisoners by prison authorities and inmates, refer to Chapter 8 on 'Living on Death Row'.

involving sexual offences. In one such instance, the accused described how the other prisoners refused to talk to him and actively avoided him because he was accused of the rape and murder of a minor. He also told us that most inmates wanted him to be executed because of the nature of the crime. In another sexual offence case, the prisoner revealed that he was often beaten up by the other inmates and added “all that keeps happening.” In another case, Rajul said he was beaten up often by his fellow inmates because of the charge of rape against him. However, he was ultimately cleared of the rape charge and convicted for kidnapping with murder.⁶

Interview of Chetak's mother

Wearing a torn sari without a blouse, with a basket in one hand and a broom in the other, the frail, old woman frightened and bewildered, sat down on her haunches in the middle of a curious crowd, repeating a refrain in a barely audible voice, "I know nothing, I understand nothing". Jamna Kumari lived in a small, dilapidated room, surrounded by a yard piled with bricks and rubble. She lived by herself, and survived by cleaning cowsheds and making dung cakes. Not paid for her labour, she was given food, enough to comprise a single meal for the day. On several days, she would not receive even this meal, and would go to bed hungry, having consumed a small cup of tea the entire day. The other villagers did not know her name, even though she worked in their houses, and one villager proudly whispered,



**“WE DO NOT
ASSOCIATE
WITH HER.”**



Chapter 4

Socio-Economic Profile

WHO GETS THE DEATH PENALTY IN INDIA?

Having observed the dynamics of India's criminal justice system, we had a strong perception that prisoners sentenced to death in this country were almost always poor and belonged to the marginalised sections of society. A close look at the administration of the death penalty in the United States and the Caribbean countries strengthened this notion. But we realised that there was a woeful lack of information on the socio-economic profile of prisoners on death row, about how their families were coping and what their experiences with the criminal justice system were. One of the significant motivations of undertaking this Project, therefore, was to generate specific data that would test this perception.

A meaningful discussion on the death penalty is not possible until we answer the question—who gets the death penalty in India? This is a question that must be answered with empirical evidence gathered over a period of time. A project like the one we undertook captures this information as a snapshot of a certain time period. We have no way of knowing if the information provided below would hold true

for prisoners sentenced to death before this Project. We can only capture this data hereon and analyse the statistical patterns. The socio-economic profile we have sought to document in this chapter is only an initial step in that direction.

We are aware of the possibility that a few changes in the cases could change the analysis we have arrived at. This awareness only reinforces our belief that such an exercise must be undertaken at regular periods to provide a more conclusive picture. However, the socio-economic information of 373 prisoners (out of a total of 385) documented by the Project, does point us in a certain direction. This takes us beyond intuition and into the realm of empirical reality. It is imperative to engage with this reality while discussing the desirability or otherwise of the death penalty.

METHODOLOGY FOR SOCIO-ECONOMIC ANALYSIS

Information for this chapter was gathered through interviews with prisoners sentenced to death and their families. All details recorded were based on the information provided in these interviews. We did not undertake any documentary validation of the information provided. We realised very early on that many of these prisoners and their families had no access to documentary proof of their socio-economic status. Another methodological difficulty we encountered was with documenting 'income'. A large number of prisoners, for a variety of reasons, could not assign a specific monetary value to the processes through which they ensured subsistence and livelihood. Therefore, in order to get a sense of the economic profile, we have provided information based on economic vulnerability. We have classified prisoners as 'economically vulnerable' by considering their occupation and

Age composition of prisoners at the time of incident		
Age of prisoner at the time of incident (in years)	Number of prisoners	Percentage of prisoners
Less than 18	18	5.8%
18-21	54	17.4%
22-25	38	12.3%
26-40	140	45.2%
41-60	53	17.1%
More than 60	7	2.3%

Information relating to the age of 63 prisoners is unavailable.

land holding. While educational status has a very close connection, we have presented that information separately from economic vulnerability. Further, the information provided regarding education level, occupation and land of prisoners pertains to the time of the arrest of these prisoners. These socio-economic factors might have changed during the progress of their case and incarceration.

AGE

Age is often seen as a very important factor in sentencing. Criminal trials in India are divided into two broad stages: in the first stage, the trial court decides on the guilt of the accused according to rules of evidence. Once the guilt is established, the trial court then has to determine the sentence and punishment for the person concerned. In this sentencing phase, the trial court can take into consideration a whole range of factors that would have been irrelevant for deciding the guilt of the person concerned. Age is a particularly strong sentencing factor, especially young or old age (**Graphics 2 & 3**).

In *Bachan Singh v. State of Punjab*, a five-judge bench of the Supreme Court held that “if an accused is young or old, he shall not be sentenced to death.”¹ In terms of young age, it is considered that the person has her entire life ahead of her and the foundations of the criminal justice system tend to lean towards reformation in such cases. It is also assumed that young people are extremely vulnerable in society and it would be harsh to give them the same punishment as older adults. Extreme old age also poses its own set of problems in this context. One of the dominant reasons cited by retentionists for executions is that certain individuals pose an unacceptable risk to society and should therefore be executed.

¹ (1980) 2 SCC 684, paragraph 206.

Age composition of prisoners at the time of interview		
Age of prisoner at the time of interview (in years)	Number of prisoners	Percentage of prisoners
18–21	17	5.5%
22–25	25	8.1%
26–40	141	45.5%
41–60	100	32.3%
More than 60	27	8.7%

Information relating to the age of 63 prisoners is unavailable.

However, individuals who are extremely old can hardly be said to pose such a risk. It must also be remembered that the choice is not between executing the guilty and letting them go free.

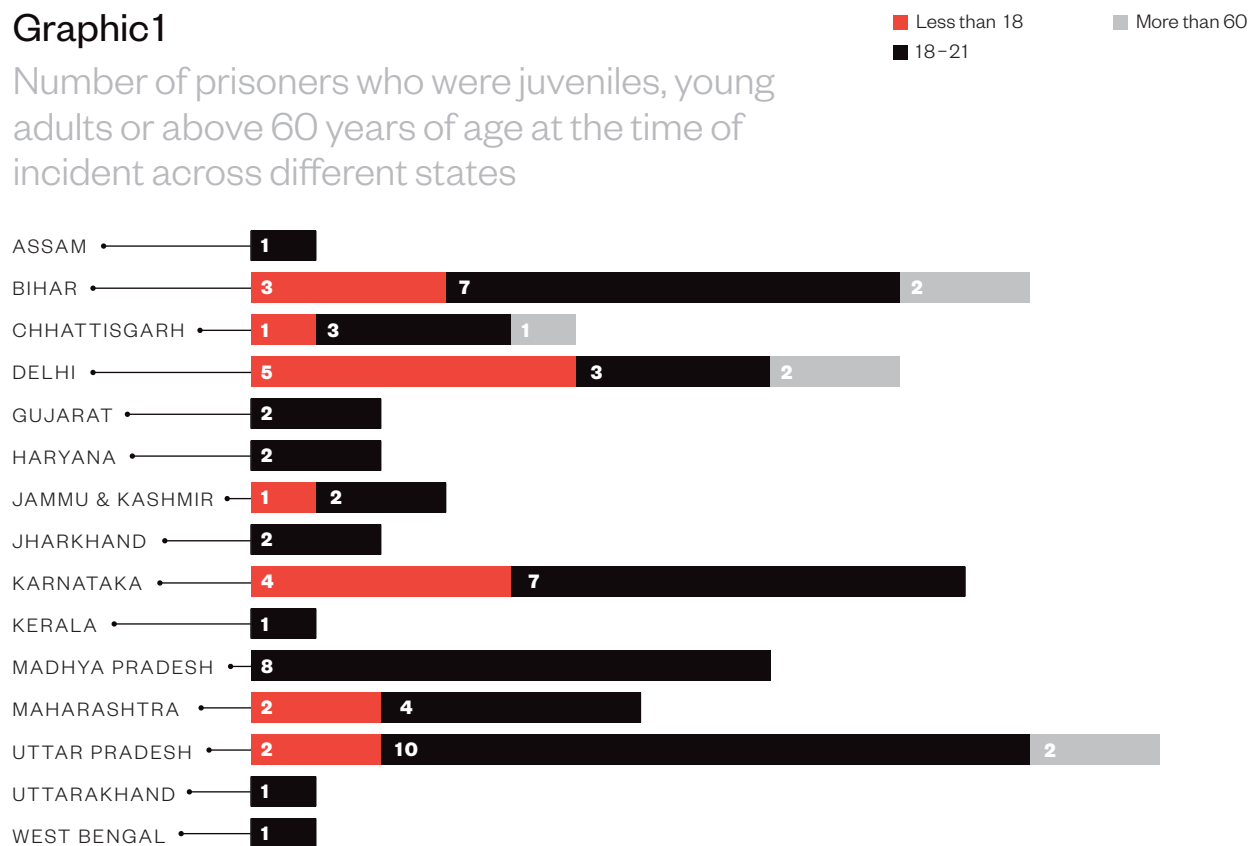
COMPOSITION OF PRISONERS BY AGE-GROUPS

It is a matter of grave concern that 18 prisoners sentenced to death claimed to have been below 18 years of age at the time of the incident (**Table 1**). However, the claim of juvenility is a complex one in many of these circumstances due to the lack of documentation. Since all these prisoners are significantly older now, a bone density test cannot be an accurate indicator of a person's age. A distressing observation was that hardly any of them had the opportunity to agitate this issue before the trial court that first sentenced them to death. Much of this has to do with the nature of the lawyer-client interaction in such cases discussed in detail in Chapter 5 on 'Legal Assistance'. From the 18 prisoners referred to above, five had never attended school and 12 had not completed their secondary education.

Of the 310 prisoners for whom age related information is available, 54 prisoners (17.4%) were in the 18 to 21 years bracket at the time of the incident in their cases (**Graphic 1**). Ten prisoners (18.5%) from these 54 had never attended school and 32 (59.2%) had not completed their secondary education. Countries like the United Kingdom treat 'young offenders' as a separate category within their sentencing policy towards ensuring that they can be reformed and are not condemned to becoming perpetual victims of the criminal justice system. While there must certainly be appropriate punishment, societies cannot abandon complete responsibility for the manner in which their young people develop. Indian society seems

Graphic1

Number of prisoners who were juveniles, young adults or above 60 years of age at the time of incident across different states



Information relating to the age of 63 prisoners is unavailable. The number of prisoners belonging to each age category at the time of incident across different states has been provided in Table 4 of the Appendix.

to be regressing in this regard with the Juvenile Justice (Care and Protection of Children) Act, 2015 coming into force that provides for stricter punishment to juveniles aged between 16 and 18 years for committing heinous crimes.

While there were seven prisoners who were above 60 years at the time of the incident in their cases, 27 of them were more than 60 at the time of the interviews for this Project (**Table 2**). There is no real justification, even in terms of the internal logic of the death penalty, to keep individuals who are very old under the sentence of death, as they cannot pose a risk to society due to their infirmity.

CLAIM OF JUVENILITY

While arguments on age as a mitigating circumstance are important for other categories of prisoners as well, they hold particular significance for those prisoners sentenced to death who claim to be juveniles at the time of the incident i.e. below the age of 18. In our study we came across 18 prisoners who raised such claims. Out of these, we were able to access the trial court decisions of 15 prisoners.

An analysis of these decisions shows that the claim of juvenility was not addressed in the trial court decisions in 12 cases. In the remaining decisions where arguments on juvenility were raised,

THE YOUNGEST AND OLDEST PRISONERS SENTENCED TO DEATH

In our study, the youngest person sentenced to death was Muttresh who was arrested in September 1996 and was sentenced to death under Section 396 of the IPC for dacoity with murder. Though Muttresh claimed he was only 11 years old at the time of his arrest, he was shown as being 18 years old by the investigating authorities. After the death of his parents, Muttresh moved to Bangalore in search of his brother who was a coolie (manual casual labourer). Prior to his

arrest, he had earned a living by carrying night soil and laying bricks at construction sites. Muttresh had spent 17 years and six months in prison, with three and a half years on death row, before being acquitted by the High Court in 2014. Muttresh was acquitted on the basis that there was no material on record to establish his involvement in the commission of the offence. However, Muttresh continues to be incarcerated on account of other charges. The oldest person sentenced to death interviewed by the Project was

Dheer. At the time of his arrest, Dheer was 78 years old. Along with 13 others, he was convicted for his involvement in the murder of 16 people and was sentenced to death. Dheer had never attended school and was illiterate. At the time of his arrest, he lived with his wife and seven children. Dheer had spent three years, nine months in prison when we interviewed him. He struggled to walk and needed assistance to be brought for the interview.

the trial court summarily dismissed those claims without even ordering a further investigation. In Lakshmikanth's case, while dismissing the claim of juvenility, the sessions court, noted that it was a "tactic to avoid the death sentence" as the accused did not raise that point either during the investigation, arguments, or his cross examination. In Ifraz's case, on the basis of the age of the accused mentioned in the "*chowkidar* (guard) register" of the village, the trial court summarily dismissed the accused's submission that he was 16 years old at the time of the incident. In Archit's case, the court dismissed the prisoner's claim of juvenility on the basis that he had moved a "false and frivolous application" alleging that he was a juvenile, after admitting his age as 20 years before the investigating authorities.

Further, in cases where arguments over age are raised during the sentencing phase, courts have erroneously placed reliance on the age of the accused at the time of the trial instead of her age at the time of the incident. Such an error comes at a tremendous cost for prisoners who were either just below 18 at the time of incident or had prolonged trials. While deciding on the sentence in Sawan's case, the court noted that he was about 27 years old at the time of sentencing. In this regard, it is pertinent to note that his trial took more than nine years.

Another issue which is apparent from these decisions is the lack of discussion on the possibility of reformation and rehabilitation of the prisoner. As per the Supreme Court's directions in *Bachan Singh*, the State must provide evidence that the accused cannot be reformed and rehabilitated.² Such an onus on the State would have special relevance in cases concerning young offenders, as these prisoners have their entire lives ahead of them and would

² (1980) 2 SCC 684, paragraph 206.

Graphic 2

Age-wise composition of prisoners at the time of incident across different crimes

■ Less than 18
■ 18-21

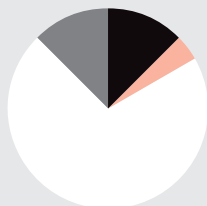
■ 22-25
■ 26-40

■ 41-60
■ More than 60



Murder *simpliciter*

■ 7 ■ 18 ■ 40
■ 25 ■ 81 ■ 6



Terror offences

■ 0 ■ 1 ■ 3
■ 3 ■ 17 ■ 0



Sexual offences

■ 7 ■ 11 ■ 8
■ 19 ■ 27 ■ 1



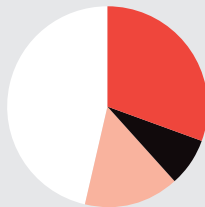
Kidnapping with murder

■ 0 ■ 6 ■ 1
■ 6 ■ 7 ■ 0



Drug offences

■ 0 ■ 0 ■ 0
■ 0 ■ 1 ■ 0



Dacoity with murder

■ 4 ■ 2 ■ 0
■ 1 ■ 6 ■ 0



Offences under defence legislations

■ 0 ■ 0 ■ 1
■ 0 ■ 1 ■ 0

Information regarding the age of 63 prisoners is unavailable.

Graphic 3

Age-wise composition of prisoners at the time of interview across different crimes

Less than 18
18-21

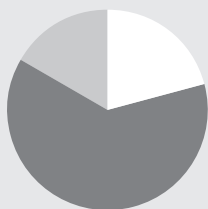
22-25
26-40

41-60
More than 60



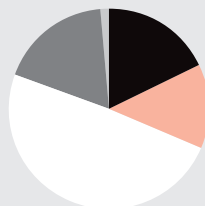
Murder *simpliciter*

0 4 14 72 65 22



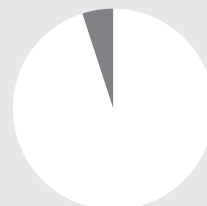
Terror offences

0 0 15 0 5 4



Sexual offences

0 10 13 36 1



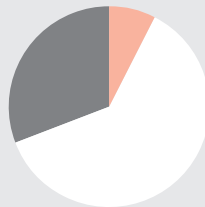
Kidnapping with murder

0 0 1 0 19 0



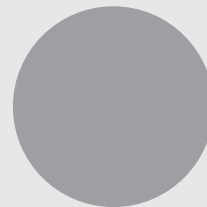
Drug offences

0 0 0 0 1 0



Dacoity with murder

0 1 4 0 8 0



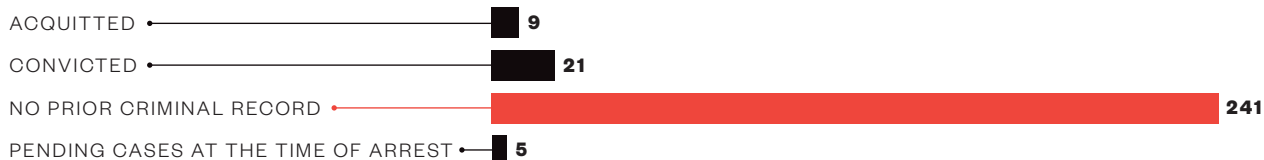
Offences under defence legislations

0 0 2 0 0 0

Information regarding the age of 63 prisoners is unavailable.

Graphic 4

Previous criminal record of prisoners sentenced to death



Information regarding prior criminal history is unavailable for 97 prisoners.

have greater chances of being rehabilitated. However, amongst these decisions, the courts have either not considered any arguments on the possibility of reformation or have dismissed such claims on the basis of the 'heinousness of the crime'.³

PRIOR CRIMINAL HISTORY

Another aspect which is often considered during sentencing is the previous criminal record of the prisoner. In *Shankar Kisanrao Khade v. State of Maharashtra*, the Supreme Court explained that mere pendency of cases is "not an aggravating circumstance to be taken note of while awarding death sentence unless the accused is found guilty and convicted in those cases."⁴ Therefore, the criminal antecedents of a prisoner would be relevant for sentencing, only if they resulted in a conviction against the prisoner.

Of the 276 prisoners for whom information regarding prior criminal history is available through their accounts, 241 prisoners (87.3%) did not have any previous criminal record (**Graphic 4**). Of the remaining prisoners, 21 (7.6%) had prior convictions.

Amongst the 214 prisoners who did not have a prior criminal record and for whom information regarding age at the time of incident was available,⁵ 75 prisoners (35%) were below the age of 25 (**Table 3**).

ECONOMIC VULNERABILITY

This section aims to analyse the economic position of the prisoners sentenced to death. Given the nature of data we collected, we concluded that we were on firmer ground documenting economic vulnerability rather than poverty. A wide variety of factors influ-

³ For more details on sentencing, refer to Chapter 7 on 'Trial and Appeals'.

⁴ (2013) 5 SCC 546, paragraph 62.

⁵ Amongst the 241 prisoners who did not have a prior criminal record, information regarding age at the time of incident is unavailable for 27 prisoners.

Prior criminal history and age at time of incident				
Age of prisoner at time of incident	Acquitted	Convicted	No prior criminal record	Pending cases at the time of arrest
Less than 18	1	1	12	0
18-21	1	2	37	1
22-25	2	3	26	0
26-40	2	9	94	3
41-60	3	2	40	0
More than 60	0	0	5	0

Information regarding prior criminal history and age at the time of incident is unavailable for 129 prisoners.

enced this decision. In a large number of cases, since significant time had elapsed between the incident and our interviews with the prisoners and their families, they were unable to reliably recollect their income at the time of the incident. We also did not find it easy to collect information on other aspects like child mortality, nutrition, health, sanitation and living standards because the prisoners and their families were more eager to talk about case-related matters. Many of them responded to questions on income by answering that they cultivated enough for their subsistence. In such circumstances, the most reliable information that we could document, as one facet of poverty, was occupation.

While occupation cannot be determinative of poverty, we have used it instead as an indicator of economic vulnerability. Another factor that we have considered to determine economic vulnerability is the size of the prisoner's landholding. Since land can be a source of income (agricultural produce) as well as an important economic asset, its ownership adds to the social and economic security of a person. For this reason, we have excluded those with medium (between four and 10 hectares) and large land holdings (above 10 hectares) from the 'economically vulnerable' category.

The occupation of the prisoners in the study were categorised in the following manner:

1. Manual casual labourers (agricultural and non-agricultural)
2. Marginal and small cultivators (cultivating on own or leased land measuring less than four hectares)
3. Low paying public and private salaried employment
4. Small own account enterprises
5. Students
6. Unemployed persons

- 7. Religious occupations
- 8. Salaried public and private employment
- 9. Medium and large cultivators (cultivating on own or leased land measuring four hectares and above)
- 10. Medium and large businesses

Some of the categories above represent a collection of various occupations, which have been disaggregated in **Graphic 5** (the national and state-wise division of prisoners into 10 broad categories has been provided in Tables 5 & 6 of the Appendix).

