

॥ न्यायस्त्र प्रमाणं स्यात् ॥



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**DEATH PENALTY
IN INDIA**
ANNUAL
STATISTICS
REPORT

2016
2017

FOREWORD

The second edition of *The Death Penalty in India: Annual Statistics* brought out by the Centre on the Death Penalty (the Centre) at National Law University, Delhi attempts to compile comprehensive data on the use of the death penalty in India in 2017.

Since the first edition, we have improved upon our data collection systems and broadened our search avenues to meticulously track all cases involving the death penalty. Nonetheless, we continued to run into some roadblocks because of the generally poor quality of data maintenance by the state institutions responsible for administering the death penalty. In addition, there were delays and resistances from many of these state institutions in providing information.

We filed a total of 200 applications under the Right to Information Act, 2005 (RTIs) covering all prison and home departments, High Courts, and Governor's Offices across India to collect information on death row prisoners. We also regularly mined the High Court and Supreme Court websites to track movements in cases. In addition, we wrote to the State Legal Services Authority of every state to further verify mined information. Since most Sessions Courts either don't have websites or do not update them, local newspaper reports proved to be the most reliable source of information for tracking number of death sentences in 2017.

We found several issues with the responses we received from the state departments. Many responses were incomplete or incorrect. Each RTI resulted in several transfers within the department before we could receive a final response. These transfers caused significant delays in our data collection process. Further, the High Court websites are not updated regularly which made our search particularly difficult. In a majority of cases, we had to track the lawyers involved in the case to obtain information. These issues required us to monitor our database

1. The Death Penalty in India: Annual Statistics 2016, Centre on the Death Penalty, National Law University Delhi, March 2017.

2. The number of prisoners in Uttar Pradesh increased by 7, Haryana and Jharkhand by 2 each, and Karnataka and Kerala by 1 each. These figures were added after the relevant High Court websites updated the statuses of these cases in 2017.

regularly and tie up information from diverse sources to present the figures in this report.

The lack of coordination between the state institutions and their inefficiency in maintaining basic information on those sentenced to death calls for further scrutiny and essential policy reforms in criminal justice administration. Notwithstanding this state of affairs, we are confident that this report presents the most comprehensive dataset on the death penalty in India available in the public domain.

It is pertinent to note that during the course of our consolidation of information for 2017, the numbers that we released for 2016¹ also underwent significant revision. The total number of prisoners sentenced in 2016 now stand at 149 (previously recorded as 136)² and the total death row population at the end of 2016 increased to 399 (previously recorded as 397). The data on nature of crime and state-specific population have also been corrected in this report. Having witnessed the complex nature of aggregating these numbers, we hope that the accuracy and availability of data on the death penalty will continuously improve in the years to come along with our data collection efforts.

We would like to acknowledge the exceptional work of our interns Kali Srikari Kancherla, Pritam Giriya and Varsha Sharma (undergraduate law students at National Law University Delhi), who were instrumental in filing RTIs, mining court websites, tracking news reports, and the overall maintenance of our database.

IMPORTANT NUMBERS 2017

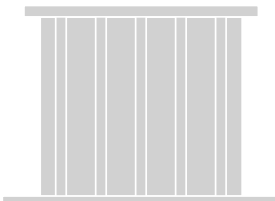
The numbers below account for death sentences awarded by Sessions Courts, and acquittals and commutations by appellate courts. Each number in this Report represents a person and not a case, unless otherwise specified. Statistics for the Supreme Court pertain to criminal appeals and review petitions.

PRISONERS ON DEATH ROW AS ON 31ST DECEMBER 2017 : 371

DEATH PENALTY CASES IN 2017

- ☪ Death Sentence
- Commutation
- × Acquittals
- ✓ Confirmation

SESSIONS COURT



109[☪]

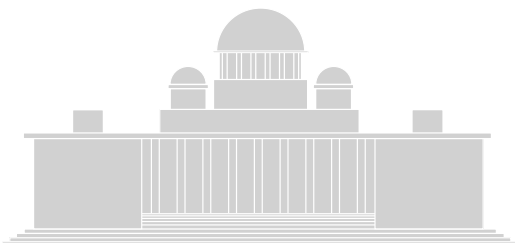
HIGH COURT



53[—] 35[×] 11[✓]

TOTAL 99

SUPREME COURT



07^{★✓}

*Out of the 7 confirmations, 1 was a criminal appeal with 4 prisoners and 2 were review petitions with 3 prisoners. Supreme Court did not commute or acquit any prisoners.

SESSIONS COURTS IN 2017

States where death penalty was imposed in 2016 but not in 2017

- Assam
- Delhi
- Gujarat
- Odisha
- Telangana
- Tripura

149

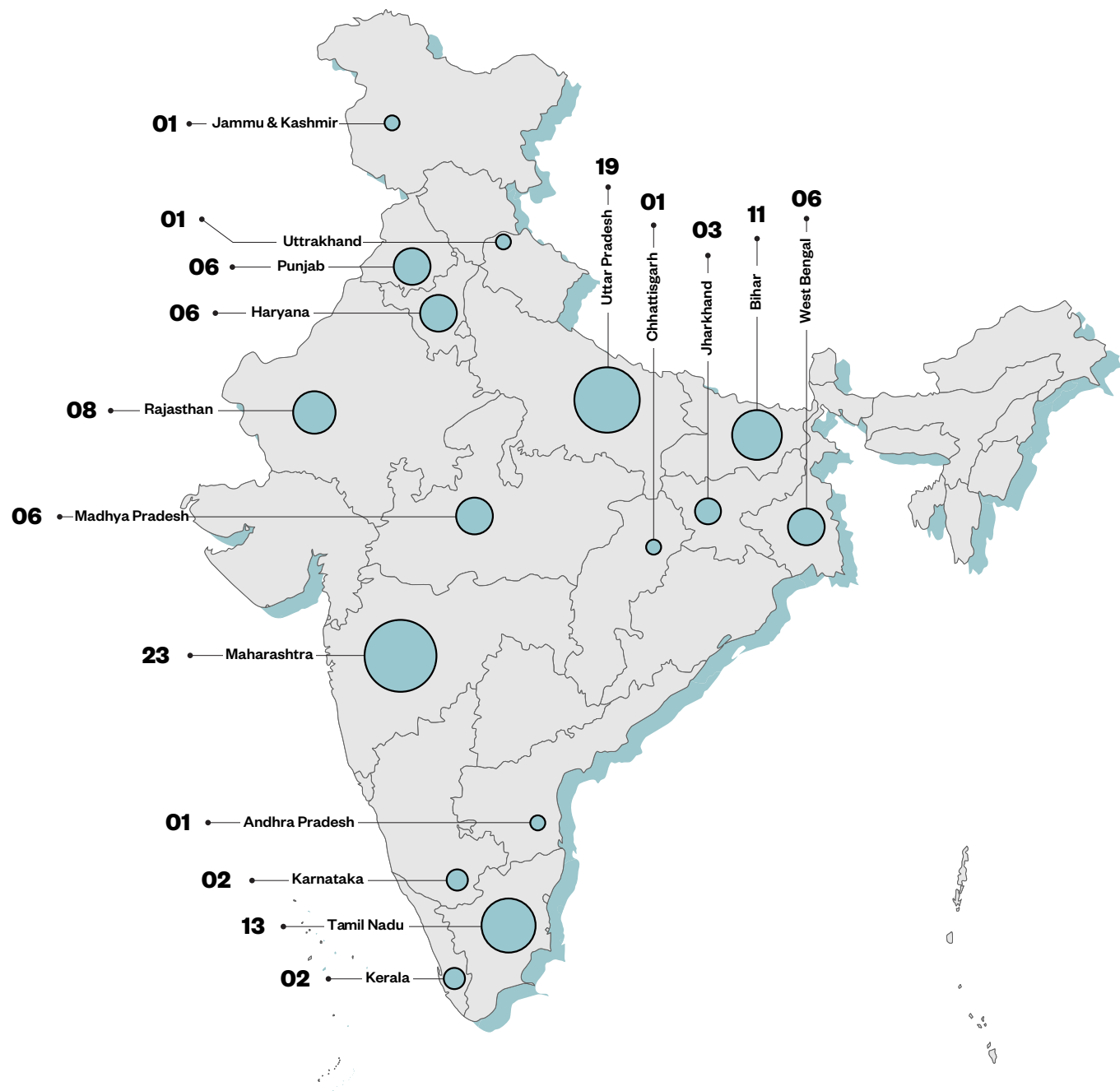
Total number of
persons sentenced
to death in **2016**

