

**SUBMISSIONS TO THE SPECIAL RAPPORTEUR ON EXTRA-JUDICIAL, SUMMARY OR ARBITRARY
EXECUTIONS ON THE IMPOSITION OF THE DEATH PENALTY AND ITS IMPACT**

- From *Project 39A, National Law University, Delhi*

1. Individuals sentenced to death: Could you please provide information, if and as applicable, on:

- **How many individuals were on trial in your country facing a possible death sentence; and how many were sentenced to death in 2021?**

There is no public data available on individuals on trial in India facing a possible death sentence.

2021 saw India continue to impose the death penalty at an alarming rate, with 144 persons sentenced to death by trial courts of India and 6 confirmed by High Courts.¹ In a unique shift, the Supreme Court of India did not confirm a single death sentence in 2021, commuting five death sentences to life imprisonment and acquitting four death row prisoners of all charges.²

- **How many individuals were on death row awaiting execution at the end of 2021 in your country? Please include as many details as possible on charges and disaggregated data on gender, age, nationality, ethnic origin and other relevant demographics of the persons affected.**

“Death row” refers to those cases in which the accused was sentenced to death by the trial court in India and proceedings remain pending before appellate courts or otherwise. The end of 2021 saw 488 prisoners on death row, as opposed to 404 in 2020.³

¹ [Project 39A, National Law University, Delhi, *Death Penalty in India: Annual Statistics Report 2021*, Project 39A, National Law University, Delhi, 2022.](#)

² [Project 39A, National Law University, Delhi, *Death Penalty in India: Annual Statistics Report 2021*, Project 39A, National Law University, Delhi, 2022.](#)

³ [Project 39A, National Law University, Delhi, *Death Penalty in India: Annual Statistics Report 2021*, Project 39A, National Law University, Delhi, 2022.](#)

Charges

Project 39A has categorised the charges under which the death sentence was imposed based on the nature of offence. The offences for which the highest number of death sentence were imposed were that of murder⁴, at 433, which includes murder involving sexual offences (190), murder simpliciter (188), kidnapping with murder (41) and dacoity with murder (14).⁵

Death penalty was also imposed on 52 persons for non-homicidal offences, including terror offences (34), sale of spurious liquor (9), child rape without murder (8), and drug-related offences (1).⁶ The offences for which the death sentence was imposed on 3 prisoners were unknown.

Gender distribution

Between 2016 and 2021, a majority of the prisoners sentenced to death were men at 470 whereas the number of female prisoners sentenced to death were 18.⁷ Only 1 prisoner was not a citizen of India.⁸

Age

According to Project 39A's seminal work, Death Penalty India Report, which was able to collate data on the age of 310 persons on death row at the time of the incident, the highest number of prisoners belonged to the age group of 26-40 at 45.2%, followed by those between the ages of 18-21 years, at 17.4%, between 41 and 60 at 17.1%, between 22 and 25 years of age at 12.3% and 2.3% of prisoners were above the age of 60.⁹

What is of significance is that 18 prisoners sentenced to death raised the plea of juvenility or

⁴ "Murder" involves cases where the accused is convicted of murder under Section 302 of the Indian Penal Code, 1872. This category includes those convicted of murder simpliciter, murder involving sexual offences, dacoity with murder and kidnapping with murder.

⁵ [Project 39A, National Law University, Delhi, *Death Penalty in India: Annual Statistics Report 2021*, Project 39A, National Law University, Delhi, 2022.](#)

⁶ [Project 39A, National Law University, Delhi, *Death Penalty in India: Annual Statistics Report 2021*, Project 39A, National Law University, Delhi, 2022.](#)

⁷ Internal records on the imposition of death penalty maintained by Project 39A.

⁸ Internal records on the imposition of death penalty maintained by Project 39A.

⁹ [Project 39A, National Law University, Delhi, *Death Penalty India Report*, Project 39A, National Law University, Delhi, 2016.](#)

being under the age of 18 at the time.¹⁰ 11 persons sentenced to death by the trial court, in violation of the statutory mandate¹¹, were found to be juveniles by the High Court.¹² In fact, in the case of 3 juveniles, by the time the order of release was provided, they had spent more than 3 years in prison.¹³

Socio-economic background

From data collected in the Death Penalty India Report, the death row population in India disproportionately belonged to economically vulnerable backgrounds at 74.1%.¹⁴ 63.2% of the prisoners were either primary or sole earners of their families.¹⁵ Almost half of these prisoners 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.¹⁶

23% of the prisoners sentenced to death had never attended school; 9.6% had attended school but not completed primary school education; and a staggering 61.6% had not completed their secondary education.¹⁷ Of the 214 prisoners who discussed their childhood experiences, 91 (42.5%) said that they started working before attaining the age of 18.¹⁸ A

¹⁰ [Project 39A, National Law University, Delhi, *Death Penalty India Report*, Project 39A, National Law University, Delhi, 2016.](#)

¹¹ Section 21 of the Juvenile Justice (Care and Protection of Children) Act, 2015.

¹² Internal records on the imposition of death penalty maintained by Project 39A.

