

॥ दायिस्त्र प्रमाणं स्यात् ॥



DEATH PENALTY IN INDIA

ANNUAL STATISTICS

2016

Centre on the Death Penalty

NATIONAL LAW UNIVERSITY DELHI

Disclaimer

This report has been compiled by the Centre on the Death Penalty, National Law University Delhi, for information purposes only.

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Foreword

Accessing accurate and updated statistics on the use of the death penalty in India is an enormous challenge. It is almost impossible to state with any kind of certainty the number of death sentences handed out in any given year or even know the exact number of prisoners under the sentence of death at any given point. Lack of updated records, ineffective data reporting and management practices, barriers to accessing official data that should be in the public domain are some of the reasons that have contributed to this situation. Given that it is the harshest punishment in our criminal justice system, the absence of such basic figures speaks volumes about the level of our engagement with concerns surrounding the administration of this punishment. Additionally, the fact that there exists no reliable data even on the number of executions carried out in independent India speaks to the opacity that surrounds the death penalty.

This Annual Statistics Report attempts to address these concerns by collating basic data on the use of the death penalty in India. We have relied on a variety of sources to put together this information - monitoring judgments, official data provided by some prison departments in state capitals, information received from some High Courts, RTI applications, and newspaper reports. The processes adopted in the course of preparing this Report revealed the limitations of each of these sources, and therefore preclude any claim that this data is exhaustive. Despite this, the Report is the most comprehensive source on the status of death penalty cases in India.

We are committed to ensuring that reliable and exhaustive data on the use of the death penalty in India is consistently in the public domain, and subsequent editions of the Annual Statistics Report will take important strides towards that goal.

Statistics in 2016

The numbers below account for death sentences awarded by sessions courts, and acquittals and commutations by appellate courts. Each number in this Report represents a person and not a case, unless otherwise specified. Statistics for the Supreme Court pertain to criminal appeals only. A more detailed analysis of the Supreme Court's engagement with the death penalty in 2016 is reflected later in this Report.

| | |
|--|------------|
| PRISONERS ON DEATH ROW AS ON 31ST DECEMBER 2016 | 397 |
|--|------------|

| | |
|--|------------|
| PERSONS SENTENCED TO DEATH BY SESSIONS COURTS | 136 |
|--|------------|

| | |
|-----------------------|-----|
| HIGH COURT ACQUITTALS | 014 |
|-----------------------|-----|

| | |
|-------------------------|-----|
| HIGH COURT COMMUTATIONS | 044 |
|-------------------------|-----|

| | |
|--------------------------|-----|
| HIGH COURT CONFIRMATIONS | 015 |
|--------------------------|-----|

| | |
|---------------------------|-----|
| SUPREME COURT ACQUITTALS* | 003 |
|---------------------------|-----|

| | |
|------------------------------|-----|
| SUPREME COURT COMMUTATIONS** | 007 |
|------------------------------|-----|

| | |
|-------------------------------|-----|
| SUPREME COURT CONFIRMATIONS** | 000 |
|-------------------------------|-----|

*This refers to persons acquitted of charges attracting the death penalty. However, two of these appellants were convicted on other charges.

**These pertain to criminal appeals only. While the Supreme Court did not confirm any death sentence at the criminal appeal stage, there was one confirmation (BA Umesh vs. State of Karnataka) at the review petition stage.

Death Warrants¹ issued in 2016

In May 2015, the Supreme Court of India laid down guidelines for the issuance of death warrants in *Shabnam v. Union of India and Ors*². Sessions Courts can no longer issue death warrants for executions in undue haste, without a hearing, secretly, or prematurely. This is to ensure that all legal remedies of a prisoner on death row have been exhausted and that the guidelines in *Shatrughan Chauhan v. Union of India*³ have been complied with before an execution.