109

Total number of
persons sentenced
to death in **2017**

State-wise Distribution of persons sentenced to death in 2017

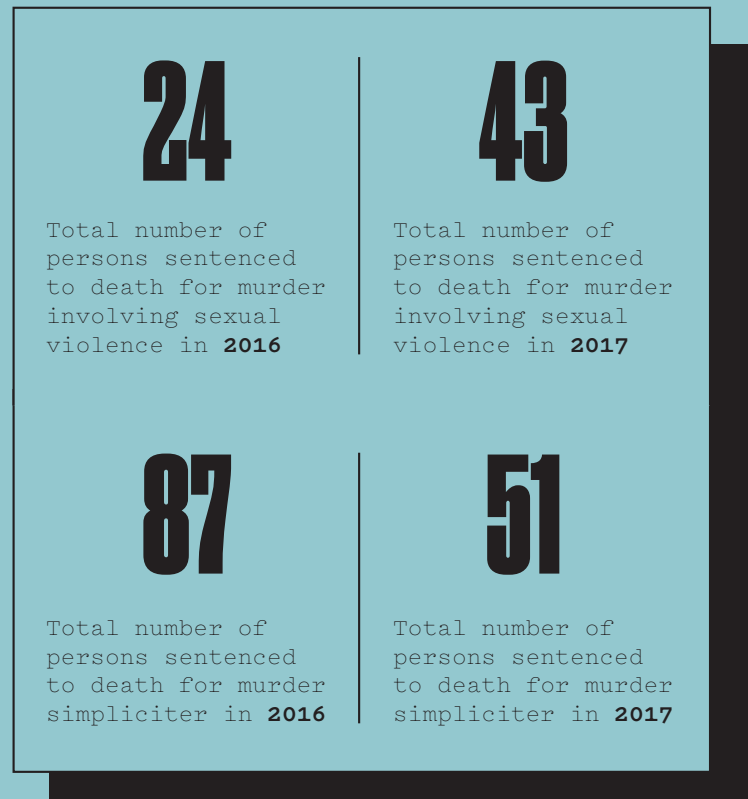
Persons sentenced to death in 2017



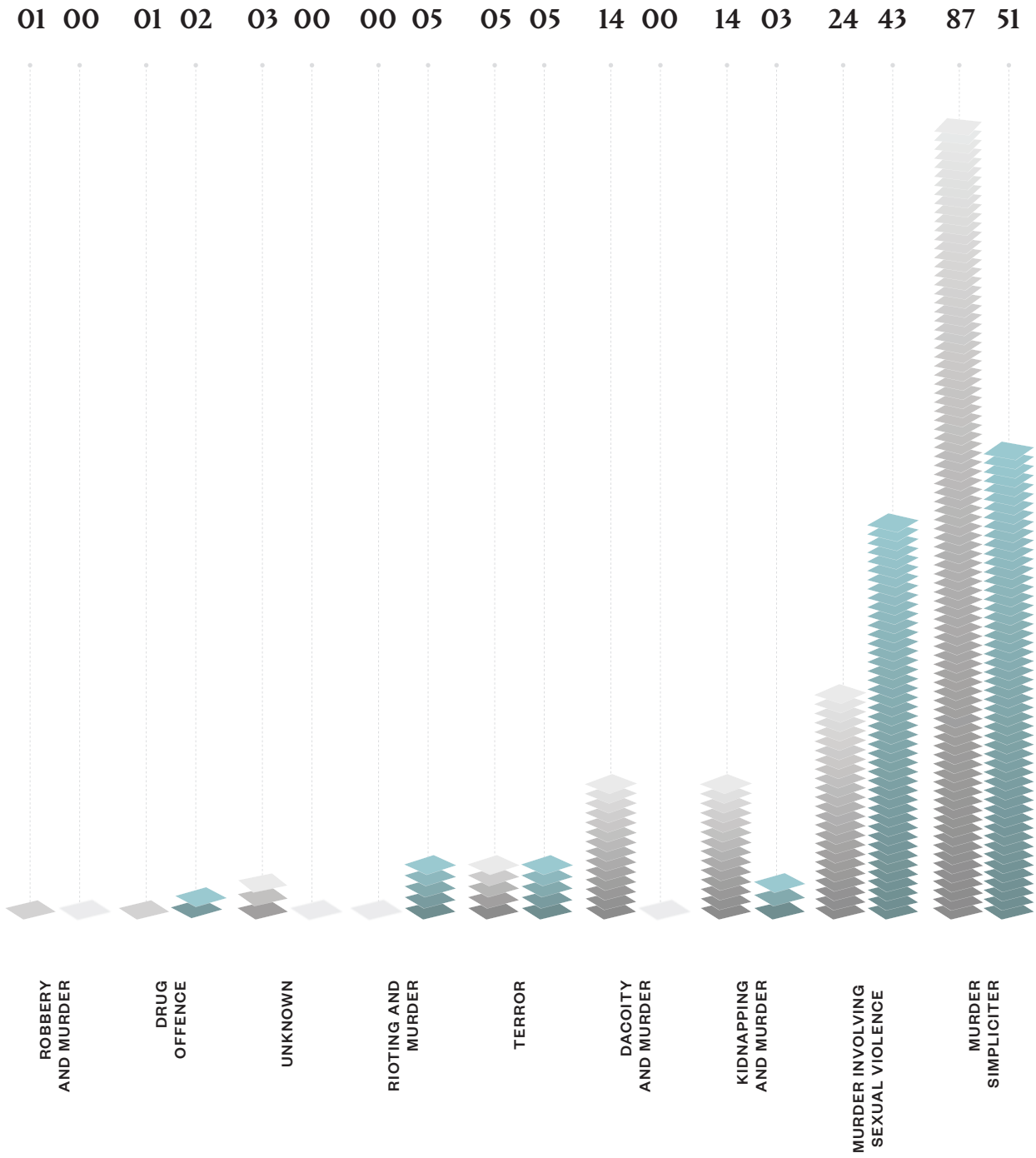
NATURE OF CRIME

The data on the nature of crime of those sentenced to death in 2017 has been categorised into murder simpliciter (includes cases where the prisoners were convicted only for murder), murder involving sexual violence, terror offences, dacoity and murder, robbery and murder, kidnapping and murder, rioting and murder, and drug offences.