¹³ [Project 39A, National Law University, Delhi, *Death Penalty India Report*, Project 39A, National Law University, Delhi, 2016.](#)

¹⁴ [Project 39A, National Law University, Delhi, *Death Penalty India Report*, Project 39A, National Law University, Delhi, 2016.](#)

¹⁵ [Project 39A, National Law University, Delhi, *Death Penalty India Report*, Project 39A, National Law University, Delhi, 2016.](#)

¹⁶ [Project 39A, National Law University, Delhi, *Death Penalty India Report*, Project 39A, National Law University, Delhi, 2016.](#)

¹⁷ [Project 39A, National Law University, Delhi, *Death Penalty India Report*, Project 39A, National Law University, Delhi, 2016.](#)

¹⁸ [Project 39A, National Law University, Delhi, *Death Penalty India Report*, Project 39A, National Law University, Delhi, 2016.](#)

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.¹⁹

The Death Penalty India Report showed that more than 76% of the prisoners sentenced to death belong to backward classes and religious minorities.²⁰ In the states of Gujarat, 79%, in Kerala, 60% and Karnataka, 31.8%, belonged to religious minorities.²¹ Of those sentenced for death for terror offences, it was seen that 93.5% either belonged to scheduled castes or religious minorities, with a disproportionate representation of Muslims at 61.3%.²²

- **How many years on average do individuals spend on death row in your country?**

The median time spent on death row for cases between 2000 to 2015 was 10 years and 5 months.²³ Between 2016 and 2021, the average time spent on death row was about 3 years 8 months.²⁴ Those whose mercy-petitions are pending spent a median of 8 years and 7 months under the sentence of death.²⁵

2. Procedures and conditions of detention:

- **Could you please explain how the administration of the death penalty in your country conforms with international norms and standards, including with regard to ensuring due process and fair trial guarantees in all stages of criminal proceedings leading to a possible imposition of a death sentence?**

Constitutional and statutory safeguards: Article 21 of the Constitution of India provides that “nobody should be deprived of his life and liberty except according to the procedure

¹⁹ [Project 39A, National Law University, Delhi, Death Penalty India Report, Project 39A, National Law University, Delhi, 2016.](#)

²⁰ [Project 39A, National Law University, Delhi, Death Penalty India Report, Project 39A, National Law University, Delhi, 2016.](#)

²¹ [Project 39A, National Law University, Delhi, Death Penalty India Report, Project 39A, National Law University, Delhi, 2016.](#)

²² [Project 39A, National Law University, Delhi, Death Penalty India Report, Project 39A, National Law University, Delhi, 2016.](#)

²³ These statistics are for the years 2000 through 2015; [Project 39A, National Law University, Delhi, Death Penalty India Report, Project 39A, National Law University, Delhi, 2016.](#)

²⁴ Internal records on the imposition of death penalty maintained by Project 39A.

²⁵ [Project 39A, National Law University, Delhi, Death Penalty India Report, Project 39A, National Law University, Delhi, 2016.](#)

established by law”.²⁶ In India, no person sentenced to death can be executed without a confirmation from the High Court.²⁷ The filing of mercy petitions before the President of India, after all courts have confirmed the death penalty and the review petition has failed, is part of “procedure established by law”.²⁸ The right of the accused to a fair trial as well as a speedy trial is recognized as part of this fundamental right.²⁹

Legal Representation: The Constitution guarantees to every person arrested, the right to consult or be defended by a legal practitioner of her choice.³⁰ The Supreme Court, in order to ensure that just, fair and reasonable procedure is followed in cases involving impoverished, indigent or illiterate prisoners, has held that the State shall provide free legal services to such persons from the time they are first presented before the Magistrate.³¹

In reality, however, several issues mar the protection of legal representation accorded to prisoners. More than 89% of prisoners interviewed did not have any representation when they were first produced before a Magistrate after arrest.³² It was also found that the opportunity of an effective defense was seriously compromised since lawyers representing the prisoners had very little understanding of law related to the death penalty; they would often collude with the public prosecutor and victim’s family to act against the interests of their own client; and legal aid lawyers would demand payments from the family of the incarcerated.³³ The lack of commitment is clear from the fact 76.7% of the prisoners said that they had not even met their lawyers outside of the court and 70.2% of the lawyers did not even discuss the case with the accused.³⁴ This leads to alienation of the accused from the

²⁶ Article 21 of the Constitution of India, 1950 is a fundamental right guaranteeing protection of life and personal liberty to all persons.

²⁷ Section 366 of the Code of Criminal Procedure, 1973.

²⁸ *Shabnam v. Union of India*, (2015) 6 SCC 702.

²⁹ *Shabnam v. Union of India*, (2015) 6 SCC 702.

³⁰ Article 22 of the Constitution of India, 1950.

³¹ *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.

³² [Project 39A, National Law University, Delhi, *Death Penalty India Report*, Project 39A, National Law University, Delhi, 2016, Vol. II.](#)

³³ [Project 39A, National Law University, Delhi, *Death Penalty India Report*, Project 39A, National Law University, Delhi, 2016, Vol. II.](#)

³⁴ [Project 39A, National Law University, Delhi, *Death Penalty India Report*, Project 39A, National Law University, Delhi, 2016, Vol. II.](#)

judicial process.

