

DEATH PENALTY IN INDIA



PROJECT 39A
EQUAL JUSTICE
EQUAL OPPORTUNITY

ANNUAL ■ STATISTICS ■ REPORT ■ 2023



PROJECT 39A
EQUAL JUSTICE
EQUAL OPPORTUNITY

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LIST OF ABBREVIATIONS

Bharatiya Nyaya Sanhita Bill, 2023	BNS
Bharatiya Nagarik Suraksha Sanhita Bill, 2023	BNSS
Bharatiya Sakshya Bill, 2023	BSB
Code of Criminal Procedure, 1973	CrPC
Indian Evidence Act, 1872	IEA
Indian Penal Code, 1860	IPC

FOREWORD

This is the eighth edition of the *Death Penalty in India: Annual Statistics Report* published by Project 39A at National Law University, Delhi.

2023 saw the highest number of persons on death row at the end of a calendar year in nearly two decades.¹ There were 561 prisoners under the sentence of death by the end of December 2023, reflecting a 45.71% increase since we started publishing these annual statistics in 2016. 2023 also saw a noticeable decrease in the disposal of cases by the High Courts.

Significantly, 2023 saw the lowest number of appellate court confirmations of death sentences since the compilation of our Annual Statistics in 2016. While the trial courts imposed 120 death sentences in 2023, the appellate courts remained reluctant to use the death penalty. The Supreme Court did not confirm any death sentence in 2023. In the High Courts, only one death sentence was confirmed by the Karnataka High Court in a murder simpliciter case. In doing so, 2023 marks the lowest rate of death sentence confirmations by the appellate courts since 2000.

Through a series of acquittals and remands in 2023, the Supreme Court recognised serious lapses in police investigation and appreciation of evidence by trial courts in death penalty cases. In all three of its commutation decisions in 2023, the Supreme Court continued the trend of relying on reports pertaining to the psychiatric evaluation, jail conduct and life circumstances of the accused from previous years. These developments have found its way to High Courts, with the Kerala High Court and Telangana High Court calling for these reports in thirteen death sentence confirmation cases before them in 2023.

This edition of the report follows the same methodology as previous years. We relied on news reports to gather information and updates on death sentences, which were then verified using the e-courts platforms of trial courts and appellate courts. Trial court judgments were tracked to examine their compliance with the Supreme Court's decision in *Manoj and ors. v. State of Madhya Pradesh* from May 2022, directing trial courts to proactively call

¹ Prison Statistics India, National Crime Records Bureau.

OVERVIEW OF DEVELOPMENTS IN 2023

for and consider relevant materials (including psychological evaluation reports and jail conduct reports of the accused) while deciding the sentence.

We would like to thank Sarah (IV Year, Gujarat National Law University), Rehan Mathur (III Year, National Law University, Delhi) and Mudrika Agarwal (III Year, National Law University, Delhi) for their valuable efforts in compiling and verifying the data for this report.

This report would not have been possible without the efforts of Varsha Sharma, Pritam Raman Giriya and Ashna Devaprasad who were instrumental in developing the original directory and database on the death penalty in India. Lubhyathi Rangarajan, Peter John, Poornima Rajeshwar, Rahul Raman, Neetika Vishwanath, Preeti Pratishruti Dash, Gale Andrew, Aishwarya Mohanty, Hrishika Jain and Adrija Ghosh have played key roles in developing previous editions of this report.

At the end of 2023, 120 death sentences were imposed by trial courts and 561 prisoners were living under a sentence of death in India. This makes 2023 the year with the highest number of prisoners on death row in nearly two decades, and the second highest since the turn of this century according to the National Crime Record Bureau's Prison Statistics Reports.² Over the years, the death row population has increased, with 2023 recording the third consecutive year with the highest death row numbers since 2004. The year 2023 also witnesses a 45.71% increase in the death row population since 2015.³

The increase in the death row population can be attributed to the comparatively slower rate of case disposal by High Courts over the years. In a concerning update, the rate of disposal of death penalty confirmation proceedings at the High Courts in 2023 has seen a decrease of 15.00% since the previous year. High Courts disposed of 57 death penalty cases involving 80 prisoners in 2023 whereas in 2022 they disposed of 68 cases involving 101 prisoners. At the end of 2023, 303 cases involving 488 prisoners remain pending before 23 High Courts for confirmation proceedings. This decrease in disposal comes in a year when the High Courts are faced with the highest number of death row prisoners whose cases are pending disposal in its confirmation proceedings.

Significantly, 2023 marks the lowest rate of death sentence confirmations by the appellate courts since the year 2000, with only one death sentence being confirmed by the Karnataka High Court in a murder simpliciter case. Although appellate courts have confirmed very few death sentences over the years,⁴ a single confirmation across High Courts in one calendar year signifies further decline in the rate of confirmations at the High Courts. Similarly, this is the second calendar year after 2021 where the Supreme Court has not confirmed any death sentence.

In a trend continuing since 2019, crimes involving sexual offences formed the majority of death penalty cases at the trial courts.

² Prison Statistics India Report (2004), National Crime Records Bureau. The year 2004 marked the highest death row population at 563 prisoners. The year 2023 marks the highest death row population in the last 19 years.

³ Project 39A, Death Penalty India Report (2016).

⁴ Project 39A, Death Penalty India Report (2016).

Nearly 53.30% of the 120 death sentences imposed by trial courts in 2023 were for homicidal rape cases. Trial courts imposed death sentences in 86.96% of its cases in the absence of any information relating to the accused.⁵ Despite the Supreme Court's mandate in *Manoj v. State of Madhya Pradesh* (2022),⁶ trial courts did not call for the probation officers' report, the report on psychiatric evaluation of the accused or their jail conduct.

Acquittals and remands by the Supreme Court and the High Courts in 2023 indicate significant concerns with the quality of police investigations and appreciation of evidence by lower courts in death penalty cases. The Supreme Court acquitted six prisoners in five cases and remanded two cases involving two prisoners to the trial court and the High Court respectively. In all these decisions, the Supreme Court criticised lapses in the investigations and trials. In a particularly egregious case, Narayan Chetanram Chaudhary was found by the Supreme Court to have been a child at the time of the offence – 28 years post his imprisonment (with 25 years spent on death row).⁷ In a similar vein, High Courts acquitted 36 prisoners of all charges and remanded three cases, involving five prisoners, to the trial court for significant lapses in the cross-examination of forensic evidence and for the perfunctory nature of the sentencing exercise. One writ petition challenging the rejection of a mercy petition was decided by the Karnataka High Court, commuting the prisoner's death sentence on the grounds of prolonged solitary confinement and unexplained delay by the executive in disposing the mercy petition.

In a noteworthy update, the Kerala High Court and the Telangana High Court directed professionals trained in social sciences and social work to assist the courts as mitigation investigators in gathering information on circumstances of the accused in pending death penalty cases before them. These orders signify the implementation of developments in the Supreme Court on capital sentencing at the High Court level.

⁵ Out of the 88 cases, judgements were accessible for 69 cases.

⁶ *Manoj v. State of Madhya Pradesh*, Criminal Appeal No. 248 of 2015.

⁷ *Narayan Chetanram Choudury v. State of Maharashtra*, Review Petition No. 1139 of 2000.

A three-judge bench of the Supreme Court had convened a Constitution bench in September 2022 to reconsider and plug gaps in the capital sentencing law.⁸ In December 2023, the Supreme Court directed relevant parties to file their submissions, indicating a potential hearing in 2024.

In March 2023, the Supreme Court considered a writ petition challenging the constitutionality of hanging as a method of execution, 40 years after hanging had been upheld by the Supreme Court in *Deena v. Union of India* (1983). The Court directed the State to form an expert committee to examine alternative, more humane methods of execution which are in line with constitutional standards.

Developments in criminal law usher potential changes to the death penalty and its administration. In August 2023, the Parliament passed three new bills (the BNS, BNSS and BSB) to repeal the existing criminal codes (the IPC, the CrPC and the IEA), and received Presidential assent on 25th December 2023. The BNS, which replaces the IPC, increases the number of offences punishable with the death penalty, from twelve under the Indian Penal Code 1860 to eighteen offences under the new bill. Additionally, the bills codify procedures on the filing of mercy petitions by death row prisoners, and restrict the scope of sentences that can be imposed upon commuting a death sentence to life imprisonment. Notification pertaining to the date on which these bills are set to come into force is yet to be notified by the Ministry of Home Affairs in the gazette.

2023 also witnessed significant global developments in the death penalty. In April 2023, the Malaysian Parliament passed a bill to abolish the mandatory imposition of death sentences for convictions in specific offences, and to abolish the sentence of life imprisonment till the end of natural life. In pursuance of this development, the Malaysian Parliament also passed a second bill enabling a resentencing exercise for people who had previously

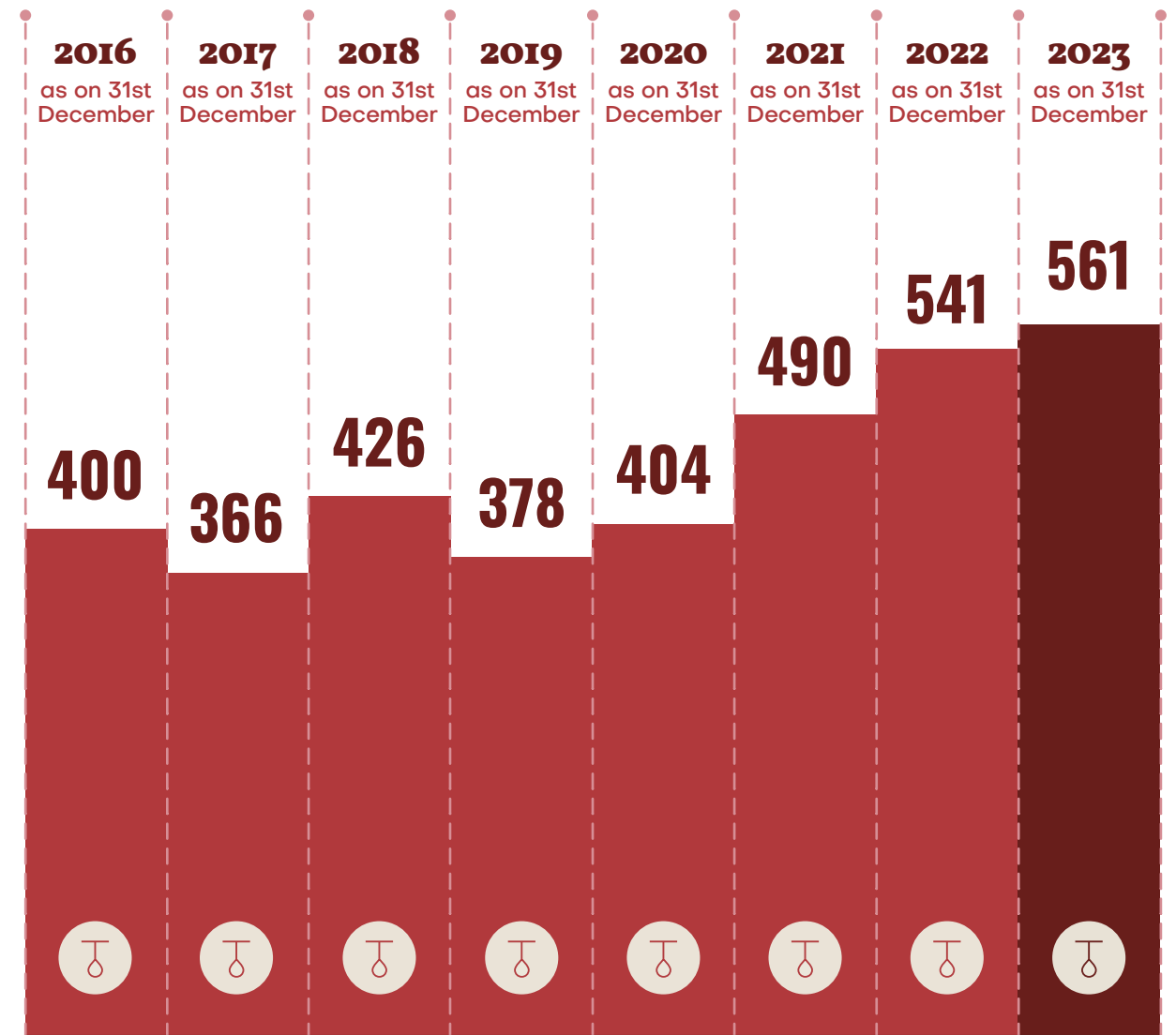
⁸ In re: Framing Guidelines Regarding Potential Mitigating Circumstances To Be Considered While Imposing Death Sentences, Suo Motu Writ Petition (Crl.) No. 1 of 2022.

been sentenced to death or imprisonment for the end of natural life. Ghana's Parliament passed a bill to abolish the death penalty for ordinary crimes in July 2023. In another major development, the President of Kenya commuted all death sentences imposed in the country prior to 21st November 2022 to life imprisonment, based on the recommendation of the Power of Mercy Advisory Committee.

PRISONERS ON DEATH ROW

One prisoner on death row died in prison

Jitendra @ Pappu Shinde died by suicide on 9 September, 2023 at the Yerwada Jail in Maharashtra. Jitendra had been convicted and sentenced to death in November 2017 for the rape and murder of a child. The appeal against his conviction and the confirmation of his death sentence were pending before the Bombay High Court. Jitendra had been in prison for seven years, out of which he had spent six years on death row.

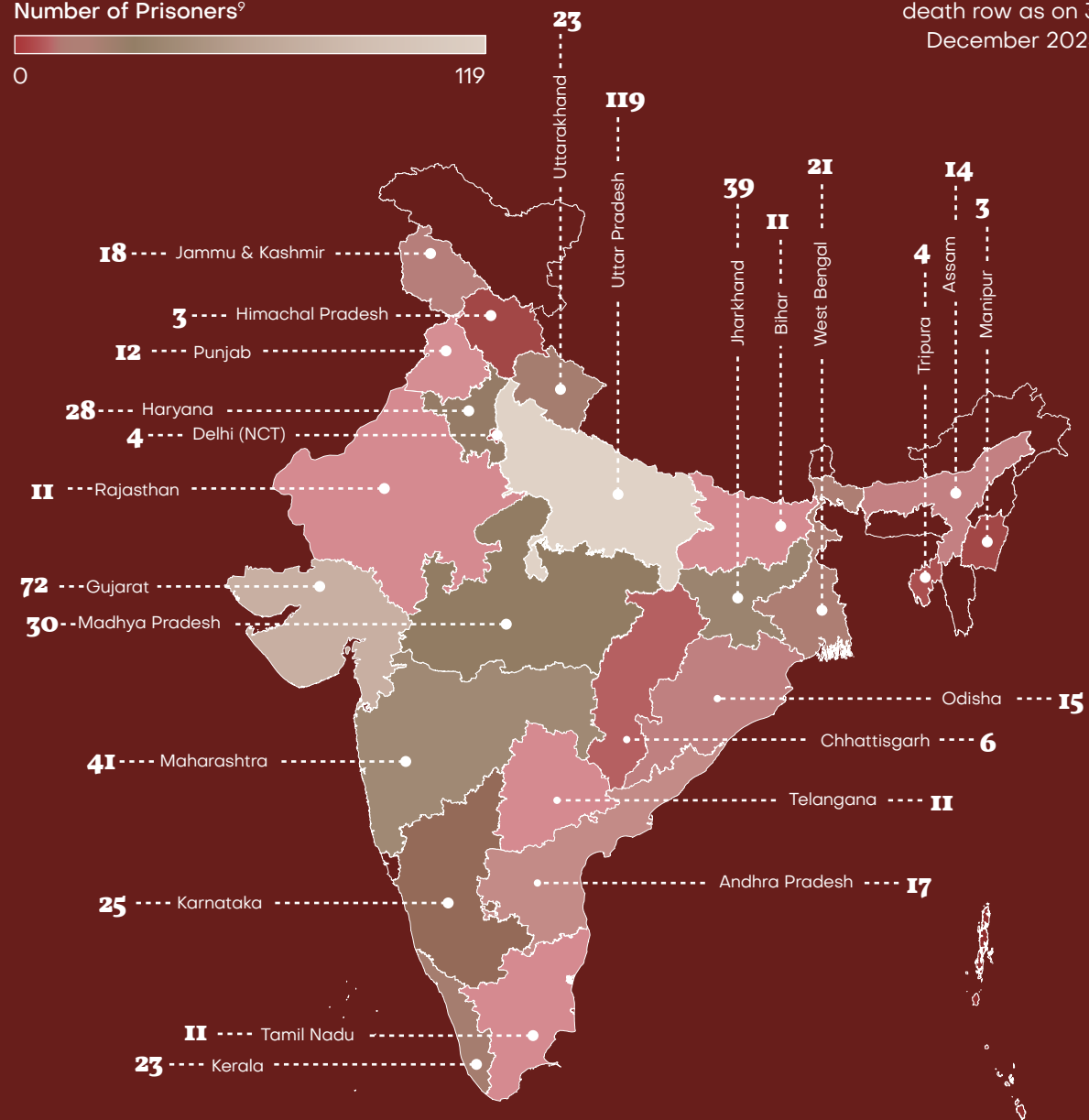


STATE WISE DISTRIBUTION OF PERSONS ON DEATH ROW

561

Prisoners on death row as on 31st December 2023

Number of Prisoners⁹



⁹ This figure denotes the number of prisoners on death row. A prisoner may have multiple death sentences and cases pending disposal at various stages of death penalty proceedings.