Despite this judgment by the Supreme Court, Sessions Courts issued death warrants for the execution of 5 prisoners before they had exhausted all their legal options. While the Supreme Court stayed these warrants for four of them, the High Court of Karnataka did the same in the case of B.A. Umesh in October, 2016.

B.A. Umesh

A death warrant was issued by the Sessions Judge for the execution of B.A. Umesh in October 2016, despite it remaining open to him to challenge the rejection of his mercy petition in both the High Court of Karnataka and the Supreme Court. The warrant was subsequently stayed by the High Court of Karnataka.

Javed Khan

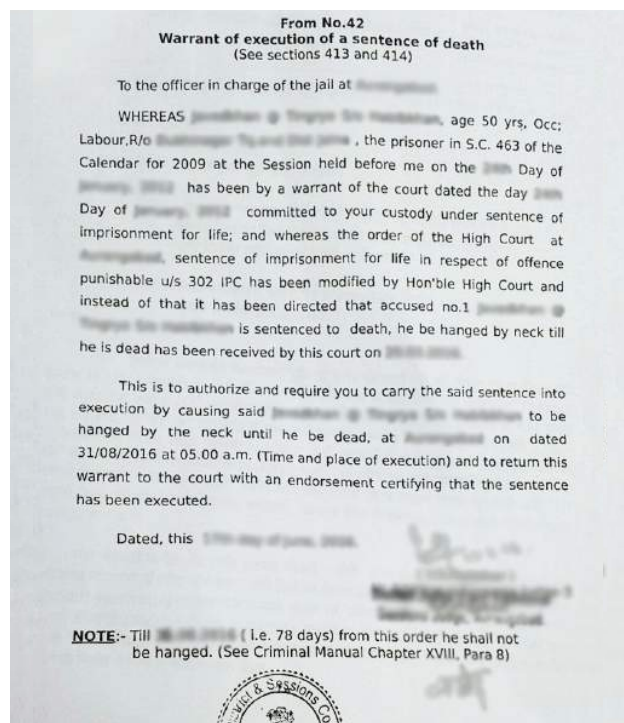
In June 2016, a death warrant was issued by the Sessions Judge, Aurangabad for the execution of Javed Khan solely on the basis of enhancement of his life sentence to one of death by the High Court of Aurangabad. His criminal appeal is currently pending before the Supreme Court.

Sachin Kumar Singhraha

In March 2016, the Supreme Court stayed the death warrant issued by the Sessions Judge for the execution of Sachin Kumar Singhraha. The warrant was issued within days of confirmation of his death sentence by the High Court of Madhya Pradesh at Jabalpur and before he could appeal to the Supreme Court. Sachin's criminal appeal is currently pending before the Supreme Court.

Vikram Singh and Jasvir Singh

Despite a legal remedy remaining, to challenge the rejection of their mercy petitions at the High Court of Punjab and Haryana and the Supreme Court, death warrants were issued in October 2016 for the execution of Vikram Singh and Jasvir Singh, co-accused in a case. These warrants were subsequently stayed by the Supreme Court. Their review petitions are reserved for judgment by the Supreme Court.



