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PENALTY
INDIA
REPORT
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INTRODUCTION

The Death Penalty Research Project is an attempt to answer questions concerning the socio-economic profile of prisoners sentenced to death in India along with enquiring into the manner in which they are sentenced to death. Through personal interviews with prisoners and their families, the aim was to focus on aspects of the death penalty that have received very little attention in India and explore new fronts for discussion beyond analysis of Supreme Court judgments. This Report must be read in the context of our position that the death penalty is a unique punishment. The everyday uncertainty between life and death sets capital punishment apart from imprisonment of any other kind. Taking a position that the death penalty is a unique punishment does not in any manner imply that this Report is a document that wades into the debate on abolition of the death penalty. The question concerning abolition is a much wider question, beyond the mandate of this Report.

Through the issues addressed in two volumes of the Report, the effort is to bring to the fore structural and institutional concerns that throw significant light on the administration of the death penalty. The institutions, legal provisions and practices that are invoked in the context of the death penalty point towards a crisis in the criminal justice system that cannot be ignored. The narratives from prisoners sentenced to death show that multiple facets of the criminal justice system like police custody, investigation, trials, legal representation, treatment in prisons, clemency proceedings are beset with deep structural flaws. While evaluating and reflecting on these components of the criminal justice system, there must be particular consideration of the fact that these findings and observations are being made in the context of the harshest punishment in our legal system.

While an in-depth understanding of the dynamics of the criminal justice system is critical, it is equally important to understand on whom the burden

of the death penalty falls. The capabilities required to negotiate the criminal justice system and bear the burdens it imposes raise significant questions about the differential impact of the death penalty. While the Report certainly does not suggest a causal connection between various socio-economic factors and the death penalty, it demonstrates the disparate impact of the harshest punishment in our legal system. The violent and alienating dynamics of India's criminal justice system are evident to everyone who comes in conflict with it. However, the concern has been that structural reasons often ensure that people with a certain socio-economic profile are disproportionately affected by it. While this Project cannot make any claim in that regard about the Indian criminal justice system as such, the findings and observations in the two volumes lend weight to that argument in the context of the death penalty.

The aim of this Report is to draw attention to the fact that a meaningful national conversation on the death penalty cannot be limited to the heinousness and brutality of the crimes involved. It must also involve a rigorous and frank evaluation of the criminal justice system that is used to administer the death penalty and a recognition of the structural realities that operate within it.

COVERAGE OF THE PROJECT

There were 385 prisoners under the sentence of death during the course of this Project. 373 of those prisoners across 20 states and one union territory (Andaman & Nicobar Islands) are a part of this study (**Graphic 1**).¹ The remaining 12 prisoners who do not form part of this study were sentenced to death in Tamil Nadu. Despite our numerous attempts, the Government of Tamil Nadu did not grant us permission to conduct prison interviews, citing lack of security clearance from ‘agencies’ in Delhi. We were never informed who these ‘agencies’ were.

Amongst the 373 prisoners, 361 were men and 12 were women. While Uttar Pradesh had the highest number of prisoners sentenced to death (79) in absolute numbers,

Delhi had the largest proportion in terms of the prisoners sentenced to death in comparison with the population (1.79 persons per 10 lakh population), with 30 prisoners sentenced to death. The prisoners interviewed in the Project were incarcerated in 67 prisons, of which 42 were central prisons and 25 were district prisons. Of these 67 prisons, 30 had gallows.

DEATH PENALTY OFFENCES IN INDIA

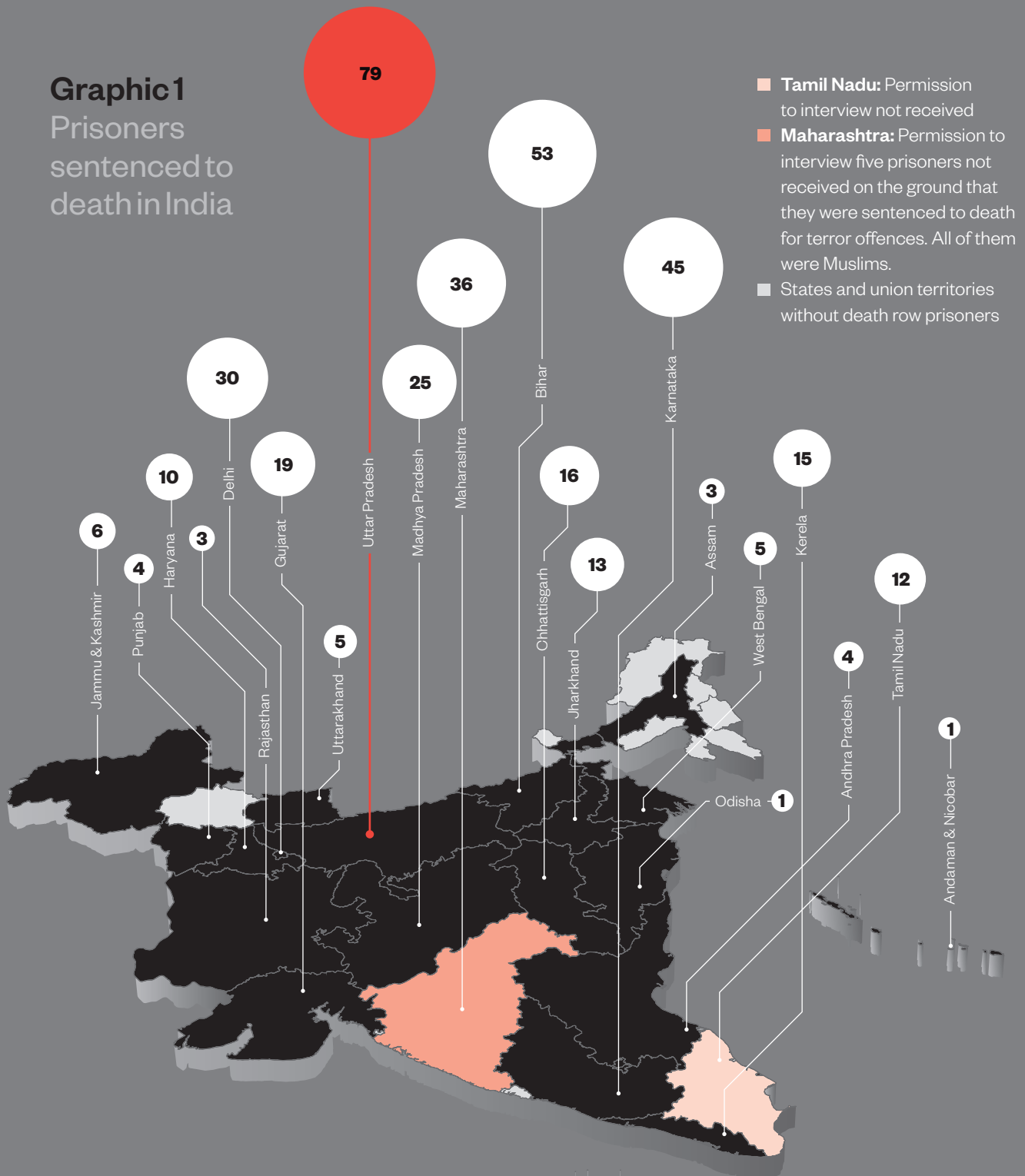
59 sections across 18 central legislations in India allow for the death penalty as a punishment (**Table 1**), of which 12 sections are under the Indian Penal Code, 1860. Under these legislations, 13 homicide offences, i.e. offences

Table 1 Central legislations 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 Indian Penal Code, 1860
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

¹ For the purposes of this study, Delhi has been considered as a state.

Graphic1

Prisoners sentenced to death in India



involving loss of life, and 41 non-homicide offences are punishable by death.²

361 prisoners in this Project were given the death penalty for homicide offences while 12 others were sentenced to death for non-homicide offences. Of these 12 prisoners, eight were sentenced to death for ‘waging war’ under Section 120 of the Indian Penal Code, 1860 while three others were sentenced to death under Section 376E of the Indian Penal Code, 1860 for a repeat conviction of rape. Additionally, one prisoner was sentenced to death under Section 31A of the Narcotic Drugs and Psychotropic Substances Act, 1985 which provides for the death penalty in case of a repeat conviction for carrying commercial quantities of drugs.

CATEGORIES OF PRISONERS

According to the stages in death sentence cases, the prisoners forming part of our study have been categorised as follows:

- 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 has been rejected
- The number of prisoners in each of the above categories has been provided in **Graphic 2**.

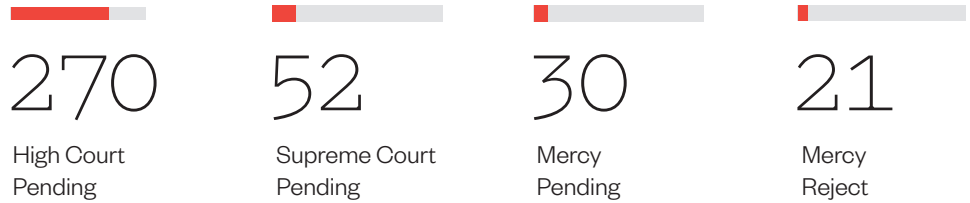
As evident from **Graphic 3**, there is no automatic right available to a prisoner sentenced to death to have her case heard by the Supreme Court except in a few circumstances. While the Supreme Court has the discretion under Article 136 of the Constitution to decide which appeals should be admitted for hearing, the Court has developed a ‘time honoured tradition’ to hear the appeals of prisoners sentenced to death. However, in the last decade, the Supreme Court has refused to admit and hear the appeals in nine death sentence cases involving 11 prisoners (**Table 2**).

Table 2 Special leave petitions dismissed <i>in limine</i> 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, CK 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.

² 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 allow for the death sentence in situations, where loss of life may or may not be involved. Further, 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. There are eight such provisions in the defence legislations.

Graphic 2

Categories of prisoners sentenced to death



1

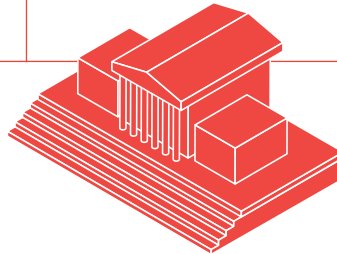
Trial Court



Mandatory reference of case to High Court under S. 366(1) CrPC

2

Confirmation by High Court



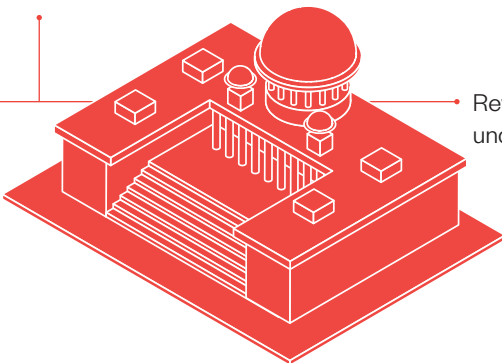
Graphic 3

Stages in death sentence cases

- High Court certifies the case to be fit for appeal under Art. 132 or Art. 134A
- Mandatory appeal to Supreme Court under Art. 134
- Supreme Court grants special leave to appeal under Art. 136

3

Appeal against death sentence in Supreme Court



Review petition under Art. 137

4

Review petition in Supreme Court



5

Curative petition in Supreme Court



DURATIONS ON DEATH ROW

The discussion around the death penalty in India should not be limited to executions and must also focus on the experience of prisoners living under the sentence of death. Given the harsh conditions of confinement and the unbearable uncertainty associated with the death sentence, it becomes essential to consider the time spent by these prisoners under the death sentence. As is evident from **Table 3**, prisoners in our study spent extremely long durations in prison from their arrest till the time of their interview, with a large portion of this time being on death row. Making an individual undergo that experience for years together is an extreme form of punishment in and of itself.