An analysis of the nature of crimes for which prisoners were sentenced to death reveals that death penalty imposed for murder simpliciter and murder involving sexual violence constituted 74% of the total crimes in 2016 and 86% of the total crimes in 2017.



2017 2016



DEATH WARRANT

In August 2017, death warrants were issued by the 3rd Additional Sessions Judge, Jabalpur against two prisoners, Raja and Rajesh Yadav, whose criminal appeals are currently pending in the Supreme Court. Earlier that month, the Madhya Pradesh High Court had confirmed their death sentences. Similarly, in 2016, death warrants were issued for the execution of five prisoners before they had exhausted all their legal options.

These warrants are in violation of the Supreme Court guideline laid down in May 2015 for the issuance of death warrants in *Shabnam v. Union of India* and Ors³. According to the guideline, Sessions Courts can no longer issue death warrants for executions in undue haste, without a hearing, secretly, or prematurely. This is to ensure that all legal remedies of a prisoner on death row have been exhausted in accordance with *Shatrughan Chauhan v. Union of India*⁴.

The confusion emerges because there is no corresponding provision in the CrPC stipulating the exhaustion of all remedies as a prerequisite for issuing death warrant. Sections 413 and 414 of the CrPC state that upon the confirmation of a death sentence by the High Court, the Sessions Court shall cause the order to be carried into effect by issuing a death warrant. Section 415 of the CrPC directs the postponement of the execution only till the appeal is pending in the Supreme Court.

3. (2015) 6 SCC 702.

4. (2014) 3 SCC 1.

“... However, in the statutory framework, further procedural safeguards in the form of judicial review as well as mercy petitions are yet to be traversed. This would also be covered by the expression **procedure established by law** occurring in **Article 21**. Therefore, till the time limitation period for filing the review petition and thereafter reasonable time for filing the mercy petition has not lapsed, issuing of death warrants would be violative of Article 21.”

Operative part of the Supreme Court ruling in *Shabnam v. Union of India* (para 12.3) prohibiting issuance of death warrant before exhaustion of all legal remedies.

390. The date for the execution of a sentence of death confirmed by the High Court shall be fixed by the Court of Sessions and such date shall be the twenty-first day is a Sunday or other public holiday, the next succeeding working day. The date shall be specified in the warrant addressed to the superintendent of the jail in which the convict is confined.

Rule 390 of the Madhya Pradesh Rules and Orders (Criminal) allowing the Sessions Court to issue death warrants after the High Court confirms the death sentence.

HIGH COURT IN 2017

5. Over the years, all 11 prisoners accused in the highly publicized Dandupalya case of 2010 have been acquitted, commuted or have had their cases remitted to the Sessions Court.

6. Section 313 of the Code of Criminal Procedure, 1973, provides an opportunity to the accused to explain any circumstances appearing in the evidence against him.

Section 366 of the Code of Criminal Procedure, 1973, mandates that every case where the Sessions Court imposes the death sentence has to be sent to the High Court for confirmation. In 2017, the High Courts in India disposed cases involving 99 prisoners, 26 more than last year. High Court acquittals saw a significant increase in 2017, whereas the number of confirmations reduced. Overall the Karnataka High Court disposed 26 cases involving 26 prisoners (highest among all the High Courts in India)- confirming the death sentences of 4 prisoners, commuting 10, and acquitting 12. Of the 26 decided cases, 13 cases involved 7 prisoners accused in the *Dandupalya* case⁵. In 5 cases involving 22 death row prisoners, the High Courts of Calcutta, Patna, and Karnataka sent the case back to the Sessions Court for recording of accused person's statement under Section 313 of the Code of Criminal Procedure⁶.

73

Total cases
disposed by
High Courts
in 2016

99

Total cases
disposed by
High Courts
in 2017




HIGH COURT CONFIRMATIONS IN 2017

11

Total number
of prisoners

10

Total number
of cases

-  No. of Prisoners
-  No. of Cases
-  Coram (No. of Cases)

Karnataka (Bangalore Bench)

 **03**  **03**

 Justices Ravi Malimath and John Michael Cunha (3)

Madhya Pradesh (Jabalpur Bench)

 **03**  **02**

 Justices S.K. Seth and H.P. Singh(1)
Justices S.K. Seth and Anjuli Palo(1)

Uttar Pradesh (Allahabad Bench)

 **03**  **03**

 Justices Shashi Kant Gupta and Prabhat Chandra Tripathi(1)
Justices Arvind Kumar Tripathi and Mukhtar Ahmad (2)

Chhattisgarh

 **01**  **01**

 Justices Pritinker Diwanker and Ram Prasanna Sharma(1)

Karnataka (Dharwad Bench)

 **01**  **01**

 Justices Anand Byrareddy and K. Somashekar(1)




HIGH COURT COMMUTATIONS IN 2017

53

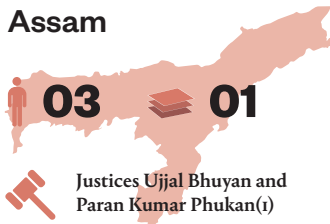
Total number
of prisoners

30

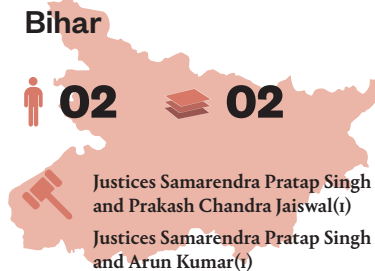
Total number
of cases

-  No. of Prisoners
-  No. of Cases
-  Coram (No. of Cases)