For the purposes of this study, we have considered those in categories 1 to 6 as 'economically vulnerable'. As stated above, we have considered land holdings to exclude those who might have been economically vulnerable by virtue of just their occupation. All those who had medium or large land holdings (between four to 10 hectares and above 10 hectares) were excluded.⁶

ECONOMIC CAPABILITY AND PARTICIPATION IN THE LEGAL PROCESS

While the spectrum of economic vulnerability in the sections included is certainly not homogenous, we have aimed at capturing a threshold below which the capability to meaningfully participate in the legal process is significantly reduced. While the experience of economic vulnerability varies across categories 1 to 6, this classification is meant to be used only to reflect on the capability of such persons to benefit from the protections within the criminal justice system.

The economic capabilities of an accused are critical to participation in the criminal justice system in many ways. Starting from issues of bail, legal representation, expert witnesses at the trial

⁶ Additionally, students and unemployed persons whose families engaged in occupations that fell into categories 7 to 10, or whose families owned medium or large land holdings, have been excluded.

DALVINDER

Dalvinder was convicted and sentenced to death for the murder of five persons in May 1997. At that time, he had a prior conviction for the rape of a woman, who was related to the deceased persons, for which he was sentenced to 10 years imprisonment. While hearing his death reference, the High Court observed that the testimony of one of the deceased in the rape case was the motive behind the murder and on that basis confirmed the death sentence. This decision was affirmed by the Supreme Court. Subsequently, Dalvinder filed a mercy petition before the President and during its pendency, he

was acquitted in the rape case in November 2003. After the disposal of the mercy petition by the President, Dalvinder filed a writ petition before the High Court, challenging the rejection *inter alia* on the ground that the material regarding his acquittal in the rape case was not placed before the President for deciding on the mercy petition. Considering this procedural irregularity, the High Court observed that the fact that Dalvinder had been “acquitted in the rape case might have had a great bearing on the decision of the mercy petition,” particularly because the Supreme Court had previously commuted the death

sentence of his brother, a co-accused, while noting that he was not involved in the rape case. In view of this, the High Court commuted Dalvinder’s death sentence, while pointing out that this procedural illegality had caused serious prejudice to him and “violated his fundamental right to get his mercy petition considered in its right perspective.” Dalvinder had spent 20 years and four months in prison, with 16 years and five months on death row, before his sentence was commuted by the High Court.

stage, to sustaining the appellate process in the High Court and the Supreme Court, and a range of other facets, these capabilities are determinative to a very significant degree. While external factors like an effective legal aid system can neutralise the negative impact of such vulnerability to a certain extent, the economic vulnerability we have mapped helps us understand the extent to which prisoners sentenced to death are placed on the margins of the criminal justice system. It allows us to get a better perspective of the prisoners, which can then further inform the evaluation of the components of the criminal justice system, including the legal aid system.

ECONOMIC VULNERABILITY: NATIONAL ANALYSIS

In this section, we are largely concerned with data from those states which had more than 10 prisoners sentenced to death. However, for the purposes of computing the national figures, information from all states has been used.

According to the national figures, 74.1% of the prisoners sentenced to death in India are economically vulnerable according to their occupation and landholding (**Graphic 6**). As stated above, a prisoner’s economic status has a direct impact on her ability to effectively participate in the criminal justice system. Since a large portion of the present population of prisoners sentenced to death are economically vulnerable, it is important to examine the impact of their economic status on their cases and whether there are any other factors which distinguish their cases from those prisoners who do not receive the death sentence for similar offences. However, such an exercise was beyond the scope of the present study.

Graphic5

Occupations of prisoners sentenced to death

* Only occupations classified as ‘manual casual labourers-non-agricultural’ have been provided in this graphic.

MANUAL CASUAL LABOURERS*

- Auto driver
- Brick kiln labourer
- Bus conductor/cleaner
- Construction worker
- Daily wage worker
- Engaged in poultry/fishing/ animal husbandry
- Garment worker
- Hotel/eating joint helper
- Manual scavenger
- Repair worker
- Rickshaw puller
- Scrap dealer
- Sewage worker
- Shop helper
- Small factory worker
- Street vendor
- Transport worker

LOW PAYING PRIVATE SALARIED EMPLOYMENT

- Counter salesman/shop assistant
- Domestic worker
- Driver
- Guard
- Hospital peon

LOW PAYING PUBLIC SALARIED EMPLOYMENT

- LIC insurance agent
- Municipal safai karamchari

SMALL OWN ACCOUNT ENTERPRISES

- Cycle repair shop owner
- Driver of self-owned private taxi
- Engaged in distribution business
- Engaged in informal banking
- Engaged in leather business
- Engaged in phone connections business
- Engaged in battery inverters business
- Garage owner
- Music teacher
- Owner of small transport business
- Petrol and cigarette seller
- Property broker
- Shop owner
- Tailor

SALARIED PUBLIC EMPLOYMENT

- Army/ Border Security Force soldier
- Class IV government employee
- District council employee
- Government school teacher
- Municipal corporation employee
- Police officer
- Public bank clerk
- Public corporation driver
- Rail coach workshop employee
- Railway clerk
- State transport bus driver
- Stenographer
- Tube well operator
- University Professor/ administrative officer

SALARIED PRIVATE EMPLOYMENT

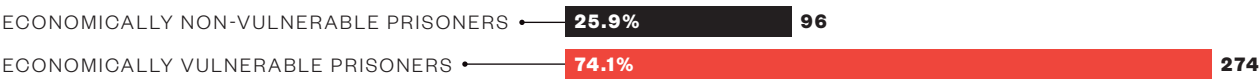
- Advocate
- Bank manager
- Chartered accountant
- Employed in the diamond cutting business
- Finance company manager
- Insurance company advisor
- Insurance company employee
- Manager in schools associated with a foundation
- Private school teacher
- Private transport company manager

MEDIUM AND LARGE BUSINESSES

- Engaged in manufacturing tin sheets
- Engaged in real estate
- Engaged in tent house business
- Engaged in wood business
- Event manager
- Hotel owner
- Leather industrialist
- Owner of automobile spare parts shop
- Owner of canteen stores
- Owner of computer centre
- Owner of grocery store
- Owner of modular kitchen business
- Owner of paan (betel leaves) shops
- Owner of photocopy shop
- Owner of photography studio
- Owner of tuition centre
- Wholesale dealer in spices

Graphic6

Economic vulnerability of prisoners sentenced to death



Information regarding economic vulnerability of three prisoners is unavailable.

While evaluating the impact of the prisoner's economic status on her case, another aspect which must be considered is whether these prisoners were the sole or primary earners in their families. The implication of a sole or primary earner of a family in a capital offence would not only restrict the resources available for sustaining their case, but would also have a serious impact on the economic well-being of the dependant family members. Of the 209 economically vulnerable prisoners, 63.2% were either the primary or sole earners in their families (**Graphic 10**).⁷

ECONOMIC VULNERABILITY: STATE-WISE ANALYSIS
Amongst the states with 10 or more prisoners sentenced to death (**Graphic 8**), Kerala had the highest proportion of economically vulnerable prisoners sentenced to death with 14 out of 15 prisoners (93.3%) falling in this category. Other states which had 75% or more prisoners sentenced to death belonging to the 'economically vulnerable' category were Bihar (75%), Chhattisgarh (75%), Delhi (80%), Gujarat (78.9%), Jharkhand (76.9%), Karnataka (75%) and Maharashtra (88.9%). On the other hand, the highest proportion of non-vulnerable prisoners was found in Uttar Pradesh i.e. 38.5% (i.e. 30 out of 78 prisoners).⁸

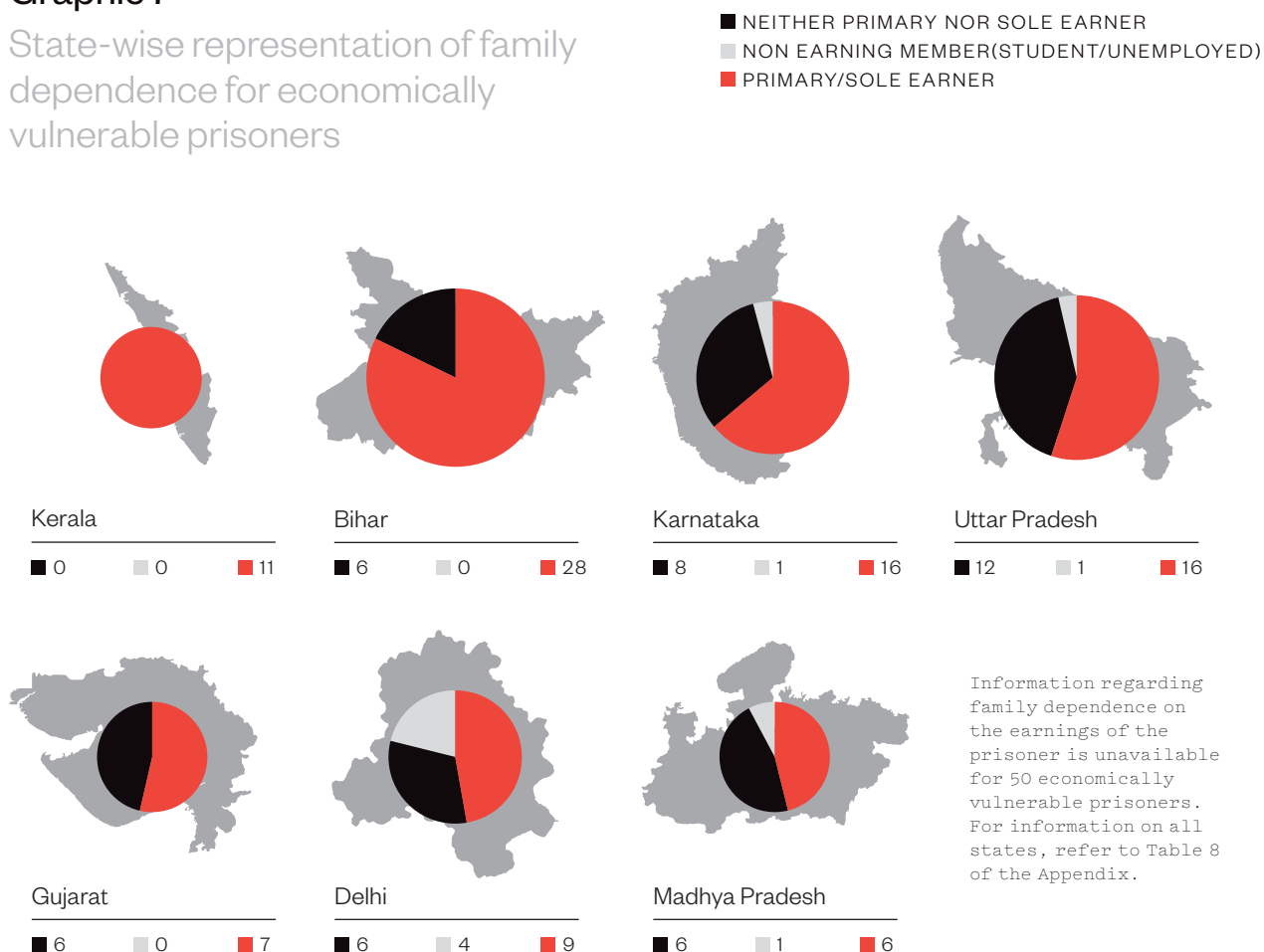
A state-wise analysis of the economic dependence of families on economically vulnerable prisoners reveals that among the states with 10 or more such prisoners (**Graphic 7**), over 50% of the economically vulnerable prisoners in Kerala, Bihar, Karnataka, Maharashtra, Uttar Pradesh and Gujarat were primary or sole earners. While Bihar had the highest number of economically vulnerable prisoners who were sole or primary earners (28), in

⁷ Information on the economic dependence of the family on the earnings of the prisoner is unavailable for 65 prisoners.

⁸ Information regarding economic vulnerability for one prisoner each from Bihar, Karnataka and Uttar Pradesh is unavailable.

Graphic 7

State-wise representation of family dependence for economically vulnerable prisoners



Kerala all economically vulnerable prisoners (11) were also sole or primary earners.⁹

ECONOMIC VULNERABILITY: STAGE-WISE ANALYSIS

As is evident from the state-wise analysis, the national proportion of economically vulnerable prisoners i.e. 74.1% is true for most states with 10 or more prisoners sentenced to death. This proportion is also visible at each stage i.e. High Court pending, Supreme Court pending, Mercy pending and Mercy reject (**Graphic 9**).

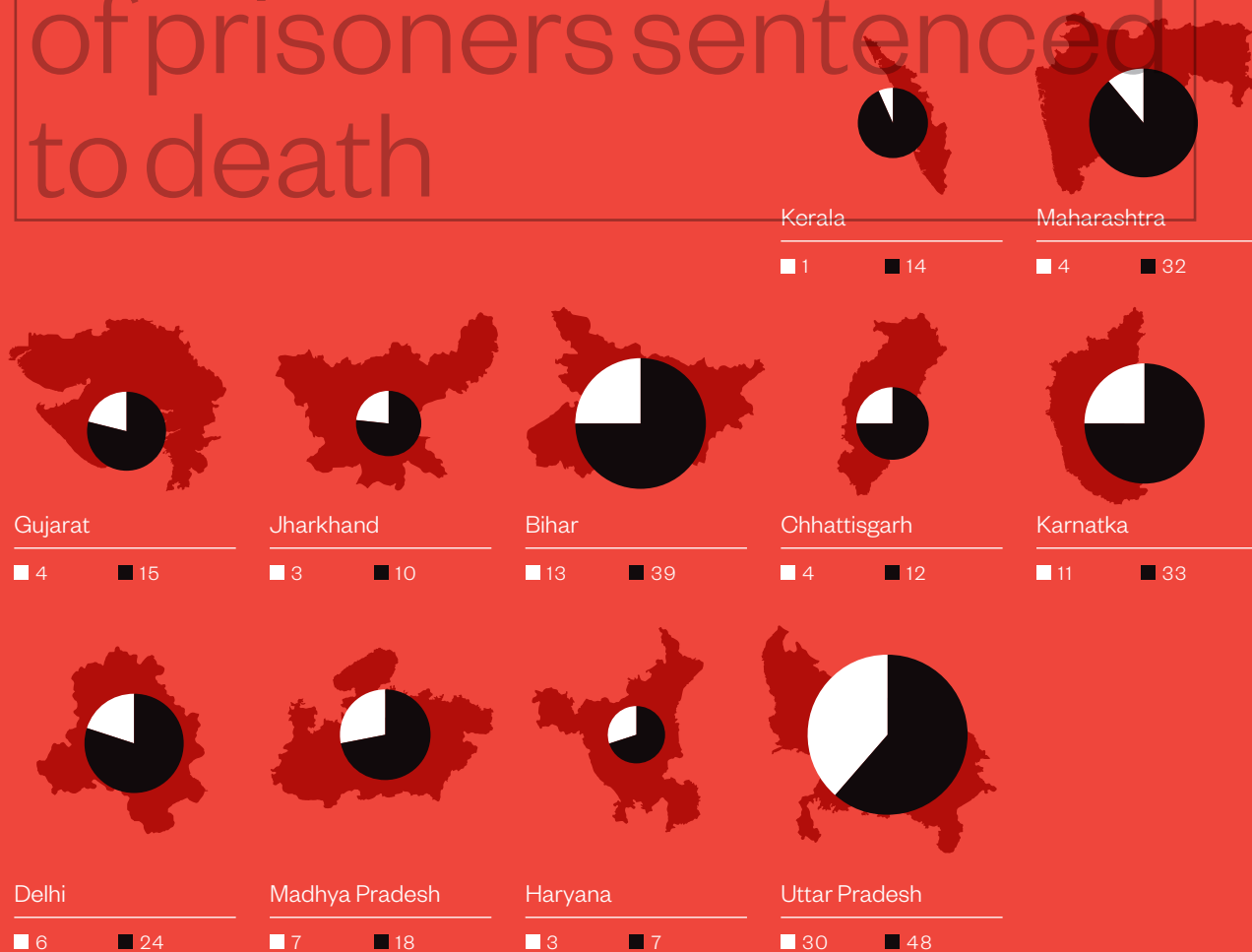
While analysing the figures of economically vulnerable prisoners at each stage, it must be considered that this vulnerability has been tracked as at the time of the incident. Given the huge litigation expenses as well as the costs incurred by families in meeting the prisoners, the economic vulnerability of these prisoners and their families would only increase over the years, as the case progresses through the judicial hierarchy. Therefore, it is likely that the

⁹ Information regarding economic dependence of the family on the earnings of the prisoner is unavailable for three prisoners in Kerala.

Graphic 8

State-wise representation of economic vulnerability of prisoners sentenced to death

■ ECONOMICALLY NON-VULNERABLE
■ ECONOMIC VULNERABLE



Information regarding economic vulnerability for one prisoner each from Bihar, Karnataka and Uttar Pradesh is unavailable. The data from states with less than ten prisoners sentenced to death has been omitted. For information regarding economic vulnerability for all states, refer to Table 7 of the Appendix.

MORÉ BROTHERS

Six members of the Moré family were arrested for the murder of four people and, rape and murder of a girl. After the Supreme Court confirmed their death sentences, one of the six brothers, Gopal Moré was declared to be a juvenile by the sessions court on the basis of his school leaving certificate which was previously not considered by any court. At the time of this decision, Gopal had already spent nine years in prison, six of them on death row, and his mercy

petition had also been rejected by the Governor without consideration of his age. Of the remaining five brothers who are currently on death row, Bhairav Moré stated that he was 11 years old at the time of his arrest but as he had never attended school and therefore, did not have any proof of age like his older brother, Gopal. The Moré brothers belong to a Scheduled Tribe. Before the incident they had been working as labourers, digging gutters and lifting sand bags. Amongst the five brothers

currently on death row, four never went to school and one of them had briefly attended school. During his interview, Nagesh Moré said that he started working at the age of seven or eight years and therefore never got the opportunity to attend school. Apart from construction work, he also did manual scavenging in order to earn enough money for his children. The Morés have been in prison for 11 years and eight of those have been on death row.

economic vulnerability of the prisoners increases in the advanced stages of their case.

OCCUPATIONAL HISTORY

When considering economic vulnerability, the study focused on occupation at the time of the arrest of the prisoner. However, examination of the childhood experiences and occupational history provides a deeper understanding of the vulnerability of the prisoners.

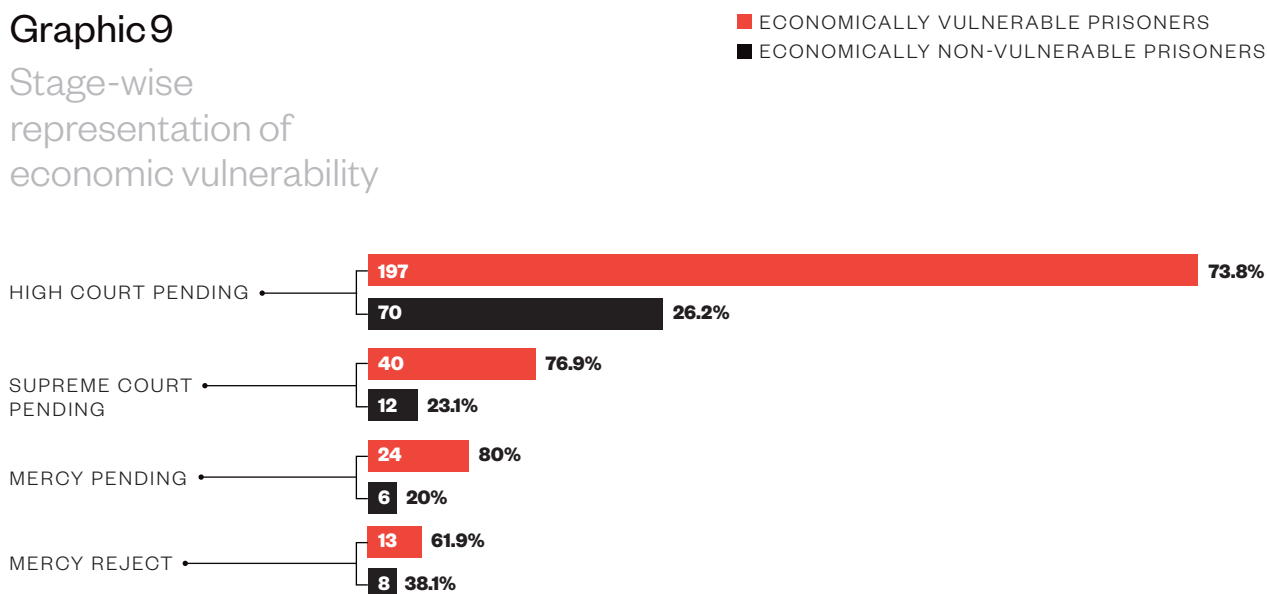
Of the 348 prisoners who shared their occupational history, nearly half were engaged in the unorganised sector, working in vulnerable and low paying occupations through most of their life such as manual scavenging, construction work, driving rickshaws, or working in a factory. While some prisoners did agricultural work on their own land, others were unemployed or were students. Less than one-fifth of the prisoners held jobs paying a higher income such as teaching, running a business, or government employment.