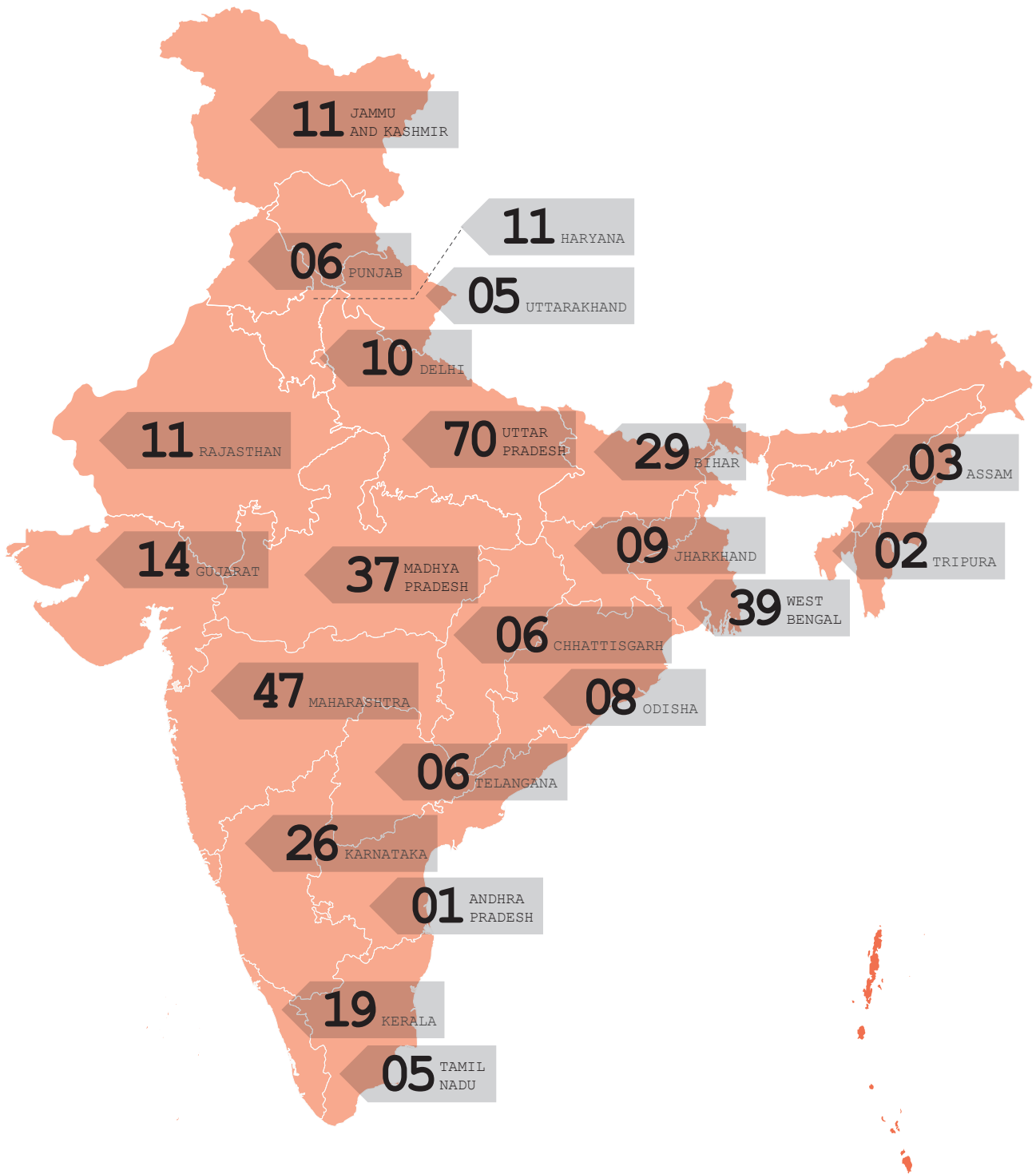
Death Warrant issued by a Sessions Judge

¹ A death warrant specifies the date, time and place of execution and is issued by the court that first sentences the person to death. This is laid down in Form No. 42 of the Second Schedule in the Code of Criminal Procedure, 1973.