Understanding trial proceedings: During the course of conducting interviews for Death Penalty India Report, it was found that only 25% of the accused were present for all hearings pertaining to their case.³⁵ Even when accused persons were present in court for trial, it was found that they struggled to understand the meaning and content of the proceedings unfolding before them. Out of the 286 prisoners who spoke about their experience during trial, 156 (54.6%) said that they could not understand the proceedings at all.³⁶

Sentencing procedure: The Supreme Court laid down broad guidelines to govern the imposition of the death penalty, and set up a sentencing framework to be complied with before sentencing a person to death.³⁷ The death penalty was to be imposed on consideration of mitigating and aggravating circumstances, in “rarest of rare” cases where the issue of life imprisonment was “unquestionably foreclosed”.³⁸

The issue lies in the improper interpretation and application of these vague guidelines, which have led to an unguided and a judge-centric approach. In a study undertaken by Project 39A on sentencing within the criminal justice system of India, it was found that trial courts would base their decision solely on the crime without attempting to understand the context of the individual offender.³⁹

Once guilt was established, there was no serious attempt to determine the appropriate punishment, leading to sentences being pronounced on the same day as the conviction.⁴⁰ It was found that in 36.18% of the cases, sentencing took place on the same day as conviction.⁴¹ In 18.42% cases, there was a gap of a day. No mitigating circumstances were

³⁵ [Project 39A, National Law University, Delhi, *Death Penalty India Report*, Project 39A, National Law University, Delhi, 2016, Vol. II.](#)

³⁶ [Project 39A, National Law University, Delhi, *Death Penalty India Report*, Project 39A, National Law University, Delhi, 2016, Vol. II.](#)

³⁷ Bachan Singh v. State of Punjab, (1980) 2 SCC 684.

³⁸ Bachan Singh v. State of Punjab, (1980) 2 SCC 684.

³⁹ [Project 39A, National Law Institute University, Delhi, *Death Penalty Sentencing in Trial Courts: Delhi, Madhya Pradesh & Maharashtra \(2000-2015\)*, Project 39A, National Law Institute University, Delhi, 2020.](#)

⁴⁰ [Project 39A, National Law Institute University, Delhi, *Death Penalty Sentencing in Trial Courts: Delhi, Madhya Pradesh & Maharashtra \(2000-2015\)*, Project 39A, National Law Institute University, Delhi, 2020.](#)

⁴¹ Internal records on the imposition of death penalty maintained by Project 39A.

mentioned in 40.2% of the cases and in 66.67% cases no mitigating circumstances were accepted as part of the ‘weighing’ or ‘balancing’ scale.

Violation of procedural safeguards: Article 22 of the Constitution guarantees the right of all persons arrested to be informed of the grounds of arrest as soon as possible.⁴² However, more than half the prisoners on death row were not informed of the grounds of their arrest.⁴³ There have been instances where the police have arrested persons under the garb of ‘answering some questions’ or ‘signing some documents’. Less than 10% of families of death row prisoners had any information about the arrest of the prisoner at the time.

While the police are mandated under law to produce the accused before the Magistrate within a period of 24 hours⁴⁴ Project 39A documented instances of periods of police custody extending up to 7 days, which was sometimes extended to several weeks or months.⁴⁵ In certain cases, neither the police nor the Magistrate informed the accused persons of their right to remain silent or that they were not bound to make a confession.⁴⁶ In violation of a Supreme Court judgement⁴⁷, which observed that provision of a copy of the judgement to the accused person is integral to procedural fairness, it was found that most prisoners were either not given a copy of the judgement or were not provided with its translated version.⁴⁸

- **Could you please provide detailed information on the conditions of detention of prisoners on death row in your country, including with regard to visits by family members and others, and other relevant circumstances, such as, for instance, any support provided to exercise one’s religion?**

Loss of opportunity: Another consequence of being on death row in India is that persons

⁴² Article 22 of the Constitution of India, 1950 is a fundamental right guaranteeing protection against arrest and detention in certain cases.

⁴³ [Project 39A, National Law University, Delhi, Death Penalty India Report, Project 39A, National Law University, Delhi, 2016, Vol. II.](#)

⁴⁴ Article 22(2) of the Constitution of India, 1950.

⁴⁵ [Project 39A, National Law University, Delhi, Death Penalty India Report, Project 39A, National Law University, Delhi, 2016, Vol. II.](#)

⁴⁶ [Project 39A, National Law University, Delhi, Death Penalty India Report, Project 39A, National Law University, Delhi, 2016, Vol. II.](#)

⁴⁷ Madhav Hayawadanrao Hoskot v. State of Maharashtra, (1978) 3 SCC 544.