EDUCATIONAL PROFILE

Educational status is an important marker of marginalisation and exclusion, and is a strong indicator of disadvantage. Analysis of the educational profile will primarily point us in two directions: first, to fully understand the socio-economic position of prisoners at the time of the incident and second, to give us an understanding of the alienation of the prisoners from the entire legal system. By alienation, we mean the experience of the prisoner within the legal system and the extent to which the prisoner is able to understand the details of the case against her. While educational profile is just one factor that has an influence on this, it certainly begins to tell us

Graphic9

Stage-wise representation of economic vulnerability



Information regarding economic vulnerability of three prisoners is unavailable.

a story. This direction, i.e. the different ways in which the prisoners we interviewed were alienated from the legal system is explored in detail in Volume 2.

However, our immediate task in this sub-section is to present data on educational profile that gives us a much more nuanced understanding of the socio-economic status of the prisoners sentenced to death in India. While caste and religious composition give us a certain dimension of marginalisation, educational status further underscores the impact of other socio-economic factors.

As is evident from the **Graphic 11**, 23% of prisoners sentenced to death had never attended school. A further 9.6% had barely attended but had not completed even their primary school education.¹⁰ As we moved up the levels of school education, we observed that a staggering 61.6% of prisoners sentenced to death had not completed their secondary school education. The caste/ religious minorities composition considered along with the educational profile tells us a further story of marginalisation and disadvantage.

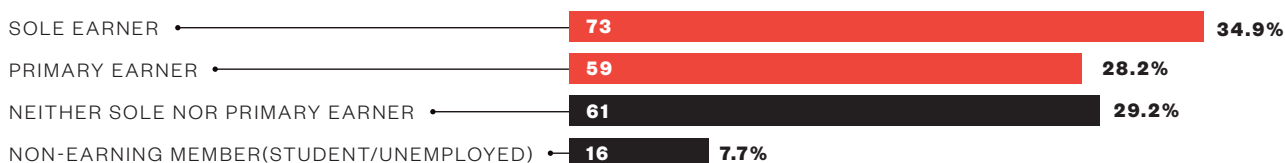
Six out of the 13 prisoners in Jharkhand never went to school (46.2%) but among the states with a substantial number of prisoners, Bihar and Karnataka had the highest proportion of such prisoners. In Bihar 18 out of the 51 prisoners (35.3%) never attended school, while in Karnataka 15 out of 44 prisoners (34.1%) were part of this category. Kerala is the only state (amongst those states with 10 or more prisoners sentenced to death) where all prisoners had at least attended school.

As indicated in **Table 4**, 89.5% of the prisoners sentenced to death (i.e. 17 out of 19 prisoners) in Gujarat did not complete

¹⁰ For a detailed break-up of educational profile of prisoners sentenced to death, refer to Tables 9 & 10 of the Appendix.

Graphic10

Status of family dependance for economically vulnerable prisoners



Information on the economic dependence of the family on the earnings of the prisoner is unavailable for 65 prisoners.

their secondary education. While the national ratio for prisoners sentenced to death who did not complete their secondary education is 62%, states like Kerala (71.4%), Jharkhand (69.2%), Maharashtra (65.7%), Delhi (63.3%) and Uttar Pradesh (61%) had a large proportion of prisoners under this category.

Of the 214 prisoners who discussed their childhood experiences, 91 (42.5%) said that they started working before attaining the age of 18. A large number of prisoners reported that the financial insecurity of the family forced them to drop out of school and take up jobs in order to support the family. Some of them had lost one or both of their parents at a young age and so had to provide for their siblings and the rest of the family.

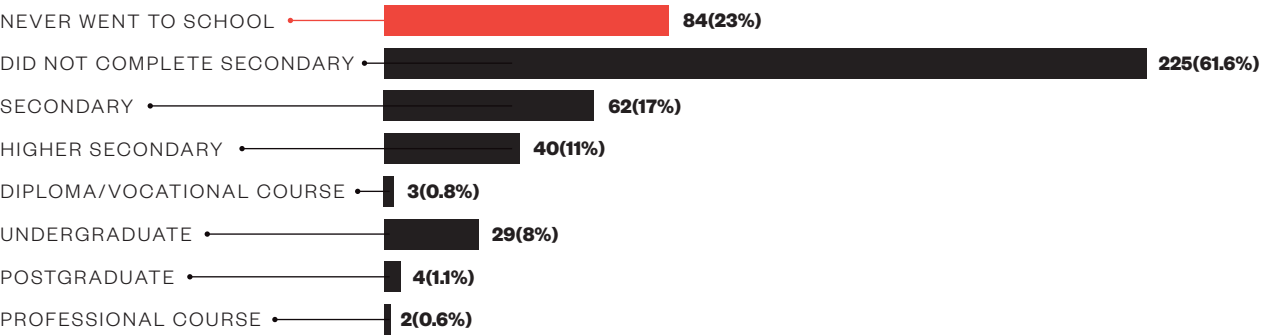
CASTE AND RELIGIOUS PROFILE

While we have used information from all states to present the national data in this section, for the state-wise analysis we have highlighted only those states that have 10 or more prisoners sentenced to death.

As is evident from **Graphic 12**, 76% (279 prisoners) of prisoners sentenced to death in India are backward classes and religious minorities. While the purpose is certainly not to suggest any causal connection or direct discrimination, disparate impact of the death penalty on marginalised and vulnerable groups must find a prominent place in the conversation on the death penalty. Further, disaggregating the data state-wise gives us a far more nuanced picture from the national one (**Graphic 13**).

Graphic11

Educational profile of prisoners sentenced to death



The educational profile of eight prisoners is unavailable. The category of 'Never went to school' (84 prisoners) is also included in the category of 'Did not complete Secondary'.

SCHEDULED CASTES/ SCHEDULED TRIBES
While the proportion of Scheduled Castes/Scheduled Tribes (SC/STs) amongst all prisoners sentenced to death in India is 24.5%, that proportion is significantly higher in Maharashtra (50%), Karnataka (36.4%), Madhya Pradesh (36%), Bihar (31.4%), Jharkhand (30.8%) and Delhi (26.7%), amongst states with 10 or more prisoners sentenced to death (**Table 5**). These states together had 199 prisoners whose caste information is available and the cumulative proportion of SC/STs in these states is 35.7%.¹¹

RELIGIOUS MINORITIES
Religious minorities comprised a disproportionate share of the prisoners sentenced to death in Gujarat, Kerala and Karnataka. In Gujarat, out of the 19 prisoners sentenced to death 15 were Muslims (79%), while 60% of the prisoners sentenced to death in Kerala were religious minorities (five Muslims and four Christians amongst 15 prisoners sentenced to death). Of the 45 prisoners sentenced to death in Karnataka, 31.8% were religious minorities (10 Muslims and four Christians).¹²

PROFILE OF PRISONERS SENTENCED TO DEATH FOR TERROR OFFENCES
Amongst the 373 prisoners who form a part of this study, 31 prisoners were sentenced to death for terror offences. 29 of these prisoners (93.5%) either belonged to scheduled castes or religious minorities, with 19 of them being Muslims (61.3% of the total 31 prisoners).

¹¹ Information on social profile is unavailable for three prisoners sentenced to death in these states.

¹² Information on social profile is unavailable for one prisoner sentenced to death in Karnataka.

State-wise representation of educational profile of prisoners sentenced to death					
State	Educational profile				
	Never went to school	Did not complete Secondary	Secondary	Higher secondary	Higher studies
Bihar	18 (35.3%)	28 (57.2%)	9 (17.6%)	7 (13.7%)	5 (9.8%)
Chhattisgarh	2 (12.5%)	9 (56.3%)	5 (31.3%)	2 (12.5%)	0
Delhi	8 (26.7%)	19 (63.3%)	3 (10%)	4 (13.3%)	4 (13.3%)
Gujarat	1 (5.3%)	17 (89.5%)	1 (5.3%)	1 (5.3%)	0
Haryana	1 (10%)	5 (50%)	3 (30%)	1 (10%)	1 (10%)
Jharkhand	6 (46.2%)	9 (69.2%)	3 (23.1%)	0	1 (7.7%)
Karnataka	15 (34.1%)	27 (62.8%)	9 (20.5%)	3 (6.8%)	5 (11.4%)
Kerala	0	10 (71.4%)	3 (21.5%)	0	1 (7.1%)
Madhya Pradesh	4 (16%)	12 (48%)	7 (28%)	5 (20%)	1 (4%)
Maharashtra	6 (17.1%)	23 (65.7%)	4 (11.4%)	3 (8.6%)	5 (14.3%)
Uttar Pradesh	15 (19.5%)	47 (61%)	10 (13%)	10 (13%)	10 (13%)

In this table, the category of 'Never went to school' is also included in the category of 'Did not complete Secondary'. In these states, information regarding educational profile of seven prisoners is unavailable. For state-wise representation of educational profile of all prisoners sentenced to death, refer to Table 11 of the Appendix.

CASTE AND RELIGIOUS PROFILE: STAGE-WISE ANALYSIS

The caste and religious profile that emerges when broken down stage-wise presents a very different picture compared to the cumulative all-India figures referred to above. As discussed earlier, we have categorised the prisoners into four categories: High Court pending; Supreme Court pending; Mercy pending; Mercy reject.

It is interesting to note that the lowest rung, i.e. High Court pending cases, more or less reflects the overall national figures in terms of castes and religious minorities (**Table 6**). However, as we move up the hierarchy of the legal process, we see the proportion of general category prisoners falling and the proportion of SC/STs and religious minorities increasing.

In death penalty cases pending in the Supreme Court, the proportion of general category is 15.7% while it is 26.7% in the High Court pending cases. The proportion of SC/STs rose to 27.5% in the category of Supreme Court pending cases from 20.7% at the High Court pending stage. The proportion of SC/STs further increased to 42% at the mercy stage. Religious minorities comprised 19.6% of the cases at the High Court pending stage but their proportion increased to 29.4% at the Supreme Court pending stage. The proportion of the general category at the mercy stage is 18%, which is the same as the proportion of religious minorities.

ANALYSIS OF MULTIPLE SOCIO-ECONOMIC FACTORS

In this section, we seek to examine the interplay between multiple factors in order to better understand the extent of social and

economic marginalisation of prisoners sentenced to death in India. For this purpose, we have only provided a national level analysis of multiple socio-economic factors.

ANALYSIS OF EDUCATIONAL PROFILE AND ECONOMIC VULNERABILITY

As we have noted above, a study of the educational profile and economic vulnerability of prisoners sentenced to death would help in understanding their ability to participate in legal proceedings and assess their interaction with the criminal justice system. Out of the 364 prisoners for whom information regarding economic vulnerability and educational profile was available, 200 (54.9%) prisoners were disadvantaged on both counts—they had not completed secondary school and were also economically vulnerable (**Table 7**). Amongst these prisoners, 79 of them (21.7%) had never attended school (**Graphic 14**).¹³

While analysing economic vulnerability within each category of education level, a strong trend was observed, with the proportion of economically vulnerable prisoners decreasing with a rise in the level of education (**Table 8**). Amongst the prisoners who had not completed secondary education, 89.3% were economically vulnerable (200 out of 224 prisoners who did not complete secondary education). This proportion decreased with each stage of education until the undergraduate level where the percentage of economically vulnerable prisoners was 24.1% (7 out of 29 prisoners who were undergraduates).

Amongst economically vulnerable prisoners, 74.3% (200 out of 269 prisoners) had not completed their secondary education. On the other hand, amongst the economically non-vulnerable

¹³ Information regarding economic vulnerability and/or educational profile for nine prisoners is unavailable.

CHITRABHANU

Chitrabhanu was studying in the third standard when he ran away from home after being beaten by his father. After wandering through Punjab, Delhi and Maharashtra looking for work, he started doing odd jobs at a sweet shop. He told us that he was 12 years old at the time of his arrest. During incar-

ceration, he resumed his studies and at the time of his interview he was pursuing a Masters degree in Sociology and was also doing a certificate course in Human Rights. Further, he had completed a certificate course in Tourism Studies and was proficient in English. While his routine in the prison was centred around

academics, Chitrabhanu sometimes found it difficult to sleep after studying, troubled by thoughts of his uncertain future. At the time of his interview, Chitrabhanu had been incarcerated for 19 years, nine months, and had spent 16 years, three months on death row.

prisoners, 25.3% (24 out of 95 prisoners who were economically non-vulnerable) had not completed their secondary education.

ANALYSIS OF EDUCATIONAL AND SOCIAL PROFILE OF PRISONERS

An examination into the educational and social profile of prisoners sentenced to death shows that 36 prisoners who were SC/STs (10% of all prisoners sentenced to death in India) had never attended school while another 12 prisoners (3.3%) had never attended school and belonged to religious minorities (**Table 11**). Further, there are 113 prisoners (31.5%) who had not completed secondary education and were either SC/STs or belonged to religious minorities.¹⁴

On a consideration of educational profile within a particular social profile category, a trend was observed in the proportion of prisoners who had not completed their secondary education, for different social profiles (**Table 10**). The maximum proportion of prisoners who had not completed their secondary school within any social category, were SC/STs (73.9%, 65 prisoners). While 64% (48 prisoners) belonging to religious minorities and 65% (80 prisoners) from the OBC community had not completed their secondary education, this figure is 47.1% (41 prisoners) for the general category.¹⁵ Further break-down of proportion of prisoners from SC/ST category who had not completed secondary school revealed that 36 of them (40.9%) had never attended school.

¹⁴ Information regarding educational attainment for eight prisoners and social profile for six others, is unavailable.

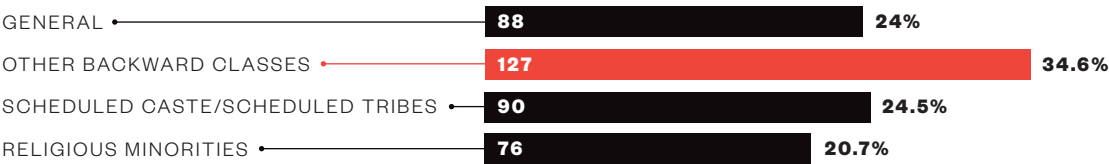
¹⁵ There were 14 prisoners belonging to both other backward classes and religious minorities, and have been counted in both categories—'OBC' and 'Religious Minorities'.

ANALYSIS OF SOCIAL PROFILE AND ECONOMIC VULNERABILITY

In this sub-section, we have examined the economic vulnerability of prisoners against the composition of their caste and religious

Graphic12

Social profile of prisoners sentenced to death



14 prisoners belonging to both other backward classes and religious minorities have been counted in both categories-‘OBC’ and ‘Religious Minorities’. Caste information regarding six prisoners is unavailable.

profile. This is significant because it allowed us to simultaneously view two factors which determine a prisoner’s economic and social status.

On disaggregating the data on economic vulnerability for each social profile category, it was observed that 85.4% of the prisoners who were SC/STs were also economically vulnerable (**Graphic 15**). Amongst the prisoners who were religious minorities, 76% of them were economically vulnerable. In contrast, 64.4% prisoners belonging to the general category are economically vulnerable.

ANALYSIS OF ECONOMIC VULNERABILITY, EDUCATIONAL AND SOCIAL PROFILE

A study of the educational and social profile of prisoners along with their economic vulnerability helped us ascertain the number of prisoners who were most marginalised in terms of three major factors that influence their interaction with the criminal justice system. Of the total, 48 prisoners (13.5%) sentenced to death were economically vulnerable, had never attended school and belonged to the religious minorities or SC/STs (**Table 12**).¹⁶ Further, 108 prisoners (30.2%) were economically vulnerable, had not completed their secondary education and belonged to the religious minorities or SC/STs.¹⁷

FEMALE PRISONERS SENTENCED TO DEATH

There were 12 female prisoners sentenced to death during the period of our study. With the total being 373 prisoners during this time, the female prisoners comprised 3.2%. The state-wise composition of female prisoners sentenced to death in India has

¹⁶ Information regarding economic vulnerability, educational and/or social profile for 15 prisoners is unavailable.

¹⁷ Figures of economic vulnerability, educational profile and social profile of all prisoners sentenced to death have been provided in Table 12 in the Appendix.

THE MUSAHARS

Musahars are considered to be Mahadalits, the poorest amongst the Dalits. In 2009, 10 persons belonging to the Musahar community were sentenced to death for the massacre of 16 persons from the OBC community. Of this group, nine prisoners were illiterate and never went to school. Munish was the lone person in the entire vil-

lage to have received any formal education. All 10 prisoners were the sole earners in their families. The family of Ramrang, one of the Musahar prisoners sentenced to death, recounted that after Ramrang was arrested, his 10-year old son was compelled to work as a manual labourer. The child was the sole earner for his mother and five brothers and sisters. On many

days, Ramrang's family went to bed with empty stomachs. They did not know what the High Court's verdict would be, but they believed that both the death sentence and imprisonment for life were equally bad, as the family would go hungry in case the High Court imposed either of these sentences on Ramrang.

been provided in **Table 1** of Chapter 1 on 'Coverage of the Project'. Seven of these women were in the age group of between 26 to 40 years at the time of the incident.¹⁸ Two of them were below 21 years at the time of the incident, and one was above 60 years of age. Here again, it is worthwhile to draw attention to the Supreme Court's decision in *Bachan Singh*¹⁹ where it was held that an accused who is young or old shall not be sentenced to death. The age of female prisoners at the time of the incident as well as that during time of interview have been provided in **Table 13**.

In terms of their social profile, all female prisoners sentenced to death belonged to the backward classes or were Muslims (**Table 14**). A majority of them belonged to the OBC (seven prisoners) while three others belonged to the SC/ST category. The remaining two female prisoners sentenced to death were Muslims.

A consideration of the educational profile of female prisoners revealed that six of them had never gone to school (**Table 15**).²⁰ One had completed her primary education, one had completed her secondary education, while two others had completed their higher secondary education. Only one of these women had pursued postgraduate studies and completed Masters in two subjects, English and Geography.

At the time of their arrest, nine out of the 12 female prisoners were unemployed while one had been a daily wage labourer (**Table 9**). Only two female prisoners had been drawing a salary; one had been a teacher in a government school while the other worked in an insurance company, alongside her higher education.

The categories of offences for which the female prisoners were sentenced to death were: kidnapping with murder, dacoity

¹⁸ Information regarding age at the time of the incident for one female prisoner is unavailable.

¹⁹ *Bachan Singh v. State of Punjab* (1980) 2 SCC 684, paragraph 206.

²⁰ Information regarding the educational status of one female prisoner is unavailable.

Graphic13

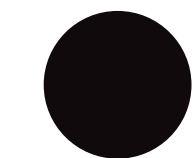
State-wise social profile of prisoners sentenced to death

■ OBC

■ GENERAL

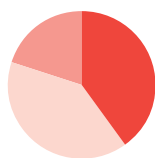
■ RELIGIOUS MINORITIES

■ SC/ST



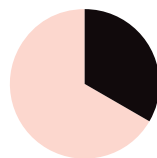
Andaman & Nicobar Islands

■ 1 ■ 0
■ 0 ■ 0



Andhra Pradesh

■ 0 ■ 2
■ 2 ■ 1



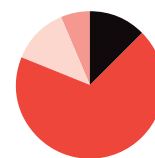
Assam

■ 1 ■ 0
■ 2 ■ 0



Bihar

■ 24 ■ 9
■ 16 ■ 2



Chhattisgarh

■ 2 ■ 11
■ 2 ■ 1



Delhi

■ 6 ■ 10
■ 8 ■ 6



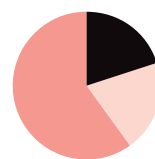
Gujarat

■ 3 ■ 9
■ 0 ■ 15



Haryana

■ 0 ■ 10
■ 0 ■ 0



Jammu & Kashmir

■ 1 ■ 0
■ 1 ■ 3



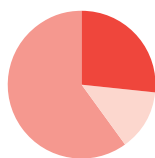
Jharkhand

■ 5 ■ 2
■ 4 ■ 2



Karnataka

■ 2 ■ 12
■ 16 ■ 14



Kerala

■ 0 ■ 4
■ 2 ■ 9



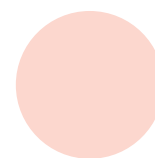
Madhya Pradesh

■ 6 ■ 10
■ 9 ■ 0



Maharashtra

■ 6 ■ 5
■ 18 ■ 8



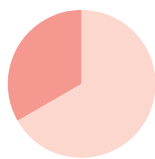
Odisha

■ 0 ■ 0
■ 1 ■ 0



Punjab

■ 1 ■ 2
■ 1 ■ 0



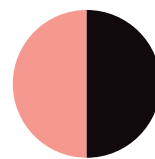
Rajasthan

■ 0 ■ 0
■ 2 ■ 1



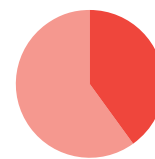
Uttar Pradesh

■ 28 ■ 39
■ 6 ■ 9



Uttarakhand

■ 2 ■ 0
■ 0 ■ 2



West Bengal

■ 0 ■ 2
■ 0 ■ 3

14 prisoners belonging to both other backward classes and religious minorities have been counted in both categories- 'OBC' and 'Religious Minorities'. Caste information regarding six prisoners is unavailable.