Assam



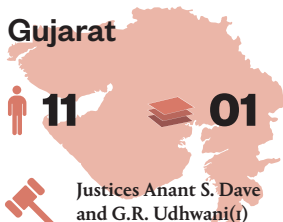
Bihar



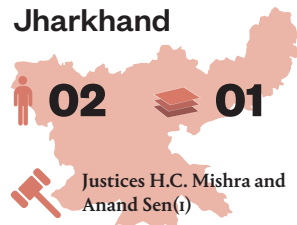
Delhi



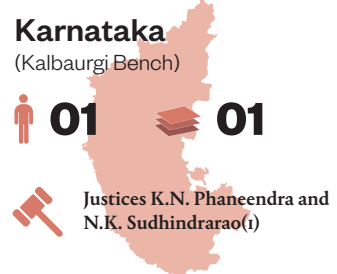
Gujarat



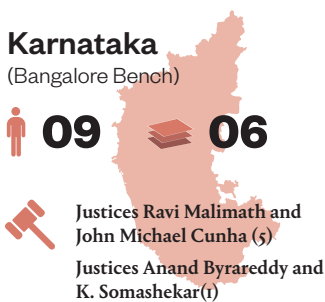
Jharkhand



Karnataka (Kalburgi Bench)



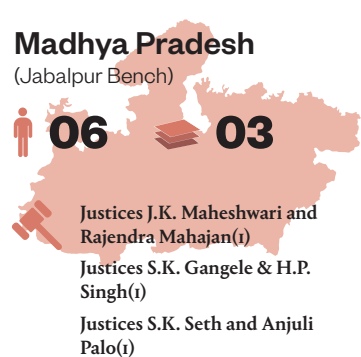
Karnataka (Bangalore Bench)



Kerala



Madhya Pradesh (Jabalpur Bench)



Maharashtra

(Aurangabad Bench)

 **01**  **01**

 Justices S.S. Shinde(i)

Orissa

 **02**  **01**

 Justices I Mahanty and
Biswajit Mohanty(i)

Rajasthan

(Jodhpur Bench)

 **02**  **01**

 Justices Gopal Krishan Vyas and
Deepak Maheshwari(i)

Rajasthan

(Jaipur Bench)

 **01**  **01**

 Justices Mohammad Rafiq and
Kailash Chandra Sharma(i)

West Bengal

 **02**  **02**

 Justices Nadira Patherya
and Debi Prosad Dey(i)

Tamil Nadu


 **03**  **02**

 Justices P.N. Prakash and
C.V. Karthikeyan(i)

Uttar Pradesh

(Allahabad Bench)

 **05**  **04**

 Justices Ramesh Sinha and
Umesh Chandra Srivastava(i)
Justices Bal Krishna Narayana
and Arvind Kumar Mishra(i)
Justices Arvind Kumar and
Shailendra Kumar Agrawal(i)
Justices Arvind Kumar Tripathi
and Mukhtar Ahmad(i)




HIGH COURT ACQUITTALS IN 2017

35

Total number
of prisoners


24

Total number
of cases

-  No. of Prisoners
-  No. of Cases
-  Coram (No. of Cases)

Bihar

 **05**  **01**

 Justices Samarendra Pratap Singh and Arun Kumar(i)

Karnataka

(Bangalore Bench)

 **11**  **14**

 Justices Ravi Malimath and John Michael Cunha(i)

Karnataka

(Kalburgi Bench)


 **01**  **01**

 Justices Rathnakalaa and N.K. Sudhindrarao(i)

Madhya Pradesh

(Jabalpur Bench)


 **01**  **01**

 Justices S.K. Seth and H.P. Singh(i)

Madhya Pradesh

(Indore Bench)

 **04**  **01**

 Justices S.C. Sharma and Alok Verma(i)

Orissa

 **03**  **01**

 Justices I Mahanty and Biswajit Mohanty(i)

Tamil Nadu

 **01**  **01**

 Justices P.N. Prakash and C.V. Karthikeyan(i)

West Bengal


 **01**  **01**

 Justices Ashim Kumar Roy and Malay Marut Banerjee(i)

Uttar Pradesh

(Allahabad Bench)

 **08**  **03**

 Justices Bala Krishna Narayana and Arvind Kumar Mishra(i)
Justices Bala Krishna Narayana and Shashi Kant(i)
Justices Prashant Kumar and Mahendra Dayal(i)