DURATION ON DEATH ROW

Median Duration Longest Duration

Number of Prisoners on Death Row on 31st December 2023

HIGH COURTS (CONFIRMATION PROCEEDINGS)



SUPREME COURT (CRIMINAL APPEAL AND RELATED PROCEEDINGS)



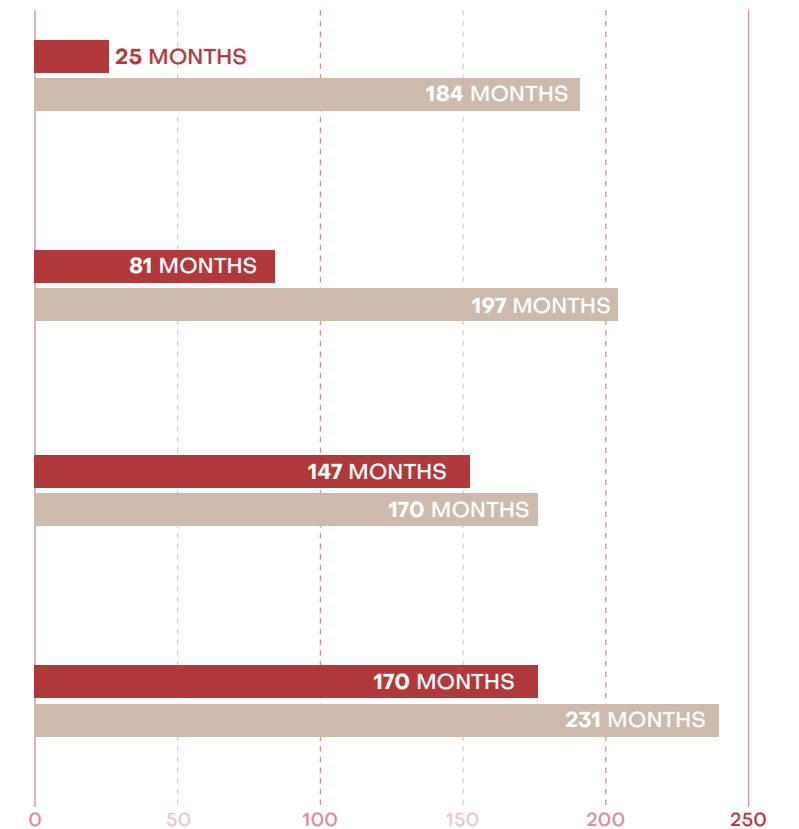
MERCY PETITIONS THAT REMAINED PENDING IN 2023



POST-MERCY PROCEEDINGS AT HIGH COURTS & SUPREME COURT









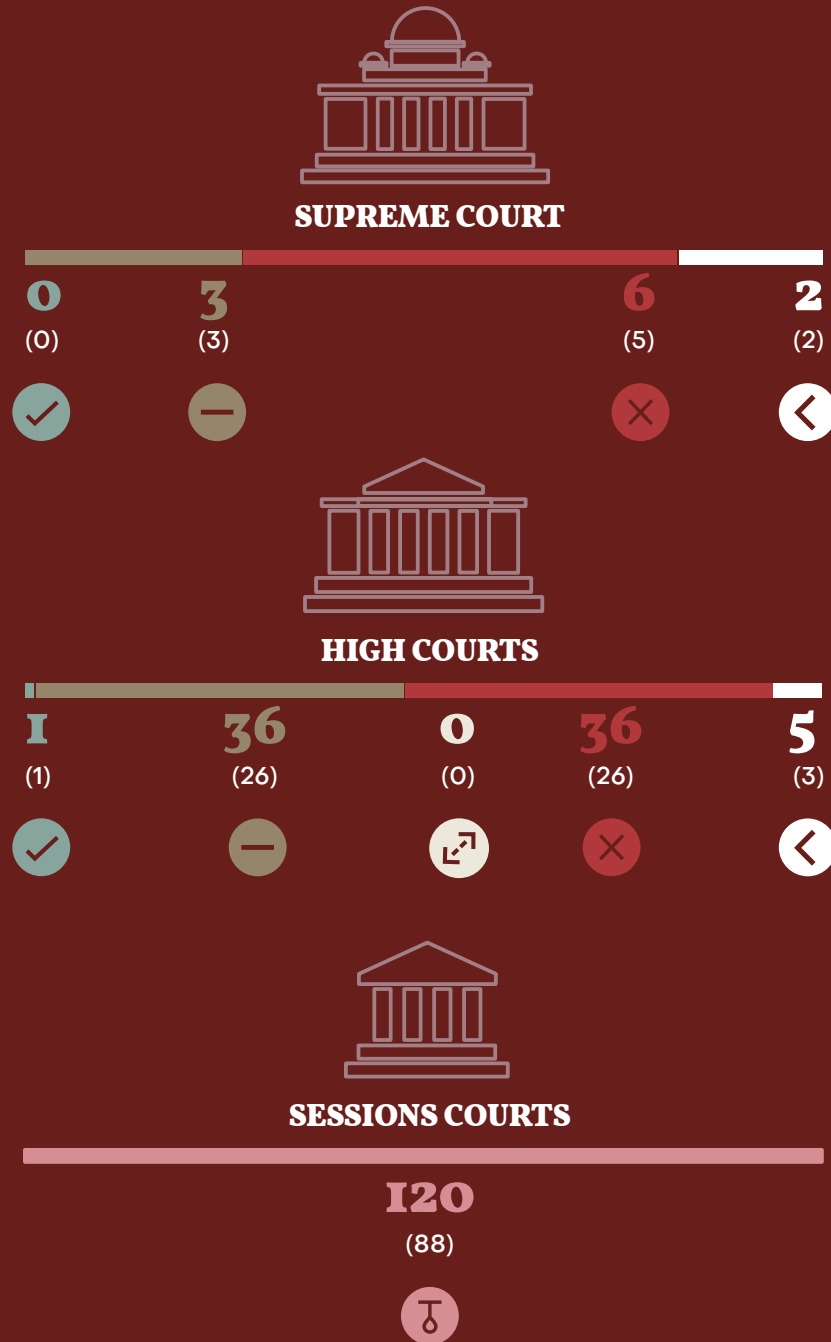
Duration



DEATH PENALTY CASES 2023

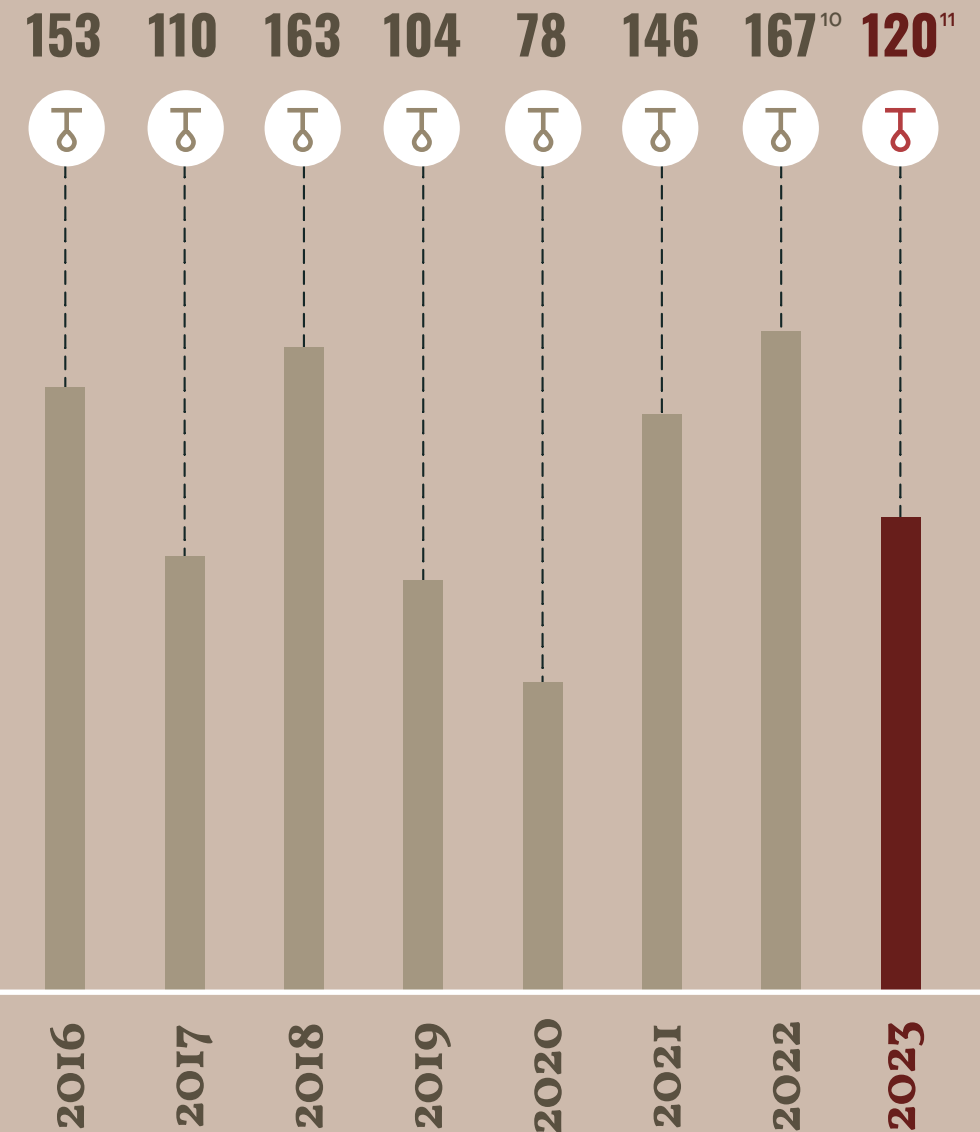
Prisoners (Cases)

-  Death Sentences
-  Confirmations
-  Commutations
-  Enhancements
-  Acquittals
-  Remands



SESSIONS COURTS IN 2023

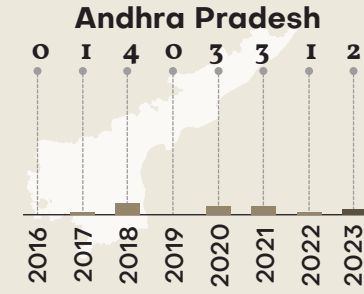
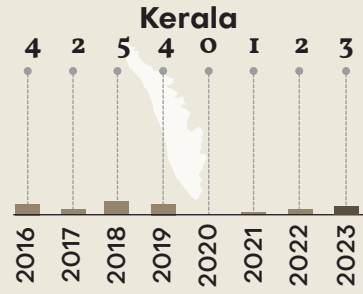
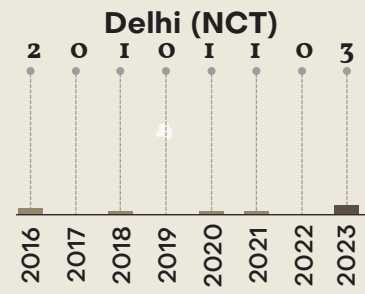
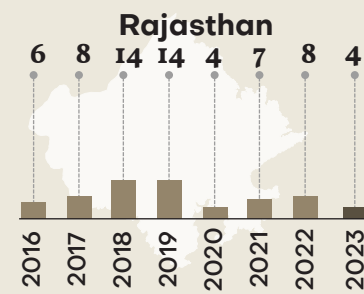
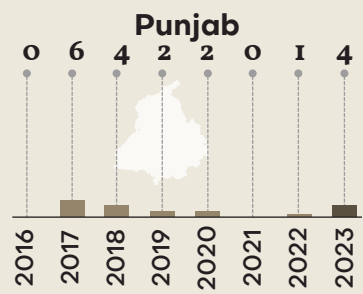
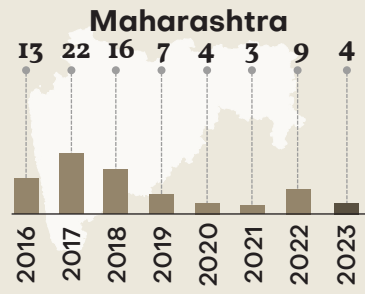
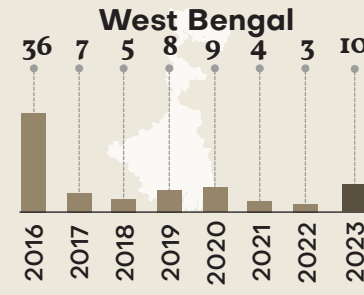
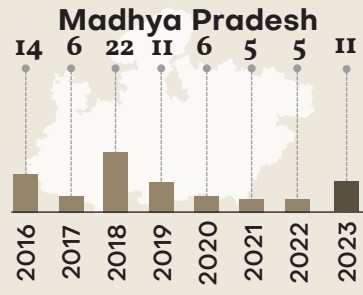
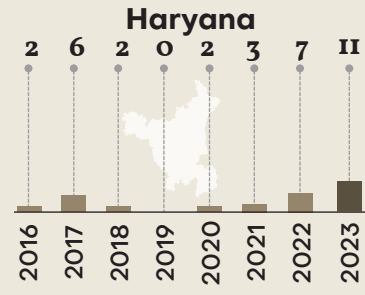
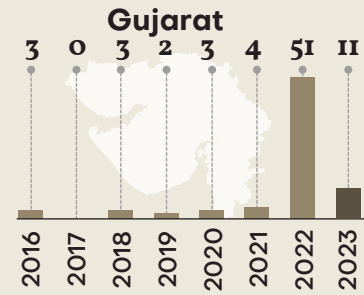
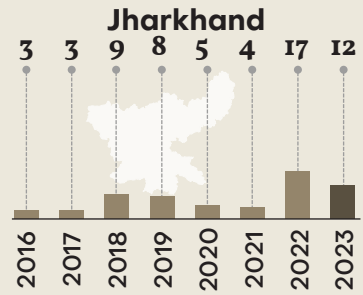
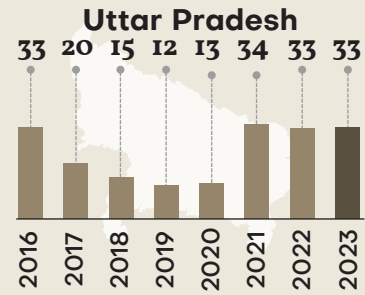
Number of Death Sentences Imposed by Sessions Courts



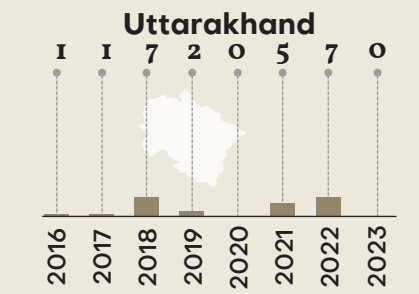
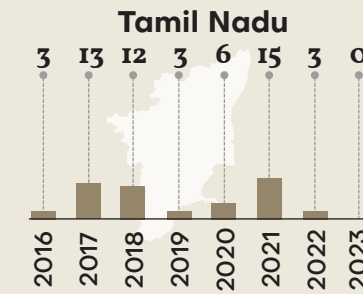
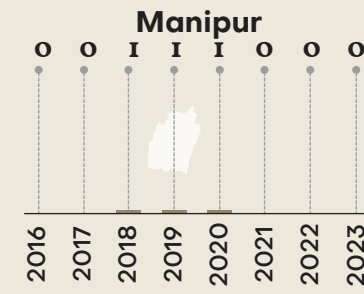
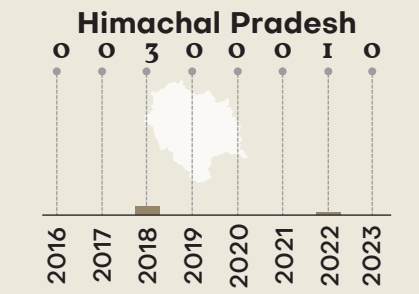
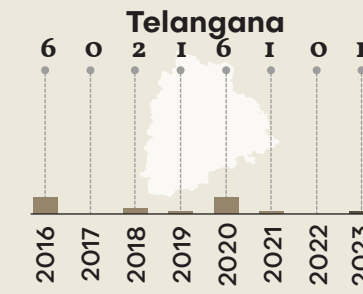
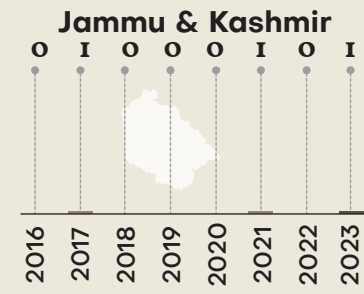
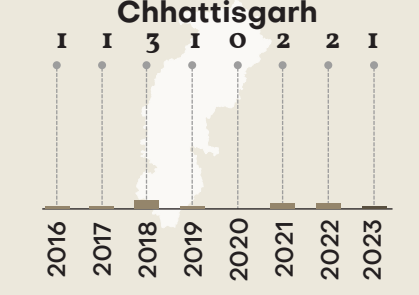
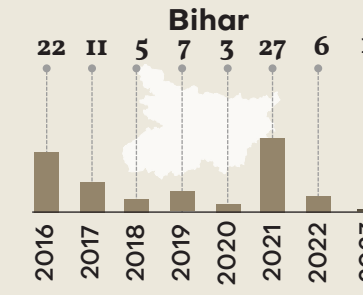
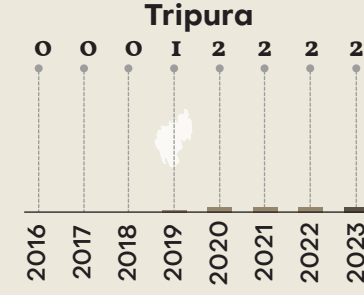
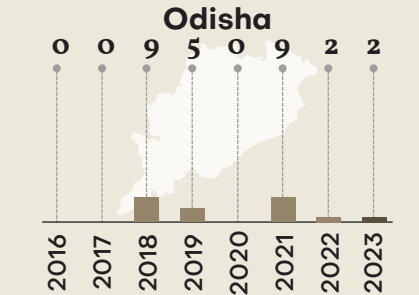
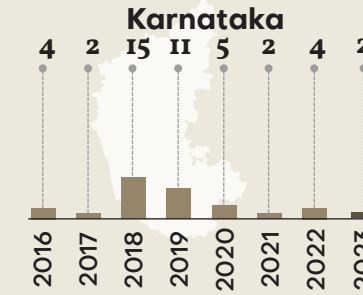
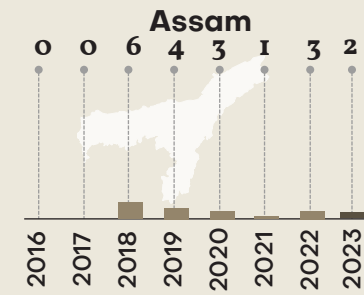
¹⁰ Out of the total number of death sentences imposed by trial courts in 2022, a Special Court in Ahmedabad imposed 38 death sentences in a single case in State of Gujarat v. Jahid @ Javed Kutubuddin Shaikh (Sessions Case No. 38 of 2009).