⁴⁸ [Project 39A, National Law University, Delhi, Death Penalty India Report, Project 39A, National Law University, Delhi, 2016, Vol. II.](#)

sentenced to death are not allowed to work and are therefore deprived of economic opportunities.⁴⁹ Additionally, some prisons in India denied prisoners on death row educational opportunities, which is not only inhumane but also legally untenable.⁵⁰ Certain instances have been brought to light wherein prisoners were denied basic medical attention. It has been found that gross negligence has also led to the failure to diagnose terminal illnesses among prisoners.⁵¹

Prison conditions: Prisoners were also forced to live in cramped spaces, cells with very little light and air, unacceptable standards of hygiene, abysmal quality of food, poor standards of medical services and almost non-existent mental health services.⁵² This constant psychological and physical assault through the deprivations inflicted by punishment, without any positive reinforcements or coping mechanisms, exacerbates the dehumanisation within the prison system.⁵³

Family visits: Formally, prisoners can contact their families through the system of *mulakaats* i.e., supervised meetings, over the telephone or through letters. However, due to structural and institutional barriers, these have not proved to be adequate means of support.⁵⁴ Barriers include the inability of prisoners to write letters due to poor education, the problems in contacting through phone due to poor connectivity, prison restrictions on time and the financial implications coupled with the dissatisfaction of a very brief *mulakaat* after prolonged anticipation.⁵⁵

⁴⁹ [Project 39A, National Law University, Delhi, *Death Penalty India Report*, Project 39A, National Law University, Delhi, 2016, Vol. II;](#) [Project 39A, National Law University, Delhi, *Deathworthy: A mental health perspective on the death penalty*, 2021, Project 39A, National Law University, Delhi, 2021.](#)

⁵⁰ This denial of work violates the rights of persons sentenced to death to be treated humanely and to access facilities available to other convicted persons, as also recently affirmed by the Supreme Court in *Sunil Batra v. Delhi Administration & Ors* (1978) 4 SCC 494; [Project 39A, National Law University, Delhi, *Death Penalty India Report*, Project 39A, National Law University, Delhi, 2016, Vol. II.](#)

⁵¹ [Project 39A, National Law University, Delhi, *Death Penalty India Report*, Project 39A, National Law University, Delhi, 2016, Vol. II.](#)

⁵² [Project 39A, National Law University, Delhi, *Death Penalty India Report*, Project 39A, National Law University, Delhi, 2016, Vol. II.](#)

⁵³ [Project 39A, National Law University, Delhi, *Deathworthy: A mental health perspective on the death penalty*, 2021, Project 39A, National Law University, Delhi, 2021.](#)

⁵⁴ [Project 39A, National Law University, Delhi, *Deathworthy: A mental health perspective on the death penalty*, 2021, Project 39A, National Law University, Delhi, 2021.](#)

⁵⁵ [Project 39A, National Law University, Delhi, *Deathworthy: A mental health perspective on the death penalty*,](#)

Families have to undergo a significant amount of hardship to maintain contact with the prisoner. For meetings, families have to travel great distances, spending significant sums of money for boarding and lodging, and further deepen their economic vulnerability, which finally impacts the relationship they are able to maintain with the prisoner.⁵⁶ Prisoners were often overcome with sadness or guilt at the thought of not being able to contribute positively to the family in any way and being the cause of their trouble and grief.⁵⁷

Pains of death row: Death row has a dehumanising effect on prisoners. Through its study on the psychological consequences and the pains of death row conducted in Deathworthy, Project 39A was able to interview 88 death row prisoners across Central and State prisons. It was found that on account of the executive delay, demonization and the constant threat of death, these prisoners on death row suffer from mental and emotional agony, and acute psychological distress. Apart from the oppressive conditions, these prisoners also experience physical violence, various forms of humiliation, ostracization in the hands of fellow prisoners, which was sometimes accompanied by complicity among the prison staff.

A complete lack of autonomy, lack of freedom to make any choices, coupled with monotony, loneliness, lack of purpose and a sense of powerlessness creates conditions that constantly attack their self-worth and dignity as human beings.

The study found connections between conditions of death row incarceration and poor mental health and mental illness.⁵⁸ An overwhelming majority of death row prisoners interviewed (62.2%) had at least one mental illness.⁵⁹ Prisoners resorted to substance use leading to mental illnesses, including depression, anxiety and suicidal ideation.⁶⁰ The rate of suicidal ideation among prisoners sentenced to death was 13.8%, and eight prisoners had attempted

[2021, Project 39A, National Law University, Delhi, 2021.](#)

⁵⁶ [Project 39A, National Law University, Delhi, *Deathworthy: A mental health perspective on the death penalty*, 2021, Project 39A, National Law University, Delhi, 2021.](#)

⁵⁷ [Project 39A, National Law University, Delhi, *Deathworthy: A mental health perspective on the death penalty*, 2021, Project 39A, National Law University, Delhi, 2021.](#)

⁵⁸ [Project 39A, National Law University, Delhi, *Deathworthy: A mental health perspective on the death penalty*, 2021, Project 39A, National Law University, Delhi, 2021.](#)

⁵⁹ [Project 39A, National Law University, Delhi, *Deathworthy: A mental health perspective on the death penalty*, 2021, Project 39A, National Law University, Delhi, 2021.](#)

⁶⁰ [Project 39A, National Law University, Delhi, *Deathworthy: A mental health perspective on the death penalty*, 2021, Project 39A, National Law University, Delhi, 2021.](#)

suicide in prison while 94% of them were at risk of suicide.⁶¹

- **Is there a monitoring body that oversees the conditions of detention and welfare of individuals sentenced to death in your country?**

The prison officials are in-charge of the welfare of all the prisoners in India. There is no other body constituted specifically for the purpose of monitoring prisoners on death row.