² (2015) 6 SCC 702

³ (2014) 3 SCC 1

Distribution of Prisoners on Death Row as on 31st December 2016



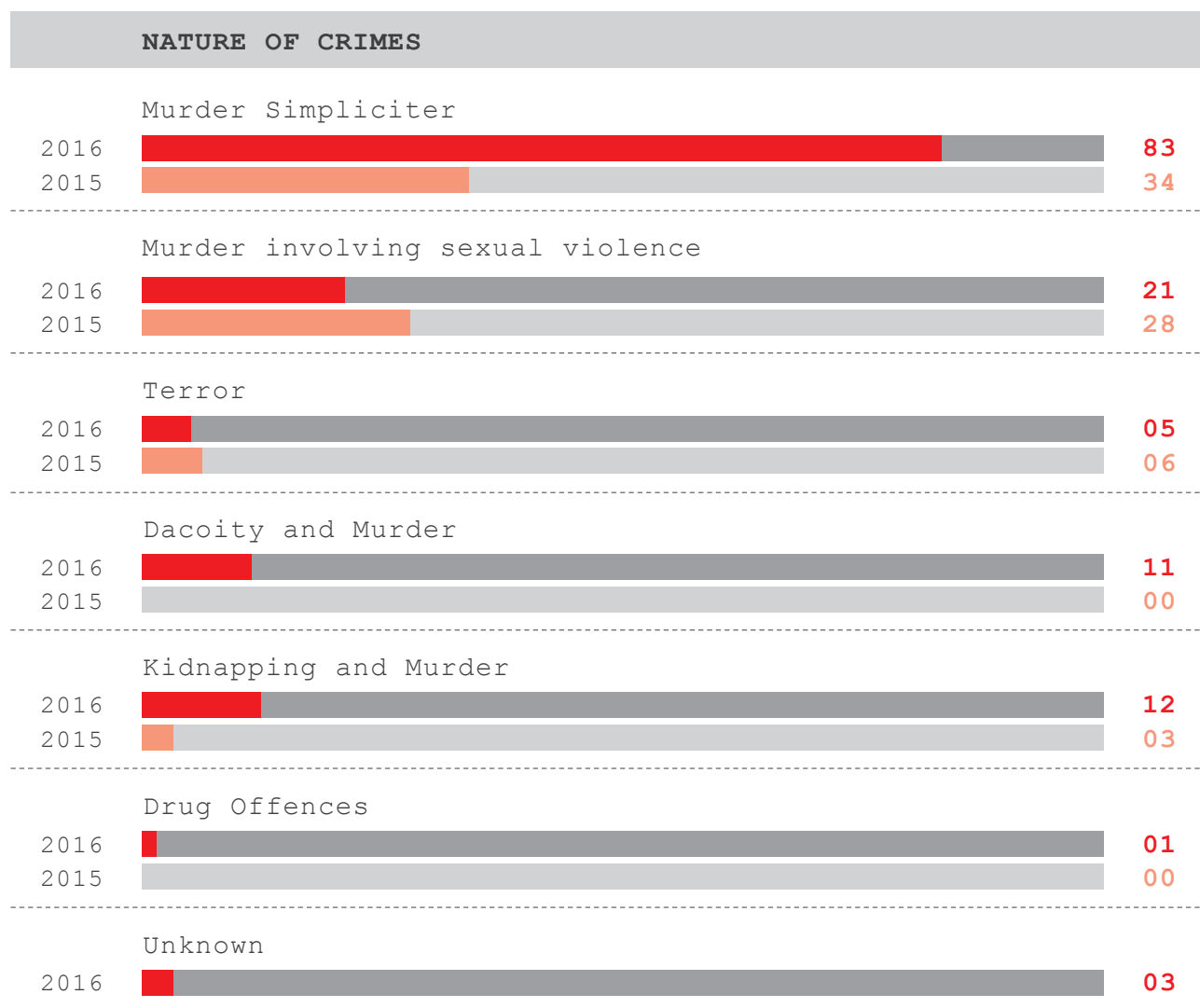
- ▶ 11 prisoners have not been classified state-wise as they were sentenced to death under the Army Act, 1950. The status of these cases are unknown.
- ▶ No information was forthcoming from the following states and union territories: Arunachal Pradesh, Manipur, Meghalaya, Mizoram, Nagaland, Sikkim, Goa, Puducherry, Dadra & Nagar Haveli, Daman & Diu, Lakshadweep and Andaman & Nicobar Islands.