¹¹ Out of 88 cases that resulted in the imposition of death sentences, 15 cases involving 43 prisoners had more than one person being sentenced to death.

STATE-WISE DISTRIBUTION OF DEATH SENTENCES IMPOSED BY SESSIONS COURTS



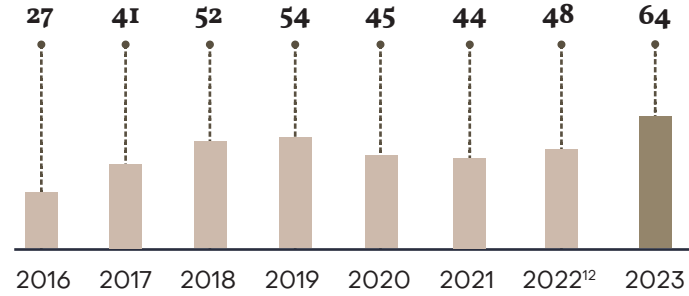
Total Death Sentences



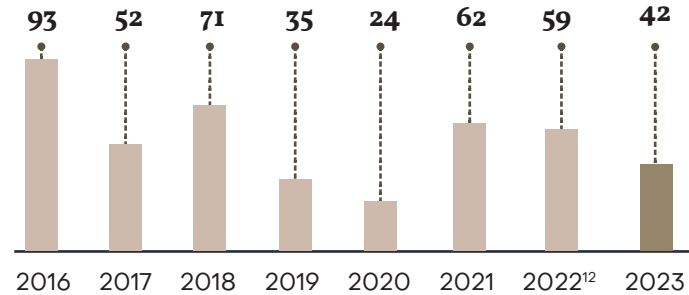
NATURE OF OFFENCE FOR THOSE SENTENCED TO DEATH BY SESSIONS COURTS IN 2023

Number of Death Sentences

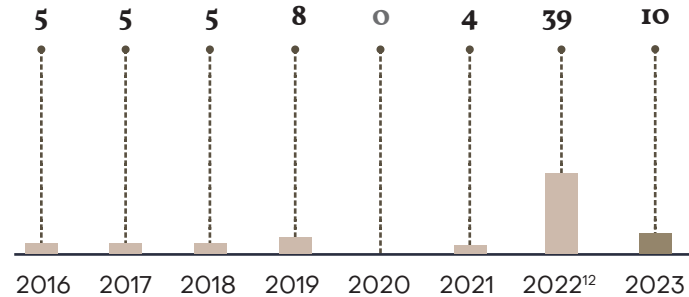
Murder involving Sexual Offences



Murder Simpliciter

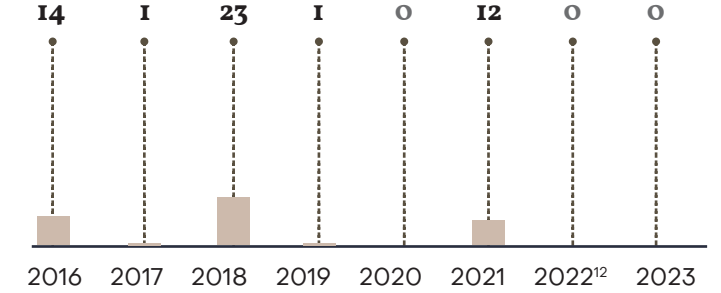


Terror Offences

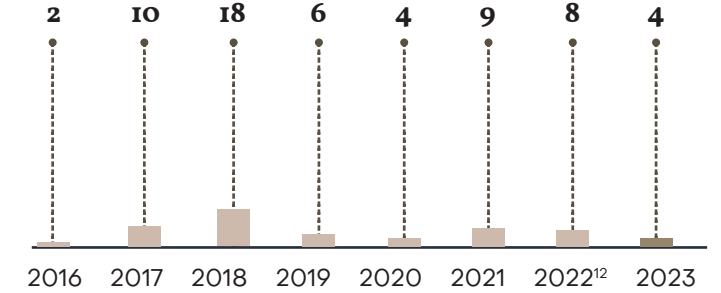


¹² In six cases involving eight death sentences, the details of the nature of offence are unavailable.

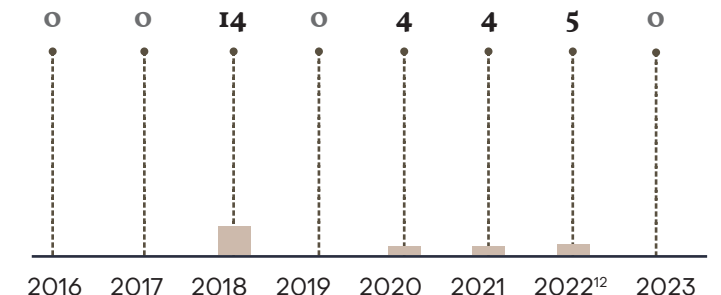
Dacoity with Murder



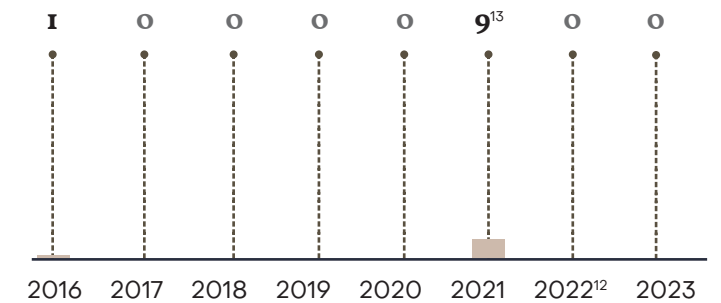
Kidnapping with Murder



Child Rape without Murder

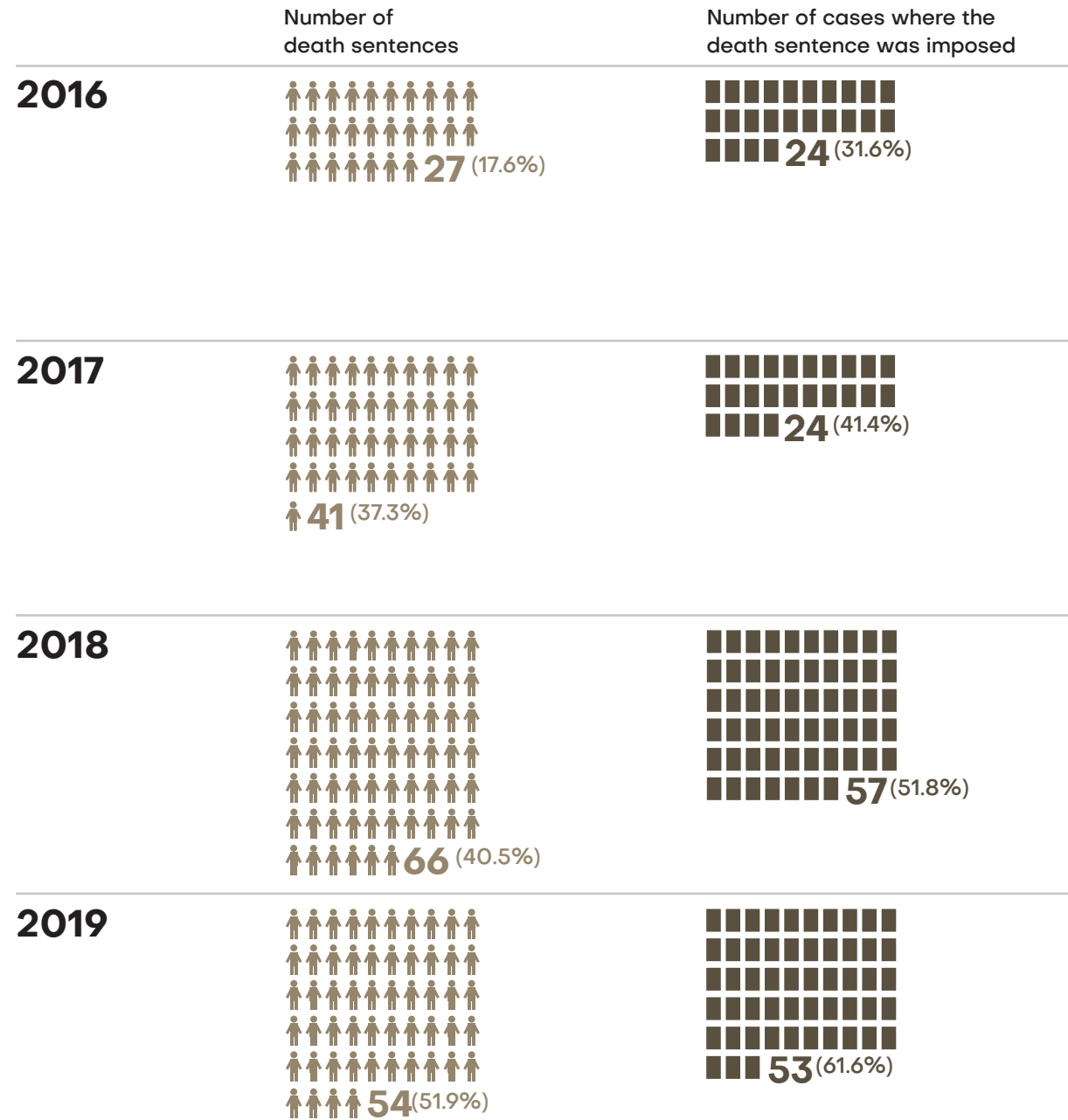


Other

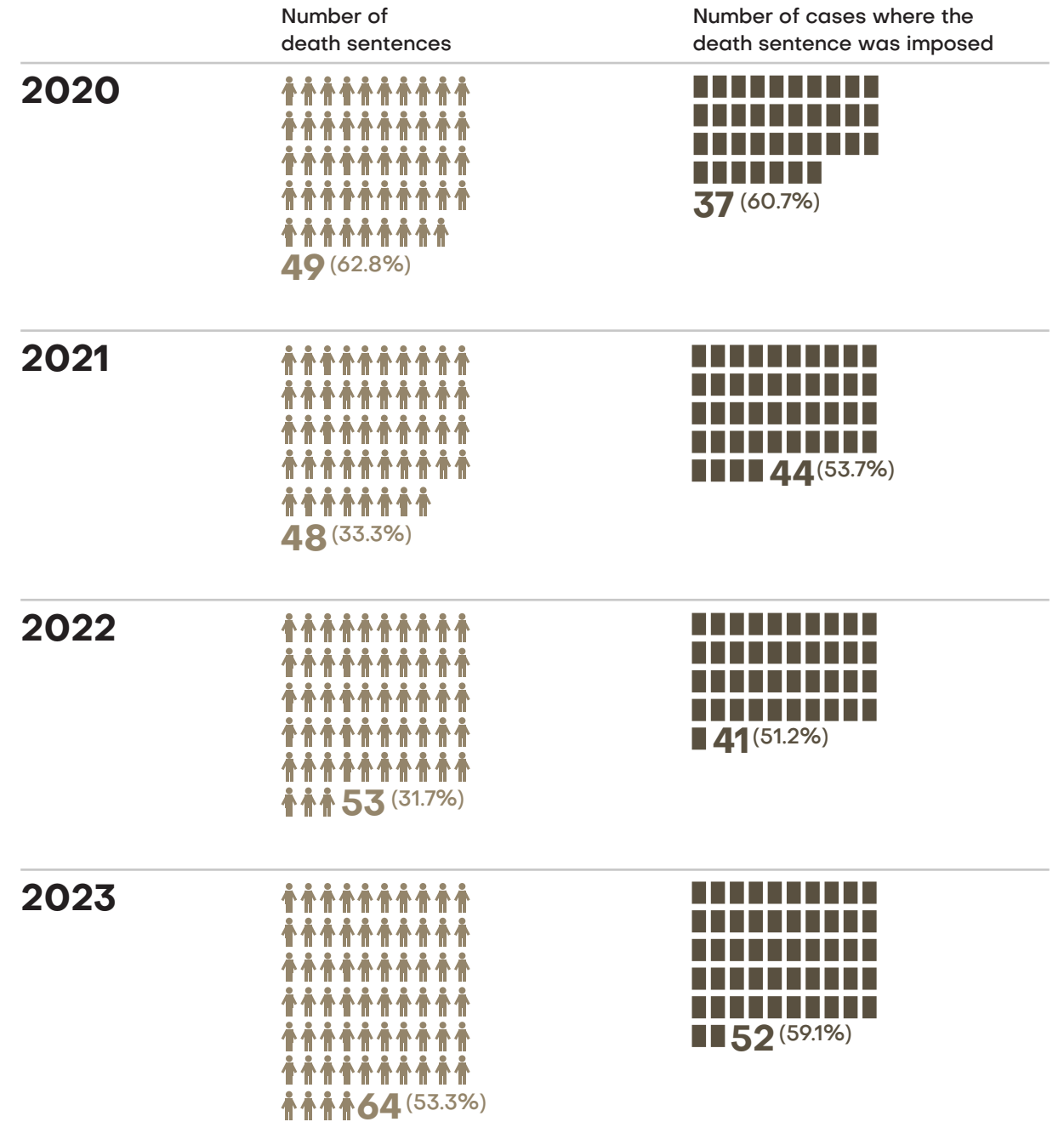


¹³ For 2021, this figure includes drug offences and a case that involved the sale of spurious liquor which resulted in the deaths of multiple persons.