It is also interesting to examine the time taken for completion of legal proceedings in cases of prisoners sentenced to death (**Table 4**). The implication of long durations of legal proceedings must be understood in light of the burdensome cost imposed by the criminal justice system on prisoners and their families. The seriousness of

the charge against the accused causes families to incur costs towards fees for private representation rather than resort to the unpredictable quality of legal aid assistance. The economically vulnerable families also face considerable burden over the years in incurring costs to travel to the courts and to visit prisoners.

The pendency of legal proceedings in courts for more than five years has been considered by the National Court Management Systems Committee of the Supreme Court to be a violation of speedy justice guaranteed under Article 21 of the Constitution.³ This Committee, under the supervision of the Chief Justice of India, has urged all courts across the country to prioritise the disposal of matters that have been pending for more than five years. Of the 373 prisoners in our study, the trials of 127 prisoners lasted for more than five years (**Graphic 4**) with the trials of 54 such prisoners continuing for more than 10 years.

Table 3 Stage-wise durations under incarceration and on death row at the time of interview			
Category of prisoners	Median duration of incarceration	Median duration on death row	Longest duration of incarceration
Mercy-rejected	16 years, 9 months	10 years, 5 months	25 years
Mercy-pending	12 years	8 years, 7 months	21 years, 5 months
Appeal pending in the Supreme Court	6 years, 7 months	3 years, 8 months	21 years, 6 months

Table 4 Average and median durations of legal proceedings		
Stage	Average duration	Median duration
Trial court	5 years	3 years, 2 months
High Court	1 year, 4 months	11 months
Supreme Court	2 years, 1 month	1 year, 10 months

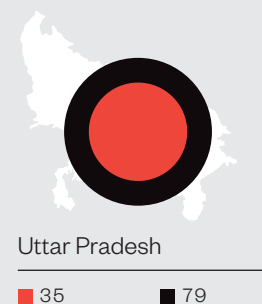
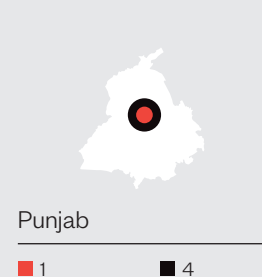
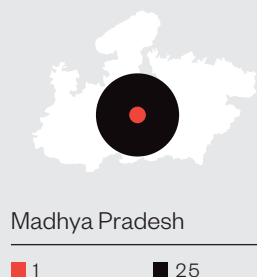
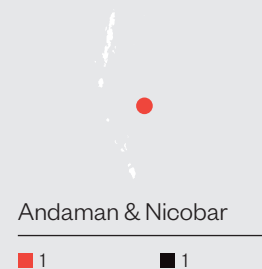
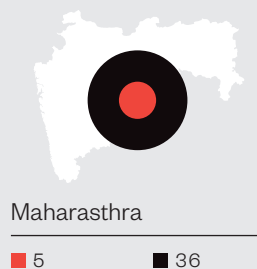
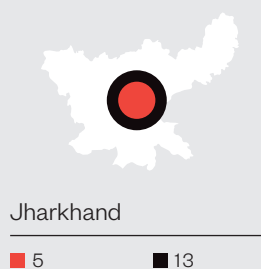
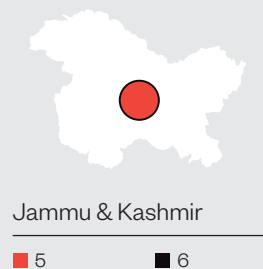
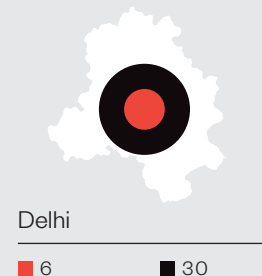
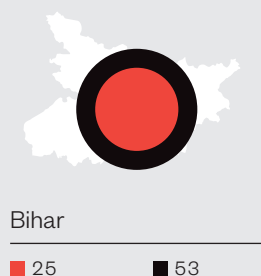
Due to limited access to case records, the duration of trial has been calculated from the date of the arrest of the prisoner and if unavailable, the date of the incident, as recorded in the judgments. The duration between the pronouncement of sentence by the trial court and the confirmation by the High Court has been used to compute the duration of High Court proceedings. Similarly, the duration between the High Court confirmation and the Supreme Court judgment has been used to calculate the duration of Supreme Court proceedings.

³ 'National Court Management Systems—Policy & Action Plan', National Court Management Systems Committee, available at <<http://supremecourtindia.nic.in/noms27092012.pdf>>.

Graphic 4

States with trials lasting more than 5 years

- Prisoners with trials lasting more than 5 years
- Total number of prisoners sentenced to death



NATURE OF CRIMES

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 the crime-wise duration of proceedings.

Of the 18 central legislations that provide for the death sentence, seven legislations were invoked to sentence the prisoners in this Project (**Table 5**). Not surprisingly, the Indian Penal Code, 1860 was invoked most often to sentence individuals to death. During our study, no prisoners were sentenced to death under any state legislation.

CATEGORIES OF OFFENCES

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 Indian Penal Code, 1860 (murder), or Section 300 of the Indian Penal Code, 1860 (murder) along with Arms Act, 1959; Explosive Substances Act, 1908 and Scheduled Castes and Scheduled Tribes (Prevention of Atrocities) Act, 1989.
- **Sexual offences:** Includes cases where the main offence along with the murder charge was rape, and also includes cases involving a repeat conviction of rape punishable with death under Section 376E of the Indian Penal Code, 1860.
- **Terror offences:** Includes cases where the prisoners were convicted under the Terrorist and Disruptive Activities (Prevention) Act, 1987, the Prevention of Terrorism Act, 2002, Unlawful Activities (Prevention) Act, 1967 or for the offence of 'waging war' under Section 121 of the Indian Penal Code, 1860.
- **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 Indian Penal Code, 1860.
- **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 for a repeat conviction under the Act.

The highest number of prisoners were sentenced to death for murder *simpliciter* (213), comprising 57.1% of the total prisoners forming part of the study (**Graphic 5**). Of these, 25.8% (55 prisoners) were sentenced to death for the murder of a single person. 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.

STATE-WISE ANALYSIS OF CRIMES

A state-wise analysis of the nature of crime reveals that Uttar Pradesh and Bihar had the highest number of prisoners sentenced to death for murder *simpliciter* (collectively 46% of the 213 prisoners sentenced to death for murder *simpliciter*), while in Haryana, all 10 prisoners sentenced to death in the state were convicted for murder *simpliciter*.

Amongst the 84 prisoners sentenced to death for sexual offences, 17.9% (15 prisoners) were from Maharashtra and 16.7% (14 prisoners) were from Madhya Pradesh. These prisoners constituted 41.7% and 56% respectively, of all prisoners sentenced to death in these states (**Table 6**).

Karnataka 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), while Bihar was the second highest state with seven prisoners (22.6%) convicted under the Terrorist and Disruptive Activities (Prevention) Act, 1987. Uttar Pradesh and West Bengal were the only two states with a prisoner each sentenced to death under defence legislations. The one prisoner sentenced to death under the Narcotic Drugs and Psychotropic Substances Act, 1985 was from Gujarat.

Graphic 5

Nature of crime of prisoners sentenced to death

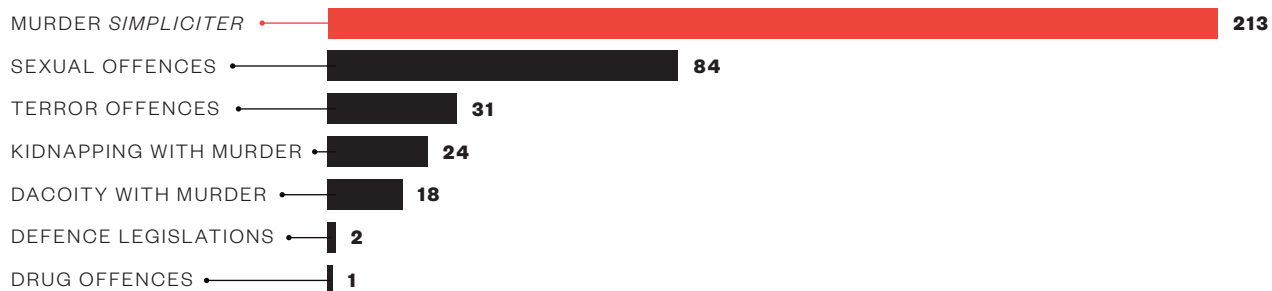


Table 5 Legislations under which prisoners have been sentenced to death	
Legislations	Number of prisoners
The Indian Penal Code, 1860	363
The Explosive Substances Act, 1908	13
The Terrorist and Disruptive Activities (Prevention) Act, 1987	13
The Arms Act, 1959	5
The Border Security Force Act, 1968	1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

Table 6 States with the highest number of prisoners sentenced to death for different crimes				
Nature of Crime	State with highest number of prisoners within crime category	Number of prisoners	National percentage out of all prisoners within crime category	State percentage out of all prisoners in the state
Murder <i>simpliciter</i>	Uttar Pradesh	62	29.1%	78.5%
Sexual offences	Maharashtra	15	17.9%	41.7%
Terror offences	Karnataka	12	38.7%	26.7%
Kidnapping with murder	Uttar Pradesh	5	20.8%	6.3%
Dacoity with murder	Karnataka	11	61.1%	24.4%

National percentage represents the 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. State percentage provides the 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.

NATURE OF CRIME AND DURATION OF LEGAL PROCEEDINGS

Large variation was observed in the median duration of legal proceedings at different stages across different crimes (**Tables 7, 8 & 9**). Among crimes for which statistically significant numbers were sentenced to death, the median durations in cases involving sexual offences were the shortest in the trial court and High Court stages. On the other hand, the longest median durations for proceedings at the trial courts and High Courts were observed in cases involving terror offences. Interestingly, the trend of short duration in cases involving sexual offences was not replicated at the Supreme Court, where the highest median duration of confirmation was for such cases.

The significantly shorter durations of proceedings in cases involving sexual offences call for particular attention. With delay being pandemic in our criminal justice system, we must interrogate the manner in which cases of sexual offences are decided at such fast pace, and whether there is complete fidelity to procedures that ensure fair trial and protection of rights of the accused in such cases. Although violation of such foundational principles may not have

necessarily occurred in cases involving sexual offences, certain narratives of prisoners in our study seem to suggest otherwise. Umang⁴ was convicted and sentenced to death in a trial that lasted nine days, the shortest trial documented in the study. “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 explained the prosecution case against him.