Sessions Courts and High Courts in 2016

Status of death sentence cases in Sessions Courts and High Courts

| | 2016 | 2015 |
|--------------------------------|------|------|
| Sessions Court Death Sentences | 136 | 70 |
| High Court Commutations | 44 | 15 |
| High Court Confirmations | 15 | 6 |
| High Court Acquittals | 14 | 3 |

The data on the crimes for which the sentence of death was imposed in 2016 has been categorized into murder simpliciter (includes cases where the prisoners were convicted only for murder), murder involving sexual violence, terror offences, dacoity and murder, kidnapping and murder, and drug offences. The nature of offenses in the case of three prisoners is unknown.



Supreme Court in 2016

Criminal Appeals

Out of seven criminal appeals in death penalty cases that were decided by the Supreme Court in 2016, none were confirmed. This is a significant departure from 2015 when the Supreme Court considered the death sentences of nine prisoners and confirmed eight.

| | 2016 | 2015 |
|---------------|------|------|
| Enhancements | 0 | 0 |
| Commutations | 7 | 1 |
| Confirmations | 0 | 8* |
| Acquittals** | 3 | 0 |
| Pending | 71 | 72 |

*4 prisoners had their Special Leave Petitions dismissed *in limine* by the Supreme Court. Their death sentences were confirmed without a hearing on the merits of the case. The Death Penalty India Report has found that since 2004 there have been 9 cases of *in limine* dismissals.

**These acquittals pertain to charges that attract the death penalty.

Acquittals

A bench comprising Justices Ranjan Gogoi, Prafulla C. Pant and Uday Umesh Lalit in September 2016 acquitted three persons of charges attracting the death penalty.

In *Dhal Singh v. State of Chhattisgarh*⁴, the appellant was acquitted of all charges in a 2:1 majority with Justice Pant dissenting on conviction. Dhal Singh was sentenced to death in February 2012 by a Sessions Court in Durg, Chhattisgarh. The High

Court had confirmed his death sentence in August 2013, and at the time the Supreme Court acquitted him, he had spent three years on death row.

In *Rajesh v. State of Madhya Pradesh*⁵ and *Govindaswamy v. State of Kerala*⁶, the appellants were acquitted of murder charges, but the conviction on charges of rape under the Indian Penal Code [IPC] were upheld. They have been sentenced to undergo rigorous imprisonment for life.

| NAME | CHARGES | DECISION |
|--------------|--|--|
| Dhal Singh | Murder (S. 302 of IPC) | Acquitted of all charges |
| Rajesh | Sexual offence involving murder (S. 302, S. 376 and S. 377 of IPC) | Acquitted on the charge of murder and sentenced to rigorous imprisonment for life under S. 376 of IPC |
| Govindaswamy | Sexual offence involving murder (S. 302 and S. 376 of IPC) | Acquitted on the charge of murder and sentenced to rigorous imprisonment for life under S. 376 and S. 377 of IPC |

⁴ Criminal Appeal No(s).162-163 of 2014, Judgement dated 23.09.2016

⁵ Criminal Appeal No(s).1481-1482 of 2014, Judgement dated 08.09.2016

⁶ Criminal Appeal No(s).1584-1585 of 2014, Judgement dated 15.09.2016

Commutations

Two different benches of the Supreme Court commuted the death sentences of four prisoners in 2016.

While commuting the death sentence in *Shyam Singh v. State of Madhya Pradesh*⁷, *Ghulam Mohi-ud-din Wani Vs. State of Jammu and Kashmir*⁸, and *Kamlesh Ghanti v. State of Madhya Pradesh*⁹, Justices Ranjan Gogoi, Prafulla C. Pant and Uday Umesh Lalit invoked mitigating factors such as young age of the accused, no prior criminal history, conduct of the accused while in custody, socio-economic background, addiction to drugs,

unclear role of the accused in commission of the crime, and circumstantial evidence.