States with high proportion of SC/ST prisoners sentenced to death	
State	Number of SC/ST prisoners
Maharashtra	18 (50%)
Madhya Pradesh	9 (36%)
Karnataka	16 (36.4%)
Jharkhand	4 (30.8%)
Bihar	16 (31.4%)
Delhi	8 (26.7%)

Amongst the aforementioned states, information on social profile of three prisoners is unavailable.

Stage-wise variations in social profile of prisoners sentenced to death			
Caste	High Court pending	Supreme Court pending	Mercy pending & Mercy reject
General	71 (26.7%)	8 (15.7%)	9 (18%)
OBC	98 (36.8%)	17 (33.3%)	12 (24%)
Religious Minorities	52 (19.6%)	15 (29.4%)	9 (18%)
SC/ST	55 (20.7%)	14 (27.5%)	21 (42%)

There were 14 prisoners belonging to both other backward classes and religious minorities, and have been counted in both categories-‘OBC’ and ‘Religious Minorities’. Caste information is unavailable for six prisoners. Percentages have been calculated out of total number of prisoners in each stage for whom information regarding social profile is available

with murder, terror offences and murder *simpliciter* (Table 16).

Amongst the 12 female prisoners, eight were sentenced to death for murder *simpliciter*. The only female prisoner sentenced to death for a terror offence was Muslim. It is noteworthy that all female prisoners sentenced to death had been convicted with male accomplices.²¹

Amongst the female prisoners, the longest period of incarceration was for Maahi and Adita. Of the nearly 18 years they have spent in prison, Maahi and Adita spent 13 years under the sentence of death.

When discussing their childhood experiences, seven out of the 12 female prisoners said that they were married before they attained the age of 18. Of these, Nuriyah was the youngest to be married at the age of 10. Another prisoner, Roshini said that she was married when she was 15 years old and had her first child at the age of 16. In the early years of her marriage she claimed that her husband would beat her and force her to remain in the house, refusing to let her work outside. Nirmiti said that she was married at the age of 13 and not allowed to go to school because she was a girl. She told us that before being implicated in her case, she had never spoken outside the four walls of her house and that it was being in prison that had taught her to speak her mind.

²¹ In one of these cases, Maahi and Adita were convicted and sentenced to death on basis of approver evidence given by Maahi’s husband who was granted pardon by the sessions court.

Graphic 14

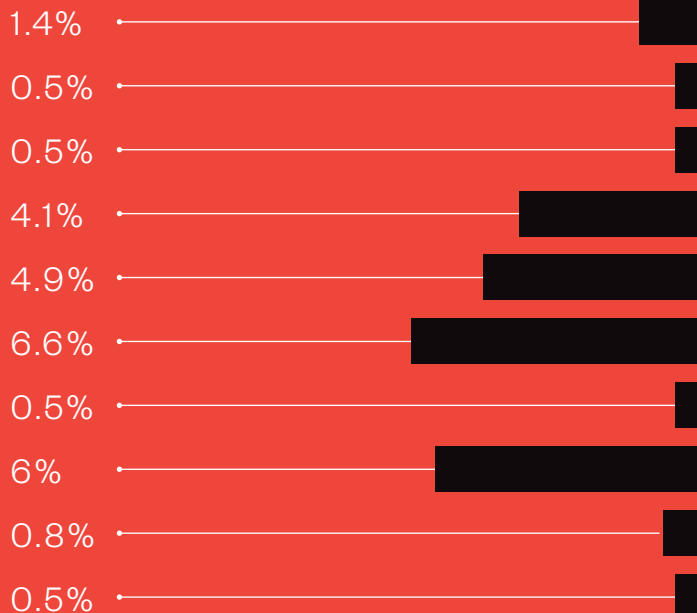
Economic vulnerability and educational profile of prisoners sentenced to death



EDUCATIONAL PROFILE

NEVER WENT TO SCHOOL	5
ATTENDED SCHOOL (did not complete Primary)	2
PRIMARY	2
MIDDLE	15
SECONDARY	18
HIGHER SECONDARY	24
DIPLOMA/VOCATIONAL COURSE	2
UNDERGRADUATE	22
POSTGRADUATE	3
PROFESSIONAL COURSE	2

ECONOMICALLY NON-VULNERABLE



THERE IS ALSO ONE OTHER CHARACTERISTIC OF DEATH PENALTY THAT IS REVEALED BY A STUDY OF THE DECIDED CASES AND IT IS THAT DEATH SENTENCE HAS A CERTAIN CLASS COMPLEXION OR CLASS BIAS IN AS MUCH AS IT IS LARGELY THE POOR AND THE DOWN-TRODDEN WHO ARE THE VICTIMS OF THIS EXTREME PENALTY. WE WOULD HARDLY FIND A RICH OR AFFLUENT PERSON GOING TO THE GALLOWS. **CAPITAL PUNISHMENT, AS POINTED OUT BY WARDEN DUFFY IS “A PRIVILEGE OF THE POOR.”**

–DISSENTING OPINION, JUSTICE BHAGWATI,

BACHAN SINGH v. STATE OF PUNJAB,

SUPREME COURT OF INDIA (1982)

ECONOMICALLY VULNERABLE



Percentages have been calculated out of total number of prisoners for whom information regarding economic vulnerability and educational profile is available (364 out of 373 prisoners).

Educational profile analysis as per economic vulnerability of prisoners sentenced to death		
Economic vulnerability	Educational profile	Number of prisoners
Economically vulnerable	Did not complete Secondary	200 (74.4%)
	Secondary	44 (16.4%)
	Higher Secondary	16 (6%)
	Diploma/Vocational Course	1(0.4%)
	Undergraduate	7 (2.6%)
	Postgraduate	1(0.4%)
Economically non-vulnerable	Did not complete Secondary	24 (25.3%)
	Secondary	18 (19%)
	Higher Secondary	24 (25.3%)
	Diploma/Vocational Course	2 (2.1%)
	Undergraduate	22 (23.2%)
	Postgraduate	3 (3.2%)
	Professional Course	2 (2.1%)

Information regarding economic vulnerability and/or educational profile for nine prisoners is unavailable.

Economic vulnerability analysis as per educational profile		
Educational profile	Number of prisoners	
	Economically vulnerable	Economically non-vulnerable
Did not complete Secondary	200 (89.3%)	24 (10.7%)
Secondary	44 (71%)	18 (29%)
Higher Secondary	16 (40%)	24 (60%)
Diploma/Vocational Course	1(33.3%)	2 (66.7%)
Undergraduate	7 (24.1%)	22 (75.9%)
Postgraduate	1(25%)	3 (75%)
Professional Course	0	2 (100%)

Occupational status & economic vulnerability of female prisoners sentenced to death		
Occupation categories	Number of prisoners	Economic vulnerability
Unemployed	9	Economically vulnerable
Manual casual labourer—non-agricultural	1	Economically vulnerable
Salaried public employment	1	Economically non-vulnerable
Salaried private employment	1	Economically non-vulnerable

DATTA

Datta belongs to the Korku community, a Scheduled Tribe in India. In a small village situated 200 kilometres away from the city, he lived with his parents in a mud hut without electricity. Like his parents, Datta was illiterate and had never gone to school. He was arrested at the age of 19 and has been in prison ever since. During his interview, he said that it

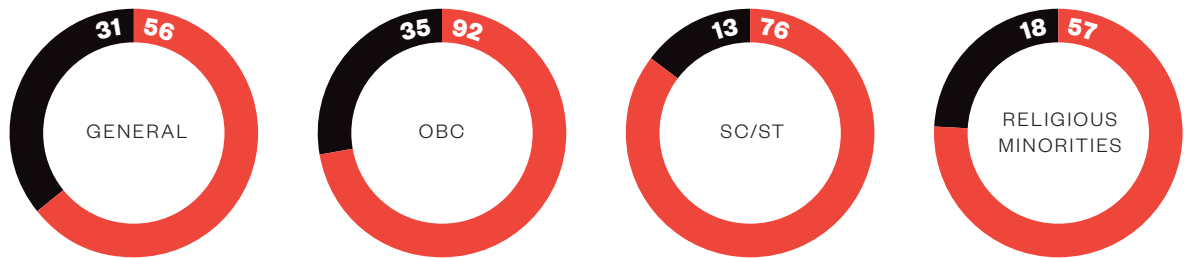
was in prison that he developed an inclination to study. At that time, he had enrolled in the fifth standard, through the distance learning programme run by the Indira Gandhi National Open University. During his interview, he proudly told us that he had learnt to write his name and his father's name in Hindi. Datta's parents, who had never attended school as well, were evidently proud when

our researchers informed them that their son had learnt to read and write in prison. However, within a few moments, their joy disappeared and they immediately spoke about the circumstances in which their son had achieved this feat and the uncertainty over his fate.

Graphic15

Economic vulnerability of prisoners in each social profile category

■ ECONOMICALLY VULNERABLE
■ ECONOMICALLY NON-VULNERABLE



Information regarding economic vulnerability for three prisoners and social profile for six prisoners, is unavailable.

Educational profile of prisoners sentenced to death within each social category				
Educational profile	Social profile			
	General	OBC	SC/ST	Religious minorities
Did not complete Secondary	41 (47.1%)	80 (65%)	65 (73.9%)	48 (64%)
Secondary	22 (25.3%)	18 (14.6%)	13 (14.8%)	8 (10.7%)
Higher Secondary	13 (14.9%)	13 (10.6%)	7 (8%)	7 (9.3%)
Undergraduate	8 (9.2%)	11 (8.9%)	3 (3.4%)	7 (9.3%)
Postgraduate	2 (2.3%)	1 (0.8%)	0	1 (1.3%)
Professional Course	1 (1.1%)	0	0	1 (1.3%)

Prisoners belonging to both other backward classes and religious minorities have been counted in both categories- 'OBC' and 'Religious Minorities'. Information regarding social profile for six prisoners and educational attainment for eight others is unavailable. Percentages have been calculated out of total number of prisoners in each social category for whom information regarding educational attainment is available.

ZAINA

Zaina and Saabiq were sentenced to death for the murder of seven members of Zaina’s family. Zaina gave birth to her son in prison and as per the prison rules, he continued to live with her until he was almost seven years old. Due to her level of educational attainment, Zaina was allowed to teach other

children in the prison and was paid a token amount in return by the prison authorities. Zaina underwent tremendous emotional turmoil while deciding the fate of her son, once he was no longer eligible to stay with her in prison. Keen that her son not be sent to the state welfare agencies, Zaina sent her son to live with a longtime friend.

The Supreme Court, while confirming the death sentence for Zaina and Saabiq, took the view that having a young dependent child was an irrelevant sentencing factor.

Social profile and educational profile of prisoners sentenced to death		
Educational profile	Caste	Number of prisoners
Never went to school	General	10 (2.8%)
	OBC	24 (6.7%)
	Religious Minorities	12 (3.3%)
	SC/ST	36 (10%)
Did not complete Secondary	General	41 (11.4%)
	OBC	80 (22.3%)
	Religious Minorities	48 (13.4%)
	SC/ST	65 (18.1%)
Secondary	General	22 (6.1%)
	OBC	18 (5%)
	Religious Minorities	8 (2.2%)
	SC/ST	13 (3.6%)
Higher Secondary	General	13 (3.6%)
	OBC	13 (3.6%)
	Religious Minorities	7 (1.9%)
	SC/ST	7 (1.9%)
Diploma/Vocational Course	Religious Minorities	3 (0.8%)
Undergraduate	General	8 (2.2%)
	OBC	11 (3.1%)
	Religious Minorities	7 (1.9%)
	SC/ST	3 (0.8%)
Postgraduate	General	2 (0.6%)
	OBC	1 (0.3%)
	Religious Minorities	1 (0.3%)
Professional Course	General	1 (0.3%)
	Religious Minorities	1 (0.3%)

Percentages have been calculated out of total number of prisoners for whom information regarding educational attainment and social profile is available (359 out of 373). In this table, the category of ‘Never went to school’ is also included in the category of ‘Did not complete Secondary’. Prisoners belonging to both other backward classes and religious minorities have been counted in both categories- ‘OBC’ and ‘Religious Minorities’.

Educational and social profile of economically vulnerable prisoners sentenced to death		
Educational profile	Caste	Number of prisoners
Never went to school	General	8 (2.2%)
	OBC	21 (5.9%)
	Religious Minorities	12 (3.4%)
	SC/ST	36 (10.1%)
Did not complete Secondary	General	32 (8.9%)
	OBC	67 (18.7%)
	Religious Minorities	44 (12.3%)
	SC/ST	64 (17.9%)

In this table, the category of 'Never went to school' is also included in the category of 'Did not complete Secondary'. Percentages have been calculated out of total number of prisoners for whom information regarding economic vulnerability, educational and social profile is available (358 out of 373 prisoners).

Age of female prisoners sentenced to death		
Age (in years)	Number of female prisoners	
	At time of incident	At time of interview
18-21	2	0
22-25	1	1
26-40	7	7
41-60	0	2
More than 60	1	1

Information regarding age for one female prisoner is unavailable.

Social profile of female prisoners sentenced to death		
Caste	Number of female prisoners	
OBC		7
Religious Minorities		2
SC/ST		3

Educational profile of female prisoners sentenced to death		
Educational profile	Number of female prisoners	
Never went to school		6
Did not complete Secondary		7
Secondary		1
Higher Secondary		2
Postgraduate		1

In this table, the category of 'Never went to school' is also included in the category of 'Did not complete Secondary'. Information on educational profile of one female prisoner is unavailable.

Crime-wise composition of female prisoners sentenced to death		
Nature of crime	Number of female prisoners	
Dacoity with murder		1
Kidnapping with murder		2
Murder <i>simpliciter</i>		8
Terror offences		1

**“WHENEVER
WOULD ENQU
THE LAWYER
REFUSE TO A**

TELLING ME TO MIND MY OWN BUSINESS.”

—JAIKRISHNA



**I
WIRE,
WOULD
ANSWER**



Chapter 5

Legal Assistance

The quality of legal representation available to prisoners sentenced to death is an important parameter to evaluate the fairness of the administration of the death penalty in India. Given the socio-economic profile of prisoners sentenced to death, it is crucial to understand the nature of legal representation prisoners accessed during all stages of the legal process. While there certainly can be no numerical scale to ascertain the proficiency of a defence counsel, the experiences of prisoners and their families while interacting with their lawyers, and their opinions on the quality of legal representation received are important indicators.

Although there were instances of positive opinions of private and legal aid lawyers, these were outnumbered by narratives of absence during court proceedings, lack of interaction with prisoners and their families, repeated demands for money and dereliction of duties as a defence lawyer.

It is important to emphasize here that the prisoners and their families rarely based these evaluations on the outcome of the case. Instead, they focussed on the manner in which their lawyers treated them and the extreme forms of alienation from the legal process inflicted upon them.

LEGAL REPRESENTATION AT PRE - TRIAL STAGE

Article 22 of the Constitution guarantees the right of every arrested person to consult or be defended by a legal practitioner of her choice. As is evident from the text of the provision, there is no constitutional requirement that an arrested person must necessarily have a lawyer during police custody or even that an arrested person must mandatorily have access to a lawyer during the investigation of the crime. All that the provision guarantees is that an arrested person has a right to consult a lawyer of her choice. In essence, the State is not obligated to provide a lawyer to every arrested person.

However, the grim reality is that custodial violence and torture is rampant in the country. In acknowledgment of that reality, the Supreme Court has sought to lay down guidelines regulating arrest and detention. In the late 1970s, it had recognised and acknowledged the challenges posed by custodial torture for the rule of law protections within the Constitution. The importance of the right to consult an advocate of one's choice during arrest or detention was highlighted by the Supreme Court in *Nandini Satpathy v. P.L. Dani & Anr.*¹ The Court observed that the right to consult a legal practitioner was the best promotion of the right against self-incrimination. While the lawyer could not interfere in the questioning, the presence of the lawyer is necessary to intervene when intimidatory tactics or incriminations are attempted and therefore "he can caution his client and insist on questions and answers being noted where objections are not otherwise fully appreciated."² The bench felt that the very presence of the lawyer would remove the "implicit menace of a police station." However, the Court did not

¹ (1978) 2 SCC 424.

² (1978) 2 SCC 424, paragraph 64.

agree that the services of a lawyer must be secured by the police since it would lead to “police-station-lawyer system, an abuse which breeds other vices.”³

Unfortunately, the situation had not changed much even by the latter half of the 1990s. In order to curb the “growing incidence of torture and deaths in police custody” the Supreme Court issued guidelines in *DK Basu v. State of West Bengal*,⁴ pursuant to which amendments were made to the Code of Criminal Procedure, 1973 (CrPC) in 2008, inserting procedural safeguards in case of arrest or detention. One such addition was Section 41D which guarantees that any person arrested by the police shall be allowed to meet a lawyer of her choice during interrogation, though not throughout the interrogation. It may be noted that the obligation of the State to provide legal aid was once again not extended to police interrogations.

However, the Supreme Court has held that the State is obligated to provide a lawyer free of charge to an indigent accused, from the time she is first presented before the Magistrate.⁵ Article 22 (2) of the Constitution mandates that anyone who is arrested or detained must be produced before a Magistrate within 24 hours. Any custody or detention of an individual beyond 24 hours must necessarily be authorised by a Magistrate. The production before a Magistrate is a crucial juncture because the Magistrate determines whether the accused is to be remanded to judicial custody in prison or sent back to further police custody.⁶

CUSTODIAL TORTURE, INVESTIGATION AND ‘PROOF’

We repeatedly heard similar narratives from prisoners across the country about the manner in which investigations are carried out.

³ (1978) 2 SCC 424, paragraph 63.

⁴ (1997) 1 SCC 416, paragraphs 18 and 35.

⁵ *Hussainara Khatoon & Ors (IV) v. Home Secretary, State of Bihar, Patna* (1980) 1 SCC 98, paragraph 7; *Khatri & Ors v. State of Bihar* (1981) 1 SCC 627, paragraph 5; *Mohammad Ajmal Mohammad Amir Kasab v. State of Maharashtra* (2012) 9 SCC 1, paragraph 474.

⁶ For more details on procedural safeguards during arrest and detention, refer to Chapter 6 on ‘Experience in Custody’.

SAWAN, UTPAL AND SALIL KUMAR

Co-accused, Sawan, Utpal and Salil Kumar were sentenced to death by the sessions court for the murder of three persons. During police custody, the three accused were ruthlessly tortured and left with only two options: either sign on blank papers or prolong their horrors. During his interview, Utpal recounted that the police made them sign on multiple sheets of paper and then wrote their 'script' on them. As per the pros-

ecution, after committing the murders, the accused robbed the jewellery belonging to the victims. During the trial, these ornaments were shown to be recovered at the instance of the accused. However, contrary to the prosecution's case, the accused did not make any statements regarding the location of the jewellery belonging to the victims. They claimed that they saw the jewellery for the first time, when it was presented before the sessions court. Relying on

the recovery of jewellery items based on the 'statements' made by the accused in police custody, the trial court found them guilty and sentenced them to death. In addition to these recoveries, the court also relied on the depositions of the police officers and noted that there was "no reason to disbelieve the testimony of police officials regarding recovery of jewellery at the instance of accused persons."⁷

Even though the Indian Evidence Act, 1872 (IEA) makes confessions to a police officer inadmissible, there is a very good reason that custodial torture continues to be rampant.⁸ Any information provided by the accused which leads to the discovery of facts may be proved against the accused, even if such information is part of a confession made in police custody.⁹

We heard numerous accounts of the accused being tortured and forced to sign blank sheets of paper, followed by staged recovery of facts that go on to become critical to prove the guilt of the accused during the trial. At the risk of oversimplification, a disturbing narrative we encountered during our interviews was:

The accused is tortured until she agrees to sign a blank sheet of paper. The blank sheet of paper is then essentially used by the police to fabricate the 'statement' from the accused to the police officer. This supposed 'statement' invariably involves the accused revealing the location of the dead body, weapons, clothes of the accused or the deceased, which the police is already aware of or had planted these facts in the manner revealed in the 'statement'. The accused is then taken for a 'recovery' of these facts and in order to establish that it was indeed the accused who pointed out these 'facts' to the police, the law requires that two or more independent witnesses be present at the scene of the recovery. Very often, the police use the same stock witnesses for this part of the procedure. Therefore, even though a confession is not admissible, the fact that it was the accused's statement to the police that led the police to the recovery of these 'facts', is presented as a strong piece of evidence by the prosecution in establishing the guilt of the accused during the trial.

⁷ The case of Sawan, Utpal and Salil Kumar was pending in the High Court at the time of their interview.

⁸ For details on methods of custodial torture, refer to Chapter 6 on 'Experience in Custody'.

⁹ Section 27, Indian Evidence Act, 1872. For details on evidence based on confession to a police officer, refer to Chapter 7 on 'Trial and Appeals'.