The true import of long durations of legal proceedings for terror offences can be understood when it is mapped on to the period of incarceration in these cases. Prisoners sentenced to death for terror offences are incarcerated for far longer durations as compared to prisoners sentenced to death for other crimes, with the median duration of incarceration for terror offences being 158 months (13 years, two months), a duration significantly higher than the median duration of incarceration for all offences (66 months or five years, six months).

⁴ 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.

Table 7 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

Table 8 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 the Terrorist and Disruptive Activities (Prevention) Act, 1987. 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.

Table 9 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.

SOCIO-ECONOMIC PROFILE

A meaningful discussion on the death penalty is not possible until we answer the question—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. Our research takes us beyond the realm of intuition, and confirms the long-held hypothesis that the death penalty is disproportionately imposed on vulnerable persons along the axes of economic and social parameters. Although our research cannot be used to make an argument regarding direct discrimination, it does point to the disparate impact of the death penalty on marginalised sections.

The socio-economic analysis presented in this chapter is based on the interviews of prisoners and their families. We have not cross-checked the information provided to us against documentary sources, as we realised very early on that many prisoners and families did not have access to documentary proof. Further, it must be noted that our research is limited to the prisoners on death row during a specific period of time, and periodic research in the future would provide us a more conclusive picture regarding the socio-economic profile of prisoners sentenced to death in India.

AGE

Age is an important factor to be considered at the time of sentencing, and in *Bachan Singh v. State of Punjab* the Supreme Court held that “if an accused is young or old, he shall not be sentenced to death.”⁵ The rationale is that persons of young age have their entire lives ahead of them, and the criminal justice system tends 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. Further, persons of old age cannot be considered to pose much threat to society, and sentencing such persons to death is not justified under the ‘crime prevention’ or ‘incapacitation’ theory of punishment.

Despite the judicial pronouncement against sentencing young and old prisoners to death, 54 prisoners in our study were between the ages of 18–21 years, and seven prisoners in our study were over 60 years of age at the time of the crimes for which they were convicted (**Graphic 6**).

Claim of juvenility

18 prisoners in our study claimed that they were juveniles (below the age of 18) at the time of the incident for which they were sentenced to death. The claim of juvenility is a complex one, for reasons such as lack of documentary proof and difficulty in ascertaining the exact age of prisoners after the passage of a long period of time after their arrest. However, what is of much concern is that the claim of juvenility is seldom addressed in the courts.

Of the 18 prisoners who claimed to be juveniles, we were able to access the trial court decisions of 15 prisoners, to discover 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 trial court summarily dismissed those claims without even ordering a further investigation. Further, amongst these decisions, the courts have either not considered any arguments on the possibility of reformation or have superficially dismissed such claims on the basis of the ‘heinousness of the crime’.

PREVIOUS CRIMINAL RECORD

The prisoners sentenced to death in India forming a part of our study were overwhelmingly first time offenders with no prior criminal record. 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 7**).

ECONOMIC VULNERABILITY

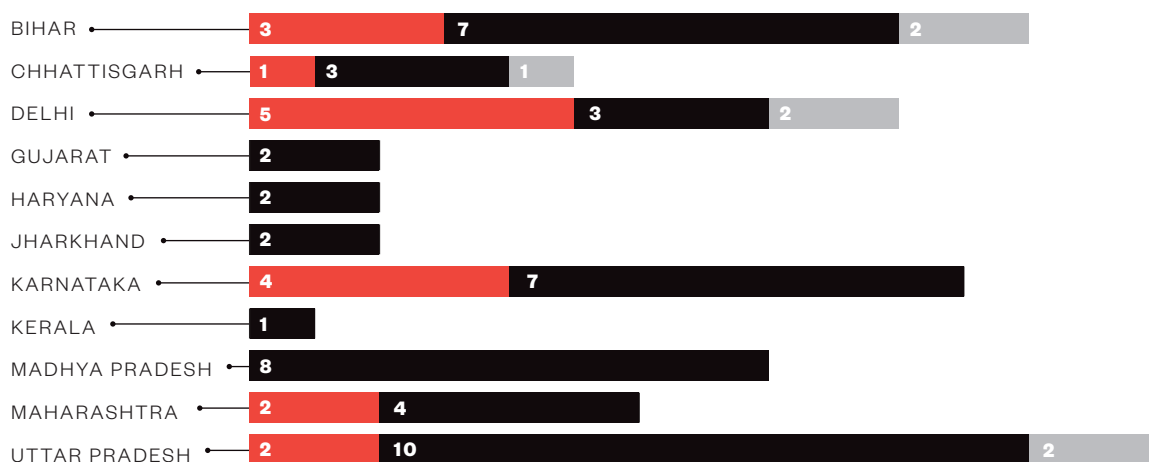
We have documented the economic vulnerability of prisoners in our study based on their occupation. While occupation cannot be determinative of poverty, we have used it instead as an indicator of economic vulnerability. Our choice of an occupation-based analysis was based on

⁵ (1980) 2 SCC 684, paragraph 206.

Graphic 6

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

■ Less than 18
■ 18-21
■ More than 60



Graphic 7

Previous criminal record of prisoners sentenced to death



Information regarding prior criminal history is unavailable for 97 prisoners.

several reasons. In a large number of cases, the passage of long durations between the incident and our interviews with prisoners and their families prevented them from reliably recollecting their income at the time of the incident. Many of them responded to questions on income by answering that they cultivated enough for their subsistence. Further, we were unable to gather 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.

Another factor that we have considered to determine economic vulnerability is the size of the prisoner's land-holding. 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.

Almost three-fourth of the prisoners in our study (74.1% or 274 prisoners) were economically vulnerable (**Graphic 8**). Of the 209 economically vulnerable prisoners, 63.2% of them were either the primary or sole earners in their families (**Graphic 9**).

State-wise analysis of economic vulnerability

Amongst the states with 10 or more prisoners sentenced to death, Kerala had the highest proportion of economically vulnerable prisoners sentenced to death i.e. 14 out of 15 prisoners (93.3%). **Table 10** lists the other states with statistically significant number of prisoners sentenced to death which had 75% or more prisoners belonging to the 'economically vulnerable' category.

Stage-wise analysis of economic vulnerability

The overall proportion of economically vulnerable (74.1%) is also visible at each stage i.e. High Court pending, Supreme Court pending, Mercy pending and Mercy reject, of the legal process (**Graphic 10**). It must be noted that we have determined the economic vulnerability of prisoners as at the time of the incident. The burdens imposed by the

criminal justice system would only increase their economic vulnerability as the cases of the prisoners travelled through the judicial hierarchy.

EDUCATIONAL PROFILE

The level of educational attainment is an important indicator of exclusion and marginalisation, and helps us understand more holistically the socio-economic profile of prisoners sentenced to death as at the time of the incident. Further, the educational profile of prisoners points to the alienation that they would experience from the legal process, in terms of the extent to which they are able to understand the case against them and engage with the criminal justice system.

As is evident from **Graphic 11**, 23% of prisoners sentenced to death had never attended school. A further 9.6% had barely attended school but had not completed even their primary school education, while a staggering 61.6% of prisoners sentenced to death had not completed their secondary school education. Of the 12 female prisoners, six prisoners had never attended school.⁶

CASTE AND RELIGIOUS PROFILE

As is evident from **Graphic 12**, 76% (279 prisoners) of prisoners sentenced to death in India belong to backward classes and religious minorities, with all 12 female prisoners belonging to 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.

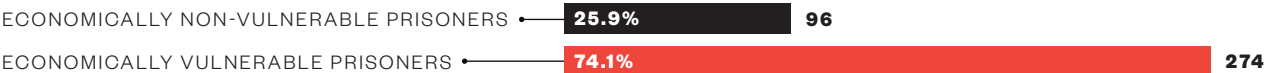
State-wise analysis of caste and religious profile

While the proportion of Scheduled Castes/Scheduled Tribes (SC/ STs) amongst all prisoners sentenced to death in India was 24.5%, that proportion was significantly higher in Maharashtra (50%), Karnataka (36.4%), Madhya Pradesh (36%), Bihar (31.4%) and Jharkhand (30.8%), amongst states with 10 or more prisoners sentenced to death (**Graphic 13**). Religious minorities comprised a disproport-

⁶ Information regarding educational profile of one female prisoner is unavailable.

Graphic 8

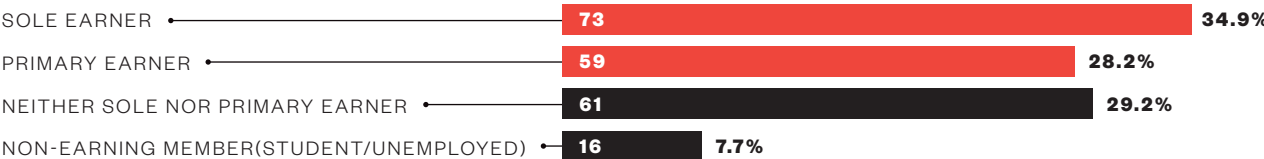
Economic vulnerability of prisoners sentenced to death



Information regarding economic vulnerability of three prisoners is unavailable.

Graphic 9

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.

Table 10 States with high proportion of economically vulnerable prisoners		
State	Number of economically vulnerable prisoners	Percentage of economically vulnerable prisoners in the state
Bihar	39	75%
Chhattisgarh	12	75%
Delhi	24	80%
Gujarat	15	78.9%
Jharkhand	10	76.9%
Karnataka	33	75%
Maharashtra	32	88.9%

Information regarding economic vulnerability for one prisoner each from Bihar and Karnataka is unavailable.

tionate share of the prisoners sentenced to death in Gujarat (79%), Kerala (60%) and Karnataka (31.8%).

Stage-wise analysis of caste and religious profile

At the lowest rung, i.e. High Court pending cases, the social profile of prisoners sentenced to death more or less reflects the overall national figures. 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 (Table 11).

Social profile of prisoners sentenced to death for terror offences

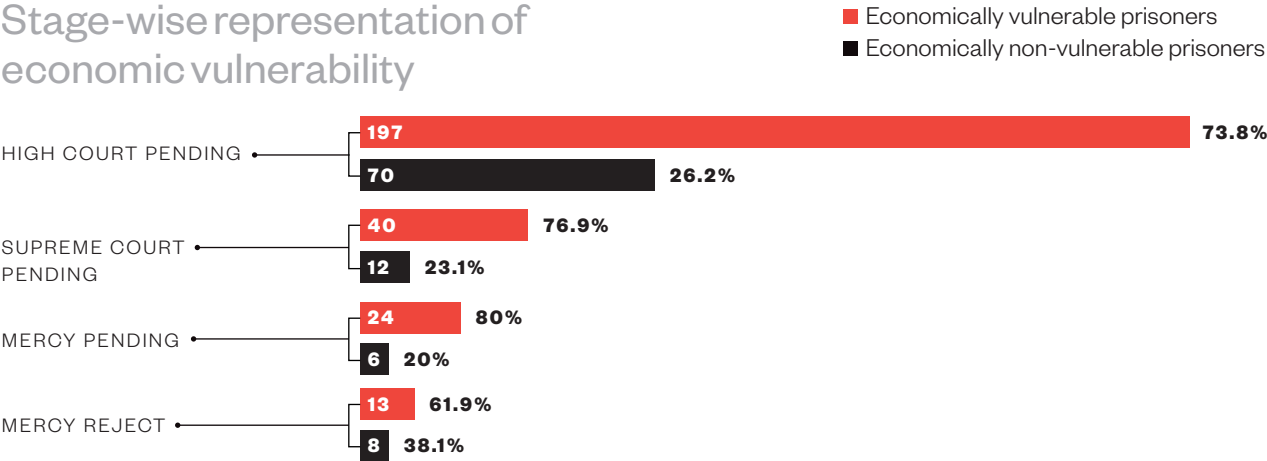
Amongst the 373 prisoners who form a part of this study, 31 prisoners were sentenced to death for terror offences.