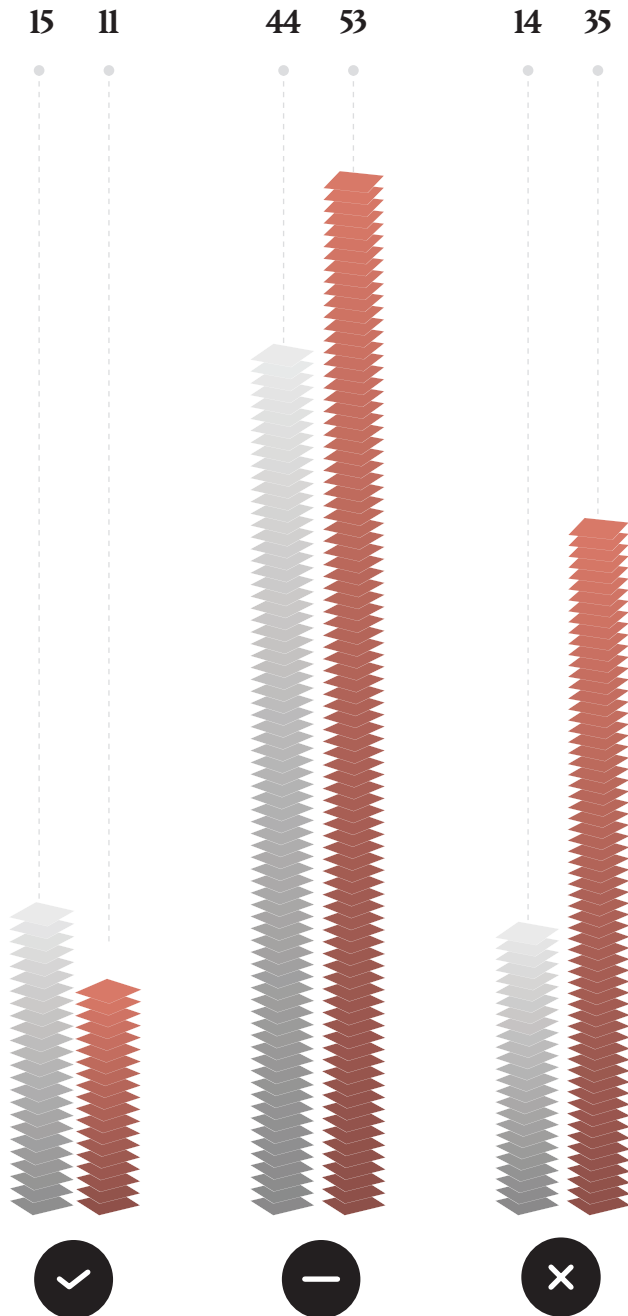
HIGH COURT IN 2017

2017 2016

✓ Confirmation

✕ Acquittals

— Commutation



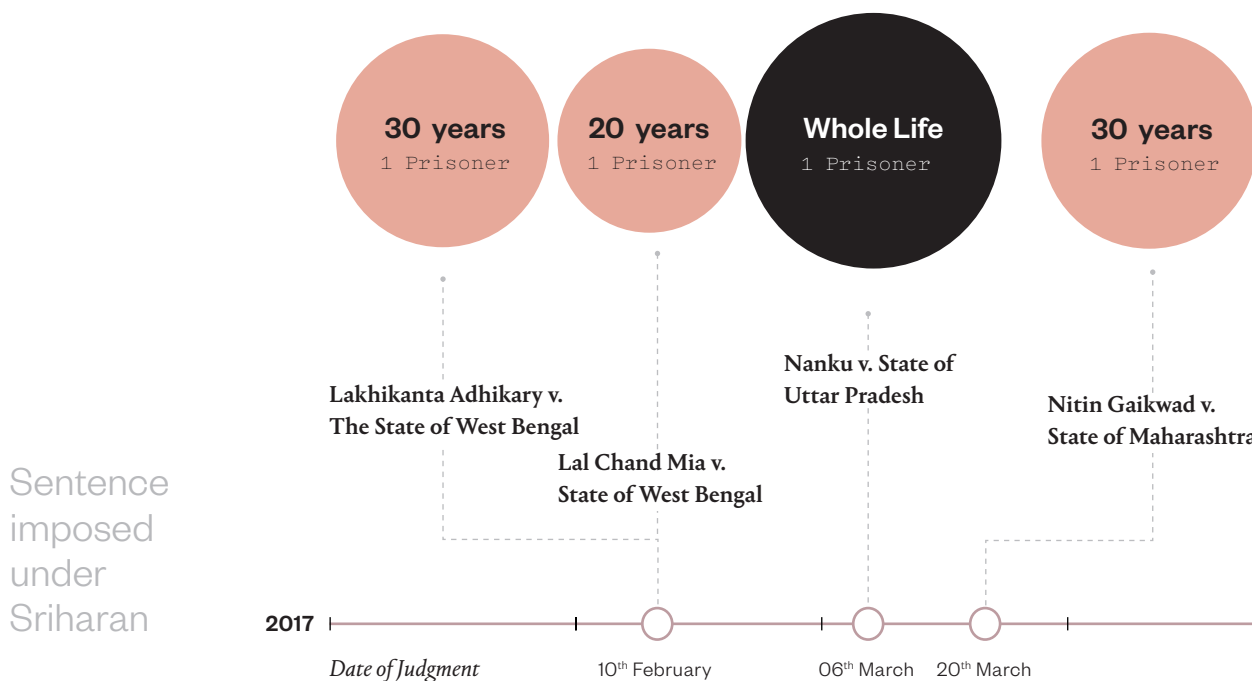
COMMUTATIONS UNDER *UNION OF INDIA* *V. SRIHARAN*⁷

7. (2016) 7 SCC 1.

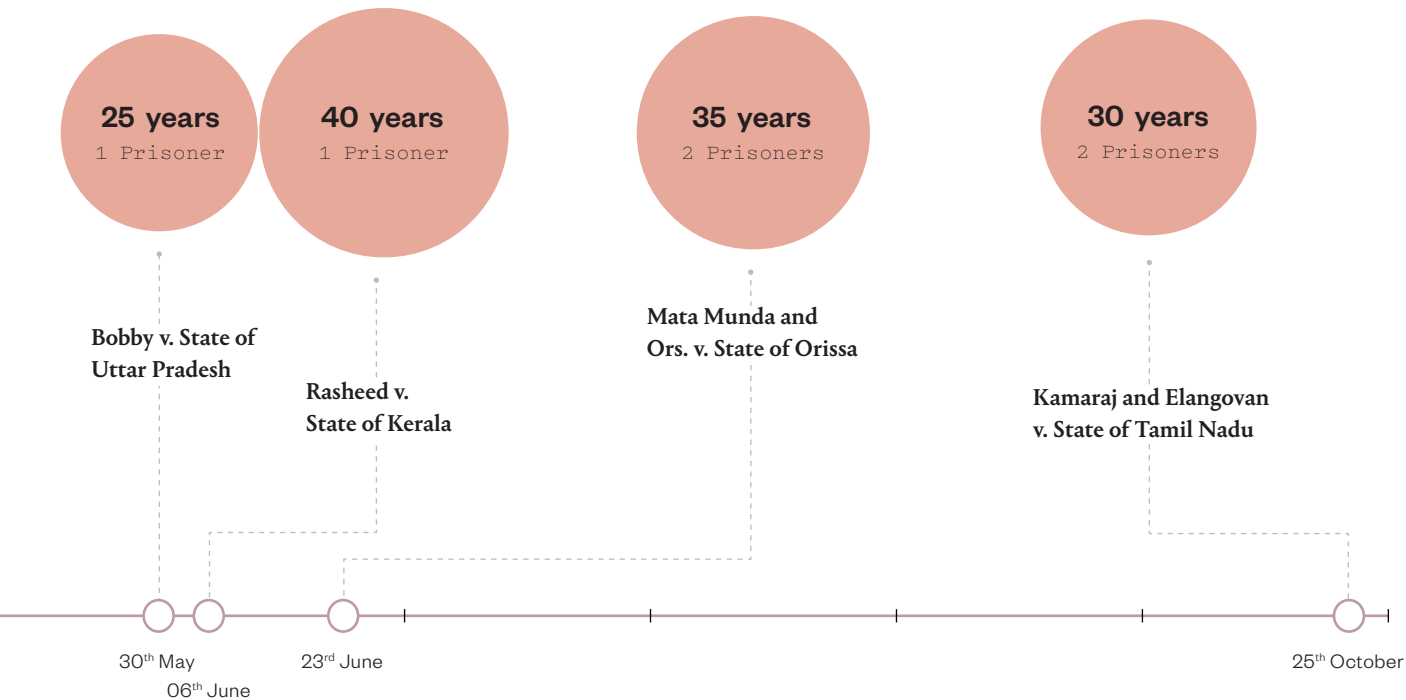
8. *Nanku v. State of Uttar Pradesh*,
Capital Case No. - 1435 of 2016

In December 2015, a Constitution Bench of the Supreme Court in *Union of India v. Sriharan*, laid down that life imprisonment can mean imprisonment for the remainder of one's natural life. To this end, the State Government's power of remission under the Code of Criminal Procedure can be excluded by the Supreme Court and the High Courts.

In 2017, 10 out of 53 prisoners whose death penalty was commuted to life imprisonment were sentenced under the *Sriharan dicta*. In these cases, the respective High Courts stipulated a fixed term during which the prisoner could not be granted statutory remission. In one case the Allahabad High Court ruled out possibility of statutory remission for the remainder of convict's life⁸.



- Life imprisonment without possibility of remission till stipulated time.
- Life imprisonment for the whole of the remaining natural life.



SUPREME COURT IN 2017

9. (2017) 6 SCC 1.