- **Have there been any recent studies carried out in your country on the impact of the death penalty on individuals sentenced to death and/or on their families?**

There have been two studies carried out in India which highlight the impact of death penalty on individuals sentenced to death and their families – [Death Penalty India Report, 2016](#) and [Deathworthy: A mental health perspective on the death penalty](#), both published by Project 39A.

Incarceration leads to impoverishment, indebtedness and exclusion. When the primary breadwinner of a family is sentenced to death, it renders the family economically vulnerable by reducing the family income and adding the burden of additional expenses, further pushing the families into impoverishment and debt.⁶² The stigma also pushes families into forcing their spouses to re-marry or abandon the death row prisoner.⁶³

Society often attributes guilt by association to these families. Families of prisoners on the death row may be forced to uproot themselves, create new lives elsewhere, conceal their identity and relationship with the prisoner and curtail social interaction.⁶⁴ Families are stripped of social support, making them unable to publicly express their grief and mourn their loss.⁶⁵ These families are forced to live with an unacknowledged grief owing to their circumstances.⁶⁶

⁶¹ [Project 39A, National Law University, Delhi, *Deathworthy: A mental health perspective on the death penalty*, 2021, Project 39A, National Law University, Delhi, 2021.](#)

⁶² [Project 39A, National Law University, Delhi, *Death Penalty India Report*, Project 39A, National Law University, Delhi, 2016, Vol. II.](#)

⁶³ Reena Mary George, *Voices of Prisoners Surviving the Death Row in India*, Wien University (2013).

⁶⁴ [Project 39A, National Law University, Delhi, *Deathworthy: A mental health perspective on the death penalty*, 2021, Project 39A, National Law University, Delhi, 2021.](#)

⁶⁵ [Project 39A, National Law University, Delhi, *Deathworthy: A mental health perspective on the death penalty*, 2021, Project 39A, National Law University, Delhi, 2021.](#)

⁶⁶ [Project 39A, National Law University, Delhi, *Deathworthy: A mental health perspective on the death penalty*.](#)

Children of these prisoners have to cope with the sudden loss of a parent, deterioration of material conditions, and the stigma of being associated with a person condemned by society.⁶⁷ It also often opens them up to exploitation. Children often have to go through ‘adultification’ as a result of these new conditions imposed on them, often resulting in hostility at school, as a result of which, several children are either moved to another school or are forced to quit education, diminishing their educational opportunities.⁶⁸ The families of death row prisoners are marred by intergenerational stigma, forcing them to settle for opportunities limited by their current capacities.⁶⁹

3. Family members: What support is provided in your country for children and other family members of individuals sentenced to death or executed? How much contact are family members, including children, allowed to have with individuals sentenced to death in your country?

The recognition of the special needs of children of incarcerated parents in India is fairly limited and recent. The National Plan of Action for Children, 2016 commits to taking special protection measures to secure the rights and entitlements of children.⁷⁰

While there is no centralised scheme in place across all States for the purpose of those on death row, ameliorative government schemes have been adopted by various State governments. However, they may not always be accessible. For example, the Union Territory of Delhi’s ‘Scheme for Financial Sustenance, Education & Welfare of Children, 2014’, aimed at addressing needs of children who are left to their own resources on incarceration of one or both earning parents, was criticised⁷¹ for having a narrow eligibility criterion, limited to only

[2021, Project 39A, National Law University, Delhi, 2021.](#)

⁶⁷ [Project 39A, National Law University, Delhi, *Deathworthy: A mental health perspective on the death penalty*, 2021, Project 39A, National Law University, Delhi, 2021.](#)

⁶⁸ [Project 39A, National Law University, Delhi, *Deathworthy: A mental health perspective on the death penalty*, 2021, Project 39A, National Law University, Delhi, 2021.](#)

⁶⁹ [Project 39A, National Law University, Delhi, *Deathworthy: A mental health perspective on the death penalty*, 2021, Project 39A, National Law University, Delhi, 2021.](#)

⁷⁰ Ministry of Women and Child Development, National Action Plan for Children, 2016; available at <https://wcd.nic.in/sites/default/files/National%20Plan%20of%20Action%202016.pdf> (Last accessed 28 April 2022 12:05 IST)

⁷¹ Economic Times, *Welfare scheme for children of incarcerated parents ‘unsatisfactory, inaccessible’*: DCPCR, Economic Times, 2020, available at: <https://economictimes.indiatimes.com/news/politics-and-nation/welfare-scheme-for-children-of-incarcerated-par>

those children whose surviving parent or both parents had been incarcerated.⁷²

The state of Assam provides financial assistance to families of live convicts during their imprisonment. Under the scheme, an ascertainment of the “neediest” families is undertaken and financial assistance of Rs. 10,000/- is provided for the sustenance of the family.⁷³ In the state of Maharashtra, a sponsorship scheme for children living with foster families includes children of prisoners but the amount of financial support is merely Rs. 425/- per month.⁷⁴