It is precisely for these reasons that legal representation or access to legal advice during the interrogation and investigation phases is critical. With police forces across the country grappling with colonial structures and practices, inadequate funding, unscientific investigation methods and custodial violence are often the only methods to secure convictions. There is no turning away from the reality that it is precisely these methods that are often relied on to gather evidence in death sentence cases.

ACCESS TO LEGAL REPRESENTATION—PRE-TRIAL STAGE

Out of the 191 prisoners who shared information regarding access to a lawyer at the time of interrogation, 185 (97%) said they did not have a lawyer. Of these 185 prisoners, 155 spoke about their experience of custodial violence, out of which 128 prisoners (82.6%) said they were tortured in police custody.¹⁰

Further, out of the 185 prisoners who did not have access to a lawyer during interrogation, 144 were economically vulnerable (80%). There were instances where the investigating officers told the accused that they would be let off if they gave a bribe. However, these accused had no money to finance their exit from the criminal justice system. These realities compel us to confront the question of whether allowing the death sentence in a system which is deeply flawed right from the investigation stage, necessarily implies that the punishment is disproportionately meted out to the vulnerable sections of our society.

The figure is just as striking when we consider legal representation at the time of being produced before a Magistrate. As stated above, legal representation at this stage has been recognised

¹⁰ Out of 265 prisoners who spoke about custodial torture, 214 (80.8%) revealed that they were tortured in custody. For more details on custodial torture, refer to Chapter 6 on 'Experience in Custody'.

TOO POOR TO BUY FREEDOM

10 Mahadalits were sentenced to death for their alleged involvement in a massacre of 16 people belonging to an OBC community. The narratives of these prisoners are instructive of the manner in which the criminal justice system can be

manipulated. During their interviews, the prisoners claimed that amongst all the people arrested for the incident, certain influential individuals were let off by the police on payment of Rupees 20,000 for each arrested person. The prisoners felt that the police

did not even ask them for money since such an amount was way beyond their means as daily wage labourers. One of the prisoners, Munish recounted that some of the arrested individuals bribed the witnesses and the public prosecutor.¹¹

¹¹ The case of these prisoners was pending in the High Court at the time of the interview.

¹² *Hussainara Khatoon & Ors (IV) v. Home Secretary, State of Bihar, Patna* (1980) 1 SCC 98, paragraph 7; *Khatiri & Ors v. State of Bihar* (1981) 1 SCC 627, paragraph 5; *Mohammad Ajmal Mohammad Amir Kasab v. State of Maharashtra* (2012) 9 SCC 1, paragraph 474.

¹³ Information relating to nature of legal representation at trial court for 12 prisoners is unavailable. 117 prisoners were allotted legal aid lawyers at the trial court while 15 prisoners were represented on a *pro bono* basis. Of the 117 prisoners who had legal aid lawyers at the trial court, 28 prisoners also had a private lawyer for a part of the proceedings. Two prisoners represented themselves in the trial court.

¹⁴ Information relating to nature of legal representation at High Court for 36 prisoners is unavailable. 89 prisoners were allotted legal aid lawyers at the High Court while 15 prisoners were represented on a *pro bono* basis. Of the 89 prisoners who had legal aid lawyers at the High Court, six prisoners also had a private lawyer for a part of the proceedings. Lawyers at the High Court were not yet appointed for five prisoners at the time of their interview while two prisoners represented themselves in Court. The appeals for 13 prisoners convicted by designated courts under the Terrorist and Disruptive Activities (Prevention) Act, 1987 lay directly before the Supreme Court.

by the Supreme Court to be a fundamental right under Article 21 of the Constitution.¹² Out of the 189 prisoners who spoke about whether they were represented at the time of first production before the Magistrate, 169 (89.4%) did not have a lawyer. Out of the remaining 20 who had a lawyer when produced before a Magistrate, only three were represented by legal aid lawyers.

NATURE OF LEGAL REPRESENTATION: PRIVATE LAWYERS V/S LEGAL AID LAWYERS

One of the major perceptions about the death penalty in India is that prisoners sentenced to death are disproportionately represented by legal aid lawyers. Our research demonstrates a rather different but perhaps a more worrying scenario. As per the information received from the prisoners, at the trial court and High Court, a vast majority of prisoners sentenced to death had private lawyers representing them. At the trial court, 36.6% prisoners had legal aid lawyers or lawyers who agreed to fight the case *pro bono*¹³ while the corresponding figure at the High Court was 32.6%.¹⁴ However, the situation is inversed in the Supreme Court. Amongst the 77 prisoners sentenced to death who spoke about their lawyers at the Supreme Court, 55 (71.4%) had legal aid or *pro bono* lawyers.¹⁵

At the trial court, 70.6% of the prisoners had private lawyers while this figure was 68.7% in the High Courts.¹⁶ In the Supreme Court, this figure dramatically fell to 29.9%.¹⁷ However, it is also interesting to note the economic profile of prisoners sentenced to death accessing private lawyers. Of the prisoners represented by private lawyers in the trial courts and High Courts, 70.6% were economically vulnerable.¹⁸ The reasons for individuals and families hiring

15 Information relating to nature of legal representation at the Supreme Court for 25 prisoners is unavailable. 44 prisoners were allotted legal aid lawyers at the Supreme Court while 11 prisoners were represented on a *pro bono* basis. Of the 44 prisoners who had legal aid lawyers at the Supreme Court, one prisoner also had a private lawyer for some part of the proceedings. One prisoner did not file an appeal before the Supreme Court.

16 255 prisoners had private legal representation at the trial court, of which 28 prisoners had a legal aid lawyer for a part of the proceedings. In the High Court, 219 prisoners had private lawyers, of which six prisoners had a legal aid lawyer for a part of the proceedings.

17 23 prisoners had private legal representation at the Supreme Court, of which one prisoner had a legal aid lawyer for a part of the proceedings.

18 180 out of the 255 prisoners who had private lawyers at the trial court were economically vulnerable, while the rest were economically non-vulnerable. Similarly, 154 out of the 219 prisoners who were represented by private lawyers at the High Court were economically vulnerable, while 64 were economically non-vulnerable. Information on the economic vulnerability for one of the 219 prisoners who had private lawyers at the High Court is unavailable.

private lawyers despite their economic vulnerability were quite evident from our interviews.

There seems to be a deep-seated fear of legal aid lawyers that drives families to hire private lawyers at any cost. Amongst the economically vulnerable families who had hired private lawyers at the trial court or High Court, and who spoke about expenditure on the case, many had borrowed money or sold their assets like house, land, jewellery, livestock, or other belongings, to afford the private legal representation. Families that had borrowed money for paying private lawyers were still in debt at the time of our interviews.

In one such case, Viraj recounted that his family had to incur debt to pay the lawyer. The family was constrained to take another loan to manage the miscellaneous expenses incurred during trial. He rued that the family was forced to take these loans since they did not own any land. In another case, Muthu paid his legal expenses by cleaning clothes for other inmates and begging in prison. It would be incorrect to consider the figures on the number of private and legal aid lawyers as indicative of the quality of legal representation availed by prisoners at trial courts and High Courts. Many prisoners and their families were aggrieved about the way in which the prisoner was represented in court, irrespective of the nature of legal representation.

ARRANGING LEGAL REPRESENTATION

Before we look into the quality of legal assistance available to prisoners, it would be worth examining the manner in which prisoners arrange for legal representation. Apart from economic vulnerability, the nature of the alleged crime was in many instances

AARJAV

In February 2011, Aarjav was sentenced to death for the murder of his employer's children. In order to afford private representation, his mother, Geeta Bai, not only sold their land and various possessions, she also

took private loans. Her attempts to hire a private lawyer resulted in a debt of over Rupees 80,000. Despite these efforts, the prisoner received very poor legal representation. The lawyer never spoke to him beyond a few minutes during every court appearance and

did not raise a single question during the cross-examination of prosecution witnesses. However, the lawyer repeatedly asked Geeta Bai for money and assured her of a positive outcome for the case.

a significant obstacle in finding competent legal representation. The legal aid lawyers were either provided at the instance of the court, or arranged by the prison. As discussed earlier, most of the prisoners and their families did not have access to a lawyer at the time of the incident and had to rely on various sources to find private legal representation. There were many cases where a co-accused's lawyer was also hired by the prisoner, or where a lawyer was hired on the reference of other inmates in the prison.

In other instances the lawyer was arranged by fellow villagers, or by an organisation that stepped in to help the accused with the case. Some families had completely severed ties with the prisoner and had no information about the lawyer or progress in the case, yet others had no financial resources to meet the prisoner or arrange a lawyer, simply leaving it to the prisoner's fate. While there were a few cases where a lawyer proactively provided legal assistance to a prisoner, there were various instances where lawyers collectively decided not to provide legal representation to the accused.

The prisoners or their families arranged for lawyers at the High Court in ways similar to that at the trial court. There were instances where prisoners were represented by their trial court lawyers in the High Court proceedings, despite having a poor opinion of the work done by them. This was mainly because these prisoners or their families had no means to search for and engage new lawyers. It was also observed that prisoners switched from private legal representation at the trial court to legal aid at the High Court as they could not afford further depletion of their limited resources. Conversely, there were also families who moved to private representation at the High Court from legal aid lawyers at the trial court,

HETANSH, JAINISH, DHEEMAN AND SHALIN SHARMA

Hetansh, Jainish, Dheeman and Shalin Sharma were convicted and sentenced to death for the kidnapping and murder of a minor. The victim's father being an influential lawyer in that district, turned the other

advocates against the accused and they collectively decided not to provide legal representation to them. As a result, the accused had to wait for several months before getting legal representation. The situation worsened at the time of sentencing, when the lawyers went on strike and threatened to burn

down the court if the accused were not sent to the gallows. Further, the prisoners believed that the victim's father, who had been elevated to head the local bar association, also pressurised the trial court judge to sentence the accused to death.

as they were extremely unsatisfied by the poor performance or demands for money by the legal aid lawyers.

INTERACTION WITH LAWYERS

Very often, due to their economic vulnerability, the prisoner or her family were able to pay very little to the private lawyer. Therefore, though a large number of prisoners were accessing private lawyers at the trial court and High Court, the extremely low fees often translated into a complete lack of engagement with the prisoner. Of the 258 prisoners who spoke about interaction with their trial court lawyers, 181 (70.2%) said that their lawyers did not discuss case details with them. Further, 76.7% of the prisoners who spoke regarding meetings with trial court lawyers said that they never met their lawyers outside court and the interaction in court was perfunctory.¹⁹ At the High Court, 68.4% of the prisoners never interacted with or even met their High Court lawyers.²⁰

While describing the nature of their interactions, prisoners often complained that their lawyers refused to discuss case details with them or claimed that the meeting with the lawyer was primarily for demanding or receiving money. Lawyers dismissing the prisoners as incompetent to understand the case against them was also a common grievance. When Jaikrishna enquired about the progress in his case, his trial court lawyer rebuffed his queries, telling him to "mind his own business." These experiences led Jaikrishna to believe that he may have been better represented if he could have afforded a private lawyer. In another case, Abdal, had similar grievances with his lawyer, who would angrily respond to Abdal's questions by asking him, "Have you become a lawyer?" Abdal recounted that his trial court lawyer never explained the

¹⁹ Of the 184 prisoners who spoke about meeting their trial court lawyers outside court, 141 never met their lawyer outside court.

²⁰ Of the 177 prisoners who spoke about meeting their High Court lawyers, 121 never met their High Court lawyers.

“I HAVE YET TO SEE A DEATH CASE AMONG THE DOZEN COMING TO THE SUPREME COURT ON EVE-OF-EXECUTION STAY APPLICATIONS IN WHICH THE DEFENDANT WAS WELL REPRESENTED AT TRIAL... PEOPLE WHO ARE WELL REPRESENTED AT TRIAL DO NOT GET THE DEATH PENALTY.”

—RUTH BADER GINSBURG,
U.S. SUPREME COURT JUSTICE,
AT A LECTURE IN THE UNIVERSITY OF
DISTRICT OF COLUMBIA (2001).

proceedings to him and wondered if he was conniving with the public prosecutor. There were certainly a small section of lawyers who discussed the details of the case with prisoners and their families, heard the prisoners' account of the incident and kept them abreast of court proceedings.

There were also instances of lawyers willing to meet the families of prisoners, but since the latter stayed in remote villages in the district, they were unable to travel due to financial constraints. This was an even bigger hurdle in meeting High Court lawyers as the families did not have the resources to travel to the city. Some trial court and High Court lawyers also communicated with families over the phone. Of the cases decided or pending before the Supreme Court, 44.1% of the prisoners did not know the names of the lawyers representing them at the Supreme Court.²¹ Most of the families did not meet the Supreme Court lawyer at all during the case.

Not only does such non-interaction with the lawyer compromise the quality of defence but it also implies a greater level of alienation of the accused from the judicial process. At the level of the High Courts, meeting the prisoner in death sentence cases is of tremendous importance as the High Courts are not sitting as only appellate courts but are also tasked with confirming the judgment of the trial court. In this unique role of the High Courts in death sentence cases, they can once again examine all questions of facts and law that the trial courts have considered. Even the Supreme Court has recognised its 'time-honoured tradition' in matters relating to capital punishment, to re-appreciate evidence on record and assure itself about the findings of the lower courts.²² In such a context, it is important for the lawyer to extensively

²¹ Of the 103 prisoners whose cases were decided or were pending before the Supreme Court, 68 spoke about knowing the name of their Supreme Court lawyers. Of these, 30 prisoners did not know the names of lawyers representing them at the Supreme Court.

²² *Dayanidhi Bisoi v. State of Orissa* (2003) 9 SCC 310, paragraph 12; *Mohammed Ajmal Mohammad Amir Kasab v. State of Maharashtra* (2012) 9 SCC 1, paragraph 5; *Adambhai Sulemanbhai Ajmeri & Ors v. State of Gujarat* (2014) 7 SCC 716, paragraph 214.

SELF-REPRESENTATION

During the Project, two prisoners shared accounts of representing themselves in their cases without any formal legal assistance. At the time of his interview, Rubiram was implicated in several cases involving charges of kidnapping, rape and murder. Amongst these, Rubiram has been sentenced to death in a case that was confirmed by the High Court as well as the Supreme Court. While a legal aid lawyer was appointed in each of Rubiram's cases, he was extremely disappointed with the quality of legal assistance and decided to

represent himself in all cases. His lawyers never spoke to him and ignored any views that Rubiram shared regarding his defence. In the case where his death sentence has been confirmed, Rubiram's state appointed trial lawyer often rebuked him for sharing inputs on the case, asking him, "Are you the advocate!" Barun Kumar, convicted in multiple rape and murder cases, also decided to represent himself in all his matters as he was afraid that the lawyers might collude with the police. While he admitted that he could not have afforded a private lawyer, he

decided against a state-appointed counsel as there was no guarantee that they would not ask for money. Barun had an in-depth understanding of the evidence in each case, and was also well informed about the provisions of the Indian Penal Code, 1860, CrPC and the IEA. He candidly remarked that his knowledge of investigation techniques came from the crime series that he had watched on television. Being a government school teacher before his arrest, Barun assists the poor and uneducated prisoners during his time in prison.

interact with the prisoner. Such interaction would allow the lawyer to elicit vital information in order to establish a plea of alibi, claim of juvenility or point to contradictions in the prosecution evidence. In cases where evidence is fabricated by the police through means of custodial torture, it is extremely difficult for the lawyer to contest such staged recoveries without interacting with the accused. Further, a detailed conversation with the accused may also allow the lawyer to gather information about her age, socio-economic background, mental health and other relevant sentencing factors, in order to build a meaningful case in favour of a lesser punishment. The lack of communication between the lawyers and the prisoners or their families means that the latter are kept in the dark as far as the judicial proceedings are concerned, often through extremely long durations. Such alienation has grave implications in death penalty cases, adding significantly to the suffering that arises from having to deal with the uncertainty about life and death constantly.²³

OPINION ON LEGAL ASSISTANCE

Considering the minimal or no contact between the lawyers and the prisoners or their families, the opinions of the latter on legal representation are hardly surprising. The major grievances included non-interaction with the prisoners and their families, inadequate performance of duties as defence lawyer, repeated demands for more money, not appearing in court during proceedings (especially during sentencing hearing) and connivance with the prosecution. The most significant complaint was the alienation inflicted upon the prisoners and families by the failure of lawyers to keep them meaningfully informed about the progress in the case.

²³ For more details, refer to Chapter 7 on 'Trial and Appeals'.

CHETAK

Chetak was sentenced to death for murdering five people in the house where he worked as a domestic help. He was paid a meagre salary of Rupees 1,500 by his employers, who often abused him verbally and did not pay him his entire monthly salary to ensure that he continued working. The economic condition of his mother, Narmada, was even more precarious. Surviving on food she got in exchange for doing

small chores for fellow villagers, she lived in extreme destitution and barely had the means to visit him in jail. Things were made even worse by the fact that Chetak was not allowed to work or earn in prison. His legal aid lawyer would ask him for money every time he met him in court and told Chetak that he would fight the case properly only if he was paid. Whenever Chetak made an effort to ask about the case, the lawyer would dismiss

his request saying that the court proceedings would be beyond his comprehension and the process of explaining them to him was a futile one. Extremely dissatisfied with his lawyer, he was convinced that the fate of his case would have been entirely different if he had been able to afford a private lawyer.²⁴

This held true across all stages of the legal process but where the lawyer did meet the prisoner or her family, it was primarily to pressurise them for more money, or to offer shallow assurances of acquittal. Prisoners stated that despite their suggestions to lawyers about asking certain questions of particular witnesses, or about presenting a specific material as evidence, or about bringing a particular testimony into evidence, the lawyers did not engage with them. Champak felt cheated by his trial court lawyer who was privately appointed, as he recounted that even though he had given a list of witnesses and his work certificate to his lawyer to prove his alibi at the time of the incident, his lawyer failed to present them as evidence. It must also be noted that even though families had spent beyond their means to pay for private lawyers, they had a very strong sense of being deceived by the lawyers. They felt that the lawyers depleted their meagre financial resources and were never really invested in their cases.

It must also be highlighted that there were cases where prisoners had very positive opinions about the efforts of their lawyers. Instances where the lawyers, both private and legal aid, had withstood significant pressure to put up a good fight were also narrated. However, such narratives were far too few compared to the widespread dissatisfaction at the legal assistance received.

MALPRACTICES

DEMAND FOR PAYMENT BY LEGAL AID LAWYERS

The abuse of the legal aid process is not unknown in our criminal justice system. In the course of our research we came across a number of structural as well as individual flaws in the legal aid system used in capital cases. The public prosecutors in death penalty

²⁴ Chetak's death sentence was commuted by the Supreme Court on grounds of inordinate delay in disposal of his mercy petition, along with the fact of his solitary confinement in prison.

VIDHUR

Vidhur, sentenced to death for rape and murder of a minor in June 2010, was one of the few prisoners satisfied with the legal representation he received. He said that the High Court lawyer (privately engaged) heard his entire story and explained the case to

him twice. The lawyer appeared at every hearing and briefed Vidhur in detail about the witness testimonies while eliciting his responses. He also made substantial arguments on sentencing while arguing in favour of commuting the death sentence to life imprisonment in the High Court. Though

the lawyer did not meet Vidhur after the High Court confirmed the death sentence, he sent him a letter advising him to speak to his son, who practices in the Supreme Court. Vidhur's criminal appeal is currently pending before the Supreme Court.

cases are often lawyers with strong connections with the investigative authorities, and the need to secure a conviction in response to crimes perceived as the most heinous ones, leads to formidable prosecution cases, many a times built on statements extracted through torture. Such strong prosecution is pitted against legal aid lawyers with low experience in death penalty matters and little monetary incentive. This results in little or no engagement with the prisoners or their families, weak cross-questioning, and almost no guidance provided on the examination of the accused during trial proceedings.

Prisoners spoke about legal aid lawyers, both at the trial court and High Court level, often pressurising their families to pay money, and also at times threatening to not turn up for court proceedings unless they were paid. As a result, the economically vulnerable families were compelled to pay these lawyers, or at times, make peace with their inability to pay and risk adverse consequences in the case. Urvi's legal aid lawyer asked for Rupees 10,000, which was partly collected by his wife's relatives and the remaining amount was provided by his fellow inmates. Despite these efforts to arrange for the lawyer's fees, Urvi recounted that the lawyer was dismissive and even rejected his suggestion of producing defence witnesses, saying that he would be acquitted anyway.