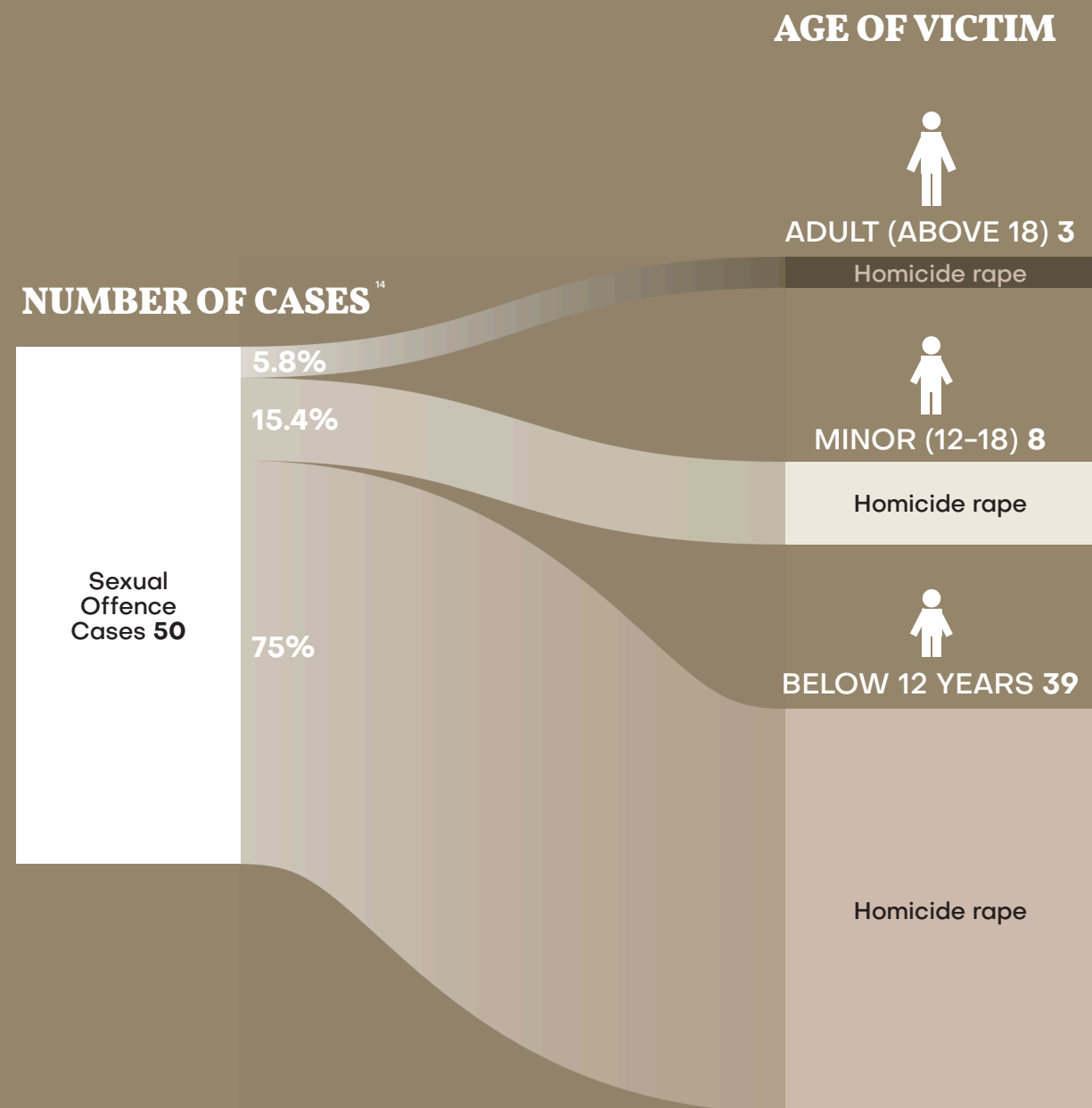
DEATH PENALTY IN CASES OF SEXUAL OFFENCES



In 2023, trial courts predominantly imposed death sentences in cases involving sexual offences.



AGE OF VICTIM IN SEXUAL OFFENCE CASES IN WHICH A DEATH SENTENCE WAS IMPOSED IN 2023



¹⁴ In two cases involving sexual offences, details on the age of the victim were unavailable.

DURATION BETWEEN CONVICTION AND SENTENCING IN SESSIONS COURT DEATH PENALTY CASES

Section 235(2) CrPC divides a criminal trial into the guilt determination and sentencing stages, and mandates the trial court to offer the accused an opportunity to be heard at sentencing.¹⁵ Additionally, section 354(3) CrPC requires judges who impose the death penalty over the default life sentence to give 'special reasons' for their decision.¹⁶ In 1980, a five-judge (Constitution) bench of the Supreme Court in *Bachan Singh v. State of Punjab*¹⁷ supplied meaning to the phrase 'special reasons' by laying down a sentencing framework to guide the court's choice between a life and death sentence. As per this framework, judges are mandated to consider both the aggravating and mitigating circumstances of the accused and crime at sentencing. *Bachan Singh* places special emphasis on the relevance of mitigating circumstances in death penalty sentencing. Finally, *Bachan Singh* obliges the State to demonstrate the accused's lack of reformatory potential before a death sentence is imposed.

In pursuance of *Bachan Singh*, the information relating to life history of the accused such as their age, mental health, socioeconomic status, and life experience amongst others is essential. Such in-depth information about the accused is not available in the case file. It has to be collected by identifying and interviewing relevant persons including the accused who can speak to different aspects of their life. Naturally, such investigation requires time, resources and expertise that lawyers lack.

However, empirical evidence reveals that trial courts routinely impose death sentences¹⁸ without sufficient gap between the conviction and sentencing hearing, despite the complex nature of an inquiry into the life history of the accused. In fact, trial courts are also known to sentence people to death on the same day as pronouncement of their guilt.

¹⁵ Section 235(2) of the CrPC.

¹⁶ Section 354(3) of the CrPC.

¹⁷ 1980 2 SCC 684 (10).

¹⁸ Death Penalty Sentencing in Trial Courts, 2020, Project 39A, National Law University, Delhi. Available at: <https://www.project39a.com/dpsitc>; Death Penalty Sentencing In India's Trial Courts (2018-2020), 2022, Project 39A, National Law University, Delhi. Available at: <https://www.project39a.com/death-penalty-sentencing-in-indias-trial-courts>.

At present, the law remains unclear on the question of sufficient time gap between the conviction and the sentencing hearing. Although some Supreme Court decisions have cast doubt over the validity of death sentences imposed on the day of conviction,¹⁹ some others have held that same day sentencing in and of itself does not constitute a fair trial violation.²⁰ The referral by the Supreme Court in September 2022 to a Constitution bench identifies this as an issue that needs to be resolved.²¹

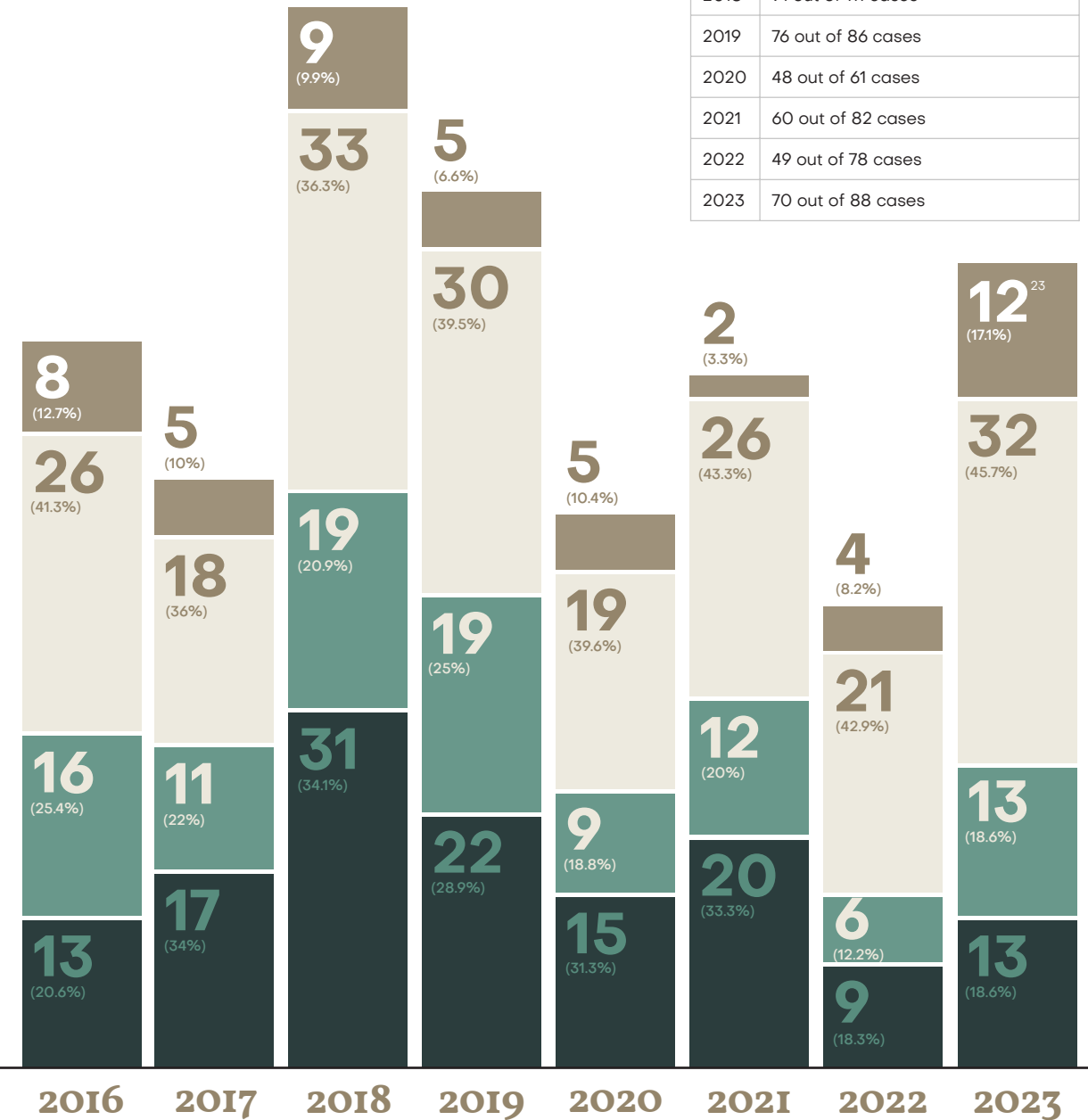
Death sentences were imposed on the same day, or within one day of conviction, in at least 37.14% of death penalty cases at the trial courts in 2023. 45.71% of death sentence orders were passed within two to seven days from conviction. Trial courts imposed death sentences after one week from conviction in only 17.14% of all death penalty cases.

¹⁹ Allaudin Mian v. State of Bihar, Criminal Appeal Nos. 343 and 446 of 1988; Rangaswamy v. State of Tamil Nadu, AIR 1989 SC 1137; Dattaraya v. State of Maharashtra, Criminal Appeal Nos. 1110-1111 of 2015.
²⁰ B A Umesh v. State of Karnataka, Criminal Appeal Nos. 285-286 of 2011; Vasanta Sampat Dupare v. State of Karnataka, Criminal Appeal Nos. 2486-2487 of 2014; Mukesh v. State of NCT (Delhi), Criminal Appeal Nos. 607-608 of 2017; Accused X v. State of Maharashtra, Criminal Appeal Nos. 680 of 2007.
²¹ In re: Framing Guidelines Regarding Potential Mitigating Circumstances to be Considered While Imposing Death Sentences, Suo Moto Crl Writ Petition No. 1 of 2022.

Number of days between conviction and sentencing in death penalty cases²²

Cases (Proportion of Cases with Information Available)

0 days 1 day 2-7 days More than a week



Year	Availability of information on dates
2016	63 out of 76 cases
2017	50 out of 58 cases
2018	91 out of 111 cases
2019	76 out of 86 cases
2020	48 out of 61 cases
2021	60 out of 82 cases
2022	49 out of 78 cases
2023	70 out of 88 cases

²² Indicating number of cases.

²³ Includes one case in which a death sentence was imposed 508 days after the conviction order.

SENTENCING MATERIAL²⁴

In *Manoj v. State of Madhya Pradesh* (May 2022), a three judge bench of the Supreme Court held that it was the duty of the trial courts to proactively elicit materials on mitigating circumstances while sentencing in death penalty cases, and issued guidelines for the collection of such information. It further reiterated the State's duty to lead evidence addressing the improbability of reform, whenever capital punishment was sought.

In 2023, trial courts imposed 84 death sentences in 60 cases without seeking any evidence on mitigating circumstances in the form of a jail conduct report.

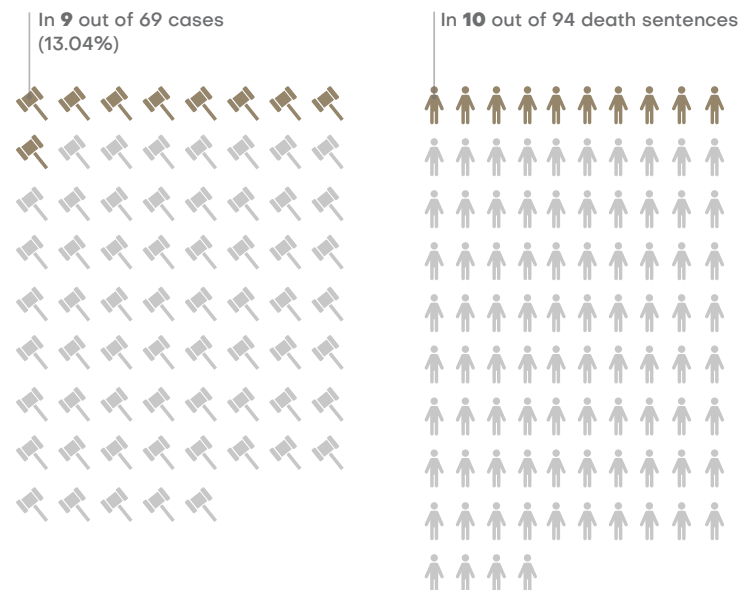
Cases Where The Trial Court Elicited/Sought Materials On Sentencing

Post Manoj

2022



2023



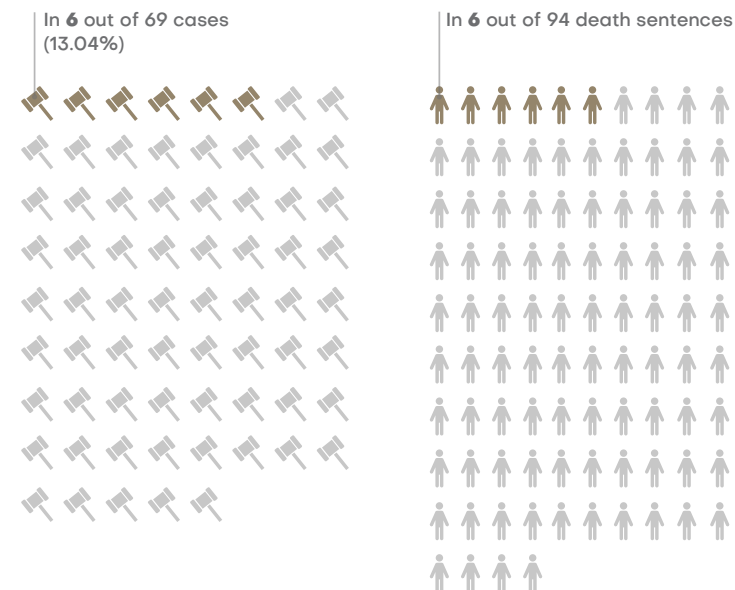
Cases Where the State-Led Materials on Reform

Post Manoj

2022



2023



Through *Bachan Singh*, the Supreme Court mandated the State to prove a lack of reformatory potential in the accused using evidence. The State had not brought any evidence to prove the lack of reformatory potential in the accused in at least 63 cases involving 88 death sentences. This constitutes 91.30% of all death sentences imposed this year.

²⁴ Information is not available in 19 cases (involving 26 death sentences) out of the total 88 cases due to the unavailability of judgments.

HIGH COURTS IN 2023

Prisoners (**Cases**) (Proportion of prisoners)²⁵

	2016	2017	2018	2019
High Court Confirmations	16 (11) ²⁶ (14.7%)	11 (10) (10.8%)	23 (18) (20.2%)	26 (15) (20%)
High Court Commutations	58 (38) (56.9%)	58 (39) (56.9%)	53 (35) (46.5%)	59 (38) (45.4%)
High Court Acquittals	18 (12) (17.6%)	35 (23) (34.3%)	27 (12) (23.7%)	31 (17) (23.8%)
Remanded to Trial Courts by High Courts	11 (1) (10.7%)	10 (5) (9.8%)	10 (6) (8.7%)	15 (7) (11.5%)

²⁵ Proportions have been calculated against the total number of prisoners whose cases were decided in each calendar year.
²⁶ Includes one case involving one prisoner, in which the High Court enhanced the sentence from life imprisonment to death penalty.

	2020	2021	2022	2023 ²⁷
High Court Confirmations	3 (3) (7.7%)	5 (6) (8.2%)	4 (4) (4%) ²⁸	1 (1) (1.25%)
High Court Commutations	22 (17) (56.4%)	23 (20) ²⁹ (37.7%)	51 (39) (50.5%)	36 (26) (45.00%)
High Court Acquittals	5 (5) (12.8%)	30 (16) (48.2%)	40 (19) (42.6%)	36 (26) ³⁰ (45.00%)
Remanded to Trial Courts by High Courts	9 (6) (23.1%)	2 (2) (3.3%)	6 (6) (5.9%)	5 (3) (6.25%)

²⁷ Two cases involving two prisoners were abated due to the prisoners' deaths.

²⁸ Includes one case involving one prisoner, in which the High Court enhanced the sentence from life imprisonment to death penalty.

²⁹ In one case involving one prisoner, the High Court dismissed the writ petition challenging the rejection of the mercy petition by the President of India.

³⁰ In one case involving three prisoners, the High Court found two prisoners to have been juvenile at the time of offence.