The Supreme Court has framed certain guidelines to provide that children in prison with their mothers are entitled to food, shelter, medical care, clothing, education and recreational facilities as a matter of right.⁷⁵ However, this is restricted only to the rights of children residing in prison with their mothers. The State of Orissa has taken this a step further and developed the Integrated Child Development Scheme which has extended its benefit to children of incarcerated parents, including within its ambit both children residing in prisons and those staying outside of prisons.⁷⁶

4. Lead-up to execution: In the lead-up to execution, what sort of information is provided to individuals on death row, their families, and legal representatives, including the date of the execution? What arrangements, if any, are in place for families and friends of those on death-row in the lead-up to the execution? If no advance notifications are

[ents-unsatisfactory-inaccessible-dcpcr/articleshow/79302537.cms?from=mdr](#) (Last accessed 28 April 2022 12:011 IST)

⁷² Delhi State Legal Services Authority, Scheme for Financial Sustenance, Education & Welfare of Children, 2014, 2014 available at <http://dlslsa.org/wp-content/uploads/2015/12/Scheme-for-Financial-Sustenance-Education-Welfare-of-Children-2014.pdf> (Last accessed 28 April 2022 12:07 IST)

⁷³ National Records Crime Bureau, Rehabilitation and Welfare of Prisoners, 2017, available at: https://ncrb.gov.in/sites/default/files/psi_table_and_chapter_report/CHAPTER-10-2017.pdf (Last accessed 28 April 2022 12:10 IST)

⁷⁴ Tabish Ahsan, Prayas, Tata Institute of Social Sciences, *Children of women prisoners: The invisible trial*, Tata Institute of Social Sciences, 2018, available at https://tiss.edu/uploads/files/Children_of_Women_Prisoners_-_The_Invisible_Trial.pdf. (Last accessed 28 April 2022 12:15 IST)

⁷⁵ R.D. Upadhyay v. State of Andhra Pradesh, (2007) 15 SCC 337.

⁷⁶ Satyasundar Barik, Odisha frames guidelines for children of incarcerated parents, The Hindu, 2022, available at: <https://www.thehindu.com/news/national/other-states/odisha-frames-guidelines-for-children-of-incarcerated-parents/article65255492.ece> (Last accessed 28 April 2022 12:25 IST)

given concerning the execution, why is this the case?

Keeping in mind principles of natural justice and the right to a dignified life, the Supreme Court laid down certain guidelines for the procedure to be followed prior to execution of a person.⁷⁷ According to these guidelines:

- Prisoners and their family members must be informed of the decision by the Governor or the President to reject the mercy petition, in writing along with a copy of the rejection of the mercy petition. Family members must be informed well in advance.
- There must be sufficient time provided prior to the execution. The minimum time to be provided between the rejection of the mercy petition and the execution should be 14 days so that the prisoner is able to prepare himself mentally and there is sufficient time for the prisoner to meet his family for one last time.

Similarly, the Supreme Court emphasised the need to observe essential safeguards by providing the prisoner sufficient notice prior to the issuance of the death warrant so that he may be represented before the Sessions Court.⁷⁸ The death warrant issued must specify the exact date and time for the execution. A copy of such a warrant must be supplied to the prisoner immediately. There must be a reasonable time period between the issuance of the death warrant and the execution so that the prisoner has a reasonable opportunity to pursue legal recourse against the warrant. These were considered essential procedural safeguards implied under Article 21 of the Constitution.

6. Methods of execution: What is/are the method(s) of execution in your country? Have there been any recent cases that challenged the lawfulness of the method of execution? If so, did this result in any change in the methods of executions or any related practice? What safeguards exist to prevent physical pain and suffering?

In India, the method of execution followed is hanging by the neck.⁷⁹ The method of execution was challenged, but upheld by the Supreme Court in *Deena v. Union of India*.⁸⁰ It did, however, provide that the execution of a death sentence should satisfy the following tests:

⁷⁷ Shatrughan Chauhan v. Union of India, (2014) 3 SCC 1.

⁷⁸ Shabnam v. Union of India, (2015) 6 SCC 702.

⁷⁹ Section 354(5) of the Code of Criminal Procedure, 1973.

⁸⁰ (1983) 4 SCC 845.

- The act of execution should be as quick and simple and free from anything that unnecessarily sharpens the poignancy of the prisoner's apprehension.
- The act of the execution should produce immediate unconsciousness passing quickly into the death.
- It should be decent.
- It should not involve mutilation.