CONNIVANCE OF DEFENCE LAWYERS

Connivance of defence lawyers with the victim's family, police, public prosecutor or the judge, resulting in the imposition of the death sentence, was perceived to be a major concern. Despite lawyers making repeated demands for money, pushing the families to a position of extreme economic desperation, prisoners and their families often felt that the lawyers still would not engage

ADAMYA SHARMA

Adamyia Sharma, was threatened by his legal aid lawyer that he would argue only if he was paid Rupees 500 for each hearing in court. Adamyia complained to the judge about his lawyer's insistence on being paid pursuant to which

another lawyer was allotted to him. To Adamyia's dismay, even this lawyer demanded money to defend him. Adamyia, who belonged to an extremely poor family, spent a sum of about Rupees 10,000 that he had collected over three years of work as an undertrial, in paying

the legal aid lawyers. Ultimately, the third lawyer who was allotted to Adamyia was not paid any money. However, Adamyia believed that because of the non-payment, the lawyer did not argue well which had an adverse impact on his case.

with them or appear regularly in court. In some cases insufficient cross examination of material witnesses or failure to record key evidence also led the prisoners to believe that their lawyers were colluding with the victim's family or the public prosecutor. Narratives on connivance were noted both in case of trial court as well as High Court lawyers. Such concerns of connivance not only highlight the lack of confidence in the criminal justice system, but also underscore the lack of access to basic legal representation for people accused of offences punishable with death.

When the harshest punishment available in our legal system is sought to be imposed, the extent of compliance with procedural safeguards should also be at its highest. However, often, the nature of alleged offence itself and various other factors result in the routine and repeated violations of basic safeguards. As a result, the death penalty is imposed despite such deep-rooted structural flaws in the legal representation available to prisoners charged with crimes punishable by death.

Appendix

- H: Sections prescribing the death sentence for offences that involve loss of life
- N: Sections prescribing the death sentence for offences that do not involve loss of life
- D: Sections under defence legislations providing for the death sentence where the same has been prescribed for an offence under a civil legislation

[U]: Section declared unconstitutional

Sections punishable with the death penalty under different central legislations	
S. NO.	SECTIONS PUNISHABLE WITH DEATH PENALTY
THE AIR FORCE ACT, 1950	
1	<p>34. Offences in relation to the enemy and punishable with death</p> <p>Any person subject to this Act who commits any of the following offences, that is to say,</p> <p>(a) shamefully abandons or delivers up any garrison, fortress, post, place or guard, committed to his charge, or which it is his duty to defend, or uses any means to compel or induce any commanding officer or other person to commit the said act; or</p> <p>(b) intentionally uses any means to compel or induce any person subject to military, naval or air force law to abstain from acting against the enemy, or to discourage such person from acting against the enemy ;or</p> <p>(c) in the presence of the enemy, shamefully casts away his arms, ammunition, tools or equipment or misbehaves in such manner as to show cowardice; or</p> <p>(d) treacherously holds correspondence with, or communicates intelligence to, the enemy or any person in arms against the Union ; or</p> <p>(e) directly or indirectly assists the enemy with money, arms, ammunition, stores or supplies ;</p> <p>(f) or treacherously or through cowardice sends a flag of truce to the enemy ;or</p> <p>(g) in time of war or during any air force operation, intentionally occasions a false alarm in action, camp or quarters or spreads reports calculated to create alarm or despondency; or</p> <p>(h) in time of action leaves his commanding officer or his post, guard, piquet, patrol or party without being regularly relieved or without leave ; or</p> <p>(i) having been made a prisoner of war, voluntarily serves with or aids the enemy ; or</p> <p>(j) knowingly harbours or protects an enemy not being a prisoner ; or</p> <p>(k) being a sentry in time of war or alarm, sleeps upon his post or is intoxicated ; or</p> <p>(l) knowingly does any act calculated to imperil the success of the military, naval or air forces of India or any forces co-operating therewith or any part of such forces; or</p> <p>(m) treacherously or shamefully causes the capture or destruction by the enemy of any aircraft belonging to the Forces; or</p> <p>(n) treacherously uses any false air signal or alters or interferes with any air signal ; or</p> <p>(o) when ordered by his superior officer or otherwise under orders to carry out any air force operations, treacherously or shamefully fails to use his utmost exertions to carry such orders into effect;</p> <p>shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.</p>

- H: Sections prescribing the death sentence for offences that involve loss of life
- N: Sections prescribing the death sentence for offences that do not involve loss of life

2	<p>37. Mutiny</p> <p>Any person subject to this Act who commits any of the following offences, that is to say,</p> <p>(a) begins, incites, causes, or conspires with any other persons to cause, any mutiny in the military, naval or air forces of India or any forces co-operating therewith ; or</p> <p>(b) joins in any such mutiny; or</p> <p>(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same ; or</p> <p>(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to commit such mutiny or any such conspiracy, does not, without delay, give information thereof to his commanding or other superior officer ; or</p> <p>(e) endeavours to seduce any person in the military, naval or air forces of India from his duty or allegiance to the Union;</p> <p>shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.</p>	■
3	<p>38. Desertion and aiding desertion</p> <p>(1) Any person subject to this Act who deserts or attempts to desert the service shall on conviction by court-martial, if he commits the offence on active service or when under orders for active service, be liable to suffer death or such less punishment as is in this Act mentioned; and if he commits the offence under any other circumstances, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.</p>	■
4	<p>71. Civil offences</p> <p>Subject to the provisions of section 72, any person subject to this Act who at any place in or beyond India commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section shall be liable to be tried by a court-martial and, on conviction, be punishable as follows, that is to say,—</p> <p>(a) if the offence is one which would be punishable under any law in force in India with death or with transportation, he shall be liable to suffer any punishment, other than whipping, assigned for the offence, by the aforesaid law and such less punishment as is in this Act mentioned; and</p> <p>(b) in any other case, he shall be liable to suffer any punishment other than whipping “assigned for the offence by any law in force in India, or imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.</p>	■

■ D: Sections under defence legislations providing for the death sentence where the same has been prescribed for an offence under a civil legislation

[U]: Section declared unconstitutional

THE ARMS ACT, 1959

[U]

27. Punishment for using arm, etc.

...(3) Whoever uses any prohibited arms or prohibited ammunition or does any act in contravention of section 7 and such use or act results in the death of any other person, shall be punishable with death.

Section 7 of the Act states:

7. Prohibition of acquisition or possession, or of manufacture or sale, of prohibited arms or prohibited ammunition.

No person shall

(a) Acquire, have in his possession or carry; or

(b) Use, use manufacture, sell, transfer, convert, repair, test or prove; or

(c) Expose or offer for sale or transfer or have in his possession for sale, transfer, conversion, repair, test or proof;

any prohibited arms or prohibited ammunition unless he has been specially authorised by the Central Government in this behalf.

Note: Section 27(3) of the Arms Act, 1959 was declared unconstitutional in *State of Punjab v. Dalbir Singh* (2012) 3 SCC 346 in February 2012.

THE ARMY ACT, 1950

5

34. Offences in relation to the enemy and punishable with death

Any person subject to this Act who commits any of the following offences, that is to say,—

(a) shamefully abandons or delivers up any garrison, fortress, post, place or guard, committed to his charge, or which

it is his duty to defend, or uses any means to compel or induce any commanding officer or other person to commit any of the said acts; or

(b) intentionally uses any means to compel or induce any person subject to military, naval or air force law to abstain from acting against the enemy, or to discourage such person from acting against the enemy; or

(c) in the presence of the enemy, shamefully casts away his arms, ammunition, tools or equipment or misbehaves in such manner as to show cowardice; or

(d) treacherously holds correspondence with, or communicates intelligence to, the enemy or any person in arms against the Union; or

(e) directly or indirectly assists the enemy with money, arms, ammunition, stores or supplies; or

(f) treacherously or through cowardice sends a flag of truce to the enemy; or

(g) in time of war or during any military operation, intentionally occasions a false alarm in action, camp, garrison or quarters, or spreads reports calculated to create alarm or despondency; or

(h) in time of action leaves his commanding officer or his post, guard, picquet, patrol or party without being regularly relieved or without leave; or

(i) having been made a prisoner of war, voluntarily serves with or aids the enemy; or

(j) knowingly harbours or protects an enemy not being a prisoner; or

(k) being a sentry in time of war or alarm, sleeps upon his post or is intoxicated; or

(l) knowingly does any act calculated to imperil the success of the military, naval or air forces of India or any forces co-operating therewith or any part of such forces;

shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned

- H: Sections prescribing the death sentence for offences that involve loss of life
- N: Sections prescribing the death sentence for offences that do not involve loss of life

6	<p>37. Mutiny</p> <p>Any person subject to this Act who commits any of the following offences, that is to say,—</p> <p>(a) begins, incites, causes, or conspires with any other persons to cause, any mutiny in the military, naval or air forces of India or any forces co-operating therewith; or</p> <p>(b) joins in any such mutiny; or</p> <p>(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or</p> <p>(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to commit such mutiny or any such conspiracy, does not, without delay, give information thereof to his commanding or other superior officer; or</p> <p>(e) endeavours to seduce any person in the military, naval or air forces of India from his duty or allegiance to the Union;</p> <p>shall, on conviction by court-martial, be liable to suffer death or such less punishment as is in this Act mentioned.</p>	■
7	<p>38. Desertion and aiding desertion</p> <p>(1) Any person subject to this Act who deserts or attempts to desert the service shall on conviction by court-martial,</p> <p>if he commits the offence on active service or when under orders for active service, be liable to suffer death or such less punishment as is in this Act mentioned; and</p> <p>if he commits the offence under any other circumstances, be liable to suffer imprisonment for a term which may extend to seven years or such less punishment as is in this Act mentioned.</p>	■
8	<p>69. Civil offences</p> <p>Subject to the provisions of section 70, any person subject to this Act who at any place in or beyond India, commits any civil offence, shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section, shall be liable to be tried by a court-martial and, on conviction, be punishable as follows, that is to say,—</p> <p>(a) if the offence is one which would be punishable under any law in force in India with death or with transportation, he shall be liable to suffer any punishment, other than whipping, assigned for the offence, by the aforesaid law and such less punishment as is in this Act mentioned;</p>	■

■ D: Sections under defence legislations providing for the death sentence where the same has been prescribed for an offence under a civil legislation

[U]: Section declared unconstitutional

THE ASSAM RIFLES ACT, 2006	
9	<p>21. Offences in relation to the enemy and punishable with death</p> <p>Any person subject to this Act who commits any of the following offences, that is to say,—</p> <p>(a) shamefully abandons or delivers up any post, place or guard, committed to his charge or which it is his duty to defend; or</p> <p>(b) intentionally uses any means to compel or induce any person subject to this Act or to army, naval, air force law or any member of other armed forces to abstain from acting against the enemy or to discourage such person from acting against the enemy; or</p> <p>(c) in the presence of enemy, shamefully casts away his arms, ammunition, tools or equipment or misbehaves in such manner as to show cowardice; or</p> <p>(d) treacherously holds correspondence with, or communicates intelligence to, the enemy or any person in arms against the Union; or</p> <p>(e) directly or indirectly assists the enemy with money, arms, ammunition, stores or supplies or in any other manner whatsoever; or</p> <p>(f) in time of active operation against the enemy intentionally occasions a false alarm in action, camp, quarters or spreads or causes to be spread reports calculated to create alarm or despondency; or</p> <p>(g) in time of action leaves his Commandant or other superior officer or his post, guard, picket, patrol or party without being regularly relieved or without leave; or</p> <p>(h) having been captured by the enemy or made a prisoner of war, voluntarily serves with or aids the enemy; or</p> <p>(i) knowingly harbours or protects an enemy not being a prisoner; or</p> <p>(j) being a sentry in time of active operation against the enemy or alarm, sleeps upon his post or is intoxicated; or</p> <p>(k) knowingly does any act calculated to imperil the success of the Force or the army, naval, air forces of India or any other armed forces of the Central Government co-operating therewith or any part of such forces, shall, on conviction by an Assam Rifles Court, be liable to suffer death or such less punishment as is in this Act mentioned.</p>
10	<p>24. Mutiny</p> <p>Any person subject to this Act who commits any of the following offences, that is to say,—</p> <p>(a) begins, incites, causes or conspires with any other person to cause any mutiny in the Force or in the army, naval or air forces of India or any forces co-operating therewith; or</p> <p>(b) joins in any such mutiny; or</p> <p>(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or</p> <p>(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not, without delay, give information thereof to his Commandant or other superior officer; or</p> <p>(e) endeavours to seduce any person in the Force or in the army, naval or air forces of India or any forces cooperating therewith from his duty or allegiance to the Union, shall, on conviction by an Assam Rifles Court, be liable to suffer death or such less punishment as is in this Act mentioned.</p>
11	<p>25. Desertion and aiding desertion</p> <p>(1) Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by an Assam Rifles Court,—</p> <p>(a) if he commits the offence when on active duty or when under orders for active duty, be liable to suffer death or such less punishment as is in this Act mentioned;</p>

- H: Sections prescribing the death sentence for offences that involve loss of life
- N: Sections prescribing the death sentence for offences that do not involve loss of life

12	<p>55. Civil offences</p> <p>Subject to the provisions of section 56, any person subject to this Act who at any place in, or beyond, India commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section, shall be liable to be tried by an Assam Rifles Court and, on conviction, be punishable as follows, that is to say,—</p> <p>(a) if the offence is one which would be punishable under any law in force in India with death, he shall be liable to suffer any punishment assigned for the offence, by the aforesaid law and such less punishment as is in this Act mentioned;</p>	■
THE BORDER SECURITY FORCE ACT, 1968		
13	<p>14. Offences in relation to the enemy and punishable with death</p> <p>Any person subject to this Act who commits any of the following offences, that is to say,—</p> <p>(a) shamefully abandons or delivers up any post, place or guard, committed to his charge or which it is his duty to defend; or</p> <p>(b) intentionally uses any means to compel or induce any person subject to this Act or to military, naval or air force law to abstain from acting against the enemy or to discourage such person from acting against the enemy; or</p> <p>(c) in the presence of the enemy, shamefully casts away his arms, ammunition, tools or equipment or misbehaves in such manner as to show cowardice; or</p> <p>(d) treacherously holds correspondence with, or communicates intelligence to, the enemy or any person in arms against the Union; or</p> <p>(e) directly or indirectly assists the enemy with money, arms, ammunition, stores or supplies or in any other manner whatsoever; or</p> <p>(f) in time of active operation against the enemy, intentionally occasions a false alarm in action, camp, quarters, or spreads or causes to be spread reports calculated to create alarm or despondency; or</p> <p>(g) in time of action leaves his Commandant or other superior officer or his post, guard, picket, patrol or party without being regularly relieved or without leave; or</p> <p>(h) having been captured by the enemy or made a prisoner of war, voluntarily serves with or aids the enemy; or</p> <p>(i) knowingly harbours or protects an enemy not being a prisoner; or</p> <p>(j) being a sentry in time of active operation against the enemy or alarm, sleeps upon his post or is intoxicated; or</p> <p>(k) knowingly does any act calculated to imperil the success of the Force or the military, naval or air forces of India or any forces co-operating therewith or any part of such forces,</p> <p>shall, on conviction by a Security Force Court, be liable to suffer death or such less punishment as is in this Act mentioned.</p>	■

■ D: Sections under defence legislations providing for the death sentence where the same has been prescribed for an offence under a civil legislation

[U]: Section declared unconstitutional

14	<p>17. Mutiny</p> <p>Any person subject to this Act who commits any of the following offences, that is to say, —</p> <p>(a) begins, incites, causes or conspires with any other person to cause any mutiny in the Force or in the military, naval or air forces of India or any forces co-operating therewith; or</p> <p>(b) joins in any such mutiny; or</p> <p>(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or</p> <p>(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not, without delay, give information thereof to his Commandant or other superior officer; or</p> <p>(e) endeavours to seduce any person in the Force or in the military, naval or air forces of India or any forces co-operating therewith from his duty or allegiance to the Union, shall, on conviction by a Security Force Court, be liable to suffer death or such less punishment as is in this Act mentioned.</p>	■
15	<p>18. Desertion and aiding desertion</p> <p>(1) Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by a Security Force Court, —</p> <p>(a) if he commits the offence when on active duty or when under orders for active duty, be liable to suffer death or such less punishment as is in this Act mentioned;</p>	■
16	<p>46. Civil Offences</p> <p>Subject to the provisions of section 47, any person subject to this Act who at any place in, or beyond, India commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section shall be liable to be tried by a Security Force Court and, on conviction, be punishable as follows, that is to say, —</p> <p>(a) if the offence is one which would be punishable under any law in force in India with death, he shall be liable to suffer any punishment, assigned for the offence, by the aforesaid law and such less punishment as is in this Act mentioned;</p>	■
THE COAST GUARD ACT, 1978		
17	<p>17. Mutiny</p> <p>Any person subject to this Act who commits any of the following offences that is to say, —</p> <p>(a) begins, incites, causes or conspires with any other to cause any mutiny in the Coast Guard or in the military, naval or air forces of India or any forces co-operating therewith; or</p> <p>(b) joins in any such mutiny; or</p> <p>(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or</p> <p>(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not, without delay, give information thereof to his Commanding Officer or other superior officer; or</p> <p>(e) endeavours to seduce any such person in the Coast guard, or in the military, naval or air forces of India or any forces co-operating therewith from his duty or allegiance to the Union, shall, on conviction by a Coast Guard Court, be liable to suffer death or such less punishment as in this Act mentioned:</p> <p>Provided that a sentence of death awarded under this section shall not be carried out unless it is confirmed by the Central Government.</p>	■

- H: Sections prescribing the death sentence for offences that involve loss of life
- N: Sections prescribing the death sentence for offences that do not involve loss of life

18	<p>49. Civil Offences</p> <p>Subject to the provisions of section 50, any person subject to this Act who at any place in, or beyond, India commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section shall be liable to be tried by a Coast Guard Court, and on conviction, be punishable as follows, that is to say,—</p> <p>(a) if the offence is one which would be punishable under any law in force in India with death, he shall be liable to suffer any punishment, assigned for the offence, by the aforesaid law or such less punishment as in this Act mentioned;</p>	■
THE COMMISSION OF SATI (PREVENTION) ACT, 1987		
19	<p>4. Abetment of Sati</p> <p>(1) Notwithstanding anything contained in the Indian Penal Code (45 of 1860) , if any person commits sati, whoever abets the commission of such sati, either directly or indirectly, shall be punishable with death or imprisonment for life and shall also be liable to fine.</p>	■
THE DELHI METRO RAILWAY (OPERATION AND MAINTENANCE) ACT, 2002		
20	<p>74. Maliciously wrecking a train or causing sabotage</p> <p>(1) If any person—</p> <p>(a) loosens or displaces any rail or any other matter or thing belonging to the metro railway; or</p> <p>(b) turns, moves, unlocks or diverts any point or other machinery belonging to the metro railway; or</p> <p>(c) does or causes to be done any act of sabotage in relation to the metro railway with intent or with knowledge that it is likely to endanger safety of any person upon the metro railway, he shall be punishable with imprisonment for life, or with rigorous imprisonment for a term which may extend to ten years:</p> <p>Provided that, in the absence of special and adequate reasons to the contrary to be mentioned in the judgment of the court, where a person is punished with rigorous imprisonment, such imprisonment shall not be less than</p> <p>(i) three years in the case of a first conviction; and</p> <p>(ii) seven years in the case of conviction for the second or subsequent offence.</p> <p>(2) If a person unlawfully does any act of sabotage or any other act referred to in sub-section (1) with intent to cause the death of any person, or with knowledge that such act is so imminently dangerous that it must in all probability cause the death of any person or such bodily injury to any person as is likely to cause the death of any person, he shall be punishable with death or imprisonment for life.</p>	■

■ D: Sections under defence legislations providing for the death sentence where the same has been prescribed for an offence under a civil legislation

[U]: Section declared unconstitutional

THE GENEVA CONVENTIONS ACT, 1960	
21	<p>3. Punishment of grave breaches of Conventions ■</p> <p>(1) If any person within or without India commits or attempts to commit, or abets or procures the commission by any other person of, a grave breach of any of the Conventions he shall be punished—</p> <p>(a) where the offence involves the wilful killing of a person protected by any of the Conventions, with death or with imprisonment for life; and</p> <p>(b) in any other case, with imprisonment for a term which may extend to fourteen years.</p> <p>(2) Sub-section (1) applies to persons regardless of their nationality or citizenship.</p> <p>(3) For the purposes of this section,—</p> <p>(a) a grave breach of the First Convention is a breach of that Convention involving an act referred to in article 50 of that Convention committed against persons or property protected by that Convention;</p> <p>(b) a grave breach of the Second Convention is a breach of that Convention involving an act referred to in Article 51 of that Convention committed against persons or property protected by that Convention;</p> <p>(c) a grave breach of the Third Convention is a breach of that Convention involving an act referred to in article 130 of that Convention committed against persons or property protected by that Convention; and</p> <p>(d) a grave breach of the fourth Convention is a breach of that Convention involving an act referred to in article 147 of that Convention committed against persons or property protected by that Convention.</p>
THE INDIAN PENAL CODE, 1860	
22	<p>120B. Punishment of criminal conspiracy ■</p> <p>(1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in this Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.</p>
23	<p>121. Waging, or attempting to wage war, or abetting waging of war, against the Government of India ■</p> <p>Whoever wages war against the Government of India, or attempts to wage such war, or abets the waging of such war, shall be punished with death, or imprisonment for life and shall also be liable to fine.</p>
24	<p>132. Abetment of mutiny, if mutiny is committed in consequence thereof ■</p> <p>Whoever abets the committing of mutiny by an officer, soldier, sailor or airman, in the Army, Navy or Air Force of the Government of India, shall, if mutiny be committed in consequence of that abetment, be punished with death or with imprisonment for life, or imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine.</p>
25	<p>194. Giving or fabricating false evidence with intent to procure conviction of capital offence ■</p> <p>Whoever gives or fabricates false evidence, intending thereby to cause, or knowing it to be likely that he will thereby cause, any person to be convicted of an offence which is capital by the laws for the time being in force in India 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;</p> <p>If innocent person be thereby convicted and executed.</p> <p>and if an innocent person be convicted and executed in consequence of such false evidence, the person who gives such false evidence shall be punished either with death or the punishment hereinbefore described.</p>