OTHER DEATH SENTENCE PROCEEDINGS

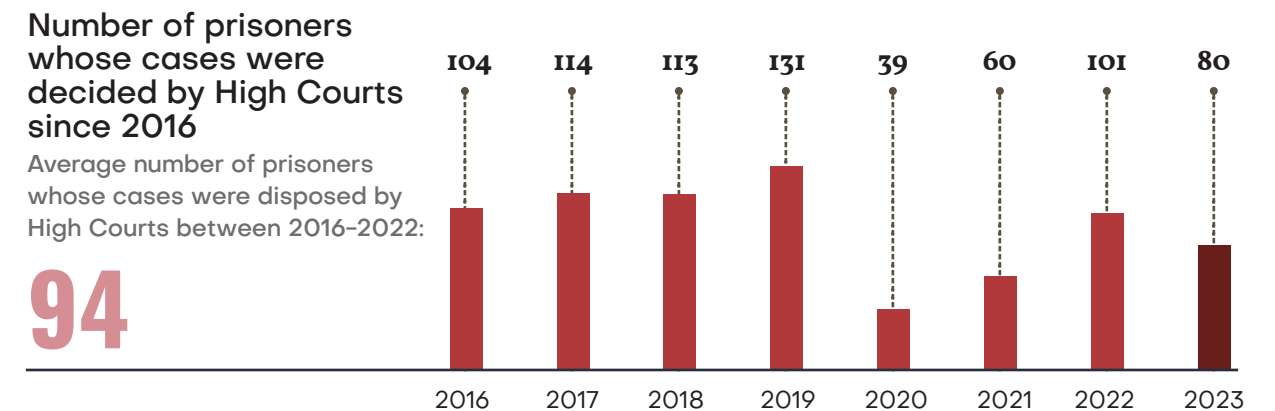
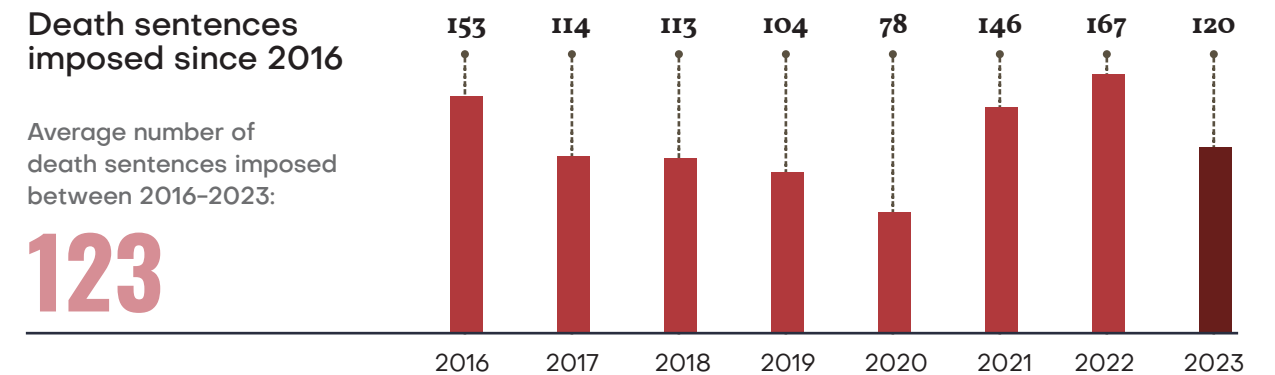
On 17.08.2023, the Karnataka High Court commuted the death sentence imposed on Saibanna Ningppa Natikar to life imprisonment (eligible for remission after 14 years) on the grounds of in-ordinate and unexplained delay of more than seven years in the consideration of his mercy petition, and of his imprisonment in solitary confinement for over sixteen years.³¹ Convicted in January 2003 for the murder of his wife and daughter in 1994, Saibanna's death sentence was confirmed by the Karnataka High Court in October 2003. His criminal appeal in the Supreme Court was rejected in April 2005. His mercy petition dated 29.04.2005 was rejected by the Governor of Karnataka in 2007, and subsequently by the President of India on 04.10.2013. Saibanna was in prison for 30 years. He was 70 years old on the day of the commutation of his sentence.

³¹ Saibanna s/o Ningappa Natikar v. Union of India, Writ Petition No. 3297 of 2013 (Karnataka High Court).

DISPOSAL OF DEATH PENALTY CASES BY HIGH COURTS

Section 366 of the CrPC mandates High Courts to hear and examine all death penalty cases from the trial courts, both on the question of conviction and sentence. The average number of prisoners whose cases were disposed of at the High Court confirmation proceedings stage between 2016-2022 is 94.³² In 2023, High Courts disposed of 57 cases involving 80 prisoners, marking a 15.00% decrease from this average rate of disposal between 2016 and 2022. It is pertinent to note at this juncture that with 488 prisoners, 2023 witnesses the highest number of prisoners whose death penalty cases remain pending before the High Court since the compilation of our Annual Statistics reports in 2016.

³² Indicating the average from the total number of prisoners whose death penalty cases were disposed of between 2016 to 2022.



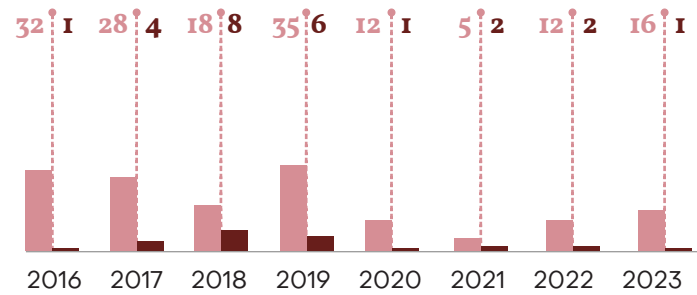
NATURE OF OFFENCE AT THE HIGH COURTS IN 2023

33 | **01**
Commutations | Confirmations

Number of Prisoners

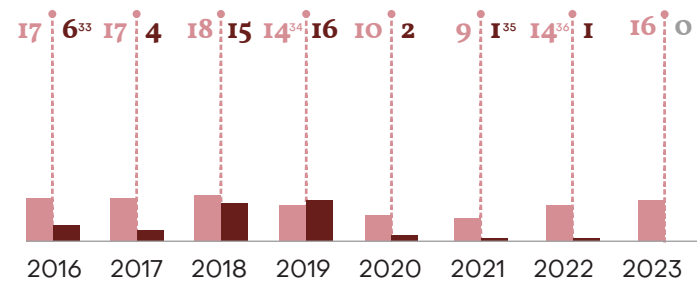
Murder Simpliciter

COMMUTED 13
CONFIRMED 1



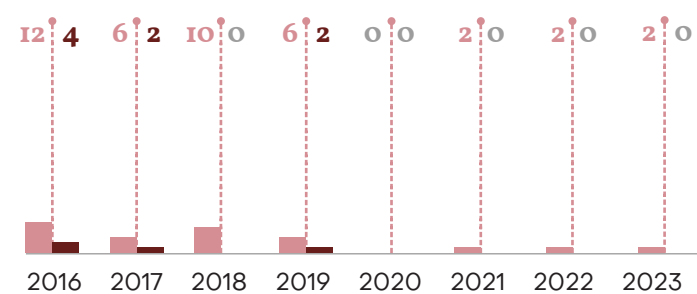
Murder involving Sexual Offences

COMMUTED 16
CONFIRMED 0



Kidnapping with Murder

COMMUTED 2
CONFIRMED 0



³³ In one case, involving one prisoner, the High Court enhanced the sentence of life imprisonment to death sentence.

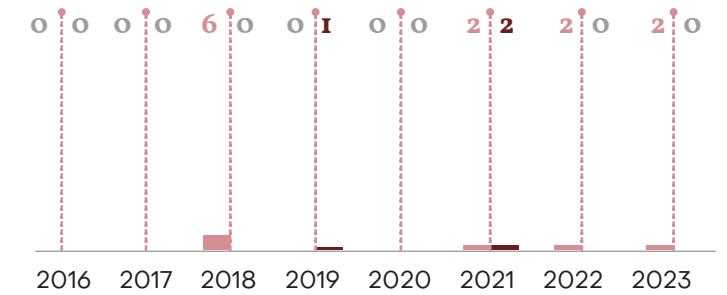
³⁴ This data excludes one case involving two prisoners in which the High Court commuted the death sentence in a writ petition challenging the rejection of the mercy petition by the President of India.

³⁵ This data excludes one case involving one prisoner in which the High Court dismissed the writ petition challenging the rejection of the mercy petition by the President of India.

³⁶ In one case, involving one prisoner, the High Court acquitted the prisoner of the charge carrying the death penalty, which resulted in a reduced sentence for the prisoner.

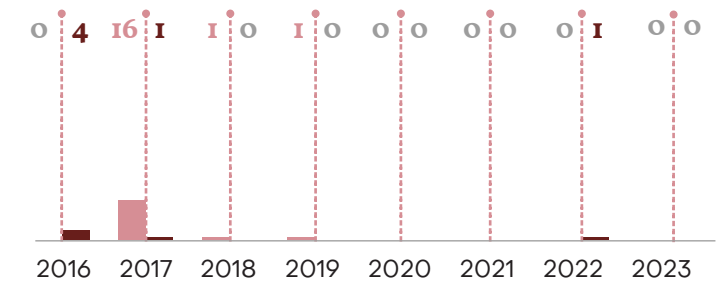
Child Rape without Murder

COMMUTED 2
CONFIRMED 0



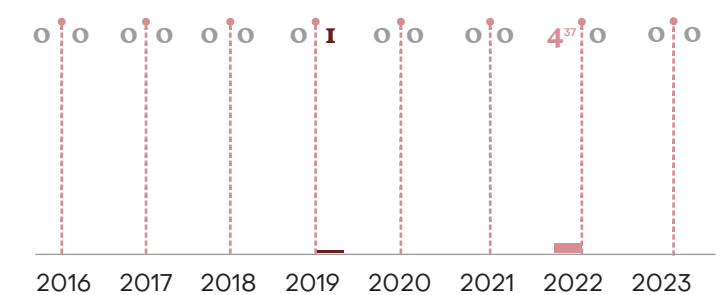
Dacoity with Murder

COMMUTED 0
CONFIRMED 0



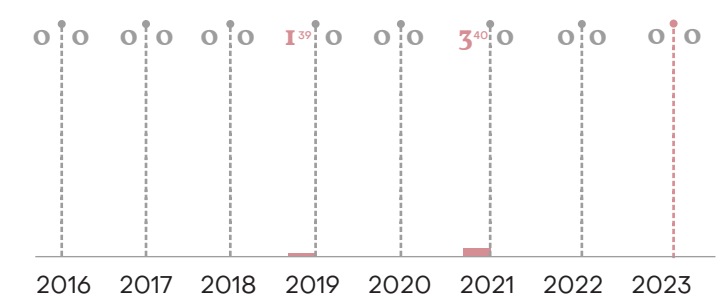
Terror Offences

COMMUTED 0
CONFIRMED 0



Others³⁸

COMMUTED 0
CONFIRMED 0



³⁷ Includes one case, involving three prisoners, in which the High Court acquitted the prisoners of the charge carrying the death penalty, which resulted in a reduced sentence for the prisoners.

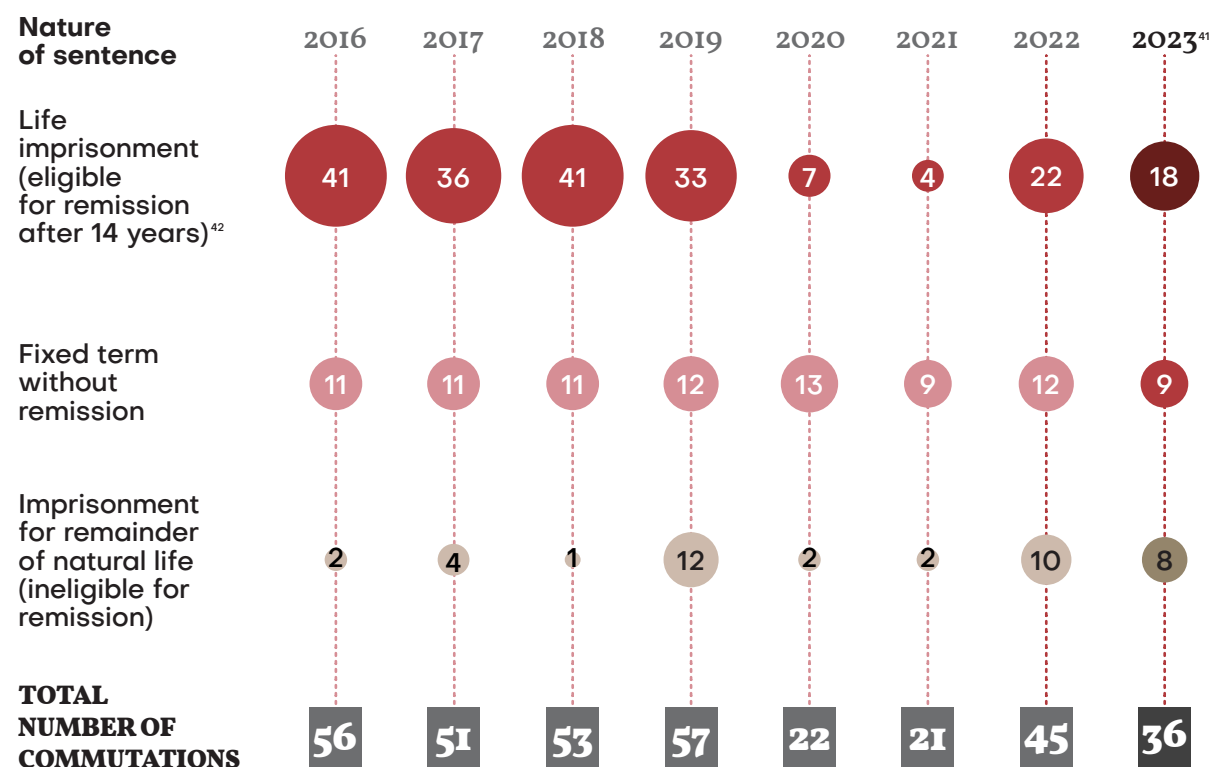
³⁸ Includes offences for which no appeal of a death sentence was decided by the High Court in 2023, involving drug offences, 376E (for multiple convictions of sexual offences).

³⁹ Includes one case, involving one prisoner, who was sentenced to death in a drug offence case.

⁴⁰ Includes three cases, involving three prisoners, who were sentenced to death under 376E IPC (for multiple convictions of sexual offences).

SENTENCES IMPOSED BY HIGH COURTS ON COMMUTATION OF DEATH SENTENCE

Number of Prisoners



⁴¹ Information on the sentence upon commutation is unavailable for one case involving one prisoner.

⁴² Unless a judgment explicitly excludes remission or bars the state government from ordering early release, commutation to life imprisonment is classified as 'Life Imprisonment (eligible for remission after 14 years)'.

ACCESS TO MITIGATION INVESTIGATORS AT THE HIGH COURT

Since 2021, the Supreme Court has increasingly prioritised gathering evidence regarding the life circumstances and reformatory progress of the accused in death penalty cases through orders seeking such information, and decisions directing trial courts to follow suit. Extending these developments to the High Court confirmation stage, the Kerala and Telangana High Courts ordered enquiries to gather information on the accused's life circumstances, mental health and jail conduct for sentencing.⁴³

In May 2023, the Kerala High Court directed mitigation investigators (professionals trained in social sciences) to collect information and present reports on the mental health, socioeconomic circumstances and other life circumstances of two prisoners whose death sentence references are pending before the High Court. Taking these directions forward, the High Court in September 2023 extended the enquiry to the six remaining prisoners whose death sentence references were pending before it. Both orders reiterate the Supreme Court decision in *Manoj* while directing the State to place reports on the psychiatric evaluation and jail conduct of the accused.

In November 2023, the Telangana High Court directed mitigation investigators to prepare and present psychological evaluation reports for five prisoners whose cases were pending before the Court. Further, the Court directed the State to present reports on the jail conduct and behaviour of the accused, with emphasis on the work undertaken by them in prison. While issuing these directions, the Telangana High Court cited the Supreme Court's orders in *Manoj* as well as the directions by the Kerala High Court earlier in the year.

⁴³ State of Kerala v. Nino Mathew, Death Sentence Reference No. 2 of 2016 (Kerala High Court), order dt. 11.05.2023; State of Kerala v. Narendra Kumar, Death Sentence Reference No. 1 of 2018 (Kerala High Court), order dt. 27.09.2023; Special Judge for Scheduled Offences of NIA, Ranga Reddy v. Asadullah Akhtar and Ors, Referred Trial No. 1 of 2016 (Telangana High Court), order dt. 22.11.2023.