The Supreme Court has echoed the voice of the Law Commission in holding that the method of execution should be “certain, humane, quick and decent”, and the mode of execution must accord dignity to the prisoner. The Law Commission of India’s consultation paper on “*Mode of Execution of Death Sentence and Incidental Matters*”⁸¹ made a comparative analysis of hanging, intravenous lethal injection and shooting as the mode of execution. The Committee acknowledged that the death as a result of the hanging in most of the cases is because of asphyxia or strangulation which causes the lingering and painful death of the condemned person.⁸² In the report, it weighed the execution of death sentence by hanging by rope against objective factors such as international standards or norms or the climate of the international opinion, modern penological theories and evolving standards of human decency, and recommended that lethal injections also be added to the already existing method of hanging, and these methods should be reviewed periodically.⁸³ It must be noted that this method of execution was challenged yet again in 2020 and the issue is pending before the Supreme Court of India.⁸⁴

Accordingly, to ensure that these guidelines are met, prison manuals provide a detailed procedure for execution of a death row prisoner. The Delhi Prison Manual for instance provides that on the day of execution, the death warrant must be read over to the prisoner in vernacular or in the language the prisoner understands; their hands pinioned behind their

⁸¹ Law Commission of India, *187th Report on Mode of execution of death sentence and incidental matters*, Law Commission Report No. 187, October 2003; *Shabnam v. Union of India*, (2015) 6 SCC 702.

⁸² Law Commission of India, *187th Report on Mode of execution of death sentence and incidental matters*, Law Commission Report No. 187.

⁸³ Law Commission of India, *187th Report on Mode of execution of death sentence and incidental matters*, Law Commission Report No. 187.

⁸⁴ Live Law News Network, Freedom fighter moves SC challenging constitutionality of execution by death penalty, Live Law News Network, 2020, available at: <https://www.livelaw.in/top-stories/freedom-fighter-moves-sc-challenging-constitutionality-of-execution-of-death-penalty-by-hanging-152547> (Last accessed: 28 April 2022 12:20 IST)

back and their leg irons (if any) struck off. The prisoner would be marched to the scaffold under the charge of the Deputy Superintendent and guarded by the Head Warder and six warders. The Superintendent, Magistrate and Medical Officer act as witnesses who are present at the scaffold.

It further provides that a cotton cap with a flap is to be put on the prisoner's face just before he enters the gallows-enclosures so that the prisoner is not able to see the gallows. The executioner then places the person being executed under the beam where the rope is attached; straps the prisoner's hand tightly, and puts the noose round the neck tightly, the knot or metal eye being just in front of and below the angle of the jaw, so as to run up behind the ear when the prisoner falls and receives the jerk. The noose is to be kept tight, having been adjusted by means of a stiff leather washer on the rope. The length of the drop is to be regulated according to the weight of the prisoner, after consulting the medical officer. On completion of all these processes, the Superintendent gives a signal, on seeing which the executioner in-charge pushes the lever to let down the trap-door. The body is to remain suspended for half an hour and then be taken down only after the Medical Officer has certified that the person has died.⁸⁵

7. Treatment of bodies of the executed: How are bodies of the executed treated in your country? Please provide information on the procedures in place for their burial/cremation and the return of bodies to family members or to other individuals and the management and final disposal of unclaimed bodies.

As per procedure in the state of Delhi, the body of the person executed remains suspended for a period of 30 minutes and is brought down only once it has been certified dead by the medical officer.⁸⁶ The body will only be disposed of after a post-mortem in the hospital, in accordance with the religious requirements.⁸⁷ If there are relatives present, they will need to

⁸⁵ Government of NCT of Delhi, Delhi Prison Rules, 2018, 2018, available at: http://web.delhi.gov.in/wps/wcm/connect/lib_centraljail/Central+Jail/Home/Acts+and+Rules, (Last accessed; 28 April 2022 11:56 IST).

⁸⁶ Government of NCT of Delhi, Delhi Prison Rules, 2018, 2018, available at: http://web.delhi.gov.in/wps/wcm/connect/lib_centraljail/Central+Jail/Home/Acts+and+Rules, (Last accessed; 28 April 2022 11:56 IST).

⁸⁷ Government of NCT of Delhi, Delhi Prison Rules, 2018, 2018, available at: http://web.delhi.gov.in/wps/wcm/connect/lib_centraljail/Central+Jail/Home/Acts+and+Rules, (Last accessed; 28 April 2022 11:56 IST).

make an application to the Superintendent, who may allow the request and hand over the body to them, provided there are no public demonstrations of any kind at the cremation/burial.⁸⁸ The prison authorities shall keep the body in the mortuary for a period of 24 hours for that purpose.⁸⁹

In the event that there is likelihood of a public demonstration, the Superintendent is to consult the District Magistrate and arrangements for the disposal of the body shall be made according to the requirements of the situation. The body of the prisoner shall be taken out of the prison with all solemnity.⁹⁰ A municipal hearse or ambulance shall be used for the transportation of the body to the cremation/burial ground. The Superintendent is authorised to incur all reasonable expenditure required for the transportation and disposal of the dead body.⁹¹

8. Is there any other information that you would like to share which would be relevant to the present call for input (for instance, policy positions; national and international initiatives and/or efforts to raise awareness on the question of the death penalty etc.).