In the case of *Tattu Lodhi v. State of Madhya Pradesh*¹⁰, a bench comprising Justices Jasti Chelameswar, Shiva Kirti Singh and Abhay Manohar Sapre took the view that the facts of the case did not fall under the doctrine of 'rarest of rare' and therefore the death sentence was commuted to life imprisonment, with a further direction that the appellant shall not be released from prison till he completes actual period of 25 years.

| NAME | CHARGES | DECISION |
|-------------------------|--|---|
| Shyam Singh | Murder (S. 302 of IPC) | Life imprisonment subject to remission |
| Ghulam Mohi-ud-din Wani | Murder (S. 302 of IPC) | Life imprisonment subject to remission |
| Kamlesh Ghanti | Sexual offence involving murder (S. 302 and S. 376(A) of IPC) | Rigorous imprisonment for the remainder of natural life |
| Tattu Lodhi | Murder, kidnapping and attempt to rape (S. 302, 366 (A), 363, 364, 376 (2)(f), 511 of IPC) | Rigorous imprisonment till he completes imprisonment of a period of 25 years. |

What does *life imprisonment* mean?

In December 2015, a Constitution Bench of the Supreme Court in *Union of India v. V. Sriharan*¹¹, laid down that life imprisonment can mean imprisonment for the remainder of one's natural life. To this end, the State Government's power of remission under the Code of Criminal Procedure can be excluded by the Supreme Court and the High Courts (only).

⁷ Criminal Appeal No(s).864/2013, Judgement dated 01.09.2016

⁸ Criminal Appeal No(s).1275-1276 of 2014, Judgement dated 15.09.2016

⁹ Criminal Appeal No(s).1720-1721/2014, Judgement dated 21.09.2016

¹⁰ Criminal Appeal No(s).292-293 of 2014, Judgement dated 16.09.2016

¹¹ (2016) 7 SCC 1

Review Petitions

In September 2014, a Constitution Bench of the Supreme Court in *Mohd. Arif. v. The Registrar, Supreme Court*¹², declared that review petitions in all death sentence cases are to be heard in open court.

In 2016, the Supreme Court decided two Review Petitions, of which one resulted in commutation of the death sentence of three prisoners, and the other upheld the death sentence. In 2015, only one Review Petition was decided to confirm the death sentence.¹³

In March 2016 a bench comprising Justices Ranjan Gogoi, Arun Mishra and Prafulla C. Pant,

in *C. Muniappan & Ors. v. State of Tamil Nadu*¹⁴, commuted the death sentence to life imprisonment of three prisoners on the grounds that the judgment under review overlooked certain vital facts and circumstances that ought to have been considered.

In *B.A. Umesh v. State of Karnataka*¹⁵ the death sentence was upheld as the bench comprising Justices Ranjan Gogoi, Prafulla C. Pant and A.M. Khanwilkar did not find sufficient reason to review or modify the judgment. In October 2016, a death warrant was issued for the execution of B.A. Umesh which was subsequently stayed by the High Court of Karnataka.

| NAME | CHARGES | DECISION |
|--|--|--|
| C. Muniappan, Nedu @Nedunchezhan, Madhu @Ravindran | Murder (S. 302 of IPC) | Death sentence commuted to life imprisonment |
| B.A. Umesh | Sexual offence involving murder (S. 302 and S. 376 of IPC) | Death sentence upheld |

¹² (2014) 99 SCC 737

¹³ Yakub Memon's review petition was dismissed in April 2015 in open court. In July 2015 his curative petition, one of the last appellate remedies available at the Supreme Court, was rejected. Yakub Memon was hanged on July 30, 2015.

¹⁴ Review Petition (CrI.) D 14086 of 2011, Judgment dated 11.03.2016

¹⁵ Review Petition (CrI.) Nos. 135-136 of 2011, Judgment dated 03.10.2016

President's Exercise of Clemency Powers in 2016

The President of India, in exercise of his powers of clemency under Article 72 of the Constitution of India, rejected the mercy petitions of six prisoners, and commuted the death sentence of one prisoner.