10. The acquittals pertain to charges that attract the death penalty.

CRIMINAL APPEALS

Only one criminal appeal involving the death penalty was decided by the Supreme Court in 2017. In *Mukesh v. Govt. of NCT of Delhi*⁹ (2012 Delhi gang-rape case) the Court upheld the death sentences of four accused persons confirmed by the Delhi High Court in March 2014. In comparison, the Supreme Court decided seven criminal appeals in 2016, confirming none, commuting seven, and acquitting three prisoners¹⁰.

In *Mukesh* the Supreme Court bench comprising Justices Dipak Misra (as he then was), Ashok Bhushan, and R. Banumathi unanimously confirmed the death sentence of Mukesh (24), Pawan (20), Vinay (22), and Akshay (29). Interestingly, in an unprecedented order passed on February 3, 2017 in this case, the Court granted defense counsel access to the accused in prison for recording relevant mitigating circumstances.

CONFIRMATION IN DEATH PENALTY CASES SUPREME COURT 2017

DATE OF
JUDGMENT

05 . 05 . 2017

04

No. of accused charged

MUKESH AND ORS.
V. STATE OF NCT
OF DELHI

Name of case

**RAPE AND MURDER
(SECTION 302, 376
AND 377 OF IPC)**

Charges

DEATH SENTENCE UPHELD

Sentence by Supreme Court

JUSTICES DIPAK MISRA (AS HE THEN WAS),
ASHOK BHUSHAN AND R. BANUMATHI
Coram

11. (2014) 9 SCC 737.
12. (2017) 6 SCC 631.
13. (2017) 8 SCC 518.

REVIEW PETITIONS

In September 2014, a Constitution Bench of the Supreme Court in *Mohd. Arif v. The Registrar, Supreme Court*¹¹, declared that review petitions in all death sentence cases are to be heard in open court.

In 2017, the Supreme Court decided two Review Petitions, upholding the death sentences of three prisoners. A bench comprising Justices Dipak Misra (as he then was), Rohinton Nariman, and Uday Umesh Lalit dismissed the review petition in *Vasanta Sampat Dupare v. State of Maharashtra*¹² (May, 2017). It held that the aggravating factors, mainly extreme depravity and young age of the victim, outweighed the mitigating circumstances brought on record.

In *Vikram Singh and anr. v. State of Punjab*¹³ (July, 2017), the bench comprising Justices Dipak Misra (as he then was), Ashok Bhushan, and R. Banumathi, dismissed the review petition filed by two accused persons. They were convicted for kidnapping and killing the victim with an anesthesia overdose in 2005. Their criminal appeal was dismissed by the Supreme Court in 2010. Interestingly, their review petition was dismissed earlier in 2011. However, the accused approached the Court again to reopen their review petition in open court in terms of the judgment in *Mohd. Arif*.

REVIEW PETITION IN DEATH PENALTY CASES SUPREME COURT 2017

DATE OF JUDGMENT 03.05.2017

VASANTA SAMPAT
DUPARE V. STATE
OF MAHARASHTRA

Name of case

JUSTICES DIPAK MISRA
(AS HE THEN WAS),
ROHINTON NARIMAN,
UDAY UMESH LALIT

Coram

**RAPE AND MURDER
(SECTION 302 AND
SECTION 376 OF IPC)**

Charges

DEATH SENTENCE UPHELD

Sentence by Supreme Court

DATE OF JUDGMENT 07.07.2017

VIKRAM SINGH
AND ANR. V. STATE
OF PUNJAB

Name of case

JUSTICES DIPAK MISRA
(AS HE THEN WAS),
ASHOK BHUSHAN,
R. BANUMATHI

Coram

**ABDUCTION AND MURDER
(SECTION 302 AND SECTION
364A OF IPC)**

Charges

DEATH SENTENCE UPHELD

Sentence by Supreme Court

PRESIDENT'S EXERCISE OF CLEMENCY POWER IN 2017

14. President's Secretariat Website, Available at <http://rashtrapatisachivalaya.gov.in/archive/mercy-petitionpdf>.

15. 'Govt lost mercy petition of 4 Maoist convicts on death row', Hindustan Times, July 31, 2015.

16. 'History in the Making? Pranab Mukherjee Rejects Government Advice on Death Row Convicts', The Wire, January 23, 2017.

Article 72 of the Indian Constitution gives the President the power to grant clemency to convicted prisoners. The former President, Pranab Mukherjee, before the end of his term on 24th July 2017, commuted the death sentences of four prisoners¹⁴. All four prisoners had been sentenced to death in 2001 for events arising out of the Bara massacre of February 1993. The commutation came 14 years after the confirmation of their sentence by the Supreme Court. In the past, reports had emerged suggesting that the State and the Central governments had lost the record of their mercy petitions which were filed in 2003¹⁵. More recently, a few newspapers reported that the President commuted their sentence against the advice of the Ministry of Home Affairs¹⁶.

Overall, the President of India disposed 9 mercy petitions during 2017, as compared to 6 during 2016. In 2017, 5 out of the 9 disposed petitions were rejected and the other 4 were commuted. In comparison, in 2016, only one prisoner was commuted by the President and mercy petitions of 5 prisoners were rejected.

Name of the Prisoner	Date of Sessions Court Sentence	Date of Supreme Court Confirmation	Date of Disposal of Mercy Petition	Decision
Krishna Mochi	08.06.2001	15.04.2002	01.01.2017	Commuted
Nanhe Lal Mochi	08.06.2001	15.04.2002	01.01.2017	Commuted
Bir Kuer Paswan	08.06.2001	15.04.2002	01.01.2017	Commuted
Dharmendra Singh @Dharu	08.06.2001	15.04.2002	01.01.2017	Commuted
Babu @ Ketan	26.04.2013	06.01.2015	25.05.2017	Rejected
Jitendra @ Jeetu	26.04.2013	06.01.2015	25.05.2017	Rejected
Sanni @ Devendra	26.04.2013	06.01.2015	25.05.2017	Rejected
Purushottam Dashrath Borate	20.03.2012	08.05.2015	26.05.2017	Rejected
Pradeep Yeshwant Kokade	20.03.2012	08.05.2015	26.05.2017	Rejected