29 of these prisoners (93.5%) were Scheduled Castes or religious minorities, with 19 of them being Muslims (61.3% of the total 31 prisoners).

MULTIPLE SOCIO-ECONOMIC FACTORS

The interplay between multiple factors enables us to better understand the extent of marginalisation of prisoners sentenced to death in India. It also provides insight into the alienation faced by prisoners sentenced to death from the criminal justice system and the difficulties faced in participating in their legal proceedings due to economic, social and educational vulnerabilities (Tables 12 & 13 and Graphics 14 & 15).

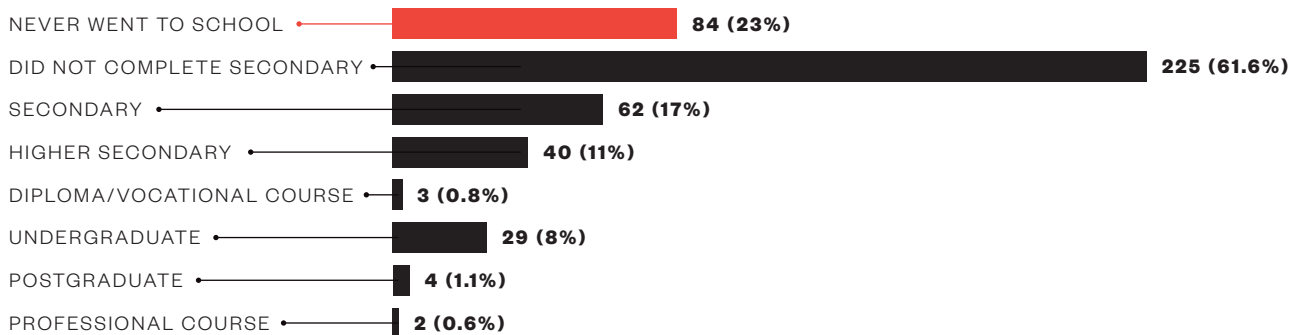
Graphic 10
Stage-wise representation of economic vulnerability



Information regarding economic vulnerability of three prisoners is unavailable.

Graphic 11

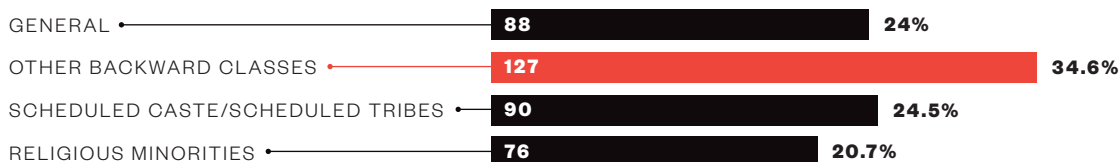
Educational profile of prisoners sentenced to death



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'.

Graphic 12

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.

Graphic 13

State-wise social profile of prisoners sentenced to death

■ OBC
■ General
■ Religious minorities
■ SC/ST



Eight prisoners in Gujarat, three prisoners in Maharashtra and one prisoner in Uttar Pradesh belonging to both other backward classes and religious minorities have been counted in both categories- 'OBC' and 'Religious Minorities'. Caste information regarding two prisoners in Bihar and one prisoner in Karnataka is unavailable.

Table 11 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%)

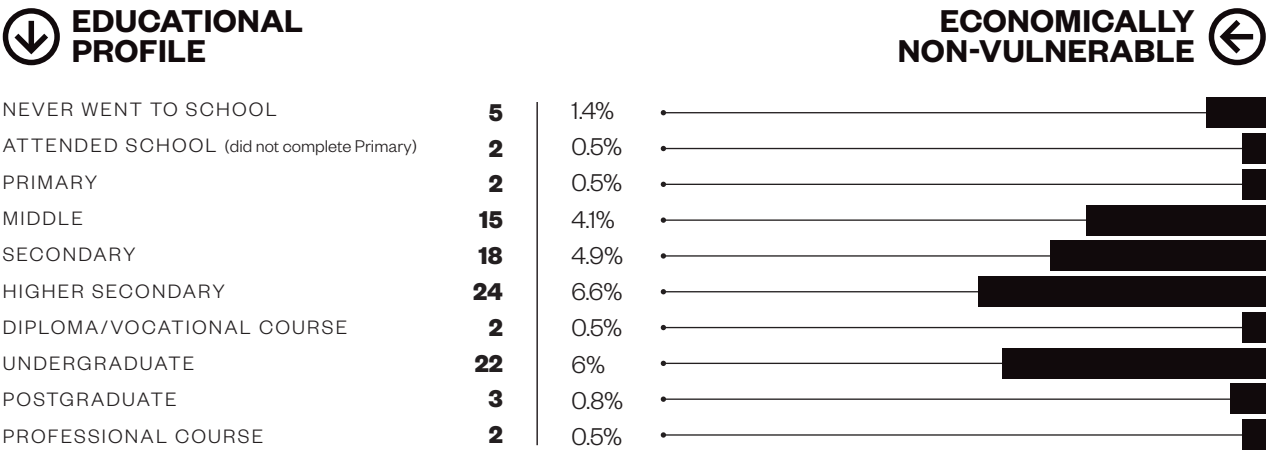
There were 14 prisoners belonging to both other backward classes and religious minorities, and have been counted in both categories- 'OBC' and 'Religious Minorities'. Caste information is unavailable for six prisoners. Percentages have been calculated out of total number of prisoners in each stage for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

Table 12 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.

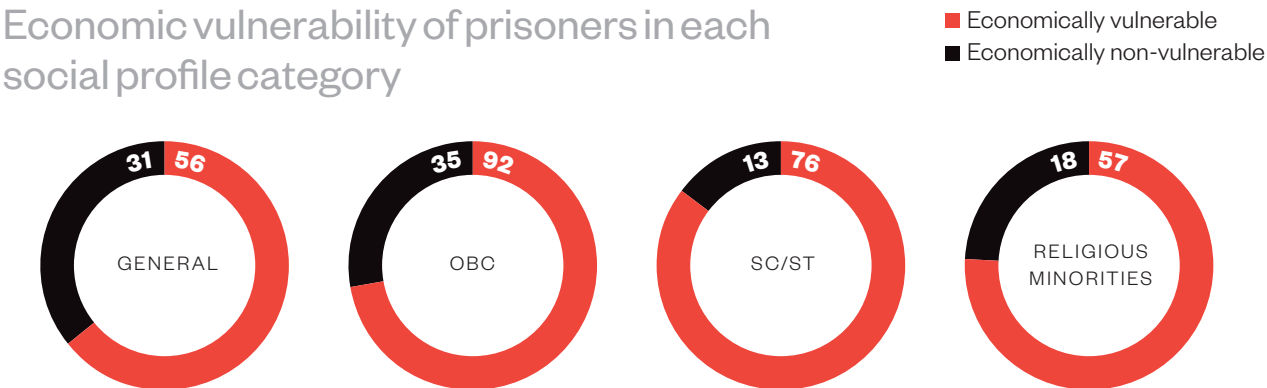
Graphic 14

Economic vulnerability and educational profile of prisoners sentenced to death



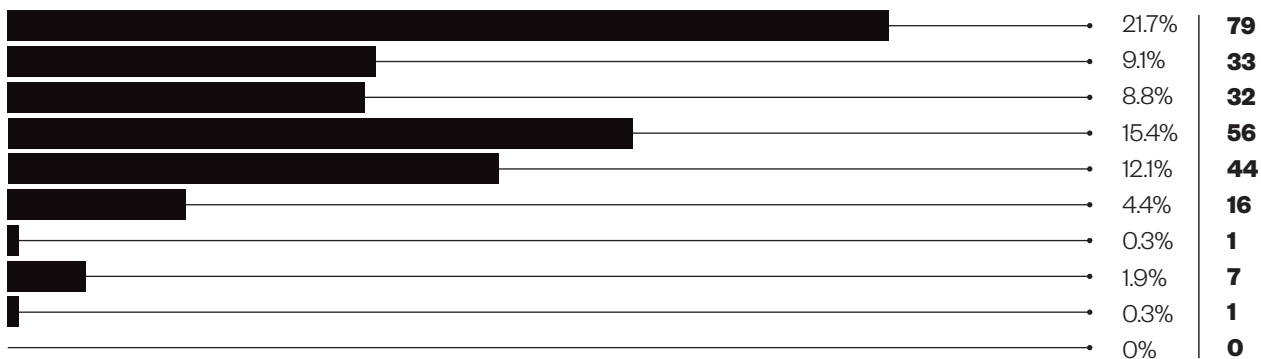
Graphic 15

Economic vulnerability of prisoners in each social profile category



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

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). It may be noted here that 74.4% (200 prisoners) of all economically vulnerable prisoners did not complete secondary education.

Table 13 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).

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, lawyers are required to play an important role to counter the alienation experienced by prisoners from the criminal justice system. However, while we encountered positive opinions on lawyers in our study, they were outnumbered by narratives on the lack of interaction with prisoners and their families, repeated demands for money and dereliction of duties by defence lawyers. The evaluation of lawyers by prisoners and their families were rarely based on outcomes of cases and were centred around the interaction with their lawyers.

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

The findings in this Project do not support the common hypothesis that prisoners sentenced to death are largely represented by legal aid lawyers. Over 60% of the prisoners in the Project engaged private legal representation at the trial court and High Court stages (**Table 14**). Interviews with prisoners and families revealed the reasons for such practice. Although 70.6% of the prisoners represented by private lawyers in the trial courts and High Courts were economically vulnerable,⁷ their deep-seated fear of legal aid lawyers drove families to hire private lawyers. 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.

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

The trend regarding the engagement of private lawyers was not replicated at the Supreme Court stage, where over 70% of the prisoners sentenced to death relied on legal aid lawyers. (**Table 14**).

INTERACTION WITH LAWYERS

Very often, due to their economic vulnerability, the prisoner or her family were able to pay very little to their private lawyers. 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 they never met their lawyers outside court and the interaction in court was perfunctory.⁸ At the High Court, 68.4% of the prisoners never interacted with or even met their High Court lawyers.⁹

Interaction with the prisoners and their families 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. 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 interaction thereby severely impacts the quality of representation provided to prisoners sentenced to death.