HIGH COURT ACQUITTALS IN 2023

35 | **19**
 No. of persons | No. of cases

Coram Nature of Offence

BIHAR

No. of persons



No. of cases



18.12.2023 Prisoners - 1

- Justices Ashutosh Kumar and Alok Kumar Pandey**
The State of Bihar v. Amar Kumar
- Murder involving Sexual Offences

30.11.2023 Prisoners - 1

- Justices Chakradhari Sharan Singh and G Anupama**
The State of Bihar v. Deva Nand Singh
- Murder Simpliciter

29.08.2023 Prisoners - 1

- Justices Chakradhari Sharan Singh and Nawneet Kumar**
The State of Bihar v. Shahid
- Murder involving Sexual Offences

Coram Nature of Offence

JHARKHAND

No. of persons



No. of cases



05.04.2023 Prisoners - 15

- Justices Rongon Mukhopadhyay and Ambuj Nath**
The State of Jharkhand v. Ramai Karua & Ors
- Murder Simpliciter

MADHYA PRADESH

No. of persons



No. of cases



21.06.2023 Prisoners - 1

- Justices Sujoy Paul and Achal Kumar Paliwal**
In reference v. Vijay @ Pintiya
- Murder involving Sexual Offences

PUNJAB & HARYANA

No. of persons



No. of cases



20.12.2023 Prisoners - 1

- Justices G S Sandhawalia and Harpreet Kaur Jeewan**
State of Punjab v. Palwinder Singh
- Murder Simpliciter

RAJASTHAN

No. of persons



No. of cases



19.07.2023 Prisoners - 1

Justices Pankaj Bhandari and Bhuwan Goyal

State of Rajasthan v. Hariom Sharma

Murder involving Sexual Offences

02.06.2023 Prisoners - 2

Justices Pankaj Bhandari and Bhuwan Goyal

State of Rajasthan v. Sultan & Ors

Murder involving Sexual Offences

29.03.2023 Prisoners - 1

Justices Pankaj Bhandari and Sameer Jain

State of Rajasthan v. Mohd. Saif @ Karian

Terror Offences

29.03.2023 Prisoners - 1

Justices Pankaj Bhandari and Sameer Jain

State of Rajasthan v. Mohd. Salman

Terror Offences

29.03.2023 Prisoners - 1

Justices Pankaj Bhandari and Sameer Jain

State of Rajasthan v. Mohd. Sarvar Azmi @ Rajhans Yadav

Terror Offences

29.03.2023 Prisoners - 1

Justices Pankaj Bhandari and Sameer Jain

State of Rajasthan v. Saifur @ Saifur Rehman Ansari

Terror Offences

TRIPURA

No. of persons



No. of cases



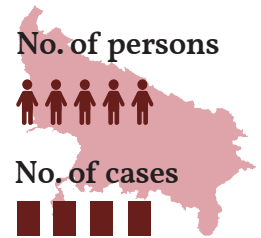
17.05.2023 Prisoners - 2

Justices Amarnath Goud and Arindam Lodh

The Sessions Judge, North Tripura Judicial District, Dharmanagar v. the State of Tripura

Murder Simpliciter

UTTAR PRADESH



07.08.2023 Prisoners - 1

- Justices Ashwani Kumar Mishra and Syed Aftab Husain Rizvi
Jugal v. State of UP
- Murder Simpliciter

05.04.2023 Prisoners - 2

- Justices Ashwani Kumar Mishra and Vinod Diwakar
Rakesh Pandey v. State of UP
- Murder Simpliciter

16.10.2023 Prisoners - 1

- Justices Ashwani Kumar Mishra and Syed Aftab Husain Rizvi
Surendra Koli v. Central Bureau of Investigation⁴⁴
- Murder involving Sexual Offences

16.10.2023 Prisoners - 1

- Justices Ashwani Kumar Mishra and Syed Aftab Husain Rizvi
Moninder Singh Pandher v. Central Bureau of Investigation and Another⁴⁵
- Murder involving Sexual Offences

⁴⁴ Surendra Koli has been acquitted of all charges in twelve different cases wherein he had been sentenced to death.
⁴⁵ Moninder Singh Pandher has been acquitted of all charges in two different cases wherein he had been sentenced to death.

WEST BENGAL



06.10.2023 Prisoners - 1

- Justices Joymalya Bagchi and Ajay Kumar Gupta
State of West Bengal v. Saiful Ali and Ors
- Murder involving Sexual Offences

24.02.2023 Prisoners - 1

- Justices Joymalya Bagchi and Ajay Kumar Gupta
Sudhama Sharma v. State of West Bengal
- Murder involving Sexual Offence

HIGH COURT COMMUTATIONS IN 2023

34 | 25

No. of persons | No. of cases

Coram Nature of Offence Sentence Imposed on Commutation of Death Sentence

BIHAR

No. of persons



No. of cases



26.06.2023

Prisoners - 1

Justices Chakradhari Sharan and Rajesh Kumar Verma
Jai Kishor Sah v. State of Bihar

Murder involving Sexual Offences

Fixed term imprisonment of 25 years without remission

CHHATTISGARH

No. of persons



No. of cases



08.09.2023

Prisoners - 2

Justices Ramesh Sinha and Naresh Kumar
Chandravanshi
In Reference of State of Chattisgarh v. Sohit Kumar
Kenwat

Murder Simpliciter

Life Imprisonment (eligible for remission after 14 years)

27.04.2023

Prisoners - 1

Justices Ramesh Sinha and Sanjay K Agrawal
In Reference of State of Chattisgarh v. Jhaggar Singh
Yadav

Murder involving Sexual Offences

Imprisonment for the rest of natural life without
remission

Coram Nature of Offence Sentence Imposed on Commutation of Death Sentence

01.12.2023

Prisoners - 1

Justices Ramesh Sinha and Naresh Kumar
Chandravanshi

In Reference of State of Chhattisgarh v. Sandeep Jain

Murder Simpliciter

Imprisonment for the rest of natural life without remission

NCT OF DELHI

No. of persons



No. of cases



26.06.2023

Prisoners - 1

Justices Mukta Gupta and Anish Dayal
Jeevak Nagpal @ Veevek Nagpal @ Shanky v. The State

Kidnapping with Murder

Fixed term imprisonment of 20 years without remission

12.10.2023

Prisoners - 1

Justices Siddharth Mridul and Amit Sharma
Ariz Khan v. State of Delhi

Terror Offences

Life imprisonment (eligible for remission after 14 years)

JHARKHAND

No. of persons



No. of cases



14.08.2023

Prisoners - 1

Justices Shree Chandrashekhar and Ratnaker Bhengra
State v. Dablu Modi

Murder involving Sexual Offences

Fixed term imprisonment of 25 years without remission

KARNATAKA

No. of persons



No. of cases



19.12.2023

Prisoners - 3

Justices Sreenivas Harish Kumar and Ramachandra D. Huddar

Babu v. State of Karnataka

Murder Simpliciter

Life imprisonment (eligible for remission after 14 years)

MADHYA PRADESH

No. of persons



No. of cases



01.08.2023

Prisoners - 1

Justices Ravi Malimath and Vishal Mishra

In reference received from Sessions Judge, Raisen (M.P) v. Jitendra Uikey

Murder involving Sexual Offences

Imprisonment for the rest of natural life without remission

19.12.2023

Prisoners - 3

Justices Sujoy Paul and Binod Kumar Dwiwedi

In reference received from IVth Additional Sessions Judge, District Jabalpur (M.P) v. Ravi Kushwaha & Ors

Murder Simpliciter

Imprisonment for the rest of natural life without remission

03.05.2023

Prisoners - 1

Justices Sujoy Paul and Amar Nath (Kesharwani)

Ribu @ Akbar Khan v. State of Madhya Pradesh

Murder involving Sexual Offences

Imprisonment for the rest of natural life without remission

MAHARASHTRA

No. of persons



No. of cases



15.09.2023

Prisoners - 1

Justices Vibha Kankanwadi and Abhay S Waghvase

State of Maharashtra v. Baburao Ukandu Sangerao @ Baburao Malegaonkar

Murder involving Sexual Offences

Fixed term imprisonment of 25 years without remission

31.10.2023

Prisoners - 1

Justices Vinay Joshi and Valmiki SA Menezes

State of Maharashtra v. Raju s/o Channulal Birha

Murder Simpliciter

Fixed term imprisonment of 30 years without remission

RAJASTHAN

No. of persons



No. of cases



14.03.2023

Prisoners - 1




Justices Pankaj Bhandari and Anil Kumar Upman

State of Rajasthan v. Sundar @ Surendra @ Santu




Murder involving Sexual Offences

Imprisonment for the rest of natural life without remission

31.05.2023 Prisoners - 1

-  **Justices Pankaj Bhandari and Bhuwan Goyal**
State of Rajasthan v. Sunil Kumar
-  Child Rape without Murder
-  Life imprisonment (eligible for remission after 14 years)

18.07.2023 Prisoners - 1

-  **Justices Pankaj Bhandari and Bhuwan Goyal**
State of Rajasthan v. Suresh Kumar
-  Murder involving Sexual Offences
-  Imprisonment for the rest of natural life without remission

TAMIL NADU




No. of persons



No. of cases



21.11.2023 Prisoners - 1

-  **Justices S S Sundar and Sunder Mohan**
The State Rep by the Inspector of Police v. XXX Father of the victim child
-  Child Rape without Murder
-  Life imprisonment (eligible for remission after 14 years)

TELANGANA




No. of persons



No. of cases



28.04.2023 Prisoners - 3

-  **Justices P Naveen Rao and Juvvadi Sridevi**
State of Telangana v. Shaik Babu and Ors
-  Murder involving Sexual Offences
-  Imprisonment for the rest of natural life without remission

UTTAR PRADESH




No. of persons



No. of cases



26.09.2023 Prisoners - 1

-  **Justices Ashwani Kumar Mishra and Syed Aftab Husain Rizvi**
Ranvir Singh v. State of UP
-  Murder Simpliciter
-  Life imprisonment (eligible for remission after 14 years)

WEST BENGAL

No. of persons




No. of cases




06.10.2023 Prisoners - 2

-  **Justices Joymalya Bagchi and Ajay Kumar Gupta**
State of West Bengal v. Saiful Ali and Ors
-  Murder involving Sexual Offences
-  Imprisonment for the rest of natural life without remission


24.03.2023 Prisoners - 1

 **Justices Debangsu Basak and Md Shabbar Rashidi**
State of West Bengal v. Sovan Sakrar


 Murder Simpliciter

 Imprisonment for the rest of natural life without remission

10.03.2023 Prisoners - 3

 **Justices Joymalya Bagchi and Subhendu Samanta**
State of West Bengal v. Sahadeb Barman & Ors

 Murder Simpliciter

 Fixed term imprisonment of 30 years without remission


31.01.2023 Prisoners - 2

 **Justices Debangsu Basak and Md Shabbar Rashidi**
State of West Bengal v. Gourab Mondal @ Shanu & Anr.


 Murder involving Sexual Offences

 Imprisonment for the rest of natural life without remission

12.04.2023 Prisoners - 1

 **Justices Debangsu Basak and Md Shabbar Rashidi**
State of West Bengal v. Nandita Saha @ Mou & Anr.

 Murder Simpliciter

 Fixed term imprisonment of 40 years without remission


02.02.2023 Prisoners - 1

 **Justices Joymalya Bagchi and Ajay Kumar Gupta**
The State of West Bengal v. Pranab Roy

 Murder involving Sexual Offences

 Life imprisonment (eligible for remission after 14 years)

03.01.2023 Prisoners - 1

 **Justices Debangsu Basak and Md Shabbar Rashidi**
The State of West Bengal v. Tapan Bag

 Kidnapping with Murder

 Fixed term imprisonment of 40 years without remission

HIGH COURT CONFIRMATIONS IN 2023

01 | **01**
No. of persons | No. of cases

 Coram  Nature of Offence

KARNATAKA



30.05.2023

Prisoners - 1

 **Justices Suraj Govindaraj and G Basavaraja**
Byluru Thippaiah @ Byaluru Thippaiah v. State of Karnataka

 Murder Simpliciter

HIGH COURT REMANDED CASES IN 2023

04 | **02**
No. of persons | No. of cases

 Coram  Nature of Offence

JHARKHAND



18.10.2023

Prisoners - 3

 **Justices Shree Chandrashekhar and Anubha Rawat Choudhary**

State of Jharkhand v. Mithu Rai & Ors

 Murder involving Sexual Offences

RAJASTHAN



24.04.2023

Prisoners - 1

 **Justices Pankaj Bhandari and Bhuwan Goyal**
State of Rajasthan v. Lalchand s/o Nandlal


 Murder involving Sexual Offences

MADHYA PRADESH



11.09.2023

Prisoners - 1

 **Justices Ravi Malimath and Vishal Mishra**
Anokhilal s/o Seetaram v. State of Madhya Pradesh⁴⁶

 Murder involving Sexual Offences

⁴⁶ This High Court decision is the second remand by an appellate court in the prisoner Anokhilal's case. Anokhilal had been sentenced to death in 2013 and the case was remanded to the trial court for fair trial violations by the Supreme Court in 2019. The Sessions Court convicted Anokhilal and re-sentenced him to death in 2022. In 2023, the High Court once again remanded the case back to the Sessions Court citing fair trial violations.

SUPREME COURT IN 2023

Prisoners (**Cases**) (Proportion of prisoners)

Criminal Appeal And Related Proceedings In 2023⁴⁷

	2016	2017	2018	2019
Commutations	10 (8) (83.3%)	0 (0) (0%)	11 (11) (78.6%)	16 (16) (45.7%)
Confirmations	1 (1) (8.3%)	8 (4) (100%)	3 (1) (21.4%)	6 (6) (17.1%)
Acquittals	1 (1) (8.3%)	0 (0) (0%)	0 (0) (0%)	11 (3) (31.4%)
Remanded	0 (0) (0%)	0 (0) (0%)	0 (0) (0%)	2 (2) (5.7%)

⁴⁷ Including Criminal Appeals, Review Petitions or Curative Petitions connected to the original Criminal Appeal.

	2020	2021	2022	2023
Commutations	4 (3) (28.6%)	5 (4) (55.5%)	7 (5) (53.3%)	3 (3) (27.3%)
Confirmations	6 (4) (42.9%)	0 (0) (0%)	2 (2) (13.3%)	0 (0) (0%)
Acquittals	0 (0) (0%)	4 (2) (44.4%)	5 (3) (33.3%)	6 (5) (54.5%) ⁴⁸
Remanded	0 (0) (0%)	0 (0) (0%)	0 (0) (0%)	2 (2) (18.2%)

⁴⁸ Includes two cases involving two prisoners who were declared to be juvenile at the time of offence.