State-wise Distribution of Prisoners on Death Row

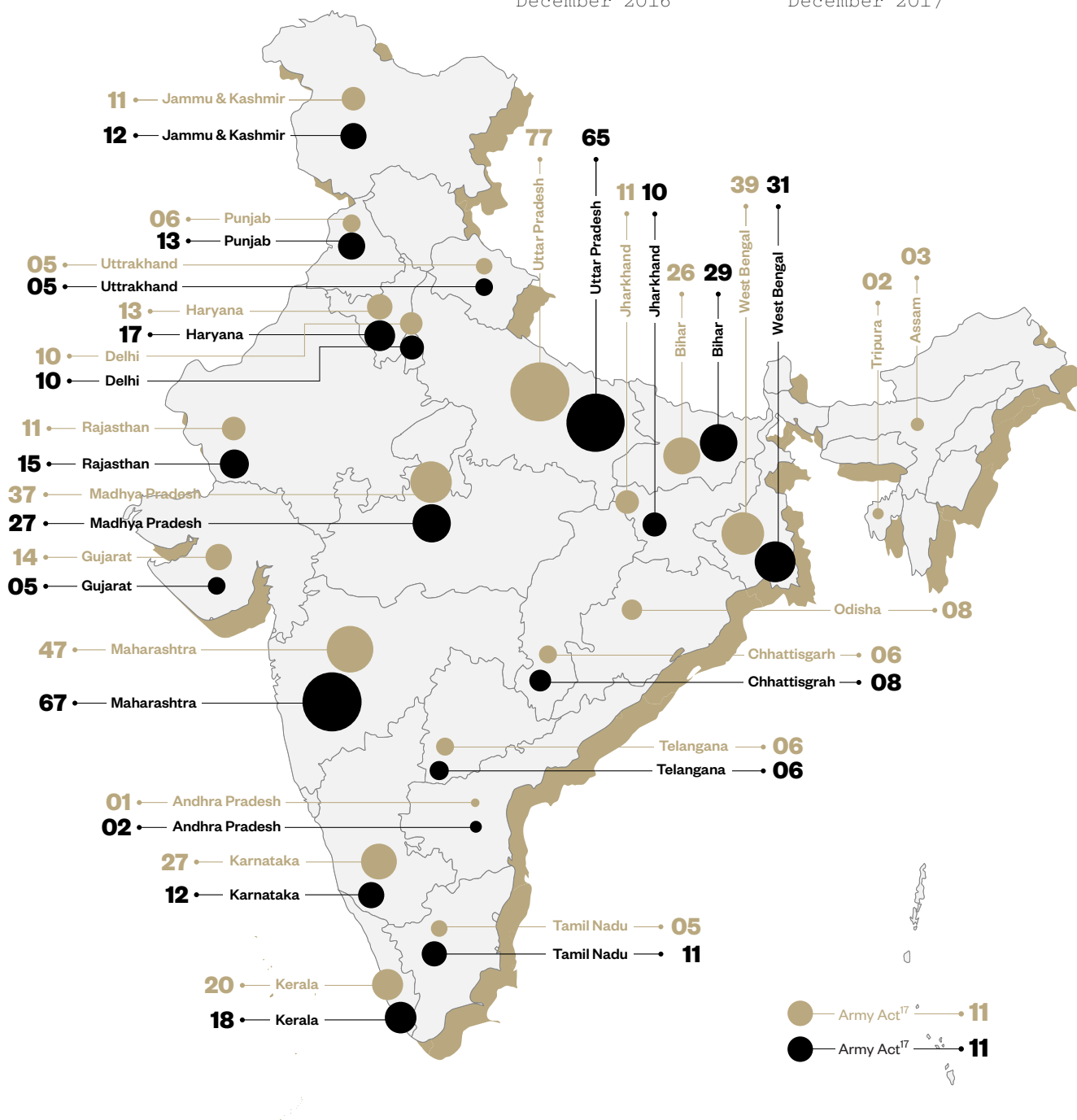
2016 2017

399

Total number of Prisoners on Death Row as on 31st December 2016

371

Total number of Prisoners on Death Row as on 31st December 2017



LEGAL & POLITICAL DEVELOPMENTS IN 2017

1. DELHI GANG RAPE CASE—MITIGATION ORDER

On 3 February, 2017 a three-judge bench of the Supreme Court headed by Justice Dipak Misra (as he then was) passed an order in *Mukesh v. Govt. of NCT of Delhi*¹⁸ (2012 Delhi gang-rape case) granting defense counsel the opportunity to gather all relevant mitigating evidence to be taken into consideration during sentencing. The court allowed defense counsel access to the accused, for two hours daily in a separate room, for over a fortnight. The Supreme Court recognised that neither the Sessions Court nor the Delhi High Court had undertaken individualized sentencing.

This is a significant step towards ensuring an adequate mitigation exercise in capital cases. Usually, there is very little material presented during sentencing. This condition is worsened as the legal representatives are granted limited time for meeting prisoners with no privacy for confidential conversations. Sessions Courts routinely conduct final arguments on conviction and sentence in the same hearing in violation of the law, and without regard to the time and preparation required for an effective sentencing hearing. In a positive development, the Supreme Court set a separate date for hearing arguments on sentencing after granting sufficient time for counsel to collect evidence on sentencing.

17. 11 prisoners for 2016 and 2017 have not been classified state-wise as they were sentenced to death under the Army Act, 1950. The status of these cases are currently unknown.

18. (2017) 6 SCC 1.

2. INDIA'S VOTE AGAINST UNHRC RESOLUTION ON THE QUESTION OF THE DEATH PENALTY

On 29 September 2017, the United Nations Human Rights Council passed a resolution on “the question of the death penalty” (A/HRC/36/L.6) with 27 votes in favour, 13 against and 7 abstentions¹⁹. The resolution notably called for protecting the rights of foreign nationals, and minorities facing death penalty, ensuring that it is not imposed based on discriminatory application of law, and affording equal access to justice to the economically vulnerable, among other safeguards. India was one of the 13 members that voted against this resolution²⁰.

The resolution emphasized the importance of providing consular access to those facing the death penalty abroad and condemned the use of the death penalty as a sanction for offenses such as apostasy, blasphemy, adultery, and consensual same-sex relationships. India's vote against the resolution is in line with its statement on March 1st at the 34th session of the Human Rights Council. At the High Level Panel Discussion on the Death Penalty, Ambassador Virander Paul reiterated India's stance against any curtailment of its sovereign powers in matters related to the death penalty²¹.

19. UN Human Rights Council comprises of 47 seats, filled by member states for three year terms.

20. The Wire, “India Votes Against UN Move on Death Penalty That May Have Helped Jadhav”, October 4, 2017.

21. The Wire, “India Votes Against UN Move on Death Penalty That May Have Helped Jadhav”, October 4, 2017.

3. MODE OF EXECUTION WRIT

On October 6th, the Supreme Court heard a writ petition²² filed by Advocate Rishi Malhotra under Article 32 of the Constitution that challenged the validity of Section 354(5) of the Code of Criminal Procedure, 1973 which mandates hanging as a method of execution. The section was challenged on the grounds that it violates the right to life with dignity guaranteed under Article 21 of the Constitution.

The petitioner referred to various sources to contend that hanging, as a mode of execution, is highly technical, prone to error, and if not properly executed may lead to extreme pain and suffering. He relied on the 35th Law Commission Report and the case of *Deena v. Union of India* to contend that capital punishment must be quick, simple, humane, predictable, and cause as little suffering as possible. Furthermore, the petitioner compared hanging unfavorably to other modes of execution, such as shooting and lethal injection, to posit that it is inordinately cruel and therefore violative of the right to life with dignity.