In the order commuting Jeetendra Gehlot's death sentence, the President stated that Gehlot would spend the rest of his natural life in prison.

Status of mercy petitions decided by the President in 2016

| NAME OF THE PRISONER | DATE OF SESSIONS COURT SENTENCE | DATE OF SUPREME COURT CONFIRMATION | DATE OF DISPOSAL OF MERCY PETITION | DECISION |
|----------------------------|---------------------------------|------------------------------------|------------------------------------|----------|
| Mofil Khan | 01/08/2008 | 09/10/2014 | 06/03/2016 | Rejected |
| Mobarak Khan | 01/08/2008 | 09/10/2014 | 06/03/2016 | Rejected |
| Shabnam | 15/07/2010 | 15/05/2015 | 07/08/2016 | Rejected |
| Jasvir Singh | 21/12/2006 | 25/01/2010 | 07/08/2016 | Rejected |
| Vikram Singh | 21/12/2006 | 25/01/2010 | 07/08/2016 | Rejected |
| Jeetendra Nainsingh Gehlot | 23/02/1998 | 05/09/2000 | 18/09/2016 | Commuted |

Source: Official Website, President's Secretariat

After having waited for 14 years, Krishna Mochi, Dharmendar Singh, Nanhe Lal Mochi and Bir Kuer Paswan, finally received a decision on their mercy petition in January 2017 from the President of India. The President commuted their death sentence to life imprisonment. After being first sentenced to death in June 2001 for events arising in the Bara massacre that took place in February 1993, the Supreme Court confirmed their death sentences in April 2002. Though they had filed their mercy petitions in March 2003, reports emerged in the recent past suggesting that neither the Government of Bihar nor the Government of India had any record of their petitions.¹⁶

¹⁶ 'Govt lost mercy petition of 4 Maoist convicts on death row', Hindustan Times, July 31, 2015

Recent Political Developments

Parliament

In July 2015, Mr. D. Raja of the Communist Party of India moved a Private Member's Resolution in the Rajya Sabha seeking abolition of the death penalty in India. The Resolution further urged the House and the Government to declare a moratorium on imposition of death sentences by courts, pending abolition. The Minister of State for Home Affairs, Kiren Rijju, stated that prevailing circumstances in India do not warrant abolition.

After debate and discussion, the Resolution was put to a vote and rejected by the House.

In May 2016, the Anti-Hijacking Bill was passed by both Houses of Parliament. The Bill introduced the death penalty for perpetrators, where the offence results in death of those in hostage or security personnel and life imprisonment in all other cases.

States

The Bihar State Legislative Assembly in March 2016 unanimously passed the Bihar Excise (Amendment) Bill, 2016 to ban country-made liquor. The Bill introduced the death sentence for manufacturers and distributors of illicit liquor in case of liquor related deaths. However, in October 2016, the Patna High Court quashed this Act as being unconstitutional. This has now been stayed by the Supreme Court.

While addressing the 'Namami Devi Narmade - Seva Yatra' at Sandiya village of Hoshangabad district in January 2017, Madhya Pradesh Chief Minister Shivraj Singh Chouhan asked for deliberations across the country for laws to be enacted that would allow imposition of capital punishment for rape.¹⁷ Later that month, at a youth convention in Rewa, the Chief Minister announced that his government would alter the law to make rape of minors punishable by death.¹⁸

United Nations

In November 2016, India opposed the United Nations Resolution (A/Res/71/187) calling for a moratorium on executions with a view to abolishing the death penalty, as it goes against Indian statutory law. The Resolution was, however, adopted by the General Assembly by 115 votes to 38, with 31 countries abstaining.