NATURE OF OFFENCE AT THE SUPREME COURT IN 2023

Criminal Appeal & Related Proceedings

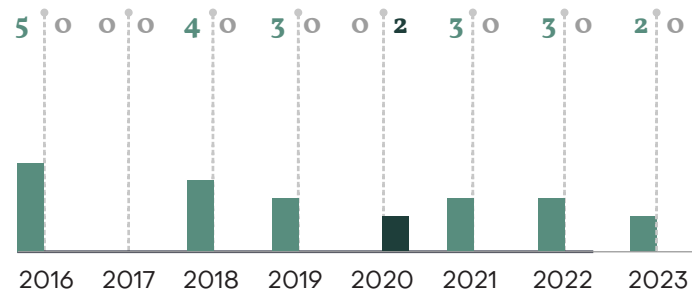
03 | 00

Commutations | Confirmations

Number of Prisoners

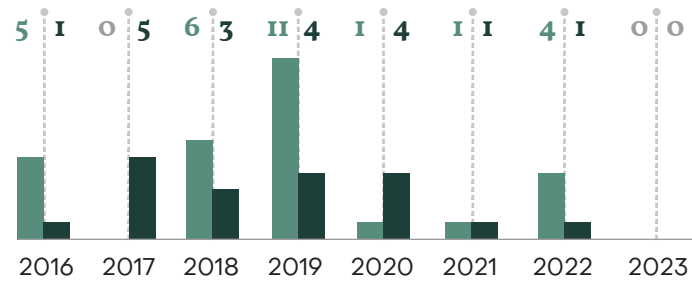
Murder
Simpliciter

COMMUTED 2
CONFIRMED 0



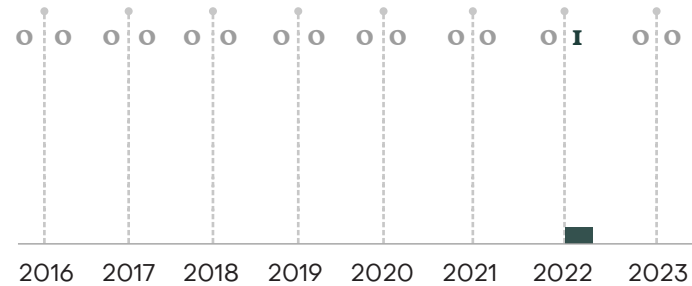
Murder involving
Sexual Offences

COMMUTED 0
CONFIRMED 0



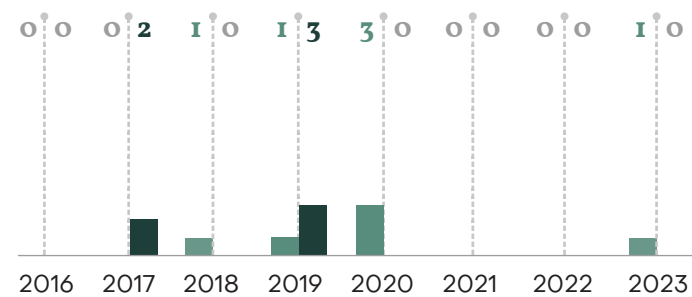
Terror
Offences

COMMUTED 0
CONFIRMED 0



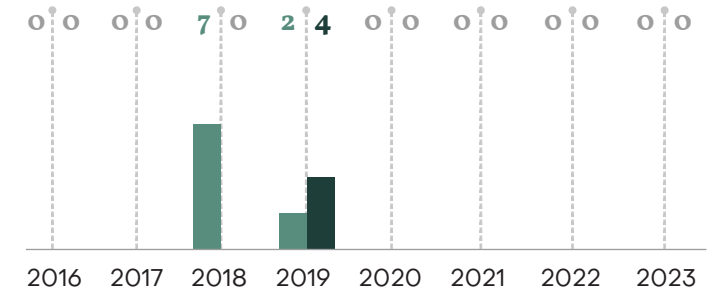
Kidnapping with
Murder

COMMUTED 1
CONFIRMED 0



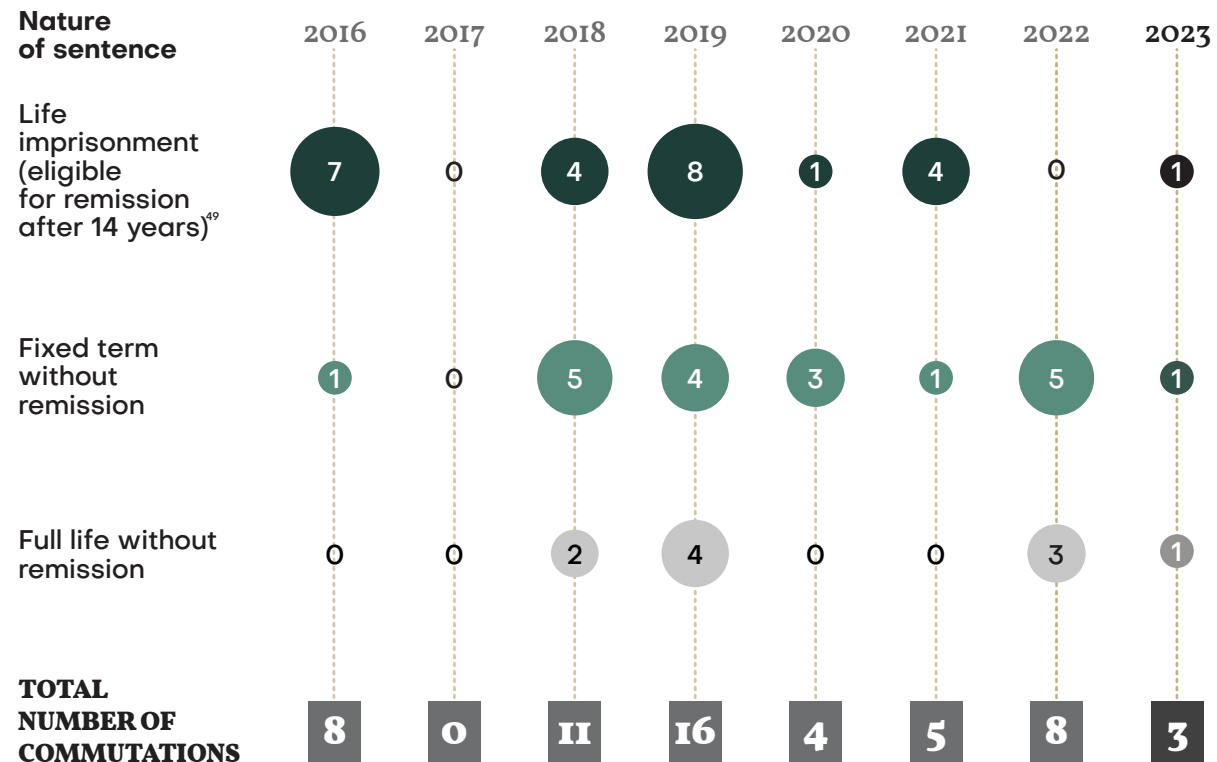
Others

COMMUTED 0
CONFIRMED 0



SUPREME COURT SENTENCES IMPOSED UPON COMMUTATION OF DEATH SENTENCE IN 2023

Number of Prisoners



⁴⁹ Unless a judgment explicitly excludes remission or bars the state government from ordering early release, commutation to life imprisonment is classified as 'Life Imprisonment (eligible for remission after 14 years)'.

ANALYSIS OF SUPREME COURT DECISIONS IN 2023

The Supreme Court acquitted four prisoners in three death penalty appeals, remanded two death penalty cases involving two prisoners to the trial court and the High Court, and commuted the death sentences of three death row prisoners in criminal appeals. Additionally, the Supreme Court released two prisoners in two death penalty cases upon finding that they were children in conflict with the law at the time of the offences.

In acquitting and remanding cases of death row prisoners, the Supreme Court noted serious concerns in the quality of police investigation and appreciation of evidence by the trial courts. In particular, the Court criticised the trial courts for their uncritical reliance on forensic reports without examining the reliability of the procedures used in the collection of forensic samples, and in the absence of cross-examination of forensic experts. The Court also criticised the careless manner in which police investigations were conducted, resulting in evidence that was incomplete and possibly tampered with.

While commuting death sentences of three prisoners, the Supreme Court continued its emphasis on their ability to reform by relying on information about the accused, including those from their jail conduct reports.

ACQUITTALS IN 2023


(Number of Prisoners)

21.09.2023

Rajesh and Ors. v. State of Madhya Pradesh (2)

Kidnapping with Murder

Case History

 Criminal Appeal No. 794 of 2022

 Justices B R Gavai,
J B Pardiwala and Sanjay
Kumar

Rajesh and Raja were convicted and sentenced to death by the trial court for the kidnapping and murdering a fifteen year old boy on 29.12.2016. The High Court of Madhya Pradesh (Jabalpur Bench) upheld their conviction and confirmed their death sentence on 10.08.2017. The accused persons filed appeals against their conviction and sentence before the Supreme Court. The Supreme Court acquitted the accused of all charges, and set aside their conviction and death sentences.

Supreme Court (Criminal Appeal)


While acquitting Rajesh and Raja, the Supreme Court found that the prosecution had not established the guilt of the accused persons beyond all reasonable doubt. The Supreme Court rejected the recovery evidence led by the prosecution. It also rejected the claim that the hair belonging to one of the accused was found in the deceased's hand, when his corpse was discovered. The Supreme Court found that the police had manipulated the investigation, disregarded evidence procedures, and had glossed over important leads making their version of events extremely inconsistent. While criticising the quality of police investigation, the Supreme Court remarked that it was necessary to devise a consistent and dependable code of investigation for the police. At the time of acquittal, Raja and Rajesh had spent seven years on death row.


23.08.2023

Irfan @ Naka v. State of Uttar Pradesh (1)

Murder Simpliciter

Case History

 Criminal Appeal No. 825 of 2022

 Justices B R Gavai,
J B Pardiwala and
P K Mishra


Irfan was convicted and sentenced to death by the Additional Sessions Judge (VI), Bijnor for the murder of his son and two brothers on 31.07.2017. The Allahabad High Court upheld his conviction and confirmed the death sentence on 25.04.2018. Irfan filed an appeal in the Supreme Court against the High Court's decision. The Supreme Court acquitted Irfan of all charges and set aside his conviction and death sentence.


Supreme Court (Criminal Appeal)

The Supreme Court held that the eyewitness testimonies had contradicted each other. The Court also found that these testimonies were also inconsistent with the deceased's dying declaration pertaining to the cause of their death. Additionally, the Court noted the absence of any other evidence to corroborate the dying declaration. Based on these material inconsistencies in witness statements, and the unreliable nature of the dying declaration, the Supreme Court acquitted Irfan of all charges. At the time of release, Irfan had spent six years on death row.

19.05.2023

Murder involving Sexual Offences

 Criminal Appeal No. 1636 of 2023

 Justices B R Gavai, Sanjay Karol and Vikram Nath

Prakash Nishad @ Kewat Zinak Nishad v. State of Maharashtra (1)

Case History


Prakash Kewat was convicted and sentenced to death by the trial court for the rape and murder of a six year old girl on 27.11.2014. The High Court upheld the conviction and confirmed the death sentence on 14.10.2015. Prakash Kewat appealed the High Court decision before the Supreme Court. The Supreme Court acquitted Kewat of all charges, setting aside his conviction and death sentence.


Supreme Court (Criminal Appeal)

The Supreme Court found that the evidence used to secure Kewat's guilt was unreliable and incomplete due to serious lapses in the police investigation. The Court took note of the failure of the police to conduct the medical examination of the accused to gather evidence in sexual offences. Further, it observed that the biological samples of the accused – a prerequisite for a DNA analysis – had not been collected during investigation. Noting significant delays in forwarding the DNA samples, the Supreme Court found a high possibility of tampered forensic evidence, and hence cast doubt over the validity of the DNA reports. The Supreme Court also disregarded evidence on the police recovery of bloodstained clothes at Kewat's behest. Instead, it found that the police had unsuccessfully searched the location of the clothes prior to his statement to the police. The Supreme Court commented on the poor quality of police investigation, and characterised the evidence used in conviction as one with "yawning gaps". Kewat had spent nine years on death row before being acquitted by the Supreme Court.

03.03.2023

Murder involving Sexual Offences

 Criminal Appeal No. 572 of 2019

 Justices B R Gavai, Vikram Nath and Sanjay Karol

Karan @ Fatiya v. State of Madhya Pradesh (1)

Case History

Karan was convicted and sentenced to death on 17.05.2018 for the rape and murder of a minor girl. The High Court of Madhya Pradesh (Indore Bench) confirmed his conviction and death sentence on 15.11.2018. Karan filed an appeal against his conviction and sentence before the Supreme Court. During the pendency of the proceedings before the Supreme Court, Karan moved an application claiming that he was a juvenile on the date of offence. On 28.09.2022, the Supreme Court directed the trial court to conduct an inquiry into Karan's juvenility at the time of the crime. The First Additional Sessions Judge, Manawar, Madhya Pradesh submitted a report on 27.10.2022, finding that Karan was fifteen years old on the date of the offence.


Supreme Court (Criminal Appeal)

Based on the report of the First Additional Sessions Judge, Manawar, the Supreme Court held that Karan was a juvenile (below eighteen years of age) at the time of offence. The Supreme Court did not delve further into the merits of the case. Based on the report attesting to his juvenility, the Court set aside Karan's death sentence and directed his immediate release. Karan had spent five years on death row at the time of his release.

27.03.2023

Murder Simpliciter

 Review Petition No. 1139 of 2000

 Justices Aniruddha Bose, K M Joseph and Hrishikesh Roy

Narayan Chetanram Chaudhary v. State of Maharashtra (1)

Case History

Narayan was convicted and sentenced to death by the trial court on 23.02.1998 for the murder of five women and two children. The High Court confirmed his death sentence on 22.07.1999. The Supreme Court had upheld the same in its criminal appeal on 05.09.2000. Narayan's review petition before the Supreme Court had been dismissed on 24.11.2000.

On 14.08.2005, Narayan moved an application in Yerwada prison seeking determination of his age. As per the report, he was between 22 and 40 years of age in 2005. Narayan also filed a writ petition in the Supreme Court seeking to quash his death sentences on the grounds of his juvenility during the offence. This writ petition was dismissed without full hearing in open court by the Court in its order dated 12.08.2013. Narayan filed a subsequent review petition⁵⁰ pressing the grounds of juvenility. On 29.01.2019, the Supreme Court directed the Principal District and Sessions Judge, Pune to decide the issue of Narayan's juvenility. In its report, the inquiring judge recorded that Narayan was twelve years and six months at the time of the offence.

Supreme Court (Review Petition)

Based on the report, the Supreme Court relied on Narayan's date of birth (as recorded in his school register) according to which he had been twelve years old at the time of offence. The Supreme Court's decision confirming Narayan's juvenility came 28 years into his imprisonment (with 25 years spent on death row). The Supreme Court set aside his death sentence and directed his release.


⁵⁰ In Mohd Arif, the Supreme Court had mandated future benches to hear review petitions pertaining to death penalty cases in open court. Previously, the Supreme Court had had the discretion to hear and dispose of death penalty review petitions in chamber, without the opportunity of oral arguments in an open court. Review petitions in death penalty cases, which had previously been dismissed by judges in chamber, could now be reopened for a hearing in open court.

REMANDED CASES IN 2023

04.09.2023

Murder involving Sexual Offences

 Criminal Appeal Nos. 1271-1272 of 2018

 Justices B R Gavai, J B Pardiwala and P K Mishra

Munna Pandey v. State of Bihar (1)

Case History

Munna Pandey was convicted for the rape and murder of a ten year old girl child by the trial court. A criminal appeal was filed before the Patna High Court which was disposed of together with the confirmation proceedings. The Patna High Court upheld the conviction and death sentence in its judgment dated 10.04.2018. The judgment of the High Court was appealed before the Supreme Court in this criminal appeal. The Supreme Court remanded the case to the Patna High Court upon recording a failure of the High Court in discharging its statutory duties.

Supreme Court (Criminal Appeal)

The Supreme Court criticised the Patna High Court for its failure to recognise fair trial violations at the trial court. Additionally, it found that the High Court had failed to discharge its statutory duty under the CrPC when deciding a death penalty confirmation proceeding. The Supreme Court held that the High Court has a duty to reconsider the entire trial court case record, including all the materials used to convict and sentence the accused in death penalty confirmation proceedings. The Court differentiated this duty from regular criminal appeals in non-death penalty cases, wherein the High Court could limit itself in examining the correctness of the trial court judgment alone.


The Supreme Court observed that the Patna High Court had failed to recognise contradictions between witness statements given to the police as opposed to their statements in court. Further, the Court noted that the High Court had not questioned lapses in the investigation. This included the failure of the police to conduct a medical examination of the accused, and their failure to produce the forensic science lab report before the court. The Supreme Court also recognised multiple fair trial lapses at the trial court which went unnoticed by the High Court. The Supreme Court found that the accused had not been offered the statutory opportunity to explain all the evidence used against him to establish guilt. Further, the Court cast doubt on the quality of legal representation received by Munna during the trial by observing the counsel's failure to question serious contradictions in witness statements.

While the Court's criticism of the High Court confirmation proceedings formed the basis of its remand, the Supreme Court also criticised the police for conducting a shoddy investigation, and the trial court for fair trial violations. Given that Munna had already spent nine years in prison, the Supreme Court directed the Patna High Court to dispose of his case efficiently and quickly, with the aid of an experienced defence counsel representing him.

19.10.2023

Murder involving Sexual Offences

 Criminal Appeal Nos. 489-490 of 2019

 Justices B R Gavai, P S Narasimha and P K Mishra

Naveen @ Ajay v. State of Madhya Pradesh (1)

Case History

Naveen @ Ajay was convicted for the rape and murder of a three month old girl child by a Sessions Court in Indore, Madhya Pradesh and sentenced to death. The High Court of Madhya Pradesh upheld the conviction and death sentence in its judgment dated 24.12.2018. The judgment of the High Court was appealed before the Supreme Court in this criminal appeal. Upon recording fair trial violations, the Supreme Court remanded the case to the trial court for a fresh trial.

Supreme Court (Criminal Appeal)

The Supreme Court observed that the trial was conducted hastily (within fifteen days). Consequently, it held that the trial court had failed to offer the accused a fair opportunity to defend himself during various stages of the trial. The Court observed that various forensic reports (including the DNA, FSL and Viscera reports) had not been filed with the charge sheet. Further, the Court cast doubt over the supply of witness statements to the accused, finding that the trial court order sheet had made no reference to this end. Resultantly, the Court held that the trial court had not provided the defence with a fair opportunity to rebut the evidence filed against the accused.


The Supreme Court noted that the trial was conducted on a day-to-day basis, impeding the ability of the accused to present defence witnesses within a day. The Court found that such durations made it particularly difficult for the defence to enforce the attendance of forensic experts, and to conduct their cross-examination. Despite statutory mandate, the Court observed that the trial court had failed to offer the accused the opportunity to deny or admit the evidence against him in the forensic reports. Further, the Court held that the trial court's hurried manner of conducting the trial could have impacted the counsel's ability to prepare well and to put forth a robust defence. At the time of remand, Naveen had already spent five years on death row.