OPINION ON LEGAL ASSISTANCE

Considering the minimal or absence of contact between the lawyers and the prisoners or their families, the opinions

⁷ 180 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.

⁸ Of the 184 prisoners who spoke about meeting their trial court lawyers outside court, 141 never met their lawyer outside court.

⁹ Of the 177 prisoners who spoke about meeting their High Court lawyers, 121 never met their High Court lawyers.

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 lawyers refusing to keep them meaningfully informed about the progress in the case. 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.

Table 14 Legal aid lawyers v/s private lawyers at different stages		
Stage	Number of prisoners represented by legal aid lawyers	Number of prisoners represented by private lawyers
Trial court	132 (36.6%)	227 (70.6%)
High Court	104 (32.6%)	219 (68.7%)
Supreme Court	55 (71.4%)	23 (29.9%)

Trial court figures: 117 prisoners were allotted legal aid lawyers at the trial court while 15 prisoners were represented on a *pro bono* basis. 28 prisoners who had private as well as legal aid representation at different stages of trial have been counted under both categories- 'Legal aid' and 'Private'. Further, two prisoners represented themselves in the trial court. Also, information relating to nature of legal representation at trial court for 12 prisoners is unavailable.

High Court figures: 89 prisoners were allotted legal aid lawyers at the High Court while 15 prisoners were represented on a *pro bono* basis. Six prisoners who had private as well as legal aid representation at different stages of High Court proceedings have been counted under both categories- 'Legal aid' and 'Private'. 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. Further, the appeals for 13 prisoners convicted by designated courts under the Terrorist and Disruptive Activities (Prevention) Act, 1987 lay directly before the Supreme Court. Also, information relating to nature of legal representation at High Court for 36 prisoners is unavailable.

Supreme Court figures: 44 prisoners were allotted legal aid lawyers at the Supreme Court while 11 prisoners were represented on a *pro bono* basis. One prisoner who had private as well as legal aid representation at different stages of Supreme Court proceedings has been counted under both categories- 'Legal aid' and 'Private'. Further, one prisoner did not file an appeal before the Supreme Court. Additionally, information relating to nature of legal representation at the Supreme Court for 25 prisoners is unavailable.

EXPERIENCE IN CUSTODY

The Constitution and the Code of Criminal Procedure, 1973 contain essential safeguards to ensure that the police does not abuse its powers while investigating cases. However, an examination of the experience of prisoners sentenced to death at the time of their arrest (or surrender) and the manner in which they were treated by the police and investigative agencies while in custody painted a shocking picture of rampant custodial violence and violation of constitutional and statutory safeguards that seek to uphold the rule of law and protect the rights of an accused.

CUSTODIAL TORTURE

80% of the prisoners in our study who spoke about their experience in police custody admitted to having suffered custodial torture.¹⁰ Not only was the number astonishing, the methods employed by the police while inflicting torture were inhuman, degrading and inflicted extreme forms of physical and mental suffering.

¹⁰ Of the 270 prisoners who spoke about their experience in police custody, 216 (80%) admitted to have suffered custodial violence.

forms of torture

- / hands and legs tied to a machine with a motor
- / skin burnt (with cigarettes/fire)
- / beaten until unconscious, and then made to hop on the spot after drinking water/tea
- / tied in a sack of chillies hung from a tree and beaten with the butt of police guns
- / soap water run through nasal canal
- / petrol inserted into body
- / head crashed against walls/glass
- / threat of encounter killings
- / forced nudity for long periods
- / needles inserted into fingernails
- / put inside a tyre and beaten up
- / fingernails pulled out

/not allowed to use toilets	/fingers broken with pliers	/rollers pressed on body	/forced to drink urine
/not allowed to sit for long periods	/put on a slab of ice and leg broken	/handcuffed/ hands and feet tied up/tied to furniture/ chained	/hung by wires
/electric current passed through wet body/lips/ nipples/ genitals	/stripped and tied to a table with a snake let loose in the room	/‘aeroplane’- arms and legs tied behind the back, with stomach parallel to the floor, and then pulled up	/beaten up with belt/ iron rod/ pipes on face/head/ genitals/ soles of feet
/immersed in boiling water	/immersed in ice-cold water	/head immersed in the toilet	/dragged by the hair
/no food or water for long periods	/chilli powder smeared on wounds	/solitary confinement	/teeth broken
/forcible anal penetration with rods/ glass bottles	/forcibly made light-headed and then beaten	/extreme stretching of arms and legs	/made to urinate on heater
/hung upside down and beaten	/waterboarding	/“unexplainable things”	

RIGHT TO BE PRODUCED BEFORE THE MAGISTRATE IN 24 HOURS

The Constitution and the Code of Criminal Procedure, 1973 contain several provisions to protect the accused from police excesses, but these proved to be ineffective in preventing investigating agencies from resorting to torture. Article 22 of the Constitution and Section 57 of the Code of Criminal Procedure, 1973 mandate the production of an accused before a Magistrate within 24 hours of her arrest. Given the exalted status of a fundamental right, such protection is envisaged as an important check on police investigation by the Magistrate. However, of the 258 prisoners in our study who spoke about production before a Magistrate, 166 said that they were not produced before a Magistrate within 24 hours. Narratives of police custody for periods up to seven days, which sometimes extended to several weeks or months, were documented. When the prisoners were produced before the Magistrate, prisoners repeatedly recounted that the Magistrate did not ask them about custodial torture. In cases where the prisoners themselves complained that they were being beaten in police custody, the Magistrate did not take any action.

CONFESSION BEFORE THE POLICE

Despite multiple judicial and legislative attempts at curbing custodial torture, the police engages, as a matter of routine, in a host of practices which are cruel, degrading and inflict unbearable pain. With police forces across the country grappling with colonial structures and inadequate funding, custodial violence is often used to secure confession statements, and convictions on the basis of these statements. Although a confession to a police officer is inadmissible as evidence under the Indian Evidence Act, 1872, Section 27 of this Act provides that 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. We heard 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. While the information gathered through a

confession in police custody by employing torture is often unreliable, as individuals are willing to make statements simply to stop their unbearable suffering and pain, the police continue to rely on these to secure convictions even in death sentence cases.

Out of the 92 prisoners who said that they had confessed in police custody, 72 (78.3%) admitted to making confessions due to torture. The techniques employed to extract such confessions ranged from extreme physical violence to threatening harm to their family members. The accounts of these prisoners portray their helplessness in the face of police brutality and explain why they believed that a confession was the only way to gain respite from the unrelenting torture.

LEGAL REPRESENTATION AT THE PRE-TRIAL STAGE

The presence of a lawyer in the pre-trial phase, while an accused is in police custody, has been considered to be of much value by the Supreme Court to act as a check on “intimidatory tactics or incriminations” attempted by the police during interrogation and to remove the “implicit menace of a police station.”¹¹ Article 22 of the Constitution guarantees the right of every arrested person to consult or be defended by a legal practitioner of her choice. Yet, interviews revealed that such provision failed to provide meaningful protection to the prisoners in our study. Of the 191 prisoners who shared information regarding access to a lawyer at the time of interrogation, 185 prisoners (97%) said they did not have a lawyer. Of these 185 prisoners, 82.6% of the prisoners who spoke about their experience in custody said that they were subject to torture by the police.¹²

The absence of a lawyer during police custody is perhaps better explained on mapping the economic vulnerability of prisoners who did not have access to a lawyer during their interrogation. Interviews with prisoners revealed that out of the 185 prisoners who did not have access to a lawyer during this phase, 144 were economically vulnerable (80%). It is a pity that the obligation of the State to provide legal aid to an accused has not been extended to this

¹¹ *Nandini Satpathy v. P.L. Dani & Anr* (1978) 2 SCC 424, paragraph 63.

¹² Of these 185 prisoners, 155 spoke about their experience of custodial violence, out of which 128 prisoners (82.6%) said that they were tortured in police custody.

TRIAL AND APPEALS

phase, especially in light of the horrific torture and violation of foundational principles experienced in this phase.

The Supreme Court has, however, 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.¹³ Yet, 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.

The narratives of custodial torture reveal the unreliable and illegal ways through which evidence may be collected during criminal investigations. The cruel and inhuman manner in which these prisoners have been tortured in police custody to extract confessions not only makes them more vulnerable during their trials, but the pain and humiliation inflicted also denies them basic standards of human dignity. While the crimes for which prisoners in our study were convicted were brutal, justifying torture as a necessary evil to secure convictions in the context of a broken criminal justice system, must be resisted. It must be recognised that not only is evidence obtained through torture unreliable, more fundamentally, increased police powers and condoning the brutality of the investigating agencies is detrimental to foundational liberties and freedom of all people.

It becomes important to examine the manner in which the legal process unfolds to sentence an individual to death, given the unique suffering that the death penalty entails. If the death penalty is to be imposed, it must carry with it a very high degree of fidelity to trial procedures, appellate processes, and sentencing factors.

PRESENCE OF AN ACCUSED IN THE TRIAL COURT

The presence of the accused in court during trial is a fundamental requirement of the criminal justice system and is the first step in ensuring a fair trial. The foundational reason for such a requirement is to give the accused an opportunity to understand the case against her. Section 273 of the Code of Criminal Procedure, 1973 requires that all evidence led in trial proceedings must be taken in the presence of the accused, or her lawyer, if the accused's presence has been dispensed with.

Out of the 225 prisoners who spoke about their presence during the trial proceedings, only 57 (25.3%) said that they were present during all hearings. The responses of the remaining prisoners varied from attending the majority of proceedings to being present for the examination of a few witnesses. Another practice revealed in several accounts was one of taking the prisoners to the court premises and then confining them in the court lock-up, without actually producing them in the courtroom.

UNDERSTANDING TRIAL PROCEEDINGS

Even when the accused were present in court for the trial, 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. The architecture of several trial courts across the country, requiring prisoners to stand at the back of the courtrooms during legal proceedings, prevented the accused from hearing the proceedings. The language used in court created yet another barrier for the prisoners. They rarely understood English and said that even though the witnesses might be examined in local languages, instances

¹³ *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.

where the arguments were in English were beyond their comprehension. It is then not surprising that prisoners across the country said that they had very little knowledge of the evidence that was used against them and were unable to explain or discuss the quality of evidence against them.

EXAMINATION OF THE ACCUSED BY THE JUDGE

Section 313 of the Code of Criminal Procedure, 1973 provides that the trial court may put questions to the accused at any stage and shall examine her generally on the case after the prosecution completes presenting its case. The examination stage is an essential component of the right to fair trial and is meant to be an opportunity for the accused to explain the incriminating circumstances relied upon by the prosecution.¹⁴ Section 313 requires that the accused be questioned separately about each material circumstance which is intended to be used against her, in a manner that the accused is able to understand.¹⁵

The socio-economic profile of prisoners coupled with the low levels of educational attainments impede the ability of prisoners to effectively use the Section 313 proceedings. Further, prisoners do not understand the prosecution case against them as they are unable to attend or to understand proceedings, and their lawyers do not explain the proceedings to them. In such circumstances, the statutory responsibility of the trial court judge assumed importance.