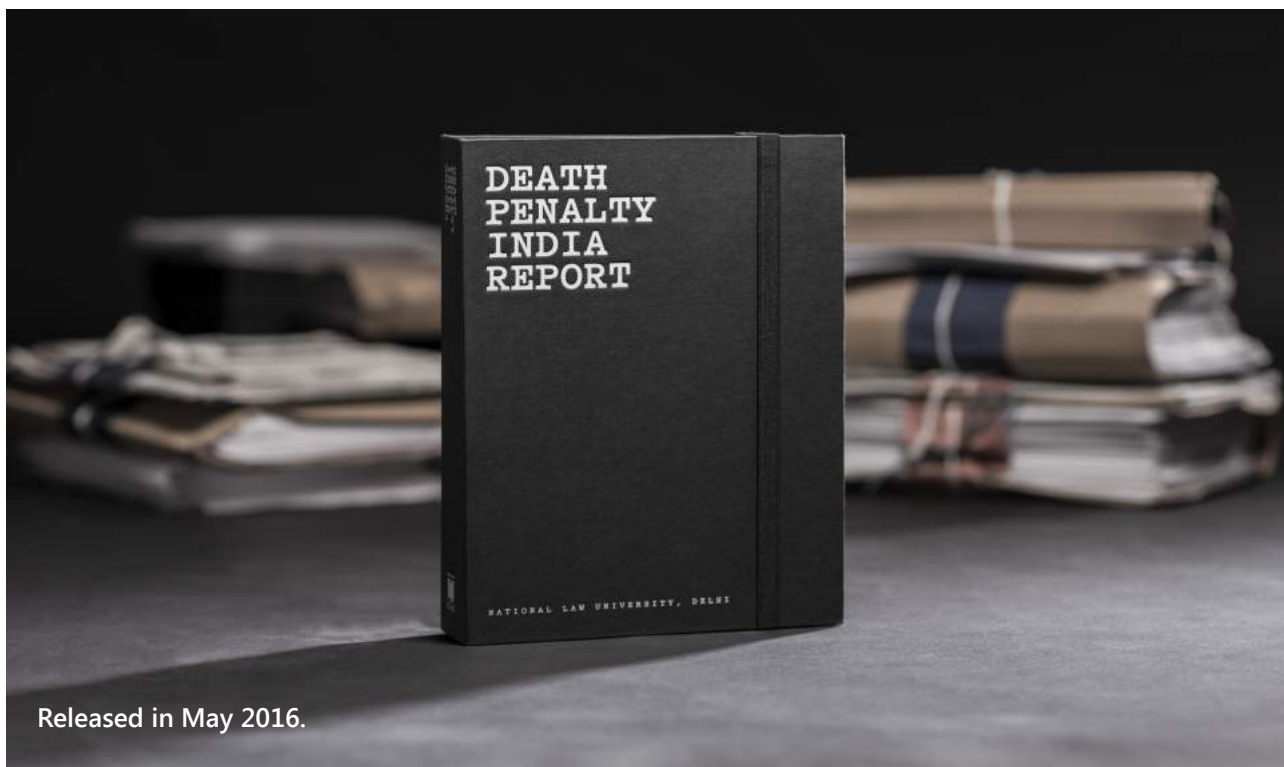
Countries that opposed the Resolution besides India, included the United States of America, Japan, Bangladesh, Kuwait, Egypt, Iraq, Iran, China, Saudi Arabia, Pakistan and Afghanistan. India opposed a similar call for a moratorium in 2007 and 2012.

¹⁷ 'CM Shivraj Singh Chouhan bats for death to rapists', Deccan Chronicle, January 12, 2017

¹⁸ 'Bhopal: Will make law for death penalty for rapists of minors says CM', The Free Press Journal, January 21, 2017

Death Penalty India Report, 2016

The Death Penalty India Report by National Law University Delhi is India's first comprehensive report on the socio-economic profile of prisoners sentenced to death and the administration of the death penalty. It is available in three parts, Volume I (quantitative), Volume II (qualitative), and an Executive Summary, on our website www.deathpenaltyindia.com.





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