COMMUTATIONS IN 2023

20.03.2023

Kidnapping with Murder

 Review Petition (Crl.) Nos. 159-160 of 2013

 Justices D Y Chandrachud, Hima Kohli and P Narasimha

Sundar @ Sundarrajan v. State by Inspector of Police (1)

Case History (Review Petition)

Sundar @ Sundarrajan was convicted for the kidnapping and murder of a seven year old child by a trial court in Tamil Nadu and sentenced to death on 30.07.2010. The Madras High Court upheld the conviction and death sentence in its judgment dated 30.09.2010. The judgment of the High Court was appealed before the Supreme Court. The Supreme Court confirmed the death sentence in its criminal appeal dated 05.02.2013. The petitioner filed a review petition against the rejection of his criminal and relied on Mohd. Arif alias Ashfaq v. Registrar, Supreme Court of India.⁵¹ The Supreme Court in this case commuted the death sentence imposed on Sundar @ Sundarrajan to life imprisonment for a fixed term of twenty years without remission.

Supreme Court (Review Petition)


Sundar @ Sundarrajan's death sentence was commuted considering a lack of a prior criminal record, his age at the time of the offence (23 years old), satisfactory conduct in prison and his history with systematic hypertension. Although Sundar @ Sundarrajan had attempted to escape from prison in 2013, the Supreme Court observed that he showed potential to reform by engaging in vocational education. However, the Court noted that due to the "gruesome crime", the sentence of life imprisonment with remission would be inadequate.


The Supreme Court found that the trial court had limited its examination to offence-related circumstances alone, without adequate consideration of mitigation. Similarly, it also found limited engagement with the accused's circumstances at the High Court stage and acknowledged the presence of these limitations in its own criminal appeal. The Court observed that both trial court and appellate courts had failed to effectively consider mitigation during sentencing by acting as "indifferent by-standers". Additionally, the Court criticised the criminal appeal's consideration of offence-related circumstances, noting that the sex of the deceased child could not be considered aggravating in and of itself.

⁵¹ In Mohd Arif, the Supreme Court had mandated future benches to hear review petitions pertaining to death penalty cases in open court. Previously, the Supreme Court had had the discretion to hear and dispose of death penalty review petitions in chamber, without the opportunity of oral arguments in an open court.

28.04.2023

Murder Simpliciter

 Criminal Appeal Nos. 221-222 of 2022 with Criminal Appeal No. 280 of 2023

 Justices B R Gavai, Vikram Nath and Sanjay Karol

Digambar Dasre v. State of Maharashtra (1)

Case History


Digambar Dasre was convicted for the murder of his sister and her lover by Sessions Court in Nanded, Maharashtra and sentenced to death on 18.07.2019. The Bombay High Court upheld the conviction and death sentence in its judgment dated 13.12.2021. The judgment of the High Court was appealed before the Supreme Court in this criminal appeal. The court commuted Digambar Dasre's death sentence to a sentence of simple life imprisonment on 28.04.2023.

Supreme Court (Criminal Appeal)

Noting Digambar's young age (25 years) at the time of offence, and finding the lack of brutality in the injuries, the Supreme Court held that the death penalty could not be imposed. Further reliance was placed on reports from the jail authorities and probation officer (which stated that the appellant was well-behaved, helpful and exhibited leadership qualities). By relying on precedents, the Court held that honour killing by itself did not deserve a death sentence. Based on the evidence of Digambar's probability of reformation, the nature of offence and lack of brutality, the Supreme Court commuted his death sentence to life imprisonment. The Court did not interfere with the sentence of co-accused Mohan, as he had originally been sentenced to life imprisonment.

09.11.2023

Murder Simpliciter

 Criminal Appeal Nos. 1381-1382 of 2017 with Criminal Appeal No. 1790 of 2017

 Justices B R Gavai,
B V Nagarathna, Prashant
Kumar Mishra

Madan v. State of Uttar Pradesh (1)

Case History

Madan was convicted along with two other co-accused persons for the murder of six persons by trial court in Muzaffarnagar, Uttar Pradesh and sentenced to death on 31.07.2015. The Allahabad High Court upheld the conviction and death sentence in its judgment dated 22.02.2017. The judgment of the High Court was appealed before the Supreme Court in this criminal appeal. The Supreme Court commuted the sentence of Madan to life imprisonment for a fixed term of twenty years without remission on 09.11.2023.

Supreme Court (Criminal Appeal)

The Supreme Court commuted Madan's death sentence based on his young age and good prison conduct. The Court observed that the trial court sentenced the co-accused in the case to life imprisonment despite relying on the same evidence. Further, it found that the High Court commuted the other co-accused's sentence to life but confirmed Madan's death sentence. While acknowledging that the death sentence had been confirmed due to criminal antecedents, the Supreme Court held that a death sentence could not be confirmed based on criminal antecedents alone. Particular emphasis was placed on the Madan's conduct in prison demonstrating his probability of reformation while commuting the death sentence. However, the Court imposed a life sentence barring remission for twenty years on the basis of brutality of offence.

MERCY PETITIONS

The President of India rejected the mercy petition of Vasanta Sampat Dupare on 12th March 2023. Vasanat Sampat Dupare was convicted on 29.09.2010 for the kidnapping, rape and murder of a minor in 2008. His death sentence was confirmed by the Bombay High Court (Nagpur Bench) on 27.03.2012. The Supreme Court confirmed his death sentence on 26.11.2014 at the criminal appeal stage. Subsequently, his review petition was rejected by the Supreme Court on 03.05.2017.



DEVELOPMENTS IN THE LAW

01

Constitutionality of Hanging as a Method of Execution

In *Rishi Malhotra v. Union of India*, the Supreme Court considered a writ petition challenging the constitutionality of hanging as a method of execution. The Court issued orders in this petition, directing the Union to set up a committee (of experts in the medical sciences and the law) to examine alternative methods of execution which could cause death in a quicker, less painful manner. Previously, a three-judge bench of the Supreme Court had upheld the constitutionality of hanging in *Deena v. Union of India* (1983).

02

Introduction of New Criminal Law Bills

Three new criminal bills – the BNS, BNSS and BSB introduced in Parliament by the Union Government to replace the IPC, CrPC and IEA were passed by the Lok Sabha and the Rajya Sabha in the Winter Session of the Parliament in 2023 and received the President's assent on 25 December 2023. The Ministry of Home Affairs is set to notify the date on which the laws will come to effect.

The BNS retains the offences punishable with death under the IPC and expands the number of offences punishable with death from twelve (under the IPC) to eighteen. It also introduces the offence of mob lynching in the provision of murder as a special category of murder committed by 'five or more persons acting in concert' and motivated by the social profile of the victim⁵² and makes it punishable with the death penalty. Notably, unlike murder which can be punished with life or death sentence, the newly created offence of mob lynching is punishable with 7 years imprisonment or life imprisonment or the death penalty.⁵³

⁵² Bharatiya Nyaya Sanhita Bill – A Substantive Analysis, 2023, Project 39A, National Law University, Delhi, pg. 18. Available at: <https://p39ablog.com/wp-content/uploads/2023/08/Bharatiya-Nyaya-Sanhita-Bill-2023-Research-Brief.pdf>.

⁵³ Cl. 101(2) of the BNS; Cl. 115(4) of the BNS.

03

Recommendation of the Parliamentary Standing Committee on the Retention of Capital Punishment

In light of the increased number of offences punishable with death under the BNS, the Parliamentary Standing Committee on Home Affairs, in its 246th Report on the Bharatiya Nyaya Sanhita 2023, took note of submissions by various experts on the need to abolish the death penalty or the systemic changes to be introduced upon its retention.⁵⁸ Expert submissions against the death penalty relied on the sparse rate of death sentence confirmations by the Supreme Court (as opposed to the "poorly reasoned and consistently high number of death sentences" imposed at trial courts) and the global trend towards abolition.⁵⁹ The Committee also recorded submissions seeking to establish "mitigation steps and processes" through the BNSS, the establishment of Sentencing Councils to "formulate guidelines on sentencing for the judiciary" and the need to plug the gaps in the rarest of rare doctrine guiding capital sentencing, should the death penalty be

⁵⁴ Cl. 473 of the BNS.

⁵⁵ Bharatiya Nagarik Suraksha Sanhita, 2023 and Bharatiya Sakshya Bill, 2023 – A Substantive Analysis, 2023, Project 39A, National Law University, Delhi, pg. 74. Available at: https://p39ablog.com/wp-content/uploads/2023/10/P39A-Blog_-BNSS_BSB_Research-Brief.pdf.

⁵⁶ Bharatiya Nagarik Suraksha Sanhita, 2023 and Bharatiya Sakshya Bill, 2023 – A Substantive Analysis, 2023, Project 39A, National Law University, Delhi, pg. 74. Available at: https://p39ablog.com/wp-content/uploads/2023/10/P39A-Blog_-BNSS_BSB_Research-Brief.pdf.

⁵⁷ Bharatiya Nagarik Suraksha Sanhita, 2023 and Bharatiya Sakshya Bill, 2023 – A Substantive Analysis, 2023, Project 39A, National Law University, Delhi, pg. 74. Available at: https://p39ablog.com/wp-content/uploads/2023/10/P39A-Blog_-BNSS_BSB_Research-Brief.pdf.

⁵⁸ Department Related Parliamentary Standing Committee on Home Affairs, 246th Report on the Bharatiya Nyaya Sanhita, 2023 (10 November 2023).

⁵⁹ Department Related Parliamentary Standing Committee on Home Affairs, 246th Report on the Bharatiya Nyaya Sanhita, 2023 (10 November 2023) [paras 2.9, 2.10].

retained.⁶⁰ Additionally, submissions seeking to address persisting issues in death penalty administration— including the lack of adequate legal representation, media influence in trials leading to the death penalty and issues with legal representation in cases involving “religious or caste prejudice” were highlighted.⁶¹ After taking note of these submissions, the Committee officially recommended the matter of retention to be left up to the Government, but recognised that the fallibility of the judicial system and the resultant possibility of imposition of the death penalty on innocent persons is the strongest argument against the death penalty that could be made.⁶²

⁶⁰ Department Related Parliamentary Standing Committee on Home Affairs, 246th Report on the Bharatiya Nyaya Sanhita, 2023 (10 November 2023) [para 2.11].

⁶¹ Department Related Parliamentary Standing Committee on Home Affairs, 246th Report on the Bharatiya Nyaya Sanhita, 2023 (10 November 2023) [para 2.11].

⁶² Department Related Parliamentary Standing Committee on Home Affairs, 246th Report on the Bharatiya Nyaya Sanhita, 2023 (10 November 2023) [para 2.12].



INTERNATIONAL DEVELOPMENTS

MALAYSIA



Malaysia Repeals Mandatory Death Penalty and Natural Life Imprisonment

On 11 April 2023, Malaysia’s Parliament passed two bills abolishing the mandatory death penalty and the sentence of life imprisonment till the end of natural life. The first bill called the Abolition of Mandatory Death Penalty Bill 2023 abolishes the mandatory death penalty for twelve offences including murder, drug trafficking, treason, and terrorism.⁶³ For these offences, judges now have the option to use their discretion to impose the death penalty. The death penalty has also been abolished as a punishment for seven offences entirely. The second bill, Revision of Sentence of Death and Imprisonment for Natural Life (Temporary Jurisdiction of the Federal Court) Bill 2023, allows for the resentencing of persons sentenced to death or natural life imprisonment.⁶⁴

GHANA



Ghana Outlaws the Death Penalty for Ordinary Crimes

On 25 July 2023, the Parliament of Ghana passed the Criminal Offences (Amendment) Bill, 2022⁶⁵ with the aim to abolish the death penalty and replace it with life imprisonment for the offences of murder, genocide, piracy and smuggling. The death penalty can still be imposed for acts of high treason. Ghana last carried out an execution in 1933.

⁶³ Abolition of Mandatory Death Penalty Bill 2023, D.R. 7/2023, available at: <https://www.parlimen.gov.my/bills-dewan-rakyat.html?uweb=dr&lang=en#>.

⁶⁴ Revision of Sentence of Death and Imprisonment for Natural Life (Temporary Jurisdiction of the Federal Court) Bill 2023, D.R. 8/2023, available at: <https://www.parlimen.gov.my/bills-dewan-rakyat.html?uweb=dr&lang=en#>.

⁶⁵ Available here: <http://ir.parliament.gh/bitstream/handle/123456789/2385/Criminal%20Offence%20%28Amendment%29Bill%2c2022.pdf?sequence=1&isAllowed=y>

UZBEKISTAN



Codification of Abolition of the Death Penalty in Uzbekistan's Constitution through Referendum

On 30 April 2023, through a Referendum on a Constitutional Amendment, Uzbekistan recorded 90% of votes in favour of changes to the Constitution of Uzbekistan. One of the changes allows for the abolition of the death penalty to be codified in Article 25 of the Constitution. The death penalty as a punishment had been abolished in Uzbekistan since 2008, through this Constitutional Amendment, the abolition has been specifically codified in the Constitution.

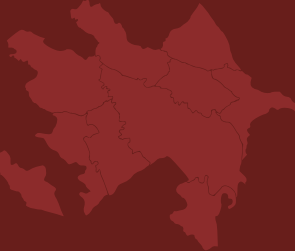
KENYA



Commutation of Death Sentences to Life Imprisonment in Kenya

In July 2023, the President of Kenya commuted all death sentences imposed before 21st November, 2022 to life imprisonment, based on a recommendation by the Power of Mercy Advisory Committee. Previously, in 2009 and 2016, the then Presidents had also commuted death sentences of 4000 and 2655 prisoners, respectively. In 2017, the Supreme Court of Kenya held the mandatory death penalty for the offence of murder to be unconstitutional.⁶⁶ Kenya's last execution was carried out in 1987.

AZERBAIJAN

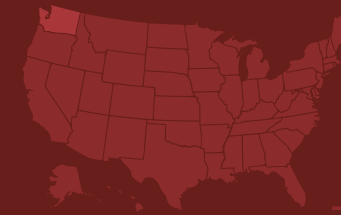


Azerbaijan Signs Protocol to Abolish Death Penalty in All Circumstances

On 8 March 2023, Azerbaijan signed Protocol No. 13 to the European Convention on Human Rights, on the abolition of the death penalty in all circumstances. This makes the country the last Member State of the Council of Europe to sign the Protocol. Azerbaijan is yet to ratify the Protocol.

⁶⁶ Francis Karioko Muruatetu & Another v Republic, (2017) eKLR.

UNITED STATES OF AMERICA



State of Washington Formally Abolishes the Death Penalty

On 21 April 2023, Washington State Governor Jay Inslee signed a bill into law that eliminated the death penalty as a state-sanctioned punishment.⁶⁷ The Governor had moved a moratorium on the death penalty in 2014. In 2018, Washington Supreme Court ruled the death penalty to be unconstitutional due to its inconsistent application.⁶⁸

⁶⁷ State Bill 5087 – 2023–24, available at: <https://app.leg.wa.gov/billsummary?BillNumber=5087&Initiative=false&Year=2023#:~:text=of%20the%20Washington%20state%20Constitution>

⁶⁸ State v. Gregory, 427 P.3d 621 (Wash. 2018).

FINAL OBSERVATIONS

With 561 prisoners, 2023 saw the highest population on death row in nearly two decades.⁶⁹ 488 prisoners from the total death row population are awaiting judgment from the High Courts. This is the highest number of death row prisoners whose cases are pending before the High Courts since 2016. Despite this rate, 2023 saw the second lowest disposal rate of High Court death penalty confirmation proceedings since 2016 (the lowest being in 2020, when COVID-19 had impacted the functioning of the High Courts).

Importantly, the calendar year 2023 marked the lowest rate of death sentence confirmations by the appellate courts since 2000, with only one confirmation by the Karnataka High Court. While confirmations in death penalty cases have always been sparse, the decrease in 2023 signifies that appellate courts are increasingly reluctant to use the death penalty. Acquittals dominated the outcomes in death penalty cases at the appellate courts in 2023. The Supreme Court and the High Courts raised grave concerns over the shoddy nature of investigations and poor quality of evidence relied on by trial courts to convict and sentence persons to death. The Supreme Court continued the trend from previous years by relying on jail conduct and psychiatric evaluation report of the accused to commute death sentences of three prisoners in two cases.

Citing the Supreme Court's decision in *Manoj v. State of Madhya Pradesh*, the Kerala High Court and the Telangana High Court directed a team of mitigation investigators trained in the social sciences to provide information on the mental health and life circumstances of the accused for sentencing. This update signifies the important extension of Supreme Court developments on capital sentencing to the High Courts.

In contrast to growing concern in appellate courts over the lack of information about the accused at sentencing, trial courts in 2023 continued to overwhelmingly impose death sentences without eliciting necessary reports from the State.

⁶⁹ National Crime Records Bureau, Prison Statistics India Reports for the years 2000-2001.

These figures denote a widening gulf between the efforts from appellate courts to improve the institutional capacity of administering the death penalty, and the persisting capital sentencing crisis at trial courts. In 2022, the Supreme Court had referred the issue of framing guidelines for effective, meaningful sentencing in capital cases to a Constitution bench. It remains to be seen how the Constitution bench – which is yet to be convened – will approach these issues.

CORRECTIONS TO ANNUAL STATISTICS

- Subsequent access to updated court records reveal that the number of death sentences imposed in 2022 is 167 (not 165 as was reported in the previous edition). In light of this update, the number of prisoners on death row at the end of 2022 was 541 and not 539. All other data points have been updated accordingly.



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