2021 marked a considerable shift in the Supreme Court of India's approach towards sentencing in death penalty matters. Project 39A successfully represented prisoners on death row, of which 3 prisoners were acquitted; 4 prisoners' death sentence was commuted to life imprisonment⁹² and the Supreme Court of India made the following observations:

- A Bench comprising three judges called for reports from Probation Officers, prison

⁸⁸ Government of NCT of Delhi, Delhi Prison Rules, 2018, 2018, available at: http://web.delhi.gov.in/wps/wcm/connect/lib_centraljail/Central+Jail/Home/Acts+and+Rules, (Last accessed; 28 April 2022 11:56 IST).

⁸⁹ Government of NCT of Delhi, Delhi Prison Rules, 2018, 2018, available at: http://web.delhi.gov.in/wps/wcm/connect/lib_centraljail/Central+Jail/Home/Acts+and+Rules, (Last accessed; 28 April 2022 11:56 IST).

⁹⁰ Government of NCT of Delhi, Delhi Prison Rules, 2018, 2018, available at: http://web.delhi.gov.in/wps/wcm/connect/lib_centraljail/Central+Jail/Home/Acts+and+Rules, (Last accessed; 28 April 2022 11:56 IST).

⁹¹ Government of NCT of Delhi, Delhi Prison Rules, 2018, 2018, available at: http://web.delhi.gov.in/wps/wcm/connect/lib_centraljail/Central+Jail/Home/Acts+and+Rules, (Last accessed; 28 April 2022 11:56 IST).

⁹² A total of five death sentences were commuted to life imprisonment and four death row prisoners were acquitted of all charges.

authorities and mental health experts before the issue of sentence could be considered.⁹³

- Another Bench comprising three judges criticised the fact that the trial court had pronounced sentence without undertaking an enquiry into the circumstances related to the criminal, such as his state of mind, his socio-economic background, etc.⁹⁴ It commuted the death sentence into life imprisonment after taking into consideration the probability of reform, economic background and nature of the criminal, and the fact that the alternative of life imprisonment was not unquestionably foreclosed.⁹⁵
- This Bench also laid emphasis on the State's responsibility to present evidence that establishes the improbability of reformation, before the death penalty may be imposed.⁹⁶ It considered the affidavits of the prisoners' family and community members, in addition to relying on jail conduct reports to establish the probability of reform and commuted the death sentence to life imprisonment.⁹⁷

Collectively, these changes reveal an important shift in the approach of the Supreme Court to the death penalty. It represents an increasing focus on the non-compliance of established procedures before this extraordinary punishment can be imposed. It draws attention to the complete breakdown of the death penalty sentencing framework in India.⁹⁸

In March 2022, a 3-judge bench of the Supreme Court initiated suo moto proceedings to consider the possibility of appointing mitigation investigators during trials for death-eligible

⁹³ Mohd. Firoz v. State of Madhya Pradesh, Criminal Appeal No. 612/2019 (Supreme Court), order dt. 25.11.2021.

⁹⁴ Lochan Shrivastava v. State of Chattisgarh, Criminal Appeal Nos. 499-500 of 2018; Bhagchandra v. State of Madhya Pradesh, Criminal Appeal Nos. 255-256 of 2018.

⁹⁵ [Project 39A, National Law University, Delhi, Death Penalty in India: Annual Statistics Report 2021, Project 39A, National Law University, Delhi, 2022.](#)

⁹⁶ Mofil Khan & Mobarak Khan v. State of Jharkhand, Review Petition (Criminal) No. 641 of 2015; Lochan Shrivastava v. State of Chattisgarh, Criminal Appeal Nos. 499-500 of 2018; Bhagchandra v. State of Madhya Pradesh.

⁹⁷ Mofil Khan & Mobarak Khan v. State of Jharkhand, Review Petition (Criminal) No. 641 of 2015, para 10; Bhagchandra v. State of Madhya Pradesh; Lochan Shrivastava v. State of Chattisgarh, Criminal Appeal Nos. 499-500 of 2018; [Project 39A, National Law University, Delhi, Death Penalty in India: Annual Statistics Report 2021, Project 39A, National Law University, Delhi, 2022.](#)

⁹⁸ [Project 39A, National Law University, Delhi, Death Penalty in India: Annual Statistics Report 2021, Project 39A, National Law University, Delhi, 2022.](#)

crimes.⁹⁹ The step is intended to help judges make an informed decision in imposing the death penalty and ensure that the spirit of the sentencing framework established in *Bachan Singh v. State of Punjab* is complied with. This represents an important shift in the Supreme Court's approach to sentencing in capital cases, and is indicative of a broader trend to reform the death penalty process and restrict its unfettered imposition by trial courts of India.

From Project 39A, National Law University Delhi

Project 39A is a litigation and research centre that is formally a part of National Law University, Delhi. Project 39A represents prisoners sentenced to death before appellate courts in India and undertakes empirical research on various issues concerning the criminal justice system including legal aid, torture, forensics, mental health and criminal justice, and the death penalty.



⁹⁹ Irfan @ Bhayu Mevati v. State of Madhya Pradesh SLP (CrI.) No(s). 9692-9693 of 2021, order dt. 29.03.2022.