Unfortunately, it emerged through our interviews that the examinations under Section 313 of the Code of Criminal Procedure, 1973 are carried in a manner characterised by apathy and high degree of formality that aggravated the alienation and exclusion of the accused, procedures that superficially met the technical requirements of the law, and at times practices that bordered on effective denial of this opportunity. Of the 142 prisoners who provided us details of their Section 313 proceedings, 86 (60.6%) said that they were asked to give only 'Yes/ No' responses. The narratives of prisoners we encountered revealed that they were not

given a meaningful opportunity to explain themselves, much less have the incriminating circumstances explained to them in a simple manner.

SENTENCING IN DEATH PENALTY CASES

The sentencing phase of the trial is quite distinct from the conviction phase and a wide range of factors, that might be irrelevant in determining the guilt of the accused, must play an important role in determining the appropriate sentence. The law recognises that the sentencing hearing is to be a separate proceeding (Section 235(2) of the Code of Criminal Procedure, 1973) and also that the judge will have to state 'special reasons' for invoking the death penalty (Section 354(3) of the Code of Criminal Procedure, 1973).

In cases where the death penalty is sought, the Supreme Court of India in *Bachan Singh v. State of Punjab* (while upholding the constitutionality of the death penalty) has laid down an elaborate sentencing framework to be adopted before sentencing an individual to death.¹⁶ The 'rarest of rare' doctrine developed in *Bachan Singh* requires judges to balance aggravating and mitigating circumstances while determining whether a death sentence is the appropriate punishment. *Bachan Singh* requires judges to not only consider the brutality of the crime,¹⁷ but also to consider the possibility of reformation of prisoners and to ensure that the alternative option (of life imprisonment) is unquestionably foreclosed.¹⁸

Prisoner interviews revealed that the manner in which sentencing hearings are carried out seemed to be a mere formality after the conviction has been achieved. The issues we confronted included lawyers not being present for sentencing hearings, these hearings being conducted on the same day as the conviction (without adequate time given to place before court all relevant material on sentencing), defence lawyers presenting very cursory sentencing factors limited to the age, poverty and number of dependents of the prisoner, and judges demonstrating lack of interest in sentencing arguments.

¹⁴ *Sujit Biswas v. State of Assam* (2013) 12 SCC 406, paragraph 20.

¹⁵ *Tara Singh v. State* 1951 SCR 729, paragraph 32.

¹⁶ (1980) 2 SCC 684.

¹⁷ (1980) 2 SCC 684, paragraph 202.

¹⁸ (1980) 2 SCC 684, paragraph 209.

Further, there has been a complete breakdown in the application of the 'rarest of rare' doctrine developed in *Bachan Singh*. Of the 50 prisoners in our study in whose cases the Supreme Court had confirmed the death sentence, the issue of reformation was not addressed in the judgments for 34 of them (68%).¹⁹ For the remaining 16 prisoners, the Supreme Court ruled out any chance of reformation for eight of them only on the basis of the nature of the crime in question. Further, for this set of prisoners, the death sentences for 62% of them were confirmed by the various High Courts without considering the possibility of reformation.²⁰ As we move to the trial courts, the performance on this count worsens. For these 50 prisoners, we had access to the trial court judgments for only 28 prisoners. Amongst these 28 prisoners, 21 of them (75%) did not have the issue of possibility of reformation considered.

In this analysis, judges have tended to rule out the possibility of reformation on rather curious grounds without providing any real explanation as to how they are relevant and exhaustive for ruling out the possibility of reformation. The most commonly invoked reasons included individuals absconding during police investigation, commission of subsequent offences before being arrested and no visible sign of remorse during the trial.

It is inherent in the sentencing framework developed in *Bachan Singh* that the decision to extinguish life cannot be backward looking and must necessarily take on the moral and legal burden of demonstrating that there is no possibility of reformation of the prisoner, and that there is no future value to the individual's life. The limited considerations of age, poverty, and remaining family members cannot be considered to be a rigorous sentencing practice in death penalty cases. In the move towards extinguishing a person's life through the law, it is imperative that a far more holistic approach be undertaken to present the value of a person's life. This holistic approach must throw light on the physiological, psychological, social, economic and emotional factors that might have impacted the development of the individual before the court. However, such an approach

cannot be limited to understanding the individual leading up to the crime in question but would also require considering the individual's life in prison from relevant perspectives.

APPELLATE PROCEEDINGS

By the end of trial proceedings, most prisoners interviewed during the Project felt extremely alienated from the legal process and were affected by the helplessness of not being able to speak in their defence. Coupled with the mental trauma of being given the most extreme punishment, these experiences characterized their interaction with the criminal justice system as their case reached the appellate stage. While the appellate procedure seeks to ensure strict judicial scrutiny before an individual is sent to the gallows, the law does very little to remedy the deep sense of alienation experienced by these prisoners, which only increases as their case progresses in the appeals process.

The various rules of procedure which guarantee the right to fair trial are meant as protections against the excesses of the investigative agencies. The criminal justice system places the burden on the prosecution to demonstrate that it has played by the rules and depends on institutional actors like judges and defence lawyers to ensure compliance with constitutional guarantees and procedural safeguards. The accounts of the prisoners force us to confront the harsh reality that there exists a serious crisis in the performance of the various institutional actors while imposing the harshest punishment.

¹⁹ Out of the 51 prisoners whose mercy petitions had been rejected or were pending at the time of interview, one did not file an appeal before the Supreme Court.

²⁰ Out of the 51 prisoners whose mercy petition had been rejected or were pending at the time of the interview, 10 were sentenced to death under Terrorist and Disruptive Activities (Prevention) Act, 1987 and their appeals were directly heard by the Supreme Court. Five others had their sentence commuted in the High Court before they were enhanced to death penalty in the Supreme Court. Out of the remaining 36 prisoners, High Court judgments could be accessed for 34 of them. Amongst these 34 prisoners, the death sentence imposed on 21 of them was confirmed by the High Court without considering the possibility of reformation.

LIVING ON DEATH ROW

There is hardly any information on the manner in which prisoners sentenced to death in India are treated in prisons. One of the striking features is that prisoners sentenced to death are treated differently from the moment the trial court imposes the death sentence, despite the law being abundantly clear that all death sentences imposed by the trial courts require confirmation by the High Court. This difference in treatment has very real consequences in prisons including the prohibition on work, lack of interaction with general prison population, prohibition from participating in prison activities, etc.

SOLITARY CONFINEMENT

Amongst the most egregious violations inflicted on prisoners sentenced to death was solitary confinement. The Supreme Court in 1978 had held that prisoners sentenced to death could be kept in a cell away from other prisoners only when the death sentence had finally become executable.²¹ Even in such separate incarceration, the Supreme Court had prohibited solitary confinement. Our research revealed that prisons continue to confine prisoners sentenced to death in solitary confinement for considerable durations. Such punishment was seen to have caused severe physical and psychological pain and suffering amounting to torture. The combination of solitary confinement with the sentence of death is particularly inhumane and the narratives of prisoners revealed the depth of suffering such prisoners undergo.

CONDITIONS OF INCARCERATION

The punishment for prisoners who have been sentenced to death is their sentence itself, and harsh conditions of confinement are not part of their punishment. However, the experience of prisoners revealed that the harsh physical conditions of incarceration almost act as a separate sentence, making living under the sentence of death all the more difficult. Prisoners narrated a wide range of concerns that should set off serious warning signals about denying them the dignity that is guaranteed to all persons by the Constitution—extremely cramped spaces, cells with very little light and air, unacceptable standards of hygiene,

abysmal quality of food in flagrant violation of prison manuals, poor standards of medical services and almost non-existent mental health services.

The Prisons Act, 1894 contains provisions relating to hospital facilities for prisoners in jail. However, conversations with the prisoners revealed the difference between legal provisions and their lived experience. During our study, we came across instances of prisoners being denied basic medical attention and even instances of gross negligence in the failure to diagnose terminal illnesses until it was very late.

DESPITE THE ODDS—EDUCATION AND WORK IN PRISONS

The uncertainty of living under the sentence of death is worsened by inhospitable prison conditions and yet we encountered remarkable narratives of prisoners negotiating significant obstacles to overcome their illiteracy and low levels of educational attainment. Despite these accounts, in certain instances, prisons actively denied prisoners sentenced to death educational opportunities. The prohibition on work, however, was far more widespread across prisons in India. Prisons seem to adopt the argument that since prisoners sentenced to death are 'high risk prisoners', they need to be denied opportunities to work to ensure that they do not hurt themselves in any manner. The prohibition on work meant that prisoners sentenced to death were denied any real opportunity to take their minds off the sentence of death.

DATTA was only 20 years old when he was arrested for the rape and murder of a minor girl. Datta had never attended school in his childhood, and in fact nobody from his family had ever gone to school. His family belonged to a Scheduled Tribe, and Datta had moved out of his village to work as a daily wage labourer on somebody else's land to contribute to the meager family income. Currently, Datta is the youngest prisoner in the barrack he shares with older prisoners, as there are no separate barracks for young adults. Datta spends his time in prison studying and working, going to school at eight in the morning each day and

²¹ *Sunil Batra v. Delhi Administration & Ors* (1978) 4 SCC 494, paragraph 223.

returning to his barrack in the evening. Datta is very proud of the fact that he has learnt so much in prison—he has learnt to read and write in Hindi, and stated with immense satisfaction that he is able to write his name. He has now filled the form to enroll in the fifth standard.

FAMILY VISITS

Given the extremely vulnerable economic status of prisoners and their families documented in the Chapter on 'Socio-Economic Profile', visits to prisons was a significant challenge for families of prisoners. In addition to the prohibitive costs of travelling across large distances, families had to encounter *mulaqat* (meeting) conditions that permitted hardly any communication. Family visits for prisoners under the sentence of death was not an entirely happy experience as it reminded them of the lives they had left behind and often left them feeling like an additional burden on the family.

TREATMENT OF PRISONERS

There was great reluctance amongst prisoners to talk about the violence inflicted on them by prison officials and other inmates. Despite the general reluctance arising out of the fear of reprisal, narratives emerged about violence within prisons. Apart from physical violence, prisoners also experienced different forms of humiliation and ostracisation at the hands of their fellow prisoners. It was also evident that the very personnel involved in the day-to-day administration of the prison view prisons as institutions to further inflict punishment on the persons being brought in. In light of such attitudes to prisoners, it becomes difficult to consider prisons as institutions working towards meaningful reformation or rehabilitation.

MENTAL HEALTH

The concerns surrounding mental health of prisoners sentenced to death operated at different levels. While there were prisoners formally diagnosed with mental illnesses who continued to be under the sentence of death, there were others who were not being treated for mental illness, but it was evident to even non-experts like us that they

needed urgent attention on their mental health. There was another category of prisoners being administered medication typically used to treat mental illnesses but there was no formal diagnosis in their cases. Further, we also interviewed prisoners who had harmed themselves in an attempt to take their own lives, or those that explicitly contemplated suicide. While more research is required to develop a detailed understanding of the impact of the death penalty and conditions of incarceration on the mental health of prisoners sentenced to death, our conversations with prisoners demonstrated a credible cause for concern.