- H: Sections prescribing the death sentence for offences that involve loss of life
- N: Sections prescribing the death sentence for offences that do not involve loss of life

26	<p>195A. Threatening or inducing any person to give false evidence ■</p> <p>Whoever threatens another with any injury to his person, reputation or property or to the person or reputation of any one in whom that person is interested, with intent to cause that person to give false evidence shall be punished with imprisonment of either description for a term which may extend to seven years, or with fine, or with both;</p> <p>and if innocent person is convicted and sentenced in consequence of such false evidence, with death or imprisonment for more than seven years, the person who threatens shall be punished with the same punishment and sentence in the same manner and to the same extent such innocent person is punished and sentenced.</p>
27	<p>302. Punishment for murder ■</p> <p>Whoever commits murder shall be punished with death, or imprisonment for life, and shall also be liable to fine. Murder is defined under Section 300 of the Indian Penal Code, 1860 as:</p> <p>“Except in the cases hereinafter excepted, culpable homicide is murder, if the act by which the death is caused is done with the intention of causing death, or</p> <p>Secondly.—If it is done with the intention of causing such bodily injury as the offender knows to be likely to cause the death of the person to whom the harm is caused, or</p> <p>Thirdly.—If it is done with the intention of causing bodily injury to any person and the bodily injury intended to be inflicted is sufficient in the ordinary course of nature to cause death, or</p> <p>Fourthly.—If the person committing the act knows that it is so imminently dangerous that it must, in all probability, cause death or such bodily injury as is likely to cause death, and commits such act without any excuse for incurring the risk of causing death or such injury as aforesaid.”</p>
[U]	<p>303. Punishment for murder by life-convict ■</p> <p>Whoever, being under sentence of imprisonment for life, commits murder, shall be punished with death.</p> <p><i>Note: This section was struck down as unconstitutional by the Supreme Court in Mithu v. State of Punjab (1983) 2 SCC 277 in April 1983.</i></p>
28	<p>305. Abetment of suicide of child or insane person ■</p> <p>If any person under eighteen years of age, any insane person, any delirious person, any idiot, or any person in a state of intoxication commits suicide, whoever abets the commission of such suicide, shall be punished with death or imprisonment for life, or imprisonment for a term not exceeding ten years, and shall also be liable to fine.</p>
29	<p>307. Attempt to murder ■</p> <p>Whoever does any act with such intention or knowledge, and under such circumstances that, if he by that act caused death, he would be guilty of murder, shall be punished with imprisonment of either description for a term which may extend to ten years, and shall also be liable to fine; and, if hurt is caused to any person by such act, the offender shall be liable either to imprisonment for life, or to such punishment as is hereinbefore mentioned. Attempts by life-convicts.</p> <p>When any person offending under this section is under sentence of imprisonment for life, he may, if hurt is caused, be punished with death.</p>
30	<p>376A. Punishment for causing death or resulting in persistent vegetative state of victim ■ ■</p> <p>Whoever, commits an offence punishable under sub-section (1) or sub-section (2) of section 376 and in the course of such commission inflicts an injury which causes the death of the woman or causes the woman to be in a persistent vegetative state, shall be punished with rigorous imprisonment for a term which shall not be less than twenty years, but which may extend to imprisonment for life, which shall mean imprisonment for the remainder of that person's natural life, or with death.</p>

■ D: Sections under defence legislations providing for the death sentence where the same has been prescribed for an offence under a civil legislation

[U]: Section declared unconstitutional

31	<p>376E. Punishment for repeat offenders</p> <p>Whoever has been previously convicted of an offence punishable under section 376 or section 376A or section 376D and is subsequently convicted of an offence punishable under any of the said sections shall be punished with imprisonment for life which shall mean imprisonment for the remainder of that person's natural life, or with death.</p>	■ ■
32	<p>396. Dacoity with murder</p> <p>If any one of five or more persons, who are conjointly committing dacoity, commits murder in so committing dacoity, every one of those persons shall be punished with death, or imprisonment for life, or rigorous imprisonment for a term which may extend to ten years, and shall also be liable to fine.</p> <p>Dacoity is defined under Section 391 of the Indian Penal Code, 1860 as:</p> <p>"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"."</p> <p>Robbery is defined under Section 390 of the Indian Penal Code, 1860 as:</p> <p>"In all robbery there is either theft or extortion.</p> <p>When theft is robbery.—Theft is "robbery" if, in order to the committing of the theft, or in committing the theft, or in carrying away or attempting to carry away property obtained by the theft, the offender, for that end, voluntarily causes or attempts to cause to any person death or hurt or wrongful restraint, or fear of instant death or of instant hurt, or of instant wrongful restraint.</p> <p>When extortion is robbery.—Extortion is "robbery" if the offender, at the time of committing the extortion, is in the presence of the person put in fear, and commits the extortion by putting that person in fear of instant death, of instant hurt, or of instant wrongful restraint to that person or to some other person, and, by so putting in fear, induces the person so put in fear then and there to deliver up the thing extorted."</p>	■
33	<p>364A. Kidnapping for ransom, etc.</p> <p>Whoever kidnaps or abducts any person or keeps a person in detention after such kidnapping or abduction, and threatens to cause death or hurt to such person, or by his conduct gives rise to a reasonable apprehension that such person may be put to death or hurt, or causes hurt or death to such person in order to compel the Government or any foreign State or international inter-governmental organisation or any other person to do or abstain from doing any act or to pay a ransom, shall be punishable with death or imprisonment for life, and shall also be liable to fine.</p>	■ ■

- H: Sections prescribing the death sentence for offences that involve loss of life
- N: Sections prescribing the death sentence for offences that do not involve loss of life

THE INDO-TIBETAN BORDER POLICE FORCE ACT, 1992

34	<p>16. Offences in relation to the enemy or terrorist and punishable with death ■</p> <p>Any person subject to this Act who commits any of the following offences, that is to say,—</p> <p>(a) shamefully abandons or delivers up any post, place or guard, committed to his charge or which it is his duty to defend; or</p> <p>(b) intentionally uses any means to compel or induce any person subject to this Act or to any other law relating to military, naval, air force or any other armed force of the Union to abstain from acting against the enemy or to discourage such person from acting against the enemy; or</p> <p>(c) in the presence of the enemy or terrorist, shamefully casts away his arms, ammunition, tools or equipment or misbehaves in such manner as to show cowardice; or</p> <p>(d) treacherously holds correspondence with, or communicates intelligence to, the enemy, terrorist or any person in arms against the Union; or</p> <p>(e) directly or indirectly assists the enemy or terrorist with money, arms, ammunition, stores or supplies or in any other manner whatsoever; or</p> <p>(f) in time of active operation against the enemy or terrorist, intentionally occasions a false alarm in action, camp, quarters or spreads or causes to be spread reports calculated to create alarm or despondency; or</p> <p>(g) in time of action leaves his commanding officer or other superior officer or his post, guard, picket, patrol or party without being regularly relieved or without leave; or</p> <p>(h) having been captured by the enemy or made a prisoner of war, voluntarily serves with or aids the enemy; or</p> <p>(i) knowingly harbours or protects an enemy, not being a prisoner; or</p> <p>(j) being a sentry in time of active operation against the enemy or alarm, sleeps upon his post or is intoxicated; or</p> <p>(k) knowingly does any act calculated to imperil the success of the Force or the military naval or air force of India or any forces, co-operating therewith or any part of such forces,</p> <p>shall, on conviction by a Force Court, be liable to suffer death or such less punishment as is in this Act mentioned.</p>
35	<p>19. Mutiny ■</p> <p>Any person subject to this Act who commits any of the following offences, that is to say,—</p> <p>(a) begins, incites, causes, or conspires with any other persons to cause, any mutiny in the military, naval or air forces of India or any forces co-operating therewith; or</p> <p>(b) joins in any such mutiny; or</p> <p>(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or</p> <p>(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to commit such mutiny or any such conspiracy, does not, without delay, give information thereof to his commanding or other superior officer; or</p> <p>(e) endeavours to seduce any person in the military, naval or air forces of India from his duty or allegiance to the Union;</p> <p>shall, on conviction by a Force Court, be liable to suffer death or such less punishment as is in this Act mentioned.</p>

■ D: Sections under defence legislations providing for the death sentence where the same has been prescribed for an offence under a civil legislation

[U]: Section declared unconstitutional

36	<p>20. Desertion and aiding desertion</p> <p>(1) Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by a Force Court,—</p> <p>(a) if he commits the offence when on active duty or when under orders for active duty, be liable to suffer death or such less punishment as is in this Act mentioned;</p>
37	<p>49. Civil offences</p> <p>Subject to the provisions of section 50, any person subject to this Act who at any place in, or beyond, India commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section shall be liable to be tried by a Force Court and, on conviction, be punishable as follows, that is to say,—</p> <p>(a) if the offence is one which would be punishable under any law in force in India with death, he shall be liable to suffer any punishment, assigned for the offence, by the aforesaid law and such less punishment as is in this Act mentioned;</p>

THE NARCOTIC DRUGS AND PSYCHOTROPIC SUBSTANCES ACT, 1985

38

31A. Death penalty for certain offences after previous conviction

(1) Notwithstanding anything contained in section 31, if any person who has been convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, any of the offences punishable under section 15 to section 25 (both inclusive) or section 27A, is subsequently convicted of the commission of, or attempt to commit, or abetment of, or criminal conspiracy to commit, an offence relating to,—

(a) engaging in the production, manufacture, possession, transportation, import into India, export from India or transshipment, of the narcotic drugs or psychotropic substances specified under column (1) of the Table below and involving the quantity which is equal to or more than the quantity indicated against each such drug or substance, as specified in column (2) of the said Table:

S.No.	Particulars of narcotic drugs/psychotropic substances (1)	Quantity (2)
(i)	Opium	10Kgs.
(ii)	Morphine	1Kg.
(iii)	Heroin	1Kg.
(iv)	Codeine	1Kg.
(v)	Thebaine	1Kg.
(vi)	Cocaine	500 grams.
(vii)	Hashish	20 Kgs.
(viii)	Any mixture with or without any natural material of any of the above drugs	3[lesser of the quantity between the quantities given against the respective narcotic drugs or psychotropic substances mentioned above forming part of the mixture.]
(ix)	LSD, LSD-25(+)-N, N Diethyllysergamide (d-lysergic acid diethylamide)	500 grams
(x)	THC (Tetrahydrocannabinols, the following Isomers : 6a (10a), 6a (7) 7, 8, 9, 10, 9 (11) and their stereochemical variants)	500 grams
(xi)	Methamphetamine (+)-2-Methylamine-1-Phenylpropane	1,500 grams
(xii)	Methaqualone (2-Methyl-3-O-tolyl-4-(3h)-quinazolinone)	1,500 grams
(xiii)	Amphetamine (+)-2-amino-1-phenylporpane	1,500 grams
(xiv)	Salts and preparations of the psychotropic substances mentioned in (ix) to (xii)	1,500 grams;

(b) financing, directly or indirectly, any of the activities specified in clause (a), shall be punished with punishment which shall not be less than the punishment specified in section 31 or with death.

- H: Sections prescribing the death sentence for offences that involve loss of life
- N: Sections prescribing the death sentence for offences that do not involve loss of life

THE NAVY ACT, 1957	
39	<p>34. Misconduct by officers or persons in command ■</p> <p>Every flag officer, captain of or other person subject to Naval law who, being in command on ship, vessel or aircraft of the Indian Navy or any Naval establishment—</p> <p>(a) fails to use his utmost exertions to bring into Action any such ship, vessel or aircraft which it is his duty to bring into Action; or</p> <p>(b) surrenders any such ship, vessel or aircraft to the enemy when it is capable of being successfully defended or destroyed; or</p> <p>(c) fails to pursue the enemy whom it is his duty to pursue or to assist to the utmost of his ability any friend whom it is his duty to assist; or</p> <p>(d) in the course of any Action by or against the enemy improperly withdraws from the Action or from his station or fails in his own person and according his rank to encourage the persons under the command to fight courageously; or</p> <p>(e) surrenders any such Naval establishment or any part of such an establishment to the enemy when it is capable of being successfully defended or when it is his duty to cause it to be destroyed, shall,—</p> <p>(a) if such act is committed with the intent to assist the enemy or from cowardice, be punished with death or such other punishment as is hereinafter mentioned;</p>
40	<p>35. Misconduct by persons other than those in command ■</p> <p>Every person subject to naval law who, not being in command of any naval establishment or any ship, vessel or aircraft of the Indian Navy, fails when ordered to prepare for action by or against the enemy, or during any such action to use his utmost exertions to carry the lawful orders of his superior officers into executions shall,—</p> <p>(a) if such act is committed with the intent to assist the enemy, be punished with death or such other punishment as is hereinafter mentioned;</p>
41	<p>36. Delaying or discouraging action or service commanded ■</p> <p>Every person subject to naval law who wilfully delays or discourages upon any pretext whatsoever; any action or service which has been commanded on the part of the Navy, regular Army, or Air Force or any forces co-operative therewith shall,—</p> <p>(a) if such act is committed with intent to assist the enemy, be punished with death or such other punishment as is hereinafter mentioned;</p>
42	<p>37. Penalty for disobedience in action ■</p> <p>Every person subject to Naval law who, being in the presence or vicinity of the enemy or having been ordered to be prepared for action by or against the enemy—</p> <p>(a) deserts his post; or</p> <p>(b) sleeps upon his watch,</p> <p>shall be punished with death or such other punishment as is hereinafter mentioned.</p>
43	<p>38. Penalty for spying ■</p> <p>Every person not otherwise subject to naval law who is or acts as a spy for the enemy shall be punished under this Act with death or such other punishment as is hereinafter mentioned as if he were a person subject to naval law.</p>

■ D: Sections under defence legislations providing for the death sentence where the same has been prescribed for an offence under a civil legislation

[U]: Section declared unconstitutional

44	<p>39. Correspondence, etc., with the enemy</p> <p>Every person subject to naval law, who,—</p> <p>(a) traitorously holds correspondence with the enemy or gives intelligence to the enemy; or</p> <p>(b) fails to make known to the proper authorities any information he may have received from the enemy; or</p> <p>(c) assists the enemy with any supplies; or</p> <p>(d) having been made a prisoner of war, voluntarily serves with or aids to enemy:</p> <p>shall be punished with death or such other punishment as is hereinafter mentioned.</p>	■
45	<p>43. Punishment for mutiny</p> <p>Every person subject to naval law, who,—</p> <p>(a) joins in a mutiny; or</p> <p>(b) begins, incites, causes or conspires with any other persons to cause a mutiny; or</p> <p>(c) endeavors to incite any person to join in a mutiny or to commit an act of mutiny; or</p> <p>(d) endeavors to seduce any person in the regular Army, Navy or Air Force from his allegiance to the constitution or loyalty to the state or duty to his superior officers or uses any means to compel or induce any such person to abstain from acting against the enemy or discourages such person from acting against the enemy; or</p> <p>(e) does not use his utmost exertions to suppress or prevent a mutiny; or</p> <p>(f) wilfully conceals any traitorous or mutinous practice or design or any traitorous words spoken against the state; or</p> <p>(g) knowing or having reason to believe in the existence of any mutiny or of any intention to mutiny does not without delay give information thereof to the commanding officer of his ship or other superior officer; or</p> <p>(h) utters words of sedition or mutiny;</p> <p>shall be punished with death or such other punishment as is hereinafter mentioned.</p>	■
46	<p>44. Persons on board ships or aircraft seducing naval personnel from allegiance</p> <p>Every person not otherwise subject to naval law who being on board any ship or aircraft of the Indian Navy or on board any ship in the service of the Government endeavors to seduce from his allegiance to the constitution or loyalty to the state or duty to superior officers any person subject to naval law shall be punished under this Act with death or such other punishment as is hereinafter mentioned as if he were a person subject to naval law.</p>	■

- H: Sections prescribing the death sentence for offences that involve loss of life
- N: Sections prescribing the death sentence for offences that do not involve loss of life

47	<p>49. Desertion</p> <p>(1) Every person subject to naval law who absents himself from his ship or from the place where his duty requires him to be, with an intention of not returning to such ship or place, or who at any time and under any circumstances when absent from his ship or place of duty does any act which shows that he has an intention of not returning to such ship or place is said to desert.</p> <p>(2) Every person who deserts shall,—</p> <p>(a) if he deserts to the enemy, be punished with death or such other punishment as is hereinafter mentioned; or</p> <p>(b) if he deserts under any other circumstances, be punished with imprisonment for a term which may extend to fourteen years or such other punishment as is hereinafter mentioned;</p> <p>and in every such case he shall forfeit all pay, head money, bounty, salvage, prize money and allowances that have been earned by him and all annuities, pensions, gratuities, medals and decorations that may have been granted to him and also all clothes and effects which he deserted, unless the tribunal by which he is tried or the which he deserted, unless the tribunal by which he is tried or the Central Government or the Chief of the Naval Staff, otherwise directs.</p>
48	<p>56. Offences by officers in charge of convoy</p> <p>(1) All officers appointed for the convoy and protection of any ships or vessels shall diligently perform their duty without delay according to their instructions in that behalf.</p> <p>(2) Every such officer subject to naval law, who,—</p> <p>(a) does not defend the ships and goods under his convoy without deviation to any other objects; or</p> <p>(b) refuses to fight their defense if they are assailed; or</p> <p>(c) cowardly abandons and exposes the ships in his convoy to hazard; or</p> <p>(d) demands or extracts any money or other reward from any merchant or master for conveying any ships or vessels entrusted to his care; or</p> <p>(e) misuses the masters or mariners thereof;</p> <p>shall be punished with death or such other punishment as is hereinafter mentioned, and shall also make such reparation in damages to the merchants owners and others as a civil court of competent jurisdiction may adjudge.</p>
49	<p>59. Arson</p> <p>Every person subject to naval law who unlawfully sets fire to any dockyard, victualling yard or steam factory yard, arsenal, magazine, building stores or to any ship, vessel, barge, boat, aircraft, or other craft or furniture thereunto belonging, not being the property of an enemy, shall be punished with death or such other punishment as is hereinafter mentioned.</p>
50	<p>77. Civil offences</p> <p>(1) Every person subject to naval law who commits a civil offence punishable with death or with imprisonment for life shall be punished with the punishment assigned for that offence.</p>
THE PETROLEUM AND MINERALS PIPELINES (ACQUISITION OF RIGHT OF USER IN LAND) ACT, 1962	
51	<p>15. Penalty</p> <p>(4) Whoever, with the intent to cause or knowing that he is likely to cause damage to or destruction of any pipeline laid under section 7, causes by fire, explosive substance or otherwise damage to the pipeline being used for transportation of petroleum products, crude oil or gas with the intent to commit sabotage or with the knowledge that such act is so imminently dangerous that it may in all probability cause death of any person or such bodily injury likely to cause death of any person, shall be punishable with rigorous imprisonment which shall not be less than ten years but may extend to imprisonment for life or death.</p>