On these grounds, it was prayed that i) Section 354(5) should be struck down as violative of Article 21 of the Constitution and ii) the right to die by means a dignified procedure of death should be considered an integral component of Article 21. Following the writ, a Bench led by Chief Justice Dipak Misra, issued notice to the government to find alternatives to hanging which are painless as the primary mode of carrying out the death penalty.

22. Writ Petition(s) (Criminal) No(s). 145/2017.

23. “Death Penalty for rape of girls aged 12 and below: MP Assembly passes Bill”, The Hindu, December 4, 2017.

24. Currently Section 376 of the IPC provides for imprisonment of life as the maximum punishment for the offence of rape. Section 376-A and 376-E of the IPC provide for the death penalty as the maximum punishment for the offence of rape in certain circumstances. Section 376-A provides for punishment for rape causing death or resulting in persistent vegetative state; and Section 376-E provides for death penalty to repeat offenders. Currently the maximum punishment stipulated under Protection of Children against Sexual Offences Act, 2012 (POCSO) is life imprisonment.

4. INDIAN PENAL CODE (MADHYA PRADESH AMENDMENT) BILL, 2017

On 4 December 2017, the Madhya Pradesh Legislative Assembly unanimously passed a bill to amend the Indian Penal Code (IPC) in order to prescribe the death penalty for those convicted of raping girls aged 12 and below²³.

The “Public Safety Bill” as it has been dubbed, stipulates for addition of Section 376AA and 376DA. Section 376AA, specifically categorizes the rape of a woman 12 or below as an offence punishable by death or rigorous imprisonment of not less than 14 years which may extend to imprisonment until the end of natural life. Section 376DA prescribes death or rigorous imprisonment of not less than 20 years which may extend to imprisonment until the end of natural life to each member of a group that has raped a woman who is 12 or below²⁴.

Since the amendment bill passed by the Madhya Pradesh Assembly seeks to amend a central legislation (IPC), it will require the assent of the President of India under Article 254(2) of the Constitution.

According to NCRB statistics, in 2015, Madhya Pradesh had the highest recorded number of rapes and the second highest number of cases recorded under the Protection of Children from Sexual Offences Act, 2012. The proposed amendments were heralded by Chief Minister Shivraj Singh Chouhan who has vocally supported the idea of introducing extreme punishment to combat sexual offences. However, several human rights and child rights activists criticized this move citing the ineffectiveness of the capital punishment as a deterrent²⁵. The Justice Verma Committee had also opposed the use of the death penalty for sexual offences²⁶.

25. "Activists Thrash Madhya Pradesh Bill Giving Death to Child Rapists", The Week, December 6, 2017.

26. "Verma panel says no to death penalty", The Hindu, January 23, 2013.

5. UP EXCISE (AMENDMENT) ORDINANCE, 2017

The UP Excise (Amendment) Bill, 2017, was passed by the Uttar Pradesh Assembly on 22 December 2017. The Bill has introduced Section 60A to enforce the crackdown of illicit liquor/hooch manufactured and sold within the state. The newly added section provides for imprisonment for life or fine of Rs. 10 lakhs or both or the death penalty as punishment in cases where death has been caused due to consumption of illicit liquor.

According to UP Excise Minister Jai Pratap Singh, the death penalty provision will be applied depending upon the intensity of the case. Through this amendment, UP became the third state in India, after Gujarat and Bihar, to introduce the death penalty in response to deaths caused by sale of hooch.

6. KULBHUSHAN JADHAV

On 10 April, 2017, following a Field General Court Martial, Kulbhushan Jadhav was sentenced to death in Pakistan. He has been accused of espionage. As a result, the Government of India approached the International Court of Justice (ICJ) for provisional measures, alleging violation of right to consular access under international law (Article 36 of the Vienna Convention on Consular Relation, 1963) against the Government of Pakistan. On 18 May, 2017, the ICJ unanimously accepted India's request for interim relief and directed Pakistan to stay Kulbhushan Jadhav's execution till it delivers the final judgment in the case. The ICJ will now rule on India's substantive request for reversing Jadhav's conviction and release.

7. STATE RESPONSES TO 262ND LAW COMMISSION REPORT ON THE DEATH PENALTY:

In its 262nd report, released in August 2015, the Law Commission of India recommended abolition of the death penalty except in terror cases. Since all matters relating to criminal procedure fall under the Concurrent List given in the Seventh Schedule of the Constitution of India, the Central as well as State governments have to accept or reject the recommendations. We have been tracking the responses of the State governments to assess the policy-making process in the criminal justice system. According to the information provided in an RTI response by the Ministry of Home Affairs, Government of India, eleven States and three Union Territories have furnished their responses (States - Chhattisgarh, Gujarat, Goa, Jharkhand, Karnataka, Kerala, Manipur, Mizoram, Sikkim, Tripura and Delhi; Union Territories - Dadra and Nagar Haveli, Daman and Diu and Lakshadweep).

We also filed RTIs to the Home Departments of these States and Union Territories to study the text of the responses. We have found that Chhattisgarh, Goa, Mizoram, Delhi and Lakshadweep are interested in retaining the death penalty, Karnataka is in agreement with the conclusion of the 262nd Law Commission report; Gujarat recommends retaining the death penalty in its present form or replacing capital punishment with imprisonment for life without commutation or remission; and Tripura is in favour of complete abolition.

FINAL OBSERVATIONS

In review, 2017 has been a year that presents significant challenges for the study of the death penalty in India. While there has been a drop of nearly 27% in the number of prisoners sentenced to death by Sessions Courts in 2017 (compared to 2016), there have been significant legislative developments that expand the role of the death penalty in the Indian penological imagination.

An overview reveals that legislative efforts by one state to introduce the death penalty for certain crimes encouraged other states to adopt similar strategies. After Madhya Pradesh introduced legislation that prescribed the death penalty for the rape of minor girls, the governments of Rajasthan²⁷ and Karnataka²⁸ announced plans to bring similar legislation into force. The Uttar Pradesh government's decision in 2017 to bring in the death penalty for dealing in spurious liquor relied on a similar move by the Bihar Government in 2016. Soon after the Uttar Pradesh Assembly passed the bill in December 2017, the government of Madhya Pradesh announced plans to introduce an equivalent bill.

State-specific movements in the death row population on both ends of the spectrum saw interesting developments. At the end of 2017, Maharashtra recorded a net increase of 20 death row prisoners bringing its death row population to 67. This is a significant development because Maharashtra now has the highest death row population in India, overtaking Uttar Pradesh whose overall population is nearly twice of Maharashtra's. On the other hand, Karnataka's death row population was reduced from 27 to 12 (the highest reduction in the country) on the back of commutations and acquittals by the Karnataka High Court mainly in the *Dandupalya* case.

27. "Rajasthan Government Contemplates Death Penalty for Minors", *The Times of India*, December 14, 2017.

28. "After Madhya Pradesh, Karnataka Plans a Law to Give Death Penalty To Rapists for Minor Girls", *Outlook*, December 24, 2017.

॥ न्यायस्त्र प्रमाणं स्यात् ॥



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