HARIKISHAN, a prisoner sentenced to death for rape and murder, attempted suicide in prison when he was 31 years old. After his mercy petition was rejected by the President, Harikishan first learnt about the date set for his hanging through news channels on the television set in the death barrack. He felt that the media portrayed him as a monster and depicted his entire village as being terrified of him. With details of the preparation for his execution constantly flashing on the television screen in his barrack, he could see the theatre of his own death playing out. Filled with extreme anguish at his inability to prove his innocence, Harikishan slashed his genitals with a piece of floor tile. He told us that he would rather kill himself than be executed by the State for a crime he did not commit. During his interview, Harikishan emphasised that the evidence against him was false and that he would have accepted any level of punishment if the prosecution case was true. While describing his anguish, he said that he feels like he is “caught between two blades of a scissor, with no means to escape.” Harikishan had spent nearly 12 years in prison.²²

EXPERIENCE OF LIVING UNDER THE SENTENCE OF DEATH

Life in prison is extremely difficult for the prisoners sentenced to death due to the harsh conditions of incarceration and limited opportunities for meaningful human interaction. Further, the awareness of their sentence makes the prisoners worry about the precariousness of their existence, constantly oscillating between life and death.

²² The Supreme Court commuted Harikishan's death sentence on the ground of inordinate delay in deciding his mercy petition.

This worry is further intensified with time, and the long wait coupled with the uncertainty of their final fate makes living under the sentence of death an unbearable experience of anxiety and fear. During the Project, multiple prisoners told us that they would rather be executed immediately than prolong their agony of living under the sentence of death.

LIFE ON DEATH ROW

Chitrabhanu had already spent 19 years and nine months in prison and his mercy petition was pending before the President at the time of his interview. He was initially confined in a single cell in the death barrack of the prison. He recounted that he could hardly sleep and when he was alone in his cell, he would begin thinking about his sentence. Chitrabhanu said that he would rather die than continue to live in the manner in which he was confined in prison. “How many years can one live like this?” he asked. He had lost all hope in the criminal justice system and observed that although he had reformed in prison, there was no one to see his reformation. He recounted the time when he made a noose from a piece of cloth, placed it over his neck and tightened the noose to get a sense of how the end might feel. Chitrabhanu shared that he immediately broke out into a cold sweat. Amarpreet, a prisoner whose mercy petition had been rejected at the time when we interviewed her, described that she felt as if there was always a rope hanging above her head. She was unable to sleep at night and every time the gate opened she thought that the authorities had come to take her to carry out the execution. She felt most apprehensive in the early morning hours, which was the preferred time for executions. She frequently saw a nightmare where she was being led to a butcher’s shop and slaughtered. Amarpreet had written a letter to the President, praying that she be hanged immediately because she could not bear “the agony of waiting.” Aamod Singh was terrified when he walked into the room for a conversation with us. Though his case was pending in the High Court, he had been told by some prisoners residing in his barrack that he was being taken to be executed. His hands were trembling violently due to fright and he kept muttering to himself that he was going to be hanged. He was acutely alienated from the criminal justice system and was unaware that he could not be executed at that stage. Although we reassured him that he had many legal options remaining,

he remained unconvinced. After settling down, he told us that he felt this frightened whenever he thought about his sentence of death. He said, “I know that when I am taken to the gallows, I will refuse to climb.”

GALLOWS

The presence of gallows in 30 out of the 67 prisons in which interviews were conducted was a cruel and constant reminder to the prisoners about their possible fate. While some prisons had death barracks designed in such a manner so as to ensure that prisoners sentenced to death had a constant view of the gallows, we also heard narratives where prison officials would first take prisoners sentenced to death to the gallows before showing them to their barracks. Satyanarayanan, a prisoner sentenced to death for rape and murder, revealed that a prison official showed him a photograph of the gallows on his mobile phone. Some of the officials also asked him to name them in his “last wish” as the person to place the noose around his neck, because the official placing the noose around the prisoner’s neck was entitled to a reward of Rupees 20,000 from the state government.

From the various narratives concerning the experience of prisoners sentenced to death, it is evident that there is very little systemic investment in their reformation and rehabilitation. Given the nature of their punishment, they are invariably reduced to just individuals awaiting execution and very little else.

SEEKING MERCY

Prisoners sentenced to death can approach the President and the Governor under Articles 72 and 161 of the Constitution for seeking pardon. Under these provisions, the President and the Governor can consider the merits of the case again and can take a much wider view of relevant factors. They are not bound by the judicial determination in the case and neither is the exercise of power granting pardon seen as an alteration of the judicial determination.²³ The Supreme Court has since *Kehar Singh & Anr v. Union of India & Anr* held that the power of pardon is subject to judicial review on limited grounds. In January 2014, the Supreme Court in *Shatrughan Chauhan & Anr v. Union of India & Ors* recognised undue, inordinate and unreasonable delay in deciding mercy petitions as a ground for commutation of the death sentence.²⁴ The Court took the view that such delay amounts to torture and also acknowledged supervening circumstances such as mental illness, procedural lapses, solitary confinement and judgments declared *per incuriam* as relevant factors for considering commutation of the death sentence even after the mercy petitions were rejected.

SUPERVENING CIRCUMSTANCES

Girish Kumar described the experience of awaiting a decision by the courts to be very different from waiting for a decision from the President. He said that only a person who has experienced it could understand the difference. Girish was convicted and sentenced to death for the murder of four members of a family. Subsequently, the High Court confirmed his death sentence and the Supreme Court upheld that decision a year later. Although Girish filed his mercy petition to the President within two weeks from the Supreme Court's dismissal, it was rejected after nine and a half years. After the initial visits by his wife in the district prison, where Girish was lodged as an undertrial, he did not get any visitors once he was moved to the central prison. In his mercy petition, Girish mentioned that he had been kept in solitary confinement since his trial court decision. On being asked about family visits, Girish murmured that he does not know how to spend his time when other prisoners

have visitors and wished that he could meet his family again. Not having received a decision on his mercy petition for almost a decade, Girish lamented that waiting for 'tomorrow' was a sentence in itself and that he was surviving only because of his belief in God. When we interviewed Girish, he had spent 15 years and six months in prison.

In another case, Pranay Singh, a prisoner sentenced to death for the murder of five persons belonging to his cousin's family, was reprieved by the Supreme Court on the grounds of his mental illness. After the confirmation of his death sentence by the Supreme Court, his mercy petition was sent through the prison to the President stating that he committed the offence due to insanity. A month after the submission of his mercy, Pranay Singh was admitted in a mental hospital, where he was diagnosed with schizophrenia. About 10 months after his discharge from the hospital, Pranay was orally informed about the rejection of his mercy petition by the President. Pranay's incoherent responses during his interview pointed towards his deteriorating mental condition. Our interactions with his family revealed that he developed his mental illness prior to the incident. Considering that the opinion of the Ministry of Home Affairs on Pranay's mercy petition did not refer to his mental condition, the Supreme Court concluded that his mental health had not been factored while deciding his mercy petition.

EXPERIENCE OF SEEKING MERCY

The alienation from the legal system that prisoners experienced in the trial and appellate stages, applied with just as much intensity during the phase of seeking mercy as well. The practices developed in filing mercy petitions on behalf of prisoners sentenced to death rarely involve the prisoners themselves. The common practice is for prison authorities to use standard templates without any application of mind and the role of the prisoner is to merely put her signature or thumb impression. Rare instances of legal assistance along with the lack of any meaningful participation by the prisoner at this stage reduce this last attempt to largely a formality.

²³ *Kehar Singh & Anr v. Union of India & Anr* (1989) 1 SCC 204, paragraph 10.

²⁴ (2014) 3 SCC 1.

CHETAK'S story, in this context, represents the extreme alienation faced by these prisoners at the final stages of the criminal justice system. Chetak was sentenced to death for murdering four members of his employer's family and their other domestic help. Represented by state appointed counsels throughout the trial and appeals process, Chetak never had an opportunity to discuss his case with his lawyers. After the confirmation of his death sentence by the Supreme Court, Chetak had no knowledge about his remaining legal recourses. Thereafter, he was informed by his fellow inmates that he could seek clemency and a month after the confirmation by the Supreme Court, his mercy petitions were sent to the President and the Governor through the prison. However, Chetak did not receive any legal assistance for preparing his mercy petitions nor did he have copies of the same. While the President denied Chetak's request for pardon over three years later, the prison received an official communication regarding the rejection after a delay of three months. During this time, he had learnt about the rejection of his mercy petition through a local Hindi newspaper. Further, Chetak was not provided with a copy of the letter intimating the prison regarding the rejection of his mercy petition. On being asked about his experience with the criminal justice system, Chetak despaired that he was alone throughout this complex process, with "no one to listen to his voice or look out for him." Consumed by the fear of his uncertain fate, he spent sleepless nights after he learnt about the rejection of his mercy petition. Subsequently, the Supreme Court commuted his death sentence considering the delay of three years and 10 months in disposal of his mercy petition. The Court also took into account that Chetak was kept in solitary confinement for six years and seven months, after he was sentenced to death by the trial court.

DEATH WARRANT

A death warrant is a document that specifies the time, date and location of a prisoner's execution. It is issued by the court that sentenced the prisoner to death in the first instance. The practices that have developed in this regard through prison manuals defy constitutional logic. Governments under the current framework for death warrants are able to approach the original sentencing courts for death warrants even before the prisoner exhausts all her consti-

tutional options. This has led to prisoners being brought to the brink before a stay is granted merely few hours before the scheduled execution. The recent judgments of the Supreme Court (May 2015) and the Allahabad High Court (January 2015) have held that principles of natural justice must be followed during the proceedings to issue the death warrant. Now, the prisoner must be given sufficient notice of these proceedings and must be present in court with her lawyer for such proceedings. The Supreme Court in *Shatrughan Chauhan* has also held there must be a 14-day period between issuing of the death warrant and the date of execution, during which a last meeting with the family must necessarily be arranged.

GORAKH was among the few prisoners who shared their experience after the issuance of their death warrant. In an intense account, describing what he believed to be his last meal, Gorakh recounted that he was served *dal* (lentils), *roti* (Indian bread) and *sabzi* (vegetables) as his final dinner until he was informed, just a few hours before the scheduled time of his execution, that it had been stayed. Gorakh was convicted for the murder of his five daughters and his special leave petition was dismissed *in limine* by the Supreme Court. Thereafter, a mercy petition was filed on his behalf by the prison authorities, which stated that he was suffering from a mental illness and was undergoing treatment. Nonetheless, Gorakh's mercy petition was rejected by the President, a year and a half later. The date for Gorakh's execution was set in a death warrant proceeding before the appropriate sessions court without producing him or having his lawyer present. The prison in which Gorakh was lodged went out of its way to arrange for his family to meet him on the evening before his execution. Strangely, it was only during this last meeting with his brother and sons the evening before that he learnt he was to be hanged the next morning. In his last few hours, while he was afraid of death, he recounted that he was also grateful that his ordeal as a death row prisoner would soon end. The stay on Gorakh's execution was achieved through a public interest litigation initiated by a human rights organisation which learnt about his impending execution through newspaper reports, a day before the scheduled hanging. On the day fixed for Gorakh's execution, the Supreme Court issued a stay order considering that he had received no official communica-

IMPACT

tion regarding the rejection of his mercy petition by the President and did not have sufficient time to pursue any post-mercy judicial remedies. In the course of this litigation, the Supreme Court commuted his death sentence and noted that while Gorakh's mercy petition mentioned that he suffered from a mental illness since his trial, the Home Ministry failed to consider this important factor.