THE SASHASTRA SEEMA BAL ACT, 2007

52	<p>16. Offences in relation to enemy and punishable with death</p> <p>Any person subject to this Act who commits any of the following offences, namely:</p> <p>(a) shamefully abandons or delivers up any post, place or guard, committed to his charge or which it is his duty to defend; or</p> <p>(b) intentionally uses any means to compel or induce any person subject to this Act or to any other law relating to military, naval, air force or any other armed force of the Union to abstain from acting against the enemy or to discourage such person from acting against the enemy; or</p> <p>(c) in the presence of the enemy, shamefully casts away his arms, ammunition, tools or equipment or misbehaves in such manner as to show cowardice; or</p> <p>(d) treacherously holds correspondence with, or communicates intelligence to, the enemy, terrorist or any person in arms against the Union; or</p> <p>(e) directly or indirectly assists the enemy or terrorist with money, arms, ammunition, stores or supplies or in any other manner whatsoever; or</p> <p>(f) in time of active operation against the enemy or terrorist, intentionally occasions a false alarm in action, camp, quarters, or spreads or causes to be spread reports calculated to create alarm or despondency; or</p> <p>(g) in time of action leaves his commanding officer or other superior officer or his post, guard, picket, patrol or party without being regularly relieved or without leave; or</p> <p>(h) having been captured by the enemy or made a prisoner of war, voluntarily serves with or aids the enemy; or</p> <p>(i) knowingly harbours or protects an enemy, not being a prisoner; or</p> <p>(j) being a sentry in time of active operation against the enemy or alarm, sleeps upon his post or is intoxicated; or</p> <p>(k) knowingly does any act calculated to imperil the success of the Force or the military, naval or air force of India or any forces co-operating therewith or any part of such forces, shall, on conviction by a Force Court, be liable to suffer death or such less punishment as is in this Act mentioned.</p>	■
53	<p>19. Mutiny</p> <p>Any person subject to this Act who commits any of the following offences, namely:</p> <p>(a) begins, incites, causes or conspires with any other person to cause any mutiny in the Force or in the army, naval or air forces of India or any forces co-operating therewith; or</p> <p>(b) joins in any such mutiny; or</p> <p>(c) being present at any such mutiny, does not use his utmost endeavours to suppress the same; or</p> <p>(d) knowing or having reason to believe in the existence of any such mutiny, or of any intention to mutiny or of any such conspiracy, does not, without delay, give information thereof to his Commandant or other superior officer; or</p> <p>(e) endeavours to seduce any person in the Force or in the army, naval or air forces of India or any forces cooperating therewith from his duty or allegiance to the Union, shall, on conviction by a Force Court, be liable to suffer death or such less punishment as is in this Act mentioned.</p>	■

- H: Sections prescribing the death sentence for offences that involve loss of life
 - N: Sections prescribing the death sentence for offences that do not involve loss of life
 - D: Sections under defence legislations providing for the death sentence where the same has been prescribed for an offence under a civil legislation
- [U]: Section declared unconstitutional

54	<p>20. Desertion and aiding desertion</p> <p>(1) Any person subject to this Act who deserts or attempts to desert the service shall, on conviction by a Force Court,—</p> <p>(a) if he commits the offence when on active duty or when under orders for active duty, be liable to suffer death or such less punishment as is in this Act mentioned;</p> <p>...(4) For the purposes of this Act, a person deserts,—</p> <p>(a) if he absents from his unit or the place of duty at any time with the intention of not reporting back to such unit or place, or who, at any time and under any circumstances when absent from his unit or place of duty, does any act which shows that he has an intention of not reporting to such unit or place of duty;</p> <p>(b) if he absents himself without leave with intent to avoid any active duty.</p>	■
55	<p>49. Civil offences</p> <p>Subject to the provisions of section 50, any person subject to this Act who at any place in, or beyond, India commits any civil offence shall be deemed to be guilty of an offence against this Act and, if charged therewith under this section shall be liable to be tried by a Force Court and, on conviction, be punishable as follows, namely:</p> <p>(a) if the offence is one which would be punishable under any law in force in India with death, he shall be liable to suffer any punishment, assigned for the offence, by the aforesaid law and such less punishment as is in this Act mentioned;</p>	■
THE SCHEDULED CASTES AND SCHEDULED TRIBES (PREVENTION OF ATROCITIES) ACT, 1989		
56	<p>3. Punishment for offences of atrocities</p> <p>...(2) Whoever, not being a member of a Scheduled Caste or a Scheduled Tribe,—</p> <p>(i) gives or fabricates false evidence intending thereby to cause, or knowing it to be likely that he will thereby cause, any member of a Scheduled Caste or a Scheduled Tribe to be convicted of an offence which is capital by the law for the time being in force shall be punished with imprisonment for life and with fine; and if an innocent member of a Scheduled Caste or a Scheduled Tribe be convicted and executed in consequence of such false or fabricated evidence, the person who gives or fabricates such false evidence, shall be punished with death;</p>	■

THE SUPPRESSION OF UNLAWFUL ACTS AGAINST SAFETY OF MARITIME NAVIGATION AND FIXED PLATFORMS ON CONTINENTAL SHELF ACT, 2002

57	<p>3. Offences against ship, fixed platform, cargo of a ship, maritime navigational facilities, etc.</p> <p>(1) Whoever unlawfully and intentionally—</p> <p>(a) commits an act of violence against a person on board a fixed platform or a ship which is likely to endanger the safety of the fixed platform or, as the case may be, safe navigation of the ship shall be punished with imprisonment for a term which may extend to ten years and shall also be liable to fine;</p> <p>(b) destroys a fixed platform or a ship or causes damage to a fixed platform or a ship or cargo of the ship in such manner which is likely to endanger the safety of such platform or safe navigation of such ship shall be punished with imprisonment for life;</p> <p>(c) seizes or exercises control over a fixed platform or a ship by force or threatens or in any other form intimidates shall be punished with imprisonment for life;</p> <p>(d) places or causes to be placed on a fixed platform or a ship, by any means whatsoever, a device or substance which is likely to destroy that fixed platform or that ship or cause damage to that fixed platform or that ship or its cargo which endangers or is likely to endanger that fixed platform or the safe navigation of that ship shall be punished with imprisonment for a term which may extend to fourteen years;</p> <p>(e) destroys or damages maritime navigational facilities or interferes with their operation if such act is likely to endanger the safe navigation of a ship shall be punished with imprisonment for a term which may extend to fourteen years;</p> <p>(f) communicates information which he knows to be false thereby endangering the safe navigation of a ship shall be punished with imprisonment for a term which may extend to fourteen years and shall also be liable to fine;</p> <p>(g) in the course of commission of or in attempt to commit, any of the offences specified in clauses (a) to (d) in connection with a fixed platform or clauses (a) to (f) in connection with a ship—</p> <p>(i) causes death to any person shall be punished with death;</p>	■
----	--	---

THE UNLAWFUL ACTIVITIES PREVENTION ACT, 1967

58	<p>10. Penalty for being member of an unlawful association, etc.</p> <p>Where an association is declared unlawful by a notification issued under section 3 which has become effective under sub-section (3) of that section,—</p> <p>...(b) a person, who is or continues to be a member of such association, or voluntarily does an act aiding or promoting in any manner the objects of such association and in either case is in possession of any unlicensed firearms, ammunition, explosive or other instrument or substance capable of causing mass destruction and commits any act resulting in loss of human life or grievous injury to any person or causes significant damage to any property,—</p> <p>(i) and if such act has resulted in the death of any person, shall be punishable with death or imprisonment for life, and shall also be liable to fine;</p>	■
59	<p>16. Punishment for terrorist act</p> <p>(1) Whoever commits a terrorist act shall,—</p> <p>(a) if such act has resulted in the death of any person, be punishable with death or imprisonment for life, and shall also be liable to fine;</p>	■

Crime-wise median duration of incarceration		
Nature of crime	Number of prisoners	Median duration of incarceration
Offences under defence legislations	2	179.5 months (15 years)
Terror offences	31	158 months (13 years, 2 months)
Dacoity with murder	18	149.5 months (12 years, 6 months)
Drug offences	1	127 months (10 years, 7 months)
Kidnapping with murder	24	97 months (8 years, 1 month)
Murder <i>simpliciter</i>	213	59 months (4 years, 11 months)
Sexual offences	84	33.5 months (2 years, 10 months)
Total	373	66 months (5 years, 6 months)

Nature of crime disaggregated by number of victims		
Nature of crime	Number of victims (category)	Number of prisoners
Dacoity with murder	1	3
	2-4	9
	5 and more	6
Defence legislations	2-4	2
Kidnapping with murder	1	19
	2-4	2
	5 and more	3
Murder <i>simpliciter</i>		
	1	55
	2-4	82
	5 and more	76
Drug offences	0	1
Sexual offences	1	79
	2-4	3
	5 and more	2
Terror offences	0	8
	2-4	1
	5 and more	22

The number of prisoners in each category of victims may include cases involving single or multiple accused. Due to limited access to case records, the precise number of co-accused could not be reliably ascertained in each case.

State-wise representation of age of prisoners sentenced to death at time of incident						
State	18-21	22-25	26-40	41-60	Less than 18	More than 60
Andaman & Nicobar Islands			1			
Andhra Pradesh		1	1			
Assam	1		1	1		
Bihar	7	2	19	17	3	2
Chhattisgarh	3	1	9	1	1	1
Delhi	3	4	8	5	5	2
Gujarat	2	2	11	3		
Haryana	2	4	3	1		
Jammu & Kashmir	2		3		1	
Jharkhand	2	2	4	3		
Karnataka	7	7	17	1	4	
Kerala	1		11	2		
Madhya Pradesh	8	3	10	3		
Maharashtra	4	4	8	5	2	
Odisha			1			
Punjab		1	1			
Rajasthan			2			
Uttar Pradesh	10	5	26	10	2	2
Uttarakhand	1	2	1			
West Bengal	1		3	1		

Information regarding age of prisoners at time of incident is unavailable for one prisoner each from Bihar, Gujarat, Kerala, Madhya Pradesh, Rajasthan and Uttarakhand; two prisoners each from Andhra Pradesh, Jharkhand and Punjab; three prisoners each from Bihar and Delhi; nine prisoners from Karnataka; 13 prisoners from Maharashtra and 24 prisoners from Uttar Pradesh.

National occupational composition of prisoners sentenced to death	
Broad occupation category	Number of prisoners
Manual casual labourers (agricultural and non-agricultural)	170
Marginal and small cultivators (cultivating on own or leased land measuring less than four hectares)	47
Low paying public and private salaried employment	32
Small own account enterprises	17
Students	6
Unemployed persons	17
Religious occupations	3
Salaried public and private employment	36
Medium and large cultivators (cultivating on own or leased land measuring four hectares and above)	20
Medium & large businesses	22

Information regarding occupation of three prisoners is unavailable.

State-wise occupational composition of prisoners sentenced to death

State	Manual casual labourers (agricultural and non-agricultural)	Marginal and small cultivators (cultivating on own or leased land measuring less than four hectares)	Low paying public and private salaried employment	Small own account enterprises	Students	Unemployed persons	Religious occupations	Salaried Ppblic and private employment	Medium and large cultivators (cultivating on own or leased land measuring four hectares and above)	Medium & large businesses
Andaman & Nicobar Islands	0	0	0	0	0	0	0	0	0	1
Andhra Pradesh	3	1	0	0	0	0	0	0	0	0
Assam	1	0	0	0	1	0	0	1	0	0
Bihar	27	8	2	2	3	0	0	2	6	2
Chhattisgarh	7	3	0	1	0	2	1	1	1	0
Delhi	11	2	5	4	0	4	0	1	0	3
Gujarat	9	0	3	3	0	0	1	1	0	2
Haryana	2	3	0	0	0	2	0	0	2	1
Jammu & Kashmir	3	1	1	0	0	0	0	1	0	0
Jharkhand	7	3	1	0	0	0	1	1	0	0
Karnataka	24	4	4	2	0	1	0	5	0	4
Kerala	13	0	1	0	0	0	0	1	0	0
Madhya Pradesh	8	4	4	1	1	1	0	3	2	1
Maharashtra	18	2	7	0	1	4	0	3	0	1
Odisha	1	0	0	0	0	0	0	0	0	0
Punjab	0	0	0	0	0	0	0	1	0	3
Rajasthan	3	0	0	0	0	0	0	0	0	0
Uttar Pradesh	28	16	3	3	0	2	0	14	9	3
Uttarakhand	4	0	1	0	0	0	0	0	0	0
West Bengal	1	0	0	1	0	1	0	1	0	1
Total	170	47	32	17	6	17	3	36	20	22

Information regarding the occupation is unavailable for one prisoner each from Bihar, Karnataka and Uttar Pradesh.

State-wise representation of economic vulnerability of prisoners sentenced to death		
State	Economically Vulnerable	Economically Non-vulnerable
Andaman & Nicobar Islands	0 (0%)	1 (100%)
Andhra Pradesh	4 (100%)	0 (0%)
Assam	1 (33.3%)	2 (66.7%)
Bihar	39 (75%)	13 (25%)
Chhattisgarh	12 (75%)	4 (25%)
Delhi	24 (80%)	6 (20%)
Gujarat	15 (79%)	4 (21.1%)
Haryana	7 (70%)	3 (30%)
Jammu & Kashmir	5 (83.3%)	1 (16.7%)
Jharkhand	10 (76.9%)	3 (23.1%)
Karnataka	33 (75%)	11 (25%)
Kerala	14 (93.3%)	1 (6.7%)
Madhya Pradesh	18 (72%)	7 (28%)
Maharashtra	32 (88.9%)	4 (11.1%)
Odisha	1 (100%)	0 (0%)
Punjab	0 (0%)	4 (100%)
Rajasthan	3 (100%)	0 (0%)
Uttar Pradesh	48 (61.5%)	30 (38.5%)
Uttarakhand	5 (100%)	0 (0%)
West Bengal	3 (60%)	2 (40%)

Information regarding the economic vulnerability is unavailable for one prisoner each from Bihar, Karnataka and Uttar Pradesh.

State-wise representation of economic dependence of families on economically vulnerable prisoners sentenced to death						
State	Primary/sole Earner		Neither primary nor sole earner		Non-earning member (student/ unemployed)	
Andhra Pradesh	0	-	0	-	0	-
Assam	1	100%	0	-	0	-
Bihar	28	82.4%	6	17.6%	0	-
Chhattisgarh	3	33.3%	5	55.6%	1	11.1%
Delhi	9	47.4%	6	31.6%	4	21.1%
Gujarat	7	53.8%	6	46.2%	0	-
Haryana	2	50%	0	-	2	50%
Jammu & Kashmir	4	80%	1	20.0%	0	-
Jharkhand	5	83.3%	1	16.7%	0	-
Karnataka	16	64%	8	32.0%	1	4%
Kerala	11	100%	0	-	0	-
Madhya Pradesh	6	46.2%	6	46.2%	1	7.7%

State-wise representation of economic dependence of families on economically vulnerable prisoners sentenced to death (Continued)

Maharashtra	17	58.6%	7	24.1%	5	17.2%
Odisha	1	100%	0	-	0	-
Rajasthan	1	33.3%	2	66.7%	0	-
Uttar Pradesh	16	55.2%	12	41.4%	1	3.4%
Uttarakhand	4	100%	0	-	0	-
West Bengal	1	33.3%	1	33.3%	1	33.3%

Information regarding family's dependence on prisoners is unavailable for one prisoner in Uttarakhand; two prisoners in Gujarat; three prisoners each in Chhattisgarh, Haryana, Kerala and Maharashtra; four prisoners each in Andhra Pradesh and Jharkhand; five prisoners each in Bihar, Delhi and Madhya Pradesh; eight prisoners in Karnataka and 19 prisoners in Uttar Pradesh.

Detailed break-up of educational profile of prisoners sentenced to death

Educational profile	Number of prisoners
Never went to school	84 (23%)
Attended school (but not completed Primary)	35 (9.6%)
Primary	34 (9.3%)
Middle	72 (19.7%)
Secondary	62 (17%)
Higher secondary	40 (11%)
Diploma/Vocational Course	3 (0.8%)
Undergraduate	29 (8%)
Postgraduate	4 (1.1%)
Professional Course	2 (0.6%)

Information regarding educational profile of prisoners is unavailable for one prisoner each in Andhra Pradesh, Karnataka, Kerala and Maharashtra and two prisoners each in Bihar and Uttar Pradesh.

Educational courses undertaken by prisoners sentenced to death

Postgraduate Courses	Master of Arts Master of Commerce Master of Computer Applications Master of English Master of Geography
Undergraduate Courses	Bachelor of Arts (History, Political Science, Psychology, Sociology and General Studies) Bachelor of Commerce Bachelor of Computer Applications Bachelor of Education Bachelor of Science Bachelor of Technology
Diploma/Vocational Courses	Diploma in Education Diploma in Hotel Management Industrial Training Course Postgraduate Diploma in Computer Application

State-wise representation of educational profile of prisoners sentenced to death			
State	Educational qualification	Number of prisoners	% within state
Andaman & Nicobar Islands	Higher studies	1	100%
Andhra Pradesh	Did not complete Secondary	1	33.3%
	Secondary	2	66.7%
Assam	Never went to school	1	33.4%
	Did not complete Secondary	1	33.4%
	Secondary	1	33.4%
	Higher Secondary	1	33.4%
Bihar	Never went to school	18	35.3%
	Did not complete Secondary	28	57.2%
	Secondary	9	18.4%
	Higher Secondary	7	14.3%
	Higher studies	5	10.3%
Chhattisgarh	Never went to school	2	12.5%
	Did not complete Secondary	9	56.3%
	Secondary	5	31.3%
	Higher Secondary	2	12.5%
Delhi	Never went to school	8	26.7%
	Did not complete Secondary	19	63.4%
	Secondary	3	10%
	Higher Secondary	4	13.4%
	Higher studies	4	13.4%
Gujarat	Never went to school	1	5.3%
	Did not complete Secondary	17	89.5%
	Secondary	1	5.3%
	Higher Secondary	1	5.3%
Haryana	Never went to school	1	10%
	Did not complete Secondary	5	50%
	Secondary	3	30%
	Higher Secondary	1	10%
	Higher studies	1	10%
Jammu & Kashmir	Never went to school	3	50%
	Did not complete Secondary	4	80%
	Higher studies	1	20%
Jharkhand	Never went to school	6	46.2%
	Did not complete Secondary	9	69.3%
	Secondary	3	23.1%
	Higher studies	1	7.7%

State-wise representation of educational profile of prisoners sentenced to death (Continued)

Karnataka	Never went to school	15	34.1%
	Did not complete Secondary	27	62.8%
	Secondary	9	21%
	Higher Secondary	3	7%
	Higher studies	4	9.4%
Kerala	Did not complete Secondary	10	71.5%
	Secondary	3	21.5%
	Higher studies	1	7.2%
Madhya Pradesh	Never went to school	4	16%
	Did not complete Secondary	12	48%
	Secondary	7	28%
	Higher Secondary	5	20%
	Higher studies	1	4%
Maharashtra	Never went to school	6	17.2%
	Did not complete Secondary	23	65.8%
	Secondary	4	11.5%
	Higher Secondary	3	8.6%
	Higher studies	5	14.3%
Odisha	Did not complete Secondary	1	100%
Punjab	Secondary	1	25%
	Higher Secondary	1	25%
	Higher studies	2	50%
Rajasthan	Did not complete Secondary	2	66.7%
	Higher Secondary	1	33.4%
Uttar Pradesh	Never went to school	15	19.5%
	Did not complete Secondary	47	61.1%
	Secondary	10	13%
	Higher Secondary	10	13%
	Higher studies	10	13%
Uttarakhand	Never went to school	3	60%
	Did not complete Secondary	4	100%
West Bengal	Never went to school	1	20%
	Did not complete Secondary	2	50%
	Higher Secondary	1	25%
	Higher studies	1	25%

The category of 'Never went to school' (84 prisoners) is also included in the category of 'Did not complete secondary'. The category 'Higher Studies' includes the following educational qualifications-Diploma/Vocational Courses, Undergraduate, Postgraduate and Professional Course. Information regarding educational profile of prisoners is unavailable for one prisoner each in Andhra Pradesh, Karnataka, Kerala and Maharashtra and two prisoners each in Bihar and Uttar Pradesh.

Economic vulnerability, educational profile and social profile of all prisoners sentenced to death		
Educational qualification	Caste	Number of prisoners
Never went to school	General	8
		2
	OBC	21
		3
	Religious Minorities	12
Attended school (but not completed Primary)	SC/ST	36
	General	4
	OBC	10
		2
	Religious Minorities	13
Primary	SC/ST	10
	General	7
		1
	OBC	12
		1
Middle	Religious Minorities	5
	SC/ST	1
		9
	General	13
		5
Secondary	OBC	24
	Religious Minorities	7
		14
	SC/ST	3
		9
	General	1
		16
	OBC	6
		15
	Religious Minorities	3
	SC/ST	5
		3
	General	8
		5

■ ECONOMICALLY VULNERABLE

■ ECONOMICALLY NON-VULNERABLE

Economic vulnerability, educational profile and social profile of all prisoners sentenced to death (Continued)

Higher Secondary	General	5
		8
	OBC	5
		8
	Religious Minorities	4
		3
	SC/ST	2
		5
Diploma/Vocational Course	Religious Minorities	1
		2
Undergraduate	General	2
		6
	OBC	1
		10
	Religious Minorities	3
		4
	SC/ST	1
		2
Postgraduate	General	2
	OBC	1
	Religious Minorities	1
Professional Course	General	1
	Religious Minorities	1

14 prisoners belonging to both other backward classes and religious minorities have been counted in both categories-‘OBC’ and ‘Religious Minorities’. Information regarding the economic vulnerability, educational profile and social profile is unavailable for 15 prisoners.

- ECONOMICALLY VULNERABLE
- ECONOMICALLY NON-VULNERABLE

॥ न्यायस्त्र प्रमाणं स्यात् ॥



Centre on the Death Penalty

National Law University, Delhi

Sector 14, Dwarka

New Delhi—110078

www.deathpenaltyindia.com

Twitter: @deathpen_nlud

Email: deathpenalty@nludelhi.ac.in

ISBN 978-93-84272-06-7



9 789384 272067

₹800/- (Set of two volumes)