The accounts of the prisoners seeking mercy allow us to understand their fears and despair which are aggravated by the opacity of the process. The grave procedural irregularities highlighted in the chapter reinforce the fact that the system has failed in ensuring the meaningful realisation of the right to life guaranteed to all citizens alike.

In the discourse on crime and punishment, the accounts of the families of the offender are often ignored. When a punishment like the death penalty is imposed, there is very little space for grappling with its impact on people who hold absolutely no moral responsibility for the crime. As a society, we have never really paid any serious attention to the consequences faced by families when one of their members is in a position of conflict with the criminal justice system. In this context, the offences for which death sentences have been imposed present the starkest picture. The crimes in question and the reactions to them tend to have wider connotations that go much beyond the crime. These social and political meanings attached to the crime then translate into myriad social, economic, legal and psychological consequences for family members of the accused/convict. While many of these crimes may not have received national media coverage, they did attract tremendous local attention. The crimes attracted a spectrum of responses ranging from violence and social and economic boycott to strong community support. These reactions were strongest at the time of the arrest. As the case of the prisoner travelled through the complex criminal justice system, the families also had to deal with the possibility of the prisoner being one step closer to execution.

We also encountered cases where the families felt a deep sense of shame due to the crime in question. There were instances of abandonment of the prisoner as an expression of their intense revulsion of what they believed the prisoner had done, or abandonment as an attempt to show the community that they also believed that the prisoner deserved harsh punishment.

Through a series of narratives in the Chapter on 'Impact', we have attempted to demonstrate the complexities of experiences that families of prisoners have undergone. These accounts provide an insight into the manner in which revenge and disapproval play out in the context of society's views on crimes and those who commit crimes.

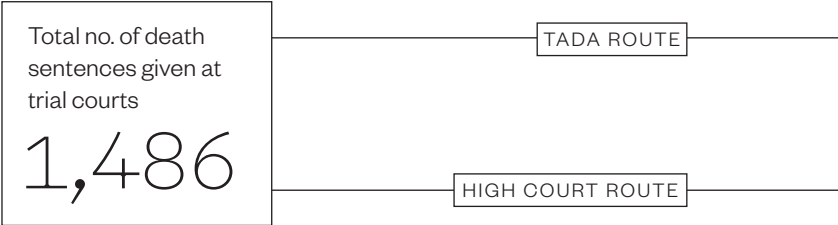
DEATH SENTENCES IN INDIA (2000–2015): AN OVERVIEW

During the course of the Project we realised that there existed a dearth of information about prisoners sentenced to death in India. We believe that empirical research on the number of prisoners sentenced to death, the number of death sentences confirmed in the appellate courts and an analysis of the nature of offences at different stages would contribute towards a more informed debate on the issue. In the Report, we present an overview of the death sentence cases in India during the period from 2000 to 2015 wherein we have attempted to trace the outcome of each death sentence case through the criminal appeal process, categorised the cases as per the nature of offence and recorded other details such as gender of the accused and number of deceased victims.²⁵ In the process, we were able

to reasonably determine the number of death sentences that were confirmed and commuted by the appellate courts along with determining the number of death sentences that were ultimately converted into acquittals during the appeals process.

During the period of this study, of the 1,486 death sentences imposed by the trial courts²⁶ for which the outcome across the appellate stages could be traced, only 4.9% (73 prisoners) remained on death row after the appeal in the Supreme Court was decided. Of the total death sentences, 65.3% (970 prisoners) were commuted, and another 29.8% (443 prisoners) of the prisoners sentenced to death at the trial court stage were acquitted by the end of the judicial ladder.²⁷

Graphic 16
Fate of prisoners sentenced to death by trial courts at the end of the judicial ladder



²⁵ The method of computing figures for the purposes of this chapter have been provided in detail in the sections on 'Methodology' and 'Calculating the figures'.

²⁶ For the purposes of this section, trial courts include both ordinary trial courts and designated courts established under the Terrorist and Disruptive Activities (Prevention) Act, 1987.

²⁷ The judicial ladder for a prisoner sentenced to death at the trial court and subsequently acquitted or commuted in the High Court has been assumed to be exhausted at the High Court, unless the decision of the High Court was enhanced to death sentence by the Supreme Court. For tracking the outcome of cases from the trial court to the Supreme Court, prisoners whose cases were pending at the High Court or the Supreme Court, or those for whom the outcome could not be traced at either of the two appeal stages, have not been included. Therefore, out of the 1,810 prisoners sentenced to death at the trial court, only 1,486 are considered while tracking the outcome of death sentence cases from the trial court to the Supreme Court, with the following category of cases being filtered out: cases which were pending in either of the two appellate courts, cases decided in High Court for which outcomes could not be ascertained, cases that were sent for retrial or remitted to a lower court, cases that were abated, cases that could not be decided on account of absconsion of the accused, and cases where the accused was declared as juvenile in the High Court.

No. of prisoners
sentenced to death
by TADA courts

23

SUPREME COURT OUTCOMES

No. of prisoners commuted at Supreme Court	No. of prisoners acquitted at Supreme Court	No. of prisoners confirmed at Supreme Court
16	1	6****

Prisoners on death row at
end of appeals process

73 (4.9%)

SUPREME COURT OUTCOMES

No. of prisoners commuted at Supreme Court	No. of prisoners acquitted at Supreme Court	No. of prisoners confirmed/ enhanced at Supreme Court
108	15	67

HIGH COURT OUTCOMES

No. of prisoners commuted at High Court	No. of prisoners acquitted at High Court	No. of prisoners confirmed at High Court
851*	428**	184***

No. of prisoners
sentenced to death by
ordinary trial courts

1,463

* Five out of the 851 prisoners commuted at the High Court had their sentences enhanced to death penalty at the Supreme Court.

** One out of the 428 prisoners acquitted at the High Court had his sentence enhanced to death penalty at the Supreme Court.

*** This figure does not include High Court confirmations which were pending in the Supreme Court at the time of compiling of data.

**** The sentence of life imprisonment given to four prisoners by a designated court under the Terrorist and Disruptive Activities (Prevention) Act, 1987 (TADA) was enhanced to death by the Supreme Court. These prisoners have been excluded for the purposes of this graphic as they were initially sentenced to life imprisonment.

CONCLUSION

It is evident that we have too little information about the manner in which the harshest punishment in India's criminal justice system is administered. The political and philosophical debates relevant to the death penalty must be situated in the context of minute details about the processes involved and the structural realities of the criminal justice system. Those debates must also be informed by a substantial understanding about the nature of the death penalty as a form of punishment. Very often we limit ourselves to thinking about the death penalty purely in terms of an execution and hardly any attention is paid to the experience of living on death row. An attempt to truly understand that experience should inevitably lead us to a more searching examination of the relevant processes.

This Report is a preliminary attempt to understand some of those structural realities and processes that inform the administration of the death penalty in India. There is a wide gap between the provisions of law and the realities of its enforcement. The flagrant violations of even the most basic protections like those against torture and self-incrimination, along with the systemic inability to provide for competent representation or to undertake effective sentencing procedures in capital cases is symptomatic of the nature and extent of the crisis within the criminal justice system. The quality of legal representation emerged as an extremely serious concern. The absence of any real communication with their lawyers, baffling courtroom proceedings, and no real knowledge of progress in their case at the appellate stages only intensify the fear and suffering that prisoners experience on death row.

The burdens imposed by the criminal justice system in the context of the death penalty are extremely difficult to navigate without sufficient economic, social and political resources. Much of the discussion of the death

penalty is focused on the nature of the crime without reference to systemic factors that are at the core of the issue. In that context it is crucial to examine on whom the burden of the death penalty falls. The socio-economic profile of prisoners documented in this Report begins to demonstrate that these burdens have a disparate impact on vulnerable and marginalised sections of society along the lines of economic status, caste, religion, and levels of educational attainment. While there has always existed an intuition about this in discussions on the death penalty, the socio-economic profile presented in this Report is hopefully the first step towards understanding the precise burdens that such marginalised sections bear in the context of the death penalty. It is imperative that the socio-economic profile is read in conjunction with the various practices adopted in the criminal justice system to understand the full import of the methods adopted by the investigation agencies, the bar, courts, and prisons.

We need to make much more of an effort to understand the nature of the death penalty as a punishment. It would be grossly inadequate to understand the punishment as only the fact of 'taking of life'. The conversations with prisoners sentenced to death led to the realisation that the suffering of the death penalty is not only about the fear of death or not wanting to die. The dimension of the everyday uncertainty between life and death often does not get the necessary attention it deserves. Many prisoners detested the uncertainty over their lives, often citing the wait to know whether they would live or die as the worst part of the punishment. This perspective raises many complex moral questions that we have not really engaged with. An essential part of that journey should be a focus on the conditions of incarceration of prisoners sentenced to death in India.

Much of the Report also demonstrates that there is a lot more to the discussion on the death penalty than the nature of the crime. One important consideration is the persons that prisoners have become during their time in prison. The law on sentencing people to death and affirming the death sentences in the appellate stages takes a view of the person frozen in time, reduced to just that moment when the crime occurred. The law does not seem to have the space and imagination to account for the changes in the prisoners on death row while in prison. It is hoped that different parts of the Report will help us to begin understanding the lives of prisoners on death row beyond the crime they have been convicted for and start a process of meaningful engagement with issues of reformation and rehabilitation. None of this is to suggest a justification for the crimes in question but rather to prompt a reflection on the need for a much more holistic determination of justice in these cases.

A very difficult question that we must address is the impact on families of prisoners on death row. We do not seem to have the vocabulary and legal framework to address the violent impact on their lives, given the manner in which such cases are reported. It is important to recognise their vulnerability and understand how their experience of stigma, social boycott and tremendous economic impact marginalises them further.

The Report does not seek to make a case for the abolition of the death penalty. However, integral to the Report's purpose is to throw light on some difficult questions concerning the criminal justice system that is used to condemn individuals to death. These questions are not asked often enough but concern issues that must form the very core of the discussion on the death penalty. Whether the death penalty should remain or not requires a wider consideration of factors apart from those discussed in this Report.

However, a discussion on the death penalty cannot be carried out by ignoring systemic realities. Irrespective of the the sides we may take on the death penalty as a philosophical issue, we need to acknowledge that the nature of the crime cannot be the only relevant consideration. The Report indicates that the harshest punishment in our legal system is administered using a criminal justice system that is in a deep crisis at multiple points. To rely on such a system not only raises concerns of the rule of law but also asks questions of our own humanity.

॥ न्यायस्य प्रमाणं स्यात् ॥



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